Bill Rowland
and other LSC staff

Legislative Service Commission

Bill Analysis

H.B. 95*

125th General Assembly
(As Introduced)

Rep. Calvert

TABLE OF CONTENTS

This analysis is arranged by state agency, beginning with the Department of Administrative Services and continuing in alphabetical order. Items that do not directly involve an agency are located under the agency that has regulatory authority over the item, or otherwise deals with the subject matter of the item.

Within each agency category, a summary of the items appears first (in the form of dot points), followed by a discussion of their content and operation. Items generally are presented in the order in which they appear in the Revised Code.

* *This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Budget in Detail spreadsheet and Comparison Document for H.B. 95 for an analysis of such provisions.*

DEPARTMENT OF DEVELOPMENT

OHIO BOARD OF DIETETICS

COMMISSION ON DISPUTE RESOLUTION AND CONFLICT MANAGEMENT

DEPARTMENT OF EDUCATION

OHIO ETHICS COMMISSION

DEPARTMENT OF HEALTH

DEPARTMENT OF JOB AND FAMILY SERVICES

DEPARTMENT OF ADMINISTRATIVE SERVICES

- Codifies the Vehicle Liability Fund.

- Requires the Director of Administrative Services, through the Office of Risk Management, to operate the Vehicle Liability Fund on an actuarially sound basis, including maintaining reserves necessary and adequate to cover potential liability claims, expenses, fees, or damages.

- Requires contributions from state agencies and state bodies for the purpose of purchasing liability insurance or administering self-insurance programs to be deposited to the credit of the Vehicle Liability Fund.

- Eliminates a provision of existing law requiring reimbursements by state agencies to the Department of Administrative Services for "contracts of insurance" to be deposited to the credit of the General Services Fund or the Information Technology Fund.

- Eliminates the State Forms Management Control Center in the Department of Administrative Services and its administrator, but retains DAS' responsibility to control and supervise a revised state forms management program.

- Repeals the Form Burden Law that is no longer operative.

- Removes the Office of State Records Administration and a designated administrator from the Department of Administrative Services, but retains DAS responsibility for a state records program.

- Removes several duties of the state records program including the duty to make continuing surveys of record-keeping operations and recommend improvements, and the duty to establish and operate state records centers and auxiliary facilities as authorized by appropriation and provide related necessary services.

- Changes the definition of "qualifications," for purposes of the Professional Design Services Law, to include as a catch-all "any other relevant factors as determined by the public authority."

- Eliminates an obsolete reference to a non-existent pay range for State Fire Commission Members.

Vehicle Liability Fund

(R.C. 9.83 and 125.15)

Existing law requires all state agencies that must secure "contracts of insurance" from DAS to reimburse DAS upon its request for the contracts, including a reasonable sum to cover DAS' administrative costs. The money so paid must be deposited into the state treasury to the credit of the General Services Fund or the Information Technology Fund, as appropriate.

The bill eliminates the requirement that moneys paid for contracts of insurance be deposited into the state treasury to the credit of those funds and establishes, in permanent law, the Vehicle Liability (VL) Fund in the state treasury. The VL Fund, which currently is established by administrative rule, must be used to provide insurance and self-insurance for the state. Money in the VL Fund may be applied to the payment of liability claims (i.e., liability for injury, death, or loss to person or property arising from the operation of an automobile, truck, motor vehicle with auxiliary equipment, etc.) that are filed against the state in the Court of Claims and determined in the manner provided in the law governing that court. The Director of Administrative Services, through the Office of Risk Management, is required to operate the VL Fund on an actuarially sound basis.

The Director is required to collect from each state agency or participating state body its contribution to the VL Fund for the purpose of purchasing insurance or administering self-insurance programs. The Director must determine the amount of the contribution, with the approval of the Director of Budget and Management, based on actuarial assumptions and the relative risk and loss experience of each state agency or participating state body. The amount of the contribution also must include a reasonable sum to cover DAS' administrative costs. In addition to these contributions, which must be deposited into the VL Fund, all investment earnings of the VL Fund must be credited to it.

Reserves must be maintained in the VL Fund in an amount that is necessary and adequate, in the exercise of sound and prudent actuarial judgment, to cover potential liability claims, expenses, fees, or damages. The Director of Administrative Services may procure the services of a qualified actuarial firm for the purpose of recommending the specific amount of money that is required to maintain adequate reserves in the VL Fund for a specified period of time.

State forms management

(R.C. 125.92, 125.93, 125.95, 125.96, and 125.98)

Current law establishes in DAS a State Forms Management Control Center under the control and supervision of the Director of Administrative Services, who must appoint an *administrator* of the Center. The Center must develop, implement, and maintain a *statewide forms management program* that involves all state agencies and is designed to simplify, consolidate, or eliminate, when expedient, forms, surveys, and other documents used by the agencies. (R.C. 125.92.)

The bill eliminates the Center in DAS as well as the position of its administrator. But, DAS still must establish and administer a state forms management program under the control and supervision of the Director of Administrative Services or the Director's designee. The program must be developed, implemented, and maintained for all state agencies and be designed to simplify, consolidate, or eliminate, when expedient, forms, surveys, and other documents used by them. (R.C. 125.92, 125.93, 125.95, 125.96, and 125.98.)

Under current law, the Center is required, among its other duties, to conduct an annual evaluation of the effectiveness of the forms management program and the forms management practices of individual state agencies. The results of an evaluation must be reported to the Speaker of the House of Representatives and the President of the Senate by January 15 of each year. The bill eliminates from the duties of the continuing DAS state forms management program this annual evaluation requirement as well as the Center's duties (1) to

utilize existing functions within DAS to design economical forms and compose art work, (2) to use appropriate procurement techniques to take advantage of competitive selection, consolidated orders, and contract procurement of forms, (3) to establish and supervise control procedures to prevent the undue creation and reproduction of state forms, and (4) to assist state agencies to compose art work for forms. (R.C. 125.93.)

Finally, the Center currently must maintain a *central cross-index* of state forms to facilitate standardization of the forms, eliminate redundant forms, and provide a central source of information on forms usage and availability. The bill instead requires the state forms management program to maintain a *central forms repository* of all state forms for those purposes. (R.C. 125.93(E) and 125.98(A)(5).).

Form Burden Law

(R.C. 125.91; repeal of R.C. 125.931, 125.932, 125.933, 125.934, and 125.935)

The bill outright repeals the statutes pertaining to the Form Burden Law that are no longer operative, as that law's requirements were only for fiscal years 1995 through 1999. That law had a requirement that each state agency submit in those fiscal years a forms reduction summary to the Director of Administrative Services.

Office of State Records Administration

(R.C. 149.33, 149.331, 9.01, 101.82, 149.011, 149.332, 149.333, 149.34, and 149.35)

Under current law, the Department of Administrative Services (DAS) has full responsibility for establishing and administering a state records program for all state agencies, except for state-supported institutions of higher education. This responsibility is fulfilled by DAS' Office of State Records Administration which is under the control and supervision of the Director of Administrative Services or the Director's appointed deputy. The office has an *administrator* designated by the Director. (R.C. 149.33(A).)

The current *state record administration program* has a number of statutory duties, including, but not limited to, the duty to work with the state archivist in establishing effective management procedures for state records, the duty to make surveys of record-keeping operations and recommend improvements in current records management practices, the duty to establish and operate state records centers and auxiliary facilities authorized by appropriation, the duty to review applications for one-time records disposal and schedules of records retention and

destruction submitted by state agencies, the duty to establish and maintain a records management training program, and the duty to obtain reports from entities necessary for the program's effective administration (R.C. 149.331 and 149.332).

The bill eliminates the Office of State Records Administration in DAS as well as the position of state records administrator. But, DAS will have the responsibility (replacing "full" responsibility under current law) for establishing and administering a state records program (replacing current law's "state record administration program") for all state agencies, except for state-supported institutions of higher education, under the control and supervision of the Director of Administrative Services or the Director's appointed deputy. The bill also eliminates as duties of the state records program (1) the surveying of record-keeping operations, (2) the recommending of improvements in current records management practices, (3) the establishment and operation of state records centers and auxiliary facilities, and (4) the obtaining of reports from entities for the program's effective administration; a new duty under the bill is that program must provide a basic consulting service for personnel involved in record-keeping (in addition to its continuing duty to establish and maintain a records management training program for those personnel). (R.C. 149.33 and 149.331.) Similarly, the bill removes the requirements for each state agency to cooperate in the surveys and to transfer certain records to a state records center or auxiliary facility (R.C. 149.34). The bill also replaces numerous statutory references to the state records administrator with references to the state records program or the Director of Administrative Services (R.C. 9.01, 149.332, 149.333, 149.34, and 149.35).

Finally, although existing law defines "records" to include any document, device, or item, regardless of physical form or characteristic, that is created or received by or comes under the jurisdiction of a public office and that serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office, the bill specifically includes in that definition, as an example, *electronic records* as currently defined in the Electronic Records Transfer Law (R.C. 149.011(G)).

Professional design services contracts

(R.C. 153.65)

Under the current Professional Design Services (PDS) Law, a "public authority" that may contract for those services includes the state, a county, township, municipal corporation, school district, or other political subdivision, or any public agency, authority, board, commission, instrumentality, or special district of the latter. The PDS Law also provides that the "qualifications" that a professional design firm must satisfy for contracting purposes include competence to perform the required design services as indicated by its personnel technical

training, education, and experience, ability of the firm in terms of its workload and availability to perform those services competently and expeditiously, the past performance of the firm, and *other similar factors*. The bill replaces the catch-all with "any other relevant factors as determined by the public authority."

Salaries of State Fire Commission Members

(R.C. 3737.81)

The bill eliminates an obsolete reference to pay range 32 (S)(D) once used to fix the salary of members of the State Fire Commission but which is no longer contained in the Department of Administrative Services Law (R.C. Chapter 124.). The bill retains the existing authorization for the Director of Administrative Services to establish the rate of payment.

DEPARTMENT OF AGING

- Establishes the Resident Services Coordinator Program in the Department of Aging to provide services to low-income and special-needs tenants in subsidized rental housing and establishes the Resident Services Coordinator Fund to receive moneys from the Department of Development and the General Assembly.

- Permits the State Long-Term Care Ombudsman to investigate all complaints against community-based long-term care service providers, rather than only complaints involving an individual age 60 or older.

- Increases to $6 (from $3) the amount for each resident bed that long-term care facilities must pay annually for support of regional long-term care ombudsperson programs and excludes adult foster homes from the payment requirement.

Resident Services Coordinator Program

(R.C. 173.08)

The bill establishes the Resident Services Coordinator Program in the Department of Aging under which resident service coordinators provide information and assistance to low-income and special-needs tenants, including the elderly, living in subsidized rental housing complexes. The coordinators aid

tenants in obtaining community and program services and other benefits for which they are eligible. The bill also establishes the Resident Services Coordinator Fund to receive moneys from the Department of Development (proposed to come from the Housing Trust Fund) and moneys the General Assembly appropriates to the Fund.

Investigative authority of State Long-Term Care Ombudsman

(R.C. 173.14)

Current law limits the State Long-Term Care Ombudsman's authority to investigate complaints against community-based long-term care service providers to those that involve an individual age 60 or older. The bill removes this restriction, allowing the Ombudsman to investigate any complaints against a community-based long-term care service provider.

Bed fee for regional long-term care ombudsperson programs

(R.C. 173.26)

Under current law, a nursing home, residential care facility, adult care facility, adult foster home, or other specified long-term care facility must annually pay to the Department of Aging $3 for each bed the facility maintained for use by a resident during any part of the previous year. The funds are used to pay the costs of operating regional long-term care ombudsperson programs.

The bill increases the annual per bed amount to $6. It excludes adult foster homes from the payment requirement. (An adult foster home is a residence in which accommodations and personal care services are provided to one or two adults who are unrelated to the home's owners.)

DEPARTMENT OF AGRICULTURE

- Extends the Family Farm Loan Program through October 15, 2005.
- Authorizes, rather than requires, the Division of Markets in the Department of Agriculture to perform specified duties, eliminates the Division's duty relating to inspection of farm produce at collecting and receiving centers, and makes conforming changes.
- Authorizes the Division to participate in trade missions between states and foreign countries in order to encourage the sale and promotion of Ohio-grown products.

- Eliminates the Director of Agriculture's authority in the Division of Markets Law to adopt a fee schedule for inspecting any agricultural product for the purposes of the issuance of an export certificate that may be required by the United States Department of Agriculture or foreign purchasers, and instead authorizes the Director or his authorized representative, in the Nursery Stock and Plant Pests Law, to conduct inspections of agricultural products that are required by federal agencies, other states, or foreign countries to determine whether the products are infested and to issue a certificate if a product is not infested, allows the Director to charge fees for performing those functions, and requires that the money from the fees be used to pay the costs of administering that Law.

- Allows investment earnings of the Clean Ohio Agricultural Easement Fund, which are credited to the Fund, to be used indefinitely to pay costs incurred by the Director of Agriculture in administering the agricultural easements program.

- Authorizes the Director of Agriculture to establish a voluntary gypsy moth suppression program under which a landowner may request that the Department of Agriculture have the landowner's property treated for gypsy moths in exchange for the landowner's payment of a percentage of the cost of the treatment, and requires the Director to adopt rules to facilitate implementation of the program.

- Requires the Department of Agriculture to adopt rules prescribing fees that auctioneer licensees must pay and, except for single-auction licensees, deadlines and procedures with which they must comply, and specifies that until those rules are adopted, licensees must pay the fees and comply with the deadlines and procedures established in current law.

- Increases the amount of financial responsibility required for single-auction licensees.

- Excludes persons who seek compensation for losses resulting from improper conduct by single-auction licensees from eligibility for compensation from the Auction Recovery Fund, but retains requirements pertaining to single-auction licensees' contributions to the Fund.

Family Farm Loan Program

(R.C. 122.011; Sections 132.05 and 132.06)

Under current law, the Family Farm Loan Program is scheduled to expire on July 1, 2003. The bill extends the expiration date to October 15, 2005, and changes all statutory dates with regard to that program accordingly.

Division of Markets

(R.C. 901.17)

Current law requires the Division of Markets in the Department of Agriculture to perform specified duties regarding the production and marketing of agricultural products. The duties include the inspection and determination of the grade and condition of farm produce at collecting and receiving centers within the state. The bill authorizes, rather than requires, the Division to perform the specified duties. It also modifies the duties by: (1) eliminating the requirement that the Division inspect and determine the grade and condition of farm produce at collecting and receiving centers within the state, and (2) authorizing the Division to participate in trade missions between states and foreign countries in order to encourage the sale and promotion of Ohio-grown products.

Under existing law, the Director of Agriculture must adopt and may amend schedules of fees to be charged for inspecting farm produce at collecting and receiving centers or other services as may be rendered under current law. The fees must be made with a view to the minimum cost and to make "this branch" of the Department self-sustaining. The fees must be credited to the Inspection Fund in the state treasury for use in performing the Division's duties required under current law. All investment earnings of the Fund must be credited to the Fund. If, in any year, the balance of the Fund is not sufficient to meet the Division's expenses incurred in performing its duties, the deficit must be paid from funds appropriated for the use of the Department. As a result of the bill's elimination of the requirement that the Division inspect and determine the grade and condition of farm produce at collecting and receiving centers within the state, the bill makes conforming changes by eliminating these provisions.

Current law authorizes the Director to adopt a schedule of fees to be charged for inspecting any agricultural product for the purposes of the issuance of an export certificate as may be required by the United States Department of Agriculture or foreign purchasers. The fees must be credited to the General Revenue Fund. The bill eliminates these provisions in the Division of Markets Law and enacts similar provisions, with modifications, in the Nursery Stock and

Plant Pests Law (see "***Inspection of agricultural products by Director of Agriculture***," below).

Inspection of agricultural products by Director of Agriculture

(R.C. 921.151 (921.22) and 927.69; Sections 3.01, 3.02, 3.03, and 147.02)

Under current law, the Director of Agriculture or his authorized representative may perform specified inspection activities to carry out the purposes of the Nursery Stock and Plant Pests Law. The bill adds to those functions authority for the Director or his authorized representative to conduct inspections of agricultural products that are required by other states, the United States Department of Agriculture, other federal agencies, or foreign countries to determine whether the products are infested. If, upon making such an inspection, the Director or his authorized representative determines that an agricultural product is not infested, he may issue a certificate, as required by other states, the United States Department of Agriculture, other federal agencies, or foreign countries, indicating that the product is not infested.

The bill authorizes the Director to charge fees for both the inspection and the issuance of a certificate. The fees must be established in rules adopted by the Director and must be deposited into the state treasury to the credit of the Pesticide Program Fund created in the Pesticides Law. Money credited to the Fund must be used to pay the costs incurred by the Department in administering the Nursery Stock and Plant Pests Law. The bill specifies that the portion of the money in the Fund collected under the Nursery Stock and Plant Pests Law and the portion of the money in the Fund collected under the Pesticides Law must be used to carry out the purposes of each Law, respectively.

Use of investment earnings of Clean Ohio Agricultural Easement Fund

(R.C. 901.21)

Current law creates the Clean Ohio Agricultural Easement Fund, which consists of 12½% of net proceeds of general obligation bonds issued and sold for agricultural and conservation projects. The Fund must be used for the purposes of the agricultural easements program. Investment earnings of the Fund must be credited to the Fund and, until July 26, 2003, may be used to pay the costs incurred by the Director of Agriculture in administering that program. The bill eliminates the deadline, thus allowing the investment earnings to be used for that purpose indefinitely.

Gypsy moth suppression

(R.C. 921.151 and 927.701; Sections 3.01, 3.02, 3.03, and 147.02)

The bill authorizes the Director of Agriculture to establish a voluntary gypsy moth suppression program under which a landowner may request that the Department of Agriculture have the landowner's property aerially sprayed to suppress the presence of gypsy moths in exchange for payment from the landowner of a portion of the cost of the spraying. Under the bill, "gypsy moth" means the live insect, Lymantria dispar, in any stage of development.

To determine the amount of payment that is due from a landowner, the Department first must determine the projected cost per acre to the Department of gypsy moth suppression activities for the year in which the landowner's request is made. The cost must be calculated by determining the total expense of aerially spraying for gypsy moths to be incurred by the Department in that year divided by the total number of acres proposed to be sprayed in that year. With respect to a landowner, the Department must multiply the cost per acre by the number of acres that the landowner requests to be sprayed. The Department must add to that amount any administrative costs that it incurs in billing the landowner and collecting payment. The amount that the landowner must pay to the Department cannot exceed 50% of the resulting amount.

The bill requires the Director to adopt rules in accordance with the Administrative Procedure Act to establish procedures under which a landowner may make a request to have his property aerially sprayed for gypsy moth suppression and to establish provisions governing agreements between the Department and landowners concerning gypsy moth suppression together with any other provisions that the Director considers appropriate to administer the gypsy moth suppression program.

The Director must deposit all money collected from landowners as payment for gypsy moth suppression into the state treasury to the credit of the Pesticide Program Fund created under current law. Such money that is credited to the Fund must be used for the suppression of gypsy moths.

Auctioneers Law

(R.C. 4707.071, 4707.072, 4707.10, and 4707.24)

License fees and licensing procedures for auctioneers, apprentice auctioneers, and special auctioneers

Under current law, the fee for each auctioneer's, apprentice auctioneer's, or special auctioneer's license issued by the Department of Agriculture is $100, and

the annual renewal fee for any of these licenses is $100. All licenses expire annually on June 30 and must be renewed according to the procedures in the Standard Renewal License Procedure Law or other procedures established in the Auctioneers Law. Any auctioneer, apprentice auctioneer, or special auctioneer licensee who fails to renew his license before July 1 must reapply for licensure in the same manner and pursuant to the same requirements as for initial licensure unless before September 1 of the year of expiration, the person pays, in addition to the regular renewal fee, a late renewal penalty of $100.

Existing law prohibits any person who fails to renew the person's license before July 1 from engaging in any auctioneering activity specified in current law until the person's license is renewed or a new license is issued. A person who renews his license between July 1 and September 1 cannot engage in any auctioneering activity until his license is renewed or he is issued a new license. The Department may refuse to renew the license of or issue a new license to any person who violates these provisions.

Under current law, each auctioneer or apprentice auctioneer licensee must give written notice to the Department of any change in principal business location or any change in the name under which business is conducted; the Department then must issue a new license for the unexpired period. Any such change without notification to the Department automatically cancels any license previously issued. For each new auctioneer or apprentice auctioneer license issued upon the occasion of a change in business location or a change in the name under which business is conducted, the Department may collect a fee of $10 for each change unless the notification of the change occurs concurrently with the renewal application.

The bill instead requires the Department to adopt rules prescribing fees that auctioneer, apprentice auctioneer, and special auctioneer licensees must pay and license renewal deadlines and procedures with which licensees must comply. Until those rules are adopted, licensees must pay the statutory fees and comply with the statutory license renewal deadlines and procedures described above. The bill makes necessary conforming changes.

Additionally, current law requires the Department to prepare and deliver to each licensee a permanent license certificate and an annual renewal card, the appropriate portion of which must be carried by the licensee at all times when engaged in any type of auction activity, and part of which must be posted with the permanent certificate in a conspicuous location at the licensee's place of business. The bill changes the type of card that a licensee receives with his license certificate from an annual renewal card to an identification card.

Changes regarding single-auction licenses

Under current law, the Department may grant single-auction licenses to any nonresident person deemed qualified by the Department. An applicant for a single-auction license or any auctioneer affiliated with the applicant must meet specified requirements before the applicant is issued a license. The requirements include payment of a $100 license fee, which is credited to the Auctioneers Fund created under current law, and submission of proof of financial responsibility in the form of a bond for $10,000, which increases to $25,000 on July 1, 2003. The bill instead requires the Department to adopt rules prescribing the fee that a license applicant must pay. Until those rules are adopted, a license applicant must pay the fee established in current law. The bill also increases the amount of financial responsibility that is required for a single-auction license to $50,000.

Recently enacted law establishes the Auction Recovery Fund and establishes procedures by which persons may apply for compensation from the Fund for losses resulting from improper conduct by persons licensed under the Auctioneers Law. The Fund consists of all of the following: any moneys transferred to it from the Auctioneers Fund; except as otherwise provided under recently enacted law, a portion, in an amount specified in rules adopted by the Director, of license fees collected under the Auctioneers Law; any assessments levied under recently enacted law (see below); repayments made to the Auction Recovery Fund by persons licensed under the Auctioneers Law; and interest earned on the assets of the Fund.

Under recently enacted law, the Director must ascertain the balance of the Auction Recovery Fund on the first day of July each year. If the balance of the Fund is greater than $2 million, the Director may utilize, during the fiscal year beginning on that first day of July, the portion of the Fund that is greater than $2 million for educational or research purposes. If the balance of the Fund is at least $4 million, the portion of license fees collected under the Auctioneers Law that otherwise would be credited to the Auction Recovery Fund must be credited to the Auctioneers Fund during the fiscal year beginning on that first day of July. However, if the balance of the Auction Recovery Fund is less than $400,000, the Director must levy an assessment against each person who holds a valid license issued under the Auctioneers Law. The amount of the assessment is determined by a formula that is established under recently enacted law. All assessments that are collected must be credited to the Fund.

The bill excludes persons who seek compensation for losses resulting from improper conduct by single-auction licensees from eligibility for compensation from the Auction Recovery Fund. However, the requirement that a portion of license fees collected from single-auction licensees be deposited into the Auction Recovery Fund and the requirement that an assessment be levied on each single-

auction licensee if the balance of the Fund is less than $400,000 remain unchanged by the bill.

DEPARTMENT OF ALCOHOL AND DRUG ADDICTION SERVICES

- Increases by 100% all current liquor permit fees of $300 or less and by 25% all such fees of more than $300.
- Increases from 21% to 32.5% the percentage of the Undivided Liquor Permit Fund that must be paid to the Statewide Treatment and Prevention Fund and then appropriated to the Department of Alcohol and Drug Addiction Services.

Liquor Law changes

Increase in liquor permit fees

(R.C. 4303.02, 4303.021, 4303.03, 4303.04, 4303.05, 4303.06, 4303.07, 4303.08, 4303.09, 4303.10, 4303.11, 4303.12, 4303.121, 4303.13, 4303.14, 4303.141, 4303.15, 4303.151, 4303.16, 4303.17, 4303.171, 4303.18, 4303.181, 4303.182, 4303.183, 4303.184, 4303.19, 4303.20, 4303.201, 4303.202, 4303.203, 4303.204, 4303.21, 4303.22, 4303.23, and 4303.231)

The bill increases by 100% all current liquor permit fees that are set at $300 or less and by 25% all such fees that are set at more than $300. The specific increase in each liquor permit fee is listed in the table below.

Liquor Permit	Current Fee	Fee Proposed by the Bill
A-1 (beer manufacturer)	$3,125 for each plant	$3,906 for each plant
A-1-A (retail beer and liquor sales on premises of a beer or wine manufacturer)	$3,125	$3,906
A-2 (wine manufacturer)	$63 per plant producing 100 wine barrels, of 50 gallons each, or less annually, plus 10¢ per barrel for each such barrel over 100 barrels	$126 per plant producing 100 wine barrels, of 50 gallons each, or less annually, plus 10¢ per barrel for each such barrel

Liquor Permit	Current Fee	Fee Proposed by the B l
	annually	over 100 barrels annually
A-3 (spirituous liquor manufacturer)	$3,125 per plant or $2 pe barrel if less than 500 barrels, of 50 gallons eac , are produced annually	$3,906 per plant or $2 pe barrel if less than 500 barrels, of 50 gallons eac , are produced annually
A-4 (mixed beverage manufacturer)	$3,125 per plant	$3,906 per plant
B-1 (beer wholesale distributor)	$2,500 per distributing pl nt or warehouse	$3,125 per distributing pl nt or warehouse
B-2 (wine wholesale distributor)	$250 per distributing plar t or warehouse plus 10¢ fo each 50-gallon barrel ove 1,250 barrels distributed annually	$500 per distributing plar t or warehouse plus 10¢ fo each 50-gallon barrel ove 1,250 barrels distributed annually
B-3 (sacramental wine wholesale distributor)	$62	$124
B-4 (mixed beverage wholesale distributor)	$250 per distributing plar t or warehouse plus 10¢ fo each 50-gallon barrel ove 1,000 barrels distributed annually	$500 per distributing plar t or warehouse plus 10¢ fo each 50-gallon barrel ove 1,000 barrels distributed annually
B-5 (wine wholesale distributor)	$1,250	$1,563
C-1 (beer retailer for sale for off-premises consumption)	$126	$252
C-2 (wine and mixed beverage retailer for sales for off-premises consumption)	$188	$376
C-2x (beer retailer for sal s for off-premises consumption)	$126	$252
D-1 (beer retailer for sale for on and off-premises consumption--hotels, certain restaurants, clubs, amusement parks, drug stores, lunch stands, boat , or vessels)	$188	$376

Liquor Permit	Current Fee	Fee Proposed by the Bill
D-2 (wine and mixed beverage retailer for sales for on- and off-premises consumption--hotels, certain restaurants, clubs, boats, or vessels)	$282	$564
D-2x (beer retailer for sales for on- and off-premises consumption)	$188	$376
D-3 (spirituous liquor retailer for sales for on-premises consumption--hotels, certain restaurants, clubs, boats, or vessels)	$600	$750
D-3x (wine retailer for sales for on-premises consumption)	$150	$300
D-3a (spirituous liquor retailer for sales for on-premises consumption)	$750	$938
D-4 (beer and liquor sales at private club)	$375	$469
D-4a (beer and liquor sales at airline-sponsored private club at an airport)	$600	$750
D-5 (beer and liquor sales at restaurant or night club)	$1,875	$2,344
D-5a (beer and liquor sales at hotel or motel with at least 50 rooms and a restaurant)	$1,875	$2,344
D-5b (beer and liquor sales at enclosed shopping center)	$1,875	$2,344
D-5c (beer and liquor sales at certain restaurants)	$1,250	$1,563
D-5d (beer and liquor sales at restaurants at certain publicly owned airports)	$1,875	$2,344

Liquor Permit	Current Fee	Fee Proposed by the B l
D-5e (beer and liquor sal s on riverboats)	$975	$1,219
D-5f (beer and liquor sal s at restaurants along navigable rivers)	$1,875	$2,344
D-5g (beer and liquor sal s at a national professional sports museum)	$1,500	$1,875
D-5h (beer and liquor sal s at a fine arts museum)	$1,500	$1,875
D-5i (beer and liquor sal s at large restaurants)	$1,875	$2,344
D-5j (beer and liquor sal s at restaurants in a community entertainmen district)	$1,875	$2,344
D-5k (beer and liquor sal s at a botanical garden)	$1,500	$1,875
D-6 (Sunday liquor sales)	$250 (all permits except C- 2 permit); $200 (C-2 permit)	$500 (all permits except C- 2 permit); $400 (C-2 permit)
D-7 (beer and liquor sale in a resort area)	$375 per month	$469 per month
D-8 (retail sale of tasting samples of beer, wine, an l mixed beverages)	$250	$500
E (beer and liquor sales o n airplanes and railroad car)	$250	$500
F (beer sales at special events)	$20 per event	$40 per event
F-1 (consumption of bee and liquor by nonprofit organizations' members i convention facilities)	$125 per three days	$250 per three days
F-2 (beer and liquor sale at special events)	$75 per event	$150 per event
F-3 (beer, wine, and mix d beverage samplings at a	$150 for five days	$300 for five days

Liquor Permit	Current Fee	Fee Proposed by the Bill
beer, wine, or mixed beverages industry convention)		
F-4 (wine samplings at wine festivals)	$30 per day	$60 per day
G (sale of alcohol for medicinal purposes by pharmacies)	$50	$100
H (beer and liquor transportation by commo carriers)	$150	$300
I (sale of alcohol by wholesale druggists)	$100	$200
W (storage of beer and liquor in warehouses by manufacturers and suppliers)	$1,250 per warehouse	$1,563 per warehouse

Increase in payments from Undivided Liquor Permit Fund to Statewide Treatment and Prevention Fund

(R.C. 4301.30)

Current law requires the Division of Liquor Control to deposit in the state treasury to the credit of the Undivided Liquor Permit Fund all of the fees the Division collects. The Division must pay to the Statewide Treatment and Prevention Fund an amount equal to 21% of the Undivided Liquor Permit Fund before certain amounts of the fees received for all C-2 permits and certain D-2 permits are paid from the Undivided Liquor Permit Fund to the General Revenue Fund. The General Assembly must appropriate to the Department of Alcohol and Drug Addiction Services the amount paid from the Undivided Liquor Permit Fund to the Statewide Treatment and Prevention Fund, together with an amount equal to 1.5% of the gross profit the Division derives from the sale of spirituous liquor.

The bill increases from *21% to 32.5%* the percentage of the Undivided Liquor Permit Fund that the Division must pay to the Statewide Treatment and Prevention Fund and that the General Assembly must then appropriate to the Department of Alcohol and Drug Addiction Services.

Current law, unchanged by the bill, requires that the remainder of the Undivided Liquor Permit Fund be distributed to each municipal corporation and township in the aggregate amount collected from permits issued for premises located in that municipal corporation or township.

OHIO ARTS AND SPORTS FACILITIES COMMISSION

- Eliminates the requirement that a cooperative or management contract entered into by an Ohio arts facility with the Ohio Arts and Sports Facilities Commission be for a term not less than the time remaining to the date of payment or provision for payment of any state bonds issued to pay the costs of the arts project.

- Eliminates as an element before state funds can be used to pay for an Ohio sports facility the minimum time period requirement for which the state must have a property interest in the facility, its site, or a portion of it when it is financed from state bond proceeds.

Ohio arts facility

(R.C. 3383.01(K))

Under current law, an Ohio arts facility, includes among other theaters and facilities, a specified type of capital facility in Ohio. Any capital facility in Ohio that meets the following requirements is an Ohio arts facility: (1) construction of an arts project related to the facility was authorized or funded by the General Assembly under specific statutory authority, and proceeds of state bonds are used for costs of the arts project, and (2) the facility is managed directly by, or is subject to a *cooperative or management contract* with the Ohio Arts and Sports Facilities Commission, and is used for or in connection with the activities of the Commission, including the presentation or making available of arts to the public and the provision of training or education in the arts.

Current law also provides that a cooperative or management contract must be for a term not less than the time remaining to the date of payment or provision for payment of *any state bonds issued* to pay the costs of the arts project, as determined by the Director of Budget and Management and certified by the Director to the Commission and the Ohio Building Authority (OBA). The bill eliminates this requirement.

Ohio sports facility

(R.C. 3383.07)

Current law specifies that one of the elements that must exist (1) before state funds can be used to pay or reimburse more than 15% of the initial estimated construction cost of an Ohio sports facility (excluding any site acquisition costs) or (2) before state funds, including any state bond proceeds, can be spent on an Ohio sports facility is that, if *state bond proceeds* are being used, the state owns or has sufficient property interests in the facility, in the site of the facility, or in the portion or portions of the facility financed from those proceeds. Those property interests must extend for a period of not less than the greater of the useful life of the portion of the facility so financed as determined using the guidelines for maximum maturities in the Uniform Public Securities Law, or the period remaining to date of payment or provision for payment of outstanding state bonds allocable to costs of the facility, all as determined by the Director of Budget and Management and certified by the Director to the Commission and the OBA. The bill eliminates this minimum time period requirement for the state's property interests.

OHIO ATHLETIC COMMISSION

- Removes the requirement that the Ohio Athletic Commission maintain an office in Youngstown and keep all of its permanent records there.

- Increases statutorily established fees that the Ohio Athletic Commission must charge for licenses and permits required to conduct boxing and wrestling matches and exhibitions, and allows the Commission to increase those fees by up to 50% instead of 25%.

- Abolishes the Athlete Agents Registration Fund and requires the Ohio Athletic Commission instead to deposit money it receives under the Athlete Agents Law to the Occupational Licensing and Regulatory Fund.

Ohio Athletic Commission office in Youngstown

(R.C. 3773.33)

The bill removes the requirement of current law that the Ohio Athletic Commission maintain an office in Youngstown and keep all of its permanent records there (R.C. 3773.33(D)).

Fees relative to the regulation of boxing and wrestling

(R.C. 3773.43)

The bill increases fees that the Ohio Athletic Commission must charge for the following:

Purpose	Fee
Application or renewal of a promoter's license for public boxing matches or exhibitions	from $50 to $100
Application or renewal of a license to participate in a public boxing match or exhibition	from $10 to $20
Permit to conduct a public boxing match or exhibition	from $10 to $50
Application or renewal of a promoter's license for professional wrestling matches or exhibitions	from $100 to $200
Permit to conduct a professional wrestling match or exhibition	from $50 to $100

Additionally, the bill permits the Commission, subject to the approval of the Controlling Board, to establish fees in excess of the increased fees listed above by up to 50% instead of by up to 25% of the existing fees listed above.

Athlete Agents Registration Fund

(R.C. 4743.05 and 4771.22)

The bill abolishes the Athlete Agents Registration Fund, which under current law is used to administer the Athlete Agents Law (R.C. Chapter 4771.). The bill requires the Ohio Athletic Commission instead to deposit money it receives under the Athlete Agents Law to the Occupational Licensing and Regulatory Fund for the continuing administration of the Athlete Agents Law.

OHIO BARBER BOARD

- Increases fees collected by the Ohio Barber Board related to licensure of barbers, barber shops, barber schools, barber teachers, and barber applicants and students.

Fee increases

(R.C. 4709.12)

The Ohio Barber Board collects fees related to licensure of barbers, barber shops, barber schools, barber teachers, and barber applicants and students. The bill increases these specified fees; however, under continuing law, the Barber Board, subject to approval by the Ohio Controlling Board, would retain the ability to charge fees in excess of the amount specified by up to 50% of the specified new amounts. Under the bill, the increases in specified fees and those persons to whom the fees apply are as follows:

Barber license and barber shop license	Fees
Barber license examination application	from $60 to $90
Application to retake any part of the barber license examination	from $30 to $45
Initial barber license	from $20 to $30
Biennial renewal of barber license	from $75 to $110
Restoration of an expired barber license for each year expired	from $50 to $75
Maximum fee for restoration of expired barber license	from $460 to $690
Issuance of barber license by reciprocity	from $200 to $300
Providing license information about an applicant upon request of the applicant	from $25 to $40
Issuance of duplicate barber or barber shop license	from $30 to $45
Issuance of barber shop license, inspection of new barber shop, change of ownership, or reopening facilities formerly a barber shop	from $75 to $110
Biennial renewal of barber shop license	from $50 to $75
Restoration of barber shop license	from $75 to $110

Barber school license	Fees
Inspection of new or of relocated licensed barber school premises	from $500 to $750
Initial or renewal barber school license	from $500 to $1,000
Restoration of barber school license	from $600 to $1,000

Barber student registration and teacher licensu e	Fees
Barber student registration	from $25 to $40
Examination and issuance of initial biennial barber teacher license (eliminates fee for "assistant teachers")	from $125 to $185
Renewal of barber teacher license (eliminates fee for "assistant teachers")	from $100 to $150
Restoration of barber teacher license/fee per year license expired (eliminates restoration amount/fees for "assistant teachers")	from $150/$40 to $225/$60
Maximum fee for restoration of expired barber teacher license (eliminates fee for "assistant teachers")	from $300 to $450

OFFICE OF BUDGET AND MANAGEMENT

- Repeals (1) a requirement that OBM, after enactment of an act containing appropriations of federal funds, provide a list of the federal programs associated with the appropriations, and (2) a general statement that a state agency is not required to obtain an executive order to participate in a federal program appearing on that list.

- Changes a prohibition regarding state agency expenditure of federal funds, to provide that an appropriation authorizes such expenditure even if it does not identify the federal program that is the source of the funds.

- Permits the transfer to the General Revenue Fund (GRF) of the amount that otherwise would have been transferred from the Tobacco Master Settlement Agreement Fund to the Tobacco Use Prevention and Cessation Trust Fund in FY 2004, and requires reimbursement from the Tobacco Master Settlement Agreement Fund in FY 2015 of the amount

not transferred to the Tobacco Use Prevention and Cessation Trust Fund in FY 2004 due to the GRF transfer.

- Eliminates the reimbursements required from the Tobacco Master Settlement Agreement Fund in FYs 2013 and 2014, of any amounts diverted from the Southern Ohio Agricultural and Community Development Trust Fund and Ohio's Public Health Priorities Trust Fund in FYs 2002 and 2003.

Federal funds reports and expenditures

(R.C. 131.35 and 131.38)

The bill repeals a requirement of current law that, within 60 days after the effective date of an act appropriating any federal funds, the Office of Budget and Management (OBM) provide a list of associated federal programs, by state agency, to the Speaker of the House of Representatives, the President of the Senate, and the Chairpersons of the House and Senate Finance Committees. The bill also repeals a general statement that a state agency is not required to obtain an executive order to participate in a federal program appearing on that OBM list.

The bill additionally affects a prohibition pertaining to expenditures of federal funds that have been credited to state funds from which the Controlling Board may transfer excess cash balances. Currently, a state agency is prohibited from expending those federal funds unless authorized (1) by a specific appropriation identifying the federal program that is the source of the funds, (2) by the repealed list statute described above, (3) by the Controlling Board under continuing statutory authority, or (4) by executive order, and until OBM has approved an allotment. The bill removes altogether the restriction that refers to the list statute, and provides that an appropriation authorizes spending even if it does not identify the federal program that is the source of the funds.

Transfer and reimbursement of tobacco revenue

(R.C. 183.02; Section 133)

Current law provides that a certain percentage of the amount credited to the Tobacco Master Settlement Agreement Fund in FY 2004 be transferred to the Tobacco Use Prevention and Cessation Trust Fund. The bill permits the Director of Budget and Management, on or before June 30, 2004, to transfer to the General Revenue Fund the amount that otherwise would be transferred to the Tobacco Use Prevention and Cessation Trust Fund. In addition, it requires the Director to

transfer to the Tobacco Use Prevention and Cessation Trust Fund, from amounts credited to the Tobacco Master Settlement Agreement Fund in FY 2015, the amount *not* transferred to the Tobacco Use Prevention and Cessation Trust Fund from the Tobacco Master Settlement Agreement Fund in FY 2004 due to the bill.

The bill also eliminates the requirement that any amounts not transferred to the Southern Ohio Agricultural and Community Development Trust Fund and Ohio's Public Health Priorities Trust Fund in FYs 2002 and 2003 due to H.B. 405 and S.B. 242 of the 124th General Assembly be reimbursed from the Tobacco Master Settlement Agreement Fund in FYs 2013 and 2014, respectively. (H.B. 405 and S.B. 242 authorized the diversion of those transfers to the General Revenue Fund for those years.)

BOARD OF CAREER COLLEGES AND SCHOOLS

- Requires the State Board of Career Colleges and Schools to deposit receipts in the occupational licensing and regulatory fund.

Deposit of funds

(R.C. 3332.04)

The State Board of Career Colleges and Schools regulates most for-profit career schools. Currently, receipts of the board are deposited in the State Treasury to the credit of the general revenue fund. However, beginning on July 1, 2003, current law creates a "career colleges and schools operating fund" in the State Treasury. Receipts of the Board are to be deposited in this fund. The bill eliminates the career colleges and schools operating fund and instead direct that receipts of the Board be deposited in the State Treasury's occupational licensing and regulatory fund.

OHIO CIVIL RIGHTS COMMISSION

- Requires amounts received by the Ohio Civil Rights Commission, and amounts awarded by a court to the Commission, for attorney's fees, court costs, expert witness fees, and other litigation expenses to be paid into the state treasury to the credit of the Civil Rights Commission General Reimbursement Fund.

Civil Rights Commission General Reimbursement Fund

(R.C. 4112.15)

Existing law requires all money paid to the Ohio Civil Rights Commission for copies of Commission documents and for other goods and services furnished by the Commission to be paid into the state treasury and credited to the Civil Rights Commission General Reimbursement Fund. In addition to these moneys, the bill requires all amounts received by the Commission, and all amounts awarded by a court to the Commission, for attorney's fees, court costs, expert witness fees, and other litigation expenses to be paid into the state treasury to the credit of that fund.

DEPARTMENT OF COMMERCE

- Eliminates the registration requirement for travel agencies and tour promoters and the accompanying $10 registration fee.

- Increases the income of and provides for payment of expenses from the Consumer Finance Fund for the Department of Commerce in administering law relating to high cost mortgages.

- Increases the maximum filing fee that the State Board of Building Appeals may collect for processing an appeal, from $100 to $200.

- Increases boiler inspection and certificate of operation fees and modifies the boiler and pressure vessel licensing laws.

- Transfers responsibility from the Division of Industrial Compliance to the Board of Building Standards with respect to the inspection of power, refrigeration, hydraulic, heating, and liquefied petroleum gas piping systems except in the case of new systems that may still be inspected by the Division of Industrial Compliance or by local inspectors certified by the Board of Building Standards.

- Codifies into statute, certain existing administrative rules regarding welding and brazing procedures and performance qualifications.

- Establishes regulations for the design, installation, and testing of nonflammable medical gas and vacuum piping systems.

- Increases elevator certificate of operation fees and removes a 50% cap on the authority of the Director of Commerce relative to increasing various elevator, escalator, and moving walkway inspection-related fees

- Establishes registration requirements and fees for contractors who desire to enter into contracts that are subject to the Prevailing Wage Law and creates the Prevailing Wage Administration Fund to pay the costs to administer that Law.

Repeal of travel agency and tour promoter registration requirement

(R.C. 1333.96, repealed)

The bill repeals the section of law that requires travel agencies and tour promoters to register with the Director of Commerce and pay a $10 registration fee, and that also requires tour promoters either to have a statement from a licensed financial institution guaranteeing the tour promoter's performance in an amount not less that $50,000 or to have a bond in the amount of $50,000 for interstate or international travel or $20,000 for intrastate travel.

Consumer Finance Fund; income and expenses administering High Cost Mortgage Law

(R.C. 1321.21)

Under continuing law, fines collected by the Superintendent of Financial Institutions within the Department of Commerce for violations of law relating to the regulation of so-called "high cost mortgages" are deposited into the Consumer Finance Fund (R.C. 1349.34--not in bill). Currently, the Consumer Finance Fund generally (1) is the Fund in the state treasury in which the Superintendent deposits income and pays expenses for administering the Mortgage Lending, Mortgage Broker, Credit Services Organization, Pawnbroker, Precious Metal Dealer, Check Cashing, and Check Cashing Lending Laws, and (2) is a Fund from which administrative costs of the Department of Commerce and the Division of Financial Institutions are paid on a proportionate basis. The bill adds that in administering law relating to high cost mortgages, any *other* fees, charges, penalties, or forfeitures received by the Superintendent under this law and expenses or obligations of the Superintendent and the Department of Commerce incurred pursuant to this law are to be deposited into or paid from the Consumer Finance Fund and to be used as described in (1) and (2) above.

Filing Fee for Appeal to the Board of Building Appeals

(R.C. 3781.19)

The bill increases the maximum fee that the State Board of Building Appeals may establish for the filing and processing of an appeal to the Board, from $100 to $200.

Boiler and pressure vessel inspections and fees

(R.C. 4101.01, 4104.02, 4104.04, 4104.06, 4104.07, 4104.08, 4104.15, 4104.18, 4104.19, and 4104.20)

Under current law, the Board of Building Standards formulates rules for the construction, installation, inspection, repair, conservation of energy, and operation of boilers and the construction, inspection, and repair of unfired pressure vessels.

The bill eliminates the requirement that the Board of Building Standards formulate rules regarding the inspection of either boilers or pressure vessels. The term "unfired pressure vessel" in current law is changed to "pressure vessel" under the bill to more accurately describe the subject of regulation without any apparent substantive effect.

Under current law, the Superintendent of Industrial Compliance in the Department of Commerce is required to select and contract with one or more persons to maintain responsibility for licensing examinations for steam engineers and high or low pressure boiler operators. Under the bill, this duty is permissive.

Existing law allows the Director of Commerce, with the advice and consent of the Controlling Board, to raise inspection, licensing, or certificate of operation renewal fees by not more than 50% of the amount of the fee listed in statute. The bill eliminates the 50% cap on future fee increases by the Director but retains the requirement that increases are subject to the advice and consent of the Controlling Board.

Under current law, the owner of a boiler that is required to be inspected upon installation, and the owner of a boiler that is issued a certificate of inspection, which is later replaced with a certificate of operation pay a fee to the Superintendent of Industrial Compliance for inspections required upon installation of a boiler and to maintain a certificate of operation. The bill increases those fees as follows:

Boilers subject to annual inspection:	$30 to $45
Boilers subject to biennial inspection:	$60 to $90
Boilers subject to triennial inspection:	$90 to $135
Boilers subject to quinquennial inspection:	$150 to $225

Pressure piping systems and welding and brazing regulations

(R.C. 121.084, 4104.41, 4104.42, 4104.43, 4104.44, 4104.45, 4104.46, 4104.47, and 4104.48; Sections 139.01 and 139.02)

Pressure piping systems regulation

Under current law, the Superintendent of Industrial Compliance issues certificates of competency to persons who have completed an application and successfully passed an examination so that they may act as general, special, or local inspectors of power, refrigerating, hydraulic, heating, and liquefied petroleum gas piping systems. The Director of Commerce then appoints general inspectors of power, refrigerating, hydraulic, heating, and liquefied petroleum gas piping systems from those persons who hold certificates of competency. General inspectors are employees of the state. Under current law, any owner or user of a pressure piping system may designate special inspectors who are employees under the general supervision of registered professional engineers employed by the owner or user to inspect the owner's or user's pressure piping systems. A local inspector is employed by building departments of municipal corporations and counties and, upon application to and approval of the Board of Building Standards, may inspect pressure piping systems for the territory under the jurisdiction of the building department for whom the inspector works.

The bill eliminates references to general, special, and local inspectors of pressure piping systems. Instead, the bill requires that new power, refrigerating, hydraulic, heating, liquefied petroleum gas, oxygen, and other gaseous piping systems are to be inspected by inspectors designated by the Superintendent of Industrial Compliance in the Department of Commerce or, within jurisdictional limits established by the Board of Building Standards, by individuals certified by the Board who are designated to do so by local building departments, as appropriate.

Under current law, the Board is required to prescribe the examinations for applicants for certificates of competency to become general, special, or local inspectors. The Board also is required to adopt the following: rules to establish a fee for inspections made by general inspectors, for the filing and auditing of special inspector reports and to collect all fees. The bill eliminates the reference to

this type of rule-making authority to correspond to the elimination of references to general, special, or local inspectors.

The bill also eliminates the current exemption from inspections and necessity to get a permit for power, refrigerating, hydraulic, heating, and liquefied petroleum gas, oxygen, and gaseous piping systems if the piping is used in air cooling systems in residential or commercial buildings and if the systems do not exceed five tons per system or if the piping is used in air heating systems in residential or commercial buildings and the systems do not exceed 150,000 British thermal units per hour per system.

Welding and brazing procedure regulation

Under current law, welding and brazing procedures used in the construction of pressure piping systems are regulated in the Ohio Administrative Code. (See O.A.C. 4101:8-15-01.) The bill codifies into statute this rule.

Under the bill, no one, other than an individual certified by a private vendor in accordance with rules adopted by the Board of Building Standards is allowed to perform welding or brazing or both in the construction of power, refrigeration, hydraulic, heating, and liquefied petroleum gas, oxygen, or other gaseous piping systems. The bill requires each welder or brazer certified by a private vendor to become recertified by a private vendor every five years. The private vendor is required to recertify a welder or brazer who meets the qualifications established by the Board in rule.

Under the bill, each manufacturer, contractor, owner, or user of power, refrigerating, hydraulic, heating, liquefied petroleum gas, oxygen, and other gaseous piping systems is required to conduct tests required in rule by the Board of Building Standards and to certify in writing on forms provided by the Superintendent of Industrial Compliance, that the welding and brazing procedures meet the standards established by the Board. Each manufacturer, contractor, owner, and user is required to maintain at least one copy of the forms provided by the Superintendent and make that copy accessible to any individual certified to make inspections by the Board. The inspector is required to examine the form and determine compliance with the rules adopted by the Board. If the inspector has reason to question the certification or ability of any welder or brazer, the inspector is required to report the concern to the Superintendent of Industrial Compliance. The Superintendent then must investigate those concerns. If the Superintendent finds facts that substantiate the inspectors concerns, then the Superintendent may require the welder or brazer in question to become recertified by a private vendor in the same manner in which five-year recertification is required of each welder and brazer. The Superintendent also has the authority to use the services of an independent testing laboratory to witness the welding or brazing performed on the

project in question and to conduct tests on "coupons" to determine whether the coupons meet the requirements of the rules adopted by the Board.

The bill also requires each manufacturer, contractor, owner, or user of power, refrigerating, hydraulic, heating, liquefied petroleum gas, oxygen, and other gaseous piping systems to file two complete copies of the aforementioned form with the Superintendent. The Superintendent is required to review the forms to determine whether the welding and brazing procedure specifications and welder and brazer performance qualifications listed on the form comply with rules adopted by the Board. If the procedure specifications and the performance qualifications comply with the rules, the Superintendent is required to indicate approval on the forms and return one copy to the manufacturer, contractor, owner, or user who submitted the forms. If, however, the Superintendent finds to the contrary, the Superintendent is required to indicate on the forms that the procedure specifications and the performance qualifications are not approved and return one copy to the manufacturer, contractor, owner, or user who submitted the forms with an explanation of why the procedure specifications and the performance qualifications were not approved.

Intent

The bill expresses the intent of the General Assembly that the provisions of the bill are general laws created in the exercise of the state's police power, arising out of matter of statewide concern, and are designed for the health, safety, and welfare of contractors, their employees, and the public. The bill also states that it is the intent of the General Assembly that power, refrigerating, hydraulic, heating, and liquefied petroleum gas, oxygen, and other gaseous piping systems will continue to be inspected as part of the building permit process, enforcement of plumbing and mechanical building codes, and occupancy certification and that the purpose of the bill is solely to eliminate duplicative inspection personnel and fees.

Elevator certificate of operation fee increase and fee setting authority

(R.C. 4105.17)

Under current law, the fee that the Director of Commerce charges for issuing or renewing a certificate of operation for an elevator that is inspected every six months is $105 plus $10 for each floor where the elevator stops. The bill increases this fee to $200 and retains the $10 per floor fee.

Current law requires the Board of Building Standards to assess a fee of $3.25, in addition to any other fees charged, for each certificate of operation issued or renewed for a permanent new elevator. Under the bill, the Board is required to charge the same $3.25 fee, in addition to any other fees charged, for each

certificate of operation issued or renewed for a permanent new escalator or moving walk, for an elevator that is required to be inspected every six months, and for an elevator that is required to be inspected every 12 months.

Under current law, the Director of Commerce, subject to the approval of the Controlling Board, may establish fees up to 50% in excess of the fees in statute for inspections or attempted inspections of elevators, escalators, and moving walks and for inspections of elevators, escalators, and moving walks that have been repaired and put back into service.

The bill removes the 50% cap on the ability to raise inspection fees and adds that fees charged for issuing or renewing certificates of operation for moving walks, escalators, elevators inspected every six months, and elevators inspected every 12 months also may be increased by any amount by the Director, subject to the approval of the Controlling Board.

Contractor registration requirement for prevailing wage contracts

(R.C. 4115.03, 4115.18, 4115.19, and 4115.20)

The bill requires contractors (including subcontractors and lower-tier subcontractors) who desire to enter into contracts that are subject to the Prevailing Wage Law (R.C. Chapter 4115.) to register with the Superintendent of the Division of Labor and Worker Safety in the Department of Commerce. It also establishes detailed registration requirements and specifies information the registrant must provide for such registration. It requires the Superintendent to reject incomplete applications and allows the Superintendent to reject applications of contractors who fail to supply requested information.

Under the bill, the initial registration and subsequent renewal fee for the annual registration of such contractors is $300. However, the bill permits contractors to change to a two-year registration period with a renewal fee of $500 after two consecutive years of registration.

Additionally, the bill creates the Prevailing Wage Administration Fund, which must be used to administer the Prevailing Wage Law and to pay an administrative assessment that funds the Division of Administration within the Department of Commerce. The Director of Commerce is permitted by the bill to reduce the registration and renewal fees if the Director determines that there is sufficient money in the Fund.

DEPARTMENT OF DEVELOPMENT

- Expands the Department of Development's duties to include the promotion of economic growth in Ohio.

- Changes the name of the Ohio One-Stop Business Permit Center to the Ohio First-Stop Business Connection.

- Repeals the statute creating the discontinued Defense Conversion Assistance Program.

- Removes an obsolete requirement that the Director of Development provide the Joint Legislative Committee on Tax Incentives with copies of the Director's determinations on job relocations under the Rural Industrial Park Loan Program.

- Adds the Lieutenant Governor or the Lieutenant Governor's designee as a member of the Clean Ohio Council.

- Removes the Director of Development as the chairperson of the Clean Ohio Council, instead requires the Governor to appoint a member of the Council to serve as chairperson, requires the Director of Development to serve as vice-chairperson unless the Director is appointed chairperson, and requires the Council annually to select a vice-chairperson from among its members if the Director is appointed chairperson.

- Allows investment earnings credited to the Clean Ohio Revitalization Fund to be used indefinitely to pay costs incurred by the Department of Development and the Environmental Protection Agency for purposes of the brownfield portion of the Clean Ohio program.

- Requires the Director of Administrative Services to adopt rules to create and implement the Encouraging Diversity, Growth, and Equity (EDGE) Program to certify disadvantaged businesses as EDGE business enterprises that then may apply for contract, financial and bonding, management, and technical assistance as well as mentoring opportunities with the Department of Administrative Services.

- Authorizes the Director of Development to guarantee bonds executed by sureties for minority business enterprises and EDGE business enterprises as principals on contracts with the state and any political subdivision or

instrumentality, or any person as the obligee and establishes parameters for those guaranty bonds.

- Requires the Director of Development to perform certain duties to assist the Director of Administrative Services in the implementation of the EDGE Program and requires both directors to issue a detailed report to the Governor no later than December 31, 2003 regarding the implementation and progress of the EDGE Program.

- Directs the Governor to appoint the chairperson of the Ohio Housing Finance Agency and permits any member of the agency to be elected as vice-chairperson.

- Establishes 45 fees that county recorders collect for deposit in the Low- and Moderate-Income Housing Trust Fund, doubling the amount of fees that recorders currently collect, and revises expenditure requirements for the Fund.

- Extends the authority of a municipal corporation or board of county commissioners to enter into enterprise zone agreements, currently scheduled to expire on June 30, 2004, until October 15, 2009.

Duties of the Department

(R.C. 122.04)

Current law outlines the duties of the Department of Development. These include a variety of specific economic development-related functions. Examples include (1) maintaining a continuing evaluation of the sources available for the retention, development, or expansion of industrial and commercial facilities in the state through both public and private agencies and (2) assisting in the development of facilities and technologies that will lead to increased, environmentally sound use of Ohio coal. The bill adds the promotion of economic growth in Ohio to the list of the Department's duties.

Office of Small Business

(R.C. 122.08)

Under current law, the Office of Small Business within the Department of Development must, among other duties, operate the "Ohio One-Stop Business

Permit Center" to assist individuals in identifying and preparing applications for business licenses, permits, and certificates and to serve as the central public distributor for all forms, applications, and other information related to business licensing. The bill changes the name of the Center to the "Ohio First-Stop Business Connection." (R.C. 122.08(B)(8).)

Defense Conversion Assistance Program

(R.C. 122.12)

Existing law provides for the Defense Conversion Assistance Program, which was a program meant to address reduced federal defense spending. The goal of the program was to assist defense-related businesses and their employees in making transitions into other types of industry. The bill repeals the statute creating this program because the program has been discontinued.

Director of Development's determination on job relocation under Rural Industrial Park Loan Program

(R.C. 122.25(D)(2))

Under the Rural Industrial Park Loan Program, nonprofit economic development organizations and certain private developers are eligible to receive financial assistance in the form of loans and loan guarantees for land acquisition, construction, renovation, and other projects associated with the development and improvement of industrial parks. Under continuing law, an industrial park developed or improved with assistance from the Rural Industrial Park Loan Program can be the site of jobs relocated from elsewhere in Ohio if the Director of Development makes a written determination that the site from which the jobs would be relocated cannot meet the needs of the relocating employer. Current law requires that the Director submit a copy of the written determination to members of the General Assembly whose districts are affected and to the Joint Legislative Committee on Tax Incentives.

The Joint Legislative Committee on Tax Incentives no longer meets. Accordingly, the bill removes the requirement that the Director submit the written determination to the Joint Committee.

Clean Ohio Council membership

(R.C. 122.651)

Current law establishes the Clean Ohio Council to award grants and make loans under the brownfield portion of the Clean Ohio Program. The Council consists of the Director of Development or the Director's designee, the Director of

Environmental Protection or the Director's designee, the Director of the Ohio Public Works Commission as a nonvoting, ex officio member, a majority member of both the Senate and the House of Representatives, a minority member of both the Senate and the House of Representatives, and seven members appointed by the Governor. The bill adds the Lieutenant Governor or the Lieutenant Governor's designee as a member of the Council.

In addition, current law requires the Director of Development to serve as the chairperson of the Council and requires the Council annually to select a vice-chairperson from among its members. The bill removes the Director as the chairperson and requires the Governor to appoint a member of the Council to serve as chairperson. Further, the bill requires the Director to serve as the vice-chairperson of the Council unless appointed chairperson. If the Director is appointed chairperson, the Council annually must select from among its members a vice-chairperson to serve while the Director is chairperson.

Use of investment earnings of Clean Ohio Revitalization Fund

(R.C. 122.658)

The Clean Ohio Revitalization Fund in existing law consists of money credited to it from revenue bonds that are issued for purposes of the Clean Ohio program to pay the costs of brownfield remediation projects and of payments of principal and interest on loans that are made from the Fund. Current law provides that until July 26, 2003, investment earnings credited to the Fund may be used to pay costs incurred by the Department of Development and the Environmental Protection Agency under the brownfield component of the Clean Ohio program. The bill removes the deadline, thus allowing the investment earnings to be used for those purposes indefinitely.

Encouraging Diversity, Growth, and Equity Program creation, implementation, and bonding authority

(R.C. 122.87, 122.88, 122.90, 123.152, and 123.153)

Creation and implementation of the Encouraging Diversity, Growth, and Equity Program

The bill requires the Director of Administrative Services to adopt rules in accordance with the Administrative Procedure Act (Chapter 119.) to create and administer the Encouraging Diversity, Growth, and Equity (EDGE) Program. The bill requires the Director of Administrative Services to adopt rules to administer the program that do all of the following:

(1) Establish procedures by which a business may apply for certification as an EDGE business enterprise;

(2) Establish agency procurement goals for contracting with EDGE business enterprises in the award of state contracts based on the availability of eligible program participants by region or geographic area, and by standard industrial code. Goals are required to be based on a percentage level of participation and a percentage of contactor availability and must be applied at the contract level, relative to an overall dollar goal for each state agency, in accordance with the following certification categories: construction, architecture, and engineering; professional services; goods and services; and information technology services.

(3) Establish a system of certifying EDGE business enterprises based on a requirement that the business show both social and economic disadvantage based on the following:

(a) Relative wealth of the business seeking certification as well as the personal wealth of the owner(s) of the business;

(b) Social disadvantage based on either a rebuttable presumption when the owner(s) demonstrate membership in a racial minority group or show personal disadvantage due to color, ethnic origin, gender, physical disability, long-term residence in an environment isolated from the mainstream of American society, location in an area of high unemployment, some other demonstration of personal disadvantage not common to other small businesses, or by business location in a qualified census tract;

(c) Economic disadvantage based on economic and business size thresholds and eligibility criteria designed to stimulate economic development through contract awards to businesses located in qualified census tracts under federal law.

(4) Establish standards to determine when an EDGE business enterprise no longer qualifies for EDGE business enterprise certification.

(5) Develop a process for evaluating and adjusting goals established by this section to determine what adjustments are necessary to achieve participation goals established by the Director.

(6) Establish a point system to evaluate bid proposals to encourage EDGE business enterprises to participate in the procurement of professional design and information technology services.

(7) Establish a system to track data and analyze each certification category.

(8) Establish a process to mediate complaints and to review EDGE business enterprise certification appeals.

(9) Implement an outreach program to educate potential participants about the EDGE Program.

(10) Establish a system to assist state agencies in identifying and using EDGE business enterprises in their contracting processes.

(11) Implement a system of self-reporting by EDGE business enterprises as well as an on-site inspection process to validate the qualifications of an EDGE business enterprise.

(12) Establish a waiver mechanism to waive program goals or participation requirements for those companies that, despite their best-documented efforts, are unable to contract with EDGE business enterprises.

(13) Establish a process for monitoring overall program compliance in which agency Equal Employment Opportunity officers maintain primary responsibility for the monitoring of their agencies.

The bill requires the Director of Development to do all of the following with regard to the EDGE Program:

(1) Conduct outreach, marketing, and recruitment of EDGE business enterprises;

(2) Provide assistance to the Department of Administrative Services, as needed, to certify new EDGE business enterprises and to train appropriate state agency staff;

(3) Provide business development services to program participants in the developmental and transitional stages of the program, including financial and bonding assistance and management and technical assistance;

(4) Develop a mentor program to bring businesses into a working relationship with EDGE business enterprises in a way that commercially benefits both entities and serves the purpose of the EDGE Program;

(5) Establish processes by which an EDGE business enterprise may apply for contract assistance, financial and bonding assistance, management and technical assistance, and mentoring opportunities.

Under the bill, the Director of Development and the Director of Administrative Services are both required to prepare a detailed report and submit it

to the Governor not later than December 31, 2003 to outline and evaluate the progress made in implementing the EDGE Program.

Bond guarantee authority

The Director of Development may execute bonds as surety for minority businesses as principals, on contracts with the state, any political subdivision or instrumentality thereof, or any person as the obligee. The Director, as surety, may exercise all the rights and powers of a company authorized by the Department of Insurance to execute bonds as surety but is not to be subject to any requirements of a surety company under Title 39 of the Revised Code (regulating insurance matters) nor to any rules of the Department of Insurance. (*See* R.C. 122.89, not in bill.)

The bill provides this exact same bonding authority to the Director of Development with regard to the guarantee of bonds executed by sureties for EDGE business enterprises. The bill also requires the Director to adopt rules in accordance with the Administrative Procedure Act to establish procedures for the application for bond guarantees and the review and approval of applications for bond guarantees submitted by sureties that execute bonds eligible for guarantees by the Director. The bill allows the Director to guarantee up to 90% of the loss incurred and paid by sureties on bonds guaranteed by the Director.

Under the bill, the penal sum amounts of all outstanding guarantees made by the Director are not allowed to exceed three times the difference between the amount of moneys in the minority business bonding fund and available to the fund and the amount of all outstanding bonds issued by the Director for the guaranty bonds issued on behalf of minority businesses as principals.

Ohio Housing Finance Agency chairperson and vice-chairperson

(R.C. 175.03)

The bill directs the Governor to appoint the chairperson of the Ohio Housing Finance Agency (OHFA) instead of having the Director of Development or the Director's designee (an ex-officio member of the agency) serve as chairperson as under existing law (presumably the Governor still could appoint the Director of Development as chair). The bill permits any OHFA member to be elected vice-chairperson instead of limiting the office to one of the nine members currently appointed by the Governor, thereby qualifying the two ex-officio members, the Director of Commerce and the Director of Development or their designees, to be elected as vice-chairperson.

Housing trust fund fees

(R.C. 317.36, 317.32, 319.63, 1563.42, 1702.59, 2505.13, 4141.23, 4509.60, 5111.021, 5310.15, 5719.07, 5727.56, 5733.18, 5733.22, 6101.09, and 6115.09)

The bill establishes 45 different fees for county recorders to collect in addition to the service fees that recorders charge under continuing law. Under the bill, the service fees that recorders currently charge are called "base fees" and the new fees are called "housing trust fund fees." The bill directs recorders to charge both the base fee and the housing trust fund fee for 45 various services that recorders perform, including filing maps, zoning resolutions and plats, deeds, mortgages, liens, and release of liens, and photocopying documents and records. The new housing trust fund fees are equal to the amounts currently charged in service fees, thus doubling the amount of fees that county recorders charge.

The new housing trust fund fees are deposited in the Low- and Moderate-Income Housing Trust Fund, which exists under continuing law and is one source of revenue for Department of Development (DOD) and Ohio Housing Finance Agency (OHFA) programs. The new fees provide a dedicated source of funding for the DOD and the OHFA because the fees are included in "permanent" law and the county auditor transfers the fees to the Treasurer of State for deposit directly into the Housing Trust Fund.

The new fees include a $5 housing trust fund fee charged when maps of abandoned mines are filed, a $2 fee when a certificate is filed for the release of a property tax lien, a fee of $50 when a zoning resolution is filed, and a fee of $1 per page for photocopying a document other than at the time of recording.

The bill permits county auditors to retain 1% of the amount collected for expenses if the auditor pays the amounts to the Treasurer of State in a timely manner. The bill directs the Treasurer to deposit any amount collected over $50 million in the state's General Revenue Fund.

Expenditures from the Housing Trust Fund

(R.C. 175.21 and 175.22)

The bill stipulates new requirements for the expenditure of money from the Low- and Moderate-Income Housing Trust Fund. New areas that receive specified funding amounts under the bill include: transitional and permanent housing programs (not more than 6% of the current year appropriation authority); training and technical assistance to nonprofit development organizations in underserved areas (at least $100,000); emergency shelter housing grants programs (not more than 7%); the resident services coordinator program in the Department

of Aging, proposed elsewhere in the bill (at least $250,000). In another new expenditure area, the bill requires that grants and loans be made from the fund to community development corporations and the Ohio Community Development Finance Fund, a private nonprofit corporation (not more than 5%). Administration of the trust fund, which is capped at 5% under current law, is allowed not more than 6% under the bill.

Enterprise zone authority extended

(R.C. 5709.62, 5709.63, and 5709.632)

Continuing law permits municipal corporations and boards of county commissioners to designate certain areas within the municipality or county as "enterprise zones." Under continuing law, a municipality or board may enter into an enterprise zone agreement with a business for the purpose of fostering economic development in the enterprise zone. Under an enterprise zone agreement, the business agrees to establish or expand its operations within the enterprise zone, or to relocate its operations to the zone, in exchange for tax relief and other incentives. Current law provides that the authority of a municipality or board to enter into enterprise zone agreements expires on June 30, 2004. The bill extends the authority to enter into these agreements until October 15, 2009.

OHIO BOARD OF DIETETICS

- Increases fees for dietician licenses.

Board of Dietetics fees

(R.C. 4759.08)

The Ohio Board of Dietetics charges and collects fees for dietician licenses. The bill increases the following fees as follows:

(1) Initial license or reactivation of an inactive license--$140 (from $110).

(2) Reinstatement of a license that has been revoked, suspended, or lapsed--$200 (from $165).

(3) License renewal--$110 (from $80).

(4) Limited permit, or renewal of a limited permit--$70 (from $55).

COMMISSION ON DISPUTE RESOLUTION AND CONFLICT MANAGEMENT

- Eliminates the Ohio Commission on Dispute Resolution and Conflict Management.

Abolishment of the Commission

(R.C. 119.035 and 3747.16; repeal of R.C. 179.01, 179.02, 179.03, and 179.04; Sections 132.09 and 132.10)

The bill abolishes the Ohio Commission on Dispute Resolution and Conflict Management and amends provisions in current law to repeal the Commission's authority to (1) act as a group facilitator for rule advisory committees of state agencies and (2) help the staff of the Board of Directors of the Ohio Low-Level Radioactive Waste Facility Development Authority and the legislative authorities of host communities resolve disputes pertaining to compensation agreements for siting a facility in a host community.

DEPARTMENT OF EDUCATION

- Maintains the $5,088 per pupil base cost formula amount specified in current law for FY 2004, but eliminates the currently specified formula amounts for FY 2005 through FY 2007 in anticipation of the General Assembly enacting a new school funding system to begin in FY 2005.

- Eliminates the requirement that the General Assembly every six years recalculate the base cost of providing an adequate education.

- Eliminates the parity aid phase-in percentages for FY 2005 and thereafter, which would have the effect of terminating authorization for the subsidy after FY 2004.

- Terminates the equity aid subsidy one year earlier than currently scheduled, at the end of FY 2004 rather than the end of FY 2005.

- Maintains for FY 2004 several components of school funding formulas as currently prescribed for FY 2003, including the threshold amounts for reimbursement of special education catastrophic costs, the personnel

allowance for the speech services subsidy, and the per pupil subsidy paid to educational service centers.

- Increases the personnel allowance used to calculate the GRADS subsidy from $46,260 in FY 2003 to $47,555 in FY 2004.

- Grants every school district a 2% increase in its FY 2004 DPIA subsidy from FY 2003, regardless of any changes in the proportion of children receiving public assistance.

- Requires, for FY 2004, the Department of Education to determine a percentage by which it will reduce the six special education funding weights so that state funds calculated under the special education funding formula will match the amount appropriated for special education weighted funding and to report that percentage to the Office of Budget and Management.

- States that in FY 2004, 100% of the unadjusted weighted amounts calculated for special education and related services will be funded through a combination of local, state, and federal funds and requires the Department of Education to report to the Office of Budget and Management the amount of local, state, and federal special education funds allocated for each school district.

- Specifies that the portion of the cost of providing special education and related services to a student by a joint vocational school district (JVSD) that exceeds the sum of the calculated state and local shares of base-cost and special education payments made to the JVSD must be paid for by the student's resident district or, if the student is enrolled in a community school, by that school.

- Requires that each JVSD spend the amount calculated for combined state and local shares of base-cost and special educational payments for special education and related services as approved by the Department of Education.

- Eliminates the requirement that school districts spend their parity aid payments on any specific activities and that the payments be aimed at strategies included in their improvement plans.

- Replaces current authorization for a state GRF-funded Head Start Program and with authorization for two new programs: "Title IV-A Head Start" and "Title IV-A Head Start Plus" to be operated by the Department of Education and funded with federal TANF money transferred from the Department of Job and Family Services to the Department of Education.

- Authorizes the Department of Job and Family Services and the Department of Education to enter into an interagency agreement and to develop procedures for operation of the Title IV-A Head Start and Title IV-A Head Start Plus programs.

- Authorizes the Department of Education to contract with agencies to provide services and to reimburse the agencies for those services under the Title IV-A Head Start Program.

- Authorizes the Department of Education to contract with county departments of job and family services to administer the Title IV-A Head Start Plus Program within their respective counties.

- Authorizes the Department of Job and Family Services to license Head Start programs, instead of the Department of Education as under current law.

- Requires that students attending another school district pursuant to an interdistrict compact, cooperative agreement, or contract be counted in the formula ADM of the district where they attend class, rather than in the formula ADM of the district where they reside as under current law.

- Reinstates students whose only identified disability is a speech and hearing handicap to the calculation of whether a school district exceeds the maximum average ratio of 25 "regular student population" students per teacher.

- Specifies that vocational, school-age special education, and handicapped preschool units be approved by the Department of Education rather than the State Board of Education as under current law.

- Specifies that handicapped preschool units will be available for children who were three years old by December 1 of any year, instead of September 30 as under current unit-funding law.

- Permits the Department of Education to reassign school buses purchased with state subsidies by county MR/DD boards or school districts when those buses are no longer needed for the transportation of certain special education or nonpublic school students.

- Renames the Auxiliary Services Mobile Unit Replacement and Repair Fund as the "Auxiliary Services Reimbursement Fund."

- Directs the state Superintendent of Public Instruction to make payments directly to providers of tutorial assistance through the Cleveland Pilot Project Scholarship Program instead of to the student's parent.

- Replaces the requirement that a school district in fiscal emergency propose a tax levy to the voters sufficient to eliminate the operating deficit and repay outstanding obligations with an option of proposing (or not proposing) to the voters a tax levy sufficient to generate enough funds to produce a positive fiscal year end cash balance by the fifth year of its five-year forecast.

Special note concerning FY 2005 appropriations

The bill does not appropriate money for any General Revenue Fund line-item under the Department of Education for the second year of the biennium, FY 2005 (other than for reimbursement of school districts for revenue lost as a result of various tax rollbacks). However, a lump sum appropriation of $6.7 billion from the General Revenue Fund is appropriated in FY 2005 for "Primary and Secondary Education Funding." The Governor's Executive Budget states:

> The Governor's Blue Ribbon Task Force on Financing Student Success, a task force made up of representatives from major educational arenas and other educational stakeholders, will cooperatively and collaboratively make recommendations to the General Assembly regarding a new financing mechanism for public primary and secondary education in Ohio.

Background on state education financing litigation

In *DeRolph I*, in 1997, the Supreme Court of Ohio ordered the General Assembly to create a new school funding system.[1] In that decision, the Court held that the state's then-current school funding system did not provide a "thorough and efficient system of common schools" as required under Article VI, Section 2 of the Ohio Constitution. Responding to that order, in 1997 and 1998, the 122nd General Assembly enacted several bills dealing with the financing and performance management of public schools.[2]

On May 11, 2000, the Court held the new system unconstitutional on essentially the same grounds.[3] In *DeRolph II*, the Court praised the effort made by the legislature but said that more had to be done in order to comply with its order. While the Court did not give the General Assembly precise instructions as how to fix the school funding system, it did highlight several areas that it found needed attention. Those areas were as follows: (1) overreliance on local property taxes, (2) increasing the basic aid formula amount, (3) continued attention to school facilities, (4) improving the school solvency assistance program, (5) funding of all state mandates, (6) eliminating "phantom revenue," and (7) adopting "strict, statewide academic guidelines." The General Assembly was given until June 15, 2001, to come up with a new system.[4]

Building on the previous legislative work, the 124th General Assembly substantially changed the state's academic accountability provisions, including a

---

[1] DeRolph v. State *(1997), 78 Ohio St.3d 193.*

[2] *Among these bills were: Am. Sub. H.B. 215, which was the general operating budget for the 1997-1999 biennium; Am. Sub. S.B. 102, which substantially amended the Classroom Facilities Assistance Program and created the Ohio School Facilities Commission; Am. Sub. S.B. 55, which added new academic accountability requirements; Sub. H.B. 412, which changed school district fiscal accountability requirements; and Am. Sub. H.B. 650 and Am. Sub. H.B. 770, which together created a new school funding system. In addition, in 1999, the 123rd General Assembly passed Am. Sub. H.B. 282, which enacted a separate education budget and made some changes to the previous legislation.*

[3] DeRolph v. State *(2000), 89 Ohio St.3d 1.*

[4] *In 2000, the 123rd General Assembly enacted two other bills also directed at some of the concerns expressed by the Court in its* DeRolph II *order. Am. Sub. S.B. 272 made substantial changes in the school facilities assistance programs. Am. Sub. S.B. 345 amended the school district solvency assistance program and modified requirements of some school district mandates.*

requirement that the Department of Education develop new academic standards to which new student diagnostic assessments and achievement tests are to be aligned.[5] In addition, in the 2001-2003 biennial budget act, the legislature made changes to the school funding system, including (among other things) enacting a new parity aid subsidy and creating a new system of six special education funding weights instead of three weights as under prior law.[6]

The state submitted these and the earlier changes to the Court prior to the June 15, 2001 deadline. The Court heard oral arguments on the matter shortly thereafter. On September 6, 2001, the Court issued its third opinion in the case (*DeRolph III*).[7] In that decision, the majority found that most components of the school funding system complied with its earlier orders and held that, if the General Assembly enacted certain changes, the new system would be constitutional. Specifically, the Court instructed the General Assembly to fully fund the new parity aid subsidy by July 1, 2003, and to make adjustments to the method of calculating the base cost of an adequate education (the base cost).

The state moved for reconsideration of the order, offering evidence that the Court's ordered changes relative to the calculation of the base cost of an adequate education were based on questionable data. The Court granted the motion but also ordered the parties to participate in a mediated settlement conference.[8] Settlement efforts were not successful, and the Court ruled again on the merits of the case on December 11, 2002 (*DeRolph IV*).[9] In that order, the Court vacated its *DeRolph III* order and, instead, stated that both of its earlier substantive orders (*DeRolph I and II*) "are the law of the case." The Court also stated that "the current school funding system is unconstitutional" and ordered the legislature to enact a new system. Nevertheless, the Court did not establish a deadline for compliance with its order, and it relinquished jurisdiction over the case.[10]

---

[5] *Am. Sub. S.B. 1 of the 124th General Assembly.*

[6] *Am. Sub. H.B. 94 of the 124th General Assembly.*

[7] DeRolph v. State (2001), *93 Ohio St.3d 309.*

[8] DeRolph v. State (2001), *93 Ohio St.3d 628.*

[9] DeRolph v. State *(2002), 97 Ohio St.3d 434.*

[10] *Presumably, then, any legal challenges to the General Assembly's response to this latest decision will be litigated as an entirely new case.*

Introduction--key concepts of the current school funding system

State per pupil payments to school districts for operating expenses have always varied according to (1) the wealth of the district and (2) the special circumstances experienced by some districts. Under both the school funding system in place prior to *DeRolph I* and the one in place since then, state operating funding for school districts has been divided primarily into two types: base-cost funding and categorical funding.

Base-cost funding

Base-cost funding can be viewed as the minimum amount of money required per pupil for those expenses that all school districts experience on a somewhat even basis. The primary costs are for such things as teachers of curriculum courses; textbooks; janitorial and clerical services; administrative functions; and student support employees such as school librarians and guidance counselors.

Equalization. Both before and after the *DeRolph* case, state funds have been used to "equalize" school district revenues. Equalization means using state money to ensure that all districts, regardless of their property wealth, have an equal amount of combined state and local revenues to spend for something. In an equalized system, poor districts receive more state money than wealthy districts in order to guarantee the established minimum amount for all districts.

State and local shares. The school funding system essentially equalizes 23 mills of property tax for base-cost funding. It does this by providing sufficient state money to each school district to ensure that, if all districts in the state levied exactly 23 effective mills, they all would have the same per pupil amount of base-cost money to spend (adjusted partially to reflect the cost of doing business in the district's county).[11] To accomplish this equalization, the base-cost formula uses five variables to compute the amount of state funding each district receives for its base cost:

(1) The stipulated amount of base-cost funding that is guaranteed per pupil in combined state and local funds (formally called the "**formula amount**").

(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 across Ohio's 88 counties. Each county is assigned a factor by statute. The formula amount is multiplied by the cost-of-doing-business factor for the appropriate county to obtain the specific guaranteed per pupil

[11] *One mill produces $1 of tax revenue for every $1,000 of taxable property valuation.*

formula amount for each school district. In FY 2003, the factors ranged from 1.00 (Gallia County) to 1.075 (Hamilton County).

(3) A number called the "**formula ADM**," which roughly reflects the full-time-equivalent number of district students.

(4) The **total taxable dollar value of real and personal property** subject to taxation in the district, adjusted to phase in increases in valuation resulting from a county auditor's triennial reappraisal or update.

(5) The **local tax rate**, expressed in number of mills, assumed to produce the local share of the guaranteed per pupil funding. The tax rate assumed is 23 mills, although the law only requires districts to actually levy 20 mills to participate in the school funding system.

Each district's state base-cost funding is computed first by calculating the amount of combined state and local funds guaranteed to the district. This is done by adjusting the formula amount for the appropriate cost-of-doing-business factor and multiplying the adjusted amount by the district's formula ADM. Next, the assumed "local share" (commonly called the "charge-off") is calculated by multiplying the district's adjusted total taxable value by the 23 mills attributed as the local tax rate. This local share is then subtracted from the guaranteed amount to produce the district's state base-cost funding.

Base-cost funding formula. Expressed as a formula, base-cost funding is calculated as follows:

(formula amount X cost-of-doing-business factor X formula ADM) minus
(.023 X the district's adjusted total taxable value)[12]

Sample FY 2003 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 was assumed to be 2.5% higher than in the lowest cost county), its formula ADM were 1,000 students, and it had an adjusted valuation of $75 million, its FY 2003 state base-cost funding amount would have been $3,348,000, calculated as follows:

[12] *R.C. 3317.022(A). In lieu of formula ADM, the Department of Education must use the district's "three-year average" formula ADM if it is greater than the current-year formula ADM.*

$4,949	FY 2003 formula amount
x 1.025	District's cost-of-doing-business factor
$5,073	District's adjusted formula amount
x 1,000	District's formula ADM (approximate enrollment)
$5,073,000	District's base-cost amount
- $1,725,000	District's charge-off (assumed local share based on 23 mills charged against the district's $75 million in adjusted property valuation)
$3,348,000	**District's state payment toward base-cost amount**
66%	District's state share percentage (per cent of total base cost paid by state)

How the base-cost amount was established. The primary difference between the pre- and post-*DeRolph* funding systems in calculating base-cost funding is that the state and local amount guaranteed per pupil (known as the formula amount) before *DeRolph* was stated in statute without any specific method of selecting the amount. Since *DeRolph*, the General Assembly has utilized explicit methodologies for determining the base cost of an adequate education, from which is derived the formula amount. The current methodology relies on the premise that, all other things being equal, most school districts should be able to achieve satisfactory performance if they have available to them the average amount of funds spent by those districts that have met the standard for satisfactory performance.[13] The standard for that performance adopted by the General Assembly in 2001 was meeting in FY 1999 at least 20 of the 27 state academic performance standards. In essence, the General Assembly developed an "expenditure model" by examining the average per pupil expenditures of school districts deemed to be performing satisfactorily. From the initial group of these districts, it eliminated "outriders" (the top and bottom 5% in property wealth and personal income) and arrived at 127 districts to include in the model. The base cost derived from analyzing that group's FY 1999 expenditures was $4,814 per pupil for FY 2002. That amount is increased by an inflation factor of 2.8% for each of the following five fiscal years, through FY 2007.

[13] *The fact that "all other things are not equal" is the rationale behind the "categorical" funding provided for school districts with greater needs for transportation funding, DPIA, special education services, and similar requirements that vary from district to district.*

Base Cost Formula Amounts Under Current Law –
FY 2002 through FY 2007

Fiscal Year	Formula Amount
FY 2002	$4,814
FY 2003	$4,949
FY 2004	$5,088
FY 2005	$5,230
FY 2006	$5,376
FY 2007	$5,527

Future recalculation of the base cost

Current law requires the Speaker of the House of Representatives and the President of the Senate each to appoint three members to a committee to reexamine the cost of an adequate education. The appointments are to be made in July 2005 and again in July every six years thereafter. The committee must issue its report within one year of its appointment.

The law then directs the General Assembly to recalculate the per pupil base cost of an adequate education every six years, beginning with FY 2008, after considering the recommendations of the committee. The recalculated base cost would apply to the first fiscal year of the six-year period, and the base cost for the following five years would be the recalculated amount inflated by an annual rate of inflation that the General Assembly determines appropriate at the time of the recalculation.

Equity aid phase-out

The pre-*DeRolph* funding system paid a second tier of state aid to school districts whose property wealth fell beneath an established threshold. This "equity aid" was paid beginning in FY 1993 as an add-on to the state base-cost (then called "basic aid") funding. The state has been phasing out equity aid by reducing the number of districts receiving the subsidy and decreasing the number of extra mills equalized under it for each fiscal year. No more equity aid is scheduled to be paid after FY 2005.

Parity aid

In 2001, the General Assembly began phasing in a new subsidy, known as "parity aid," to replace equity aid (and another, former subsidy known as "power equalization"). The new parity aid subsidy pays additional state funds to school districts based on combined income and property wealth. For most eligible school districts, parity aid essentially pays state funds to make up the difference between what 9.5 mills would raise against the district's income-adjusted property wealth versus what 9.5 mills would raise in the district where the income-adjusted property wealth ranks as the 123rd highest (the 80th percentile).[14] These 9.5 mills represent the General Assembly's determination of the average number of "effective operating mills" (including school district income tax equivalent mills) that school districts in the 70th to 90th percentiles of property valuations levied in FY 2001 *beyond* the millage needed to finance their calculated local shares of base-cost, special education, vocational education, and transportation funding.

The amount of parity aid, therefore, varies based on how far below the 123rd district a district's income-adjusted valuation falls, with the 123 districts having the highest income-adjusted valuations being ineligible for aid. Districts need not actually levy any of the 9.5 mills to receive a state payment.

The law requires the General Assembly every six years to redetermine the average number of these additional mills that are collected by districts in the 70th to 90th percentiles of property valuation.

Categorical funding

Categorical funding is a type of funding the state provides school districts in addition to base-cost funding. It can be viewed as money a school district requires because of the special circumstances of some of its students or the special circumstances of the district itself (such as its location in a higher-cost area of the state). Some categorical funding, namely the cost-of-doing-business factor and some adjustments to local property value, is actually built into the base-cost formula. But most categorical funding is paid separately from the base cost, including:

(1) Special education additional weighted funding, which pays districts a portion of the additional costs associated with educating children with disabilities;

---

[14] *There is an alternative formula for calculating parity aid payments for districts that experience a combination of lower incomes, higher poverty, and higher business costs than the statewide medians of these variables.*

(2) Vocational education additional weighted funding, which pays districts a portion of the additional costs associated with educating students in job training, workforce development, and other career-technical programs;

(3) Gifted education unit funding, which provides funds to districts for special programs for gifted children;

(4) Disadvantaged Pupil Impact Aid, or "DPIA," which provides additional state money to districts where the proportion of low-income students receiving public assistance through the Ohio Works First program is a certain percentage of the statewide proportion; and

(5) Transportation funding, which reimburses districts a portion of their costs of transporting children to and from public and private schools.

Special education and vocational education weights. The post-*DeRolph* school funding system pays a per pupil amount for special education and vocational education students on top of the amount generated by the base-cost formula for those students. It does this using an add-on formula assigning weights to those students. Weights are an expression of additional costs attributable to the special circumstances of the students in the weight class, and are expressed as a percentage of the formula amount. For example, a weight of 0.25 would indicate that an additional 25% of the formula amount (or, about $1,237 more dollars for FY 2003) is necessary to provide additional services to a student in that category.

Special Education Weights Under Current Law

Disabilities	Weight
Speech and language only	0.2892
Specific learning disabled Developmentally handicapped Other health handicapped-minor	0.3691
Severe behavior handicapped Hearing handicapped Vision Impaired	1.7695
Orthopedically handicapped Other health handicapped-major	2.3646
Multihandicapped	3.1129
Both visually and hearing disabled Autism Traumatic brain injury	4.7342

Vocational Education Weights Under Current Law

Categories	Weight
Job-training and workforce development	0.57
Other vocational education programs	0.28

Each school district is paid its state share percentage of the additional weighted amount calculated for special education and vocational education (see "***State and local shares of special and vocational education costs***," below). In addition, school districts may receive an additional "catastrophic cost" subsidy for some special education students if the district's costs to serve the students exceed a certain amount.

The state also pays subsidies for speech services and for "associated vocational education services" using separate formulas.

Phase-in of special education weights. In 2001, the General Assembly replaced the then-current system of two special education weights for three categories of disabilities with a system of six weights for six categories of disabilities. These six new weights are being phased in. The new weights were paid at 82.5% of their value in FY 2002 and 87.5% in FY 2003. The law does not specify phase-in percentages for fiscal years after FY 2003, meaning they would have to be paid at 100% of their value beginning in FY 2004 unless the General Assembly enacts otherwise.

State and local shares of special and vocational education costs. The funding system equalizes special education and vocational education costs by requiring a state and local share for the additional costs. This is determined for each district from the percentage of the base-cost amount supplied by each. For instance, if the state pays 55% of a district's base-cost amount and the district supplies the other 45%, the state and local shares of the additional special education and vocational funding likewise are 55% and 45%, respectively.

Gifted education funding. The state uses "unit funding" to pay school districts to serve students identified as gifted. A "unit" is a group of students receiving the same education program. In FY 2003, districts and educational service centers received for each approved unit the sum of:

(1) The annual salary the gifted teacher would receive if he or she were paid under the state's former minimum teacher salary schedule in effect prior to 2001 for a teacher with his or her training and experience;

(2) An amount (for fringe benefits) equal to 15% of the salary allowance;

(3) A basic unit allowance of $2,678; and

(4) A supplemental unit allowance, the amount of which partially depended on the district's state share percentage of base-cost funding. In FY 2003, for each gifted unit, a district received a supplemental unit allowance of $2,625.50 plus the district's state share percentage of $5,550 per unit.

Disadvantaged Pupil Impact Aid (DPIA). Under current law, an additional, nonequalized state subsidy is paid to school districts with threshold percentages of resident children from families receiving public assistance. The amount paid for DPIA depends largely on the district's DPIA index, which is its percentage of children receiving public assistance compared to the statewide percentage of such children. Three separate calculations determine the total amount of a district's DPIA funds:

(1) Any district with a DPIA index greater than or equal to 0.35 (meaning its proportion of children receiving public assistance is at least 35% of the statewide proportion) receives money for safety and remediation. Districts with DPIA indices between 0.35 and 1.00 receive $230 per pupil in a public assistance family. The per pupil amount increases proportionately for districts whose indices are greater than 1.00 as the DPIA index increases.

(2) Districts with a DPIA index greater than 0.60 receive an additional payment for increasing the amount of instructional attention per pupil in grades K to 3. The amount of the payment increases with the DPIA index. This payment is called the "third grade guarantee," but is also known as the "class-size reduction" payment.

(3) Districts that have either a DPIA index equal to or greater than 1.00 (having at least the statewide average percentage of public assistance children) or a three-year average formula ADM exceeding 17,500, and that offer all-day kindergarten receive state funding for the additional half day.

However, all districts (regardless of their DPIA indices) are eligible for at least the amount of DPIA funding they received during FY 1998, the last year of the old school funding system.

Transportation. In FY 1998, under the pre-*DeRolph* school funding system, state payments to school districts for transportation averaged 38% of their total transportation costs. Following *DeRolph I* the General Assembly established a new transportation funding formula and commenced a phase-in that, by FY 2003, resulted in the state paying districts the *greater* of 60% or the district's base-cost state share percentage of the amount calculated by the new formula.

The formula itself is based on the statistical method of multivariate regression analysis.[15] Under this formula, each district's payment for

[15] *Regression analysis is a statistical tool that can explain how much of the variance in one variable (in this case, transportation costs from district to district) can be explained by variance in other variables (here, number of bus miles per student per day and the percentage of students transported on buses).*

transportation of students on school buses is based on (1) the number of daily bus miles traveled per day per student in the previous fiscal year and (2) the percentage of its student body that it transported on school buses in the previous fiscal year (whether the buses were owned by the district board or a contractor).[16] The Department of Education updates the values for the formula and calculates the payments each year based on analysis of transportation data from the previous fiscal year. The Department must apply a 2.8% inflation factor to the previous year's cost data.

In 1999, the General Assembly established a separate "rough road subsidy" targeted at relatively sparsely populated districts where there are relatively high proportions of rough road surfaces.

Subsidies addressing reliance on property taxes

Charge-off supplement ("gap aid revenue"). Certain school districts are not able to achieve 23 effective mills to cover their assumed local share of the base cost. In other cases, districts' effective tax rates will not cover their assumed local shares of special education, vocational education, and transportation funding. In such cases, current law provides a subsidy to make up the gap between the districts' effective tax rates and their assumed local shares for base-cost, special education, vocational education, and transportation.

Excess cost supplement. Beginning in FY 2003, current law limits the amount of local resources that a school district is expected to contribute toward the local share of the calculated amount of its special education, vocational education, and transportation funding. Starting that year, the annual amount of any school district's aggregate calculated local share for these three categories may not exceed the product of three mills times the district's "recognized valuation."[17] (The three mills worth of resources devoted to these categories are above the 23 mills of local revenue assumed to be applied toward base-cost funding.) After the state and local share percentages have been calculated for a district in these categories, any amount of attributed local share that exceeds the three-mill cap (which the law labels "excess costs") must be paid by the state.

---

[16] The statute presents the following model of the formula based on an analysis of FY 1998 transportation data: 51.79027 + (139.62626 x daily bus miles per student) + (116.25573 x transported student percentage). The law directs that the formula be updated each year to reflect new data. (R.C. 3317.022(D)(2).)

[17] "Recognized valuation" is a constructed valuation that phases in the assessed valuation increases resulting from a triennial reappraisal or update by a county auditor.

State funding guarantee

The funding system guarantees every school district with a formula ADM over 150 that it will receive a minimum amount of state aid based on its state funds for FY 1998. The state funds guaranteed include the sum of base-cost funding, special education funding, vocational education funding, gifted education funding, DPIA funds, equity aid, state subsidies for teachers with high training and experience, and state "extended service" subsidies for teachers working in summer school.

Highlights of the Current School Funding Plan

Fiscal Year	Base Cost Amount	Special Education Weight Phase In %	Limitation on Local Share of Categorical Funding*	Districts Eligible for Parity Aid	Parity Aid Phase In %	Districts Eligible for Equity Aid	Equity Aid Phase-Out
FY 2001[†]	*$4,294*	-----	-----	-----	-----	*162*	*100%*
FY 2002	$4,814	82.5%	None	489	20%	117	100%
FY 2003	$4,949	87.5%	3 mills	489	40%	117	75%
FY 2004	$5,088	100%	3 mills	489	60%	117	50%
FY 2005	$5,230	100%	3 mills	489	80%	117	25%
FY 2006	$5,376	100%	3 mills	489	100%	0	0
FY 2007	$5,527	100%	3 mills	489	100%	0	0

*Combination of special education, vocational education, and transportation formula calculations.

[†]Prior law.

Amendments to statutes in anticipation of new funding system for FY 2005

Elimination of future school funding features

(R.C. 3317.012, 3317.0213, and 3317.0217)

In anticipation of the General Assembly enacting a new school funding system to take effect beginning in FY 2005 (see "***Special note concerning FY 2005 appropriations***," above), the bill revises several current statutes to prevent their application beyond FY 2004, as follows:

(1) The bill eliminates the statutory base-cost amounts for FY 2005 through FY 2007 (R.C. 3317.012(A)).

(2) It eliminates the requirement that the General Assembly form a committee every six years (a) to recommend a rational methodology for calculating the base cost of an adequate education and (b) to update the parity aid calculation (R.C. 3317.012(C)).

(3) It eliminates requirements that the General Assembly (a) recalculate the base cost of an adequate education every six years, (b) biennially determine the state share percentage of base cost and parity aid funding, and (c) enact methods to keep that state share percentage within 2.5%, plus or minus, of that percentage for the fiscal year in which the base cost was last calculated (R.C. 3317.012(D)).

(4) It eliminates the parity aid phase-in percentages for FY 2005 and thereafter, which presumably has the effect of terminating authorization for the program after FY 2004 (R.C. 3317.0217).

(5) It terminates the equity aid program one year earlier than currently scheduled, at the end of FY 2004 instead of FY 2005 (R.C. 3317.0213).

One-year extension of other school funding components

(R.C. 3317.022, 3317.11, and 3317.16)

The bill extends into fiscal year 2004 the following school funding components from fiscal year 2003:

(1) The $25,700 threshold for "catastrophic" special education costs in categories two through five of the special education weights (R.C. 3317.022(C)(3)(b)(i));[18]

(2) The $30,840 threshold for "catastrophic" special education costs in category six of the special education weights (R.C. 3317.022(C)(3)(b)(ii));

(3) The $30,000 personnel allowance used to calculate the subsidy paid to school districts for speech services rendered to students who are not special education students (R.C. 3317.022(C)(4) and 3317.16(E)); and

(4) The $37 per pupil state subsidy paid to most educational service centers (R.C. 3317.11(B)(1)).

[18] *If a school district or community school incurs costs beyond the annual threshold amount for serving a disabled student, it becomes eligible for additional partial state reimbursement of the costs exceeding the threshold.*

GRADS personnel allowance

(R.C. 3317.024(R))

The bill increases the GRADS personnel allowance from $46,260 in FY 2003 to $47,555 in FY 2004. The GRADS program ("Graduation, Reality, and Dual-Role Skills") serves pregnant and parenting teen students. Participating school districts receive state funding equal to their district state share percentage times the GRADS personnel allowance for every full-time-equivalent number of approved GRADS teachers.

Across-the-board DPIA payment increase for FY 2004

(R.C. 3317.029; Section 148.05)

An uncodified provision of the bill directs that every school district is to receive a 2% increase in its FY 2004 DPIA payment from FY 2003. This apparently applies even to districts that have received the same DPIA payment every year since FY 1998 because they are on the DPIA "guarantee," which entitles districts to receive no less in DPIA funds than they received under the old, pre-*DeRolph* DPIA program. It also appears to apply regardless of whether the district experiences an increase or decrease in its "DPIA index," which is a calculated figure that represents the district's concentration of children whose families receive public assistance, relative to the state as a whole, and governs the amount and type of DPIA payment district may receive (see the DPIA background description "***Disadvantaged Pupil Impact Aid (DPIA)***," above).

This uncodified stipulation of an across-the-board 2% increase for FY 2004, therefore, appears to defer a change in the calculation of the DPIA index, which current law has scheduled for FY 2004. The old DPIA index measurement accounted only for children whose families receive assistance under the Ohio Works First program. Beginning in FY 2004, the new measurement was to have included children receiving assistance under any one of several different programs: Ohio Works First, Medicaid, the Children's Health Insurance program ("CHIP"), the Food Stamp program, or the state Disability Assistance program. But the mandate for a straight 2% increase would appear to supersede any changes in DPIA payments that otherwise would have resulted from this change in calculating the index.

The bill also amends the codified law to update the statewide average teacher salary for fiscal year 2004 to $44,880 (from $43,658 in fiscal year 2003). This average is a component of the formula for calculating the class-size reduction payment of DPIA. But it is not clear, given the uncodified across-the-board DPIA

increase, whether this update to the average teacher salary has any relevance for FY 2004 DPIA payments.

Special education funding weights

(R.C. 3317.013)

During the 2001-2003 biennium, the state has been phasing in a system of six special education weights (see "***Phase-in of special education weights***," above). No phase-in percentage is specified in statute after FY 2003.

For FY 2004, the bill requires the Department of Education to determine a percentage by which it will reduce the special education weights so that state funds calculated under the special education funding formula will match the amount appropriated for special education weighted funding. The Department must determine and report the percentage to the Office of Budget and Management (OBM) by July 30, 2003. The Department may adjust that reported percentage during the course of the fiscal year if updated data indicate that the percentage will generate more or less than the appropriation. It must, however, notify OBM of the change and submit data justifying the adjustment.

The bill also provides that in FY 2004, 100% of the *unadjusted* weighted amounts calculated for special education and related services will be funded through a combination of local, state, and federal funds. The Department must submit a report to OBM by May 30, 2004, that specifies for each school district the amount of local, state, and federal pass-through funds allocated for special education and related services.[19]

Joint vocational school district special education funding and expenditures

Joint vocational school districts (JVSDs) are special taxing districts that provide career-technical instruction to high school students. They are formed by agreements among two or more member school districts. The member districts send their students who wish to enroll in career-technical programs to the JVSD

[19] **Background**. *The federal Individuals with Disabilities Act (20 U.S.C. 1400* et seq.*) and the corresponding federal regulations (34 C.F.R. Part 300) require a state or school district that receives federal funding for special education and related services to use those federal funds only to* supplement *and not* supplant *state funding of special education (34 C.F.R. 300.153; 34 C.F.R. 300.230). Additionally, federal law requires states to maintain financial support for special education and related services which means that a state cannot reduce state financial support for special education below the amount of that support in the preceding fiscal year (34 C.F.R. 300.154).*

for those services. In addition, JVSDs may enter into contracts with nonmember districts and schools to provide services specified in the contracts.

Attribution and payment of excess costs

(R.C. 3314.083, 3317.023(M), and 3317.16)

In addition to weighted vocational education amounts, each joint vocational school district receives the calculated base-cost and weighted special education amounts attributed to the students enrolled in the JVSD. These amounts, calculated on a full-time-equivalency basis, are the amounts that otherwise would be paid to a student's resident district (the regular school district in which the student is entitled to attend school free of tuition) or to a community school, if the student is enrolled in such a school.[20] However, a JVSD is not the entity responsible for developing a disabled student's individualized education program (IEP) and for guaranteeing that the student receives the services called for in the IEP. Instead, such a student's resident district or community school is legally responsible for the student's IEP.[21]

In some cases, the sum of the money a JVSD receives from the calculated state and local shares may not cover the actual cost of providing special education and related services to the disabled students enrolled in the JVSD. In such case, the bill specifies that the portion of the cost of providing those services by a JVSD that exceeds the sum of the calculated state and local shares of base-cost and special education funding be paid by the student's resident district or, if the student is also enrolled in a community school, by that school. The bill requires the Department of Education to deduct the amount of these excess costs from the account of the applicable resident district or community school and to pay that amount to the JVSD.

---

[20] *A community school, established under R.C. Chapter 3314., is an independent public school that is governed under a contract with a sponsoring entity. It receives state funding that is deducted from the account of the school district in which each student enrolled in the school is otherwise entitled to attend school. The amount of such funding is equal to the base-cost formula amount plus special education weights, vocational education weights, and Disadvantaged Pupil Impact Aid attributed to the student enrolled in the community school.*

[21] *See, R.C. 3323.01(G) and 3323.012, neither section in the bill.*

Requirement that joint vocational school districts spend the formula-calculated amounts on special education and related services

(R.C. 3317.16(D)(3))

The bill specifically requires each JVSD to spend the amount calculated for combined state and local shares of base-cost and special education payments for special education and related services as approved by the Department of Education. Those purposes approved by the Department must include, but are not limited to, compliance with state rules governing the education of handicapped children, providing the services prescribed in the IEP, and the portion of a JVSD's overall administrative and overhead costs that are attributable to its special education student population. The Department must require JVSDs to report data annually to allow for monitoring of their compliance with this provision. In addition, the Department must annually report to the Governor and the General Assembly the amount of money spent by each JVSD for special education and related services.

A similar provision applying to city, local, and exempted village school districts was enacted in 2001.[22]

Elimination of spending restrictions on school district parity aid payments

(R.C. 3302.041)

Background

Currently, all school districts that are rated by the Department of Education as "in need of continuous improvement," "in a state of academic watch," or "in a state of academic emergency" must develop a continuous improvement plan that outlines strategies to improve performance.[23] These districts also must apply the full amount of their parity aid payments (if they get them) to one or more

[22] *See, division (C)(4) of R.C. 3317.022.*

[23] *R.C. 3302.04, not in the bill. The Department is required to rate the academic performance for each school district and school building annually based on performance indicators established by the State Board of Education. Currently, there are 22 indicators. As prescribed in the law, an "excellent" district meets at least 21 indicators, an "effective" district meets at least 17 but less than 21 indicators, a district "in need of continuous improvement" meets at least 11 but less than 17 indicators, an "academic watch" district meets at least 7 but less than 11 indicators, and an "academic emergency" district meets less than 7 indicators. (R.C. 3302.03, not in the bill.) In 2003, 300 of the 608 districts that were rated attained a rating of either excellent or effective.*

statutorily prescribed activities that are directed at implementing their continuous improvement plans.[24] Those prescribed activities are the following:

(1) Upgrading or purchasing additional classroom equipment, materials, textbooks, or technology;

(2) Lowering student/teacher ratios in additional classrooms;

(3) Providing more advanced curriculum opportunities;

(4) Providing additional electives or mandatory courses for graduation;

(5) Increasing professional development;

(6) Serving more students in all-day kindergarten;

(7) Providing preschool to more students;

(8) Providing additional programming and services for special student populations such as gifted, disadvantaged, or disabled students;

(9) Establishing new academic intervention programs or increasing the number of students served in existing ones, including programs such as tutoring or summer school.

However, the Superintendent of Public Instruction may authorize a school district to spend parity aid payments for another purpose, upon request of the district, if the Superintendent finds that the proposed alternative use either would contribute to accomplishing other goals of the district's plan or is necessary to eliminate a threat to student health or safety.

The bill eliminates the spending restrictions

The bill eliminates the requirement that school districts spend their parity aid payments on any specific activities and that the payments be aimed at strategies included in their improvement plans. It does not affect the calculation of or eligibility for parity aid, nor does it affect the requirement that the three types of lower-performing school districts develop improvement plans.

[24] *R.C. 3302.041.*

Head Start and Head Start Plus

(R.C. 3301.31, 3301.33, 3301.34, 3301.35, 3301.36, 3301.40, 4511.75, and 5104.01; Sections 3.07, 3.08, and 3.09)

Head Start programs provide instruction and health care services to preschool children living in low-income families. Local agencies, including school districts, may receive direct grants from the federal government to operate such programs. In addition, the state, through the Department of Education, currently operates a Head Start funding program that provides assistance to local agencies in operating their programs. These state-funded Head Start programs are funded separately from any state-funded preschool programs operated by school districts.

The bill replaces the current authorization for the state Head Start Program with authorization for two new programs: "Title IV-A Head Start" and "Title IV-A Head Start Plus." (It does not affect the federal direct aid to Head Start agencies.) The new state programs are to be operated by the Department of Education and funded with federal TANF moneys transferred from the Department of Job and Family Services to the Department of Education.[25] The two departments are authorized under the bill to enter into an interagency agreement to develop procedures for the operation of the programs.

Title IV-A Head Start will provide traditional head start services and Title IV-A Head Start Plus will provide year-round head start services along with child care services. Both programs are restricted to providing only TANF-eligible services to only TANF-eligible individuals. Only agencies that are approved by the Department of Education for participation in the programs may receive reimbursements for services provided to eligible individuals. The eligible services are those that are allowable under Title IV-A of the Social Security Act, but they cannot be benefits and services that federal regulations include in the term "assistance."[26] Each county department of job and family services is required under the bill to verify the eligibility of individuals for those Title IV-A services.

---

[25] *TANF is a block grant program authorized by Title IV-A of the Social Security Act, 42 U.S.C. 601, that provides "temporary assistance for needy families." The program provides federal matching funds to states to serve low-income families with children.*

[26] *Accordingly, these services cannot include "cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses)." It must, however, include:*

Under Title IV-A Head Start, the Department of Education will contract directly with Head Start agencies to provide local services and will reimburse those agencies directly. On the other hand, under Title IV-A Head Start Plus, the Department of Education will contract with each county department of job and family services to administer the program within its respective county. The Head Start Plus agencies will be reimbursed for allowable expenses from the county departments, which will in turn be reimbursed by the Department of Education. Each county department is required to deposit any reimbursement payments it receives from the Department of Education in the county public assistance fund. In administering the local programs, the county departments are required to determine eligibility of individuals, establish co-payment requirements in accordance with state Department of Job and Family Services rules, ensure that the reimbursements to agencies are for allowable expenses, and to monitor the local agencies use of funds.

Licensing of Head Start agencies

(R.C. 3301.37, 3301.52 to 3301.55, 3301.57, 3301.58, 5104.02, and 5104.32, and repealed R.C. 3301.581)

Currently, all Head Start agencies are licensed by the Department of Education as preschool programs. The bill eliminates the Department of Education's authority to license Head Start agencies and instead authorizes the

---

(1) "Nonrecurrent, short-term benefits . . . designed to deal with a specific crisis situation or episode of need [that are] not intended to meet recurrent or ongoing needs, and [that will] not extend beyond four months;

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project . . . to an individual who is not otherwise receiving assistance." (45 C.F.R. 260.31(a) and (b).)

state Department of Job and Family Services to license the agencies as child day-care centers, according to procedures prescribed in R.C. Chapter 5104.[27] However, the bill permits agencies currently holding valid Head Start licenses issued by the Department of Education to continue to operate under those licenses until the earlier of the expiration date specified on that license or July 1, 2005. To continue operating after that date, an agency must obtain a license issued by the Department of Job and Family Services.[28]

Calculation of formula ADM

(R.C. 3317.03(A)(1) and (2))

The formula ADM (average daily membership) is a variable used in school funding formulas to approximate a school district's enrollment. It generally represents the average daily number of students attending class, on a full-time-equivalent basis, in the district's schools during the first full school week in October. But under current law, school districts also count in formula ADM students who reside in the district and normally would attend classes in that district, but are in fact attending classes in another district under an interdistrict compact, cooperative agreement, or contract.[29] The districts of residence are then credited with the state funding attributable to the students, which then has to be transferred to the districts where the students actually attend class.

The bill reverses how students who attend class in other districts under interdistrict compacts, cooperative agreements, or contracts are counted in formula ADM. Under the bill, those students are to be counted in the districts where they actually attend class.[30]

---

[27] The bill does not affect the Department of Education's authority to license regular preschool programs operated by school districts.

[28] Prior to 1998, Head Start licenses were issued by the Department of Human Services, the predecessor to the current Department of Job and Family Services. (See Sub. H.B. 396 of the 122nd General Assembly, effective 01-30-98.)

[29] Students by law normally attend school in the district where their parents reside (and pay taxes). See R.C. 3313.64 and 3313.65, neither in the bill.

[30] It is not clear what practical consequences this change will have. Not only is formula ADM used to calculate base-cost and parity aid funding, it is used to calculate local district wealth when determining eligibility for, and local share of, state School Building Assistance. Districts where a relatively large number of these students are involved theoretically could see their formula ADMs change from FY 2003 to FY 2004 in a way that could affect their funding.

(The bill does *not* change how open enrollment students and community school students are counted in formula ADM. Those students continue to be counted in the formula ADMs of the districts where they are legally entitled to attend school. Money is in turn deducted from state aid payments to the districts of residence and paid by the Department of Education to the districts or community schools where they attend classes.)

Pupil-teacher ratio formula adjustment

(R.C. 3317.023(A)(4) and (B))

Continuing law specifies that a school district's base-cost funding must be adjusted if the school district exceeds the maximum average ratio of 25 "regular student population" students per teacher. The formula used to calculate the "regular student population" currently excludes all vocational education students and special education students, including students whose only identified disability is a speech and hearing handicap.

The bill adjusts the formula used to calculate the "regular student population" by requiring the inclusion of special education students whose only identified disability is a speech and hearing handicap. Until FY 2002, these students were included in this calculation. They have been excluded for only two years. The bill, therefore, restores the calculation in effect two years ago.[31]

Changes in "unit" funding for certain services

(substantive changes in R.C. 3317.05; conforming changes in R.C. 3317.03, 3317.032, 3323.16, and 5126.12)

State funding for some educational services to some entities is determined and paid on a "unit" basis. A unit is generally a pre-determined cost of paying the salary and benefits of a teacher to provide those services to a set number of students (see, for example, "***Gifted education funding***," above). Currently, the number of units available for particular services is determined annually by the State Board of Education based on appropriations, and the State Board is charged with approving the award of units to each individual entity. Unit funding is used to pay for the following services:

- Handicapped preschool services (preschool-age special education) provided by school districts, educational service centers, and county MR/DD boards.

[31] *It is unclear whether this change could result in certain school districts exceeding the maximum average ratio of 25 "regular student population" students per one teacher.*

- Vocational, handicapped preschool, and school-age special education services provided by institutions operated by the Departments of Mental Health, Mental Retardation and Developmental Disabilities, Youth Services, and Rehabilitation and Correction;

- Gifted education provided by school districts; and

- Supervisory teachers for local school districts provided by educational service centers.

The bill specifies that vocational, school-age special education, and handicapped preschool units be approved by the Department of Education rather than the State Board.[32] In addition, it conforms the law regarding approval of units for handicapped preschool education to the federal law on reporting the ages of affected children. In this regard, the bill specifies that such funding units will be available for children who were three years old by December 1 of any year, instead of September 30 as under current unit-funding law.

Reassignment of school buses

(R.C. 3317.07)

School districts and county MR/DD boards receive state subsidies for the purchase of school buses. If a bus is purchased by a county MR/DD board for the transportation of children in special education programs operated by the board, the subsidy the State Board of Education pays to the MR/DD board is 100% of the cost of the bus. Similarly, if a school district purchases a bus for transporting special education or nonpublic school students, the subsidy paid by the State Board equals 100%. However, if a bus is used by a school district for transporting other students, such as students attending the district's public schools, it is the responsibility of the State Board to determine the amount of the subsidy.

The bill adds a provision regarding what may happen to a bus that is purchased by a school district or county MR/DD board with a state subsidy if that bus is no longer needed for the transportation of certain students. The bill specifies that the Department of Education may reassign a bus paid for with a state subsidy in several circumstances. First, if a county MR/DD board no longer needs a bus for transporting special education students to a program operated by the MR/DD board, the Department can reassign the bus. Second, the Department can reassign a bus purchased by a school district for the transportation of special

[32] *Current law already specifies that gifted education units and educational service center supervisory units are approved by the Department, rather than the State Board.*

education or nonpublic school students if the school district is no longer transporting such students to a particular nonpublic school or special education program. In reassigning buses, the Department may reassign the bus to either a county MR/DD board for the transportation of special education students or to a school district for the transportation of special education or nonpublic school students.

Renaming the Auxiliary Services Mobile Unit Repair and Replacement Fund

(R.C. 3317.064)

The bill renames the Auxiliary Services Mobile Unit Replacement and Repair Fund as the "Auxiliary Services Reimbursement Fund." It makes no other changes to the law governing the fund, other than the name change. It maintains the law that the fund consist of excess money transferred from the Auxiliary Services Personnel Unemployment Compensation Fund. It also maintains the law that the fund can only be used to (1) make payments to school districts to relocate, replace, or repair mobile classroom units used to render certain services at chartered nonpublic schools and (2) to offer incentives for early retirement and severance to school district personnel who provide services to students of chartered nonpublic schools.

Payments to tutorial assistance providers through the Pilot Project Scholarship Program

(R.C. 3313.979)

The Pilot Project Scholarship Program provides scholarships ("vouchers") to attend alternative schools, including private schools, and tutorial assistance grants to certain students who reside in any school district that is or has been under a federal court order requiring supervision and operational management of the district by the state Superintendent of Public Instruction. Currently, only students residing in the Cleveland City school district are eligible for participation.

Continuing law specifies that upon a student's application and using criteria established by the Department of Education, the state Superintendent awards a certain number of tutorial assistance grants to students who remain enrolled in the Cleveland City school district. The student, then, may use the grant to obtain tutorial assistance from a provider approved by the Department.[33] As mandated by current law, tutorial assistance grants are payable to the parents of a student entitled to the grant upon the parent's submission of a statement specifying the

[33] *R.C. 3313.978 (not in the bill).*

services provided by the tutorial provider and the cost of those services. The parent is responsible for paying the tutorial assistance provider.

The bill alters this payment provision by requiring the Superintendent to pay directly the tutorial assistance provider upon the submission of a statement specifying the services provided and the cost of those services. This statement must be signed by the provider and verified by the chief administrator having supervisory control over the tutoring site.

This change by the bill affects only the tutorial assistance grants offered under the pilot project and not the scholarships ("vouchers") paid for Cleveland students attending private schools. Scholarships to attend private schools will continue to be paid to the parents and not the schools.[34]

Modification of a school district's tax levy obligation when in fiscal emergency

(R.C. 3316.08)

The Auditor of State has the authority to declare a school district in a state of fiscal emergency if the district is experiencing severe financial difficulties, such as having a certified operating deficit of more than 15% and the voters have failed to pass a levy sufficient to reduce the deficit below that amount.[35] Upon a fiscal emergency designation, a financial planning and supervision commission is established for the purpose of developing and implementing a financial recovery plan.

---

[34] *In 2002, the U.S. Supreme Court evaluated the constitutionality of the Pilot Project Scholarship Program in Zelman v. Simmons-Harris, 536 U.S. 639. On the basis of the Establishment Clause of the First Amendment, the program was challenged as impermissibly aiding religious schools (most of the private schools participating in the program are religiously affiliated). The Supreme Court held that the program did not violate the Establishment Clause because the Scholarship Program is a program of "true private choice" and "provides benefits directly to a wide spectrum of individuals" who then choose where the public funds will be spent. By directing the state Superintendent of Public Instruction to pay tutorial assistance providers directly, one of the features of the Scholarship Program that perhaps led the Supreme Court to uphold the constitutionality of the program--direct payments to parents--is no longer present as applied to tutorial assistance providers. Whether this modification to the Scholarship Program is significant enough to create a new constitutional question is unclear from the Zelman v. Simmons-Harris opinion.*

[35] *For a complete list of the circumstances that give rise to a declaration of fiscal emergency, see R.C. 3316.03 (not in the bill).*

Current law requires, as one consequence of a fiscal emergency designation, that either the district board of education or the financial planning and supervision commission adopt a resolution to submit a tax levy request to the voters. The tax levy request must be for an amount sufficient to eliminate the district's operating deficit and to repay all outstanding obligations incurred by the district for the purpose of reducing or eliminating operating deficits. The resolution is submitted to the applicable board of elections which then places the issue on the ballot.

The bill removes the requirement that a board of education or financial planning and supervision commission of a school district in fiscal emergency must propose to the voters such a tax levy. Instead, it allows a school district the option of submitting a tax levy request to the voters for the purpose of generating a positive fiscal year end cash balance by the fifth year of the district's five-year forecast. Both the board of education and the financial planning and supervision commission must consider a tax levy request, and both must adopt resolutions explaining the decision to propose or not propose such a levy.

BOARD OF EMBALMERS AND FUNERAL DIRECTORS

- Increases licensing fees paid to the Board of Embalmers and Funeral Directors.
- Permits an embalmer or funeral director who has been licensed for 50 or more years and is not actually in charge of an embalming facility or funeral home to apply to the Board of Embalmers and Funeral Directors for an exemption from continuing education requirements.

Licensing fees

(R.C. 4717.07)

The bill increases licensing fees paid to the Board of Embalmers and Funeral Directors as shown in the following chart.

Licensing fee	Current fee	Fee under the bill
Initial embalmer or funeral director license	$5	$140
Embalmer or funeral director registration	$25	$100
Embalmer or funeral director certificate of apprenticeship	$10	$50
Biennial renewal of an embalmer or funeral director license	$120	$140
Initial issuance of license to operate a funeral home	$125	$250
Initial issuance of license to operate an embalming facility	$100	$200
Initial issuance of license to operate a crematory facility	$100	$200

Exemption from continuing education

(R.C. 4717.09)

Current law requires that licensed embalmers and funeral directors attend between 12 and 30 hours of continuing education every two years. The bill allows a licensed embalmer or funeral director who has been licensed for 50 years or longer and is not actually in charge of an embalming facility or funeral home to apply to the Board of Embalmers and Funeral Directors for an exemption from the continuing education requirement.

STATE EMPLOYMENT RELATIONS BOARD

- Establishes specific duties of the State Employment Relations Board's chairperson in statute, including the duty to prepare the Board's biennial budget and to employ, promote, supervise, and remove certain Board employees.

- Shifts some of the Board's duties directly to the chairperson, including the duty to appoint attorneys and attorney-trial examiners and, with the consent of one other Board member, to appoint an Executive Director.

- Establishes specific duties of the Board's Executive Director in statute, including the duty to ensure that all Board employees comply with Board rules.

- Allows either party to a collective bargaining agreement to request a fact-finding panel any time after a mediator is appointed, requires them to share the entire cost of the panel, and requires the Board to appoint a panel within 15 days after receiving a request.

Duties of the Chairperson and Executive Director

(R.C. 4117.02)

The bill specifies that the State Employment Relations Board's Chairperson is the Board's chief executive officer and that the Chairperson must exercise all administrative powers and duties conferred on the Board. The bill establishes specific duties of the State Employment Relations Board's Chairperson in statute, including the duty to prepare the Board's biennial budget, manage the daily operations of the Board's office in Columbus, and employ, promote, supervise, remove, and assign or reassign duties of Board employees. Some of the Board's duties are shifted directly to the Chairperson under the bill, including the duty to appoint attorneys and attorney-trial examiners and, with the consent of one other Board member, to appoint an Executive Director. Under current law, the Board appoints the Executive Director, so the practical effect of this change is that the Chairperson initially selects the Executive Director and seeks consent thereafter.

Under the bill, the Executive Director serves at the pleasure of the Chairperson and is the chief administrative officer for the Board. The bill requires the Executive Director to do all things necessary for the efficient and effective implementation of the Board's duties and to ensure that all Board employees comply with Board rules. The bill specifies that these duties of the Executive Director do not relieve the Chairperson from final responsibility for the performance of these duties.

Appointment and cost of fact-finding panels for collective bargaining

(R.C. 4117.14)

The bill specifies that either party to a collective bargaining agreement under the Public Employees Collective Bargaining Law (R.C. Chapter 4117.) may request a fact-finding panel any time after a mediator is appointed, and requires

the State Employment Relations Board to appoint a panel within 15 days after receiving such a request.

Additionally, the bill requires the parties to share the cost of the fact-finding panel in a manner agreed to by the parties instead of requiring the state to pay half the cost and each party to pay one quarter of the cost as currently is the case.

ENVIRONMENTAL PROTECTION AGENCY

- Allows investment earnings credited to the Clean Ohio Revitalization Fund to be used indefinitely to pay costs incurred by the Department of Development and the Environmental Protection Agency for purposes of the brownfield portion of the Clean Ohio Program.

- Allows investment earnings credited to the Clean Ohio Operating Fund to be used indefinitely to pay administrative costs incurred by the Director of Environmental Protection for purposes of the brownfield portion of the Clean Ohio Program.

- Abolishes the Hazardous Waste Facility Board, transfers its duties and responsibilities to the Director of Environmental Protection for purposes of permitting hazardous waste facilities, and revises several of the criteria to be used when determining whether to approve or disapprove a permit application.

- Extends the authority for the Environmental Protection Agency to use money in the Hazardous Waste Clean-up Fund for the Emergency Response Program and the Voluntary Action Program through October 15, 2005.

- Extends through June 30, 2006, the fee on the disposal of solid wastes that is used to fund the solid and infectious waste and construction and demolition debris management programs, and increases the fee from 75¢ per ton to $1 per ton beginning July 1, 2003.

- Eliminates the fee schedules for permits to operate and variances issued for air contaminant sources prior to January 1, 1994, and replaces the fee schedule for permits to install for such air contaminant sources with the current fee schedules for permits to install for air contaminant sources

issued on or after January 1, 1994, but applies the fee schedules only for such permits to install issued before July 1, 2003.

- Establishes new fee schedules for permits to install for air contaminant sources issued on or after July 1, 2003, by applying and modifying the schedules for permits issued on or after January 1, 1994, as follows: (1) includes in fuel-burning equipment, in addition to boilers as in current law, furnaces or process heaters that are used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer, and increases several of the fees by 25% to 50%, (2) establishes new fees of $25 to $2,000, based on generating capacity, for combustion turbines and stationary internal combustion engines designed to generate electricity, (3) increases the fees for incinerators by 25% to 50%, (4) for processes (based on process weight rate), increases most of the fees by 25%, specifies that a combustion turbine or stationary internal combustion engine that is designed to generate electricity must be assessed the fee described in (2), above, increases the fees for mining processes by 20% to 33%, and corrects a computer error in the fee schedule for mining processes, and (5) for storage tanks, revises the fee range levels, and increases the fees for the higher levels.

- Applies the annual emissions fees currently paid by holders of air pollution control permits to operate or variances, other than holders of Title V permits and owners or operators of synthetic minor facilities, only through December 31, 2003, replaces the fees beginning January 1, 2004, with a new schedule that includes increased fees of $100 and $200 for lower amounts of emissions, but retains existing fees for higher amounts of emissions, requires fees to be collected under the new schedule beginning in 2005, and extends the sunset on the annual emissions fees for synthetic minor facilities until June 30, 2006.

- Extends for two years the sunset of the annual discharge fees for holders of NPDES permits issued under the Water Pollution Control Law and application fees for industrial water pollution control certificates issued under that Law.

- Extends for two years the levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works under the Water Pollution Control Law.

- Extends for two years the sunset of annual license fees for public water system licenses issued under the Safe Drinking Water Law, and increases the fees for public water systems that are community water systems by 34% to 100%, for public water systems that are not community water systems and serve nontransient populations by 65% to 100%, and for public water systems that are not community water systems and serve transient populations by 64% to 100%.

- Increases the fee for plan approval for a public water supply system from $100 plus .2 of 1% of the estimated project cost to $150 plus .35 of 1% of the estimated cost, extends for two years the establishment of a higher cap on the total fee due and the decrease of that cap at the end of the two years, and increases the higher cap from $15,000 to $20,000 and the lower cap from $5,000 to $15,000.

- Extends for two years the levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law, and makes the following changes in the fees: (1) for the higher fees, which must be assessed triennially for each laboratory, divides the microbiological category into three subcategories and establishes a fee for each, increases the fees for the remaining categories by 55%, and establishes a $1,800 fee for each additional survey that is requested during the three-year period for the purpose of adding analytical methods or personnel, and (2) increases the lower fees by 560% to 1,300%.

- Extends for two years the levying of higher fees, and the decrease of those fees at the end of the two years, for applications and examinations for certification as operators of water supply systems or wastewater systems under the Safe Drinking Water Law or the Water Pollution Control Law, as applicable, and makes the following changes in the fees: (1) increases the higher application fee from $25 to $45 and the lower application fee from $10 to $25, (2) adds certification as a Class A operator and sets the higher examination fee for such certification at $45 and the lower fee at $25, (3) increases the higher examination fees for certification in the existing categories of operator certification by 67% to 73% and the lower fees by 36% to 80%, (4) establishes a new biennial certification renewal fee ranging from $25 to $65 depending on the class of certification and a late renewal fee ranging from $45 to $85, and (5)

requires a person who requests a replacement certificate to pay a $25 fee at the time the request is made.

- Extends for two years the levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Law.

- Generally enables an applicant to submit an electronic application for a registration certificate, permit, variance, or plan approval under the Solid, Infectious, and Hazardous Waste Law, Safe Drinking Water Law, or Water Pollution Control Law, requires the payment of the applicable application fee as expeditiously as possible after such submission, and prohibits the review or processing of a registration certificate, permit, variance, or plan approval until the required fee is paid.

- Clarifies that an applicant who has entered into an agreement with the Clean Ohio Council for a grant or loan under the brownfield portion of the Clean Ohio Program and who is issued a covenant not to sue under the Voluntary Action Program Law is not required to pay the fee for the issuance of a covenant not to sue that is established in rules adopted under the Voluntary Action Program Law.

Use of investment earnings of Clean Ohio Revitalization Fund

(R.C. 122.658)

The Clean Ohio Revitalization Fund in existing law consists of money credited to it from revenue bonds that are issued for purposes of the Clean Ohio program to pay the costs of brownfield remediation projects and of payments of principal and interest on loans that are made from the Fund. Current law provides that until July 26, 2003, investment earnings credited to the Fund may be used to pay costs incurred by the Department of Development and the Environmental Protection Agency under the brownfield component of the Clean Ohio Program. The bill removes the deadline, thus allowing the investment earnings to be used for those purposes indefinitely.

Use of investment earnings of Clean Ohio Operating Fund

(R.C. 3745.40)

The Clean Ohio Operating Fund in existing law consists of money transferred to it from the Clean Ohio Revitalization Fund as certified by the Director of Development to the Director of Budget and Management. That money consists of excess investment earnings that are available to be transferred from the Clean Ohio Revitalization Fund. Current law provides that until July 26, 2003, investment earnings credited to the Fund may be used to pay administrative costs incurred by the Director of Environmental Protection under the brownfield component of the Clean Ohio Program. The bill removes the deadline, thus allowing the investment earnings to be used to pay administrative costs incurred by the Director indefinitely.

Elimination of Hazardous Waste Facility Board

(R.C. 3734.02, 3734.05, 3734.12, 3734.123, 3734.124, 3734.18, 3734.42, 3734.44, 3734.46, and 3745.14; Sections 132.09, 132.10, and 145.03)

Current law establishes the five-member Hazardous Waste Facility Board to approve or disapprove applications for hazardous waste facility installation and operation permits for new hazardous waste storage, treatment, and disposal facilities and applications for certain modifications to existing permits. The Board is scheduled to expire on December 31, 2004, unless it is renewed by the enactment of legislation. The bill abolishes the Board on its effective date and transfers its duties and responsibilities to the Director of Environmental Protection for purposes of permitting hazardous waste facilities. Under the bill, the Director also is responsible for all permit modifications rather than just for specified types of modifications as under current law.

To effect the transfer, the bill abolishes on its effective date all of the rules adopted by the Board and requires the Director of the Legislative Service Commission to remove the rules from the Administrative Code as if they had been rescinded. The bill also specifies that on and after the its effective date and until the Director of Environmental Protection adopts rules that eliminate references to the Hazardous Waste Facility Board, whenever the Hazardous Waste Facility Board or Board, when "Board" refers to the Hazardous Waste Facility Board, is referred to in a rule, the reference must be deemed to refer to the Environmental Protection Agency or the Director of Environmental Protection, whichever is appropriate. As expeditiously as possible after the effective date, the Director must adopt rules eliminating references to the Hazardous Waste Facility Board.

Permits or modifications issued by the Board under the Solid, Hazardous, and Infectious Waste Law as that law existed prior to its amendment by the bill must continue in effect as if the Director had issued the permits or modifications under that Law after the effective date of its amendment by the bill. Any application pending before the Hazardous Waste Facility Board on the bill's effective date must be transferred to the Environmental Protection Agency for approval or disapproval by the Director. All records, files, and other documents of the Hazardous Waste Facility Board must be transferred to the Environmental Protection Agency.

Current law requires the Board to hold a public hearing after receiving a completed application and to hold an adjudication hearing at which it must hear and decide all disputed issues respecting the approval or disapproval of the application. The bill requires a permit applicant, prior to submitting a complete application to the Director, to hold at least one meeting in the township or municipal corporation in which the facility is proposed to be located, whichever is geographically closer to the proposed location. The meeting must be open to the public and be held to inform the community of the proposed hazardous waste management activities and to solicit questions from the community concerning the activities.

The bill also requires the Director, after determining whether a permit application complies with specified requirements in both statutes and rules, to issue either a draft permit or a notice of intent to deny the permit. The Director also must provide public notice of the application and the draft permit or notice of intent to deny the permit, provide an opportunity for public comments, and, if significant interest is shown, schedule a public meeting in the affected county and give public notice of it. Not later than 180 days after the end of the public comment period, the Director, without prior hearing, must issue or deny the permit in accordance with the Environmental Protection Agency Law, which allows for appeals to the Environmental Review Appeals Commission.

Current law precludes the Board from approving an application unless it makes specific findings and determinations regarding the proposed facility and its owner or operator. The bill applies the same preclusion to the Director, but modifies several of the findings and determinations. Currently, the Board must determine that a facility represents the minimum risk of all of the following: (1) contamination of ground and surface waters, (2) fires or explosions from treatment, storage, or disposal methods, (3) accident during transportation of hazardous waste to or from the facility, (4) impact on the public health and safety, (5) air pollution, and (6) soil contamination. The bill eliminates items (1), (5), and (6). It changes item (3) to "release of hazardous waste" during transportation and item (4) to "adverse impact" on the public health and safety.

In addition, the Board must find and determine that, if the owner or operator has been involved in any prior activity involving the transportation, treatment, storage, or disposal of hazardous waste, that person has a history of compliance with state and federal environmental requirements. The bill allows the Director, in making such a finding and determination for off-site facilities, to use as a basis the investigative reports prepared by the Attorney General under the state's background investigation requirements.

Finally, under current law, the Board must find and determine that the active areas where acute hazardous waste or toxic organic waste is being stored, treated, or disposed of and where the aggregate design capacity of all hazardous waste in those areas is greater than 250,000 gallons are not located or operated within specified areas, including any flood hazard area if the applicant cannot show that the facility will be designed, constructed, operated, and maintained to prevent washout by a 100-year flood or that procedures will be in effect to remove the waste before flood waters can reach it. While the Director generally must make the same finding and determination, the bill removes the option for the applicant to show that procedures will be in effect to remove the waste before flood waters can reach it.

Hazardous Waste Clean-up Fund

(R.C. 3734.28)

Under current law, the Environmental Protection Agency must use money from the Hazardous Waste Clean-up Fund for specified purposes, including, through June 30, 2003, the Emergency Response Program and the Voluntary Action Program. The bill extends the authority to use money in the Fund for those purposes through October 15, 2005.

Continuation of and increase in solid waste disposal fee

(R.C. 3734.57)

Current law levies a fee on the disposal of solid wastes to fund the Environmental Protection Agency's solid and infectious waste and construction and demolition debris management programs. The fee is set at 75¢ per ton and is scheduled to sunset on June 30, 2004. The bill continues the fee through June 30, 2006, and, beginning on July 1, 2003, increases the fee to $1 per ton.

Fees for permits issued under Air Pollution Control Law

(R.C. 3745.11(B) and (F))

Fees for existing permits and variances

Current law requires each person issued a permit to operate, variance, or permit to install under the Air Pollution Control Law prior to January 1, 1994, to pay fees according to specified fee schedules. The bill eliminates the fee schedules for permits to operate and variances and provides that each person who is issued a permit to install under the Air Pollution Control Law prior to July 1, 2003, must instead pay the fees established in current law for such permits for air contaminant sources issued on or after January 1, 1994 (see tables below). Thus, the bill replaces the fee schedules for permits to install for such air contaminant sources with the current fee schedules for permits to install for air contaminant sources issued on or after January 1, 1994, but applies the fee schedules only to such permits to install issued before July 1, 2003.

Fees for permits to install issued on or after July 1, 2003

Under existing law, each person who is issued a permit to install under the Air Pollution Control Law on or after January 1, 1994, is required to pay the fees specified in schedules for fuel-burning equipment, incinerators, process, storage tanks, gasoline/fuel dispensing facilities, dry cleaning facilities, and registration status. The bill instead applies those fees to permits to install issued on or after July 1, 2003. It also increases the fees in several of the schedules, modifies the criteria specified in several other schedules, and establishes one new schedule. Those changes are discussed below.

Fuel-burning equipment. Currently, the fees for permits to install for fuel-burning equipment apply to boilers. The bill adds furnaces and process heaters in addition to boilers and qualifies that the boilers, furnaces, or process heaters must be used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer. It also increases the fees. The table below shows the fees under current law and the bill:

Input capacity (max.) under current law (million Btu's/hr)	Fee under current law for permit to install issued on or after 1/1/94	Fee under the bill for permit to install issued on or after 7/1/03
More than 0, but less than 10	$200	$200
10 or more, but less than 100	$400	$400
100 or more, but less than 300	$800	$1,000
300 or more, but less than 500	$1,500	$2,250
500 or more, but less than 1,000	$2,500	$3,750
1,000 or more, but less than 5,000	$4,000	$6,000
5,000 or more	$6,000	$9,000

Combustion turbines and stationary internal combustion engines designed to generate electricity. The bill establishes a new fee schedule for permits to install issued for combustion turbines or stationary internal combustion engines designed to generate electricity. The table below shows the proposed fee schedule:

Generating capacity (mega watts)	Fee under the bill for permit to install issued on or after 7/1/03
0 or more, but less than 10	$25
10 or more, but less than 25	$150
25 or more, but less than 50	$300
50 or more, but less than 100	$500
100 or more, but less than 250	$1,000
250 or more	$2,000

Incinerators. The bill increases all of the fees for permits to install for incinerators except for the lowest level of input capacity. The table below shows the fee levels under current law and the bill:

Input capacity (pounds per hour)	Fee under current law for permit to install issued on or after 1/1/94	Fee under the bill for permit to install issued on or after 7/1/03
0 to 100	$100	$100
101 to 500	$400	$500
501 to 2,000	$750	$1,000
2,001 to 20,000	$1,000	$1,500
More than 20,000	$2,500	$3,750

Process. Current law establishes a fee schedule for permits to install that are issued for a process and specifies that in any process where process weight rate cannot be ascertained, the minimum fee must be assessed. The bill increases all of the fees except for the lowest fee level in the schedule. It adds that a boiler, furnace, combustion turbine, stationary internal combustion engine, or process heater designed to provide direct heat or power to a process not designed to generate electricity must be assessed a fee described in the table below. It also clarifies that a combustion turbine or stationary internal combustion engine designed to generate electricity must be assessed a fee as discussed above. The following table shows the fee levels in current law and proposed by the bill:

Process weight rate (pounds per hour)	Fee under current law for permit to install issued on or after 1/1/94	Fee under the bill for permit to install issued on or after 7/1/03
0 to 1,000	$200	$200
1,001 to 5,000	$400	$500
5,001 to 10,000	$600	$750
10,001 to 50,000	$800	$1,000
More than 50,000	$1,000	$1,250

Similarly, current law requires a person to pay a fee for a permit to install for certain mining processes that are identified by the applicable classification code. The processes include all of the following: bituminous coal and lignite mining; bituminous coal and lignite mining services; dimension stone; crushed and broken limestone; crushed and broken stone, not elsewhere classified; construction sand and gravel; industrial sand; cut stone and stone products; and minerals and earth, ground or otherwise treated. The bill corrects a computer error in the fee schedule for permits issued on or after January 1, 1994, applies the fee schedule

instead to permits issued on or after July 1, 2003, and increases the fees for all but one of the fee levels. The table below shows the existing and proposed fee levels:

Process weight rate (pounds per hour)	Fee under current law for permit to install issued on or after 1/1/94	Fee under the bill for permit to install issued on or after 7/1/03
0 to 10,000	$200	$200
10,001 to 50,000	$300	$400
50,001 to 100,000	$400	$500
100,001 to 200,000	$500	$600
200,001 to 400,000	$600	$750
400,001 or more	$700	$900

Storage tanks. Under existing law, each person who is issued a permit to install for storage tanks is required to pay a fee according to the statutory schedule. The bill reduces the number of fee levels from seven to five in the fee schedule and changes two of the fees that correspond to the change in levels. The table below shows the change in fee levels, the existing fees, and the proposed fees:

Gallons (max. useful capacity) under current law	Gallons (max. useful capacity) under the bill	Fee under current law for permit to install issued on or after 1/1/94	Fee under the bill for permit to install issued on or after 7/1/03
0 to 20,000	0 to 20,000	$100	$100
20,001 to 40,000	20,001 to 40,000	$150	$150
40,001 to 100,000	40,001 to 100,000	$200	$250
100,001 to 250,000	100,001 to 500,000	$250	$400
250,001 to 500,000	----	$350	----
500,001 to 1,000,000	500,001 or greater	$500	$750
1,000,001 or greater	----	$750	----

Gasoline/fuel dispensing facilities, dry cleaning facilities, and registration status. The bill retains the existing $100 fee for a permit to install for each gasoline/fuel dispensing facility and dry cleaning facility and the existing $75 fee for each source covered by registration status.

Emissions fees for holders of air pollution control permits to operate or variances other than holders of Title V permits and owners or operators of synthetic minor facilities

(R.C. 3745.11(D))

Current law requires holders of air pollution control permits or variances, but who are not required to obtain Title V permits and who are not owners or operators of synthetic minor facilities, to pay annual emissions fees beginning January 1, 1994, based on the sum of the actual annual emissions from the facilities of the regulated pollutants particulate matter, sulfur dioxide, nitrogen oxides, organic compounds, and lead. The bill applies the current fee schedule through December 31, 2003, and establishes a new emissions fee schedule beginning January 1, 2004. The new fee schedule establishes one new fee level category and increases the fee for the current lowest fee level category. In addition, the bill requires the new fees to be collected annually no sooner than April 15, commencing in 2005. The table below shows the current fee schedule and the new fee schedule proposed by the bill:

Total tons pe year of regulat d pollutants emit ed under current l w	**Annual emissio s fee per facilit beginning 1/1/9 4 under current l w**	**Total tons per y ar of regulated pollutants emitt d under the bill**	**Annual emissio fee per facility beginning 1/1/0 under the bill**
		More than 0, but less than 10	$100
More than 0, but less than 50	$75	10 or more, but less than 50	$200
50 or more, but less than 100	$300	50 or more, but less than 100	$300
100 or more	$700	100 or more	$700

Synthetic minor facility fees

Under current law, each person who owns or operates a synthetic minor facility must pay an annual fee based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead in accordance with a fee schedule. "Synthetic minor facility" means a facility for which one or more permits to install or permits to operate have been issued for the air contaminant sources at the facility that include terms and conditions that lower the facility's potential to emit air contaminants below the major source thresholds established in rules adopted under existing law.

Current law requires the fee to be paid through June 30, 2004. The bill extends the fee through June 30, 2006.

Water pollution control fees

(R.C. 3745.11(L) and (P))

Under existing law, a person applying for a plan approval for a wastewater treatment works is required to pay a fee of $100 plus .65 of 1% of the estimated project cost, up to a maximum of $15,000, when submitting an application through June 30, 2004, and a fee of $100 plus .2 of 1% of the estimated project cost, up to a maximum of $5,000, on and after July 1, 2004. Under the bill, the first fee is extended through June 30, 2006, and the second applies to applications submitted on or after July 1, 2006.

Current law establishes two schedules for annual discharge fees to be paid by holders of national pollutant discharge elimination system (NPDES) permits with an average daily discharge flow of 5,000 or more gallons per day. Under each of the schedules, one of which is for public dischargers and one of which is for industrial dischargers, the fees are based on the average daily discharge flow and increase as the flow increases. Current law establishes the schedules for fees that were due by January 30, 2002, and January 30, 2003. The bill extends payment of the fees and the fee schedules to January 30, 2004, and January 30, 2005.

In addition to the fee schedules described above, current law imposes a $7,500 surcharge to the annual discharge fee applicable to industrial dischargers that is required to be paid by January 30, 2002, and January 30, 2003. The bill extends the surcharge and requires it to be paid annually not later than January 30, 2004, and January 30, 2005.

Under existing law, one category of public discharger and eight categories of industrial dischargers that are NPDES permit holders 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 is due annually not later than January 30, 2002, and January 30, 2003. The bill continues the fee and requires it to be paid annually by January 30, 2004, and January 30, 2005.

Under existing law, any person submitting an application for an industrial water pollution control certificate must pay a nonrefundable fee of $500 at the time the application is submitted. The fee is applicable through June 30, 2004. The bill extends the fee through June 30, 2006.

Safe drinking water fees

(R.C. 3745.11(M) and (N) and 6109.21)

The Safe Drinking Water Law prohibits anyone from operating or maintaining a public water system without an annual license from the Director of Environmental Protection. Applications for initial licenses or license renewals must be accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems established in existing law. The fee for initial licenses and license renewals is required in statute through June 30, 2004, and must be paid annually prior to January 31, 2004. The bill extends the initial license and license renewal fee through June 30, 2006, and requires the fee to be paid annually prior to January 31, 2006.

The bill also increases the fees for each of the three basic categories of public water systems. The following table describes the fees for public water systems that are community water systems under current law and the bill:

Number of Service Connections	Current Fee	Fee Under the Bill	Current Average Cost per Connection	Average Cost per Connection Under the Bill
Not more than 49	$56	$112		
50 to 99	$88	$176		
100 to 2,499			$.96	$1.92
2,500 to 4,999			$.92	$1.60
5,000 to 7,499			$.88	$1.54
7,500 to 9,999			$.84	$1.48
10,000 to 14,999			$.80	$1.28
15,000 to 24,999			$.76	$1.22
25,000 to 49,999			$.72	$1.16
50,000 to 99,999			$.68	$.92
100,000 to 149,999			$.64	$.86
150,000 to 199,999			$.60	$.80
200,000 or more			$.56	$.76

The following table describes the fees for public water systems that are not community water systems and serve a nontransient population under current law and the bill:

Population Served	Current Fee	Fee Under the Bill
Fewer than 150	$56	$112
150 to 299	$88	$176
300 to 749	$192	$384
750 to 1,499	$392	$686
1,500 to 2,999	$792	$1,386
3,000 to 7,499	$1,760	$3,080
7,500 to 14,999	$3,800	$6,270
15,000 to 22,499	$6,240	$10,296
22,500 to 29,999	$8,576	$14,150
30,000 or more	$11,600	$19,140

Finally, the following table describes the fees for public water systems that are not community water systems and serve a transient population under current law and the bill:

Number of Wells Supplying System	Current Fee	Fee Under the Bill
1	$56	$112
2	$56	$112
3	$88	$176
4	$192	$316
5	$392	$646
System supplied by surface water, springs, or dug wells	$792	$1,300

The Safe Drinking Water Law also requires anyone who intends to construct, install, or modify a public water system to obtain approval of the plans from the Director. Current law establishes a fee for such plan approval of $100 plus .2 of 1% of the estimated project cost. The fee cannot exceed $15,000 through June 30, 2004, and $5,000 on and after July 1, 2004. The bill increases the fee for plan approval to $150 plus .35 of 1% of the estimated project cost. In addition, the bill increases the higher cap from $15,000 to $20,000 and the lower cap from $5,000 to $15,000. The bill specifies that the $20,000 limit applies to

persons applying for plan approval through June 30, 2006, and the $15,000 limit applies to persons applying for plan approval on and after July 1, 2006.

Existing law establishes two schedules of fees that the Environmental Protection Agency charges for evaluating laboratories and laboratory personnel for compliance with accepted analytical techniques and procedures established under the Safe Drinking Water Law. A schedule with higher fees is applicable through June 30, 2004, and a schedule with lower fees is applicable on and after July 1, 2004. The bill continues the higher fee schedule through June 30, 2006, but increases those fees (see table below), and applies the lower fee schedule to evaluations conducted on and after July 1, 2006, but also increases those fees (see table below). In addition, the bill divides the microbiological category in the higher fee schedule into three subcategories and establishes a fee for each. The bill continues through June 30, 2006, a provision that an individual laboratory cannot be assessed a fee more than once during a three-year period. However, it establishes a $1,800 fee for each additional survey that is requested during the three-year period for the purpose of adding analytical methods or analysts.

The following table describes the current categories, the categories and subcategories under the bill, the current fees, and the fees proposed under the bill for evaluations conducted through June 30, 2006:

Fee Category under Curren Law	Fee Subcategor y under the Bill	Current Fee	Fee under the B ll
Microbiological		$1,650	
	MMO-MUG		$2,000
	MF		$2,100
	MMO-MUG and MF		$2,550
Organic Chemical		$3,500	$5,400
Inorganic Chemical		$3,500	$5,400
Standard Chemistry		$1,800	$2,800
Limited Chemistry		$1,000	$1,550

The bill defines "MF" to mean microfiltration, "MMO" to mean minimal medium ONPG, "MUG" to mean 4-methyllumbelliferyl-beta-D-glucuronide, and "ONPG" to mean o-nitrophenyl-beta-D-galactopyranoside.

The following table describes the current categories, the current fees, and the fees proposed under the bill for evaluations conducted on and after July 1, 2006:

Fee Category	Current Fee	Fee under the Bi
Microbiological	$250	$1,650
Chemical/Radiological	$250	$3,500
Nitrate/Turbidity(only)	$150	$1,000

Certification of operators of water supply systems or wastewater systems

(R.C. 3745.11(O))

Existing law establishes a $25 application fee to take the examination for certification as an operator of a water supply system under the Safe Drinking Water Law or a wastewater system under the Water Pollution Control Law through June 30, 2004, and a $10 application fee on and after July 1, 2004. The bill increases the $25 fee to $45 and requires that fee to be paid through June 30, 2006. In addition, the bill increases the $10 fee to $25 and requires that fee to be paid on and after July 1, 2006. Upon approval from the Director that an applicant is eligible to take the examination, the applicant must pay a fee in accordance with a schedule established in current law. A higher schedule is established through June 30, 2004, and a lower schedule applies on and after July 1, 2004. The bill extends the higher fee schedule through June 30, 2006, and applies the lower fee schedule on and after July 1, 2006. It also increases the fees in both the higher and lower fee schedules and adds certification as a class A operator to each fee schedule. The following table shows the classes of operators and the corresponding fees under the existing and proposed schedules:

Class f Operat or	Current Fe e through Ju e 30, 2004	Fee under B ill through Ju e 30, 2006	Current F e on and aft r July 1, 20(4	Fee under B ll on and afte r July 1, 200 5
A	-	$45	-	$25
I	$45	$75	$25	$45
II	$55	$95	$35	$55
III	$65	$110	$45	$65
IV	$75	$125	$55	$75

In addition, the bill establishes a biennial certification renewal fee for each class of certification as operators of water supply systems or wastewater systems. The bill also establishes a late certification renewal fee schedule for a renewal fee that is received by the Director more than 30 days, but not more than one year after the expiration date of the certification. The following table describes the classes of operator, the biennial certification renewal fees, and the late certification renewal fees:

Class of Operator	Biennial Certification Renewal Fee	Late Biennial Certification Renewal Fee
A	$25	$45
I	$35	$55
II	$45	$65
III	$55	$75
IV	$65	$85

Finally, the bill requires a person who requests a replacement certificate to pay a $25 fee at the time the request is made.

Application fees under Water Pollution Control Law and Safe Drinking Water Law

(R.C. 3745.11(S))

Existing law requires any person applying for a permit other than an NPDES permit, variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law to pay a nonrefundable fee of $100 at the time the application is submitted through June 30, 2004, and a nonrefundable fee of $15 if the application was submitted on or after July 1, 2002. The bill extends the $100 fee through June 30, 2006, and applies the $15 fee on and after July 1, 2006.

Similarly, a person applying for an NPDES permit through June 30, 2004, currently must pay a nonrefundable fee of $200 at the time of application. On and after July 1, 2004, the nonrefundable application fee is $15. The bill extends the $200 fee through June 30, 2006, and applies the $15 fee on and after July 1, 2006.

Electronic submission of certain applications to Environmental Protection Agency

(R.C. 3745.11(S)(1))

Current law requires a person applying for a registration certificate, permit, variance, or plan approval under the Solid, Infectious, and Hazardous Waste Law, Safe Drinking Water Law, or Water Pollution Control Law to pay the applicable application fee at the time an application is submitted. The bill provides that if a person submits an electronic application for such a registration certificate, permit, variance, or plan approval for which an application fee is established under existing law, the person must pay the applicable application fee as expeditiously as possible after the submission of the electronic application. The bill prohibits the review or processing of an application for a registration certificate, permit, variance, or plan approval until the required fee is paid.

Fee for covenant not to sue under brownfield portion of Clean Ohio Program

(R.C. 3746.13)

Current law provides that an applicant who has entered into an agreement with the Clean Ohio Council for a grant or loan under the brownfield portion of the Clean Ohio Program and who is issued a covenant not to sue under the Voluntary Action Program is not required to pay the fee for the issuance of a covenant not to sue that is established in rules adopted under the Voluntary Action Program. The bill clarifies that such an applicant meeting those requirements is not required to pay the fee for the issuance of a covenant not to sue that is established in rules adopted under the Voluntary Action Program Law.

OHIO ETHICS COMMISSION

- Increases, effective January 1, 2004, the fees that must be paid by candidates and officeholders filing required financial disclosure statements with the appropriate ethics commission.

- Changes, effective January 1, 2004, from one-half of the applicable filing fee to $10, the late filing fee that the appropriate ethics commission must assess for each day that a person fails to timely file a required financial disclosure statement, and increases from $100 to $250 the maximum total late filing fee that may be imposed.

Filing and late fees for financial disclosure statements

(R.C. 102.02)

Continuing law generally requires candidates, persons elected or appointed to elective offices, persons holding specific positions in state government, and certain other officeholders, public officials, and public employees to file financial disclosure statements with the appropriate ethics commission identifying their sources of income, property owned, persons to whom they owe debts, sources of gifts received, and other specified information. At the time the statement is filed, candidates and officeholders must pay a filing fee. For each day that a required financial disclosure statement is not timely filed, the candidate or officeholder also must pay a late filing fee.

Beginning January 1, 2004, the bill increases the amount of the filing fees that must be paid in conjunction with the filing of required financial disclosure statements with the appropriate ethics commission for all candidates and the holders of all offices except the office of member of the United States Congress ($25) and the office of member of the General Assembly ($25). The existing filing fee and the new filing fee established by the bill for each affected office is identified in the table below.

Office	Current filing fee	New filing fee
State office, except the office of member of the State Board of Education	$50	$65
County office	$25	$40
City office	$10	$25
Office of member of the State Board of Education	$20	$25
Office of member of a city, local, exempted village, or cooperative education board of education or educational service center governing board	$5	$20
Position of business manager, treasurer, or superintendent of a city, local, exempted village, joint vocational, or cooperative education school district or educational service center	$5	$20
All other required offices or positions, except the office of member of the United States Congress or member of the General Assembly	$25	$40

If a required financial disclosure statement is not filed by the date on which it is required to be filed, the appropriate ethics commission must assess the person required to file the statement a late filing fee. Under existing law, the person must be assessed a late filing fee equal to one-half of the applicable filing fee for each day that the statement is not filed, up to a maximum total late filing fee of $100. Beginning January 1, 2004, the bill requires a late filing fee of $10 to be assessed for each day that the statement is not timely filed, up to a maximum total late filing fee of $250.

DEPARTMENT OF HEALTH

- Abolishes the Department of Health's current hemophilia program and, subject to available funds, requires the Department to create a new program.

- Abolishes the Hemophilia Advisory Council.

- Establishes a hemophilia advisory subcommittee under the Medically Handicapped Children's Medical Advisory Council.

- Eliminates the Office of Women's Health Initiatives in the Department of Health, and creates the Women's Health Program in the Department.

- Increases fees for the Department's Quality Monitoring and Inspection Program.

- Includes in the Revised Code provisions of currently uncodified law regarding the continued applicability of the conditions on which long-term care facilities received Certificates of Need under statutes that no longer exist, including conditions that prevent Medicaid certification of beds that were recategorized as intermediate care beds.

- Continues until July 1, 2005 the moratorium on accepting certificate of need applications for certain long-term care beds.

- Requires the Public Health Council to adopt rules prescribing fees for certain services provided by the Office of Vital Statistics in the Department, including issuance of a copy of a vital record.

- Prohibits a board of health from prescribing a fee for issuing a copy of a vital record that is less than that charged by the Office of Vital Statistics.

- Requires the Office of Vital Statistics and boards of health to collect an additional $5 fee for each vital record copy issued to be used to fund the modernization and automation of Ohio's vital records system.

- Requires boards of health to forward the revenues generated by the additional $5 fee to the Department within 30 days after the end of each calendar quarter.

- Eliminates the availability of uncertified copies of Ohio vital records.

- Increases by 5% fees charged maternity hospitals and hospital maternity units for an initial or renewed license.

- Increases the application and annual renewal licensing and inspection fee for "homes" (nursing homes, adult care facilities, and similar facilities).

- Increases fees paid to the Board of Examiners of Nursing Home Administrators.

- Increases licensing fees for agricultural labor camps.

- Eliminates the requirement that at least one Department of Health permanent staff member assigned to inspect agricultural labor camps speaks English and Spanish fluently and eliminates the requirement of two post-licensing inspections of the camps during occupancy.

- Increases fees for granting and renewing licenses, certifications, and approvals for persons involved in asbestos hazard abatement.

- Increases radiology inspection fees.

- Increases fees for hearing aid dealer's and fitter's licenses.

- Subject to approval from the Secretary of the United States Department of Health and Human Services, creates the Nursing Facility Regulatory Reform Task Force.

- Requires the Task Force to develop an alternative regulatory procedure for nursing facilities subject to federal regulation.

- Requires the Director of Health, at the request of the General Assembly, to apply for a federal waiver to implement the Task Force's recommendations.

Hemophilia program and advisory council

(R.C. 3701.021, 3701.022, 3701.029, 3701.0210, 3701.144 (repealed), and 3701.145 (renumbered))

The bill repeals current law requiring the Department of Health to establish a program for care and treatment of persons suffering from hemophilia. The law being repealed requires the program to include establishment of a blood donor recruitment program and assistance to persons who require continuing treatment with blood and blood derivatives to avoid crippling, extensive hospitalization, and other effects associated with hemophilia. The program must provide medical care and assistance for persons suffering from this condition who are unable to pay their own medical expenses.

The bill requires the Department to establish and administer a hemophilia program to provide payment of health insurance premiums for Ohio residents diagnosed with hemophilia or related bleeding disorder who are at least age 21. The program is subject to available funds.

The bill requires the Public Health Council in the Department of Health to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) establishing eligibility requirements for the hemophilia program, including income and hardship requirements.

The bill abolishes the Hemophilia Advisory Council the Director of Health is required to establish and requires the Medically Handicapped Children's Medical Advisory Council to establish a hemophilia advisory subcommittee to advise the Director of Health on matters pertaining to the care and treatment of individuals with hemophilia. The subcommittee is to have 15 members from varying geographic areas appointed to four-year terms. They are to serve without compensation but may be reimbursed for travel expenses to and from subcommittee meetings. Of the members, five must have hemophilia or have family members with hemophilia, five must be providers of health care services to individuals with hemophilia, and five must be experts in fields of importance to treatment of individuals with hemophilia, including infectious diseases, insurance, and law. The bill exempts the subcommittee from law that would cause it to be abolished (sunset) in four years.

Office of Women's Health Initiatives

(R.C. 3701.141 and repeals 3701.142)

The Office of Women's Health Initiatives in the Department of Health consists of the Chief of the Office and an administrative assistant, and other positions determined necessary by the Director of Health. The Chief must have at least a masters degree in public health or a related field. The Chief's primary duties include identifying issues that affect women's health, advocating women's health concerns, serving as a liaison for the public and the Department, and developing and recommending research. The Chief, the Director, and other chiefs selected by the Director are required to hold quarterly meetings regarding the activities of the Office. The Office must submit to the Director a biennial report of recommended programs, projects, and research to address issues in women's health.

The bill eliminates the Office of Women's Health Initiatives including the administrative provisions, the requirement of quarterly meetings, and the requirement of a biennial report, and creates the Women's Health Program in the Department. The Women's Health Program has the same duties as the Office of Women's Health Initiatives, but the provisions for the administration of the Office, including the duties of the Chief, are repealed and no new ones are created for the Women's Health Program.

The duties of the Women's Health Program are to:

(1) Assist the Director of Health in the coordination of women's and infant's health programs;

(2) Advocate for women's health by requesting that the Department fund research and establish programs for women's health;

(3) Collect research and provide access to that research;

(4) Apply for grants.

Quality Monitoring and Inspection Program fees

(R.C. 3702.31)

The Department of Health establishes quality standards for the following services: organ transplantation, stem cell harvesting, cardiac catheterization, open-heart surgery, obstetric and newborn care, pediatric intensive care, operation of linear accelerators, operation of cobalt radiation therapy units, and operation of gamma knives. (RC 3702.11.) The Department charges health care facilities

licensing and inspection fees for these services under the Quality Monitoring and Inspection Program. The bill increases the maximum annual fee for each service to $1,750 (from $1,250). It does not change the total fees ($5,000) that may be charged a single facility.

Continuing effect of Certificates of Need

(R.C. 3702.63; Section 132.16)

In 1995, Am. Sub. S.B. 50 of the 121st General Assembly repealed statutes requiring the Director of Health to issue Certificates of Need (CONs) to the following: (1) retirement communities that applied for CONs before August 15, 1987, (2) rest homes (now known as "residential care facilities") in eight southwestern Ohio counties that recategorized beds as intermediate care beds in nursing homes and applied for CONs before December 31, 1987, and (3) rest homes that recategorized beds as long-term care beds for persons with Alzheimer's Disease and related disorders. S.B. 50, in provisions of law not included in the Revised Code, or "uncodified law," specified that the holders of the CONs continue to be subject to all conditions on which the CONs were granted. In the case of recategorized rest homes beds in southwestern Ohio, the conditions were modified by Am. Sub. H.B. 405 of the 124th General Assembly, which allowed the CON holders to seek Medicare certification of the beds but maintained the prohibition against seeking Medicaid certification.[36]

The bill establishes in the Revised Code the same provisions that are currently in uncodified law regarding the continued applicability of the conditions on which the CONs were granted. The bill eliminates the corresponding provisions of uncodified law.

Moratorium on long-term care beds

(R.C. 3702.68; Sections 132.11 and 132.12)

Current law prohibits building or expanding the capacity of a long-term care facility without a CON issued by the Director of Health. The act continues, until July 1, 2005, a provision scheduled to expire July 1, 2003, prohibiting the Director of Health from accepting for review any application for a CON for any of the following purposes:

[36] *The counties included in this provision are Butler, Hamilton, Warren, Clermont, Clinton, Brown, Highland, and Adams counties.*

(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) 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 continues to be 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 must 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 the religious order on January 1, 1994.

A prohibition against the Director accepting an application for a CON to recategorize hospital beds as skilled nursing beds continues indefinitely beyond July 1, 2005.

Vital records

Fees for vital records

(R.C. 3705.24 and 3709.09)

The bill requires the Public Health Council to adopt rules prescribing fees for the following documents and services provided by the Office of Vital Statistics in the Department of Health:

(1) A certified copy of a vital record or certification of birth;[37]

[37] *A vital record is the certificate or report of a birth, death, fetal death, marriage, divorce, dissolution of marriage, or annulment, and any related documents. A certification of birth is usually issued when a birth record is requested. It must contain*

(2) A search by the Office of Vital Statistics of its files and records pursuant to a request for information, regardless of whether a copy of a record is provided;

(3) A copy of a record provided pursuant to a request;

(4) Replacement of a birth certificate following an adoption, paternity determination or acknowledgment, or court order;

(5) Filing of a delayed registration of a vital record;

(6) Amendment of a vital record that is requested later than one year after the filing date of the vital record;

(7) Any other documents or services for which the public health council considers the charging of a fee appropriate.[38]

The fee for any of the following must be no less than $7: a certified copy of a vital record or certification of birth, a search of records or files pursuant to a request for information, or a copy of a record pursuant to such a request. The bill prohibits the board of health of a city or general health district from prescribing a fee for issuing a copy of a vital record or certification of birth that is less than that charged by the Office of Vital Statistics.

The bill requires the Office of Vital Statistics and health district boards of health to collect an additional $5 fee for each certified copy of a vital record or certification of birth. Each board of health must forward the revenues generated by this additional fee to the Ohio Department of Health by no later than 30 days after the end of each calendar quarter. The bill provides that the revenues generated by this additional fee must be used solely toward the modernization and automation of Ohio's vital records system.

Uncertified vital records

(R.C. 3705.23)

Under current law, the state registrar or a local registrar may, on request, provide uncertified copies of Ohio vital records. The bill eliminates the availability of uncertified vital records.

---

the name, sex, date of birth, registration date, and place of birth of the person whose birth it attests. (R.C. 3705.23.)

[38] These fees do not apply to heirloom birth certificates or to copies of the contents of an adoption file (R.C. 3705.24(H) and 3705.241).

Maternity licensure program fees

(R.C. 3711.021)

Maternity hospitals and hospital maternity units are licensed by the Department of Health. The bill increases by 5% the fees charged maternity hospitals and units for an initial or renewed license. The fees are based on the number of births in the hospital or unit. Under the bill the fees will be as follows:

Not more than 99	$1,417
100-449 births	$1,942
450-649 births	$2,467
650-999 births	$2,992
1,000-1,999 births	$3,517
2,000 or more births	$4,042

Nursing home inspection fees

(R.C. 3721.02)

The Department of Health licenses and inspects facilities for aged and disabled persons, including nursing homes, residential care facilities, and adult care facilities. The fee for an application and annual renewal licensing and inspection is $100 for each 50 persons in the facility's licensed capacity. The bill increases the fee to $105 for each 50 persons in the facility's licensed capacity.

Nursing home administrator fees

(R.C. 4751.06 and 4751.07)

Under current law the Board of Examiners of Nursing Home Administrators charges an original license fee for a nursing home administrator of $210. The bill increases the fee to $250. It increases the annual fee for a new nursing home administrator certificate of registration to $275 (from $210).

Agricultural labor camps

Camp licensing fees

(R.C. 3733.43)

Agricultural labor camps are areas established as temporary living quarters for two or more families, or five or more people, who are engaged in agriculture or food processing. The Department of Health licenses agricultural labor camps. The bill increases the following annual license fees.

(1) License to operate an agricultural labor camp, $75 (from $20).

(2) License to operate an agricultural labor camp if the application for the license is made on or after April 15, $100 (from $40).

(3) Additional fee for each housing unit, $10 (from $3).

(4) Additional fee for each housing unit if application for the license is made on or after April 15, $15 per housing unit (from $6).

Camp inspections

(R.C. 3733.45)

The bill eliminates the requirement that at least one member of the permanent staff assigned by the Department of Health to conduct inspections of agricultural labor camps speaks both English and Spanish fluently. The bill also eliminates the requirement that a licensor of the camps perform at least two post-licensing inspections during occupancy, at least one of which is an unannounced evening inspection conducted after 5 p.m. The bill eliminates provisions of current law that are associated with evening inspections, including the requirement that persons who conduct evening inspections determine and record housing unit occupancy and the requirement that all designees of a licensor who conduct evening inspections be fluent in both English and Spanish.

Fee increases for persons involved in asbestos hazard abatement

(R.C. 3710.05)

The bill increases statutorily established fees for granting and renewing licenses, certifications, and approvals, as applicable, for the following categories of persons involved in asbestos hazard abatement as follows:

Asbestos Hazard Abatement Contractors	from $500	to $750
Asbestos Hazard Abatement Project Designers	from $125	to $200
Asbestos Hazard Abatement Workers	from $25	to $50
Asbestos Hazard Abatement Specialists	from $125	to $200
Asbestos Hazard Evaluation Specialists	from $125	to $200
Asbestos Hazard Training Providers	from $750	to $900

The Public Health Council may adopt rules to increase these fees under current law unchanged by the bill.

Radiation control program fees for health care and radioactive waste facilities

(R.C. 3748.07 and 3748.13)

Current law requires the Director of Health to register and inspect sources of radiation. The bill increases registration and inspection fees by 25% to 33% as shown in the following chart.

Inspection or registration fee	Current fee	New fee
Biennial registration	$160	$200
First dental x-ray tube	$94	$118
Each additional x-ray tube at a location	$47	$59
First medical x-ray tube	$187	$235
Each additional medical x-ray tube at a location	$94	$125
Each unit of ionizing radiation-generating equipment capable of operating at or above 250 kilovoltage peak	$373	$466
First nonionizing radiation-generating equipment of any kind	$187	$235
Each additional nonionizing radiation-generating equipment at a location	$94	$125

Inspection or registration fee	Current fee	New fee
Assembler-maintainer inspection	$233	$291
Inspection for unlicensed or unregistered facility without pending license or registration	$290	$363
Review of shielding plans or the adequacy of shielding	$466	$583

Hearing Aid Dealers and Fitters Licensing Board fees

(R.C. 4747.05, 4747.06, 4747.07, and 4747.10)

Under current law the Hearing Aid Dealers and Fitters Licensing Board charges fees for hearing aid dealer's or fitter's licenses. The bill increases fees as follows:

(1) Initial license, to $262 (from $250).

(2) License renewal on or before February 1, to $157 (from $150); on or before March 1, to $183 (from $175); and after March 1, to $210 (from $200).

(3) Duplicate copy of a license, to $16 (from $15).

(4) Trainee permit, to $150 (from $100).

(5) Renewal of a trainee permit, to $105 (from $100).

The Nursing Facility Regulatory Reform Task Force

(Section 138)

The bill requires the Director of Health to request approval from the Secretary of the U.S. Department of Health and Human Services to develop an alternative regulatory procedure for nursing facilities.[39] If the Secretary assents, the Director must convene the Nursing Facility Regulatory Reform Task Force and serve as its chair. The Task Force is to include the Director of Aging, the Director of Job and Family Services, the State Long-Term Care Ombudsman, or persons they designate; a member of the Governor's staff designated by the Governor; and the following individuals, appointed by the Director of Health:

[39] *Under Ohio law a residential facility that provides skilled nursing care is subject to licensure as a nursing home. A nursing home certified to provide services under Medicaid is referred to in statute as a "nursing facility."*

(1) Two representatives of the Ohio Health Care Association;

(2) Two representatives of the Association of Ohio Philanthropic Homes and Housing for the Aging;

(3) Two representatives of the Ohio Academy of Nursing Homes;

(4) Two representatives of the American Association of Retired Persons (AARP);

(5) Two representatives of Families for Improved Care;

(6) A representative from the Ohio Association of Regional Long-Term Care Ombudsmen Programs;

(7) A representative of the 1199 League of Registered Nurses;

(8) A representative of the American Federation of State, County, and Municipal Employees.

Except to the extent that service on the Task Force is part of their employment, Task Force members are not to be compensated for their services or reimbursed by the state for expenses incurred in carrying out their duties on the Task Force.

The Scripps Gerontology Center at Miami University is to provide technical and support services for the Task Force.

The bill requires the Task Force to do all of the following:

(1) Review the effectiveness of current regulatory procedures regarding the quality of care and quality of life of nursing facility residents and develop recommendations for improvements to the procedures;

(2) Evaluate the potential effects that elimination of long-term care facility provisions of the Certificate of Need program may have on nursing facility residents;[40]

(3) Develop possible demonstration projects to present how proposed changes to the regulatory procedures may increase the quality of care and life of nursing facility residents.

---

[40] *Ohio law prohibits building or expanding the capacity of a long-term care facility without a certificate of need (CON) issued by the Director of Health.*

The Task Force must submit to the Speaker and Minority Leader of the House of Representatives and to the President and Minority Leader of the Senate a report of its findings and recommendations, including an explanation of any statutory changes required to implement the recommendations. On submitting the report, the Task Force will cease to exist. If, by adoption of a joint resolution, the General Assembly so requests, the bill requires the Director of Health to apply to the Secretary of the U.S. Department of Health and Human Services for a waiver to implement the Task Force's recommendations.

DEPARTMENT OF JOB AND FAMILY SERVICES

I. General

- Requires the Director of the Ohio Department of Job and Family Services (ODJFS) to enter into one or more fiscal agreements, rather than a partnership agreement, with each board of county commissioners.

- Specifies what a fiscal agreement must do, including providing for ODJFS to award financial assistance for the family services duties included in the agreement.

- Provides that a board of county commissioners is not required to conduct a public hearing or consult with the county family services planning committee before entering into or amending a fiscal agreement.

- Eliminates the authority of a board of county commissioners to designate any private or government entity to serve as the county's workforce development agency.

- Provides that fiscal agreements are not required, and contracts designating a private or government entity to serve as a county department of job and family services (CDJFS), child support enforcement agency (CSEA), or public children services agency (PCSA) or to perform a family services duty or workforce development activity are no longer required, to (1) permit the exchange of information needed to improve services and assistance to individuals and families and the protection of children, (2) be coordinated and not conflict with certain plans and procedures, or (3) prohibit discrimination in hiring and promotion against applicants for and participants of the Ohio Works First program and the Prevention, Retention, and Contingency program.

- Provides that ODJFS may, at its sole discretion and subject to available federal funds and appropriations made by the General Assembly, reimburse county expenditures for administration of food stamps and Medicaid even though the expenditures meet or exceed the maximum allowable reimbursement if the board of county commissioners has entered into a fiscal agreement.

- Revises the law governing ODJFS taking action against a board of county commissioners, CDJFS, CSEA, or PCSA regarding family services duties, including modifying the reasons why ODJFS may take action and modifying and increasing the actions ODJFS may take.

- Revises the administrative review process available under certain circumstances to a board of county commissioners, CDJFS, CSEA, or PCSA against which ODJFS proposes to take action.

- Permits ODJFS to certify a claim to the Attorney General for the Attorney General to take action against the responsible entity to recover funds that ODJFS determines the responsible entity owes ODJFS for certain actions ODJFS takes against the responsible entity.

- Permits ODJFS to adopt rules establishing reporting requirements for family services duties.

- Requires the Director of ODJFS to enter into one or more written grant agreements, rather than a partnership agreement, with the chief elected official of a local area.

- Specifies what a grant agreement must do, including providing for ODJFS to award financial assistance for the workforce development duties in the grant agreement subject to the availability of federal funds and appropriations made by the General Assembly

- Allows the Director of ODJFS to enter into agreements with one-stop operators and one-stop partners to implement workforce development activities.

- Allows the Director of ODJFS to take action against the chief elected official of a local area, regardless of who performs a workforce development activity, if ODJFS determines that specified grant agreement requirements are not met.

- Changes dates for submission of ODJFS program participation reports.

II. Unemployment Compensation

- Creates the Federal Operating Fund for the deposit of certain federal unemployment compensation funds received by the state related to the operation of public employment offices.

- Eliminates job-listing requirements for any person or corporation contracting to do business with the state.

- Eliminates an obsolete reference to private industry councils created by a federal act that has been repealed.

- Renames accounts where federal money is deposited with the state of Ohio for purposes of paying unemployment benefits, job search, relocation, transportation, and subsistence allowances and alters the purposes for which federal money may be spent to allow it to be spent in any manner allowed under the federal acts from which the funds are received.

III. Child Welfare

- Requires that ODJFS rules governing Title IV-E foster care and adoption assistance requirements applicable to private child placing agencies and private noncustodial agencies be adopted in accordance with the Administrative Procedure Act.

- Requires ODJFS to establish (1) a single form for government entities that provide Title IV-E reimbursable placement services to children to report costs reimbursable under Title IV-E and costs reimbursable under Medicaid and (2) procedures to monitor cost reports submitted by those government entities.

- Requires ODJFS to take specified actions against a government entity providing Title IV-E reimbursable placement services to children if the entity fails to comply with fiscal accountability procedures.

- Provides for the Attorney General to take recovery actions if an inclusion or omission in a cost report for reimbursement of Title IV-E services causes a federal disallowance.

- Permits counties to use funds allocated for child welfare to pay for any child welfare services authorized by Revised Code provisions governing public children services agencies, rather than only for specified services.

- Eliminates a requirement that a county's allocation be reduced if the county's expenditure for child welfare services in the previous calendar year was less than in the year preceding that year.

- Requires a county to return unspent funds within 90 days after the end of each state fiscal biennium, rather than the end of each fiscal year.

- Provides that the Director of ODJFS is permitted, rather than required, to adopt rules prescribing county reports on expenditures, and exempts the rules from notice and public hearing requirements.

- Eliminates the State Adoption Special Services Subsidy (SASSS) Program, which provides assistance to eligible families of children determined prior to adoption to need special medical or psychological services.

- Permits a public children services agency to continue to make SASSS payments on behalf of a child for whom SASSS payments were being made prior to July 1, 2004, based on the child's individual need for services.

- Revises the law regarding provision of State Adoption Maintenance Subsidy (SAMS) and Post Adoption Special Services Subsidy (PASSS) payments on behalf of a child.

- Removes the fiscal penalty imposed on a public children services agency that fails to report to ODJFS the placement or maintenance of certain special needs children, but allows ODJFS to take disciplinary action against a public children services agency for that reason.

- Permits the ODJFS to use surplus funds in the Putative Father Registry Fund for costs of promoting adoption of children with special needs and developing, publishing, and distributing forms and materials provided to parents who voluntarily deliver a child to an emergency medical service worker, peace officer, or hospital employee.

- Eliminates a requirement that ODJFS provide state matching funds to qualify for federal funds for former foster children under the "Foster Care Independence Act of 1999."

- Requires insurance companies to cooperate with ODJFS in collecting past-due child support.

- Requires the contract between ODJFS and a hospital concerning births by unmarried women to include a provision that hospital staff will perform immediate collections of genetic samples from the mother, child, and father at the request of either the mother or father and on completion of an application by either parent for child support enforcement services, including paternity determination, unless an acknowledgement of paternity application has been completed and signed by the mother and father.

- Requires ODJFS to pay a hospital $30 for each genetic sample and to pay the cost of testing the samples.

- Requires hospital staff to explain to the mother and father the availability of immediate genetic testing at the hospital and that the test is at no cost to the mother or father.

- Eliminates a requirement that the Director of ODJFS provide domestic violence training programs to caseworkers in county departments of job and family services and public children services agencies.

- Eliminates a requirement that ODJFS reimburse public children services agencies for providing preplacement and continuing training for foster caregivers.

- Permits ODJFS to subsidize the operation of regional training centers by making grants to public children services agencies that maintain centers.

- Requires the Ohio Child Welfare Training Program to provide training for foster caregivers and adoption assessors.

- Requires ODJFS to provide, instead of reimbursement, an allowance for each hour of preplacement and continuing training provided by private child placing agencies or private noncustodial agencies.

- Permits a private child placing agency or private noncustodial agency operating an approved training program for foster caregivers to contract with an individual or public or private entity to administer the training.

IV. Adult Protective Services

- Makes implementation of the currently mandatory adult protective services system an option for each county.

- Allows the system's administrative agency to be the county department of job and family services or another county agency designated by the board of county commissioners.

- Changes to permissive the requirement that certain medical and other professionals report their reasonable belief that an adult age 60 or older is being abused, neglected, or exploited.

- Repeals existing law permitting ODJFS to reimburse county departments of job and family services for costs incurred in the implementation of the adult protective services system, to provide training on implementing the system, and to adopt rules governing the system.

V. Child Day-Care

- Requires the Director of ODJFS to send to each licensed day-care provider notice, rather than copies, of proposed rules pertaining to licensure and permits the Director to send copies of adopted rules in either paper or electronic form.

- Eliminates the requirement that the Director send to county directors of job and family services copies of proposed and adopted rules regarding day-care provider licensure and notice of hearings on proposed rules.

- Requires the Director to send to each county director of job and family services notice of proposed rules and electronic copies of adopted rules regarding the certification of Type B family homes and in-home aides.

- Requires the Director to give 30 days' advance public notice of hearings on proposed rules regarding the certification of Type B homes and in-home aides.

VI. Title IV-A Temporary Assistance for Needy Families

- Provides that federal funds available under the Temporary Assistance for Needy Families (TANF) block grant are among the funds the Department of Job and Family Services may distribute for publicly funded child day-care.

- Provides that a minor who is not married is no longer to be considered a "minor head of household" for purposes of Ohio Works First (OWF) and, therefore, is not subject to certain requirements, including work activity requirements.

- Eliminates the requirement that the Director of Job and Family Services evaluate the Learning, Earning, and Parenting (LEAP) component of OWF.

- Limits participation in LEAP, which encourages school attendance by OWF recipients who are parents or pregnant, to individuals who are under age 18, or age 18 and in school, instead of under age 20.

- Requires county departments of job and family services to provided LEAP participants with support services, including publicly funded day-care, transportation, and other services.

- Provides that the disqualification for Ohio Works First that is applicable to individuals residing in a jail or other public institution does not apply to a child in a prison nursery program.

- Eliminates the requirement that ODJFS develop a model design for the Prevention, Retention, and Contingency (PRC) Program.

- Requires each county department of job and family services (CDJFS) to adopt a written statement of policies governing the PRC Program for the county no later than October 1, 2003 and update the statement at least every two years thereafter.

- Establishes requirements for a CDJFS adopting the statement of policies, including a requirement that either (1) public and local government entities be provided at least 30 days to submit comments or (2) the county family services planning committee review the statement.

- Requires that a county's statement of policies include the board of county commissioners' certification that the CDJFS complied with state law governing the PRC Program.

- Provides that eligibility for a benefit or service under a county's PRC Program is to be certified if the benefit or service does not have a financial need eligibility requirement and to be based on an application and verification if the benefit or service has a financial need eligibility requirement.

- Provides that a board of county commissioners may contract with a private or government entity to make eligibility determinations and certifications for the county's PRC Program.

- Provides that each CDJFS is responsible for funds expended or claims under the county's PRC Program that are determined to be expended or claimed in an impermissible manner.

- Provides that the county share of public assistance expenditures for the Ohio Works First and Prevention, Retention, and Contingency programs is at least 75% and no more than 82% of the county share of expenditures during fiscal year 1994 under the former Aid to Dependent Children and Job Opportunities and Basic Skills Training Program.

VII. Medicaid

- Makes permissive inclusion under Medicaid of certain low income parents of children under age 19.

- Requires the person responsible for the estate of a decedent who was age 55 or older to investigate whether the decedent received services under Medicaid and to notify the Medicaid Estate Recovery Program if services were received.

- Requires the administrator of the Medicaid Estate Recovery Program to file a claim against the estate within 90 days after receiving notice of the decedent's receipt of Medicaid assistance or within one year of the decedent's death, whichever is later.

- Permits a financial institution to release the decedent's account proceeds to the administrator of the Medicaid Estate Recovery Program in certain circumstances.

- Eliminates provisions that require ODJFS to establish a program for substance abuse assessment and treatment referral of pregnant Medicaid recipients required to receive medical services through a managed care organization.

- Requires ODJFS to establish in some or all counties a "care management system" in which designated Medicaid recipients are required or permitted to participate.

- Requires, by July 1, 2004, that some of the designated participants include Medicaid recipients who are aged, blind, and disabled.

- Permits ODJFS to require a health insuring corporation under a Medicaid contract to provide prescription drug coverage to its enrollees.

- Requires ODJFS to appoint a temporary manager for a managed care organization under contract with ODJFS if ODJFS determines that the managed care organization has repeatedly failed to meet substantive requirements in federal Medicaid law.

- Permits ODJFS to disenroll Medicaid recipients from a managed care organization if ODJFS proposes to terminate or not to renew the organization's contract.

- Limits the reimbursement rate for services provided by a hospital that does not contract with the managed care organizations in which Medicaid recipients are enrolled to the lesser of (1) 95% of the hospital's regular Medicaid reimbursement rate or (2) the amount the hospital charges the organization.

- Requires, by October 1, 2003, that ODJFS establish a task force consisting of hospital and managed care organization representatives to assist in resolving issues that arise as a result of the proposed Medicaid reimbursement rate for hospitals.

- Eliminates provisions referring to the Medicaid Managed Care Study Committee, which no longer exists.

- Eliminates from the Director of ODJFS's examination of instituting a Medicaid copayment program a determination of which groups of

recipients are appropriate for a program designed to reduce inappropriate and excessive use of medical goods and services.

- Eliminates chiropractors from the definition of "physician" for the purpose of the Medicaid program.

- Includes, subject to federal approval, assertive community treatment and intensive home-based mental health services as reimbursable services under the community mental health component of Medicaid.

- Requires ODJFS to request federal approval by May 1, 2004, for the assertive community treatment and intensive home-based mental health services.

- Requires the Director of ODJFS to adopt rules, on receipt of the federal approval, establishing statewide access and acuity standards for partial hospitalization and for assertive community treatment and intensive home-based mental health services provided under the community mental health component of Medicaid.

- Eliminates the requirement that Medicaid reimbursement for community mental health services be based on the prospective cost of providing the services, and permits the Director of ODJFS to modify the manner or establish a new manner in which community mental health facilities and providers of alcohol and drug addiction services are paid under the Medicaid program.

- Subjects to the approval of the Director of Budget and Management contracts between ODJFS and the Department of Mental Health or Department of Alcohol and Drug Addiction Services regarding administration of a Medicaid component.

- Provides that the Department of Mental Health or Department of Alcohol and Drug Addiction Services, as appropriate, and boards of alcohol, drug addiction, and mental health services must pay the nonfederal share of any Medicaid payment to a provider for services included in such a contract.

- Removes from the Revised Code the formulas for determining Medicaid reimbursement rates for nursing facilities and intermediate care facilities

for the mentally retarded (ICFs/MR) and provides instead for them to be paid in accordance with ODJFS's Medicaid rules.

- Freezes the Medicaid reimbursement rates for nursing facility and ICF/MR services provided during fiscal years 2004 and 2005.

- Eliminates requirements on how money in the Nursing Facility Stabilization Fund is to be used, other than a general requirement that the money be used to make Medicaid payments to nursing facilities.

- Revises the law governing the submission of nursing facility and ICF/MR resident assessment information.

- Eliminates an exception to the prohibition against costs of therapy being allowable costs for the purpose of determining nursing facilities' Medicaid reimbursement rates.

- Provides that a nursing facility or ICF/MR operator may enter into Medicaid provider agreements for more than one facility.

- Eliminates a requirement that ODJFS provide copies of proposed and final Medicaid rules and proposed rules to nursing facilities and ICFs/MR that participate in Medicaid.

- Establishes requirements for nursing facilities and ICFs/MR that undergo a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation in Medicaid.

- Requires a nursing facility operator participating in Medicaid to qualify all of the facility's Medicaid-certified beds in the Medicare program.

- Adds a consumer representative to the Nursing Facility Reimbursement Study Council, provides that the Council's only duty is to advise ODJFS in the development of a new method of reimbursing nursing facilities under Medicaid, and abolishes the Council on July 1, 2005.

- Provides that the amount of the ICF/MR franchise permit fee for fiscal years 2004 and 2005 is the same as in fiscal year 2003 ($9.63 per bed per day).

- Permits the Director of Mental Retardation and Developmental Disabilities to request that the Director of ODJFS apply for Medicaid

waivers for home and community-based services for individuals with mental retardation or developmental disabilities as an alternative to placement in ICFs/MR.

- Requires the Director of ODJFS to (1) apply for a Medicaid waiver under which the individuals with mental retardation or a developmental disability who would qualify for services in an ICF/MR receive instead home and community-based services and (2) submit an amendment to the state Medicaid plan to terminate the ICF/MR service.

- Requires the Department of Job and Family Services to contract with the Department of Mental Retardation and Developmental Disabilities for the administration of the new home and community-based services waiver.

- Includes in the Revised Code provisions previously enacted in uncodified law that authorize the Director of ODJFS to establish the Ohio Access Success Project, which may provide benefits to help a Medicaid recipient make the transition from a nursing facility to a community setting.

- Authorizes a request to be made for federal Medicaid waivers under which two programs for home and community-based services may be created and implemented in place of the existing Ohio Home Care Program.

- Permits the replacement program to have a maximum number of enrollees, a maximum amount that may be spent for each enrollee each year, and a maximum aggregate amount that may be expended for all enrollees each year.

- Authorizes elimination of the Ohio Home Care Program after all eligible individuals have been transferred to the replacement programs.

- Permits the Director of ODJFS to apply for a Medicaid waiver to operate a program providing personal care services to qualified individuals in residential care facilities.

- Allows ODJFS to enter into an interagency agreement with the Department of Aging to operate the program.

- Requires ODJFS to adopt rules governing the program.

- Requires criminal records checks of applicants for a position to provide home and community-based waiver services to persons with disabilities through any ODJFS-administered home and community-based waiver services agency.

- Requires criminal records checks of independent providers in an ODJFS-administered home and community-based services program providing home and community-based waiver services to consumers with disabilities.

VIII. Hospital Care Assurance Program

- Delays the termination date of the Hospital Care Assurance Program (HCAP) from October 16, 2003 to October 16, 2005.

- Removes a reference to the termination date of HCAP from the provisions that describe the moneys included in the Health Care Services Administration Fund.

- Grants the Director of ODJFS authority to set penalties for failure of hospitals to comply with HCAP requirements.

- Shifts the deposit of penalty revenue from the General Revenue Fund to the Health Care Services Administration Fund, which is to be used to pay costs of administering the Medicaid program.

IX. Disability Financial and Medical Assistance

- Replaces the current Disability Assistance Program with separate programs for financial assistance (Disability Financial Assistance) and medical assistance (Disability Medical Assistance).

- Limits eligibility for Disability Financial Assistance to persons who are either (1) unable to do any substantial or gainful activity due to physical or mental impairment lasting at least nine months or (2) age 60 or older on the day before the bill's effective date and applied before that deadline.

- Limits eligibility for Disability Medical Assistance to persons who are "medication dependent," but permits medical assistance to continue for persons receiving it under the current program until their eligibility has been redetermined.

- Authorizes the adoption of rules for either program that establish maximum benefits, time-limits for receiving assistance, limits on the total number of persons to receive assistance, procedures for suspending acceptance of new applications, and other revisions for limiting program costs.

- Permits contracts to be entered into with any public or private entity for the administration of Disability Medical Assistance.

I. General

Agreements between Director of ODJFS and boards of county commissioners

(R.C. 307.98, 307.981, 329.06, 3125.25, 5101.21, 5101.211 (renumbered 5101.212), and 5101.97; ancillary sections: 127.16, 329.04, 329.05, 3125.12, 5101.212 (renumbered 5101.213), 5104.42, and 5153.16)

Background

Under current law, the Director of the Ohio Department of Job and Family Services (ODJFS) is required to enter into a written partnership agreement with each board of county commissioners. Each partnership agreement must include provisions regarding all of the following: administration and design of the Ohio Works First program; the Prevention, Retention, and Contingency program; family services activities that are not assigned to county departments of job and family services (CDJFSs) by state law but that a county department assumes pursuant to an agreement entered under continuing law; any other CDJFS duties that the Director and a board mutually agree to include in the agreement; and, if a county board serves is a local area under state law governing workforce development activities, workforce development activities provided by the county's workforce development agency. Each partnership agreement is permitted to include provisions regarding the administration and design of the duties of child support enforcement agencies (CSEAs) and public children services agencies (PCSAs) included in a plan of cooperation that the Director and a board agree to include in the agreement.[41]

[41] *Continuing law requires each board of county commissioners to enter into a written plan of cooperation with the CDJFS, CSEA, PCSA, and workforce development agency to enhance the administration of the Ohio Works First program; Prevention, Retention, and Contingency program; and other family services duties and workforce development activities the board and agencies agree to include in the plan.*

Fiscal agreements to replace partnership agreements

The bill requires the Director to enter into one or more written fiscal agreements with each board of county commissioners rather than a partnership agreement as required by current law. A fiscal agreement is to provide for the award of financial assistance for family services duties included in the agreement. Unlike a partnership agreement, a fiscal agreement is not to include provisions regarding workforce development.[42] Current law defines "family services duties" as a duty state law requires or allows a CDJFS, CSEA, or PCSA to assume. The bill provides that family services duties include financial and general administrative duties.

Current law requires that a partnership agreement establish, specify, or provide for the following:

(1) Requirements governing the administration and design of, and cooperation of CDJFSs, CSEAs, PCSAs, and workforce development agencies to enhance, family services duties or workforce development activities included in the agreement;

(2) Outcomes that CDJFSs, CSEAs, PCSAs, or workforce development agencies are expected to achieve from the administration and design of the family services duties or workforce development activities and assistance, services, and technical support ODJFS will provide to aid in achieving the expected outcomes;

(3) Performance and other administrative standards for the design, administration, and outcomes of the family services duties or workforce development activities and assistance, services, and technical support ODJFS will provide to aid in meeting the performance and other administrative standards;

(4) Criteria and methodology ODJFS will use to evaluate whether expected outcomes are achieved and performance and other administrative standards are met and CDJFSs, CSEAs, PCSAs, and workforce development agencies will use to evaluate whether ODJFS is providing agreed upon assistance, services, and technical support;

(5) The funding of the family services duties or workforce development activities and whether ODJFS will establish a consolidated funding allocation;

(6) Which, if any, of ODJFS's rules will be waived so that a policy provided for in the agreement may be implemented;

---

[42] *The bill provides for workforce development issues to be addressed in grant agreements. See "**Grant agreements to replace partnership agreements**," below.*

(7) Dispute resolution procedures;

(8) Provisions regarding workforce development activities if such activities are included in the agreement, including a description of the services provided in a one-stop system;

(9) Other provisions determined necessary by ODJFS, the board, CDJFS, CSEA, PCSA, and workforce development agency.

The bill requires a fiscal agreement to do the following:

(1) Specify the family services duties included in the agreement and private and government entities designated to serve as the CDJFS, CSEA, or PCSA to perform the family services duties;[43]

(2) Provide for ODJFS to award financial assistance for the family services duties included in the agreement in accordance with a methodology for determining the amount of the award established by rules ODJFS is required to adopt;

(3) Specify the form of the award of financial assistance, which may be an allocation, cash draw, reimbursement, or, to the extent authorized by an appropriation made by the General Assembly and to the extent practicable and not in conflict with a federal or state law, a consolidated allocation for two or more family services duties included in the agreement;

(4) Provide that the award of financial assistance is subject to the availability of federal funds and appropriations made by the General Assembly;

(5) Include the assurance of the board of county commissioners that the board will (a) ensure that the financial assistance is used, and the family services duties are performed, in accordance with requirements for the duties established by ODJFS, a federal or state law, state plan for receipt of federal financial participation, federal grant, or executive order, (b) ensure that the board, CDJFS, CSEA, and PCSA utilize a financial management system and other accountability mechanisms for the financial assistance that meet requirements ODJFS establishes, (c) require the CDJFS, CSEA, and PCSA to monitor all private and governmental entities that receive a payment from the financial assistance to ensure that each entity uses the payment in accordance with requirements for the family services duties and take action to recover payments that are not used in accordance with the requirements, (d) require the CDJFS, CSEA, and PCSA to promptly reimburse ODJFS the amount that represents the amount an agency is

[43] *See "**Designation of entity to serve as county family services agency**" below.*

responsible for of funds ODJFS pays to any entity because of an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty, (e) require the CDJFS, CSEA, and PCSA to take prompt corrective action if ODJFS, the Auditor of State, federal agency, or other entity authorized by federal or state law to determine compliance with requirements for a family services duty determines compliance has not been achieved, and (f) require, if ODJFS establishes a consolidated funding allocation for two or more family services duties included in the agreement, the CDJFS, CSEA, or PCSA to use funds available in the consolidated funding allocation only for the purpose for which the funds are appropriated;

(6) Comply with all of the requirements for the family services duties established by ODJFS, federal or state law, state plan for receipt of federal financial participation, federal grant, or executive order.

As is required under current law for a partnership agreement, the bill also requires a fiscal agreement to do all of the following:

(1) Specify annual financial, administrative, or other incentive awards, if any, to be provided;

(2) Provide for ODJFS taking action against the board, CDJFS, CSEA, or PCSA under certain circumstances;[44]

(3) Provide for audits required by federal and state law and require prompt release of audit findings and prompt action to correct problems identified in an audit;

(4) Establish the method of amending or terminating the agreement and an expedited process for correcting terms or conditions of the agreement that the Director and board agree are erroneous;

(5) Specify the date the agreement is to commence and end.[45]

Also as required under current law for a partnership agreement, the bill requires ODJFS to make payments authorized by a fiscal agreement on vouchers it

---

[44] *See "**ODJFS taking action against a county regarding family services duties**" below.*

[45] *Current law requires a partnership agreement to specify the date the agreement is to commence* or *end rather than commence* and *end. Unlike current law governing partnership agreements, the bill does not prohibit a fiscal agreement from commencing before it is entered into or ending later than the last day of the state fiscal biennium for which it is entered into.*

prepares and permits ODJFS to include any funds appropriated or allocated to it for carrying out the family services duties, including funds for personal services and maintenance. Unlike current law governing partnership agreements, the bill does not provide that family services duties included in a fiscal agreement are vested in the board. The bill maintains, however, authority for ODJFS to take action against a board, CDJFS, CSEA, or PCSA regarding family services duties.[46] A board is required by the bill to enter into the agreement on behalf of the CDJFS, CSEA, and PCSA.

Contracts and grants incorporated into partnership agreement

Continuing law authorizes the Director of ODJFS to enter into a written agreement with one or more state agencies and state universities and colleges to assist in the coordination, provision, or enhancement of family services duties and workforce development activities. The Director may also enter into written agreements or contracts with, or issue grants to, private and government entities under which funds are provided for the enhancement or innovation of family services duties or workforce development activities on the state or local level.

Current law provides that the terms of the agreements, contracts, and grants may be incorporated into a partnership agreement if all parties agree. The bill does not provide for the terms of the agreements, contracts, or grants to be incorporated into a fiscal agreement.

Requirement for hearing and planning committee review eliminated

Current law requires a board of county commissioners to conduct a public hearing and consult with the county family services planning committee before entering into or substantially amending a partnership agreement.[47] The bill does not require a board to conduct a public hearing and consult with the planning committee before entering into or amending a fiscal agreement.

Rules governing fiscal agreements

The bill requires that the Director of ODJFS adopt rules governing fiscal agreements. The rules are exempt from notice, public hearing, and Joint Committee on Agency Rule Review (JCARR) requirements. The rules must

---

[46] *See "**ODJFS taking action against a county regarding family services duties**" below.*

[47] *A board of county commissioners is required to obtain, through the public hearing and consultation with the county family services planning committee, comments and recommendations concerning what would be the county's obligations and responsibilities under the partnership agreement.*

establish methodologies to be used to determine the amount of financial assistance to be awarded under the agreements. The rules may (1) govern the establishment of consolidated funding allocation and other allocations, (2) specify allowable uses of the financial assistance, and (3) establish reporting, cash management, audit, and other requirements the Director determines are necessary to provide accountability for the use of the financial assistance and determine compliance with requirements established by ODJFS, a federal or state law, state plan for receipt of federal financial participation, federal grant, or executive order. The bill provides that a requirement of a fiscal agreement established by a rule is applicable to a fiscal agreement without having to be restated in the agreement.

Current law requires the Director to adopt rules in accordance with the Administrative Procedure Act governing the operation of support enforcement by CSEAs. The rules must include provisions relating to plans of cooperation between CSEAs and boards of county commissioners, requirements for public hearings, and provisions for appeal of CSEA decisions. The bill requires that the rules also include provisions concerning fiscal agreements. The rules concerning fiscal agreements, however, are exempt from notice, public hearing, and JCARR requirements.

Report

ODJFS is required under current law to complete a progress report on the partnership agreements not later than the first day of each July. The report must include a review of whether CDJFSs, CSEAs, PCSAs, and workforce development agencies satisfied performance standards included in the agreements and whether ODJFS provided assistance, services, and technical support specified in the agreements to aid the agencies in meeting the performance standards. The bill does not require ODJFS to continue the reports for fiscal agreements.[48]

Performance and other administrative standards

(R.C. 5101.22)

ODJFS is permitted under continuing law to establish performance and other administrative standards for the administration and outcomes of family services duties and workforce development activities and determine at intervals ODJFS decides the degree to which a CDJFS, CSEA, PCSA, or workforce development agency complies with a standard. Current law provides that such a standard does not apply to a CDJFS, CSEA, PCSA, or workforce development

[48] *Unlike current law governing partnership agreements, the bill does not provide for a fiscal agreement to establish performance or other administrative standards.*

agency if a different standard is specified for the agency's administration of the family services duty or workforce development activity pursuant to a partnership agreement. This exception is not continued for fiscal agreements.

The bill permits the Director of ODJFS to adopt rules to implement ODJFS's authority to establish the performance and other administrative standards. The rules are not subject to notice, public hearing, or JCARR requirements.

Designation of entity to serve as county family services agency

(R.C. 307.981)

Current law permits a board of county commissioners to designate any private or government entity within the state to serve as any of the following:

(1) The CDJFS, CSEA, or PCSA;

(2) The CDJFS and CSEA or PCSA;

(3) The CDJFS, CSEA, and PCSA;

(4) The workforce development agency;

(5) The workforce development agency and CDJFS;

(6) The workforce development agency, CDJFS, and one or two of the other agencies (CSEA and/or PCSA).

A board may also make a redesignation by designating another private or government entity.

A board's authority to make the designation is limited to the extent permitted by federal and state law. The bill provides that a board's authority to make a redesignation is similarly limited. The bill eliminates a board's authority to designate and make redesignations regarding the workforce development agency.

Current law permits the Director of ODJFS to require a partnership agreement to be amended if the Director determines that a designation or redesignation constitutes a substantial change from what is in the partnership agreement. The bill permits the Director to require a fiscal agreement to be amended if a designation or redesignation constitutes a change from the designation in the fiscal agreement.

Exchange of information to improve services and other requirements

(R.C. 307.987)

Current law provides that, to the extent permitted by federal and state law, the following must permit the exchange of information needed to improve services and assistance to individuals and families and the protection of children; be coordinated and not conflict with each other; prohibit discrimination in hiring and promotion against applicants for and participants of the Ohio Works First program and the Prevention, Retention, and Contingency program; comply with federal and state law; be adopted by resolution of a board of county commissioners; and specify how they may be amended:

(1) A partnership agreement;

(2) A contract designating a private or government entity to serve as a CDJFS, CSEA, PCSA, or workforce development agency or to perform a family services duty or workforce development activity;

(3) A plan of cooperation between a board and CDJFS, CSEA, PCSA, and workforce development agency to enhance the administration of the Ohio Works First program; Prevention, Retention, and Contingency program; and other family services duties and workforce development activities;

(4) A regional plan of cooperation to enhance the administration, delivery, and effectiveness of family services duties and workforce development activities;[49]

(5) A transportation work plan regarding the transportation needs of low income residents seeking or striving to retain employment;

(6) Procedures for providing services to frequently relocated children.

The bill provides that fiscal agreements and contracts designating a private or government entity to serve as a CDJFS, CSEA, or PCSA or to perform a family services duty or workforce development activity are not subject to these requirements.

---

[49] *A board of county commissioners may enter into a regional plan of cooperation with (1) one or more other boards of county commissioners, (2) the chief elected official of one or more municipal corporations that, for the purpose of the state's workforce development system, are single unit local areas, or (3) both boards of county commissioners and such chief elected officials.*

Reimbursement of county expenditures for food stamps and Medicaid

(R.C. 5101.162)

ODJFS is permitted under current law to use available federal funds to reimburse county expenditures for county administration of food stamps or Medicaid even though the county expenditures exceed the maximum allowable reimbursement established by ODJFS rules if the board of county commissioners has not entered into a partnership agreement. The bill provides instead that ODJFS may, at its sole discretion, make such reimbursement, subject to available federal funds and appropriations made by the General Assembly, even though the county expenditures meet or exceed, rather than just exceed, the maximum allowable reimbursement if the board has, rather than has not, entered into a fiscal agreement.

ODJFS action against a county regarding family services duties

(R.C. 5101.24 and 5101.242; ancillary section: 5101.46)

Causes for taking action against the responsible entity

ODJFS is permitted by current law to take certain actions against a board of county commissioners, CDJFS, CSEA, or PCSA if ODJFS determines any of the following apply:

(1) The CDJFS, CSEA, or PCSA fails to meet a performance standard specified in a partnership agreement or established by ODJFS for a family services duty;

(2) The CDJFS, CSEA, or PCSA fails to comply with a requirement established by federal or state law for a family services duty;

(3) The CDJFS, CSEA, or PCSA is solely or partially responsible for an adverse audit or quality control finding, final disallowance of federal financial participation, or other sanction or penalty regarding a family services duty.

Whether ODJFS will take action against the board or CDJFS, CSEA, or PCSA depends on which is the responsible entity. Current law defines "responsible entity" as the board if the family services duty involved is included in the board's partnership agreement with the Director of ODJFS and as the CDJFS, CSEA, or PCSA if the family services duty is not included in the partnership agreement.

The bill revises the reasons for which ODJFS may take action and the definition of "responsible entity." Under the bill, ODJFS may take action against the responsible entity if ODJFS determines any of the following are the case:

(1) A requirement of a fiscal agreement that includes the family services duty is not complied with;

(2) A performance standard ODJFS establishes for the family services duty is not met;

(3) A requirement for the family services duty established by ODJFS, federal or state law, state plan for receipt of federal financial participation, federal grant, or executive order is not complied with;

(4) The responsible entity is solely or partially responsible, as determined by the Director of ODJFS, for an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty regarding the family services duty.

The definition of "responsible entity" is changed to mean a board of county commissioners or CDJFS, CSEA, or PCSA, whichever the Director of ODJFS determines is appropriate to take action against. The fact that a family services duty is performed by a CDJFS, CSEA, or PCSA, a private or government entity designated to serve as the CDJFS, CSEA, or PCSA, or a private or government provider of family services duties does not affect the Director's authority to determine whether the board or the CDJFS, CSEA, or PCSA is the responsible entity.

Actions ODJFS may take

The bill also revises the law governing the actions that ODJFS make take against the responsible entity. Current law permits ODJFS to take one or more of the following actions:

(1) Require the responsible entity to submit to and comply with a corrective action plan pursuant to a time schedule ODJFS specifies;

(2) Require the responsible entity to share with ODJFS a final disallowance of federal financial participation;

(3) Require the responsible entity to pay the federal government or another entity the amount, or reimburse ODJFS the amount ODJFS pays the federal government or another entity that represents the amount, the agency is responsible for of an adverse audit or quality control finding, final disallowance of federal

financial participation, or other sanction or penalty issued by the federal government or other entity;

(4) Impose a financial or administrative sanction or adverse audit issued by ODJFS against the responsible entity;[50]

(5) Perform, or contract with a government or private entity for the entity to perform, the family services duty until ODJFS is satisfied that the responsible entity ensures that the duty will be performed satisfactorily and spend funds in the county treasury appropriated for the duty or withhold funds allocated to the responsible entity for the duty and spend the withheld funds for the duty;

(6) Ask the Attorney General to bring mandamus proceedings to compel the responsible entity to take or cease the action that enables ODJFS to take action against the responsible entity.

The bill modifies some of the actions that ODJFS may take. If ODJFS requires the responsible entity to submit to a corrective action plan, the plan is to be established or approved by ODJFS. If ODJFS performs or contracts with an entity to perform a family services duty, ODJFS is not required to choose either to spend funds in the county treasury for the duty or to withhold funds allocated for the duty but, rather, may take either or both actions. Also, ODJFS may withhold reimbursements due to the responsible entity for the family services duty, rather than just withhold allocations. The bill also authorizes ODJFS to take additional actions. ODJFS may require the responsible entity to pay ODJFS the amount that represents the amount the responsible entity is responsible for of an adverse audit finding, adverse quality control finding, or other sanction or penalty ODJFS issues. If ODJFS is authorized to take action because a requirement for a family services duty is not complied with, ODJFS may withhold funds allocated or reimbursement due to the responsible entity until ODJFS determines that the responsible entity is in compliance with the requirement. ODJFS must release the funds when ODJFS determines that compliance has been achieved.

Notice of proposed action

ODJFS is required by current law to notify the responsible entity and county auditor if ODJFS decides to take action against the responsible entity. The bill requires the notice if ODJFS proposes to take action and provides that the notice must specify the action ODJFS proposes to take. ODJFS is required by the bill to send the notice by regular United States mail.

---

[50] *The sanction may be increased if ODJFS has previously taken action against the responsible entity.*

Administrative review

Current law permits the responsible entity to request an administrative review of a proposed action, other than a proposed action to request that the Attorney General bring mandamus proceedings. To request an administrative review, the responsible entity must send a written request to ODJFS within a certain amount of time. If the proposed action is for the responsible entity to submit to a corrective action plan, the responsible entity must send the request not later than 15 days after ODJFS mails the notice. If the proposed action is for the responsible entity to share a final disallowance of federal financial participation; the responsible entity to pay, or reimburse ODJFS for, an amount the responsible entity is responsible for; ODJFS to impose a sanction or adverse audit; or ODJFS to perform, or contract with another entity to perform, a family services duty, the responsible entity must send the request not later than 45 days after ODJFS mails the notice. If a timely request for an administrative review is made, ODJFS is required to attempt to resolve the dispute with the responsible entity within a certain amount of time. The time is 15 days if the proposed action is for the responsible entity to submit to a corrective action plan. Otherwise, the time is 60 days. If the administrative review does not resolve the dispute, ODJFS must conduct an adjudication hearing in accordance with the Administrative Procedure Act.[51]

The bill revises the administrative review process. It continues to provide that the process is not available for ODJFS's request that the Attorney General begin mandamus proceedings and provides that the process is also not available for any of the following:

(1) ODJFS withholding funds allocated or reimbursement due to the responsible entity until ODJFS determines that the responsible entity is in compliance with the requirements for a family services duty;

(2) ODJFS requiring the responsible entity to share a final disallowance of federal financial participation or to pay, or reimburse ODJFS for, an amount for which the responsible is responsible if the federal government, State Auditor, or entity other than ODJFS has identified a CDJFS, CSEA, or PCSA as being solely or partially responsible for an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty;

[51] *ODJFS is not required to schedule the adjudication hearing within 15 days of the responsible entity's request as otherwise required by the Administrative Procedure Act.*

(3) An adjustment to an allocation, cash draw, advance, or reimbursement to a CDJFS, CSEA, or PCSA that ODJFS determines necessary for budgetary reasons;

(4) Withholding of a cash draw or reimbursement due to noncompliance with a reporting requirement established in ODJFS rules.[52]

The bill provides that the 15 days that the responsible entity has to request an administrative review if ODJFS proposes to require the responsible entity to submit to a corrective action plan is 15 *calendar* days. The bill reduces from 45 days to 30 calendar days the amount of time the responsible entity has to request an administrative review if ODJFS proposes that the responsible entity share a final disallowance of federal financial participation; the responsible entity pay, or reimburse ODJFS for, an amount the responsible entity is responsible for; ODJFS impose a sanction or adverse audit; or ODJFS perform, or contract with another entity to perform, a family services duty. The 30 calendar day time limit is also applied to a request for an administrative review of ODJFS's proposal to require the responsible entity to pay ODJFS the amount that represents the amount the responsible entity is responsible for of an adverse audit finding, adverse quality control finding, or other sanction or penalty ODJFS issues.

A request for an administrative review must state specifically (1) the proposed action for which the review is requested, (2) the reason why the responsible entity believes the proposed action is inappropriate, (3) all facts and legal arguments that the responsible entity wants ODJFS to consider, and (4) the name of the person who will serve as the responsible entity's representative in the review. If ODJFS's notice specifies more than one proposed action and the responsible entity does not specify all of the proposed actions in its request, the proposed actions not specified in the request are not subject to administrative review and the parts of the notice regarding those proposed actions are final and binding on the responsible entity. If the responsible entity requests an administrative review for ODJFS's proposal to require the responsible entity to share a final disallowance of federal financial participation or to pay, or reimburse ODJFS for, an amount for which the responsible entity is responsible, the request may not include disputes over a finding, final disallowance of federal financial participation, or other sanction or penalty issued by an entity other than ODJFS.

The bill provides that the responsible entity loses the right to request an administrative review, and the notice becomes final and binding on the responsible entity, if the responsible entity fails to request the review within the required time.

---

[52] *See "**Reporting requirements**" below.*

If the responsible entity and ODJFS are unable to resolve the dispute informally within 15 calendar days following a request for an administrative review of ODJFS's proposal to require the responsible entity to submit to a corrective action plan, or within 30 calendar days following a request for a review of other proposed actions, the Director of ODJFS is required by the bill to appoint an administrative review panel to conduct the review. The panel must consist of ODJFS employees who are not involved in ODJFS's proposal to take action against the responsible entity. The panel is required to review the responsible party's request and may require that ODJFS and the responsible entity submit additional information and schedule and conduct an informal hearing to obtain testimony or additional evidence. As under current law, a review of a proposal to require the responsible entity to share a final disallowance of federal financial participation or to pay, or reimburse ODJFS for, an amount for which the responsible entity is responsible is to be limited solely to the issue of the amount the responsible entity must share, reimburse, or pay. The panel is not required to make a stenographic record of its hearing or other proceedings.

An administrative review panel is required to submit a written report to the Director of ODJFS setting forth its findings of fact, conclusions of law, and recommendations for action after finishing the review. The Director is permitted to approve, modify, or disapprove the recommendations. If the Director modifies or disapproves the recommendations, the Director must state the reasons and actions to be taken against the responsible entity. The Director's approval, modification, or disapproval is final and binding on the responsible entity and is not subject to further ODJFS review.

Other actions not subject to these provisions

The bill provides that the provision of state law authorizing ODJFS to take these actions against the responsible entity does not apply to other actions ODJFS takes against the responsible entity pursuant to authority granted by another state law unless the other state law requires ODJFS to take the action in accordance with this provision of state law.

Request for Attorney General to seek recovery against responsible entity

The bill permits ODJFS to certify a claim to the Attorney General for the Attorney General to take action against the responsible entity to recover funds that ODJFS determines the responsible entity owes ODJFS for certain actions ODJFS takes against the responsible entity.[53] The actions are (1) requiring the responsible

[53] *ODJFS's certification of such a claim is not subject to the administrative review process.*

entity to share a final disallowance of federal financial participation, (2) requiring the responsible entity to pay, or reimburse ODJFS for, an amount the responsible entity is responsible for, (3) ODJFS imposing a sanction or adverse audit, and (4) ODJFS performing, or contracting with another entity to perform, a family services duty.

Reporting requirements

(R.C. 5101.243)

The Director of ODJFS is permitted by the bill to adopt rules establishing reporting requirements for family services duties. The rules are not subject to notice, public hearing, or JCARR requirements.

Grant agreements between the Director of ODJFS and chief elected officials of local areas for the administration and enforcement of workforce development activities

(R.C. 5101.211, 5101.24, 5101.241, 6301.05, and 6301.07)

Background

Under current law, the Director of ODJFS is required to enter into a written partnership agreement with each board of county commissioners. Each partnership agreement must include provisions regarding the administration and design of the Ohio Works First program; the Prevention, Retention, and Contingency program; family services activities that are not assigned to county departments of job and family services (CDJFSs) by state law but that a county department assumes pursuant to an agreement entered under continuing law; any other CDJFS duties that the Director and a board mutually agree to include in the agreement; and, if a county board serves as a "local area" under state law governing workforce development activities, workforce development activities provided by the county's workforce development agency. Each partnership agreement is permitted to include provisions regarding the administration and design of the duties of child support enforcement agencies (CSEAs) and public children services agencies (PCSAs) included in a plan of cooperation that the Director and a board agree to include in the agreement.

Grant agreements to replace partnership agreements

The bill requires the Director to enter into one or more written grant agreements with each local area rather than a partnership agreement. A grant agreement is to provide for the terms and conditions governing the accountability for and use of grants provided by ODJFS to the grantee for the administration of workforce development activities funded under the federal "Workforce

Development Act of 1998." Unlike a partnership agreement, a grant agreement does not include provisions regarding family service duties. Under the bill, family service duties are provided for in fiscal agreements between ODJFS and each board of county commissioners. (See "***Fiscal agreements to replace partnership agreements***.")

Under continuing law, "local area" means any of the following:

(1) A municipal corporation that is authorized to administer and enforce the "Workforce Investment Act of 1998," and is not joining in partnership with any other political subdivisions in order to do so;

(2) A single county;

(3) A consortium of any of the following political subdivisions:

(a) A group of two or more counties in the state;

(b) One or more counties and one municipal corporation in the state;

(c) One or more counties with or without one municipal corporation in the state and one or more counties with or without one municipal corporation in another state, on the condition that those in another state share a labor market area with those in the state.

"Local area" does not mean a region for purposes of determinations concerning administrative incentives.

Current law has different requirements for when a chief elected official of a municipal corporation in certain local areas enters into a partnership agreement with ODJFS and when that responsibility lies with the board of county commissioners. The bill eliminates reference to the board of county commissioners and chief elected officials of municipal corporations and instead requires that the chief elected official of a local area enter into grant agreements with ODJFS.

The bill specifies that in the case of a local area comprised of multiple political subdivisions, nothing precludes the chief elected officials of a local area from entering into an agreement among them to distribute any liability for activities of the local area, but that the agreement is not binding on ODJFS.

The bill also requires that a grant agreement comply with all applicable federal and state laws governing workforce development activities and that all federal conditions and restrictions that apply to the use of grants received by ODJFS also apply to the use of the grants received by the local areas from ODJFS.

Current law requires that a partnership agreement establish, specify, or provide for the following:

(1) Requirements governing the administration and design of, and CDJFSs', CSEAs', PCSAs', and workforce development agencies' cooperation to enhance, family service duties or workforce development activities included in the agreement;

(2) Outcomes that CDJFSs, CSEAs, PCSAs, or workforce development agencies are expected to achieve from the administration and design of the family services duties or workforce development activities and assistance, services, and technical support ODJFS will provide to aid in achieving the expected outcomes;

(3) Performance and other administrative standards for the design, administration, and outcomes of the family services duties or workforce development activities and assistance, services, and technical support ODJFS will provide to aid in meeting the performance and other administrative standards;

(4) Criteria and methodology ODJFS will use to evaluate whether expected outcomes are achieved and performance and other administrative standards are met and CDJFSs, CSEAs, PCSAs, and workforce development agencies will use to evaluate whether ODJFS is providing agreed upon assistance, services, and technical support;

(5) The funding of the family services duties or workforce development activities and whether ODJFS will establish a consolidated funding allocation;

(6) Which, if any, of ODJFS's rules will be waived so that a policy provided for in the agreement may be implemented;

(7) Dispute resolution procedures;

(8) Provisions regarding workforce development activities if such activities are included in the agreement, including a description of the services provided in a one-stop system;

(9) Other provisions determined necessary by ODJFS, board, CDJFS, CSEA, PCSA, and workforce development agency.

The bill requires a grant agreement to do the following:

(1) Identify the chief elected officials for the local area;

(2) Provide for the incorporation of the local workforce development plan;

(3) Include the chief elected officials' assurance that the local area and any subgrantee or contractor of the local area will do all of the following:

(a) Ensure that the financial assistance awarded under the grant agreement is used, and the workforce development duties included in the agreement are performed, in accordance with requirements established by ODJFS or any of the following: federal or state law, the state plan for receipt of federal financial participation, grant agreements between the ODJFS and a federal agency, or executive orders.

(b) Ensure that the chief elected officials and any subgrantee or contractor of the local area utilize a financial management system and other accountability mechanisms that meet requirements established by ODJFS;

(c) Require the chief elected officials and any subgrantee or contractor of the local area to do both of the following:

(i) Monitor all private and government entities that receive a payment from financial assistance awarded under the grant agreement to ensure that each entity uses the payment in accordance with requirements for the workforce development duties included in the agreement;

(ii) Take action to recover payments that are not used in accordance with the requirements for the workforce development duties that are included in the agreement.

(d) Require the chief elected officials of a local area to promptly reimburse ODJFS the amount that represents the amount a local area is responsible for of funds ODJFS pays to any entity because of an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty;

(e) Require chief elected officials of a local area to take prompt corrective action if ODJFS, the Auditor of State, a federal agency, or other entity authorized by federal or state law to determine compliance with requirements for a workforce development duty included in the agreement determines compliance has not been achieved;

(4) Provide that the award of financial assistance is subject to the availability of federal funds and appropriations made by the General Assembly;

(5) Provide for annual financial, administrative, or other incentive awards, if any, to be provided in accordance with laws regulating the social service incentive fund.

(6) Establish the method of amending or terminating the grant agreement and an expedited process for correcting terms or conditions of the agreement that the director and the chief elected officials agree are erroneous.

(7) Provide for ODJFS to award financial assistance for the workforce development duties included in the agreement in accordance with a methodology for determining the amount of the award established by the Director in rule. (See *below*, "***Rulemaking***.")

(8) Determine the dates that a grant agreement begins and ends.

Rulemaking

The bill requires the Director to adopt rules governing grant agreements as if they were internal management rules. The rules must establish methodologies to be used to determine the amount of financial assistance to be awarded under grant agreements and may do all of the following:

(1) Govern the establishment of consolidated funding allocations and other allocations;

(2) Specify allowable uses of financial assistance awarded under the agreements;

(3) Establish reporting, cash management, audit, and other requirements the Director determines are necessary to provide accountability for the use of financial assistance awarded under the agreements and determine compliance with requirements established by ODJFS or any of the following: a federal or state law, state plan for receipt of federal financial participation, a grant agreement between ODJFS and a federal entity, or executive order.

Under the bill, a requirement of a grant agreement established by the Director in rule is applicable to a grant agreement without having to be restated in the grant agreement.

Under current law, every local area is required to participate in a one-stop system for workforce development activities. Each board of county commissioners and the chief elected official of a municipal corporation must ensure that at least one physical location is available in the local area for the provision of workforce development activities. A one-stop system may be operated by a private entity or a public agency, including a workforce development agency, any existing facility or organization that is established to administer workforce development activities in the local area, and a county family services agency.

The bill allows the Director of ODJFS to enter into agreements with one-stop operators and one-stop partners for the purpose of implementing the federal, "Workforce Investment Act of 1998."

Causes for taking action against the responsible entity

ODJFS is permitted by current law to take certain actions against a board of county commissioners, CDJFS, CSEA, or PCSA if ODJFS determines any of the following apply:

(1) The CDJFS, CSEA, or PCSA fails to meet a performance standard specified in a partnership agreement or established by ODJFS for a family services duty;

(2) The CDJFS, CSEA, or PCSA fails to comply with a requirement established by federal or state law for a family services duty;

(3) The CDJFS, CSEA, or PCSA is solely or partially responsible for an adverse audit or quality control finding, final disallowance of federal financial participation, or other sanction or penalty regarding a family services duty.

Whether ODJFS will take action against the board or CDJFS, CSEA, or PCSA depends on which is the responsible entity. Current law defines "responsible entity" as the board if the family services duty involved is included in the board's partnership agreement with the Director of ODJFS and as the CDJFS, CSEA, or PCSA if the family services duty is not included in the partnership agreement.

The bill revises the reasons for which ODJFS may take action and the definition of "responsible entity." Under the bill, the responsible entity refers to the chief elected officials of a local area, regardless of who performs the workforce development activity. ODJFS may take action against the responsible entity if ODJFS determines that any of the following are the case:

(1) The responsible entity fails to comply with a grant agreement requirement, including a requirement for grant agreements established by rule;

(2) A performance standard established by ODJFS for a workforce development activity is not met;

(3) A requirement for the workforce development activity established by ODJFS or any of the following is not complied with: a federal or state law, state plan for receipt of federal financial participation, grant agreement between ODJFS and a federal agency, or executive order;

(4) The responsible entity is solely or partially responsible, as determined by the Director, for an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty regarding the workforce development activity.

Actions ODJFS may take

The bill also revises the law governing the actions that ODJFS make take against the responsible entity. Current law permits ODJFS to take one or more of the following actions:

(1) Require the responsible entity to submit to and comply with a corrective action plan pursuant to a time schedule ODJFS specifies;

(2) Require the responsible entity to share with ODJFS a final disallowance of federal financial participation;

(3) Require the responsible entity to pay the federal government or another entity the amount, or reimburse ODJFS the amount ODJFS pays the federal government or another entity that represents the amount, the agency is responsible for because an adverse audit or quality control finding, final disallowance of federal financial participation, or other sanction or penalty issued by the federal government or other entity;

(4) Impose a financial or administrative sanction or adverse audit issued by ODJFS against the responsible entity;

(5) Perform, or contract with a government or private entity for the entity to perform, the family services duty until ODJFS is satisfied that the responsible entity ensures that the duty will be performed satisfactorily and spend funds in the county treasury appropriated for the duty or withhold funds allocated to the responsible entity for the duty and spend the withheld funds for the duty;

(6) Request the Attorney General to bring mandamus proceedings to compel the responsible entity to take or cease the action that enables ODJFS to take action against the responsible entity.

The bill modifies some of the actions that ODJFS may take. If ODJFS requires the responsible entity to submit to a corrective action plan, the plan is to be established or approved by ODJFS. The bill also authorizes ODJFS to take any of the following actions:

(1) Require the responsible entity to share the cost with ODJFS of a final disallowance of federal financial participation or other sanction or penalty;

(2) Reimburse ODJFS the amount ODJFS pays to the federal government or another entity or pay the federal government, the department, or another entity the amount that represents the amount the responsible entity is found to be responsible for in an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty issued by the federal government, Auditor of State, or other entity;

(3) Pay the federal government or another entity the amount that represents the amount the responsible entity is responsible for of an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty issued by the federal government, Auditor of State, or other entity;

(4) Pay ODJFS the amount that represents the amount the responsible entity is responsible for of an adverse audit finding, adverse quality control finding, or other sanction or penalty issued by ODJFS;

(5) Impose a financial or administrative sanction or adverse audit finding issued by ODJFS against the responsible entity that may be increased with each subsequent action taken against the responsible entity;

(6) Perform or contract with a government or private entity for the entity to perform the required workforce development activity until ODJFS is satisfied that the responsible entity ensures that the activity will be performed to the ODJFS's satisfaction. If ODJFS performs or contracts with an entity to perform the required workforce development activity, ODJFS may withhold funds allocated to or reimbursements due to the responsible entity for the activity and use those funds for enforcement purposes;

(7) Request the Attorney General to bring mandamus proceedings to compel the responsible entity to take or cease actions listed above under "***Causes for taking action against the responsible entity***." The Attorney General is required to bring any mandamus proceedings in the appropriate Franklin County court at ODJFS's request;

(8) Withhold funds allocated to or reimbursement due to the responsible entity until the time that ODJFS determines that the responsible entity is in compliance with the requirement in question, at which time ODJFS is required to release the funds.

Notice of proposed action

ODJFS is required by current law to notify the responsible entity and county auditor if ODJFS decides to take action against the responsible entity. The

bill requires the notice if ODJFS proposes to take action and provides that the notice must specify the action ODJFS proposes to take. ODJFS is required by the bill to send the notice by regular United States mail.

Administrative review

Current law allows the responsible entity to request an administrative review of a proposed action, other than a proposed action to request that the Attorney General bring mandamus proceedings. To request an administrative review, the responsible entity must send a written request to ODJFS within a certain amount of time. If the proposed action is for the responsible entity to submit to a corrective action plan, the responsible entity must send the request not later than 15 days after ODJFS mails the notice. If the proposed action is for the responsible entity to share a final disallowance of federal financial participation; the responsible entity to pay, or reimburse ODJFS for, an amount the responsible entity is responsible for; ODJFS to impose a sanction or adverse audit; or ODJFS to perform, or contract with another entity to perform, a family services duty, the responsible entity must send the request not later than 45 days after ODJFS mails the notice. If a timely request for an administrative review is made, ODJFS is required to attempt to resolve the dispute with the responsible entity within a certain amount of time. The time is 15 days if the proposed action is for the responsible entity to submit to a corrective action plan. Otherwise, the time is 60 days. If the administrative review does not resolve the dispute, ODJFS must conduct an adjudication hearing in accordance with the Administrative Procedure Act.

The bill revises the administrative review process. It continues to provide that the process is not available to review ODJFS's request that the Attorney General begin mandamus proceedings and provides that the process is also not available for any of the following:

(1) ODJFS withholding funds allocated or reimbursement due to the responsible entity until ODJFS determines that the responsible entity is in compliance with the requirements for a workforce development duty;

(2) ODJFS requiring the responsible entity to share a final disallowance of federal financial participation or to pay, or reimburse ODJFS for, an amount for which the responsible entity is responsible if the federal government, Auditor of State, or entity other than ODJFS has identified a responsible entity as being solely or partially responsible for an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty;

(3) An adjustment to an allocation, cash draw, advance, or reimbursement to the responsible entity's local area that ODJFS determines necessary for budgetary reasons;

(4) Withholding of a cash draw or reimbursement due to noncompliance with a reporting requirement established in ODJFS rules.

The bill provides that the 15 days that the responsible entity has to request an administrative review if ODJFS proposes to require the responsible entity to submit to a corrective action plan is 15 calendar days. The bill reduces from 45 days to 30 calendar days the amount of time the responsible entity has to request an administrative review if ODJFS proposes that the responsible entity share a final disallowance of federal financial participation; the responsible entity pay, or reimburse ODJFS for, an amount the responsible entity is responsible for; ODJFS impose a sanction or adverse audit; or ODJFS perform, or contract with another entity to perform, a family services duty. The 30 calendar day time limit is also applied to a request for an administrative review of ODJFS's proposal to require the responsible entity to pay ODJFS the amount that represents the amount the responsible entity is responsible for of an adverse audit finding, adverse quality control finding, or other sanction or penalty ODJFS issues.

A request for an administrative review must state specifically (1) the proposed action for which the review is requested, (2) the reason why the responsible entity believes the proposed action is inappropriate, (3) all facts and legal arguments that the responsible entity wants ODJFS to consider, and (4) the name of the person who will serve as the responsible entity's representative in the review. If ODJFS's notice specifies more than one proposed action and the responsible entity does not specify all of the proposed actions in its request, the proposed actions not specified in the request are not subject to administrative review and the parts of the notice regarding those proposed actions are final and binding on the responsible entity. If the responsible entity requests an administrative review for ODJFS's proposal to require the responsible entity to share a final disallowance of federal financial participation or to pay, or reimburse ODJFS for, an amount for which the responsible entity is responsible, the request may not include disputes over a finding, final disallowance of federal financial participation, or other sanction or penalty issued by an entity other than ODJFS.

The bill provides that the responsible entity loses the right to request an administrative review, and the notice becomes final and binding on the responsible entity, if the responsible entity fails to request the review within the required time.

If the responsible entity and ODJFS are unable to resolve the dispute informally within 15 calendar days following a request for an administrative review of ODJFS's proposal to require the responsible entity to submit to a

corrective action plan, or within 30 calendar days following a request for a review of other proposed actions, the Director of ODJFS is required by the bill to appoint an administrative review panel to conduct the review. The panel must consist of ODJFS employees who are not involved in ODJFS's proposal to take action against the responsible entity. The panel is required to review the responsible party's request and may require that ODJFS and the responsible entity submit additional information and schedule and conduct an informal hearing to obtain testimony or additional evidence. As under current law, a review of a proposal to require the responsible entity to share a final disallowance of federal financial participation or to pay, or reimburse ODJFS for, an amount for which the responsible entity is responsible is to be limited solely to the issue of the amount the responsible entity must share, reimburse, or pay. The panel is not required to make a stenographic record of its hearing or other proceedings.

An administrative review panel is required to submit a written report to the Director of ODJFS setting forth its findings of fact, conclusions of law, and recommendations for action after finishing the review. The Director is permitted to approve, modify, or disapprove the recommendations. If the Director modifies or disapproves the recommendations, the Director must state the reasons and actions to be taken against the responsible entity. The Director's approval, modification, or disapproval is final and binding on the responsible entity and is not subject to further ODJFS review.

Dates for ODJFS reports

(R.C. 5101.97)

ODJFS must submit a semiannual report on the characteristics of ODJFS program participants and recipients, and the outcomes of participation. This report must include information on all of the following: work activities, developmental activities, and alternative work activities of participants in the Ohio Works First program; programs of publicly funded child day-care; child support enforcement programs; and births to Medicaid recipients.

The date for the submission of the report on participant characteristics is the first day of July and January. The bill changes the date to the last day of those months and requires that the reports be for the six-month periods ending June 30 and December 31, respectively.

II. Unemployment Compensation

Federal Operating Fund

(R.C. 4141.04)

Under current law, certain federal unemployment compensation moneys received by the state to pay for the operation of public employment offices are paid into the special employment service account in the unemployment compensation administration fund.

Under the bill, those same moneys still are to be deposited into the state treasury to the credit of the Special Employment Service Account in the newly created Federal Operating Fund.

Job listings by persons or corporations that contract with the state

(R.C. 4141.044)

The bill repeals the current law requirement that any person or corporation contracting to do business with the state must provide to the Director of ODJFS a listing of all available job vacancies within the person's or corporation's power to fill and must attempt to fill those vacancies with persons registered with the Director unless that person or corporation proposes to fill the position from within its organization or pursuant to a traditional employer-union hiring arrangement.

Private industry councils

(R.C. 4141.045)

Under current law, the membership of local private industry councils created pursuant to the federal "Job Training Partnership Act," is required to reflect the race and sex composition of the total population within an established service delivery area as defined in federal law.

The bill eliminates this provision that is now obsolete due to the July 1, 2000, repeal of the "Job Training Partnership Act."

Unemployment compensation fund updates to coordinate with federal trade act law changes

(R.C. 4141.09)

Under existing law, the federal government makes available to Ohio and other states certain moneys to pay for assistance to workers who experience job

loss or dislocation due to U.S. foreign trade agreements, most notably, the North American Free Trade Act.

Under current law, the Treasurer of State, under the direction of the Director of ODJFS, is required to deposit funds received by the Director pursuant to the federal "Trade Act of 1974" into the Trade Act Account, which was created in Ohio law for the purpose of paying for benefits, training, and support services under that act. Federal funds received by the Director pursuant to the "North American Free Trade Agreement Implementation Act," are required to be deposited into the North American Free Trade account, which was created in Ohio law for the purpose of paying unemployment benefits, training, and support services under that act.

Under the bill, the "Trade Act" account is renamed the "Trade Act Benefit" account and money deposited into that account for the payment of unemployment benefits, job search, relocation, transportation, and subsistence allowances may be used for making payments specified under the following federal acts: "Trade Act of 1974," the "North American Free Trade Implementation Act of 1993," and the "Trade Act of 2002." The bill also renames the "North American Free Trade Act" account the "Trade Act Training and Administration" account and specifies that money deposited into that account by the Director for unemployment training and administration purposes may be used for making payments specified under any of the following federal acts: "Trade Act of 1974," the "North American Free Trade Implementation Act of 1993," and the "Trade Act of 2002."

III. Child Welfare

Foster care and adoption assistance

(R.C. 5101.141, 5101.142, 5101.145, 5101.146, 5101.1410, and 5153.78)

Continuing law requires ODJFS to act as the single state agency to administer federal payments for foster care and adoption assistance made pursuant to Title IV-E of the Social Security Act. The Director of ODJFS is required to adopt rules to implement this authority.

Notice, public hearing, and JCARR rule-making requirements

Current law provides that the rules governing financial and administrative requirements applicable to public children services agencies (PCSAs), private child placing agencies (PCPAs), and private noncustodial agencies (PNAs) are not subject to notice, public hearing, and Joint Committee on Agency Rule Review (JCARR) requirements but rules establishing eligibility, program participation, and other requirements are subject to those rule-making requirements. The bill

subjects rules governing requirements applicable to PCPAs and PNAs to those rule-making requirements. Rules governing financial and administrative requirements for government entities that provide Title IV-E reimbursable placement services to children are exempted by the bill from those rule-making requirements.

Single cost reporting form and cost report monitoring procedures

Current law requires ODJFS to establish (1) a single form for PCSAs, PCPAs, and PNAs to report costs reimbursable under Title IV-E and costs reimbursable under Medicaid and (2) procedures to monitor cost reports submitted by PCSAs, PCPAs, and PNAs. ODJFS must establish the form and procedures in rules regarding financial requirements applicable to PCSAs, PCPAs, and PNAs. The bill requires that ODJFS also establish the form and procedures in rules regarding financial requirements applicable to government entities that provide Title IV-E reimbursable placement services to children.

Actions taken when fiscal accountability procedures not met

Continuing law requires that ODJFS take certain actions if a PCSA, PCPA, or PNA fails to comply with procedures ODJFS establishes to ensure fiscal accountability. For an initial failure, ODJFS and the agency must jointly develop and implement a corrective action plan according to a specific schedule.[54] If a PCSA fails to comply with the procedures a second or subsequent time or fails to achieve the goals of the corrective action plan, ODJFS must (1) impose a financial or administrative sanction or adverse audit, (2) perform, or contract with another entity to perform, the service, or (3) request that the Attorney General bring mandamus proceedings. If a PCPA or PNA fails to comply with the procedures a second or subsequent time or fails to achieve the goals of the corrective action plan, ODJFS must cancel any Title IV-E allowability rates for the agency or revoke the agency's certificate.

The bill requires ODJFS to take these actions against a government entity providing Title IV-E reimbursable placement services to children if the entity fails to comply with the fiscal accountability procedures. If the government entity fails to comply with the procedures a second or subsequent time or fails to achieve the goals of the corrective action plan, ODJFS must cancel any Title IV-E allowability rates for the entity.

---

[54] *ODJFS is required, if requested by the agency, to provide technical assistance to ensure the fiscal accountability procedures and goals of the plan are met.*

Recovery of Title IV-E funds

The bill gives ODJFS authority to certify a claim to the Attorney General for the Attorney General to take recovery actions against a PCSA, PCPA, PNA, or government entity providing Title IV-E reimbursable placement services to children if all of the following are the case:

(1) The agency or entity files a cost report with ODJFS;

(2) ODJFS receives and distributes federal Title IV-E reimbursement funds based on the cost report;

(3) The agency's or entity's misstatement, miscalculation, overstatement, understatement, or other inclusion or omission of any cost included in the cost report causes the United States Department of Health and Human Services to disallow all or part of the funds.

Child welfare subsidy

(R.C. 5101.14, 5101.144, and 5111.0113)

Current law requires ODJFS to make payments, within available funds, to counties for a part of their costs for services provided to children. Funds must be used for purposes specified in the Revised Code. The bill eliminates the list of services for which a county is permitted to use the funds, allowing counties to use them to pay for any child welfare services authorized by Revised Code provisions governing public children services agencies.

Current law specifies that ODJFS must reduce a county's child welfare allocation if the amount the county spent on child welfare services in the preceding calendar year was less than the total expended in the second preceding calendar year. ODJFS is permitted to reallocate to other counties unspent child welfare funds it withholds in the form of whole or partial waivers. The bill eliminates reductions in county child welfare allocations and the Department's ability to reallocate withheld funds.

Current law requires each county to return any unspent child welfare allocation funds to ODJFS within 90 days after the end of each fiscal year. The bill requires each county to return unspent funds after the end of each state fiscal biennium, rather than the end of each fiscal year.

Current law also requires the Director of ODJFS to adopt rules prescribing reports on expenditures that are to be submitted by the counties as necessary. The bill makes the rule making permissive and exempts the rules from notice and

public hearing requirements by specifying that they be adopted under R.C. 111.15 rather than R.C. Chapter 119.

Adoption subsidy programs

(R.C. 5103.154 and 5153.163; Section 146.20)

Background

Ohio provides financial assistance to adopted children and their families under three programs: the State Adoption Maintenance Subsidy (SAMS) program, the State Adoption Special Services Subsidy (SASSS) program, and the Post Adoption Special Services Subsidy (PASSS) program. County public children services agencies administer these programs and determine a child's eligibility for participation.[55]

SAMS

A special needs child adopted by a family that is financially unable to pay for services the child needs may be eligible to receive financial assistance through the SAMS program. Under the SAMS program, a public children services agency, pursuant to an agreement between the agency and a child's adoptive parent established before the child's adoption, makes payments on a child's behalf to fund medical, psychiatric, psychological, and counseling services for the child. SAMS assistance may also cover maintenance costs.

SASSS

A child whose adoptive family annually earns more than 120% of the federal poverty guidelines and who is eligible for federal adoption maintenance costs assistance may be eligible to receive assistance under the SASSS program.[56] The SASSS assistance, like SAMS assistance, is paid by a public children services agency pursuant to a pre-adoption agreement between the agency and the child's adoptive parent. SASSS assistance is for unusual, rather than routine, needs and may not be used for maintenance costs. SASSS assistance may be used to cover a child's medical, psychiatric, psychological, or counseling services.

---

[55] *Background information about the SAMS, SASSS, and PASSS programs was provided by a representative of ODJFS.*

[56] *The 2003 poverty level for a family of four is an annual income of $18,400 or less. 120% of that amount is $22,080.*

PASSS

A child who, after being adopted, is found to require medical, psychological, psychiatric, or counseling services (including residential treatment), may be eligible to receive financial assistance under the PASSS program. To be eligible for PASSS assistance, the child's need for services must be the result of a physical or developmental handicap or condition that either (a) existed before the child was adopted or (b) developed after the adoption was finalized but can be directly attributed to the child's pre-adoption background. Under the PASSS program, a public children services agency, pursuant to an agreement between the agency and the child's adoptive parent, makes payments on the child's behalf for services for the child. The public children services agency must include in the agreement the amount of PASSS assistance available for the child. Current law permits a child to receive up to, but not more than $20,000 per year in PASSS assistance. Depending on the amount of funds available to the public children services agency for PASSS services, PASSS assistance amounts may vary from child to child.

The bill

SASSS changes. The bill eliminates the SASSS program, but permits a public children services agency to continue to make SASSS payments for a child for whom SASSS payments were being made prior to July 1, 2004, based on the child's individual need for services.

SAMS changes. Current law authorizes public children services agencies to assess the financial circumstances of a child's adoptive family to determine the child's eligibility for SAMS assistance. The bill limits eligibility for SAMS payments to children who are not eligible for federal adoption assistance payments and whose adoptive families have annual income of no more than 120% of the federal poverty guideline. Currently, an individual remains eligible to receive SAMS assistance until age 20. The bill restricts eligibility for SAMS assistance to those under age 18 or, if mentally or physically handicapped, under age 20.

Current law specifies that SAMS payments may be used to pay for a child's medical, surgical, psychiatric, psychological, and counseling expenses, including any necessary maintenance costs, but does not include a method of determining a child's continuing eligibility for SAMS assistance. The bill does not specify the services for which SAMS payments may be used, but requires ODJFS to establish by rule an annual redetermination process by which a child's ongoing need for assistance must be assessed.

The bill also clarifies who is to make SAMS payments on a child's behalf. Current law does not indicate whether payments are to be made by the public

children services agency of the county in which the child resides, or of the county from which the child was placed. The bill specifies that SAMS payments must be made by either the public children services agency that had custody of the child before adoption or by the public children services agency of the county in which the private child placing agency that had custody of the child before adoption is located.

PASSS changes. Under current law, an individual remains eligible to receive PASSS assistance until age 20. The bill restricts eligibility for PASSS assistance to those under age 18 or, if mentally or physically handicapped, under age 20. The bill also limits the amount of PASSS assistance a child may receive to $10,000 per year ($15,000 if there are extraordinary circumstances) and requires the adoptive parent to pay at least 5% of the total cost of the services provided to the child.[57] Currently, each child receiving PASSS assistance must undergo an annual redetermination of need process to assess the child's ongoing need for PASSS assistance. The bill requires ODJFS to establish clinical standards to evaluate a child's physical or developmental handicap or mental or emotional condition and assess the child's need for services.

Rules. Current law requires ODJFS to adopt rules establishing procedures for administration of the SAMS and PASSS programs. The bill requires ODJFS to adopt rules to establish the following:

(1) An application process for the SAMS and PASSS programs;

(2) A method to determine the amount of SAMS assistance a child may receive;

(3) A process whereby a child's continuing need for SAMS assistance is annually redetermined;

(4) A method to determine the amount, duration, and scope of PASSS services a child may receive;

(5) Any other rule the department considers appropriate for the implementation of the SAMS and PASSS programs.

ODJFS disciplinary actions. Ohio law requires ODJFS to maintain a list of individuals who wish to adopt children and individuals who wish to adopt special needs children. At least quarterly, ODJFS must forward the list to all public children services agencies and private child placing agencies to assist them

[57] *The bill not does specify what might be considered an "extraordinary circumstance."*

in locating appropriate homes for children.[58] A public children services agency may find, after a determination process of no more than six months, that a special needs child cannot be placed with any individual who appears on the ODJFS list, and may then place the child in a setting other than with an individual seeking to adopt the child. Each public children services agency must report to ODJFS its reasons for so placing a child. Current law permits ODJFS to impose financial sanctions against a public children services agency that fails to adequately complete the determination process for a child or to report to ODJFS. The bill removes this penalty, but authorizes ODJFS to instead take disciplinary action, including a financial or administrative sanction, against a public children services agency that fails to meet its reporting requirements.[59]

Putative Father Registry Fund

(R.C. 2101.16, 2151.3529, 2151.3530, and 5103.155)

Current law permits a parent to voluntarily deliver a child who is not more than 72 hours old to an emergency medical service worker, peace officer, or hospital employee.[60] The Director of ODJFS is required to promulgate forms designed to gather pertinent medical information concerning a deserted child and the child's parents. The Director is also required to promulgate written materials to be given to the parents of a deserted child describing services available to assist parents and newborns, including information directly relevant to situations that might cause parents to desert a child and procedures for a person to follow to reunite with a child the person deserted.

The bill provides that if it determines that there are surplus funds in the Putative Father Registry Fund, ODJFS may use them to finance costs related to the development, publication, and distribution of the forms and materials ODJFS is required to provide.[61]

---

[58] *R.C. 5103.154.*

[59] *The sanctions are provided for in existing law (R.C. 5101.24).*

[60] *Ohio Revised Code Section 2151.3516 (not in the bill).*

[61] *A "putative father" is a man who may be a child's father and to whom all of the following apply: he is not married to the child's mother at the time of the child's conception or birth; he has not adopted the child; and paternity has not been established. The Putative Father Registry is a database established and maintained by ODJFS containing the names and addresses or telephone numbers of putative fathers. A man who has sexual intercourse with a woman is on notice that if a child is born as a result and he is the putative father of the child, the child may be adopted without his consent*

Independent living for young adults

(R.C. 2151.83 and 2151.84)

Under current law a public children service agency or private child placing agency must, to the extent funds are available, enter into an agreement with a young adult who has been in foster care to provide independent living services for a young adult who requests the services.[62] The program is funded through federal funds under the "Foster Care Independence Act of 1999," if the state provides matching funds.

The bill eliminates a requirement that ODJFS provide matching funds to qualify for the federal funds.

Insurer to divert claimant's payment if claimant is in default on child support

(R.C. 3123.97)

The bill requires all life or liability insurance claimants, including estates, to provide the claimant's date of birth, social security number, and current address to the insurer upon request. Insurers are prohibited from paying any claimant who refuse to provide the requested information. An insurer who denies payment to a claimant for this reason is exempt from suit and immune from liability in law or equity.

Monthly, under the bill, ODJFS or its agent must provide all insurers writing life and liability policies of insurance with a list of all child support obligors who are in default under Chapter 3123. of the Revised Code. The list must include identifying information on the obligors and the amount of each obligor's default. Insurers must check this list not less than ten days prior to making any nonrecurring payment to a claimant of $500 or more. If a claimant is listed as an obligor in default, an insurer must hold the payment and notify ODJFS. Upon receiving notice from ODJFS of the amount of the claimant's default, the insurer must divert the payment to ODJFS for distribution according to state and federal laws. If the payment withheld is greater than the default amount,

---

unless he registers with the Registry within 30 days after the child's birth. To register, a putative father must submit a completed registration form provided by ODJFS. (R.C. 3107.01, 3107.061, and 3107.062 not in the bill.)

[62] *"Young adult" is defined as a person age 18 or older but under age 21 who was in the temporary or permanent custody of, or was provided care in a planned permanent living arrangement by, a public children services agency or private child placing agency on the date the person attained age 18. (R.C. 2151.81.)*

only an amount equal to the default is diverted, with the remainder being paid out in accordance with the life or liability insurance policy. Any insurer that fails to comply with the bill's requirements is liable to ODJFS for the default amount, up to the amount of the claim payment available.

Insurers and individuals are prohibited from using the information provided by ODJFS for any purpose unrelated to the collection of past-due child support. Violators are subject to a fine of $500 per violation, payable to ODJFS. The fines are to be considered program income to ODJFS.

The bill does not apply to payments made to third parties on behalf of a claimant, such as may be made to attorneys, physicians, and others who have provided benefits or services related to the claim, nor to that portion of a claim based on damage to or the loss of real property. ODJFS is required to adopt rules under Chapter 119. of the Revised Code to carry out the purposes of the bill.

In-hospital genetic testing

(R.C. 3111.72 and 3727.17)

Current law requires the contract between ODJFS and a hospital concerning births by unmarried women to include various provisions. It also provides that the hospital must provide a staff person to provide information and assistance to unmarried parents.

Under the bill, the contract must include a provision that hospital staff will perform immediate collection of genetic samples from the mother, child, and father at the request of either the mother or father and on completion of an application by either parent for child support enforcement services, including paternity determination, unless an acknowledgement of paternity application has been completed and signed by the mother and father. The bill also requires ODJFS to pay the hospital $30 for each genetic sample and to pay the cost of testing samples.

The bill requires a hospital staff person to explain to the mother and father the availability of immediate genetic testing at the hospital and that the test is at no cost to the mother or father.

The Director of ODJFS is required by the bill to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement the Revised Code section dealing with contracts between ODJFS and hospitals.

Repeal of domestic violence training program

(repeals R.C. 5101.251)

Current law requires that the Director of ODJFS provide a training program to assist caseworkers in county departments of job and family services and public children services agencies in understanding the dynamics of domestic violence and the relationship domestic violence has to child abuse. The bill eliminates this requirement.

Ohio Child Welfare Training Program

Training programs for foster caregivers and adoption assessors

(R.C. 5103.031, 5103.033, 5103.034, 5103.036, 5103.037, 5103.038, 5153.60, and 5153.69)

Current law requires ODJFS to establish a statewide program to provide training that caseworkers and supervisors of public children services agencies must complete as part of their jobs. The program is called the Ohio Child Welfare Training Program and is operated by a training coordinator under contract with ODJFS. Monitoring and evaluation of the program to ensure that it is satisfying the caseworker and supervisor training requirements are the duties of the Training Program Steering Committee established by ODJFS.

Current law also permits ODJFS to provide, as part of the Ohio Child Welfare Training Program, preplacement and continuing training that foster caregivers must obtain for issuance or renewal of a foster home certificate. The Training Program Steering Committee is required to ensure that any training provided by the Ohio Child Welfare Training Program meets the same requirements other preplacement and continuing training programs must meet to obtain ODJFS approval. However, the Ohio Child Welfare Training Program is not required to obtain ODJFS approval of its training programs.

The bill changes from permissive to mandatory the provision of preplacement and continuing training by the Ohio Child Welfare Program. The bill also requires the Program to provide education programs for adoption assessors.[63] The bill requires that the Training Program Steering Committee

[63] *An adoption assessor is a person who performs various duties in connection with the adoption process. To be an adoption assessor, an individual must meet certain requirements, including completing educational programs required by rules adopted by ODJFS. The educational programs must include courses on adoption placement practice, federal and state adoption assistance programs, and post adoption support services. (R.C. 3107.014, 3107.015, and 3107.016 (not in the bill).)*

ensure that the preplacement and continuing training programs provided by the Program meet the requirements preplacement and continuing training programs operated by private child placing agencies and private noncustodial agencies must meet. However, the bill maintains the provision in current law that exempts the Program from obtaining ODJFS approval of preplacement and continuing training programs.

The bill also eliminates the requirement that ODJFS approve and reimburse preplacement and continuing training programs offered by public children services agencies. The bill permits the Ohio Child Welfare Training Program, a private child placing agency, or a private noncustodial agency operating a preplacement or continuing training program approved by ODJFS to condition the enrollment of a foster caregiver in a program on availability of space in the program. It also permits the Ohio Child Welfare Training Program to condition enrollment of a foster caregiver on assignment to the Program of compensation received by the foster caregiver's recommending agency from ODJFS for providing training (see "***Reimbursement of agencies for providing training programs***" below).[64] Private child placing agencies and private noncustodial agencies are also permitted if applicable to condition the enrollment of a foster caregiver in a training program on the payment of an instruction or registration fee, if any, by the foster caregiver's recommending agency.

The bill permits a private child placing agency or private noncustodial agency to contract with an individual or public or private entity to administer the agency's approved preplacement and continuing training programs.

Reimbursement of foster caregivers for attending training

(R.C. 513.0312)

Current law requires that a recommending agency pay a stipend to reimburse a foster caregiver who has had at least one foster child placed in the caregiver's home for attending training courses provided by the Ohio Child Welfare Training Program or an ODJFS-approved preplacement or continuing training program. The bill eliminates the requirement that the foster caregiver have at least one foster child placed in the caregiver's home.

[64] *A recommending agency is a public or private agency that recommends that ODJFS issue, deny, or renew a foster home certificate.*

Reimbursement of agencies for providing training programs

(R.C. 5103.0313, 5103.0314, 5103.0315, and 5103.0316)

Current law requires that every other year by a date specified in rules adopted by ODJFS each private child placing agency and private noncustodial agency that seeks to operate a preplacement training program or continuing training program submit to ODJFS a proposal outlining the program. The bill eliminates the requirement that each proposal include a budget for the program. The bill also removes a provision that requires ODJFS to disapprove a proposed program if the program's budget is inconsistent with rules adopted by the Department.

Current law requires ODJFS to reimburse the Ohio Child Welfare Training Program and public and private agencies for the cost of procuring or providing training programs for foster caregivers. The reimbursement must (a) be the same no matter whether the provider of the training is an agency or the Program, (b) is on a per diem basis, and (c) is limited to the cost associated with the trainer, obtaining a training site, and the administration of the training. The bill changes the reimbursement to compensation provided by ODJFS to a private child placing agency or private noncustodial agency in the form of an allowance for each hour of preplacement and continuing training provided to foster caregivers who are recommended for initial certification or recertification as a foster parent by the agency.

Grants to regional training centers

(R.C. 5153.72)

Current law requires each of the public children services agencies of each of eight counties to establish and maintain a regional training center. The bill authorizes ODJFS to make a grant to a public children services agency to wholly or partially subsidize the operation of its regional training center.

Effective date

The bill makes the changes governing the training of foster caregivers and adoption assessors effective January 1, 2004.

IV. Adult Protective Services

Adult protective services

(Primary sections 5101.60 to 5101.77 and 5101.99; R.C. 3722.15, 5101.60, 5101.601, 5101.61, 5101.611, 5101.62, 5101.65, 5101.67, 5101.68, 5101.69, 5101.70, 5101.99, 5123.61, and 5126.31)

Current law

Adult protective services assist persons age 60 or older who are in danger of harm, unable to protect themselves, and have no one else to assist them. Each county department of job and family services in Ohio is responsible for receiving and investigating reports of abuse, neglect, and exploitation of persons age 60 or older. Current law requires that an investigation of a report alleging abuse, neglect, and exploitation be initiated within 24 hours after the county department receives the report or if any emergency exists. Otherwise, an investigation must be initiated within three working days. Once an investigation is completed, the county department must determine whether a person age 60 or older is in need of protective services.

Current law also requires that certain medical and other professionals specified in the Revised Code report their reasonable belief that an adult age 60 or older is being abused, neglected, or exploited. These professionals include physicians, attorneys, peace officers, coroners, clergypersons, and counselors.

The bill

The bill makes implementation of the currently mandatory adult protective services system an option for each county. It allows the system's administrative agency to be the county department of job and family services or another county agency designated by the board of county commissioners.

The bill changes to permissive the requirement that specified medical and other professionals report their reasonable belief that an adult age 60 or older is being abused, neglected, or exploited.

The bill also repeals existing law permitting ODJFS to reimburse county departments of job and family services for costs incurred in the implementation of the adult protective services system, to provide training on implementing the system, and to adopt rules governing the system.

V. Child Day-Care

Day-care rules

(R.C. 5104.011)

Background

Current law requires a facility that provides day-care for more than six children at one time to be licensed. A facility that provides day-care for 13 or more children, or seven or more children if not the home of the administrator, is licensed as a day-care center. A Type A family day-care home is the home of the administrator and may provide child day-care for seven to 12 children at one time. A Type B family day-care home is not required to be licensed, but must be certified by the county department of job and family services of the county in which it is located if it provides publicly-funded day-care. A Type B home may provide child day-care to one to six children at one time, if not more than three of the children are under age two.

Licensed Type A homes and day-care centers

Under current law, the Director of ODJFS must send to each county director of job and family services and each licensed day-care center and Type A home copies of any proposed or adopted rules governing licensure. The bill eliminates the Director's responsibility to send copies of proposed and adopted rules to county directors. Under the bill, the Director must send notice, rather than copies, of proposed rules to each licensed day-care provider. The Director must still provide copies of adopted rules to each provider, but may do so in either paper or electronic form. Current law also requires the Director to give county directors and providers a written public notice, delivered either in person or by certified mail, of hearings on any proposed rules. The bill requires the Director to notify only the providers of hearing dates.

Type B homes and in-home aides

The bill requires the Director to send to each county director of job and family services notice of proposed rules regarding the certification of Type B homes and in-home aides. The notice must include an internet web site address where the proposed rules may be viewed. The bill also requires the Director to give at least 30 days' advance public notice of hearings on the proposed rules. In addition, the Director must provide to each county director an electronic copy of each adopted rule prior to the rule's effective date.

VI. Title IV-A Temporary Assistance for Needy Families

Continuing law requires that ODJFS prepare and submit to the United States Department of Health and Human Services a Title IV-A state plan. Title IV-A refers to the part of the Social Security Act governing the Temporary Assistance for Needy Families (TANF) block grant. The state plan must provide for the following TANF programs: (1) Ohio Works First (OWF), (2) Prevention, Retention, and Contingency (PRC), and (3) other TANF programs established by the General Assembly or an executive order issued by the Governor that are administered or supervised by ODJFS.[65]

TANF funds for publicly funded child day-care

(R.C. 5101.80, 5104.01, and 5104.30)

Current law requires ODJFS to distribute state and federal funds for publicly funded child day-care, including appropriations of federal funds for publicly funded child day-care under the Child Care and Development block grant and the Title XX social services block grant.[66] The bill provides that the funds ODJFS may distribute for publicly funded child day-care also include federal funds available under the TANF block grant.

Ohio Works First: minor heads of household

(R.C. 5107.02)

Ohio Works First (OWF) is Ohio's TANF program of time limited cash assistance to low income families with children.

Current law, for purposes of OWF, defines "minor head of household" as a minor child who is (1) a member of an assistance group that does not include an adult and (2) is at least six months pregnant or the parent of a child included in the same assistance group.[67] The bill provides that a minor who is not married is not considered a "minor head of household" for purposes of OWF and, therefore, is not subject to certain requirements, including work requirements.

---

[65] *The Title IV-A state plan must also provide for components of OWF, PRC, and other ODJFS administered or supervised TANF programs that the state plan identifies as components.*

[66] *Title XX of the Social Security Act.*

[67] *A "minor child" is an individual who is either under age 18 or under age 19 and a full-time student in a secondary school or the equivalent level of vocational or technical training. (R.C. 5107.02(E).)*

Learning, Earning, and Parenting (LEAP) Program

(R.C. 5107.30, 5107.40, and 5107.60)

The Learning, Earning, and Parenting (LEAP) Program encourages school attendance by OWF recipients who are parents or pregnant. The bill eliminates the requirement that the Director of ODJFS evaluates LEAP. The bill limits participation in the LEAP Program to individuals who are under age 18, or age 18 and in school, instead of under age 20.

The bill also requires county departments of job and family services, subject to availability of funds, to provide LEAP participants with support services, including publicly funded day-care, transportation, and other services.

Prison nursery program

(R.C. 5107.37)

Current law provides that an individual who resides in a county home, city infirmary, jail, or other public institution is ineligible to participate in Ohio Works First. The bill provides that the disqualification does not apply to a child residing with his or her mother who participates in a prison nursery program. The Department of Rehabilitation and Correction is permitted by current law to establish a prison nursery program in one or more of the institutions for women the Department operates. An inmate participating in a prison nursery program is permitted to reside in the institution with a child born to the inmate while the inmate is in the Department's custody.

Prevention, Retention, and Contingency Program

(Primary R.C. 5108.01; R.C. 5101.83, 5108.03, 5108.04, 5108.05, 5108.06, 5108.07, 5108.09, 5108.10, 5108.11, and 5108.12)

Background

The Prevention, Retention, and Contingency (PRC) Program is a TANF program that is intended to help persons overcome immediate barriers to achieving and maintaining self-sufficiency and personal responsibility. ODJFS is required to administer the program in accordance with the federal TANF block grant, federal TANF regulations, state law, and the state TANF plan submitted to the United States Secretary of Health and Human Services.

The help provided under the PRC Program may be, with one restriction, any allowable use of federal TANF funds. This means that it must be reasonably calculated to (1) provide assistance to needy families so that children may be cared

for in their own homes or in the homes of relatives, (2) end the dependency of needy parents on government benefits by promoting job preparation, work, and marriage, (3) prevent and reduce the incidence of out-of-wedlock pregnancies, or (4) encourage the formation and maintenance of two-parent families. PRC help is also an allowable use of federal TANF fund if the state could have used federal funds under the former Aid to Families with Dependent Children Program or Job Opportunities and Basic Skills Training Program, as those programs existed on September 30, 1995, or, at the state's option, August 21, 1996, to provide the help.

The restriction is that PRC help may not be "assistance," as that term is defined in a federal TANF regulation, but must be help of a type excluded from the definition. The federal regulations define "assistance" as including cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs for such things as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. "Assistance" includes such benefits even when they are provided in the form of payments to individual recipients and conditioned on participation in work experience, community service, or other work activities provided by federal TANF law. Unless specifically excluded, "assistance" also includes supportive services such as transportation and child care provided to unemployed families.

The following types of help may be given under the PRC Program because they are excluded from the definition of "assistance":

(1) Nonrecurrent, short-term benefits that are designed to deal with a specific crisis situation or episode of need, are not intended to meet recurrent or ongoing needs, and will not extend beyond four months;

(2) Work subsidies such as payment to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training;

(3) Supportive services such as child care and transportation provided to employed families;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support;

(7) Transportation benefits provided under a Job Access or Reverse Commute project to an individual who is not otherwise receiving assistance.

Consistent with the requirement that it not be "assistance," the PRC Program provides help in the form of benefits and services.

The bill

Written statement of policies governing the PRC Program (R.C. 5108.03, 5108.04, 5108.05, 5108.06, and 5108.07). ODJFS is required by current law to develop a model design for the PRC Program. A county department of job and family services (CDJFS) may adopt the model design or develop its own policies for the program. The model design must specify eligibility requirements, the help to be provided under the program, administrative requirements, and other matters determined necessary.

The bill eliminates the requirement that ODJFS develop a model design for the PRC Program. Instead, each CDJFS must adopt a written statement of policies governing the program for the county. The statement of policies must be adopted by October 1, 2003 and updated at least once every two years. The county director of job and family services is required to sign and date the statement of policies and any amendment to it. Within ten calendar days of adopting it, the CDJFS must provide ODJFS a written copy of the statement of policies or any amendment.

In adopting its statement of policies, each CDJFS is to establish or specify all of the following:

(1) The benefits and services to be provided under the program;

(2) Restrictions on the amount, duration, and frequency of the benefits and services;

(3) Eligibility requirements;

(4) Fair and equitable procedures for the certification of eligibility for benefits and services that do not have a financial need eligibility requirement and for the determination and verification of eligibility for benefits and services that have a financial need eligibility requirement;

(5) Objective criteria for the delivery of benefits and services;

(6) Administrative requirements;

(7) Other matters the CDJFS determines are necessary.

The statement of policies may also specify the benefits and services to be provided under the PRC Program that prevent and reduce the incidence of out-of-wedlock pregnancies or encourage the formation and maintenance of two-parent families and how the CDJFS will certify individuals' eligibility for the benefits and services.

The statement of policies must be consistent with the plan of cooperation developed by the board of county commissioners and the review and analysis of the county family services committee. The CDJFS must either give the public and local government entities at least 30 days to submit comments on the statement of policies or have the county family services planning committee review the statement of policies before the county director signs and dates it. Each statement of policies must also include the board of county commissioners' certification that the CDJFS complied with the law governing the PRC Program in adopting the statement of policies. The board must revise its certification if an amendment to the statement of policies that the board considers to be significant is adopted.

Hearings and administrative appeals (R.C. 5108.09). Currently, the decision in a hearing or administrative appeal regarding the PRC Program, is to be based on the ODJFS model design if the CDJFS has adopted it or on the CDJFS's written statement of policies and any amendments to the statement. Under the bill, the decision is to be based on the CDJFS's written statement of policies and amendments to the statement if the CDJFS provides a copy of the statement of policies and all amendments to the hearing officer, director, or director's designee at the hearing or appeal.

Application and determination of eligibility (R.C. 5108.10). Under existing law, an assistance group seeking to participate in the PRC Program must apply to a CDJFS using an application containing information the CDJFS requires. When a CDJFS receives the application, it has to make a prompt investigation and record of the circumstances of the applicant in order to ascertain the facts surrounding the application and to obtain such other information as may be required. On completion of the investigation, the CDJFS is required to determine whether the applicant is eligible to participate, the benefits or services the applicant should receive, and the approximate date when participation is to begin.

The bill requires that eligibility for a benefit or service under the PRC Program be certified in accordance with CDJFS's statement of policies if the benefit or service does not have a financial need requirement. Eligibility for the benefit or service is to be determined in accordance with the statement of policies and based on an application containing information the CDJFS requires if the benefit or service has a financial need eligibility requirement. When a CDJFS

receives an application for such benefits and services, it must follow verification procedures established by the statement of policies in order to ascertain the facts surrounding the application and to obtain such other information as may be required. On completion of the verification procedure, the CDJFS must determine whether the applicant is eligible for the benefits and services and the approximate date the benefits and services are to begin.

Contracts to make eligibility determinations and certifications (R.C. 5108.11). The bill permits a board of county commissioners to enter into a contract with a private or government entity to certify eligibility for benefits and services that do not have a financial need eligibility requirement and accept applications and determine and verify eligibility for benefits and services that have a financial need eligibility requirement. If the board does so, the CDJFS must do all of the following: (1) ensure that eligibility is certified, or determined and certified, in accordance with its statement of policies, (2) ensure that the entity maintains all records that are necessary for audits, (3) monitor the private or government entity for compliance with federal and state law and the statement of policies, and (4) take actions that are necessary to recover any funds that are not spent in accordance with federal law or the law governing the PRC Program.

Funds expended or claimed in an impermissible manner (R.C. 5108.12). The bill provides that each CDJFS is responsible for funds expended or claimed under the county's PRC Program that ODJFS, Auditor of State, United States Department of Health and Human Services, or other government entity determines is expended or claimed in a manner that federal or state law or policy does not permit.

Benefits and services for groups with common needs (R.C. 5101.83 and 5108.05). In addition to providing benefits and services for assistance groups that apply to participate in the program, current law provides that the ODJFS model design and a CDJFS's policies may establish eligibility requirements for, and specify benefits and services to be provided to, types of groups, such as students in the same class, that share a common need for the benefits and services. The ODJFS model design and a CDJFS's policies may also specify benefits and services that a CDJFS may provide for the general public, including billboards that promote the prevention and reduction in the incidence of out-of-wedlock pregnancies or encourage the formation and maintenance of two-parent families. The bill eliminates these provisions, so that these types of benefits and services are no longer expressly provided for in the Revised Code.

County share of public assistance expenditures

(R.C. 5101.16)

Counties are responsible for a share of the costs of certain public assistance programs, including the Ohio Works First (OWF) and Prevention, Retention, and Contingency (PRC) programs. Current law provides that a county's share of the costs of OWF and PRC for a state fiscal year is the county's share of program and administrative expenditures during federal fiscal year 1994 for assistance and services, other than child day-care, provided under the former Aid to Dependent Children and Job Opportunities and Basic Skills Training Programs.[68]

The bill provides that henceforth a county's share of the costs of OWF and PRC for a state fiscal year is a percentage of what would otherwise be the county's share of those expenditures, as established by rule adopted by the Director of ODJFS. The rules must provide for a percentage of at least 75% and not more than 82%. The Director may amend the rule as an internal management rule, in consultation with the Director of Management and Budget, to modify the percentage if the Director determines that the amount the General Assembly appropriates for TANF programs makes the change necessary.

VII. Medicaid

Medicaid is a health care program for low-income children and families, and for aged, blind, and disabled persons. The program is funded with federal, state, and county funds and was established by Congress in 1965 as Title XIX of the Social Security Act. Federal Medicaid law requires states participating in Medicaid to cover certain groups of persons and types of benefits and gives states options for covering other groups of persons and types of benefits.

"Healthy Families" Medicaid expansion

(R.C. 5111.019)

Current law requires the Director of ODJFS to submit an amendment to the state Medicaid plan to make an individual eligible to receive Medicaid benefits for a limited time if the individual is a parent of a child under age 19 and has income not exceeding 100% of the federal poverty guidelines. The bill makes this permissive and subject to availability of sufficient funds appropriated by the General Assembly.

---

[68] *The Aid to Dependent Children and Job Opportunities and Basic Skills Training programs were replaced by TANF programs.*

Medicaid Estate Recovery

When a person's eligibility for Medicaid coverage of nursing home costs is determined, certain assets are exempt from consideration. However, once the person dies, some of those assets are recoverable, and federal and state laws require that the state attempt to collect from the person's estate. The Medicaid Estate Recover Program has this responsibility (R.C. 5111.11 *not in the bill*).

Investigation regarding receipt of services

(R.C. 2117.06 and 2117.061)

Under the bill, the person responsible for the estate of a decedent who was at least 55 years old at the time of death is required to determine whether the decedent was a Medicaid recipient.[69] If the decedent was a recipient, the person responsible for the estate must notify the administrator of the Medicaid Estate Recovery Program. This notice must be in writing and be provided within 30 days after the occurrence of any of the following: (1) the granting of letters testamentary, (2) the administration of the estate, or (3) the filing of an application for release from administration.[70]

Claims against the estate

(R.C. 2117.06 and 2117.061)

Under current law, all claims against an estate must be presented within one year of the decedent's death. The bill permits the administrator of the Medicaid Estate Recovery Program to present claims the later of one year after the decedent's death or 90 days after receiving notice from the person responsible for the estate that the decedent was a Medicaid recipient.

---

[69] *The "person responsible for the estate" includes the executor, administrator, commissioner, or person who files for release from administration of an estate. (R.C. 2117.061(A)).*

[70] *"Letters testamentary" is defined as "the instrument by which a probate court approves the appointment of an executor under a will and authorizes the executor to administer the estate." Black's Law Dictionary 918 (7th ed. 1999).*

Release of the decedent's account proceeds

(R.C. 2113.041)

When a person who has received Medicaid benefits dies, the state can seek to recover the costs of Medicaid benefits correctly provided to the decedent.[71]

The bill permits the administrator of the Medicaid Estate Recovery Program to present an affidavit to a financial institution requesting the release of the decedent's account proceeds. The affidavit must specify: (1) the decedent's name, (2) the name of anyone who notified the Program of the decedent's receipt of Medicaid assistance, (3) the name of the financial institution, (4) the account number, (5) a description of the claim for estate recovery, and (6) the amount of funds sought. A financial institution may release account proceeds only if all of the following apply: (1) the decedent held an account at the financial institution, (2) the account was held in the decedent's name only, (3) no estate has been opened, (4) it is reasonable to assume that no estate will be opened, (5) the decedent has no outstanding debts known to the Program's administrator, and (6) the financial institution has received no objections to the release, or has determined that no valid objections to the release have been received. The release of funds is permissive.

If ODJFS receives notice of a valid claim to funds released pursuant to the bill that has a higher priority than that of the Medicaid Estate Recovery Program, ODJFS is permitted to release those funds either to the financial institution or to the person or government entity making the claim.

Priority of claims

(R.C. 2117.25)

Current law specifies the order in which a decedent's debts are to be paid. The bill provides that claims of the Medicaid Estate Recovery Program are to be given the same priority as other amounts owed to the state. (These amounts are seventh in the list of nine priorities.)

Liens

(R.C. 5111.111)

Current law permits ODJFS to place a lien on the property of a Medicaid recipient or a recipient's spouse to facilitate recovery under the Medicaid Estate

[71] *R.C. 5111.11.*

Recovery Program.[72] On the filing of a certificate with the appropriate county recorder's office, the lien attaches to all of the recipient's or spouse's real property described in the certificate to cover all Medicaid subsequently paid. The bill alters this language so that the lien is for all amounts paid before filing, as well as amounts paid afterwards.

Medicaid prenatal care and substance abuse screening

(R.C. 5111.017, repealed)

The bill eliminates the provisions of current law that require ODJFS to establish a program for substance abuse assessment and treatment referral for pregnant Medicaid recipients required by statute or ODJFS rule to receive medical services through a managed care organization. The elimination extends to corresponding provisions that apply to Medicaid-participating managed care organizations and the persons who provide prenatal care. Under these provisions, a screening for alcohol and other drug use must occur at the woman's first prenatal medical examination. If it is determined that there may be a substance abuse problem, the woman must be referred to a certified treatment program and be given information on the possible effects of alcohol and drug use on the fetus.

Care management system within Medicaid

(R.C. 5111.16 and 5111.17)

Under current law, ODJFS may establish a managed care system in some or all counties under which designated Medicaid recipients are required to obtain health care from providers designated by ODJFS. ODJFS may enter into contracts with managed care organizations to authorize the organizations to provide, or arrange for the provision of, health care services to Medicaid recipients participating in a managed care system.

As part of the Medicaid program, the bill requires ODJFS to establish in some or all counties a "care management system." If necessary, ODJFS must submit a request to the United States Department of Health and Human Services for a waiver of federal Medicaid requirements that would otherwise be violated in the implementation of the system. ODJFS must designate the Medicaid recipients who are required or permitted to participate in the system. By July 1, 2004, some

[72] *The lien is only available when permitted by federal law. Further, ODJFS may not place a lien on the property of the recipient of home and community-based services (or the property of the recipient's spouse) in order to recover under the Medicaid Estate Recovery Program.*

of the participants in the care management system must include Medicaid recipients who are aged, blind, or disabled.

Under the care management system the bill proposes, ODJFS may do the following:

(1) Require or permit participants in the system to obtain health care services from providers ODJFS designates;

(2) Require or permit participants to obtain health care services through managed care organizations under contract with ODJFS;

(3) Establish any other requirements or procedures ODJFS considers necessary for implementation of the system.

The bill authorizes ODJFS to adopt rules to implement the care management system. Rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

Managed care organizations under Medicaid contracts

(R.C. 5111.17)

Neither current law nor the bill specifies the meaning of "managed care organization" when referring to ODJFS's authority to enter into contracts with such organizations. The bill, however, provides that managed care organizations include health insuring corporations.

Prescription drug coverage by health insuring corporations

(R.C. 5111.02 and 5111.172)

Under current law, a health insuring corporation that has a contract to provide health care services to Medicaid recipients is prohibited from restricting the availability to its enrollees of any prescription drugs included in the Ohio Medicaid drug formulary. The bill eliminates that prohibition and instead authorizes ODJFS to require a health insuring corporation to provide prescription drug coverage to Medicaid recipients enrolled in the health insuring corporation. In providing the required coverage, the corporation is permitted, subject to ODJFS approval, to use strategies for the management of drug utilization.

Appointment of temporary manager

(R.C. 5111.173)

The bill requires ODJFS to appoint a temporary manager for a managed care organization under a Medicaid contract if ODJFS determines that the managed care organization has repeatedly failed to meet substantive requirements specified in federal statutes or regulations. The bill specifies that appointing a temporary manager does not preclude ODJFS from imposing other sanctions against the managed care organization.

The bill requires the managed care organization to pay all costs of having the temporary manager perform the temporary manager's duties, including all costs incurred in performing those duties. If the temporary manager incurs cost or liabilities on behalf of the managed care organization, the organization is required to pay those costs and be responsible for those liabilities.

The bill provides that the appointment of a temporary manager is not subject to the Administrative Procedure Act (R.C. Chapter 119.), but the organization is permitted to request a reconsideration of the appointment. Reconsiderations are to be requested and conducted in accordance with rules the Director of ODJFS is to adopt in accordance with the Administrative Procedure Act.

The bill specifies that the appointment of a temporary manager does not cause the managed care organization to lose the right to appeal, under the Administrative Procedure Act, any proposed termination or decision not to renew the organization's Medicaid provider agreement. The managed care organization does not lose the right to initiate the sale of the organization or its assets.

In addition to the rules that the bill requires to be adopted, the Director of ODJFS is authorized to adopt any other rules necessary to implement the bill's provisions concerning the appointment of temporary managers. The rules must be adopted in accordance with the Administrative Procedure Act.

Disenrollment of Medicaid recipients

(R.C. 5111.174)

Under the bill, ODJFS may disenroll some or all Medicaid recipients enrolled in a managed care organization under contract with ODJFS if ODJFS proposes to terminate or not to renew the contract and determines that the recipients' access to medically necessary services is jeopardized by the proposal. The disenrollment is not subject to the Administrative Procedure Act, but the managed care organization may request reconsideration of the disenrollment.

Reconsiderations are to be requested and conducted in accordance with rules the Director of ODJFS is to adopt in accordance with the Administrative Procedure Act. ODJFS is prohibited from delaying the disenrollment to provide a reconsideration.

In addition to the rules that the bill requires to be adopted, the Director of ODJFS is authorized to adopt any other rules necessary to implement the bill's provisions concerning disenrollment of Medicaid recipients. The rules must be adopted in accordance with the Administrative Procedure Act.

Reimbursement rate for hospital services

(R.C. 5111.175 and 5111.176)

The bill specifies that when a hospital does not have a contract with a managed care organization but provides services to a Medicaid recipient who is enrolled in the organization, the organization must reimburse the hospital for the services at a rate that is the lesser of (1) 95% of the hospital's reimbursement rate for Medicaid recipients who are not in managed care or (2) the amount the hospital charges the organization for the services. As a condition of participation in the Medicaid program, a hospital is prohibited from refusing to provide services to Medicaid recipients who are enrolled in a managed care organization and must accept the above reimbursement rate as payment in full for services provided to those Medicaid recipients. The bill specifies that it does not prohibit the organization from entering into a contract with the hospital under which the hospital is reimbursed at a rate different from the rate the bill establishes.

The bill requires the Director of ODJFS to establish a task force by October 1, 2003, to assist in resolving issues that arise as a result of the above reimbursement rates for hospital services. The Director is to appoint the members of the task force, which must include representatives of hospitals that serve Medicaid recipients and representatives of each managed care organization under contract with ODJFS.

Technical changes

(R.C. 5111.071, 5111.08, 5111.16, and 5111.173 (repealed))

The bill eliminates provisions that refer to the Medicaid Managed Care Study Committee, which no longer exists. The bill renumbers certain sections of the Revised Code to accommodate the bill's provisions dealing with care management and managed care contracting within the Medicaid program.

Medicaid copayment program

(R.C. 5111.0112)

Current law requires the Director of ODJFS to examine instituting a Medicaid copayment program. The bill eliminates a requirement that the examination include a determination of which groups of Medicaid recipients are appropriate for a copayment program designed to reduce inappropriate and excessive use of medical goods and services.

Medicaid coverage of chiropractic services

(R.C. 4734.15)

Under current law Medicaid covers physician services and a chiropractor may be reimbursed for services under that program. The bill removes chiropractors from the definition of "physician" for the purpose of the Medicaid program.

Assertive community treatment and intensive home-based mental health services

(R.C. 5111.022)

Under current law, the state Medicaid plan must include the provision of specified mental health services when provided by community mental health facilities that have quality assurance programs accredited by the Joint Commission on Accreditation of Healthcare Organizations or certified by the Department of Mental Health or Department of ODJFS. Those services include partial hospitalization mental health services of three to 14 hours per service day, rendered by persons directly supervised by a mental health professional. The bill requires the Director of ODJFS to seek federal approval to include assertive community treatment and intensive home-based mental health services in the community mental health component of Medicaid. The Director is required to seek the federal approval not later than May 1, 2004.

The bill also requires the Director to adopt rules, on receipt of the federal approval, establishing statewide access and acuity standards for partial hospitalization and for assertive community treatment and intensive home-based mental health services provided under the community mental health Medicaid component. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The Director is required to consult with the Department of Mental Health in adopting the rules.

Mental health and alcohol and drug addiction services

(R.C. 340.03, 5101.11, 5101.022, 5111.025, 5111.911, 5111.912, 5111.913, and 5119.61)

Under current law, reimbursement for community mental health services covered by Medicaid is based on the prospective cost of providing the services. The bill eliminates that requirement. The bill instead permits ODJFS to adopt rules modifying or establishing a new manner in which community mental health facilities and providers of alcohol and drug addiction services are paid under Medicaid. The bill specifies that the Director's authority in this regard is not limited by existing state rules that govern the way Medicaid pays for mental health and alcohol and drug addiction services, regardless of what state agency adopted the rules.

Current law requires that a contract between ODJFS and the Department of Mental Health specify (1) that the Department of Mental Health and boards of alcohol, drug addiction, and mental health services must provide state and local matching funds for reimbursement of mental health services and (2) how community mental health facilities will be paid for providing mental health services. The bill provides that any contract ODJFS enters into with the Department of Mental Health or Department of Alcohol and Drug Addiction Services regarding a Medicaid component is subject to the approval of the Director of Budget and Management. Additionally, any such contract must require or specify the following:

(1) In the case of a contract with the Department of Mental Health, that the Department of Mental Health and boards of alcohol, drug addiction, and mental health services comply with a requirement the bill establishes for the Department of Mental Health and boards to pay the nonfederal share of any Medicaid payment to a provider of services under the component, or aspect of the component, the Department of Mental Health administers;

(2) In the case of a contract with the Department of Alcohol and Drug Addiction Services, that the Department of Alcohol and Drug Addiction Services and boards of alcohol, drug addiction, and mental health services comply with a requirement the bill establishes for the Department of Alcohol and Drug Addiction Services to pay the nonfederal share of any Medicaid payment to a provider of services under the component, or aspect of the component, the Department of Alcohol and Drug Addiction Services administers;

(3) How providers will be paid for providing the services;

(4) The Department of Mental Health's or Department of Alcohol and Drug Addiction Services' responsibilities for reimbursing providers, including program oversight and quality assurance.

Medicaid reimbursement of long-term care services

Background

Current law requires the Ohio Department of Job and Family Services (ODJFS) to pay the reasonable costs of services that a nursing facility or intermediate care facility for the mentally retarded (ICF/MR) with a Medicaid provider agreement provides to Medicaid recipients.[73] The amount ODJFS pays a nursing facility or ICF/MR is determined by formulas established in the Revised Code. Nursing facility and ICF/MR services are divided into four different categories, referred to in state law as cost centers. Each cost center has its own Medicaid reimbursement formula. The four cost centers are capital, direct care, other protected, and indirect care costs.

Capital costs are the costs of ownership and nonextensive renovation. Cost of ownership covers the actual expense incurred for (1) depreciation and interest on capital assets that cost $500 or more per item, (2) amortization and interest on land improvements and leasehold improvements, (3) amortization of financing costs, and (4) with certain exceptions, lease and rent of land, buildings, and equipment. Costs of nonextensive renovation covers the actual expense incurred for depreciation or amortization and interest on renovations that are not extensive.

Direct care costs include costs for (1) certain staff, including nurses, nurse aides, medical directors, and respiratory therapists, (2) purchased nursing services, (3) quality assurance, (4) training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or costs for self-insurance claims, (5) consulting and management fees related to direct care, and (6) allocated direct care home office costs. In the case of an ICF/MR, direct care costs also include the facility's costs for physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech therapists, and audiologists.

Other protected costs are costs for medical supplies; real estate, franchise, and property taxes; natural gas, fuel oil, water, electricity, sewage, and refuse and

---

[73] *A cost is reasonable if it is an actual cost that is appropriate and helpful to develop and maintain the operation of patient care facilities and activities and does not exceed what a prudent buyer pays for a given item or services. Reasonable costs may vary from provider-to-provider and from time-to-time for the same provider.*

hazardous medical waste collection; allocated other protected home office costs; and any additional costs included in ODJFS rules.

Indirect care costs are all reasonable costs other than direct care costs, other protected costs, or capital costs. This includes costs of habilitation supplies, pharmacy consultants, medical and habilitation records, program supplies, incontinence supplies, food, dietary supplies and personnel, housekeeping, security, administration, liability and property insurance, travel, dues, license fees, subscriptions, legal services, accounting services, minor equipment, maintenance and repairs, help-wanted advertising, informational advertising, and consumer satisfaction survey fees.

Reimbursement formula removed from the Revised Code

(R.C. 5111.02, 5111.20, 5111.21, 5111.22, 5111.221 (repealed), 5111.23 (repealed), 5111.235 (repealed), 5111.24 (repealed), 5111.241 (repealed), 5111.25 (renumbered 5111.27), 5111.251 (repealed), 5111.255 (repealed), 5111.257 (repealed), 5111.26 (renumbered 5111.23), 5111.261 (repealed), 5111.262 (repealed), 5111.264 (repealed), 5111.27 (repealed), 5111.28, 5111.29 (renumbered 5111.31), 5111.291 (repealed), 5111.32, 5111.33 (renumbered 5111.29); ancillary sections: 127.16, 173.20, 173.21, 173.55, 3722.16, 5111.03, 5111.06, 5111.99, 5123.051, and 5123.199)

The bill eliminates the requirement that ODJFS pay the reasonable costs of services a nursing facility or ICF/MR with a Medicaid provider agreement provides to Medicaid recipients. The bill removes from the Revised Code the formulas for making Medicaid payments to nursing facilities and ICFs/MR and requires that a Medicaid provider agreement contain a provision requiring ODJFS to make payments to nursing facilities and ICFs/MR as provided in rules current law authorizes the Director of ODJFS to adopt.

The bill also removes from the Revised Code certain procedures to be followed in determining nursing facility and ICF/MR Medicaid reimbursement rates, including procedures for desk reviews and audits of cost reports, time frames for making calculations, and reconsideration of rates. In the place of statutory procedures, the bill requires ODJFS to adopt rules regarding cost reports, administrative reviews, final fiscal audits, exception reviews, and the collection of overpayments identified in findings made pursuant to an administrative review, final fiscal audit, or exception review. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

Reimbursement rate frozen for fiscal years 2004 and 2005

(Sections 142.01 and 142.02)

The bill freezes the Medicaid reimbursement rate for nursing facility and ICF/MR services provided to a Medicaid recipient during the period beginning July 1, 2003, and ending June 30, 2005. If a nursing facility or ICF/MR provider has a valid Medicaid provider agreement regarding the nursing facility or ICF/MR on June 30, 2003, the provider's rate is to be the same as the provider's rate in effect on June 30, 2003. If a nursing facility or ICF/MR undergoes a change of operator after June 30, 2003, the entering operator's rate is to be the same as the exiting operator's rate that is in effect on the day before the effective date of the entering operator's provider agreement.[74] If the nursing facility or ICF/MR both obtains initial certification as a nursing facility or ICF/MR and begins participation in the Medicaid program after June 30, 2003, the provider's rate is to be the median of all rates paid to nursing facilities or ICFs/MR on June 30, 2003. If one or more Medicaid certified beds are added to a nursing facility or ICF/MR after June 30, 2003, the provider's rate for the added beds is to be the same as the provider's rate for the Medicaid certified beds that are in the nursing facility or ICF/MR on the day before the new beds are added.

For the purpose of calculating overpayments, ODJFS is required to apply an audit adjustment to a cost report that covers a period ending December 31, 2001, to the rate ODJFS pays a provider of nursing facility or ICF/MR services to a Medicaid recipient during the period beginning July 1, 2002, and ending June 30, 2005.

Nursing Facility Stabilization Fund

(R.C. 3721.56 and 3721.561; Section 132.13)

The Nursing Facility Stabilization Fund is created under current law. The Fund consists of a percentage of the revenue generated from a franchise permit fee on long-term care beds in nursing homes and hospitals. The percentage of the revenue generated by the fee that goes to the Fund is 76.74.[75]

Current law requires that money in the Fund be used to make Medicaid payments to each nursing facility (1) in accordance with current law governing the

---

[74] *See "**Change of operator, closure, and voluntary termination and withdrawal**" below.*

[75] *The remainder of the amount generated by the franchise permit fee goes to the Home and Community-Based Services for the Aged Fund, which is used for the Medicaid Program, including PASSPORT, and the Residential State Supplement Program.*

reimbursement rate formulas, (2) for each Medicaid day in fiscal years 2003, 2004, and 2005 in an amount equal to 76.74% of the franchise permit fee the nursing facility pays for the fiscal year that ODJFS makes the payment divided by the nursing facility's inpatient days for the calendar year preceding the calendar year in which that fiscal year begins,[76] and (3) for fiscal years 2003, 2004, and 2005 in an amount equal to $2.25 per Medicaid day for the purpose of enhancing quality of care. The bill provides instead that money in the Fund be used to make Medicaid payments to nursing facilities.

Recalculation of rate

(R.C. 5111.28)

Current law requires ODJFS to recalculate a nursing facility or ICF/MR provider's Medicaid reimbursement rate if certain actions result in a determination that the provider has received a higher rate than the provider is entitled to receive. The actions for which a recalculation may be required are a cost report being properly amended, ODJFS making a finding based on an exception review of resident assessment information after the effective date of the rate for direct care costs that is based on the assessment information, or ODJFS making a finding based on an audit.[77]

The bill provides that these actions require a rate recalculation if the actions result in a determination that the provider has received a higher rate than the provider was entitled to receive for services provided in a fiscal year preceding fiscal year 2006 or, to the extent provided for in rules the bill permits the Director of ODJFS to adopt, fiscal year 2006 or thereafter. The bill also provides that an action that may lead to a recalculation includes ODJFS making a finding based on an administrative review or final fiscal audit, rather than an audit.

Submission of assessment information

(R.C. 5111.231; ancillary sections: 173.57, 5101.75, and 5111.204)

Under current law, ODJFS is required to determine case-mix scores for each resident of a nursing facility or ICF/MR using, in part, a resident assessment

---

[76] *"Medicaid day" means all days during which a resident who is a Medicaid recipient occupies a bed in a nursing facility that is included in the facility's certified capacity under Medicaid. Therapeutic or hospital leave days for which payment is made are considered Medicaid days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days.*

[77] *See "**Submission of assessment information**" below.*

instrument.[78] The bill removes from the Revised Code the requirement that ODJFS determine case-mix scores but retains a requirement that nursing facilities and ICFs/MR submit complete assessment information for each resident not later than 15 days after the end of each calendar quarter. Current law requires nursing facilities to submit the information to ODJFS. The bill requires nursing facilities to submit the information to the Department of Health and, if required by ODJFS rules, ODJFS. ICFs/MR continue to be required to submit the information to ODJFS.

ODJFS is prohibited under current law from assigning a nursing facility a quarterly average case-mix score due to late submission of corrections to the assessment information unless the nursing facility fails to submit the corrections before the earlier of the 81st day after the end of the calendar quarter to which the information pertains or the deadline for submission of the corrections established by federal regulations. The bill provides instead that ODJFS may not assign a nursing facility a quarterly average case-mix score due to late submission of corrections unless the nursing facility fails to submit the corrections before the earlier of the 46th day after the end of the day ODJFS provides the nursing facility a preliminary facility score calculation or the deadline established by federal regulations. The bill provides that ODJFS may provide preliminary facility score calculations electronically.

Whereas current law permits the Director of ODJFS to adopt rules governing the submission of resident assessment information, the bill requires the Director to adopt such rules. The bill eliminates a provision that permits rules establishing procedures for facilities to correct assessment information to prohibit nursing facilities and ICFs/MR from submitting corrections, for the purpose of calculating its annual average case-mix score, after a certain amount of time.[79]

Therapy costs

(R.C. 5111.263 (renumbered 5111.30))

Current law provides that, with a certain exception, costs of therapy are not allowable costs for nursing facilities for the purpose of determining Medicaid

---

[78] The case-mix scores are used in determining a nursing facility's or ICF/MR's Medicaid reimbursement rate for direct care costs.

[79] For ICFs/MR, the time is two calendar quarters after the end of the quarter to which the information pertains or, if the information pertains to the quarter ending the 31st day of December, after the 31st day of the following March. For nursing facilities, the time is the earlier of the time applicable to ICFs/MR or the deadline established by federal regulations.

reimbursement rates. The exception is that a nursing facility's reasonable costs for rehabilitative, restorative, or maintenance therapy services rendered to residents by nurses or nurse aides, and the facility's overhead costs to support provision of therapy services, are allowable costs for determining reimbursement rates. The bill eliminates the exception with the result that no costs of therapy are allowable costs for the purpose of determining nursing facilities' reimbursement rates.

Medicaid provider agreements

(R.C. 5111.20, 5111.21, 5111.22, 5111.221 (new enactment), 5111.30 (renumbered 5111.224), 5111.31 (renumbered 5111.222), and 5111.32 (renumbered 5111.223); ancillary sections: 5101.75 and 5111.99)

One condition for a nursing facility or ICF/MR to obtain Medicaid payments for providing services to Medicaid recipients is for the facility to enter into a Medicaid provider agreement with ODJFS. The bill provides that the provider agreement is between an operator of a nursing facility or ICF/MR and ODJFS. "Operator" is defined by the bill as a person or governmental entity responsible for the daily operating and management decisions for a nursing facility or ICF/MR.

Current law provides that one of the agreements a nursing facility or ICF/MR must make under a Medicaid provider agreement is to keep records relating to a cost reporting period for the greater of seven years after the cost report is filed or, if ODJFS issues an audit report in accordance with state law governing audits of cost reports, six years after all appeal rights relating to the audit report are exhausted. The bill requires instead that a Medicaid provider agreement require a nursing facility or ICF/MR operator to agree to keep records relating to a cost reporting period for the greater of seven years after the cost report is filed or, if ODJFS issues a final fiscal audit report in accordance with ODJFS rules, six years after all appeal rights relating to the final fiscal audit report are exhausted.

The bill provides that an operator of a nursing facility or ICF/MR may enter into Medicaid provider agreements for more than one nursing facility or ICF/MR.

Copies of Medicaid rules

(R.C. 5111.22)

The bill eliminates a requirement of current law that ODJFS provide copies of proposed and final Medicaid rules to nursing facilities and ICFs/MR that participate in Medicaid.

Change of operator, closure, and voluntary termination and withdrawal

Current law requires the owner of a nursing facility or ICF/MR operating under a Medicaid provider agreement to provide written notice to ODJFS at least 45 days before entering into a contract of sale for the facility or voluntarily terminating participation in Medicaid. The bill eliminates this requirement and establishes new requirements for a nursing facility or ICF/MR that undergoes a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation.

Change of operator

(R.C. 5111.20)

A change of operator occurs when an entering operator becomes the operator of a nursing facility or ICF/MR in the place of the exiting operator.[80] Actions that constitute a change of operator include, but are not limited to, the following:

(1) A change in an exiting operator's form of legal organization, including the formation of a partnership or corporation from a sole proprietorship;

(2) A transfer of all the exiting operator's ownership interest in the operation of the nursing facility or ICF/MR to the entering operator, regardless of whether ownership of any or all of the real property or personal property associated with the facility is also transferred;

(3) A lease of the nursing facility or ICF/MR to the entering operator or the exiting operator's termination of the lease;

(4) If the exiting operator is a partnership, dissolution of the partnership;

(5) If the exiting operator is a partnership, a change in composition of the partnership unless the change does not cause the partnership's dissolution under

[80] *The bill defines "entering operator" as the individual or private or governmental entity that will become the operator of a nursing facility or ICF/MR when a change of operator occurs. "Exiting operator" is defined as (1) an operator that will cease to be the operator of a nursing facility or ICF/MR on the effective date of a change of operator, (2) an operator that will cease to be the operator of a nursing facility or ICF/MR on the effective date of a facility closure, (3) an operator of an ICF/MR that is undergoing or has undergone a voluntary termination, or (4) an operator of a nursing facility that is undergoing or has undergone a voluntary withdrawal of participation. The "operator" is the individual or private or governmental entity responsible for the daily operating and management decisions for a nursing facility or ICF/MR.*

state law or the partners agree that the change does not constitute a change in operator;

(6) If the operator is a corporation, dissolution of the corporation, a merger of the corporation with another corporation that is the survivor of the merger, or a consolidation of one or more other corporations to form a new corporation.

The following, alone, do not constitute a change of operator:

(1) A contract for an entity to manage a nursing facility or ICF/MR as the operator's agent, subject to the operator's approval of daily operating and management decisions;

(2) A change of ownership, lease, or termination of a lease of real or personal property associated with a nursing facility or ICF/MR if an entering operator does not become the operator in place of an exiting operator;

(3) If the operator is a corporation, a change of one or more members of the corporation's governing body or transfer of ownership of one or more shares of the corporation's stocks, if the same corporation continues to be the operator.

Facility closure

(R.C. 5111.20)

The bill defines "facility closure" as discontinuance of the use of the building, or part of the building, that houses the facility as a nursing facility or ICF/MR that results in the relocation of all of the facility's residents. A facility closure occurs regardless of any of the following:

(1) The operator completely or partially replacing the facility by constructing a new facility or transferring the facility's license to another facility;

(2) The facility's residents relocating to another of the operator's facilities;

(3) Any action the Department of Health takes regarding the facility's certification under federal Medicaid law that may result in the transfer of part of the facility's survey findings to another of the operator's facilities;

(4) Any action the Department of Health takes regarding the facility's license as a nursing home;

(5) Any action the Department of Mental Retardation and Developmental Disabilities takes regarding the facility's license as a residential facility.

Voluntary termination and withdrawal of participation

(R.C. 5111.20)

The bill provides that a voluntary termination is an operator's voluntary election to terminate the participation of an ICF/MR in the Medicaid program but to continue to provide service of the type provided by a residential facility for individuals with mental retardation or a developmental disability. "Voluntary withdrawal of participation" is defined as an operator's voluntary election to terminate the participation of a nursing facility in the Medicaid program but to continue to provide service of the type provided by nursing facilities.

Notice of facility closure or voluntary termination or withdrawal

(R.C. 3721.19, 5111.20, and 5111.24 (new enactment))

The bill requires an exiting operator or owner of a nursing facility or ICF/MR participating in the Medicaid program to provide ODJFS written notice of a facility closure, voluntary termination, or voluntary withdrawal of participation. The notice is due not less than 90 days before the effective date of the closure or voluntary termination or withdrawal. The effective date of a facility closure is the last day that the last of the nursing facility or ICF/MR residents resides in the facility. The effective date of a voluntary termination is the day the ICF/MR ceases to accept Medicaid patients. The effective date of a voluntary withdrawal of participation is the day the nursing facility ceases to accept new Medicaid patients other than the individuals who reside in the nursing facility on the day before the effective date of the voluntary withdrawal.

The notice to ODJFS must include all of the following:

(1) The name of the exiting operator and, if any, the exiting operator's authorized agent;

(2) The name of the nursing facility or ICF/MR that is the subject of the closure or voluntary termination or withdrawal;

(3) The exiting operator's Medicaid provider agreement number;

(4) The effective date of the closure or voluntary termination or withdrawal;

(5) The signature of the exiting operator's or owner's representative.

Notice of change of operator

(R.C. 5111.20 and 5111.25 (new enactment))

An exiting operator or owner and entering operator are required to provide ODJFS written notice of a change of operator if the nursing facility or ICF/MR participates in the Medicaid program and the entering operator seeks to continue the facility's participation.[81] The written notice must be provided to ODJFS not later than 45 days before the effective date of the change of operator if the change does not entail the relocation of residents. The written notice is due not later than 90 days before the effective date of the change of operator if the change entails the relocation of residents. The effective date of a change of operator is the day the entering operator becomes the operator. The notice must include all of the following:

(1) The name of the exiting operator and, if any, the exiting operator's authorized agent;

(2) The name of the nursing facility or ICF/MR that is the subject of the change of operator;

(3) The exiting operator's Medicaid provider agreement number;

(4) The name of the entering operator;

(5) The effective date of the change of operator;

(6) The manner in which the entering operator becomes the facility's operator, including through sale, lease, merger, or other action;

(7) If the manner in which the entering operator becomes the facility's operator involves more than one step, a description of each step;

(8) Written authorization from the exiting operator or owner and entering operator for ODJFS to process a Medicaid provider agreement for the entering operator;

---

[81] *The bill defines "owner" as an individual or private or governmental entity that has at least 5% ownership or interest, either directly, indirectly, or in any combination, in any of the following regarding a nursing facility or ICF/MR: (1) the land on which the facility is located, (2) the structure in which the facility is located, (3) any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure on or in which the facility is located, or (4) any lease or sublease of the land or structure on or in which the facility is located.*

(9) The signature of the exiting operator's or owner's representative.

The entering operator is required to include a completed application for a Medicaid provider agreement with the notice. Also, the entering operator must attach all the proposed or executed leases, management agreements, merger agreements and supporting documents, and sales contracts and supporting documents relating to the facility's change of operator.

Determination of potential Medicaid debt

(R.C. 5111.26 (new enactment))

On notification of a facility closure, voluntary termination, voluntary withdrawal of participation, or change of operator, ODJFS is required by the bill to determine the amount of any overpayments made under Medicaid to the exiting operator, including overpayments the exiting operator disputes, and other actual and potential debts the exiting operator owes or may owe to ODJFS and the United States Centers for Medicare and Medicaid Services (CMS). In making the determination, ODJFS is required to include all of the following that ODJFS determines is applicable:

(1) Refunds for excess depreciation due to ODJFS under current law;

(2) Interest owed to ODJFS and CMS;

(3) Final civil monetary and other penalties for which all right of appeal has been exhausted;

(4) Third-party liabilities;

(5) Money owed ODJFS and CMS from any outstanding final fiscal audit, including a final fiscal audit for the last fiscal year or portion thereof in which the exiting operator participated in Medicaid.

If ODJFS is unable to make the determination before the effective date of the entering operator's provider agreement or the effective date of the closure or voluntary termination or withdrawal, ODJFS is required to make a reasonable estimate of the overpayments and other debts for the period.[82] ODJFS must make the estimate using information available to ODJFS, including prior determinations of overpayments and other debts.

[82] *See "**Provider agreement with entering operator**" below.*

Withholdings and security

(R.C. 5111.25 (renumbered 5111.27) and 5111.261 (new enactment))

Under current law, ODJFS is required to provide for a bank, trust company, or savings and loan association to hold in escrow the amount of the last two monthly Medicaid payments to a nursing facility or ICF/MR before a sale or termination of participation in Medicaid or, if the owner fails, within the required time, to notify ODJFS before entering into a contract of sale for the nursing facility or ICF/MR, the amount of the first two monthly payments made to the facility after ODJFS learns of the contract. However, if the amount the owner will be required to refund to ODJFS is likely to be less than the amount of the two monthly payments otherwise put into escrow, ODJFS must do either of the following:

(1) Withhold the amount of the owner's last monthly payment or, if the owner fails, within the required time, to notify ODJFS before entering into a contract of sale for the nursing facility or ICF/MR, the amount of the first monthly payment made after ODJFS learns of the contract;

(2) If the owner owns other facilities that participate in Medicaid, obtain a promissory note in an amount sufficient to cover the amount likely to be refunded.

The bill requires that ODJFS, instead, withhold the greater of the following from payment due an exiting operator under Medicaid:

(1) The total amount of any Medicaid overpayments to the exiting operator, including overpayments the exiting operator disputes, and other actual and potential debts, including any unpaid penalties, the exiting operator owes or may owe to ODJFS and CMS under Medicaid;

(2) An amount equal to the average amount of monthly payments to the exiting operator under Medicaid for the 12-month period immediately preceding the month that includes the last day the exiting operator's provider agreement is in effect or, in the case of a voluntary withdrawal of participation, the effective date of the voluntary withdrawal.

ODJFS is permitted to transfer the amount withheld from the exiting operator to an escrow account with a bank, trust company, or savings and loan association. If payment due an exiting operator under Medicaid is less than the amount ODJFS is required to withhold, ODJFS must require the exiting operator to provide the difference in the form of a security. ODJFS is required to release to the exiting operator the actual amount withheld if ODJFS allows the exiting operator to provide ODJFS a security in the amount ODJFS is required to

withhold, less any of that amount provided to ODJFS in the form of a security. The security must be in either or both of the following forms:

(1) In the case of a change of operator, the entering operator's nontransferable, unconditional, written agreement to pay ODJFS any debt the exiting operator owes ODJFS under Medicaid;[83]

(2) In the case of a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation, a form of collateral or security acceptable to ODJFS that is at least equal to the amount ODJFS is required to withhold, less any amount ODJFS has received through actual withholding or one or more forms of security, and is payable to ODJFS if the exiting operator fails to pay debt owed ODJFS under Medicaid within 15 days of receiving ODJFS's written demand for payment of the debt.

Final cost report

(R.C. 5111.263 (new enactment), 5111.264 (new enactment), and 5111.265)

The bill requires an exiting operator to file with ODJFS a cost report unless ODJFS waives this requirement.[84] The cost report is due not later than 90 days after the last day the exiting operator's Medicaid provider agreement is in effect or, if the exiting operator voluntarily withdraws from Medicaid participation, the effective date of the voluntary withdrawal. The cost report must cover the period that begins with the day after the last day covered by the operator's most recent previous cost report required under current law and ends on the last day the operator's provider agreement is in effect or the effective date of the voluntary withdrawal.[85] The cost report must include, as applicable, the sale price of the nursing facility or ICF/MR, a final depreciation schedule that shows which assets

---

[83] *If an entering operator provides such security, the entering operator is required by the bill to also provide ODJFS a list of the entering operator's assets and liabilities. ODJFS is required to determine whether the assets are sufficient for the purpose of the security.*

[84] *The bill gives ODJFS sole discretion over whether to waive the cost report requirement for an exiting operator.*

[85] *Current law requires nursing facilities and ICFs/MR to file with ODJFS an annual cost report covering the previous calendar year or the portion of the previous calendar year during which the facility participated in Medicaid. The bill eliminates provisions of the law governing the cost report that concern Medicaid reimbursement rates for nursing facilities and ICFs/MR.*

are transferred to the buyer and which assets are not, and any other information ODJFS requires.

All payments under Medicaid for the period the cost report covers are deemed overpayments until the date ODJFS receives the properly completed cost report if the exiting operator fails to file the cost report within the required time. ODJFS is permitted to impose on the exiting operator a penalty of $100 for each calendar day the properly completed cost report is late. The penalty is subject to an adjudication conducted in accordance with the Administrative Procedure Act.

The bill prohibits ODJFS from providing an exiting operator final payment under Medicaid until ODJFS receives all properly completed cost reports required by current law and the bill.

Determination of actual Medicaid debt

(R.C. 5111.266)

ODJFS is required to determine the actual amount of debt an exiting operator owes ODJFS under Medicaid by completing all final fiscal audits not already completed and performing all other appropriate actions ODJFS determines to be necessary. ODJFS must issue a report on the actual amount of debt not later than 90 days after the date the exiting operator files the properly completed cost report required by the bill with ODJFS, or, if ODJFS waives the cost report requirement, 180 days after the date ODJFS waives the cost report. The report must include ODJFS's findings and the amount of debt ODJFS determines the exiting operator owes ODJFS and CMS under Medicaid.[86]

Release of withholdings and security and collection of debt

(R.C. 5111.267, 5111.268, and 5111.269)

The bill establishes time frames for ODJFS to release the amount withheld from an exiting operator and the security provided to ODJFS. ODJFS must

[86] *Only the parts of the report concerning the following are subject to an adjudication conducted in accordance with the Administrative Procedure Act: (1) adverse findings that ODJFS makes pursuant to a final fiscal audit, (2) adverse findings that result from an exception review of resident assessment information after the effective date of a facility's rate that is based on the assessment information, and (3) penalties for failure to file the cost report required by the bill; failure to provide written notice of a facility closure, voluntary termination or withdrawal, or change of operator; or failure to furnish documentation requested during a final fiscal audit regarding a service provided before fiscal year 2006.*

release the withholdings and security 91 days after the date the exiting operator files a properly completed cost report required by the bill unless ODJFS issues a report on the exiting operator's actual Medicaid debt not later than 90 days after the date the cost report is filed. If the cost report is waived, the release must be made 181 days after the date ODJFS issues the waiver unless ODJFS issues the report on actual Medicaid debt not later than 180 days after the date ODJFS waives the cost report. If ODJFS issues the report on actual Medicaid debt not later than 90 days after the cost report is filed or 180 days after the date the cost report is waived, the release must be made not later than 15 days after the exiting operator agrees to a final fiscal audit resulting from the report.

The amount released is to be reduced by any amount the exiting operator owes ODJFS and CMS under Medicaid. If the actual amount withheld and the security are inadequate to pay the exiting operator's debt to ODJFS and CMS or if ODJFS is required to release the withholdings and security before ODJFS is paid the exiting operator's debt, ODJFS must collect the debt from the exiting operator. ODJFS may also collect the debt from the entering operator if ODJFS is unable to collect the entire debt from the exiting operator and the entering operator enters into a Medicaid provider agreement that requires the entering operator to assume the exiting operator's remaining Medicaid debt.[87] ODJFS may collect the remaining debt by withholding the amount due from Medicaid payments to the entering operator. ODJFS is permitted to enter into an agreement with the entering operator under which the exiting operator pays the remaining debt, with applicable interest, in installments from withholdings from the entering operator's Medicaid payments.

ODJFS is permitted, at its sole discretion, to release a withholding and security if an exiting operator submits to ODJFS written notice of a postponement of a change of operator, facility closure, or voluntary termination or withdrawal and the transactions leading to that action are postponed for at least 30 days but less than 90 days after the date originally proposed. ODJFS is required to release a withholding and security if the exiting operator submits to ODJFS written notice of a cancellation or postponement of a change of operator, facility closure, or voluntary termination or withdrawal and transactions leading to that action are canceled or postponed for more than 90 days after the date originally proposed.[88]

---

[87] *See "**Provider agreement with entering operator**" below.*

[88] *After ODJFS receives a written notice regarding cancellation or postponement of a change of operator, facility closure, or voluntary termination or withdrawal, new written notice of a closure or voluntary termination or withdrawal is required if that action is commenced at a future time.*

Refund of excess depreciation

(R.C. 5111.25 (renumbered 5111.27) and 5111.251 (repealed))

An owner that sells a nursing facility or ICF/MR may be required under current law to refund to ODJFS an amount of excess depreciation that ODJFS paid the facility as part of its capital costs for each year the owner has operated the facility under a Medicaid provider agreement.[89] The refund is prorated according to the number of Medicaid patient days for which the nursing facility or ICF/MR has received payment. The amount the owner must refund depends on the number of years the nursing facility or ICF/MR operated under a Medicaid provider agreement. If the nursing facility or ICF/MR is sold after five or fewer years, the refund must be equal to the excess depreciation ODJFS paid the facility. If the nursing facility or ICF/MR is sold after more than five years but less than ten years, the refund must equal the excess depreciation multiplied by 20%, multiplied by the difference between ten and the number of years that the facility was operated under the Medicaid provider agreement. No refund is required if the nursing facility or ICF/MR was operated under the Medicaid provider agreement for ten or more years.

The bill eliminates the provision used to compute the amount of the refund a nursing facility or ICF/MR owner must pay to ODJFS. A nursing facility or ICF/MR owner must refund the amount of excess depreciation prorated according to the number of Medicaid patient days the facility received payment.

Provider agreement with entering operator

(R.C. 5111.251 (new enactment), 5111.252 (new enactment), 5111.253, 5111.254, and 5111.255 (new enactment))

ODJFS is permitted by the bill to enter into a Medicaid provider agreement with an entering operator becoming the operator of a nursing facility or ICF/MR pursuant to a change of operator if the entering operator (1) provides ODJFS a properly completed written notice of the change of operator, (2) furnishes to ODJFS copies of all the fully executed leases, management agreements, merger agreements and supporting documents, and sales contracts and supporting

[89] *A transfer of corporate stock, merger of one corporation into another, or a consolidation does not constitute a sale of a nursing facility or ICF/MR.*

documents relating to the change of operator, and (3) is eligible for Medicaid payments.[90]

The exiting operator is to be considered the operator of the nursing facility or ICF/MR for purposes of Medicaid, including Medicaid payments, until the effective date of the entering operator's provider agreement. The entering operator's provider agreement is to go into effect at 12:01 a.m. on the effective date of the change of operator if ODJFS receives the properly completed written notice of the change of operator within the required time and the entering operator furnishes to ODJFS the required materials not later than ten days after the effective date of the change of operator. The provider agreement is to go into effect at 12:01 a.m. on a date ODJFS determines if either or both of those times frames are not met. If ODJFS is to determine the date the provider agreement is to go into effect, ODJFS must make the determination as follows:

(1) The effective date must give ODJFS sufficient time to process the change of operator, assure no duplicate payments are made, make a required withholding, and withhold the final payment to the exiting operator until 90 days after the exiting operator submits to ODJFS a properly completed cost report or 180 days after ODJFS waives the requirement to submit the cost report.[91]

(2) The effective date must not be earlier than the later of the effective date of the change of operator or the date that the exiting operator or owner and entering operator comply with the requirement to submit a notice of the change of operator.

(3) The effective date must not be later than a certain number of days after the later of the dates under (2) above. The number of days is 45 if the change of operator does not entail the relocation of residents. The number of days is 90 if the change entails the relocation of residents.

The provider agreement must satisfy all of the following requirements:

(1) Comply with all applicable federal laws;

(2) Comply with current law governing provider agreements and all other applicable state laws;

---

[90] *To be eligible for Medicaid payments, a nursing facility or ICF/MR operator must apply for and maintain a valid license to operate, if so required by law, and comply with all applicable state and federal laws.*

[91] *See "**Withholdings and security**" and "**Final cost report**" above.*

(3) Include all the terms and conditions of the exiting operator's provider agreement, including, but not limited to, any plan of correction and compliance with health and safety standards, ownership and financial interest disclosure requirements of federal regulations, civil rights requirements of federal regulations, additional requirements ODJFS imposes, and any sanctions relating to remedies for violation of the provider agreement;

(4) Require the entering operator to assume the exiting operator's remaining debt to ODJFS and CMS that ODJFS is unable to collect from the exiting operator;

(5) Have a different provider agreement number than the exiting operator's provider agreement.

If the entering operator does not agree to a provider agreement that includes all the terms and conditions of the exiting operator's provider agreement or requires the entering operator to assume the exiting operator's remaining Medicaid debt, the entering operator and ODJFS may enter into a provider agreement under current law rather than under the bill. The nursing facility or ICF/MR must obtain certification from the Department of Health and the effective date of the provider agreement cannot precede the date of certification, the effective date of the change of operator, or the date the properly completed written notice of the change of operator is submitted to ODJFS.

Rate adjustment following change of operator

(R.C. 5111.256)

The bill gives the Director of ODJFS permission to adopt rules governing adjustments to the Medicaid reimbursement rate for a nursing facility or ICF/MR that undergoes a change of operator. If adopted, the rules must be adopted in accordance with the Administrative Procedure Act. No rate adjustment resulting from a change of operator may be effective before the effective date of the entering operator's Medicaid provider agreement.

Compliance with federal law on voluntary withdrawal

(R.C. 5111.241 (new enactment))

An operator is required by the bill to comply with federal law regarding restrictions on transfers or discharges of nursing facility residents if the operator's nursing facility undergoes a voluntary withdrawal of participation. That federal law provides that a voluntary withdrawal is not an acceptable basis for the transfer or discharge of residents residing in the facility on the day before the effective date of the voluntary withdrawal and the facility's Medicaid provider agreement is to

continue in effect for such residents.[92] Additionally, the federal law requires that the facility provide notice to each individual who begins to reside in the facility after the voluntary withdrawal that the facility does not participate in Medicaid with respect to that resident and the facility may transfer or discharge the resident from the facility when the resident is unable to pay the charges of the facility.

Licensure determinations do not affect ODJFS's determinations

(R.C. 5111.257 (new enactment))

The bill provides that the Department of Health's or Department of Mental Retardation and Developmental Disabilities' determination that a change of operator has or has not occurred for purposes of licensure as a nursing home or residential facility does not affect ODJFS's determination of whether or when a change of operator occurs or the effective date of an entering operator's Medicaid provider agreement.

Rules

(R.C. 5111.2610)

The Director of ODJFS is permitted to adopt rules to implement the bill's provisions regarding changes of operator, facility closures, and voluntary terminations and withdrawals of participation. If adopted, the rules must be adopted in accordance with the Administrative Procedure Act. The rules must comply with federal law regarding restrictions on transfers or discharges of nursing facility residents in the case of a voluntary withdrawal. The rules may prescribe a Medicaid reimbursement methodology and other procedures that are applicable after the effective date of a voluntary withdrawal that differ from the reimbursement methodology and other procedures that would otherwise apply.

Penalties

(R.C. 5111.28)

Current law authorizes ODJFS to penalize a nursing facility or ICF/MR provider for not furnishing invoices or other documentation that ODJFS requests

[92] *Because the Medicaid provider agreement continues in effect for the residents in the facility before the voluntary withdrawal goes into effect, the facility continues to be subject to federal Medicaid laws regarding those residents as long as they continue to reside in the home. (42 U.S.C.A. 1396r(c)(2)(F).)*

during an audit within 60 days after the request.[93] The bill provides that ODJFS may impose the penalty if the provider fails to furnish invoices or other documentation requested during a final fiscal audit regarding a service provided in a fiscal year preceding fiscal year 2006 or, to the extent provided for in rules the bill permits the Director of ODJFS to adopt, fiscal year 2006 or thereafter.

Current law also authorizes ODJFS to penalize a nursing facility or ICF/MR owner that fails to provide notice of sale of the facility or voluntary termination of Medicaid participation within the required time.[94] The bill provides instead that ODJFS may penalize an exiting operator for failure to provide a properly completed notice of facility closure, voluntary termination or withdrawal of Medicaid participation, or change of operator as required by the bill. The penalty under current law may not exceed the current average bank prime rate plus four percent of the last two monthly payments. The penalty under the bill cannot exceed the current average bank prime rate plus four percent of an amount equal to two times the average amount of monthly Medicaid payments to the exiting operator for the 12-month period immediately preceding the month that includes the last day the exiting operator's provider agreement is in effect or, if the facility undergoes a voluntary withdrawal of participation, the effective date of the voluntary withdrawal.

The bill requires ODJFS to collect any amount a nursing facility or ICF/MR owes ODJFS because of either penalty from the withholding, security, or both that ODJFS makes or requires under the bill if the facility does not continue to participate in Medicaid.[95]

Adjudications

(R.C. 5111.29 (renumbered 5111.31))

Current law provides that the following are subject to an adjudication conducted in accordance with the Administrative Procedure Act:

(1) An audit disallowance that ODJFS makes as the result of an audit of a cost report;

---

[93] The penalty may not exceed the greater of $1,000 per audit or 25% of the cumulative amount by which the costs for which documentation is not furnished increase the total Medicaid payments to the provider during the fiscal year for which the costs are used to establish the reimbursement rate.

*[94] See "**Change of operator, closure, and voluntary termination and withdrawal**" above.*

*[95] See "**Withholdings and security**" above.*

(2) An adverse finding that results from an exception review of resident assessment information conducted after the effective date of a nursing facility's or ICF/MR's Medicaid reimbursement rate that is based on the assessment information;

(3) A penalty ODJFS imposes for failure to furnish invoices or other documentation or to provide notice of a sale or voluntary termination of Medicaid participation.

The bill provides that an adverse finding that ODJFS makes pursuant to a final fiscal audit conducted pursuant to rules, rather than an audit disallowance, is subject to an adjudication. A penalty imposed for failure to submit the cost report required by the bill is also subject to an adjudication.[96] So is a penalty imposed for failure to provide a properly completed notice of facility closure, voluntary termination or withdrawal of Medicaid participation, or change of operator as required by the bill.[97]

Medicare certification

(R.C. 5111.21)

Under current law, a nursing facility that elects to obtain and maintain eligibility for payments under Medicaid is permitted to qualify all or part of the facility in the Medicare program. The bill provides instead that an operator of a nursing facility that elects to obtain and maintain Medicaid eligibility is required to qualify all of the facility's Medicaid-certified beds in the Medicare program. The Director of ODFJS is given authority to adopt rules to establish the time frame in which a nursing facility must comply with the requirement. If adopted, the rules must be adopted in accordance with the Administrative Procedure Act.

Nursing Facility Reimbursement Study Council

(R.C. 5111.34; Section 146.046)

The Nursing Facility Reimbursement Study Council is created by current law. It consists of the following 17 members: the Directors of ODJFS, Health, and Aging; the Deputy Director of the Office of Ohio Health Plans within ODJFS; an employee of the Governor's office; six members of the General Assembly; and six representatives of nursing facility organizations. The Council's duties are to review, on an ongoing basis, the Medicaid reimbursement system for nursing

---

[96] *See "**Final cost report**" above.*

[97] *See "**Penalties**" above.*

facilities established by current law, recommend any changes it determines are necessary, and periodically report its activities, findings, and recommendations to the Governor, Speaker of the House of Representatives, and President of the Senate.

The bill adds an 18th member to the Council; a representative of Medicaid recipients residing in a nursing facility. The Governor is required to appoint this member not later than 90 days after the effective date of this provision of the bill. The bill also provides that the Council's only duty is to advise ODJFS in the development of a new method for reimbursing nursing facilities under Medicaid to be implemented beginning fiscal year 2006. The Council is abolished by the bill effective July 1, 2005.

ICF/MR franchise permit fee

(R.C. 5112.31; Section 146.25)

Current law imposes a franchise permit fee on each ICF/MR for the purpose of generating revenue for home and community-based services for individuals with mental retardation or a developmental disability. In fiscal year 2003, the amount of the fee is $9.63 multiplied by the product of (1) the number of Medicaid-certified beds on the first day of May of the calendar year in which the fee is determined and (2) the number of days in the fiscal year beginning on the first day of July of the same calendar year.

ODJFS is required by current law to adjust the fee for each fiscal year in accordance with a composite inflation factor established in rules. The bill provides that the fee is to remain at $9.63 per bed per day for fiscal years 2004 and 2005 and adjusted in accordance with the composite inflation factor for subsequent fiscal years.

Medicaid waivers for alternatives to ICF/MR placement

(R.C. 5111.87)

Federal law allows the Secretary of Health and Human Services to waive requirements for a state's Medicaid program on application by the state. A waiver under division (c) of § 1915 of the Social Security Act (42 U.S.C. 1396n) allows a state to include under Medicaid services provided in a home or community setting that are normally provided in a nursing home or other institution. (42 Code of Federal Regulations 430.25(c)(2).)

Under current law the Director of ODJFS may apply to the United States Secretary of Health and Human Services for Medicaid waivers under which home and community-based services are provided to individuals with mental retardation

and other developmental disabilities as an alternative to placement in an ICF/MR. The bill permits the Director of Mental Retardation and Developmental Disabilities to request that the Director of ODJFS apply for these waivers.

Replacing ICF/MR services with waiver services

(Primary R.C. 5111.88; R.C. 5111.23, 5111.97, 5111.971, 5111.972, and 5126.12; Section 143)

The bill requires the Director of ODJFS to apply for a Medicaid waiver under which the individuals with mental retardation or a developmental disability who would qualify for services in an ICF/MR receive instead home and community-based services. It also requires the director to submit an amendment to the state Medicaid plan to terminate the ICF/MR service.

The bill requires ODJFS to contract with the Department of Mental Retardation and Developmental Disabilities for the administration of the new home and community-based services waiver.

Ohio Access Success Project

(R.C. 5111.206)

The Ohio Access Success Project, which ODJFS is permitted to establish, is authorized by uncodified (or "temporary") law. The bill includes the uncodified section that authorizes the project (Section 62.18 of Am. Sub. H.B. 94 of the 124th General Assembly) in the Revised Code.

To the extent funds are available, the Ohio Access Success Project may provide assistance to help Medicaid recipients make the transition from residing in a nursing facility to residing in a community setting.

Under the bill, to be eligible for benefits under the Ohio Access Success Project, a Medicaid recipient must satisfy all of the following requirements:

(1) At the time of applying for the benefits, be a recipient of Medicaid-funded nursing facility care;

(2) Have resided continuously in a nursing facility since at least January 1, 2002;[98]

(3) Need the level of care provided by nursing facilities;

[98] *Under the existing uncodified provision the recipient must have resided continuously in a nursing facility since January 1, 2001.*

(4) For participation in a non-Medicaid program, receive services to remain in the community with a projected cost not exceeding 80% of the average monthly Medicaid cost of individual Medicaid recipients' nursing facility care;

(5) For participation in a program established as part of a home and community-based services program that is based on a Medicaid waiver, meet waiver enrollment criteria.

Benefits provided under the Ohio Access Success Project may include payment of (1) the first month's rent in a community setting, (2) rental deposits, (3) utility deposits, (4) moving expenses, and (5) other expenses not covered by Medicaid that facilitate a Medicaid recipient's move from a nursing facility to a community setting. No person is to receive more than $2,000 worth of benefits under the project if the project is a non-Medicaid program.

The Director of ODJFS may create Medicaid home and community-based services waiver programs to serve individuals who are eligible for participation in the Ohio Access Success Project. The Director may adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement the programs.

Ohio Home Care Program

(R.C. 5111.97)

ODJFS currently operates the Ohio Home Care Program pursuant to rule. The Program serves three categories of Medicaid recipients: (1) those under age 60 whose medical condition or functional abilities would otherwise require them to live in a nursing home, (2) those of any age whose chronic, unstable medical condition would otherwise require long-term hospitalization or institutional placement, and (3) those of any age who have both a developmental disability and a physical or cognitive impairment that would otherwise require institutional placement. Individuals may be eligible for one of several benefit packages offered by ODJFS depending on the level of care (hours of home care service, number of nursing and skilled therapy visits, and so on) that a recipient needs per week.[99] The benefit package for recipients who receive no more than 14 hours of services per week is the Core package. Core Plus provides services to those who receive more than 14 hours per week.

The bill authorizes the Director of ODJFS to request a waiver from the United States Secretary of Health and Human Services under which two Medicaid programs for home and community-based services may be created and

[99] *O.A.C. 5101:3-12-03.*

implemented to replace the Ohio Home Care Program. The bill permits the Director to specify the following regarding the two replacement programs:

(1) That one of the replacement programs will provide home and community-based services to individuals in need of nursing facility care, including individuals enrolled in the Ohio Home Care Program;

(2) That the other replacement program will provide services to individuals in need of hospital care, including individuals enrolled in the Ohio Home Care Program;

(3) That there will be a maximum number of individuals who may be enrolled in the replacement programs in addition to the number of individuals transferred from the Ohio Home Care Program;

(4) That there will be a maximum amount ODJFS may expend each year for each individual enrolled in the replacement programs;

(5) That there will be a maximum aggregate amount ODJFS may expend each year for all individuals enrolled in the replacement programs;

(6) Any other requirement the Director selects for the replacement programs.

If the Secretary grants the Director's request, the Director may create and implement the replacement programs in accordance with the waiver. The replacement programs are to be administered by ODJFS. As the replacement programs are implemented, the bill requires the Director to reduce the maximum number of individuals who may be enrolled in the Ohio Home Care Program by the number of individuals who are transferred to the replacement programs. When all individuals who are eligible to be transferred to the replacement programs have been transferred, the Director may submit to the Secretary an amendment to the state Medicaid plan to eliminate the Ohio Home Care Program.

Personal care services waiver for residential care facility residents

(R.C. 5111.98, 5111.981, and 5111.982)

The bill permits the Director of ODJFS to apply to the United States Secretary of Health and Human Services for a Medicaid waiver under which home- and community-based services are provided in the form of personal care services to individuals in residential care facilities.[100] If the waiver is approved,

[100] *"Residential care facility" is a home that provides accommodations, supervision, and personal care services for unrelated individuals and may provide skilled nursing care*

ODJFS is permitted to establish a personal care services program and enter into an interagency agreement with the Department of Aging to administer the program. ODJFS, or the Department of Aging under an interagency agreement, is authorized to provide under the program personal care services to any Medicaid-eligible person who qualifies for skilled nursing care and is one of the following:[101]

(1) A resident of a nursing facility who desires to move to a residential care facility;[102]

(2) A participant in the PASSPORT program established by the Department of Aging who desires to enter a nursing facility;[103]

(3) A resident of a residential care facility who desires to enter a nursing facility.

If the program is established, ODJFS is required to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) governing the program. If it enters into an interagency agreement with the Department of Aging, ODJFS is required to adopt the rules in consultation with the Department of Aging.

---

only to the limited extent specified in law (R.C. 3721.01 (not in the bill)). "Personal care services" are services, other than skilled nursing care, that are provided to residents of adult care facilities, nursing homes, and residential care facilities, including assisting residents with activities of daily living and with self-administration of medication (R.C. 3721.01, 3722.01 (not in the bill), and 5119.22 (not in the bill)).

[101] *"Skilled nursing care" means services provided to nursing home residents that require special technical skills and knowledge to provide, including: (1) irrigations, catheterizations, application of dressings, and supervision of special diets, (2) administration of medication, and (3) other prescribed treatments (R.C. 3721.01).*

[102] *"Nursing facility" is a type of Medicaid-certified long-term care facility for elderly and disabled individuals who are in need of skilled nursing care. A nursing facility may be a facility that is licensed as a nursing home or is the part of a hospital that provides long-term care.*

[103] *PASSPORT (Preadmission Screening System Providing Options and Resources Today) is a Medicaid waiver program that provides home- and community-based services to persons age 60 or older who otherwise would require nursing facility services. PASSPORT is administered by the Department of Aging pursuant to an interagency agreement with ODJFS (R.C. 173.40 (not in the bill)).*

Criminal records checks for waiver agency employees providing home and community-based waiver services to persons with disabilities through any ODJFS-administered home and community-based waiver services

Initiating the criminal records check

The bill requires the chief administrator of a "waiver agency" to inform each person, at the time of initial application for a position that involves providing "home and community-based waiver services" to a person with a disability, that the person is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted if the person comes under final consideration for employment (R.C. 5111.95(G)). [104]

The chief administrator of a waiver agency is required to request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check with respect to each "applicant."[105] If an applicant for whom a criminal records check request is required does not present proof of having been an Ohio resident for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the Superintendent has requested information about the applicant from the FBI in a criminal records check, the chief administrator must request that the Superintendent obtain information from the FBI as part of the criminal records check of the applicant. Even if an applicant for whom a criminal

---

[104] *"Waiver agency" means a person or government entity that is not certified under the Medicare program and is accredited by the community health accreditation program or the joint commission on accreditation of health care organizations or a company that provides "home and community-based waiver services" to persons with disabilities through any ODJFS-administered home and community-based waiver services. (R.C. 5111.95(A)(3).)*

"Home and community-based waiver services" means services furnished under the provision of 42 C.F.R. 441, subpart G, that permit individuals to live in a home setting rather than a nursing facility or hospital. Home and community-based waiver services are approved by the county medical services section of ODJFS for specific populations and are not otherwise available under the Medicaid state plan. (R.C. 5111.95(A)(4).)

[105] *"Applicant" means a person who is under final consideration for employment or, after the effective date of this provision, an existing employee with a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities. "Applicant" also means an existing employee with a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities after the effective date of this section. (R.C. 5111.95(A)(1).)*

records check request is required presents proof of having been an Ohio resident for the five-year period, the chief administrator may request that the Superintendent include information from the FBI in the criminal records check.

Under the bill, the chief administrator must provide to each applicant for whom a criminal records check request is required a copy of the BCII prescribed form used to obtain the information necessary to conduct a criminal records check and a standard fingerprint impression sheet and must obtain the completed form and impression sheet from the applicant. The chief administrator must then forward the completed form and impression sheet to the Superintendent of BCII. An applicant provided the form and fingerprint impression sheet who fails to complete the form or provide fingerprint impressions may not be employed in any position in a waiver agency for which a criminal records check is required. (R.C. 5111.95(B).)

Offenses disqualifying an applicant from employment

Except as provided in rules adopted by ODJFS and subject to the conditional employment provisions described below, the bill prohibits a waiver agency from employing a person in a position that involves providing home and community-based waiver services to persons with disabilities if the person has been convicted of or pleaded guilty to any of the following (R.C. 5111.95(C)(1)):

(1) Aggravated murder; murder; voluntary manslaughter; involuntary manslaughter; reckless homicide; felonious assault; aggravated assault; assault; failing to provide for a functionally impaired person; aggravated menacing; patient abuse; gross patient neglect; patient neglect; kidnapping; abduction; criminal child enticement; extortion; coercion; rape; sexual battery; unlawful sexual conduct with a minor; gross sexual imposition; sexual imposition; importuning; voyeurism; public indecency; compelling prostitution; promoting prostitution; procuring; prostitution; engaging in prostitution after a positive HIV test; disseminating matter harmful to juveniles; pandering obscenity; pandering obscenity involving a minor; pandering sexually oriented matter involving a minor, illegal use of minor in nudity-oriented material or performance; aggravated robbery; robbery; aggravated burglary; burglary; breaking and entering; any theft offense; unauthorized use of a vehicle; unauthorized use of property; unauthorized use of computer, cable, or telecommunications property; passing bad checks; misuse of credit cards; forgery; forging identification cards or selling or distributing forged identification cards; Medicaid fraud; securing writings by deception; insurance fraud; receiving stolen property; unlawful abortion; contributing to the unruliness or delinquency of a child; domestic violence; illegal conveyance of weapons onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of

intoxicating liquor onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of cash onto the grounds of a detention facility; carrying concealed weapons; having weapons while under disability; improperly discharging a firearm at or into a habitation, in a school safety zone, or with intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function; corrupting another with drugs; any trafficking in drugs offense; illegal manufacture of drugs or cultivation of marihuana; funding of drug or marihuana trafficking; illegal administration of distribution of anabolic steroids; any drug possession offense; permitting drug abuse; deception to obtain a dangerous drug; illegal processing of drug documents; placing a harmful or hazardous object or substance in any food or confection; felonious sexual penetration in violation of former R.C. 2907.12; a violation of R.C. 2905.04 as it existed prior to July 1, 1996; a violation of R.C. 2919.23 (interference with custody) that would have been a violation of R.C. 2905.04 as it existed prior to July 1, 1996, had the violation been committed prior to that date;

(2) An existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in the preceding paragraph.

A waiver agency may employ conditionally an applicant for whom a criminal records check request is required prior to obtaining the results of a criminal records check regarding the individual, provided that the agency requests a criminal records check regarding the individual not later than five business days after the individual begins conditional employment. A waiver agency that employs an individual conditionally must terminate the individual's employment if the results of the criminal records check request, other than the results of any request for information from the FBI, are not obtained within the period ending 60 days after the date the request is made. Regardless of when the results of the criminal records check are obtained, if the results indicate that the individual has been convicted of or pleaded guilty to any of the disqualifying offenses described above, the agency is required to terminate the individual's employment unless the agency chooses to employ the individual pursuant to the rules described in the following paragraph. If the individual makes any attempt to deceive the agency about the individual's criminal record, termination of employment under this provision is considered just cause for discharge for purposes of disqualifying the individual from unemployment compensation benefits. (R.C. 5111.95(C)(2).)

The bill requires ODJFS to adopt rules in accordance with the Administrative Procedure Act to implement the above-described records check provisions of the bill. The rules must specify circumstances under which a waiver agency may employ a person who has been convicted of or pleaded guilty to a

disqualifying offense but meets personal character standards set by DJFS. (R.C. 5111.95(F).)

Fees

The bill requires each waiver agency to pay to BCII the fee prescribed by BCII under existing law for each criminal records check conducted pursuant to a request made under the provisions described under "***Initiating the criminal records check***," above. A waiver agency may charge an applicant a fee not exceeding the amount the agency pays to BCII, but the agency may collect the fee only if it notifies the person at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the person will not be considered for employment. (R.C. 5111.95(D).)

Confidentiality

The report of the criminal records check is not a public record for the purposes of the Public Records Law and must not be made available to any person other than the following (R.C. 5111.95(E)):

(1) The individual who is the subject of the criminal records check or the individual's representative;

(2) The chief administrator of the agency requesting the criminal records check or the administrator's representative;

(3) A court, hearing officer, or other necessary individual involved in a case dealing with a denial of employment of the applicant or dealing with employment or unemployment benefits of the applicant.

Special provision for existing employees

A person who, on the effective date of the provisions described in "***Criminal records checks for waiver agency employees***," is an employee of a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities must comply with these provisions within 60 days after the effective date of these provisions unless all of the following apply (R.C. 5111.95(H)):

(1) On the effective date of these provisions, the person is an employee of a waiver agency in a full-time, part-time, or temporary position that involves providing home and community-based waiver services to a person with disabilities.

(2) The person previously had been the subject of a criminal background check relating to that position.

(3) The person has been continuously employed in that position since that criminal background check had been conducted.

Conforming change in the BCII Law

The bill makes related changes in the BCII Law to authorize BCII to conduct the criminal records check (R.C. 109.57(E) and 109.572(A)(5) and (9) and (B) to (E)).

Criminal records checks for independent providers in an ODJFS-administered home and community-based services program providing home and community-based waiver services to consumers with disabilities

Initiating the criminal records check

The bill requires ODJFS to inform each independent provider, at the time of initial application for a provider agreement that involves providing home and community-based waiver services to consumers with disabilities, that the independent provider is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted if the person is to become an independent provider in an ODJFS-administered home and community-based services program. Also, beginning on the effective date of the provisions described under "***Criminal records checks for independent providers in an ODJFS-administered home and community-based services program providing home and community-based waiver services to consumers with disabilities***," the bill requires ODJFS to inform each enrolled Medicaid independent provider on or before time of the anniversary date of the provider agreement that involves providing home and community-based waiver services to consumers with disabilities that the independent provider is required to provide a set of fingerprint impressions and that a criminal records check is required to be conducted. (R.C. 5111.96(B).)[106]

---

[106] *"Independent provider" means a person who is submitting an application for a provider agreement or who has a provider agreement as an independent provider in a Department of Job and Family Services administered home and community-based services program providing home and community-based waiver services to consumers with disabilities (R.C. 5111.86(A)(4)).*

"Home and community-based waiver services" means services furnished under the provision of 42 C.F.R. 441, subpart G, that permit individuals to live in a home setting rather than a nursing facility or hospital. Home and community-based waiver services

Under the bill, ODJFS must require the independent provider to complete a criminal records check prior to entering into a provider agreement with the independent provider and at least annually thereafter. If an independent provider for whom a criminal records check is required does not present proof of having been an Ohio resident for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) has requested information about the applicant from the FBI in a criminal records check, ODJFS must request the independent provider obtain through the Superintendent a criminal records request from the FBI as part of the criminal records check of the independent provider. Even if an independent provider for whom a criminal records check request is required presents proof of having been an Ohio resident for the five-year period, ODJFS may request that the independent provider obtain information through the Superintendent from the FBI in the criminal records check.

The bill requires ODJFS to provide information to each independent provider for whom a criminal records check request is required a copy of the BCII prescribed form used to obtain information necessary to conduct a criminal records check and a standard fingerprint impression sheet and to obtain the completed form and impression sheet and fee from the independent provider. ODJFS then is required to forward the completed form, impression sheet, and fee to the Superintendent of BCII. An independent provider given information about obtaining the form and fingerprint impression sheet who fails to complete the form or provide fingerprint impressions may not be approved as an independent provider. (R.C. 5111.96(C).)

Offenses disqualifying a person from being an independent provider

Except as provided in rules adopted by ODJFS described below, ODJFS may not issue a new provider agreement to, and must terminate an existing provider agreement of, an independent provider if the person has been convicted of or pleaded guilty to any of the following (R.C. 5111.96(D)):

---

are approved by the county medical services section of the Department of Job and Family Services for specific populations and are not otherwise available under the Medicaid state plan. (R.C. 5111.96(A)(5) by reference to R.C. 5111.95(A)(4).)

*"Anniversary date" means the later of the effective date of the provider agreement relating to the independent provider or 60 days after the effective date of the provisions described in "**Criminal records checks for independent providers in a Department of Job and Family Services administered home and community-based services program providing home and community-based waiver services to consumers with disabilities**" (R.C. 5111.86(A)(1)).*

(1) Aggravated murder; murder; voluntary manslaughter; involuntary manslaughter; reckless homicide; felonious assault; aggravated assault; assault; failing to provide for a functionally impaired person; aggravated menacing; patient abuse; gross patient neglect; patient neglect; kidnapping; abduction; criminal child enticement; extortion; coercion; rape; sexual battery; unlawful sexual conduct with a minor; gross sexual imposition; sexual imposition; importuning; voyeurism; public indecency; compelling prostitution; promoting prostitution; procuring; prostitution; engaging in prostitution after a positive HIV test; disseminating matter harmful to juveniles; pandering obscenity; pandering obscenity involving a minor; pandering sexually oriented matter involving a minor, illegal use of minor in nudity-oriented material or performance; aggravated robbery; robbery; aggravated burglary; burglary; breaking and entering; any theft offense; unauthorized use of a vehicle; unauthorized use of property; unauthorized use of computer, cable, or telecommunications property; passing bad checks; misuse of credit cards; forgery; forging identification cards or selling or distributing forged identification cards; Medicaid fraud; securing writings by deception; insurance fraud; receiving stolen property; unlawful abortion; contributing to the unruliness or delinquency of a child; domestic violence; illegal conveyance of weapons onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of intoxicating liquor onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of cash onto the grounds of a detention facility; carrying concealed weapons; having weapons while under disability; improperly discharging a firearm at or into a habitation, in a school safety zone, or with intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function; corrupting another with drugs; any trafficking in drugs offense; illegal manufacture of drugs or cultivation of marihuana; funding of drug or marihuana trafficking; illegal administration of distribution of anabolic steroids; any drug possession offense; permitting drug abuse; deception to obtain a dangerous drug; illegal processing of drug documents; placing a harmful or hazardous object or substance in any food or confection; felonious sexual penetration in violation of former R.C. 2907.12; a violation of R.C. 2905.04 as it existed prior to July 1, 1996; a violation of R.C. 2919.23 (interference with custody) that would have been a violation of R.C. 2905.04 as it existed prior to July 1, 1996, had the violation been committed prior to that date;

(2) An existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in the preceding paragraph.

The bill requires ODJFS to adopt rules in accordance with the Administrative Procedure Act to implement the above-described records check provisions of the bill. The rules must specify circumstances under which ODJFS may issue a provider agreement to an independent provider who has been convicted of or pleaded guilty to a disqualifying offense but meets personal character standards set by ODJFS. (R.C. 5111.96(G).)

Fees

The bill requires each independent provider to pay to BCII the fee prescribed by BCII under existing law for each criminal records check conducted pursuant to a request made under "***Initiating the criminal records check***," above (R.C. 5111.96(E)).

Confidentiality

The report of any criminal records check conducted by BCII is not a public record for the purposes of the Public Records Law and must not be made available to any person other than the following (R.C. 5111.96(F)):

(1) The person who is the subject of the criminal records check or the person's representative;

(2) The administrator at ODJFS who is requesting the criminal records check or the administrator's representative;

(3) Any court, hearing officer, or other necessary individual involved in a case dealing with a denial or termination of a provider agreement related to the criminal records check.

Conforming change in the BCII Law

The bill makes related changes in the BCII Law to authorize BCII to conduct the criminal records check (R.C. 109.57(E) and 109.572(A)(5) and (9) and (B) to (E)).

VIII. Hospital Care Assurance Program

Under the Hospital Care Assurance Program (HCAP), (1) hospitals are annually assessed an amount based on their total facility costs and (2) government hospitals make annual intergovernmental transfers to ODJFS. Assessments and intergovernmental transfers are made in periodic installments. ODJFS distributes to hospitals money generated by assessments, intergovernmental transfers, and federal matching funds generated by the assessments and transfers. A hospital compensated under HCAP must provide, without charge, basic, medically

necessary, hospital-level services to Ohio residents who are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty guidelines. A portion of the money generated from the first installment of assessments and intergovernmental transfers during each program year beginning in an odd-numbered calendar year is deposited into the Legislative Budget Services Fund. Also, of the amount ODJFS receives during fiscal year 2003 from the first installment of assessments and intergovernmental transfers made under HCAP, the Director is to deposit $175,000 into the state treasury to the credit of the Health Care Services Administration Fund.

Delayed termination of HCAP

(Sections 132.07 and 132.08)

The funding mechanism for HCAP is scheduled to terminate on October 16, 2003. The bill delays the termination until October 16, 2005.

Health Care Services Administration Fund

(R.C. 5111.94)

The Health Care Services Administration Fund is used to pay Medicaid administrative costs. Money deposited into the Fund includes amounts from assessments on hospitals and intergovernmental transfers by government hospitals under HCAP. The bill removes a reference to HCAP's October 16, 2003 termination date from the provisions that describe the moneys included in the Health Care Services Administration Fund.

Changes to HCAP penalties

(R.C. 5112.99)

Current law requires the Director of ODJFS to impose a penalty of $100 for each day after the statutory deadline that a hospital fails to report information required for HCAP. If a hospital fails to pay assessments or make transfers as required by law, the Director must impose a penalty of 10% of the amount due, not to exceed $20,000. All penalties imposed must be deposited into the General Revenue Fund.

The bill grants the Director the authority to set penalties for HCAP. The bill also shifts the deposit of penalty revenue from the General Revenue Fund to the Health Care Services Administration Fund.

IX. Disability Financial and Medical Assistance

Disability Assistance

Under current law, ODJFS operates the Disability Assistance Program, which consists of a financial assistance component and medical assistance component. Generally, low income persons are eligible for Disability Assistance if they are ineligible for assistance under the Ohio Works First Program, the federal Supplemental Security Income Program, or Medicaid.[107] To be eligible, a person must be one of the following:

(1) Under 18 years of age;

(2) Age 60 or older;

(3) Pregnant;

(4) Unable to do any substantial or gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for not less than nine months;

(5) A resident of a residential treatment center certified as an alcohol or drug addiction program by the Ohio Department of Drug and Alcohol Addiction Services;

(6) Medication dependent, as determined by a physician, who has certified to a county department of job and family services that the person is receiving ongoing treatment for a chronic medical condition requiring continuous prescription medication for an indefinite, long-term period of time and for whom loss of the medication would result in a significant risk of medical emergency and loss of employability lasting at least nine months. Persons in this category do receive medical assistance, but not financial assistance.

Separation of financial and medical assistance

(R.C. 5115.01 and 5115.10)

The bill separates the Disability Assistance Program into the Disability Financial Assistance Program and the Disability Medical Assistance Program.

---

[107] *The Disability Assistance program's income eligibility standards are established by ODJFS rule (R.C. 5115.05).*

Distinct requirements, eligibility determination procedures, administrative rules, and potential limitations are to be established by ODJFS for each of the programs.

Eligibility for Disability Financial Assistance

(R.C. 5115.01)

The bill establishes two categories under which a person may be eligible for the Disability Financial Assistance Program. A person's eligibility is subject to all other eligibility requirements established by statute and the rules that apply to the program.

Physical or mental impairment: Under this provision, a person may be eligible if the person is unable to do any substantial or gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for not less than nine months.

Attaining age 60 prior to the bill: Under this provision, a person may be eligible if, on the day before the bill's earliest effective date, the person was 60 years of age or older and one of the following is the case:

(1) The person was receiving or scheduled to begin receiving financial assistance on the basis of being age 60 or older;

(2) An eligibility determination was pending regarding the person's application to receive financial assistance on the basis of being age 60 or older and, on or after the bill's effective date, the person receives a determination of eligibility based on that application.

Termination of existing financial assistance eligibility

(Section 140(B))

Notwithstanding any determination through administrative or judicial order or otherwise, the bill provides that a person who was receiving financial assistance under the Disability Assistance Program prior to the bill's effective date ceases to be eligible for financial assistance under the Disability Financial Assistance Program, unless one of the following is the case:

(1) The person was receiving financial assistance on the basis of being physically or mentally impaired or being age 60 or older;

(2) The person reapplies for assistance and receives a determination of eligibility based on being physically or mentally impaired.

Financial assistance amounts

(R.C. 5115.03)

Current law requires ODJFS to establish financial assistance payments based on state appropriations. In the 2002-2003 general appropriations act, the monthly grant levels were specified. For example, a single person received $115 per month, two persons received $159, and three persons received $193.

Under the bill, the Director is authorized to adopt rules specifying or establishing maximum payment amounts. The amounts are to be based on state appropriations, which the bill identifies as appropriations *for the program*.

Eligibility for Disability Medical Assistance

(R.C. 5115.10)

The bill provides that a person may be eligible for the Disability Medical Assistance Program only if the person is medication dependent, not as determined by a physician as specified in current law, but as determined by ODJFS. A person's eligibility is subject to all other eligibility requirements established by statute and the rules that apply to the program.

The Director is required to adopt rules for purposes of implementing the bill's provisions pertaining to a person being medication dependent. The rules may specify or establish the following:

(1) Standards for determining whether a person is medication dependent, including standards under which a person may qualify as being medication dependent only if it is determined that (a) the person is receiving ongoing treatment for a chronic medical condition that requires continuous prescription medication for an indefinite, long-term period of time and (b) loss of the medication would result in a significant risk of medical emergency and loss of employability lasting at least nine months;

(2) A requirement that a person's medical condition be certified by a physician;

(3) Limitations on the chronic medical conditions and prescription medications that may qualify a person as being medication dependent.

Extension of existing medical assistance eligibility

(Section 140(C))

Notwithstanding the requirements that limit eligibility under the Disability Medical Assistance Program to persons who are medication dependent, the bill permits the Director of ODJFS to adopt rules providing for and governing temporary provision of medical assistance to person who were eligible prior to the bill's effective date. The bill specifies that a person's eligibility for medical assistance may continue pursuant to the rules until ODJFS or a county department of job and family services conducts a redetermination of the person's eligibility according to the bill's eligibility requirements.

Medical services available

(R.C. 5115.10 and 5115.12)

Current law requires the medical assistance component of the Disability Assistance Program to consist of a "system of managed primary care." Recipients may be required to enroll in a health insuring corporation or other managed care program. ODJFS is permitted to limit the number or type of health care providers from which a recipient may obtain services. The Director of ODJFS must designate medical services providers for the program and services can be rendered only by the designated providers. The Director must adopt rules governing the program, including rules that specify the maximum authorized amount, scope, duration, or limit of payment for services.

The bill permits the Director to adopt rules governing the Disability Medical Assistance Program. In place of the existing provisions describing the manner in which services may be provided, the bill permits the Director to adopt rules specifying or establishing the health care services that are included in the program. Under the bill, the Director is authorized, rather than required, to specify the maximum authorized amount, scope, duration, or limit of payment for services.

Time limits and program limits

(R.C. 5115.03 and 5112.12)

For both the Disability Financial Assistance and Disability Medical Assistance Programs, the bill permits the Director of ODJFS to adopt rules that establish or specify either or both of the following:

(1) Limits on the length of time an individual may receive assistance;

(2) Limits on the total number of individuals who may receive assistance.

For purposes of limiting the cost of either program, the bill permits the Director to revise previously adopted rules. The bill specifies that the Director may revise the program's eligibility requirements, the maximum benefits, or any other requirement or standard the Director has established or specified by rule.

Also for purposes of limiting program costs, the bill also permits the Director to suspend acceptance of new applications for assistance. During a suspension, eligibility determinations must cease and no person can be found eligible to receive assistance who was not a recipient during the month immediately preceding the suspension's effective date.[108] The bill authorizes the adoption of rules governing suspensions.

Delegation of administrative duties

(R.C. 5115.04 and 5115.13)

Current law requires ODJFS to supervise and administer the Disability Assistance Program, but allows it to require county departments of job and family services to perform any administrative function specified in rules. The bill continues this authority for both the Disability Financial Assistance and Disability Medical Assistance Programs, with the following changes:

(1) In the Disability Financial Assistance Program, the bill eliminates the duty of ODJFS to make final determinations regarding physical and mental impairment;

(2) In the Disability Medical Assistance Program, the bill permits the Director of ODJFS to contract with any private or public entity in Ohio to perform any administrative function or to administer any or all of the program. The Director is permitted either to adopt rules or include provisions in the contract governing the entity's performance of the functions. The bill specifies that the entity is required to perform the functions in accordance with the requirements established by the Director.

---

[108] *Another provision of the bill refers to persons who submitted applications prior to a suspension. An amendment may be necessary to clarify that persons who are not recipients, but have applications pending on a suspension's effective date, can be found eligible to receive assistance.*

Investigations of administrative compliance

(R.C. 5115.03, 5115.04, and 5115.13)

Current law authorizes the Director of ODJFS's to conduct investigations to determine whether Disability Assistance is being administered in compliance with statutes and rules. The bill specifies that these investigations involve activities being performed by county departments of job and family services and entities under contract to perform administrative duties.

Disability advocacy programs

(R.C. 5115.20)

The bill extends the Director's investigatory authority to the administration of disability advocacy programs, which are operated by county departments of job and family services to assist persons in applying for financial assistance under the federal Supplemental Security Income Program. With regard to the rules that govern the program, the bill changes the rule-making procedures that must be used from those specified in the Administrative Procedure Act (R.C. Chapter 119.) to those specified in R.C. 111.15, which does not include requirements for public hearings.

Recovery of erroneous payments

(R.C. 5115.23)

Current law requires ODJFS, and county departments of job and family services at ODJFS's request, to take action to recover erroneous payments made in the Disability Assistance Program. Under the bill, ODJFS is required to adopt rules specifying the circumstances under which action is to be taken to recover erroneous payments.

Eligibility determinations

(R.C. 5115.01, 5115.02, 5115.011 (repealed), 5115.05, 5115.06 (repealed), 5115.11, and 5115.14; Section 146.04)

For both the Disability Financial Assistance and Disability Medical Assistance Programs, the bill continues the duty of the Director of ODJFS to adopt rules governing application and verification procedures. The bill grants the Director authority to establish or specify eligibility requirements. With regard to these application and eligibility determination processes, the bill does the following:

(1) Allows rules to be adopted that include any procedures the Director considers necessary in administering the application process;

(2) Eliminates provisions requiring the Director to adopt rules defining terms and establishing standards for determining whether a person meets a condition of eligibility;

(3) Eliminates provisions requiring the adoption of rules defining "assistance group" and "family group" and provisions specifying the manner in which the terms may be defined;

(4) Eliminates provisions requiring that one automobile be excluded from consideration as a resource when determining eligibility;

(5) Eliminates provisions specifying reasons for which a person is rendered ineligible for medical assistance;

(6) Adds the following as reasons for which a person is rendered ineligible for financial assistance: (a) being eligible for financial assistance under a state or federal program not expressly identified in statute but similar to the assistance provided under the Disability Financial Assistance Program, as determined by ODJFS, (b) terminating employment without just cause, as applied in the Ohio Works First Program, (c) being involved in a strike or having someone in the assistance group who is involved in a strike, and (d) being a minor parent who does not reside with a parent, guardian, custodian, or other relative, as required by the Ohio Works First Program.

Report to the General Assembly

(R.C. 5115.012 (repealed); Section 146.04)

Under current law, ODJFS is required each July to provide a report to the General Assembly on the number of children who are rendered ineligible for Disability Assistance because they are ineligible for participation in the Ohio Works First Program because of time-limits on benefits or program requirements. The bill eliminates the annual reporting requirement.

Rule-making authority

(R.C. Chapter 5115.)

Under current law, the authority or duty of the Director of ODJFS to adopt rules for the Disability Assistance Program is implemented primarily through the rule-making procedures that do not require public hearings (R.C. 111.15). In some

cases, the rule-making process to be used is not specified. In these cases, the bill specifies that the rules are to be adopted in accordance with R.C. 111.15.

Transition

(Section 140)

The bill provides that the Disability Financial Assistance Program constitutes a continuation of the financial assistance component of the Disability Assistance Program and the Disability Medical Assistance Program constitutes a continuation of the medical assistance component of the Disability Assistance Program. This continuation, however, is subject to the changes the bill makes to those components. Any business commenced but not completed on behalf of the Disability Assistance Program is to be completed in the name of the Disability Financial Assistance and Disability Medical Assistance Programs. The bill provides for the continuation of rules, orders, and determinations made under the Disability Assistance Program and specifies that references to the program in any law, contract, or other document are deemed to refer to the renamed programs.

Cross-reference changes

For purposes of changing the name of the Disability Assistance Program, as well as reflecting the separation of the program into distinct financial assistance and medical assistance programs, the bill includes changes to the following sections of the Revised Code: 117.45, 127.16, 131.23, 323.01, 329.03, 329.04, 329.051, 2305.234, 2329.66, 2715.041, 2715.045, 2716.13, 2921.13, 3111.04, 3119.01, 3123.952, 3317.029, 3317.10, 3702.74, 4123.27, 4731.65, 4731.71, 5101.16, 5101.18, 5101.181, 5101.36, 5101.58, 5101.59, 5112.03, 5112.08, 5112.17, 5115.07, 5123.01, 5502.13, and 5709.64.

JOINT COMMITTEE ON AGENCY RULE REVIEW

- Requires the Chief Administrative Officer of the House of Representatives and the Clerk of the Senate to determine, by mutual agreement, which of them will act as the fiscal agent for the Joint Committee on Agency Rule Review.

Fiscal agent

(Section 10)

Section 15 of Am. Sub. H.B. 94 of the 124th General Assembly required, for the 2002-2003 biennium, the Chief Administrative Officer of the House of Representatives and the Clerk of the Senate to determine, by mutual agreement, which of them would act as the fiscal agent for the Joint Committee on Agency Rule Review (JCARR). The bill establishes the same process for determining the fiscal agent for JCARR for the 2004-2005 biennium.

OHIO LOTTERY COMMISSION

- Eliminates the State Lottery Commission's power to conduct lotteries in order to disburse unclaimed prize awards as well as the Unclaimed Lottery Prizes Fund.
- Requires all unclaimed lottery prize awards to be returned to the State Lottery Fund.

Unclaimed lottery prizes

(R.C. 1309.109, 3770.07, 3777.10, and 3770.99)

Under existing law, when lottery prize awards go unclaimed, they are transferred to the Unclaimed Lottery Prizes Fund in the state treasury. In order to disburse these unclaimed prize awards, the State Lottery Commission is allowed to conduct lotteries, the prize awards of which can include all or part of the unclaimed prize awards.

The bill eliminates the Commission's power to conduct the unclaimed prize award lotteries and the related statutory provisions governing these lotteries. Additionally, as part of this change, the bill does away with the Unclaimed Lottery Prizes Fund and instead requires all unclaimed lottery prize awards to be returned to the State Lottery Fund.

DEPARTMENT OF MENTAL HEALTH

- Requires the Director of Mental Health to include assertive community treatment and intensive home-based mental health services in rules establishing certification standards for community mental health services.

Certification standards

(R.C. 5119.611)

The Director of Mental Health is required by current law to adopt rules establishing certification standards for community mental health services. The rules must be consistent with nationally recognized applicable standards and facilitate participation in federal assistance programs. The bill requires that assertive community treatment and intensive home-based mental health services be included in the Director's rules establishing the certification standards. The Director must satisfy this requirement not later than July 1, 2004.

DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILIITES

- Requires that the rules of the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) for licensing and regulating residential facilities include rules for intermediate care facilities for the mentally retarded (ICFs/MR) and that those rules may differ from the rules for other residential facilities.

- Provides that, when a resident of a residential facility is committed to a state-operated ICF/MR, ODMR/DD must reduce by one the number of residents for which the facility is licensed, unless the facility is also an ICF/MR and the committed resident is replaced by another individual who meets certain criteria.

- Permits the Ohio Department of Job and Family Services (ODJFS), if the resident is not replaced, to transfer to ODMR/DD the nonfederal share of Medicaid expenditures saved, which are to be used to cover the resident's care in the state-operated ICF/MR.

- Repeals the moratorium on new residential facility beds in effect until October 15, 2003, and establishes a permanent cap on the number of beds in residential facilities licensed by the Director of ODMR/DD.

- Requires a residential facility to take out of service as a residential facility bed any bed located in the facility that is converted to use for supported living and provides that the number of residential facility beds a facility is licensed to have is to be reduced by each bed taken out of service.

- Requires, with certain exceptions, ODMR/DD to use funds otherwise allocated to a county board of mental retardation and developmental disabilities (county MR/DD board) to cover the nonfederal share of the cost of Medicaid services to an individual committed to a state-operated ICF/MR if the individual received supported living or home and community-based services funded by the county MR/DD board.

- Requires the Director of ODMR/DD to transfer specific funds to ODJFS to pay the nonfederal share of the cost under Medicaid for newly certified ICF/MR beds.

- Makes ODMR/DD responsible for the nonfederal share of costs of Medicaid claims for intermediate care facility services for the mentally retarded provided after June 30, 2003 in certain facilities initially certified after December 31, 2002.

- Establishes a priority category in waiting lists established by county MR/DD boards for individuals residing in a nursing facility who are eligible for home and community-based services and willing and able to move.

- Expands the authority of ODMR/DD to enter into agreements to collect money owed the state through installment payments.

- Eliminates provisions requiring that measures be taken to apprehend a person who escapes from an institution controlled by ODMR/DD and that the institution bear the cost of the person's return.

- Allows a person discharged from an institution controlled by ODMR/DD to be given the personal items purchased in implementing the person's

habilitation plan, regardless of the funding source used to purchase the items.

Residential facilities for individuals with mental retardation or a developmental disability

Background

Continuing law prohibits operation of a residential facility for individuals with mental retardation or a developmental disability without a license from the Director of the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD).[109] In general, a residential facility is a home or facility in which a person with mental retardation or a developmental disability resides.[110] A residential facility that wants to participate in the Medicaid program must obtain certification from the Director of Health as an intermediate care facility for the mentally retarded (ICF/MR).[111]

---

[109] *R.C. 5123.20 (not in the bill).*

[110] *The following are not considered to be a residential facility even if an individual with mental retardation or a developmental disability resides in it: the home of a relative or legal guardian of an individual with mental retardation or a developmental disability, respite care homes certified by a county board of mental retardation and developmental disabilities, county-operated and multi-county-operated homes, and dwellings in which the only residents with mental retardation or a developmental disability are in an independent living arrangement or are being provided supported living services. Also, a residential facility is not required to obtain a license from the Director of ODMR/DD if the facility is required to obtain a license or certificate as a nursing home, residential care facility, adult care facility, institution or association for the care of children, or hospital for the treatment of mentally ill persons.*

[111] *Certain facilities with ICF/MR beds are subject to nursing home licensing requirements rather than residential facility licensing requirements. These are nursing homes that on June 30, 1987 had beds that obtained ICF/MR certification before that date and nursing homes that on that date had an application pending to convert intermediate care facility beds to ICF/MR beds. However, such a nursing home becomes subject to residential facility licensing requirements if the home's certification or provider agreement as an ICF/MR is subject to a final order of nonrenewal or termination with respect to which all appeal rights have been exhausted and the home intends to apply for recertification. Also, such a nursing home must seek a residential facility license for new ICF/MR beds added after June 30, 1987. (R.C. 5123.192, not in the bill.)*

Rule-making authority

(R.C. 5123.19)

Continuing law requires the Director of ODMR/DD to adopt rules for licensing and regulating the operation of residential facilities. The bill requires that the rules include rules for ICFs/MR. The rules for ICFs/MR may differ from the rules for other residential facilities.

Licensed bed capacity

(R.C. 5123.19 and 5123.198)

Among the rules the Director of ODMR/DD must adopt for licensing and regulating residential facilities are rules establishing the maximum number of persons who may be served in a particular type of residential facility. This number is sometimes referred to as the licensed bed capacity of the facility.

Under the bill, when a resident of a residential facility is committed to a state-operated ICF/MR, ODMR/DD must reduce by one the facility's licensed bed capacity. However, the reduction in licensed bed capacity is not to happen if the facility is also an ICF/MR and admits an individual who resides in a state-operated ICF/MR on the date of the commitment or another individual determined to need the level of care provided by an ICF/MR and designated by ODMR/DD within 90 days after the date of the commitment.

Transfer of Medicaid savings

(R.C. 5123.198)

The bill permits ODMR/DD to notify the Ohio Department of Job and Family Services (ODJFS) of any reduction in an ICF/MR's licensed bed capacity made when a resident of the ICF/MR is committed to a state-operated ICF/MR. On receipt of the notice, ODJFS may transfer to ODMR/DD the nonfederal share of Medicaid expenditures saved, which are to be used to cover the resident's care in the state-operated ICF/MR. The bill requires ODJFS to consider the Medicaid payments for the remaining residents of the ICF/MR in which the resident resided in determining the amount of the savings.

Cap on number of residential facility beds

(R.C. 5123.19, 5123.196, and 5123.197; Section 132.14)

Am. Sub. H.B. 94 of the 124th General Assembly extended, until October 15, 2003, a prohibition on ODMR/DD's issuance of development approval for or

licensure of any new residential facility beds. The bill repeals this moratorium and establishes a permanent cap on the number of beds in residential facilities licensed by the Director of ODMR/DD. The bill also requires a residential facility to take out of service as a residential facility bed any bed located in the facility that is converted to use for supported living.[112] It provides that the number of residential facility beds that a residential facility is licensed to have is to be reduced by each bed taken out of service.

With one exception, the number of beds in residential facilities licensed by the director is capped at 10,838, minus the number of beds taken out of service after July 1, 2003, because a residential facility license is revoked, terminated, not renewed, or is surrendered, or because the beds are converted to use for supported living. The exception is where the director determines that a bed is needed to provide services to a person with mental retardation or a developmental disability who resided in the residential facility in which the bed was located.

Use of county allocations for costs of state-operated ICF/MR

(R.C. 5123.38)

The bill requires ODMR/DD to use funds otherwise allocated to a county board of mental retardation and developmental disabilities (county MR/DD board) to cover the nonfederal share of the cost of Medicaid services to an individual committed to a state-operated ICF/MR if the individual received supported living or home and community-based services funded by the county MR/DD board. ODMR/DD may not do this if the county MR/DD board, not later than 90 days after the date of the commitment of an individual receiving supported living or home and community-based services, commences funding of supported living or home and community-based services for an individual who resides in a state-operated ICF/MR on the date of the other individual's commitment or another eligible individual designated by ODMR/DD.

---

[112] *"Supported living" means services provided for as long as 24 hours a day to an individual with mental retardation or other developmental disability that enhance the individual's reputation in community life and advance the individual's quality of life by providing the support necessary to enable an individual to live in a residence of the individual's choice, encouraging the individual's participation in the community, promoting the individual's rights and autonomy, and assisting the individual in developing the skills necessary to live successfully in the individual's residence. (R.C. 5126.01(S).)*

Transfer of funds for Medicaid costs of ICF/MR beds

(Section 141)

The bill requires the Director of ODMR/DD to transfer funds to ODJFS to pay the nonfederal share of the cost under Medicaid for newly certified ICF/MR beds.

Responsibility for nonfederal share of ICF/MR services

(R.C. 5111.211)

The bill makes ODMR/DD responsible for the nonfederal share for Medicaid claims for intermediate care facility services for the mentally retarded if all of the following are the case:

(1) The services are provided after June 30, 2003;

(2) The facility receives initial certification as an intermediate care facility for the mentally retarded after December 31, 2002;

(3) The facility, or a portion of the facility, is licensed as a residential facility by the Director of ODMR/DD;

(4) There is a valid Medicaid provider agreement for the facility.

Priority category for county MR/DD board waiting list

(R.C. 5111.872 and 5126.042)

A county MR/DD board that determines that available resources are insufficient to meet the needs of all eligible individuals who request services is required by existing law to establish waiting lists for the services. Existing law requires a county MR/DD board to establish specific priorities for waiting lists in certain circumstances and permits a board to give an individual priority in an emergency.

For the purpose of obtaining additional federal Medicaid funds for certain services, including home and community-based services, a county MR/DD board is required under current law to (1) give an individual who is eligible for home and community-based services priority for those services that include supported living, residential services, or family support services if the individual is age 22 or older and receives supported living or family support services, and (2) give an individual who is eligible for home and community-based services priority for those services that include adult services if the individual resides in the

individual's own home or the home of the individual's family and will continue to reside in that home after enrollment in home and community-based services and receives adult services from the board. As federal Medicaid funds become available because of the above priorities, a county MR/DD board is required to give an individual who is eligible for home and community-based services priority in circumstances specified in statute.

The bill requires, in addition, that a county MR/DD board give priority for home and community-based services to individuals who are eligible for those services, reside in a nursing facility, choose to move to another setting, and have been determined by ODMR/DD to be capable of residing in another setting.

Under the bill, ODMR/DD is required to adopt rules specifying both of the following for the new priority category: (1) the number of years, not to exceed five, that the priority category will be in effect, and (2) the date that the priority category is to go into effect. The bill limits the number of individuals who may receive priority for services under this category to 40 per year that the priority category is in effect. Under continuing law, no individual is to receive priority for services over an individual placed on a waiting list on an emergency basis.

The bill provides that if two or more individuals on a county MR/DD board waiting list for home and community-based services have priority for the services pursuant to the bill, a county MR/DD board is permitted to use criteria specified in ODMR/DD rules in determining the order in which the individuals with priority will be offered the services. A county MR/DD board may use the criteria until December 31, 2003. Otherwise, a county MR/DD board must offer the home and community-based services to the individuals in the order they are placed on the waiting list.

ODMR/DD collection of money owed the state

(R.C. 5123.051)

Under current law, if the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) determines through an audit or reconciliation that money is owed the state by a provider of a service or program, ODMR/DD is permitted to enter into a payment agreement with the provider. The agreement must include a schedule of installment payments whereby the money owed is to be paid in full within one year. If an installment is not paid within 45 days after it is due, ODMR/DD must certify the entire balance owed to the Attorney General for collection. In limited circumstances, ODMR/DD may withhold funds to satisfy a judgment secured by the Attorney General.

The bill expands in four ways the authority of ODMR/DD to enter into payment agreements for money owed the state and the means by which ODMR/DD may collect the money. First, the bill eliminates the requirement that the determination of money owed the state be made through an audit or reconciliation. Second, the bill allows ODMR/DD to enter into a payment agreement with any person or government entity, rather than only with providers of services. Third, the bill allows ODMR/DD to specify a "reasonable" period within which the money owed must be paid in full, rather than within one year. Fourth, to satisfy a judgment secured by the Attorney General, the bill allows ODMR/DD to withhold funds from any payments it makes to the person or government entity.

Apprehension of MR/DD institution escapees

(R.C. 5123.801)

The bill eliminates a provision of current law that requires the managing officer of an institution under the control of ODMR/DD to take all proper measures for the apprehension of an escaped resident. The bill eliminates a corresponding provision that requires the institution to bear the expense of returning an escaped resident.

Personal items provided on discharge from MR/DD institutions

(R.C. 5123.851)

Under current law, each resident of an institution under the control of ODMR/DD must have a habilitation plan and receive habilitation and care consistent with the plan. Habilitation is described in current law as the process by which the staff of an institution assists a resident in acquiring and maintaining those life skills that enable the resident to cope more effectively with the demands of the resident's own person and of the resident's environment and in raising the level of the resident's physical, mental, social, and vocational efficiency.

Under the bill, when a resident is discharged, the institution's managing officer is permitted to provide the resident with all personal items that were purchased in implementing the resident's habilitation plan. The bill specifies that the personal items may be provided regardless of the source of the funds used to purchase them.

DEPARTMENT OF NATURAL RESOURCES

- Repeals the Civilian Conservation Law, thus eliminating the Division of Civilian Conservation in the Department of Natural Resources, the Civilian Conservation Advisory Council, civilian conservation programs, and all related statutory provisions.

- Creates a program that must be in place by July 1, 2004, for the licensure and regulation of timber buyers, including the establishment of a license application filing fee.

- Requires timber buyers to pay a sustainable forestry fee for a timber buying transaction, and requires landowners who convert land from a forest use to a nonforest, nonagricultural use to pay a per-acre conversion fee.

- Requires all of the new fees to be credited to the existing State Forest Fund, which is used for state forest purposes.

- Authorizes the Chief of the Division of Forestry in the Department of Natural Resources to establish and administer a cost-share program under which the state may share costs to private forest landowners of enhancing the sustainability of the forest resource in Ohio and a grant program for the purpose of enhancing the sustainability and economic development of the state's forest resource.

- Requires the Chief to adopt rules that are necessary to implement and administer the above forestry provisions, and authorizes the Chief to enter into agreements with private entities to carry out the purposes of those provisions other than rulemaking.

- Abolishes the Reclamation Commission, which hears appeals of decisions of the Chief of the Division of Mineral Resources Management in the Department of Natural Resources, and transfers its functions to the Environmental Review Appeals Commission (ERAC), except for the hearing of certain appeals involving oil and gas wells.

- Provides for two sets of procedures under which appeals may be made to ERAC depending on whether an appeal involves certain decisions of the Chief, and modifies provisions governing eligibility for an award of costs

and expenses, including attorney's fees, that may be made under one set of the procedures.

- Indefinitely extends authorization for investment earnings of the Clean Ohio Trail Fund, which are credited to the Fund, to be used to pay costs incurred by the Director of Natural Resources in administering the Clean Ohio recreational trails grants program.

- Eliminates coal mining and reclamation permit and permit renewal fees.

- Increases the mineral severance tax on coal, from 7¢ to 10¢ per ton of coal, and increases the additional coal severance tax, from 1¢ to 5¢ per ton of coal.

- Revises the allocation of mineral severance taxes among the Geological Mapping, Reclamation Forfeiture, Coal Mining Administration and Reclamation Reserve, Unreclaimed Lands, and Surface Mining Funds.

- With respect to the fee that must be paid to obtain a permit from the Chief of the Division of Water in the Department of Natural Resources for the construction of a dam, increases the amounts in the statutorily established fee schedule, authorizes the Chief to adopt rules establishing fee amounts that supersede the amounts in that schedule, and requires political subdivisions to pay the higher fee amounts that are applicable to all other permit applicants.

- With respect to the annual fee that an owner of a dam must pay to the Division of Water, requires the Chief to adopt rules establishing fee amounts that supersede the amounts in the statutorily established fee schedule, increases the fee amount in that schedule for Class I dams, subjects political subdivisions to the fee requirement, and clarifies that the federal government is exempt from the fee requirement.

- Increases the fees for hunting and fishing licenses, permits, and stamps that are issued by the Division of Wildlife in the Department of Natural Resources, and generally allows the Division, in lieu of the statutory fees, to establish fishing license fees in rules.

- Requires free hunting, trapping, and fishing licenses to be issued to Ohio residents applying for them who were born on or before December 31, 1937, rather than to those who are 66 years of age or older as under

current law, requires Ohio residents who are at least 66 years of age, other than those born on or before that date, to purchase special senior fishing, hunting, and fur taking licenses or permits, establishes the fee for each as one-half the regular license or permit fee, requires such residents to pay the regular fee for special deer or wild turkey permits and wetlands habitat stamps, and eliminates the exemption that allows residents who are at least 66 years old to take or catch frogs and turtles without a fishing license.

- Removes permission for managers and their children who reside on lands in Ohio to hunt and trap on those lands without obtaining the necessary license or permit to do so.

- Expands the nonprofit organizations that are eligible to receive contributions from the Wetlands Habitat Fund to include such organizations in the United States.

- Increases fees for various other licenses, permits, and stamps that are issued by the Division of Wildlife, increases the amount of royalty fees for specified species of fish taken commercially, and increases the per-net fee for persons authorized to use nets in specified areas of the Ohio River.

- Requires persons who purchase a wildlife conservation stamp to pay a $1 fee, or an amount established in rules, to the issuing agent of the stamp and requires proceeds from the sale of these stamps to be deposited into the Nongame and Endangered Wildlife Fund instead of into the Wildlife Fund.

- Eliminates the authority for the Chief of the Division of Wildlife to issue permits for the propagation and sale of live fish and fish food for stocking private ponds.

- Abolishes the Magee Marsh State Public Hunting Area.

- Authorizes rather than requires the Division to issue a commercial propagating license, noncommercial propagating license, or raise to release license if specified requirements are met.

- Requires deputy mine inspectors to inspect underground coal and other mineral mines not less than four times per calendar year and surface coal

and other mineral mines not less than two times per calendar year instead of at intervals not exceeding three months as under current law; requires an inspector, during an inspection, to provide to the superintendent of the mine information concerning the health and safety conditions of the mine operation and to determine if the mine operation complies with applicable health and safety standards or with any citation, order, or decision issued under the state's mining laws; and revises the list of conditions and equipment that an inspector must examine in a mine.

Repeal of Civilian Conservation Law

(R.C. 121.04, 1501.04, 1553.01 to 1553.10, 1553.99, and 3517.092; Section 148)

Current law establishes the Division of Civilian Conservation in the Department of Natural Resources. The Chief of the Division of Civilian Conservation is required to establish residential and nonresidential civilian conservation programs that the Chief considers appropriate; establish, in accordance with certain statutory provisions, eligibility standards for selecting applicants for participation in conservation programs; and adopt rules to carry out the purposes of the Civilian Conservation Law.

Current law requires the Chief to ensure that each program established under the Civilian Conservation Law provides participants with educational advancement opportunities, life skill development opportunities, and work experience related to the conservation, development, and management of natural resources and recreational areas, restoration of historic structures, and assistance in the development of related community programs. The work experience may include planting, pruning, and cutting of trees; forest management, including fire protection; reclaiming strip-mined land; wildlife habitat development; drainage control; prevention of shore and soil erosion; litter removal; trail development; cleaning or repair of drainage ditches or streams; highway and community beautification; construction of lakes, ponds, and waterways to be used as fishing and hunting sites and for other recreational purposes; flood control projects; urban parks and recreational site development; assistance in times and places of natural disasters; insect and pest control; construction and renovation of facilities; restoration of historic structures; and any other similar work experience considered appropriate by the Chief. The programs may be carried out on any publicly owned land or, with the prior written approval of the person owning, administering, or controlling the land, on privately owned land.

Under current law, a participant in a conservation program must be a resident of this state who is at least 18 years of age, but who is younger than the maximum age for participation established by the Chief and must satisfy eligibility standards established by the Chief. In considering each application, the Chief must determine whether the applicant would be benefited by participation in a program and whether the applicant has the ability and desire to participate in a program. Current law requires participants in a conservation program to serve, generally, for a period between six and twenty-four months. The Division must compensate each participant in an amount not less than minimum wage and must provide each participant in residential camps with lodging, food, and necessary work clothing and any other services that the Chief considers appropriate.

Current law requires the Chief to establish rules of conduct for conservation program participants and procedures for disciplining them and establishes limits on certain practices that involve conservation programs, such as soliciting participants for political activity. In addition, current law creates in the Division of Civilian Conservation the Civilian Conservation Advisory Council, which consists of nine members who recommend to the Chief broad policies for the Division and a long-range plan to implement the policies, evaluate the Division's needs to meet its policy objectives, and recommend to the Chief ways of cooperating with other conservation programs administered by private and public agencies.

The bill repeals the Civilian Conservation Law, thus eliminating the Division of Civilian Conservation, the Civilian Conservation Advisory Council, civilian conservation programs, and all related statutory provisions.

Sustainable forestry initiative

Licensure of timber buyers

(R.C. 1503.05, 1503.50, and 1503.51)

The bill requires the Chief of the Division of Forestry in the Department of Natural Resources, not later than July 1, 2004, to establish a program for the licensure of timber buyers. The bill defines "timber buyer" as a person who is engaged either in the business of buying timber from its grower for the purposes of sawing it into lumber, processing it, or re-selling it or in land-clearing, as "land-clearing" is defined in rules (see below). "Timber buyer" does not include a person who purchases timber for the purposes of sawing it or processing it for the person's own use and not for resale, provided that the person does not purchase timber more frequently than the interval established in rules or in greater amounts than those specified in rules. Under the bill, "timber" means trees, standing or felled, and parts of trees that can be used for sawing or processing into lumber for

building or structural purposes or for the manufacture of any article. "Timber" does not include Christmas trees, fruit or ornamental trees, or wood products that are not used or intended for use for building, structural, manufacturing, or processing purposes. "Buying timber" means to purchase timber, cut timber in exchange for receiving a share of it, or barter for timber; to offer to do so; or to take possession of timber with or without the consent of the timber grower. The bill specifies that "rules" means rules that the bill requires the Chief to adopt in accordance with the Administrative Procedure Act.

The bill prohibits a person, on and after July 1, 2004, from acting as a timber buyer unless the person holds a valid timber buyer license issued by the Chief. Under the bill, "person" means an individual, partnership, firm, association, business trust, or corporation. A person who wishes to obtain a timber buyer license must file an application with the Chief on a form that the Chief prescribes and provides. The application must include the applicant's name, the names of the applicant's principal officers if the applicant is a corporation, the names of the applicant's partners if the applicant is a partnership, the location of any principal office or place of business of the applicant, the counties in Ohio in which the applicant proposes to engage in business as a timber buyer, and any additional information that the Chief requires.

An applicant must include with an application a filing fee of $100 plus an additional $5 fee for a timber buyer identification card. The Chief must deposit the fees in the state treasury to the credit of the State Forest Fund, which is created under current law. Money in the Fund is to be used for the development, administration, and maintenance of state forests, forest nurseries, and forest programs as specified in existing law.

Upon receipt of a completed application together with the two fees, the Chief must issue a license and a timber buyer identification card to the applicant, except that the Chief is prohibited from issuing either to an applicant who has violated the bill by failing to pay the sustainable forestry fee or the per-acre conversion fee that the bill establishes (see below). The license and identification card are valid for one year and may be renewed in the same manner that an initial license and identification card are applied for and issued.

Proof of licensure

(R.C. 1503.52)

The bill requires a timber buyer to post a copy of his valid timber buyer license in his principal office in Ohio. In addition, when engaged in buying timber, a timber buyer must carry on his person a valid timber buyer identification card. Upon the request of the Chief, the Chief's authorized representative, a

sheriff, a deputy sheriff, or any other peace officer, a timber buyer must present the identification card for inspection. A person who is charged with failing to present the identification card will not be convicted if he produces in court satisfactory evidence that a timber buyer identification card that was valid at the time of the violation had been issued to him.

Prohibitions

(R.C. 1503.53)

The bill prohibits a timber buyer from doing any of the following: (1) knowingly failing to pay for any timber purchased as agreed to with the seller, (2) knowingly cutting or causing to be cut or appropriating any timber without the consent of the timber grower, (3) knowingly making any false statement in connection with an application for a timber buyer license or any other information that is required under the bill's sustainable forestry initiative provisions, (4) knowingly failing to account accurately for timber for purposes of calculating the sustainable forestry fee established by the bill (see below), (5) committing any act in connection with the cutting or purchase of timber with purpose to defraud or deceive, or (6) violating any of these provisions of the bill or rules adopted under them. In addition, the bill prohibits any person from resisting or obstructing the Chief or the Chief's authorized representatives in the administration or enforcement of any of these provisions or rules adopted under them.

Penalties

(R.C. 1503.99)

The bill specifies that whoever violates any of the above prohibitions is guilty of a minor misdemeanor. Whoever knowingly violates one of those prohibitions during a time period when the person does not possess a valid timber buyer license because the person's license has been suspended or revoked or the Chief has refused to issue him a license is guilty of a misdemeanor of the fourth degree.

Inspection authority

(R.C. 1503.54)

Under the bill, the Chief may inspect at any reasonable time the premises used by a timber buyer in the conduct of the timber buyer's business. During business hours, the books, accounts, records, and papers that are used in the conduct of that business are subject to inspection by the Chief. A timber buyer must retain any of those items that pertain to buying timber for a period of three years after the timber is bought.

Administrative enforcement

(R.C. 1503.55)

Under the bill, the Chief may suspend or revoke the timber buyer license of any person who violates any of the bill's sustainable forestry initiative provisions or rules adopted under them. In addition, the Chief may refuse to issue a timber buyer license and timber buyer identification card to a person whose license has been suspended or revoked for a period not to exceed five years following the suspension or revocation.

The Chief, by application to a court of competent jurisdiction, may seek, and the court may issue, an injunction restraining a timber buyer who engages in the business of buying timber in Ohio and who does not hold a valid timber buyer license from continuing to engage in that business until the person obtains a valid timber buyer license. Upon refusal or neglect to obey the order of the court, the court may compel compliance by initiating contempt proceedings.

Sustainable forestry fee

(R.C. 1503.05, 1503.50, and 1503.56)

The bill specifies that on and after July 1, 2004, each timber buyer who engages in buying timber in this state must pay a sustainable forestry fee. Except as otherwise discussed below, the amount of the fee must be equal to 6% of the value, as determined by the sale price, of the timber involved in a transaction.

The timber buyer must include with the fee a report describing the timber transaction that is the basis of the fee. The report must be made on forms prescribed and provided by the Chief and must include information specified by rules. The timber buyer must post a copy of the report in a conspicuous place at the harvest site.

In the case of a timber buyer who engages in the business of land-clearing forest land, as "land-clearing" is defined in rules adopted under the bill, the timber buyer must pay a sustainable forestry fee in an amount that is equal to 6% of the gross value of the standing timber before its harvest. The timber buyer must include with the fee a list on forms that the Chief prescribes and provides that specifies the size and species of the timber removed together with its gross value as standing timber. If the Chief disputes the gross value assigned to the timber, he may cause an investigation to be made into the actual gross value of the timber.

A sustainable forestry fee is not due from a timber buyer who engages in the business of land-clearing for the clearing of land that does not consist of forest land. The bill defines "forest land" as land consisting of a stand or stands of

timber that contain not less than 50 square feet of basal area or not less than 300 stems per acre and that are distributed evenly throughout the stand.

The bill requires a timber buyer, prior to harvesting timber, to submit the sustainable forestry fee together with the report or the list, as appropriate, that are required above to the Chief in accordance with procedures established in rules. The fee must be credited to the State Forest Fund.

Under the bill, the Chief must rebate one-sixth of a sustainable forestry fee that the Chief receives to the following persons under either of the following circumstances: (1) the owner of the land on which timber was harvested, provided that the landowner supplies the Chief with documentation that either a professional forester planned and administered the harvest or a trained logger was utilized in the harvest of the timber, or (2) the timber buyer, provided that the timber buyer supplies the Chief with any information about the harvest that is encouraged under current law governing soil and water conservation practices and that a trained logger and management practices to protect water quality were utilized in the harvest of the timber. For purposes of the rebate, in order to be considered a professional forester or a trained logger, a person must satisfy the standards established in rules adopted under the bill.

Per-acre conversion fee

(R.C. 1503.05 and 1503.57)

The bill requires a landowner who converts land use from forest land to nonforest land that is not used for agriculture to pay a per-acre conversion fee to the Chief. The fee must be submitted in an amount and in accordance with procedures and other requirements established by rules. The fee must be credited to the State Forest Fund.

Additional authority of the Chief, including authority for cost-share and grant programs

(R.C. 1503.011)

In addition to the authority given to the Chief under current law, the bill authorizes the Chief to do all of the following: (1) perform inventories and assessments of the forest resource in Ohio, (2) establish and administer a cost-share program, in accordance with rules adopted under the bill, under which the state may share the costs to private forest landowners of enhancing the sustainability of the state's forest resource, (3) establish and administer a grant program, in accordance with rules adopted under the bill, for the purpose of enhancing the sustainability and economic development of the forest resource of

Ohio, (4) enter into agreements with private entities to carry out the purposes of the bill's sustainable forestry initiative provisions, and (5) upon the invitation or permission of a private property owner, enter private property or designate another person to do so on the Chief's behalf to carry out the Chief's authority.

Rulemaking

(R.C. 1503.58)

The bill requires the Chief to adopt rules in accordance with the Administrative Procedure Act that do all of the following: (1) establish procedures, eligibility criteria, and any other provisions that are necessary for the administration of a cost-share program under which the state may share the costs to private forest landowners of enhancing the sustainability of the forest resource in Ohio, (2) establish procedures, eligibility criteria, and any other provisions that are necessary for the administration of a grant program for the purpose of enhancing the sustainability and economic development of the state's forest resource, (3) define "land-clearing" for purposes of the bill, (4) establish the maximum frequency and amount of timber purchases that a person may make for his own use without being considered to be a timber buyer, (5) specify the information that must be included in the report that is required to be submitted with a sustainable forestry fee and establish procedures for submitting the report together with procedures for submitting the list that may be required to be submitted with that fee, (6) establish standards that a person must meet in order to be considered to be a professional forester or a trained logger for purposes of eligibility for a rebate of the sustainable forestry fee, and (7) establish the amount of the per-acre conversion fee and establish procedures for submitting the fee and any other requirements that are necessary to administer the bill's provisions governing the fee. In addition, the Chief may adopt any additional rules that he considers necessary to administer the bill's sustainable forestry initiative provisions.

Elimination of Reclamation Commission and transfer of its authority to Environmental Review Appeals Commission

Overview

The bill abolishes the Reclamation Commission. Under current law, the Reclamation Commission hears appeals of decisions of the Chief of the Division of Mineral Resources Management in the Department of Natural Resources. The bill generally transfers authority to hear appeals of those decisions to the Environmental Review Appeals Commission (ERAC), which under law retained by the bill hears appeals of final actions of the Director of Environmental Protection.

Membership and elimination of Reclamation Commission

(R.C. 1513.05 and 1514.09)

Current law creates the Reclamation Commission, which consists of seven members appointed by the Governor with the advice and consent of the Senate. For purposes of hearing appeals that involve mine safety issues, the Reclamation Commission is required to consist of two additional members appointed specifically for that function by the Governor with the advice and consent of the Senate. All terms of office are for five years.

Two of the appointees to the Commission must be persons who, at the time of their appointment, own and operate a farm or are retired farmers. One of the appointees must be a person who, at the time of appointment, is the representative of an operator of a coal mine. Another appointee must be a person who is a representative of the public. One of the appointees must be a person who is learned and experienced in modern forestry practices. An additional appointee must be a person who is learned and experienced in agronomy. Finally, one of the appointees must be either a person who is capable and experienced in earth-grading problems or a civil engineer. Not more than four appointees can be members of the same political party.

When the Reclamation Commission hears an appeal that involves the surface or in-stream mining of aggregates, the member representing the coal mine operators must be replaced by a person who is a representative of surface or in-stream mine operators, as applicable. The two additional members of the Reclamation Commission who are appointed specifically to hear appeals that involve mine safety issues must represent employees currently engaged in mining operations. One must be a representative of coal miners, and one must be a representative of aggregates miners. Prior to making the appointments, the Governor must request the highest ranking officer in the major employee organization representing coal miners in Ohio to submit the names and qualifications of three nominees and must request the highest ranking officer in the major employee organization representing aggregates miners in Ohio to do the same. The Governor must appoint one person nominated by each organization to the Reclamation Commission. The nominees must have not less than five years of practical experience in dealing with mine health and safety issues and at the time of the nomination must be employed in positions that involve the protection of the health and safety of miners. The major employee organization representing coal miners and the major employee organization representing aggregates miners must represent a membership consisting of the largest number of coal miners and aggregates miners, respectively, in Ohio compared to other employee organizations in the year prior to the year in which the appointments are made.

When the Reclamation Commission hears an appeal that involves a coal mining safety issue, one of its members who owns and operates a farm or is a retired farmer must be replaced by the additional member who is a representative of coal miners. When the Commission hears an appeal that involves an aggregates mining safety issue, one of its members who owns and operates a farm or is a retired farmer must be replaced by the additional member who is a representative of aggregates miners. Neither of the additional members who are appointed specifically to hear appeals that involve mine safety issues can be considered to be members of the Commission for any other purpose, and they cannot participate in any other matters that come before the Commission.

The Commission may appoint a secretary, who may be a Commission member, to hold office at its pleasure. The secretary must perform duties that the Commission prescribes and must receive compensation that the Commission fixes in accordance with the schedules that are provided by law for the compensation of state employees. It addition, the Commission must appoint one or more hearing officers who must be attorneys at law admitted to practice in Ohio to conduct hearings under the Surface Coal Mining Law.

Each member of the Reclamation Commission must be paid as compensation for work as a member $150 per day when actually engaged in the performance of work as a member and when engaged in travel necessary in connection with that work. In addition to the compensation, each member must be reimbursed for all traveling, hotel, and other expenses, in accordance with the current travel rules of the Office of Budget and Management, necessarily incurred in the performance of the member's work as a member.

The bill abolishes the Reclamation Commission, eliminates all references to it in the Revised Code, and generally replaces references to it with references to ERAC.

Membership of ERAC

(R.C. 3745.02, not in the bill)

Under current law, the Environmental Review Appeals Commission consists of three members appointed by the Governor with the advice and consent of the Senate. Terms of office are for six years. Each member must have extensive experience in pollution control and abatement technology, ecology, public health, environmental law, economics of natural resource development, or related fields. At least one member must be an attorney. Not more than two members can be of the same political party, and at least two members must represent the public interest. Current law specifies that final actions of the Director of Environmental Protection are appealable to ERAC.

Transfer of authority to ERAC; exceptions

(R.C. 1509.06, 1509.08, 1513.02, 1513.07, 1513.13, 1513.131, 1513.14, 1513.16, 1514.021, 1514.071, 1514.09, 1514.10, 1561.35, 1561.351, 1561.51, 1563.13, 3745.04, and 6111.044; Section 145.02)

Current law specifies that any person having an interest that is or may be adversely affected by a notice of violation, order, or decision of the Chief of the Division of Mineral Resources Management, other than a show cause order or an order that adopts a rule, or by any modification, vacation, or termination of such a notice, order, or decision, may appeal by filing a notice of appeal with the Reclamation Commission. The bill instead specifies that such appeals are to be made to ERAC and includes standard language stating that on the bill's effective date all of the Reclamation Commission's functions, assets, liabilities, equipment, records, business, and rules will be transferred to ERAC. ERAC is deemed under the bill to constitute continuation of the Reclamation Commission and all references to the Commission are deemed under the bill to refer to ERAC.

The bill creates two exceptions under which appeals heard by the Reclamation Commission under current law are not to be heard by ERAC. The first involves an existing provision authorizing the owner of an oil or gas well to appeal to the Reclamation Commission an order of the Chief ordering the immediate suspension, due to health, safety, or certain other concerns, of the drilling, operating, plugging, or reopening of a well in a coal bearing township or appeal directly to the court of common pleas of the county in which the well is located. The bill instead provides that such a suspension order may be appealed only directly to the court of common pleas of the applicable county.

The second exception involves the Chief's decision on an application for a permit to drill, reopen, or convert an oil or gas well in a coal bearing township. Upon receipt of such an application, the Chief immediately must notify the owner or lessee of any affected coal mine that the application has been filed and must send to the owner or lessee of the mine two copies of a map showing the location or proposed location of the well. If the owner or lessee of the mine objects to the location of the well or objects to any location within 50 feet of the original location as a possible site for relocation of the well, he must notify the Chief of the objection and state reasons for it. Under current law, if the Chief determines that he does not agree with the objection, the owner or lessee of the mine may appeal the Chief's determination to the Reclamation Commission. Conversely, current law provides that if the Chief does agree with the objection and denies the permit because of it, then the permit applicant may appeal the denial to the Reclamation Commission. The bill instead specifies that the appeals are to be made to the Oil and Gas Commission that is created under current law.

Dual procedures for appeals to ERAC

(R.C. 1513.13, 1513.131, 1513.14, 3745.04, and (not in the bill) 3745.05)

The bill specifies that if an appeal made to ERAC is of an action of the Chief of the Division of Mineral Resources Management that is taken under the Coal Surface Mining Law or the Aggregates Mining Law, the appeal procedures established in those laws apply. These procedures apply to appeals made to the Reclamation Commission under current law. However, with regard to an appeal made to ERAC of an action of the Chief that is made under any other laws in the Revised Code that govern mining (generally the mine safety laws), the bill is not clear whether those appeal procedures or the appeal procedures established for ERAC under current law apply.

The two sets of procedures share a number of similarities. For example, they both require an appeal to be filed within 30 days after a decision is made. However, the procedures differ in several respects. In the discussion that follows, procedures that apply to the Reclamation Commission under current law apply to ERAC under the bill for appeals under the Coal Surface Mining Law or the Aggregates Mining Law.

The procedures that currently apply to the Reclamation Commission require the Commission to conduct hearings and render decisions in a timely fashion after an appeal has been filed with the exception of specified situations in which the Commission is required to complete such actions within a certain number of days. ERAC's current procedures require a hearing to be held within 30 days after an appeal has been filed. Current law governing appeals to the Reclamation Commission does not mention a fee for filing an appeal while current law governing appeals to ERAC requires a $60 filing fee for an appeal, which ERAC, in its discretion, may waive in cases of extreme hardship. Another difference in the two sets of procedures is that under current law the Reclamation Commission has broad subpoena power and appears to have general authority to conduct de novo hearings. Current law specifies that ERAC is confined to the record when hearing an appeal unless it is conducting a de novo hearing because no previous adjudicatory hearing was conducted by the Director of Environmental Protection in accordance with the Administrative Procedure Act or it has granted a request for the admission of additional evidence. ERAC has the authority to issue subpoenas under current law only when granting a request for the admission of additional evidence or conducting a de novo hearing. Current law authorizes the chairperson of the Reclamation Commission under certain circumstances to grant temporary relief to a person who applies for it pending the final determination of an appeal, but ERAC does not have such authority to grant temporary relief under current law. An additional difference is that under current law, the Reclamation Commission must affirm the Chief's decision that is being appealed unless the

Commission determines that the decision is arbitrary, capricious, or otherwise inconsistent with law. Current law requires ERAC to affirm an action that was appealed from if ERAC determines that the action was lawful and reasonable. Finally, under current law, an appeal from a decision of the Reclamation Commission may be made to the court of appeals of the county in which the activity addressed by the decision occurred. Current law states that an appeal from a decision of ERAC may be made to the Court of Appeals of Franklin County or, if the appeal arose from an alleged violation of law or rules, to the court of appeals of the county in which the violation allegedly occurred.

Eligibility for costs, expenses, and attorney's fees in appeals made under procedures that currently apply to Reclamation Commission

(R.C. 1513.13)

Current law specifies that at the request of a party who prevailed in connection with participation in proceedings before the Reclamation Commission, the person may be awarded a sum equal to the aggregate amount of all costs and expenses, including attorney's fees, as determined to have been necessary and reasonably incurred by the prevailing party. A party is eligible for such an award only under certain circumstances, including when an enforcement order or permit decision is appealed to the Reclamation Commission. The bill specifies that the enforcement order or permit decision must have been issued under the Surface Mining Law, and not under the Aggregates Mining Law, in order for a prevailing party to be eligible for the award of costs and expenses, including attorney's fees. This eligibility applies under the bill to appeals heard by ERAC in accordance with the procedures that apply to the Reclamation Commission under current law.

Under those current law provisions, a party, other than a permittee or the Division of Mineral Resources Management, must file a petition, if any, for an award of costs and expenses, including attorney's fees, with the Chief, who must review the petition. The bill authorizes, rather than requires, the party to file a petition.

Current law specifies that if a permittee who made a request for costs and expenses, including attorney's fees, demonstrates that a party, other than a permittee who initiated an appeal to the Reclamation Commission or participated in such an appeal, initiated or participated in the appeal in bad faith and for the purpose of harassing or embarrassing the permittee, the permittee may file a petition with the Chief. The Chief may award to the permittee the costs and expenses reasonably incurred by the permittee in connection with participation in the appeal and assess those costs and expenses against the party who initiated the appeal. The bill instead specifies that a permittee may file with the Chief a request for an award to the permittee of the costs and expenses, including attorney's fees,

reasonably incurred by the permittee in connection with an appeal initiated in accordance with the procedures that apply to the Reclamation Commission under current law. The Chief may assess those costs and expenses against a party who initiated or participated in the appeal if the permittee demonstrates that the party initiated or participated in the appeal in bad faith and for the purpose of harassing or embarrassing the permittee.

Current law authorizes the Division of Mineral Resources Management to file, with the Reclamation Commission, a request for an award to the Division of the costs and expenses reasonably incurred by the Division in connection with an appeal made to the Commission. Under current law, the Commission may assess those costs and expenses against the party who initiated the appeal if the Division demonstrates that the party initiated or participated in the appeal in bad faith and for the purpose of harassing or embarrassing the Division. The bill clarifies that the Commission (ERAC under the bill) may assess those costs and expenses, including attorney's fees, against a party who participated in an appeal as well as a party who initiated the appeal.

Current law states that whenever an order that is issued by the Reclamation Commission with respect to an appeal or as a result of any administrative proceeding under the Coal Surface Mining Law is the subject of judicial review, at the request of any party a sum equal to the aggregate amount of all costs and expenses, including attorney's fees, as determined by the court to have been necessary and reasonably incurred by the party for or in connection with participation in the proceedings may be awarded to either party in accordance with the provisions discussed above as the court, on the basis of judicial review, considers proper. The bill instead specifies that if certain final orders become the subject of judicial review, then at the request of any party a sum equal to the aggregate amount of all costs and expenses, including attorney's fees, as determined by the court to have been necessary and reasonably incurred by the party for or in connection with participation in the proceedings may be awarded to the party in accordance with the provisions discussed above as the court, on the basis of judicial review, considers proper. The final orders to which this provision applies include a final order involving the Coal Surface Mining Law that is issued by ERAC, that is issued by a court of common pleas in a civil action against the Division of Mines and Reclamation or the Chief to compel compliance with that Law, or that is issued by the Chief in proceedings relating to an employee involved in mining who alleges that he has been discriminated against for being a whistleblower.

Prohibition against purposely misrepresenting or omitting any material fact

(R.C. 1514.10)

Current law prohibits a person from purposely misrepresenting or omitting any material fact in any hearing or investigation conducted by the Reclamation Commission. The bill instead applies this prohibition to a hearing or investigation conducted by ERAC.

Use of investment earnings of Clean Ohio Trail Fund

(R.C. 1519.05)

Current law creates the Clean Ohio Trail Fund for the purpose of providing matching grants to nonprofit organizations and local political subdivisions to purchase land or interests in land for recreational trails and for the construction of such trails. Investment earnings of the Fund must be credited to it. Current law provides that until July 26, 2003, investment earnings credited to the Fund may be used to pay costs incurred by the Director of Natural Resources in administering the law that governs the issuance of the grants. The bill eliminates that deadline, thus authorizing investment earnings credited to the Fund to be used indefinitely for that purpose.

Elimination of coal mining and reclamation permit fees and refunds of excess fees

(R.C. 1513.02, 1513.07, 1513.10 (repeal), and 1513.16)

Current law requires that each application for a coal mining and reclamation permit or permit renewal must be accompanied by a fee that equals $75 multiplied by the estimated number of acres that will comprise the area of land affected by the coal mining operation. The bill eliminates the permit and renewal fees, and the excess fee refund to which an operator is entitled if the coal mining operation affects a smaller area than the estimated number of acres of land for which the operator paid the fee.

Increases to, and revisions in the allocation of, mineral severance taxes

(R.C. 5749.02)

Continuing law levies an excise tax (the mineral severance tax) on severers for the privilege of engaging in the severance of natural resources from the soil and waters of this state. The bill increases the mineral severance tax on coal from 7¢ to 10¢ per ton of coal. The bill also increases an additional coal severance tax

from 1¢ to 5¢ per ton of coal, and eliminates the permit issuance date limitation that the tax be levied for reclaiming lands operators failed to reclaim under coal mining and reclamation permits issued after April 10, 1972, but before September 1, 1981.

Current law levies another coal severance tax for the purpose of paying the state's expenses for reclaiming mined lands that the operator failed to reclaim under a coal mining and reclamation permit or under a surface mining permit, for which the operator's bond is not sufficient to pay the reclamation expenses. The bill eliminates the purpose of reclaiming mined lands under a surface mining permit.

The bill revises the allocation of certain mineral severance taxes as follows:

Natural resource on which the tax is levied	**Current allocation of that tax**	**The bill's allocation of that tax**
Coal	6.3%-Geological Mapping Fund 14.2%-Reclamation Forfeiture Fund 57.9%-Coal Mining Administration and Reclamation Reserve Fund 21.6%-Unreclaimed Lands Fund If balance in Coal Mining Administration and Reclamation Reserve Fund is below $2 million, the 14.2% allocated to the Reclamation Forfeiture Fund instead goes to that Reserve Fund.	4.4%-Geological Mapping Fund 9.9%-Reclamation Forfeiture Fund 70.6%-Coal Mining Administration and Reclamation Reserve Fund 15.1%-Unreclaimed Lands Fund If balance in Coal Mining Administration and Reclamation Reserve Fund is below $2 million, the 15.1% allocated to the Unreclaimed Lands Fund instead goes to that Reserve Fund.
Salt	15%-Geological Mapping Fund 85%-Unreclaimed Lands Fund	50%-Geological Mapping Fund 50%-Surface Mining Fund
Limestone or dolomite	7.5%-Geological Mapping Fund 42.5%-Unreclaimed Lands Fund 50%-Surface Mining Fund	15%-Geological Mapping Fund 2%-Unreclaimed Lands Fund 83%-Surface Mining Fund

Natural resource on which the tax is levied	Current allocation of that tax	The bill's allocation of that tax
Sand and gravel	7.5%-Geological Mapping Fund 42.5%-Unreclaimed Lands Fund 50%-Surface Mining Fund	15%-Geological Mapping Fund 2%-Unreclaimed Lands Fund 83%-Surface Mining Fund
Oil and natural gas	90%-Oil and Gas Well Fund 10%-Geological Mapping Fund	Same Same
Clay, sandstone or conglomerate, shale, gypsum, or quartzite	100%-Surface Mining Fund	50%-Geological Mapping Fund 50%-Surface Mining Fund

Dam construction permit fees

(R.C. 1521.06)

Current law generally requires a person or governmental agency that desires to construct a dam, dike, or levee to obtain a construction permit issued by the Chief of the Division of Water in the Department of Natural Resources. An application for a permit must be accompanied by a filing fee. Except for a political subdivision (see below), the amount of the filing fee is based on a detailed cost estimate for the proposed construction that must be filed with and approved by the Chief.

The bill doubles the fee amounts in the filing fee schedule that is established under current law. The table below reflects the statutory fee amounts established in current law and by the bill:

Construction cost estimate	Current law's fee amount (% of construction cost estimate)	Bill's fee amount (% of construction cost estimate)
For the first $100,000 of estimated cost	2%	4%
For the next $400,000 of estimated cost	1.5%	3%
For the next $500,000 of estimated cost	1%	2%
For all costs in excess of $1,000,000	.25%	.5%

The bill also authorizes the Chief to adopt rules in accordance with the Administrative Procedure Act that establish filing fee amounts that supersede the amounts in the statutorily established fee schedule described above.

Current law establishes a minimum filing fee of $200 and a maximum filing fee of $50,000. The bill increases the minimum filing fee to $1,000 and the maximum filing fee to $100,000.

Under current law, the filing fee schedule described above does not apply to political subdivisions, which instead are required to pay a filing fee of $200. The bill eliminates this provision, thus making applicable to political subdivisions the higher fee amounts that are established in the statutory filing fee schedule or the fees that are established in rules and that are applicable to all other permit applicants.

Annual fees for dams

(R.C. 1521.063)

Current law specifies that, except for a political subdivision, the owner of any dam for which a construction permit was required must pay to the Division of Water in the Department of Natural Resources an annual fee that is based on the height of the dam. The annual fee is due on or before June 30 of each year, and the amount of the fee is prescribed in a statutorily established fee schedule. The bill requires the Chief of the Division of Water to adopt rules in accordance with the Administrative Procedure Act that establish annual fee amounts that supersede the amounts in the statutorily established fee schedule.

The statutorily established fee schedule in current law specifies that for any dam classified as a Class I dam under rules adopted by the Chief, the annual fee is $30 plus $3 per foot of height of dam. The bill increases the annual fee amount for Class I dams to $30 plus $10 per foot of height of dam.

Under current law, political subdivisions are exempt from the annual fee requirement. The bill eliminates this exemption, thus requiring a political subdivision that owns a dam for which a construction permit was required to pay an annual fee in the same amount that must be paid by all other owners of such dams. However, the bill clarifies that the federal government is exempt from the annual fee requirement.

Hunting and fishing license, permit, and stamp requirements and fees

(R.C. 1533.10, 1533.101, 1533.11, 1533.111, 1533.112, 1533.13, and 1533.32)

Current law establishes fees for hunting and fishing licenses, permits, and stamps issued by the Division of Wildlife in the Department of Natural Resources. The bill increases the fees as follows:

License, permit, or stamp	Current fee	Proposed fe
Hunting license for resident	$14	$18
Hunting license for nonresident whose state has reciprocity agreement with Ohio	$14	$18
Hunting license for nonresident whose state does not have reciprocity agreement	$90	$124
Tourist's hunting license (renamed small game license by bill)	$24	$39
Fishing license for resident	$14	$18
Fishing license for nonresident whose state has reciprocity agreement with Ohio	$14	$18
Fishing license for nonresident whose state does not have reciprocity agreement	$23	$39
Tourist's fishing license	$14	$18
One-day fishing license	40% of tourist's fishing license fee	55% of tourist's fishing license fee
Fur taker permit	$10	$14
Special deer or special wild turkey permit	$19	$23
Wetlands habitat stamp	$10	$14
Reissuance of licenses, permits, or stamps	$2	$4

Current law specifies that every resident of the state who is 66 years of age or older must be issued an annual fishing license, hunting license, fur taker permit, deer or wild turkey permit, or wetlands habitat stamp, or any combination of those licenses, permits, and stamp, free of charge when application is made to the Chief of the Division of Wildlife in the manner prescribed by and on forms provided by the Chief. The bill instead requires the free licenses, permits, and stamp to be issued to state residents applying for them who were born on or before December 31, 1937. It then requires state residents who at the time of application are at least 66 years old, other than those born on or before that date, to purchase a special

senior fishing license, special senior hunting license, or special senior fur taker permit. The fee for each such license or permit is one-half of the regular license or permit fee. In addition, those residents must pay the regular fee for special deer or wild turkey permits and wetlands habitat stamps. The bill thus phases out free hunting and fishing licenses, permits, and stamps for senior citizens. It also eliminates the exemption that allows residents who are at least 66 years old to take or catch frogs and turtles without a fishing license.

Except for one-day fishing licenses, the bill allows the Division, in lieu of the statutory fees, to establish in rules the various fishing license fees and the fee charged by issuing agents for the issuance of fishing licenses.

Current law allows managers and their children who reside on lands in Ohio to hunt or trap on those lands without obtaining a hunting license, special deer or wild turkey permit, or fur taker permit. The bill eliminates this permission.

Under existing law, money from the sale of wetlands habitat stamps must be credited to the Wetlands Habitat Fund. Currently, 60% of the money in the Fund must be used for projects that the Division approves for the acquisition, development, management, or preservation of waterfowl areas in Ohio, and 40% must be used for contribution by the Division to an appropriate nonprofit organization for the acquisition, development, management, or preservation of lands and waters in Canada that provide or will provide habitat for waterfowl with migration routes that cross Ohio. The bill expands the nonprofit organizations that may receive those contributions from the Fund to include such organizations in the United States.

Additional Division of Wildlife license, permit, and stamp requirements and fees

(R.C. 1531.26, 1533.06, 1533.08, 1533.151, 1533.19, 1533.23, 1533.301, 1533.35, 1533.39, 1533.54, 1533.631, 1533.632, 1533.71, and 1533.82)

Current law establishes fees for additional licenses, permits, and stamps issued by the Division of Wildlife. The bill increases the fees as follows:

License, permit, or stamp	Current fe	Proposed fee
Wild animal collecting permit	$10	$25
Wildlife conservation stamp	$5	No more than wetland habitat stamp fee
Field trial permit	$25	$50
Fur dealer's permit	$50	$75
Permit to transport fish	$50	$65

License, permit, or stamp	Current fe	Proposed fee
Permit for sales of minnows, crayfish, or hellgrammites	$25	$40
Permit to handle commercial fish at wholesale	$50	$65
Commercial propagating license	$25	$40
Noncommercial propagating license	$10	$25

Current law establishes royalty fees for specified species of fish when those fish are taken commercially. The amount of the royalty fees for species taken for which an allowable catch or quota has been established by rule is 2¢ per pound. The bill increases those royalty fees to 5¢ per pound. Under existing law, the amount of the royalty fees for species taken for which an allowable catch or quota has not been established by rule is 1¢ per pound on that portion taken that exceeds one-half of the previous year's taking of the species. The previous year's taking is the amount reported for that previous year by the holder of a commercial fishing device license to the Division pursuant to reporting procedures established in the Hunting and Fishing Law and the Division of Wildlife Law. The bill increases those royalty fees to 2¢ per pound and eliminates the requirement that they only be paid on the portion taken that exceeds one-half of the previous year's taking.

Under current law, persons authorized to use fishing nets in specified areas of the Ohio River must pay a fee of $10 per net. The bill increases the fee to $50 per net.

In addition to changing the fee for a wildlife conservation stamp (see above), the bill requires a person who purchases a stamp to pay a $1 fee, or an amount established in rules, to the issuing agent of the stamp. Existing law requires money from the sale of wildlife conservation stamps to be credited to the Wildlife Fund to be used exclusively by the Division for specified purposes, including the education of hunters and trappers, the management and protection of wild birds and wild quadrupeds, the acquisition of lands for game preservation and public hunting grounds, and the management of all forms of wildlife for its ecological and nonconsumptive recreational value. The bill instead requires money from the sale of wildlife conservation stamps to be credited to the Nongame and Endangered Wildlife Fund to be used exclusively by the Division for specified purposes, including the management and preservation of wild animals that are not commonly taken for sport or commercial purposes, the protection of species threatened with statewide extinction, and the promotion and

development of nonconsumptive wildlife recreational opportunities involving wild animals.

Existing law authorizes the Chief of the Division of Wildlife to issue permits for the propagation and sale of live fish and fish food for stocking private ponds. A license must contain specified information prescribed by the Chief. [113] The annual license fee is $10. Current law also establishes requirements governing specified activities of such permit holders. The bill eliminates the Chief's authority to issue such permits and the requirements governing permit holders.

Current law establishes the Magee Marsh State Public Hunting Area on Department of Natural Resources lands and waters in Lucas and Ottawa Counties. The Chief may provide a special daily hunting permit for all persons allowed to hunt on the area. The permit fee is $5 per day unless the Chief adopts rules establishing a lower fee. The issuance of the permit does not alter or supersede the laws requiring a hunting license. The bill abolishes the hunting area.

Finally, existing law requires the Division, when it appears that an application for a commercial propagating license, noncommercial propagating license, or raise to release license is made in good faith, and upon payment of the fee for such a license, if applicable, to issue the applicable license to the applicant. The bill authorizes rather than requires the Division to issue a commercial propagating license, noncommercial propagating license, or raise to release license if the specified requirements are met.

Mine safety inspections

(R.C. 1561.31)

Current law generally requires each deputy mine inspector to inspect each mine in the inspector's district at intervals not exceeding three months between inspections. The bill instead requires the inspector to inspect each underground coal or mineral mine not less than four times per calendar year and each surface coal or mineral mine not less than two times per calendar year. It defines "mineral" to mean sand, gravel, clay, shale, gypsum, halite, limestone, dolomite, sandstone, other stone, metalliferous or nonmetalliferous ore, or other material or substance of commercial value excavated in a solid state from natural deposits on or in the earth, excluding coal or peat. In addition, the bill requires the inspector, during each inspection, to provide to the superintendent of the mine information concerning the health and safety conditions of the mine operation and to determine

[113] *Current law appears to use "permit" and "license" interchangeably.*

whether the mine operation complies with applicable health and safety standards and with any citation, order, or decision issued under the state's mining laws.

Under current law, an inspector must note the location and condition of buildings, the condition of the boiler, machinery, workings of the mine, the traveling ways and haulageways, the circulation and condition of the air and drainage, and the condition of electrical circuits and appliances. The bill instead requires the inspector to examine the location and condition of buildings, the condition of the machinery, the workings of the mine, the roof control measures, the traveling ways and haulageways, the circulation and condition of the air and drainage, and the condition of electrical circuits and appliances, as applicable.

OHIO BOARD OF NURSING

- Permits the Board of Nursing to sponsor and collect fees for continuing education activities.
- Creates new Board of Nursing fees and increases certain existing fees.

Board of Nursing fees

(R.C. 4723.06, 4723.08, and 4723.082)

Under current law the Board of Nursing approves continuing education programs. The bill permits the Board to also sponsor continuing education activities.

The bill creates the following new Board of Nursing fees: issuance of an intravenous therapy card, $25; out-of-state survey visits of nursing education programs operating in Ohio, $2,000; participation in a board-sponsored continuing education activity, up to $15. The receipts from board-sponsored continuing education activities are to be deposited in the Special Nursing Issues Fund. All other receipts of the Board of Nursing are deposited in the Occupational Licensing and Regulatory Fund.

The bill increases Board of Nursing fees as shown in the following chart.

License	Current fee	Fee under the bill
Application for licensure by examination or endorsement	$50	$75
Replacement copy of a nursing license	$15	$25
Replacement copy of a certificate of authority	$15	$25
Replacement copy of a dialysis technician certificate	$15	$25
Biennial renewal of a nursing license that expires on or after August 31, 2004	$45	$65

OHIO OPTICAL DISPENSERS BOARD

- Eliminates the amounts specified in statute for fees charged by the Optical Dispensers Board and provides for the amounts to be specified by the Board in rules adopted in accordance with the Administrative Procedure Act.

- Clarifies provisions for the endorsement of out-of-state licenses and the licensure of ocularists.

Optical Dispensers Board fees

(R.C. 4725.44, 4725.45, 4725.48, 4725.50, 4725.51, 4725.52, and 4725.57)

Under current law, the Optical Dispensers Board collects certain fees that are specified in statute. The bill eliminates the fees specified in statute and instead requires the Board to adopt rules in accordance with the Administrative Procedure Act that specify any fees established under the law governing licensed dispensing opticians and licensed ocularists.

Existing law permits the Board to establish fees that are higher than the amounts specified in statute, subject to Controlling Board approval, as long as the fees do not exceed the statutory amounts by more than 50%. Under the bill, because the fees are no longer specified in statute, the Board's authority to

establish higher fees with Controlling Board approval is applied to the fees established in rules.

Licensure of ocularists

(R.C. 4725.44 and 4725.48)

The bill clarifies that the Optical Dispensers Board, in addition to processing applications for licensure of dispensing opticians, is required to process applications for licensure of ocularists.[114] The Board is also required to adopt rules for the licensure of ocularists.

Endorsement of out-of-state licenses for licensed dispensing opticians

(R.C. 4725.57)

Am. Sub. H.B. 94 of the 124th General Assembly revised the law governing licensure of dispensing opticians. The bill makes a technical correction to the law governing the endorsement of out-of-state licenses to reflect those revisions.

STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS

- Eliminates a sunset provision that repeals the law establishing the State Board of Orthotics, Prosthetics, and Pedorthics.

Repeal of sunset

(R.C. 4779.08, 4779.17, and 4779.18; Section 3 of S.B. 238 of the 123rd G.A.)

The fields of orthotics, prosthetics, and pedorthics deal with rehabilitative treatment of conditions affecting the musculoskeletal system. The State Board of Orthotics, Prosthetics, and Pedorthics oversees the licensure of professionals in those fields. The bill repeals a sunset clause that would repeal the law establishing the Board on December 31, 2004.

[114] *An ocularist engages in the practice of designing, fabricating, and fitting artificial eyes (R.C. 4725.41, not in the bill).*

STATE PERSONNEL BOARD OF REVIEW

- Specifies that the State Personnel Board of Review must use the money in the Transcript and Other Documents Fund to defray the cost of producing an "administrative record."

Transcript and Other Documents Fund

(R.C. 124.03)

The State Personnel Board of Review (SPBR) hears appeals of employees in the classified state service from specified final decisions of appointing authorities or the Director of Administrative Services and appeals of appointing authorities from specified final decisions of the Director. The SPBR is funded by general revenue fund appropriations.

Current law provides that all moneys received by the SPBR for copies of documents, rule books, and transcriptions must be paid into the state treasury to the credit of the Transcript and Other Documents Fund, which was created to defray the cost of furnishing or making available those copies, rule books, and transcriptions. The bill provides that the SPBR instead must use the money in the Fund to defray the cost of producing an administrative record (presumably related to the appeals mentioned above).

PUBLIC UTILIITES COMMISSION OF OHIO

- Codifies the creation of the Special Assessment Fund in the state treasury, to be used for Public Utilities Commission investigations.

- Codifies the creation of the Gas Pipe-line Safety Fund in the state treasury, to be used for Public Utilities Commission oversight of intrastate transportation by pipeline.

- Codifies the creation of the Motor Carrier Safety Fund in the state treasury, to be used for Public Utilities Commission oversight of interstate motor carrier transportation safety.

Special Assessment Fund

(R.C. 4903.24)

The bill codifies the creation of the Special Assessment Fund in the state treasury. The fund was established in 1982 by the Controlling Board and continues under the bill to consist of money from fees, expenses, or costs required to be paid under existing law either by utilities that the Public Utilities Commission (PUCO) finds have unlawful rates or classes of service or by other parties to an investigation or hearing. The bill authorizes the PUCO to use the fund to cover the costs of investigations or hearings regarding any public utility.

Gas Pipe-line Safety Fund

(R.C. 4905.91)

The bill codifies the creation of the Gas Pipeline Safety Fund in the state treasury and renames it the Gas Pipe-line Safety Fund. The original fund was established in 1973 by the Controlling Board, and continues under the bill to consist of any federal grants-in-aid, cash, and reimbursements available to the Public Utilities Commission (PUCO) under its authority regarding gas pipeline safety. The bill authorizes the PUCO to use the fund to carry out its duties regarding intrastate transportation by pipeline.

Motor Carrier Safety Fund

(R.C. 4919.79)

The bill codifies the creation of the Motor Carrier Safety Fund in the state treasury. The fund was established in 1984 by the Controlling Board and continues under the bill to consist of any grants-in-aid, cash, and reimbursements available pursuant to continuing authority for the Public Utilities Commission (PUCO) to enter into cooperative agreements with federal agencies. The bill authorizes the PUCO to use the fund to carry out its duties regarding interstate motor carrier transportation safety.

PUBLIC WORKS COMMISSION

- Indefinitely extends authorization for investment earnings of the Clean Ohio Conservation Fund, which are credited to the Fund, to be used to pay certain administrative costs incurred by the Ohio Public Works Commission in administering the Clean Ohio conservation grants program.

Use of investment earnings of Clean Ohio Conservation Fund

(R.C. 164.27)

Current law creates the Clean Ohio Conservation Fund for the purpose of providing grants to local political subdivisions and nonprofit organizations for natural resources and parks and recreation projects. The Fund is administered by the Ohio Public Works Commission. Investment earnings of the Fund must be credited to it. Current law provides that until July 26, 2003, investment earnings credited to the Fund may be used to pay costs incurred by the Commission in administering the law governing the issuance of the grants. The bill eliminates that deadline, thus authorizing investment earnings credited to the Fund to be used indefinitely for that purpose.

OHIO BOARD OF REGENTS

- Increases the Ohio Instructional Grants (OIG Grants) for most eligible independent students with dependents at percentage increases that grow larger the farther the student is from maximum grant eligibility.

Increase in Ohio Instructional Grant (OIG) amounts

(R.C. 3333.12; Section 88.06)

The Board of Regents administers an instructional grant program. This program basically pays instructional grants to full-time, Ohio resident students who attend a public, private nonprofit, or career institution of higher education in Ohio and are enrolled in a program leading to an associate or bachelor's degree. The Board of Regents establishes all rules concerning application for the grants.

Grant amounts are generally based on whether an applicant is financially dependent or independent; the combined family income (if dependent) or the student and spouse income (if independent); the number of dependents; and whether the applicant attends a private nonprofit, public, or career institution. The amount of the grant cannot exceed the total instructional and general fees charged by the student's school.

Separate tables in each fiscal year set forth the grant amounts, one for each category of student (based on type of institution and financial dependence or independence). Each table has headings for income ranges and the number of dependents (up to five) in the family, with a grant amount for each income range

and family size. The bill maintains in both FY 2004 and FY 2005 the current maximum base amounts of gross income a student may have for grant eligibility. Thus, for dependent students attending a private, career, or public institution the maximum gross income level for grant eligibility remains $39,000. For an independent student attending a private, career, or public institution the maximum gross income level for grant eligibility remains $35,300.

The bill also does not change any grant amounts for dependent students in FY 2004 and FY 2005 from the FY 2003 awards. Thus, a dependent student attending a private institution may receive a maximum grant award of $5,466 and a minimum award of $444. A dependent student attending a career institution may receive a maximum grant award of $4,632 and a minimum award of $372. A dependent student attending a public institution may receive a maximum grant award of $2,190 and a minimum award of $174.

For independent students attending public, private, and career institutions, however, the bill does increase many of the grant amounts. While both the maximum grant awards ($5,466 at private institutions, $4,632 at career institutions, and $2,190 at public institutions) and the grant awards for independent students with no dependents are unchanged from FY 2003 awards, the grant awards for independent students with dependents who do not qualify for the maximum grant (because of income) are increased by the bill in both FY 2004 and FY 2005. The further a student falls from the maximum grant, the larger the percentage increase in grant amounts from year to year. Additionally, the minimum grants available under the bill are available to students with higher incomes and smaller family sizes.

DEPARTMENT OF REHABILITATION AND CORRECTION

- Provides an administrative procedure for the resolution of claims of inmates of state correctional institutions for the loss of or damage to property that do not exceed $300.

Administrative resolution of small claims of inmates

(R.C. 2743.02)

Under current law, an inmate of a state correctional institution who wants to pursue a claim against the state for property damage must bring a civil action in the Court of Claims, regardless of the size of the claim. The bill requires that an

inmate who has a claim of $300 or less for the loss of or damage to property first attempt to settle the claim through an administrative procedure established by rule by the Director of Rehabilitation and Correction. The inmate must file the claim within the time allowed for bringing an action in the Court of Claims. If the state admits or compromises the claim, the Director makes payment from a fund designated by the Director for that purpose. If the state denies or fails to compromise the claim at least 60 days before the expiration of the time allowed for commencing a civil action in the Court of Claims, the inmate may bring an action in the Court of Claims.

STATE BOARD OF SANITARIAN REGISTRATION

- Increases various registration fees for sanitarians and sanitarians-in-training.

Sanitarian and sanitarian-in-training registration fees

(R.C. 4736.12)

Current law requires the State Board of Sanitarian Registration to charge various fees for a person to apply to be a sanitarian-in-training, for a sanitarian-in-training to apply for registration as a sanitarian, for a person other than a sanitarian-in-training to apply for registration as a sanitarian, and for renewal of registration by a registered sanitarian and a sanitarian-in-training.

Under the bill, the fee to apply to be a sanitarian-in-training and for a sanitarian-in-training to apply for registration as a sanitarian is increased from $57 to $75. The fee for persons other than a sanitarian-in-training to apply for registration as a sanitarian is increased from $114 to $150. The provision that requires the Board to fix the renewal fee for a registered sanitarian and a sanitarian-in-training at no more than $61 is removed and replaced with a set renewal fee of $69 for both sanitarians and sanitarians-in-training.

OHIO SCHOOLNET COMMISSION

- Eliminates the Ohio SchoolNet Commission effective July 1, 2004, and transfers its functions, assets, liabilities, and employees to the Department of Education, subject to a special task force plan to be approved by the Controlling Board.

- Creates the Ohio Technology Integration Task Force to develop a plan for integrating technology into school classrooms and to make recommendations for the transfer of the Ohio SchoolNet Commission's responsibilities to the Department of Education.

Elimination of the Commission and transfer of functions to Department of Education

(R.C. 125.05, 183.28, 3301.80, 3301.801, 3314.074, 3317.06, 3317.50, 3317.51, 3319.22, and 3319.235; Sections 137 and 146.17)

Background

The Ohio SchoolNet Commission is an independent state agency charged with providing financial assistance and technical services to school districts and community schools in the acquisition and implementation of education technology. Responsibilities of the Commission include making grants to districts and schools for the procurement of support services for their education technology, establishing model professional development programs to assist teachers in integrating technology into their classrooms, and maintaining a clearinghouse for teachers that offers instructional materials such as lesson plans. The Commission is made up of eleven members, although it employs an executive director to carry out the duties of the Commission.[115]

Elimination of Commission subject to task force plan

Effective July 1, 2004, the bill eliminates the Ohio SchoolNet Commission and transfers its duties and authorities, assets, liabilities, and employees to an office within the Department of Education.[116] The bill makes no changes to the responsibilities currently handled by the Commission, all of which will be overseen by the Superintendent of Public Instruction following the transfer.

---

[115] The Commission consists of seven voting members and four nonvoting legislative members appointed by the President of the Senate and the Speaker of the House of Representatives. Voting members are the Superintendent of Public Instruction, Director of Budget and Management, Director of Administrative Services, Chairperson of the Public Utilities Commission of Ohio (PUCO), Director of the Ohio Educational Telecommunications Network Commission, and two members of the general public.

[116] Among the assets specifically cited by the bill to be transferred include vehicles and equipment assigned to Commission employees and records of the Commission.

To direct the transition, the bill creates the Ohio Technology Integration Task Force.[117] The Task Force must do all of the following: (1) develop a plan to integrate technology into all of the state's primary and secondary classrooms in a manner that enhances instruction and academic achievement, (2) make a budget proposal for FY 2005 that provides for the Department to deliver the services currently handled by the Commission, and (3) recommend which assets, functions, services, and employee positions should be transferred to the Department and which should be eliminated entirely. The Task Force must take into account economies of scale anticipated by the transfer in making its suggestions. It may also consult those involved in the implementation of education technology in schools for their input prior to developing its plan. The Task Force must present its plan and recommendations to the Controlling Board by March 31, 2004. Upon approval by the Controlling Board, the Task Force will permanently disband. The transfer of functions, assets, and liabilities from the SchoolNet Commission to the Department will be governed by the plan approved by the Controlling Board.

After the transfer, the Department assumes all ongoing business of the former Commission and the Commission's rules remain in effect until amended or rescinded by the Department. Employees of the former Commission must be transferred to the Department or dismissed according to recommendations of the Task Force. Current Commission employees are in the unclassified service and, therefore, are not subject to Collective Bargaining Law. Under the bill, all such employees who are reassigned to the Department maintain their status in the unclassified service. New employees hired by the Department after July 1, 2004, to work in the office that handles the functions of the former Commission would also be in the unclassified service while employed in those positions.

SECRETARY OF STATE

- Increases from $5 to $15 the fee that each nonattorney receiving a commission as a notary public must pay to the Secretary of State.

[117] *The Task Force consists of the Superintendent of Public Instruction, Director of Budget and Management, Director of Administrative Services, Executive Director of the Ohio Educational Telecommunications Network Commission, and Chairperson of the Public Utilities Commission of Ohio (PUCO), or designees appointed by such. All currently serve on the Ohio SchoolNet Commission. The bill directs the Superintendent of Public Instruction to chair the Task Force, which must hold its first meeting by July 31, 2003.*

- Increases from $10 to $15 the fee that each attorney admitted to the practice of law by the Ohio Supreme Court receiving a commission as a notary public must pay to the Secretary of State.

- Changes the requirement that a person appointed as a notary public be a "citizen" of Ohio or be a non-citizen of Ohio who is an attorney admitted to the practice of law in Ohio to a requirement that the person be a "legal resident" of Ohio or a nonresident of Ohio who is an attorney admitted to the practice of law in Ohio.

- Increases from 1,000 to 1,400 the maximum number of electors that a board of elections may assign to a precinct after taking into consideration the type and amount of available equipment, prior voter turnout, the size and location of each polling place, available parking, availability of poll workers, and handicapped and other accessibility to each polling place.

- Includes in the list of election supplies that boards of elections must provide to each polling place any materials, postings, or instructions required to comply with state or federal law.

- Requires boards of elections to follow the instructions and advisories of the Secretary of State in the production and use of polling place supplies.

- Permits the Secretary of State, in approving the form of an official ballot, to authorize the use of fonts, type face settings, and ballot formats other than those prescribed by statute.

Notary public fee increase and qualifications

(R.C. 147.01 and 147.37)

Continuing law permits the Secretary of State to appoint as notaries public as many persons who meet the qualifications of notary public as the Secretary of State considers necessary. In order to qualify to be appointed and commissioned as a notary public under existing law, a person must have attained the age of 18 years and must be one of the following: (1) a citizen of Ohio who is not an attorney admitted to the practice of law, (2) a citizen of Ohio who is an attorney admitted to the practice of law by the Ohio Supreme Court, or (3) a non-citizen of Ohio who is an attorney admitted to the practice of law by the Ohio Supreme Court and has the person's principal place of business or primary practice in this

state. Existing law requires each person described in item (1) above to pay a fee of $5, and each person described in items (2) and (3) above to pay a fee of $10, to the Secretary of State when receiving a notary public commission.

The bill changes the qualifications for a person to be appointed and commissioned as a notary public. Instead of requiring a person to be a "citizen" of Ohio or a non-citizen attorney with the person's principal place of business or primary practice in Ohio, the bill requires that the person be a "legal resident" of Ohio or that a person who is not a legal resident of Ohio be an attorney admitted to the practice of law in Ohio who has the person's principal place of business or primary practice in Ohio. Thus, under the bill, a non-citizen of Ohio who is a legal resident of Ohio may still be appointed and commissioned as a notary public. The bill also increases to $15 the fee that each person receiving a commission as a notary public must pay to the Secretary of State. Under the bill, the fee no longer varies depending on whether the person is an attorney admitted to practice in Ohio.

Election Law changes

Election precinct size

(R.C. 3501.18)

A board of elections is permitted to divide a political subdivision within its jurisdiction into precincts and establish, define, divide, rearrange, and combine precincts within its jurisdiction when necessary to maintain the requirements as to the number of voters in a precinct and to provide for the convenience of the voters and the proper conduct of elections. Precincts generally must contain a number of electors, not exceeding 1,000, that the board determines to be reasonable after taking into consideration the type and amount of available equipment, prior voter turnout, the size and location of each selected polling place, available parking, availability of an adequate number of poll workers, and handicap and other accessibility to each polling place. The board may apply to the Secretary of State for a waiver of this limit when the use of United States Census geographical units will cause a precinct to contain more than 1,000 electors.

The bill increases the maximum precinct size from 1,000 to 1,400 electors. Thus, after taking the required factors into consideration, a board of elections may assign up to 1,400 electors to a precinct. If the use of United States Census geographical units will cause a precinct to contain more than 1,400 electors, the board may apply to the Secretary of State for a waiver of the limit.

Election supplies; ballot approval

(R.C. 3501.30 and 3505.08)

Boards of elections must provide for each polling place the necessary ballot boxes, official ballots, cards of instructions, registration forms, pollbooks or poll lists, and other supplies necessary for casting and counting the ballots and recording the results of the voting at the polling place. Among the required supplies must be (1) a large map of each appropriate precinct, which must be displayed prominently to assist persons who desire to register or vote on election day, (2) a United States flag, approximately 2.5 feet in length, which must be displayed outside the entrance to the polling place during the time it is open for voting, and (3) two or more small United States flags, which must be placed at a distance of 100 feet from the polling place, to mark the distance within which persons other than election officials, witnesses, challengers, police officers, and electors waiting to mark, marking, or casting their ballots must not loiter, congregate, or engage in election campaigning. After the time for voting expires, all required supplies must be returned to the board.

In addition to the supplies required under existing law, the bill requires a board of elections to provide for each polling place any materials, postings, or instructions that are required to comply with state or federal law. And, boards of elections, under the bill, must follow the instructions and advisories of the Secretary of State in the production and use of polling place supplies.

Existing law provides detailed instructions for the printing of official ballots. For example, the color of ink, weight of the paper on which ballots are printed, width of attached ballot stubs, font, and type size all are specified for the printing of official ballots (R.C. 3505.08(A)). Notwithstanding the detailed specifications, the bill permits the Secretary of State, in approving the form of an official ballot, to authorize the use of other fonts, type face settings, and ballot formats.

DEPARTMENT OF TAXATION

I. Corporation Franchise Tax

- Reduces the corporation franchise tax rate from 8.5% to 7% of net income over four years, and applies that rate to all net income by eliminating the lower 5.1% bracket for the first $50,000 in net income.

- Reduces the corporation franchise tax on net worth by taxing the first $1 million at 2 mills (0.2%) and the next $1.5 million at 3 mills; only net worth above $2.5 million will be taxed at the current rate of 4 mills.

- Increases the maximum net worth tax from $150,000 to $500,000 (or $500,000 per corporation covered by a consolidated tax report).

- Increases the minimum corporation franchise tax payment from $50 to $300 (including for banks and other financial institutions).

- Revises the terms under which a corporation and its related entities may file, or be required to file, a consolidated franchise tax report.

- Revises how the net income of interstate corporations is divided for the purpose of apportionment versus allocation, employing the business/nonbusiness income distinction.

- Revises how dividends and gains and losses from stock sales are allocated when a corporation is part of a larger corporate family.

- Revises the method for allocating gains or losses from selling tangible personal property.

- Requires all nonbusiness income to be allocated to Ohio if it is not allocable under one of the specifically prescribed methods, to the extent allowed by the federal constitution.

- Employs a throwback rule for apportioning a corporation's sales.

- Modifies how a corporation's sales are apportioned, from basing apportionment on where the cost of performing the service is incurred to basing it on where the benefit of the service is received.

- Eliminates sales to overseas customers from the denominator of a corporation's sales factor.

- Requires corporations to request prior approval to use alternative apportionment or allocation methods, or to pre-pay the tax on the basis of the statutory methods.

- Eliminates deductions for capital gains accruing before the first year a corporation is taxable on the basis of its net income; for wages paid to

employees qualifying under the (now defunct) federal Targeted Jobs Credit; and for a corporation's matching contributions to individual development accounts.

- Eliminates corporation franchise tax credits for recycling and litter prevention donations, agreements with child day-care centers, reimbursing employee child day-care expenses, maintenance of railroad grade crossings, slow-moving vehicle lights and reflectors, purchases of grape production equipment, and civil defense property.

- Reduces the coal tax credit from $3 to $1 per ton.

- Excludes nonmanufacturers and nontaxpayers from claiming the franchise tax credit for purchasing manufacturing machinery and equipment.

- Expressly excludes purchases of "service" property from eligibility for the credit, and allows the credit for leased property under certain conditions.

- Clarifies the status of those LLCs that are taxed as corporations rather than as partnerships.

- Specifies that the appreciation component of a financial institution's net worth is to be computed on the basis of the equity method of accounting.

- Repeals the tax on dealers in intangibles, making them subject to taxation on the same bases as most other businesses.

II. Sales and Use Tax

- Provides that sales involving certain tangible personal property or services are subject to state and local sales or use taxes.

- Eliminates specific sales and use tax exemptions so that certain sales are subject to sales or use taxes.

- Provides that when calculating the "price" of a new motor vehicle, watercraft, or an outboard motor, on which to levy the sales or use tax, a consumer may deduct from the price only 50% of the credit for the motor vehicle, watercraft, or outboard motor received in trade, rather than the full price of the trade-in.

- Requires that delivery charges and bundled telecommunications services be included in "price," thus subjecting the charges and services to the sales or use tax.

- Creates sales and use tax exemptions for sales of tangible personal property or services to persons providing certain transportation or telecommunications services where the property or services are used directly and primarily in providing taxable transportation or telecommunications services.

- Eliminates the purchase for resale exemption when a qualifying affiliated group member purchases an item for resale, re-lease, or re-rental to a related entity.

- Eliminates the purchase for resale exemption and manufacturing exception for items used in food preparation for immediate human consumption.

- Eliminates using or consuming the thing transferred in the process of reclamation as an exception to a retail sale.

- Provides that pollution control facilities certified by the Tax Commissioner are not eligible for certain sales or use tax exemptions.

- Provides that if a vendor is required to obtain a license from the Tax Commissioner, the person may have the opportunity, or may be required, to obtain the license through the Ohio Business Gateway on-line computer network system. After January 1, 2005, persons that are required to apply to county auditors for their licenses may have the opportunity to obtain licenses in the same manner.

- Gives a discount for early filing and payment of sales or use taxes, of .05% of the amount shown to be due on a return, to a vendor that is required to remit sales taxes by electronic funds transfer, and a discount of 1% if the vendor is not required to remit taxes in that manner. The current early payment and filing discount is .75% for all vendors.

- Provides that the existing 25% sales tax refund for purchases by business customers of equipment used to provide electronic information services does not apply to members of an affiliated group of which the electronic information service provider is also a member.

- Revises the definition of "substantial nexus with this state" for purposes of imposing the use tax.

- Extends to direct payment permit holders personal liability for failure to file a return or pay sales taxes due.

- Creates a new personal liability provision in the use tax that is similar to the existing provision in the sales tax law.

III. State Income Tax

- Reduces income tax dollar amounts and tax rates for each taxable year beginning in 2005, 2006, 2007, and 2008.

- Eliminates the requirement that the Tax Commissioner annually index the amounts in the personal income brackets and the corresponding tax dollar amounts to account for increases in general price inflation.

- Eliminates the personal exemptions and the $20 personal exemption credit against the personal income tax but provides that the personal exemptions will continue to be used in calculating taxable income for purposes of any school district income tax.

- Creates a nonrefundable income tax credit for each tax return filed and a nonrefundable income tax credit for each of a taxpayer's dependents.

- Increases the personal income tax joint filing credit percentage for some taxpayers beginning in 2006.

- Expressly permits the resident credit only for taxes paid to other states to the extent the taxes have not been deducted by the taxpayer in computing federal taxable income.

- Makes the tax on trust income permanent and further refines what is considered a resident trust.

- Suspends for five years the reciprocal agreements with other states whereby Ohio residents are not taxed by those states and residents of those states are not taxable by Ohio.

IV. Municipal Taxation

- Permits taxpayers subject to a municipal income tax on business net profits to carry forward net operating losses for a period of five years.

- Establishes procedures for municipal tax administrators to follow in making assessments and jeopardy assessments against taxpayers and establishes procedures for taxpayers to follow in petitioning for reassessment.

- Specifies civil penalties municipal corporations may impose upon taxpayers for failure to file returns and pay municipal income taxes.

- Requires taxpayers to file amended returns to report any changes that affect their tax liabilities and establishes procedures for taxpayers to follow in making additional payments and in seeking refunds on overpayments.

- Establishes procedures for obtaining refunds of illegal, erroneous, or excessive payments of municipal income taxes.

- Specifies that tax administrators may credit a tax refund against a taxpayer's estimated tax payments for an ensuing year and permits tax administrators to use a refund to satisfy outstanding taxes and fees owed to the municipal corporation.

- Provides that appeals from final decisions issued by municipal tax administrators should be taken to the Board of Tax Appeals rather than municipal appellate boards and establishes procedures for initiating an appeal.

- Eliminates the requirement that nonresident employers withholding from employees more than $150 in municipal income taxes for the calendar year withhold municipal income taxes for the next three consecutive years regardless of the total amount of tax withheld from employees in each of those three years.

- Establishes a withholding tax base for municipal income taxes, but permits employers to withhold amounts on a base greater than the base established.

- Prohibits municipal corporations from requiring a municipal income tax return to be filed on any date other than the due date for filing the federal income tax return.

- Provides that when a taxpayer has requested an extension to file a federal income tax return, the due date for filing the municipal income tax return is extended to the last day of the month to which the due date of the federal return has been extended.

- Permits taxpayers subject to a municipal tax on net business profit to use the Ohio Business Gateway to file municipal income tax returns and payments.

- Provides that a taxpayer who is subject to a municipal tax on net business profit and who uses the Ohio Business Gateway to notify the Tax Commissioner of an extension to file a federal income tax return automatically receives an extension to file the municipal income tax return to the last day of the month to which the due date of the federal return has been extended.

- Permits employers to use the Ohio Business Gateway to report and remit municipal income taxes withheld from employees' compensation.

- Prohibits municipal corporations from taxing businesses' net profits using any base other than adjusted federal taxable income.

- Requires businesses subject to municipal income taxes to make adjustments to net income to account for certain classes of intercorporate transactions used to reduce taxable income.

- Eliminates a business' option of apportioning net profit for purposes of municipal income taxation on the basis of its books and records and requires that taxpayers apportion on the basis of the existing three-part statutory formula.

- Requires that businesses use the original cost of their real and tangible personal property rather than the property's net book value when apportioning net profits among different municipalities.

- Exempts certain nonqualified deferred compensation and retirement income from municipal taxation.

V. Public Utility Taxation

- By tax year 2007, reduces to 25% the tax assessment rate for all tangible personal property of a telephone company.

- Beginning tax year 2003, revises how a water transportation company's taxable property is apportioned to taxing districts in Ohio.

- Removes telephone companies and water transportation companies from the public utility excise tax on gross receipts, and requires them to pay the corporation franchise tax, beginning tax year 2005 for telephone companies, and tax year 2004 for water transportation companies.

- Transfers, from the public utility excise tax to the corporation franchise tax, the 9-1-1 service tax credit and the tax credit for telephone service programs for the communicatively impaired, and permits telephone companies to apply them against franchise tax liability.

- Creates a nonrefundable tax credit against corporation franchise tax liability for small telephone companies with less than 25,000 access lines.

- Subjects telephone companies to income taxation by municipal corporations, beginning January 1, 2004.

- Subjects sales of telecommunications services by telephone companies to sales or use taxes for all such sales billed on and after January 1, 2004.

- Provides that the transportation of person or property by a water transportation company is subject to sales or use taxes, beginning July 1, 2003.

- Removes telegraph companies from the public utility excise tax and property tax assessment laws, because they no longer exist in Ohio.

- By tax year 2007, reduces to 25% the tax assessment rate for all tangible personal property of a pipe-line company.

- Removes pipe-line companies from the public utility excise tax on gross receipts and levies a new excise tax on them.

- Reduces the tax rate from 6¾% to 4¾%, based on a different method of computing a pipe-line company's gross receipts.

- Requires that pipe-line companies pay the new excise tax on a quarterly basis, in the same manner as natural gas companies do, or, if annual tax liability is less than $325,000, pay the tax yearly.

- Establishes the same minimum tax payment (i.e., $300) for the public utility excise tax as the bill establishes for the corporation franchise tax.

VI. Other Areas of Taxation

- Increases the rate of the state tax on cigarettes from 55¢ per pack (2-3/4¢ per cigarette) to $1 per pack (5¢ per cigarette).

- Doubles the state tax rates on beer, wine, liquor, and other alcoholic beverages.

- Clarifies that all expenses paid and losses incurred by a pass-through entity with respect to a related entity are apportionable for the purpose of computing a nonresident owner's nonresident credit.

- Clarifies the treatment of distributive shares of qualified subchapter S subsidiaries for the purposes of the pass-through entity tax.

- Increases the annual reduction in the assessment rate for inventory property from 1% to 2% beginning in tax year 2005.

- Disallows the 10% and 2-1/2% property tax rollbacks for owner-occupied homes to the extent a home's value exceeds $1 million.

- Reduces the 10% rollback for business and most rental real property to 5%.

- Phases out the state reimbursement to local taxing districts for the $10,000 exemption for business personal property.

- Eliminates the requirement to file business tangible personal property tax returns if all of a business' property is exempted under the $10,000 exemption.

- Diverts a portion of the state reimbursement for real property tax rollbacks to a fund to be applied to the Department of Taxation's costs of administering property taxation.

- Creates a general "reasonable cause" basis for property tax penalties to be forgiven; reposes in the county auditor and treasurer the authority to forgive real property and manufactured home tax penalties; and prescribes the method for taxpayers to appeal refusals to forgive such penalties to the Tax Commissioner.

- Withdraws from the Tax Commissioner and grants to housing officers jurisdiction to hear complaints concerning real property tax exemptions for property located in community reinvestment areas, and provides additional limitations on the Commissioner's involvement with these property tax exemptions.

- Requires the Tax Commissioner to certify to the housing officers complaints concerning the exemption of property in community reinvestment areas from real property taxation but permits the Commissioner to hear and determine any complaint filed before the effective date of this provision.

- Eliminates certain state tax benefits for new enterprise zone agreements.

- Consolidates the laws providing for pollution control and other special purpose tax exemptions, increases the application fee, and eliminates the coal conversion facility tax exemption.

- Allows persons paying motor fuel and motor fuel use taxes to obtain refunds for taxes paid on fuel that contains at least 9% water, when water was intentionally added to it. Refunds must equal the amount of taxes paid on 95% of the water.

- Creates the Motor Fuel Tax Administration Fund to pay the expenses of the Department of Taxation incident to the administration of the motor fuel tax laws, and requires that .275% of motor fuel tax receipts be credited to the Fund, after the Tax Refund Fund and Waterways Safety Fund are credited.

VII. Tax Administration Provisions

- Authorizes the Tax Commissioner to require any tax return or tax payment to be filed or made electronically and to impose a fine for failure to comply with electronic filing requirements.

- Permits vendors to file sales tax returns and payments electronically and specifies that, if sales tax returns and payments are not filed electronically, the due date for returns and payments will be the tenth day of the month rather than the twenty-third, but requires vendors to file sales tax returns and payments electronically if the Tax Commissioner adopts rules requiring electronic filing.

- Eliminates the Tax Commissioner's authority to require reconciliation returns from vendors in addition to monthly sales tax returns.

- Permits income taxpayers to file their returns and payments electronically and specifies that the deadline for electronic filing is April 30, but requires income taxpayers to file returns and payments electronically if the Tax Commissioner adopts rules requiring electronic filing.

- Extends the deadline for filing declarations of estimated taxes and for paying estimated taxes if, for the immediately preceding taxable year, the taxpayer filed an income tax return, together with any payment shown to be due on the return, in an electronic format prescribed by the Tax Commissioner.

- Creates the Centralized Tax Filing and Payment Fund in the state treasury, requires the Director of the Office of Budget and Management to make annual $3 million transfers from the General Revenue Fund to the new fund, and authorizes the Department of Taxation to use moneys in the new fund for modifications to the Ohio Business Gateway or successor tax filing and payment systems.

- Permits the Tax Commissioner to inspect any tax record, including records maintained in an electronic or digital format, and allows the Commissioner to impose a penalty of up to $500 per day for failure to permit inspection.

- Specifies the procedural rights to be afforded a taxpayer who has been penalized for failure to permit inspection of tax records.

- Expands the Tax Commissioner's authority to delegate investigation powers to employees that have been certified by the Ohio Peace Officer Training Commission, by creating a general delegation provision that permits such delegation for the purposes of enforcing all laws relating to taxes and fees that the Commissioner is responsible for administering.

- Prohibits operating certain commercial cars and commercial tractors with a suspended or surrendered motor fuel use permit, and creates a penalty.

- Expands the Tax Commissioner's power to conduct inspections related to enforcement of the motor fuel and motor fuel use tax laws, and permits the Commissioner to authorize employees to conduct inspections at designated inspection sites.

- Creates a fund for accepting certain moneys arising from enforcement actions of the Department of Taxation for use in enforcing the tax laws.

- Extends the Tax Commissioner's authority to disregard sham transactions--currently limited to corporate franchise tax assessments, income tax assessments, and the up-front collection of sales taxes on certain leases--to every tax administered by the Tax Commissioner.

I. Corporation Franchise Tax

The corporation franchise tax is levied on corporations doing business in Ohio.[118] The tax is computed on the basis of either Ohio net income or Ohio net worth; a corporation is taxed on the basis yielding the greater tax amount. Banks and other financial institutions are subject to the franchise tax, but are taxed at different rates.

Corporation franchise tax rates

(R.C. 5733.06, 5733.065, and 5733.066; Section 144.01)

The corporation franchise tax, as measured by net income, currently is levied in two tiers: 5.1% of the first $50,000 in net income, and 8.5% of net income over $50,000.

The bill eliminates the lower tier, imposing a single rate on a corporation's net income, and reduces that single rate over four tax years, as follows:

[118] *The tax also applies to any association that is taxed as a corporation under federal law, as are some limited liability companies.*

Net income rate			
2003	2004	2005	2006 and after
8.5%	8.0%	7.5%	7.0%

The bill also reduces the rate levied on the basis of net worth, and creates three tiers. Currently, the rate is 4 mills per dollar of value (0.4%). Under the bill, net worth would be taxed at the following rates:

Net worth rates		
First $1 million	Next $1.5 million	Over $2.5 million
2 mills (0.2%)	3 mills (0.3%)	4 mills (0.4%)

Minimum and maximum tax

The bill increases the minimum tax from $50 to $300 per corporation per year. The increase in the minimum tax also applies to financial institutions.

The bill increases the maximum tax computed on the basis of net worth from $150,000 to $500,000. If a corporation files a consolidated tax report with other commonly owned or controlled corporations (see below), the maximum tax for the group is $500,000 multiplied by the number of corporations included in the consolidated report.

Corporation franchise tax: consolidated reporting

(R.C. 5733.052 and 5733.05(D))

The bill permits corporations to file a consolidated tax report with any other corporations that jointly file a consolidated federal corporate income tax return. The bill also authorizes the Tax Commissioner to require a group of corporations to file a consolidated report if the Commissioner finds that consolidated reporting is necessary to properly account for transactions between the corporations. If a corporation is eligible to file a consolidated report but files separately instead, it is subject to the add-backs for intercorporate transactions (such as income-shifting and transfer pricing; see "***Add-back for certain inter-company expenses***," below).

A consolidated report must show the combined net income and combined net worth of all the corporations included in the federal consolidated report (except for financial institutions and corporations exempt from the franchise tax that might be included in the federal report). The corporations' income and other tax items

are given the character they would have if all of the corporations were a single, combined corporation: specifically, with respect to whether the items are business or nonbusiness income, how they are apportioned or allocated, and how the tax is computed.

The election to file a consolidated report, or the Commissioner's requirement to file a consolidated report, may occur any time before the franchise tax report is due (including any filing extension granted). If a corporation elects to file a consolidated report, it may revoke the election, but only if it does so before the filing due date (including extensions). The Commissioner is not permitted to refuse a consolidated report election, or to refuse a corporation's revocation of the election if the election or revocation is properly made. If the Commissioner requires corporations to file a consolidated report, the Commissioner later may revoke the requirement, but only before the filing due date (including any extension). If a corporation's tax is reduced by the Commissioner's revocation, the corporation is entitled to an immediate refund of the excess; if the corporation's tax is increased, the corporation must immediately pay the deficiency.

Corporations filing or required to file a consolidated report are jointly and severally liable for the tax and any penalty or interest. And an assessment for an amount due issued against one of the corporations does not prevent an assessment against any of the other corporations.

The consolidated reporting requirement is limited to the extent of limitations in federal tax regulations governing consolidated federal income tax returns (I.R.C. secs. 1501 and 1502) and any pertinent limitations under the United States Constitution.

If a corporation is part of a group of corporations filing a consolidated report, it is not required to make adjustments to its net worth computation that are otherwise required of a corporation that is related to a "qualifying holding company." These adjustments are available under current law to neutralize certain tax planning approaches by equalizing the debt-to-equity ratios of members of a corporate family owned or controlled by the same holding company.

The changes in consolidated reporting apply to taxable years ending on or after the date the bill becomes law. The change in the consolidated reporting requirement does not affect a corporation's carry-forward of net operating losses from a prior year.

Corporation franchise tax: Allocation and apportionment

(R.C. 5733.04(Q) and (R), 5733.05, 5733.051, and 5733.057; Section 144.01)

If a corporation does business in Ohio and elsewhere, its corporation franchise tax liability is based on the portion of its net income or net worth that is allocated or apportioned to Ohio. Income from some sources generally is allocated entirely to Ohio or entirely outside Ohio, and all other income is apportioned on the basis of three factors meant to measure the extent of a corporation's business activity in Ohio: sales, employment (measured by payroll), and property (measured by value).

The bill modifies the allocation and apportionment provisions by adopting the distinction between business and nonbusiness income used by many states. Generally, business income is to be apportioned according to the three-factor formula, and nonbusiness income generally is to be allocated either to Ohio or outside Ohio. The bill also changes how the property and sales factors are computed, and how certain sources of nonbusiness income are allocated, as described below.

Change in apportionment computation

Property factor. The property factor is computed in largely the same manner as under current law, but the bill specifies that the factor is to include any property the corporation rents, leases, subrents, or subleases to others if the net income arising from the rental or leasing is business income.

The bill also eliminates from the property factor any pollution control facility property.

Sales factor. The bill expressly excludes from the sales factor any receipts that are excluded from a corporation's gross income (under federal law, for example), or that are not otherwise included in the corporation's net income for franchise tax purposes. No longer excluded from a corporation's sales factor would be receipts from insurance companies or public utilities (nonelectric) that are 80%-owned by the corporation, or receipts from a financial institution 25%-owned by the corporation.

Sales of real property located in Ohio are to be apportioned entirely in Ohio (i.e., the sale receipts are included in the numerator of the factor). Sales of tangible personal property are to be apportioned entirely in Ohio if the purchaser receives the property in Ohio, or if the property is shipped from Ohio but the corporation is not liable for a corporation franchise or income tax where the purchaser receives the property. If the purchaser is the United States government,

the sale is excluded from the numerator of the factor if the government receives the property in Ohio, but is included in the numerator if the property is shipped from Ohio to a United States government purchaser outside Ohio.

Sales of services are to be apportioned generally on the basis of where the benefit of the service is received by the purchaser, rather than on the basis of where most of the cost of providing the service is incurred. But if the benefit is received in another state, and the corporation selling the service is not subject to a franchise or income tax in that other state, and most of the cost of providing the service is in Ohio, then receipts from the sale are to be included in the numerator of the corporation's sales factor. The bill authorizes the Tax Commissioner to prescribe rules for determining where the benefit of a service is received; the rules may provide for prorating the benefit among two or more locations.

Allocation

Dividends; gains and losses from stock sales. Currently, income arising from dividends or other distributions that a corporation receives from another company, and capital gains (or losses) from selling or disposing of stock of another company (or similar intangible property), are allocated to Ohio in proportion to the value of underlying physical assets of the other company located in Ohio as compared to everywhere. (For example, if 30% of the value of the other company's physical assets are located in Ohio, then 30% of the dividend, gain, or loss is allocated to Ohio.)

Under the bill, such income is allocated to Ohio on the same basis, unless the other company is a member of a larger group of commonly owned or controlled companies. If the company is a member of such a group, the allocation is made on the basis of the proportion of the value of the entire group's Ohio-based physical assets.[119] If any combination of companies in the group own a majority equity stake in a pass-through entity (e.g., partnership, limited liability company), then the entity's physical assets are included in the allocation proportion to the extent of the combination's ownership in the entity. In the case of dividends and distributions, the group includes all companies owned directly or indirectly by the corporation paying the dividend or distribution; in the case of capital gains or losses on stock sales, the group includes the corporation that issued the stock and all companies owned directly or indirectly by that corporation.

[119] *The determination of whether the other company is a member of the group is made on the last day of the company's fiscal year ending before the dividend is paid or the stock in the company is sold by the taxpayer-corporation.*

Also included are the physical assets of any other ("lower level") pass-through entity owned by the ("upper level") entity that is owned by the combination, unless the upper level entity owns a minority equity stake in the lower level entity, and information about the lower level entity's physical assets is not available to the upper level entity.[120] In the case of gains or losses from the taxpayer-corporation disposing of a company's stock, if the location of the company's physical assets is not available, then the gain or loss is apportioned in the same manner as business income (i.e., the three-factor formula).

One effect of the bill is to prevent a corporation from avoiding allocation to Ohio of a dividend paid by a company (such as a holding company) having little or no physical assets in Ohio, but owning a majority stake in one or more other companies that do have physical assets in Ohio.

The bill also expressly specifies that, for the purpose of allocating and apportioning dividends and distributions received by a corporation, dividends or distributions include those from any entity that, although not organized as a corporation, is taxed as a corporation under federal law (e.g., some limited liability companies).

Tangible personal property. Capital gains (or losses) from selling or disposing of tangible personal property currently are allocated to Ohio if the property was located in Ohio when the sale or disposition occurred and if the corporation was subject to the franchise tax.

Under the bill, such gains or losses are allocated to Ohio "to the extent [the] property was utilized" in Ohio before the sale or disposition.

Alternative apportionment, allocation methods

Current law allows a corporation to request a method of allocating or apportioning its net income or net worth as an alternative to the statutory methods (i.e., the three-factor formula and the allocation rules explained above). The Tax Commissioner also may require an alternative method. The alternative can involve accounting for income items separately, excluding some of the factors, or including additional factors.

The bill adds a fourth alternative: the use of any other method to equitably calculate a corporation's taxable base. But in order to use an alternative method, a corporation first must pay the tax that it would owe on the basis of the statutory methods (computed in a good faith and reasonable manner). If a corporation does

---

[120] *In this context, information is "available" if the taxpayer is able to learn of the information before the tax report filing deadline.*

not first pay the tax computed on the basis of the statutory methods, the Tax Commissioner must deny use of the alternative method, and may impose a penalty equal to 15% of the difference between the tax due using the alternative and the tax due using the statutory methods. The corporation also must obtain the Tax Commissioner's prior written approval to use an alternative method. If it does not, the Tax Commissioner must deny use of the alternative method.

The bill permits the Tax Commissioner to prescribe rules for alternative methods that apply to all corporations, specified classes of corporations, or a particular industry.

Add-back for certain inter-company expenses

(R.C. 5733.042, 5733.044, 5733.055, and 5733.068; Sections 144.01 and 146.03)

Current law

Under current law, a corporation may be required to add to its Ohio taxable net income certain federally deductible expenses and losses associated with borrowing from a related company or with using intangible property owned by a related company (e.g., royalties, patents, copyright fees, licensing fees). Generally, the add-back of an expense is required if it is paid to a holding company or certain other kinds of "passive investment companies" that are under common ownership or control with the corporation. Similarly, a corporation may be required to include losses it incurs in certain kinds of transactions with such a related passive investment company. Because those expenses or losses are deductible for federal income tax purposes, they are not included in Ohio taxable income, which reduces the corporation's Ohio taxable income. This add-back requirement addresses the practice of some corporations to diminish or eliminate their Ohio tax liability by essentially shifting income from Ohio to another state where there is no significant income-based tax on corporations (e.g., Delaware), or where the tax is lower.

The current add-back can be avoided if the corporation can demonstrate that the transaction resulting in the expense or loss was not principally motivated by tax avoidance, and that in the same year the related company paid the expense to (or incurred the loss with respect to) either an unrelated party or a related company that in turn paid the expense to (or incurred the loss with respect to) a third, unrelated party. And, any additional tax that may result from such add-backs cannot exceed the tax that the corporation and the related company would have owed if they had been eligible to file, and had filed, a combined tax report. (Combined tax reporting may be requested by, or required of, two or more related corporations if the combined report more accurately reflects the business activity

in Ohio; particularly, it can be used to indicate and account for inter-company transactions.)

Extend add-back to all related entities, and to all expenses and losses

The bill broadens the add-back requirement in two ways: it applies to expenses and losses transacted between a corporation and *any* other related member company, even if the related member is not a passive investment company; and it applies to all expenses or losses, not just those associated with borrowing money or using intangible property.

Corporations still can avoid the add-back by showing the transaction was not principally motivated by tax avoidance and that the related member paid the expense to (or incurred the loss with respect to) an unrelated entity in the same year. And any increased tax resulting from the add-back adjustment still is limited, so that it cannot be greater than the tax that would be due if a consolidated tax report had been filed by the taxpayer-corporation paying the expense (or incurring the loss) and all related companies to which the expense was paid (or loss incurred), either directly, or indirectly through an intermediary. If a consolidated report is filed by the corporation and the related companies involved in transactions that would require an add-back adjustment, and the adjustment's effect is wholly or partly accounted for by the consolidated filing, then the adjustment does not have to be made to the extent it is accounted for by the consolidated filing.

If a company required to make the add-back adjustment fails to do so, and has not made the adjustment and paid the additional tax, if any, including penalty and interest within one year, then the company is subject to an additional penalty equal to double the interest charged corporations for delinquent corporation franchise tax payments. A safe harbor is available if the additional tax attributable to the adjustment is less than 10% of the tax otherwise due and is less than $50,000.

The expanded add-back requirement first applies to tax years ending on or after the day the bill becomes law.

Exemption for expenses paid to offshore affiliates

(R.C. 5733.042 and 5733.044)

The bill exempts expenses and losses from the existing add-back and the proposed add-back requirements if the expenses are paid (or losses are incurred with respect to) a related member that is not subject to the federal income tax (presumably, because it is not a domestic U.S. entity). Specifically, the exemption

applies only if the corporation paying or incurring the expenses or losses is able to demonstrate, by clear and convincing evidence, that all of the following four conditions are satisfied:

- The expenses or losses were paid directly to a related member that, with respect to those payments, was not subject to the federal income tax or was not required to file a federal income tax return for the three years before the payment and three years after the payment (hereafter, the "untaxed related member"). (For the purpose of this condition, a payment is made directly to the related member even if the payment is processed or paid through a third related member that does not charge a fee for the processing or payment.)

- The related member receiving the payment did not, within three years before or after the payment was received, pay any part of the payment to any other related member that was subject to the federal income tax during that six-year period--either directly, or indirectly through a third party.

- The corporation making the payment satisfies one of the following: (1) it is entitled to a federal income tax deduction with respect to the payment to the untaxed related member under the terms of an advanced pricing agreement between the corporation and the related member,[121] (2) it has complied with the documentation requirements under federal law respecting accuracy-related penalties for substantially understating or overstating the value of transactions between related members, or (3) it has complied with federal law governing reallocation of income items among related companies as necessary to prevent tax evasion.

- The transaction giving rise to the payment from the corporation to the untaxed related member was not principally motivated by avoidance of the corporation franchise tax. (This condition must be demonstrated only if the Tax Commissioner draws a "reasonable conclusion" that the principal purpose of the transaction was tax avoidance.)

---

[121] *An advance pricing agreement is an agreement between a taxpayer and the I.R.S. whereby the taxpayer may avoid a reallocation of income by the I.R.S. between the taxpayer and its related members. Such a reallocation is authorized by federal law (I.R.C. sec. 482) to prevent tax evasion and ensure that each taxpayer's income is clearly reflected. Generally, the reallocation is intended to ensure that income or deductions arising from transactions between related members is not outside the range it would be if the transaction occurred at arm's length (i.e., between unrelated persons acting in their own best interest).*

If the Tax Commissioner draws a "reasonable conclusion" that a corporation is attempting to avail itself of the exemption by engaging in sham transactions, transactions with no business purpose, or other primarily tax avoidance-motivated transactions, the corporation must refute that conclusion by clear and convincing evidence. Under current law, it is the Tax Commissioner who must show, by the less rigorous preponderance of evidence standard, that a tax avoidance transaction is engaged in (see R.C. 5733.111). If a corporation claims the exemption and is found not to be entitled to it, the required add-back is doubled in amount as a penalty (unless an advance pricing agreement applies).

Elimination of some tax credits. exemptions, and deductions

(R.C. 1502.02, 5502.49, 5733.04, 5733.064, 5733.32, 5733.36, 5733.38, 5733.43, and 5733.44)

The bill eliminates several credits against the corporation franchise tax:

- The credit for corporate donations to support the Department of Natural Resources Division of Recycling and Litter Prevention Fund.
- The credit for agreement with child day-care centers for providing day-care for employees' children, and for reimbursements of employees' child day-care expenses.
- The credit for maintaining railroad grade crossings.
- The credit for purchasing lights and reflectors for slow-moving agricultural vehicles.
- The credit for purchasing grape production equipment.

The bill also eliminates a deduction for taxes paid to other states; a deduction for capital gains accruing before the first year a corporation becomes taxable on the basis of its net income; a deduction for wages paid to employees qualifying under the federal Jobs Targeted Partnership Act (which Congress repealed); and a deduction for matching contributions to an individual development account. And corporations will no longer be permitted to exclude the value of civil defense property in computing their franchise tax base.

Reduction in Ohio coal tax credit

(R.C. 5733.39; Section 144.10)

Electric companies are entitled to a credit against the corporation franchise tax for burning coal mined in Ohio, as long as the coal is burned in certain kinds of

facilities designed to reduce or remove certain pollutants, in accordance with the federal Clean Air Act (so-called "compliance facilities"). The credit is scheduled to expire December 31, 2004.

Currently, the credit is $3 per ton of Ohio-source coal burned. The bill reduces the credit to $1 per ton. The reduction applies to credits claimed for tax years 2004 and 2005 (based on coal burned during the company's taxable year ending in 2003 and 2004, respectively). But if a company's taxable year ends before the bill becomes law (i.e., before the Governor signs the bill and it is filed with the Secretary of State), the company is entitled to the $3 credit for tax year 2004.

Manufacturing property credit

(R.C. 5733.33; Section 144.09)

Current law grants a credit against the corporation franchise and personal income taxes for purchases of manufacturing machinery and equipment. The credit equals 7.5% of the increase in the cost of new property installed in a county (13.5% in certain economically "distressed" areas). The property must be purchased by December 31, 2005, and installed by December 31, 2006. The credit is nonrefundable.

The bill clarifies the kinds of property eligible for the credit and updates some of the terminology to reflect usage elsewhere in the tax law. The bill clarifies that the property must be capitalized by a manufacturer entitled to the depreciation deduction for federal income tax purposes. (This would preclude some lessors from claiming the credit unless the lessor is a manufacturer and is entitled to the depreciation deduction.) The credit may not be claimed for property used to provide a service such as health care diagnostic equipment, veterinary diagnostic equipment, and telecommunications equipment; may not be claimed for pollution control and similar equipment; and may not be claimed for property owned by any corporation claiming to be exempted from the corporation franchise tax.

The bill also defines "manufacturer," expressly adopting the definition used in the law governing the tax reporting of personal property--i.e., a person that purchases, receives, or holds personal property for the purpose of adding to its value by manufacturing, refining, rectifying, or combining different materials with the motive of making a profit. References to partnerships are updated to reflect the wider variety of business organizations that are taxed in a manner analogous to partnerships: so-called "pass-through entities," which encompasses partnerships, S corporations, and most limited liability companies.

Limited liability companies taxed as corporations

(R.C. 5733.01)

The bill clarifies that any entity that is taxed as a corporation under federal income tax law (such as some limited liability companies) also is to be treated as a corporation under Ohio's corporation franchise tax law. Although this principle is stated in current law, the bill makes it clear that any equity stake in such an entity (such as a membership interest in such an LLC) is to be treated in the same manner as owning capital stock of a corporation for the purposes of the aspects of the franchise tax law referring to capital stock of corporations.

Financial institutions: Clarify appreciation exclusion

(R.C. 5733.056(B)(4))

Currently under the corporation franchise tax law, banks and other financial institutions can exclude appreciation (among other things) in computing their taxable net worth. "Appreciation" is not defined for this purpose.

The bill specifies that excludable appreciation is appreciation in investments in the capital stock of first-tier affiliates directly owned by the institution, as determined under the equity method of accounting.

Financial institutions: sales factor "throwback"

(R.C. 5733.056(F) and (I))

The bill employs a "throwback" rule for determining the sales factor used in apportioning the tax base of financial institutions. If the receipt from a sale is included in the denominator of a financial institution's sales factor but not in the numerator (i.e., not sitused in Ohio), but the receipt would be sitused to another state where the financial institution is not liable for a similar tax, then the receipt is to be included in the numerator if the sale has greater nexus with Ohio than with any other state in which the institution is liable for a similar tax.

The same throwback rule applies to dealers in intangibles.

Dealers in intangibles under corporation franchise tax

(R.C. 5707.03, 5725.01, 5725.14, 5725.25, 5725.26, 5733.05, 5733.056, and 5733.09; Section 144.06)

Currently, so-called "dealers in intangibles" (e.g., stockbrokers, mortgage companies, finance and loan companies) are subject to an annual property tax if

they have a place of business in Ohio. The tax is levied on the value of a dealer's shares. If a dealer is not incorporated and its capital stock is not divided into shares, the tax applies to the value of the property that represents capital employed in Ohio. In either case, if a dealer has offices in other states as well as in Ohio, the value is apportioned to Ohio on the basis of the gross receipts derived from the Ohio office as compared to the total gross receipts from all the dealer's offices. The tax is levied at the rate of eight mills per dollar of that value (equivalent to 0.8%). Revenue from the tax is divided among the county where the dealer's capital is employed and the state General Revenue Fund: generally, 5/8ths of the revenue is credited to the county undivided local government fund and distributed in the same manner as Local Government Fund money is distributed in the county; the remaining 3/8ths is credited to the GRF. (If a dealer is under common ownership with a financial institutions or insurance company, all of the revenue is credited to the GRF.)

The bill subjects dealers in intangibles to the corporation franchise tax in lieu of the intangibles property tax. Thus, their tax will be determined on the basis of their net income or net worth. The rate of tax imposed on taxable income is 5.1% on the first $50,000 and 8.5% on taxable income above $50,000; the rate of tax imposed on net worth is 4 mills per dollar (i.e., 0.4%). Dealers, like other corporations, will be required to pay the tax on the basis that yields the greater tax.

The taxable income of dealers is to be apportioned among Ohio and other states in the same manner as the taxable income of a financial institution is apportioned. In particular, commissions earned on brokerage accounts owned by customers having a billing address in Ohio are to be apportioned to Ohio. For this purpose, a billing address is the street address where bills, notices, statements, or other "acknowledgments" are sent. But the billing address is the address set forth in the dealer's records if no documents are sent, or if the documents are sent to a post office box, transmitted electronically, or sent in some other way to an address that is not a street address. (The same billing address criteria apply for the purpose of apportioning the sales of a financial institution.)

Dealers begin to be subject to the corporation franchise tax for tax year 2004 (i.e., the tax is first reportable and payable in early 2004 on the basis of the dealer's taxable year ending in 2003). Their last intangibles tax report and payment is in 2003 (based on their capital value for 2002).

II. Sales and Use Tax

How state and local sales and use taxes work

Under continuing law, an excise tax is levied on each retail sale made in Ohio (the sales tax), and on the storage, use, or other consumption in Ohio of

tangible personal property or the benefit realized in Ohio of any service provided (the use tax). Local sales or local use taxes also may be levied by counties and transit authorities on each retail sale, subject to certain limitations. If state and local sales taxes are paid on a retail sale, state and local use taxes do not apply, and vice versa. If the retail sale of tangible personal property or services, or the property or service itself, is exempt from state and local sales taxes, the sale is also exempt from state and local use taxes. In any case, local taxes cannot be levied on a retail sale if the state sales or use tax does not apply to it.

Services and tangible personal property subject to taxation

(R.C. 165.09, 902.11, 2915.01, 4505.06, 4981.20, 5739.01, 5739.02, 5739.03, 5741.01, and 5741.02)

Classification of certain transactions as "sales." Continuing law provides that "sale" and "selling" include transactions for a consideration in any manner, whether for a price or rental, in money or by exchange, and by any means whatsoever. The law lists the types of transactions that are sales subject to sales or use taxes. The bill adds to the list certain transactions that involve sales of tangible personal property or services. Under the bill, transactions involving the following **services** are "sales" that are subject to sales or use taxes:

- Laundry and dry cleaning services. Under existing law, industrial laundry cleaning services for items used in a trade or business are subject to sales or use taxes, but the bill expands this to include removing soil or dirt from any item, regardless of whether it is used in a trade or business. This service does not include self-service facilities for use by consumers (R.C. 5739.01(B)(3)(d) and (BB)).

- Telecommunications service that is billed to persons on or after January 1, 2004, by telephone companies (R.C. 5739.01(B)(3)(f) and (AA) and 5739.02(B)(6)). The bill expands the existing definition of "telecommunications service" to include related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, voice mail service, and vertical services, such as caller ID and three-way calling.

- Cable and satellite television service. Under the bill, "cable and satellite television service" means any transmission of video or other programming service to consumers with or without the use of wires, and includes all service and rental charges, premium channels or other special services, installation and repair service charges, and any other charges having any connection with the provision of the service (R.C. 5739.01(B)(3)(q) and (XX)).

- Personal care service, meaning skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services, but not a service provided by a physician, or the cutting, coloring, or styling of an individual's hair (R.C. 5739.01(B)(3)(r)).

- Beginning July 1, 2003, the transportation of persons or property by a "water transportation company," meaning a person engaged in the transportation of passengers or property, by boat or other watercraft, over any waterway, whether natural or artificial, from one point to another within this state, or between points within Ohio and points outside it (R.C. 5739.01(B)(3)(s) and 5739.02(B)(10)).

- The transportation of persons by motor vehicle or aircraft, when the point of origin and the point of termination are both within Ohio, except for transportation provided by a public transit bus and transportation of property provided by a United States citizen holding a certificate of public convenience and necessity issued under federal law (R.C. 5739.01(B)(3)(t) and 5739.02(B)(10)).

- Public relations or lobbying service. Under the bill, "lobbying service" means the services performed by a legislative agent required to be registered under existing legislative lobbying law, or an executive agency lobbyist required to be registered under existing executive agency lobbying law (R.C. 5739.01(B)(3)(u)).

- Real estate service. The bill defines "real estate service" as all services related to the buying, selling, or management of real estate, including real estate brokerage, real property inspection or appraisal, title searching, and property management. "Real estate service" does not include mortgage lending, the provision of title insurance, or any service that constitutes the practice of law. Under the bill, "property management" means the service of managing commercial, industrial, or residential property to maintain its condition and value for the property owner, and includes showing property to potential renters, collecting rents, and providing similar services to generate revenue from the property for the owner. "Property management" does not include facility management, which, under the bill, means the management of the operations of a commercial, industrial, or governmental facility under a contract or subcontract with the facility owner or a contractor of the owner (R.C. 5739.01(B)(3)(v)).

- Debt collection service. Under the bill, "debt collection" means the use of any instrumentality of interstate commerce or the mails in the business of collecting, directly or indirectly, any debts owed or due, or asserted to be owed or due, another. "Debt collection service" does not include any service that constitutes the practice of law (R.C. 5739.01(B)(3)(w)).

- Interior design service or exterior design service. The bill defines "interior design service" as providing aesthetic services associated with interior spaces, including the planning, designing, and administering of projects in interior spaces to meet the physical and aesthetic needs of individuals using them, taking into consideration building codes, health and safety regulations, traffic patterns and floor planning, mechanical and electrical needs, and interior fittings and furniture. "Exterior design service" means providing aesthetic services associated with exterior spaces, and includes the planning, designing, and administering of projects involving land or buildings, to meet the physical and aesthetic needs of individuals using them (R.C. 5739.01(B)(3)(x)).

Under the bill, transactions involving the following **tangible personal property** are "sales" that are subject to sales or use taxes:

- All transactions in which all of the ownership interests in a limited liability company are transferred, if the company is not engaging in business and all or substantially all of its assets consist of boats, planes, motor vehicles, or other tangible personal property operated primarily for the use and enjoyment of shareholders (R.C. 5739.01(B)(6) and 5741.01(A)). Closely held corporations are already taxed under this law for the transfer of their shares of stock involving these assets.

- All transactions by which a motor vehicle is or is to be parked, or by which license to park it, in a space, lot, or garage is or is to be provided (R.C. 5739.01(B)(9)).

- All transactions by which tangible personal property is or is to be stored, except such property that the consumer of the storage holds for sale in the regular course of business (R.C. 5739.01(B)(10)).

- All transactions by which admission is or is to be granted to a theater, auditorium, arena, stadium, or similar facility to view a motion picture or attend a professional sporting event, concert, theatrical production, circus, or other entertainment event where the athletes or performers receive compensation that qualifies as taxable income under

the Internal Revenue Code for their performances (R.C. 5739.01(B)(11)).

- All transactions by which admission to a zoo, amusement park, museum, or similar place of amusement is or is to be granted (R.C. 5739.01(B)(12)).

Elimination of tax exemptions for certain sales. Current law provides that sales or use taxes do not apply to certain sales, and lists the sales that are exempt from taxation. The bill eliminates many of these exemptions, so that sales of the following **are** subject to sales or use taxes:

- Newspapers and magazine subscriptions and sales or transfers of magazines distributed as controlled circulation publications (former R.C. 5739.02(B)(4)).

- Tangible personal property or services to certain nonprofit organizations operated exclusively for charitable purposes, for operating a radio or television broadcasting station licensed by the Federal Communications Commission as a noncommercial educational radio or television station; for operating a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; or for producing performances in music, dramatics, and the arts (R.C. 5739.02(B)(11)).

- Ships, vessels, or rail rolling stock used or to be used principally in interstate or foreign commerce, and repairs, alterations, fuel, and lubricants for them (former R.C. 5739.02(B)(14)).

- Emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services, including trauma care and emergency medical services, for political subdivisions of the state (former R.C. 5739.02(B)(20)).

- Tangible personal property manufactured in Ohio, if sold by the manufacturer in this state to a retailer for use in retail business outside of Ohio, and if possession is taken from the manufacturer by the purchaser in Ohio for the sole purpose of immediately removing the same from Ohio in a vehicle owned by the purchaser (former R.C. 5739.02(B)(21)).

- Water to a consumer for residential use (former R.C. 5739.02(B)(25)).

- Water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if delivered through pipes or tubing (former R.C. 5739.02(B)(25)).

- Tangible personal property to persons licensed to conduct a food service operation, if the property is primarily used directly to prepare or preserve food for human consumption for sale, or to clean property used to prepare or serve food for human consumption for sale (former R.C. 5739.02(B)(27)).

- Animals by nonprofit animal adoption services or county humane societies (former R.C. 5739.02(B)(28)).

- Sales to the state headquarters of any veterans' organization in Ohio, for use by the headquarters (former R.C. 5739.02(B)(33)).

- Sale, lease, repair, maintenance of, or parts for motor vehicles that are primarily used for transporting tangible personal property by a person engaged in highway transportation for hire, **if** the property belongs to a member of an affiliated group and is being transported by another member of the affiliated group, or the transporting is for the disposal of refuse, trash, waste, or scrap, in which the originator of the material being hauled retains no continuing legal rights or responsibilities for that material (R.C. 5739.01(Z) and 5739.02(B)(25)).[122]

- A motor vehicle that is used exclusively for vanpool ridesharing arrangement to persons participating in the arrangement when the vendor is selling the vehicle under a contract between the vendor and the Department of Transportation (former R.C. 5739.02(B)(38)).

- Sales to a professional motor racing team of motor racing vehicles, and repair services and parts for them (former R.C. 5739.01(TT) and former R.C. 5739.02(B)(40)).

---

[122] *An "affiliated group" is defined in continuing law as two or more persons related in such a way that one person owns or controls the business operations of another member of the group. For corporations, one corporation owns or controls another if it owns more than 50% of the other corporation's common stock with voting rights.*

Determination of "price"--items included in it

(R.C. 5739.01(H)(1) to (5) and 5741.01(G)(1), (2), and (6))

Continuing law defines "price" for purposes of determining the aggregate value in money of anything paid or delivered in the complete performance of a retail sale, rental, or lease--price is the amount on which sales and use taxes are levied.

Trade-in allowances. Current law provides that when calculating the "price" of a new motor vehicle, watercraft, or an outboard motor for sales or use tax purposes, the price must be reduced by the credit given to the consumer by the dealer for the motor vehicle, watercraft, or outboard motor received in trade, resulting in sales or use taxes being levied on the price of the new item after the trade-in is deducted. The bill reduces this credit to 50% of the trade-in allowance, rather than the full amount.

Delivery charges. Current law provides that the price of property or services sold does not include delivery charges that are separately stated on the initial invoice or billing rendered by a vendor. "Delivery charges" are charges for preparation and delivery to a location designated by the consumer of tangible personal property or a service, including transportation, shipping, postage, handling, crating, and packing. The bill includes delivery charges in the price, thus subjecting the charge to the sales tax. The bill does not impose the use tax on delivery charges; it retains the current exclusion for delivery charges that are separately stated on the initial invoice or billing rendered by the seller.

Leases with renewal clauses. Under continuing law, sales and use taxes on leases must be calculated by a vendor on the basis of when amounts are to be paid by or billed to the lessee. The bill adds that, in the case of a lease with a renewal clause and a termination penalty or similar provision that applies if the renewal clause is not exercised, sales and use taxes must be calculated and paid by the vendor on the basis of the entire length of the lease period, including any renewal period, until the termination penalty or similar provision no longer applies.

Bundled telecommunications services. The bill provides that, in the case of a transaction in which telecommunications service or mobile telecommunications service is sold in a bundled transaction with other distinct services for a single price that is not itemized, the entire price is subject to the state and local sales taxes, unless the vendor can reasonably identify the non-taxable portion from its books and records kept in the regular course of business. The vendor must advise the consumer, either in a sales agreement or on the bill for the bundled service, of the base on which the tax is computed. The burden of proving any non-taxable charges is on the vendor.

Sales that are not subject to sales or use taxes

(R.C. 5739.01(AA), (WW), and (YY) and 5739.02(B)(26), (33), and (34))

The bill provides that sales and use taxes do **not** apply to any of the following sales:

- Sales, to a person providing water transportation or other transportation services, of tangible personal property and services used directly and primarily in providing those taxable transportation services (R.C. 5739.01(B)(3)(s) and (t) and 5739.02(B)(33)).

- Sales of telecommunications service that is used directly and primarily to perform the functions of a call center. The bill defines a "call center" as any physical location where telephone calls are placed or received in high volume for the purpose of making sales, marketing, customer service, technical support, or other specialized business activity, and that employs at least 50 individuals that engage in call center activities on a full-time basis, or sufficient individuals to fill 50 full-time equivalent positions. "Call center" does not include any location where telephone calls are primarily placed to or received from the same person, or affiliates of the same person, that owns or operates the location (R.C. 5739.01(AA) and 5739.02(B)(34)). This exemption generally replaces the exemptions eliminated by the bill for wide area transmission (WATS) service, 1-800 service, and private service that entitles the purchaser to exclusive use of channels between exchanges.

- Sales of telecommunications service to a provider of mobile telecommunications service for use in providing mobile telecommunications service (R.C. 5739.01(AA)(2)). The bill expands the definition of mobile telecommunications service to include related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, voice mail service, and vertical services, such as caller ID and three-way calling. Sales of telecommunications service to a provider of that service for use in providing that service is already exempt from sales and use taxes.

- Sales to a cable and satellite television service vendor or mobile telecommunications service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications through the use of any medium (R.C. 5739.01(VV) and (XX) and 5739.02(B)(26)). Sales to a

telecommunications service vendor of these items are already exempt from sales and use taxes.

Elimination of purchase for resale exemptions

(R.C. 5739.01(D)(6), (E)(1), and (8), 5741.01(F)(3), and 5741.02(H))

In determining whether a transaction is a retail sale for which sales or use taxes must be paid, or who the ultimate consumer is that must pay the taxes, in some cases the purpose for which tangible personal property or a service was purchased and whether it is being resold must be considered. For example, if the consumer resells the thing transferred or the benefit of the service provided by a person engaging in business, in the form in which it is to be received by the person, continuing law provides that the sale is not a retail sale subject to sales or use taxes. This is commonly called "the exception for resale." The bill determines who the ultimate consumer is for certain transactions involving qualifying affiliated group members and persons conducting food service operations, and does not allow the consumer to claim the resale exception.

Sales to related group members. Under the bill, a person who is a member of an "affiliated group" (see "***Elimination of tax exemptions for certain sales***," above) or is a "related member" with respect to any other person or group of persons, is a "qualifying affiliated group member."[123] A qualifying affiliated group member that purchases tangible personal property for sale, lease, or rental to another qualifying affiliated group member (meaning, another person within the same group or who is a related member to the qualifying affiliated group member), for any use by that other member, other than for resale, re-lease, or re-rental to an unrelated third party as determined in (1), (2), or (3), below, is the consumer of the property purchased for that sale, lease, or rental and is not entitled to claim an exception for resale under continuing law, with respect to that purchase. The consumer may claim any other exemption or exception that would be available to the qualifying affiliated group member to whom the property is sold, leased, or rented, as if that member had purchased, leased, or rented the property from an unrelated third party.[124]

---

[123] *Generally speaking, continuing law defines a "related member" as a business entity that substantially owns, or is substantially owned by, a corporation, either through direct ownership or through a chain of other business entities.*

[124] *Under the bill, "unrelated third party" does not include any officer or shareholder of a corporation, any member of a limited liability company, or any partner in a partnership where the corporation, limited liability company, or partnership is a qualifying affiliated group member of the group that includes the qualifying affiliated group member making the original purchase of the tangible personal property.*

(1) The original purchase of tangible personal property by a qualifying affiliated group member and the sale of the property to another qualifying affiliated group member is a resale to an unrelated third party if, within 90 days of the original purchase of the property, the sale to the unrelated third party is effected and no qualifying affiliated group member directly or indirectly purchases, acquires, uses, or has possession of the property for the first 75% of the depreciable life of the property for modified accelerated cost recovery system purposes under section 168 of the Internal Revenue Code.

(2) The original purchase of tangible personal property by a qualifying affiliated group member and the lease of the property to another qualifying affiliated group member is a re-lease to an unrelated third party, if the lease to the unrelated third party is effected within 90 days of the original purchase of the property by the first qualifying affiliated group member, and the lease to the unrelated third party provides or cumulatively provides for recovery of at least two-thirds of the original purchase price of the property within at least five years of the original purchase of the property by the first qualifying affiliated group member.

(3) The original purchase of tangible personal property by a qualifying affiliated group member and rental of the property to another qualifying affiliated group member is a re-rental to an unrelated third party, if the other qualifying affiliated group member places the property in an inventory for rental to an unrelated third party within 90 days of the original purchase of the property by the first qualifying affiliated group member, and the property remains in rental inventory for a period of not less than four years, during which time at least 75% of the rental proceeds and days of rental use of the property are attributable to rentals to an unrelated third party.

Under the bill's use tax provisions, a qualifying affiliated group member that purchases, leases, or rents tangible personal property from another qualifying affiliated group member is the consumer of the property purchased, leased, or rented, and may credit against state and local use taxes due, up to the amount of the tax due, any sales, use, or other similar tax paid to Ohio or to any other state by the other qualifying affiliated group member on the purchase, lease, or rental of the property.

The bill provides that the Tax Commissioner may adopt rules to enforce and administer sales to related members and prevent price manipulation.

Items used in food service preparation. A person conducting a food service operation who prepares food for human consumption primarily for immediate sale at retail is the consumer of tangible personal property and services used to serve the food so prepared, including chairs, tables, tableware, linens, and

laundry cleaning services. The purchase of such property and services is not subject to the exception for resale under continuing law.

No manufacturing exemption for food service operations

(R.C. 5739.01(E)(8) and (S) and 5739.011)

Continuing law excludes from "retail sale" (thus, from sales or use taxation) any sale in which the purpose of the consumer is to use the thing transferred primarily in a manufacturing operation to produce tangible personal property for sale. The bill provides that the preparation or preservation of food for human consumption primarily for immediate sale at retail by a person conducting a food service operation is **not** a manufacturing operation.

Elimination of exemption for "things transferred" for reclamation

(R.C. 5739.01(E)(4) and 5739.011)

Current law excludes from "retail sale" a sale in which the purpose of the consumer is to use or consume the thing transferred in the process of surface mining reclamation required by existing law (R.C. Chapters 1513. and 1514.). The bill eliminates this exception, so that this type of sale is subject to sales or use taxes.

No additional exemption for air or noise pollution control facilities

(R.C. 5739.01(E)(2) and (8) and (P), 5739.011(C)(10), and 5739.02(B)(26), (32), and (33))

The bill provides that any tangible personal property that is part of, an operating supply for, or a repair or replacement part for, an air or noise pollution control facility certified by the Tax Commissioner under existing law does not qualify for any of the following exemptions:

- The exemption for sales to a person providing transportation services, of tangible personal property and services used directly and primarily in providing those taxable transportation services;

- The exemption for sales of tangible personal property and services to a provider of electricity used in generating, transmitting, or distributing electricity for use by others;

- The exemption for using the thing transferred directly in the rendition of a public utility service;

- The exemption for using the thing transferred primarily in a manufacturing operation to produce tangible personal property for sale;

- The exemption for sales to a telecommunications service, cable and satellite television service, or mobile telecommunications service vendor of property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications through the use of any medium.

The transfer of tangible personal property to holders of certificates for air or noise pollution control facilities is already exempt from sales and use taxes under existing law (R.C. 5709.25).

Issuance of licenses through the Ohio Business Gateway

(R.C. 5739.17(G))

Continuing law requires that a person engaging in retail sales in Ohio must obtain a license from the county auditor of each county in which the applicant desires to engage in business at a fixed place. Transient vendors may, and service vendors and delivery vendors must, apply to the Tax Commissioner for a license.

The bill authorizes the Tax Commissioner to use the Ohio Business Gateway to license certain vendors. The bill defines the "Ohio Business Gateway" as the on-line computer network system, initially created by the Department of Administrative Services, that allows private businesses to electronically file business reply forms with state agencies. The bill provides that, for applicants required to obtain licenses from the Commissioner, the Commissioner may provide them with the opportunity to use, or require the use of, the Ohio Business Gateway, or any successor electronic filing and payment system, to apply for licenses and pay license fees, if any.

Beginning January 1, 2005, the bill authorizes the Tax Commissioner to provide any applicant that is required to obtain a license from the county auditor with the opportunity to use the Ohio Business Gateway, or any successor electronic filing and payment system, to apply for the license and pay the license fee, if any. An applicant that files an application in this manner does not file an application with the county auditor and pay fees into the county treasury. The Commissioner issues the appropriate license for which the applicant applied, and the license authorizes the applicant to engage in business as is appropriate for the type of license issued.

Tiered discount for vendors

(R.C. 5739.12(D) and (K))

Under current law, a vendor that, on or before the due date for the tax return, files a return and pays the amount of tax shown on it to be due is entitled to a discount of .75% of the amount due. The bill revises this discount by providing that a vendor that is required to remit sales taxes by electronic funds transfer is entitled to a discount of .5% of the amount shown to be due on a return. A vendor that is not required to remit sales taxes by electronic funds transfer is entitled to a discount of 1% of the amount shown on the return to be due.

The bill also provides that the Tax Commissioner may require any vendor that operates from multiple locations or has multiple vendor's licenses to report all tax liability on one consolidated return.

Refund for electronic information services

(R.C. 5739.01(B)(3)(e) and 5739.071)

Continuing law requires that the Tax Commissioner refund 25% of sales or use taxes paid by providers of electronic information services on purchases of computers, computer peripherals, software, telecommunications equipment, and similar tangible personal property used to acquire, process, or store information for use by business customers. The bill provides that business customers do not include members of an affiliated group of which the electronic information service provider is also a member.

Determining nexus with Ohio for the use tax

(R.C. 5741.01(H) and (I))

Levying the use tax on sellers located outside Ohio hinges on whether the seller has nexus with this state, meaning that the seller engages in continuous and widespread solicitation of purchases from Ohio residents or otherwise purposefully directs its business activities at Ohio residents. The use tax is triggered if the seller has "substantial nexus with this state," which entails sufficient contact with Ohio, in accordance with the United States Constitution's Interstate Commerce Clause, by maintaining a place of business or employees in Ohio, or using a person in this state for receiving or processing orders, in addition to other activities under existing law.

The bill revises the definition of "substantial nexus with this state" by expanding the definition to include when the seller, or another person acting on behalf of the seller, regularly has employees in Ohio engaging in any activity that

creates, develops, or maintains a market for, or uses a person in Ohio for accepting returns of merchandise purchased from, the seller, or providing repair or warranty services to the seller's customers. Making deliveries by common carrier, if the carrier is a member with the seller in an affiliated group, also qualifies as substantial nexus.

Under continuing law, nexus is triggered when the seller has membership in an affiliated group, at least one other member of which has substantial nexus with Ohio. The bill adds that nexus is established where the member benefits the seller by doing any of the activities listed in existing law or added under the bill; using an identical or substantially similar name, trade name, or trademark, or the seller's goodwill, to develop, promote, or maintain sales; or sharing a common business plan or substantially coordinating its business plan with the seller.

Personal liability for failure to file returns or remit taxes

(R.C. 5739.33 and 5741.25)

Continuing law provides that if any corporation, limited liability company, or business trust that is required to file returns and pay sales taxes fails to do so, its employees or officers who have fiscal responsibility are personally liable for the failure. The bill adds holders of direct payment permits to the responsible entities in this personal liability provision.

The bill also creates a new personal liability provision in the use tax law. The provision is similar to the one in the sales tax law.

"Persons" subject to the sales or use tax

(R.C. 5739.01(A) and 5741.01(A))

The bill adds limited liability partnerships and limited liability companies to the definition of "person" in the sales and use tax laws.

III. State Income Tax

Income tax rates reduced

(R.C. 5747.02)

Current law establishes nine income tax brackets, each with a corresponding tax dollar amount and tax rate. The current income brackets and applicable tax dollar amounts and tax rates for each bracket is as follows:

$5,000 or less	.743%
More than $5,000 but not more than $10,000	$37.15 plus 1.486% of the amount in excess of $5,000
More than $10,000 but not more than $15,000	$111.45 plus 2.972% of the amount in excess of $10,000
More than $15,000 but not more than $20,000	$260.00 plus 3.715% of the amount in excess of $15,000
More than $20,000 but not more than $40,000	$445.80 plus 4.457% of the amount in excess of $20,000
More than $40,000 but not more than $80,000	$1,337.20 plus 5.201% of the amount in excess of $40,000
More than $80,000 but not more than $100,000	$3,417.60 plus 5.943% of the amount in excess of $80,000
More than $100,000 but not more than $200,000	$4,606.20 plus 6.9% of the amount in excess of $100,000
More than $200,000	$11,506.20 plus 7.5% of the amount in excess of $200,000

Under the bill, beginning in taxable year 2005, the income tax dollar amounts and tax rates are gradually reduced each year through 2008 as follows:

For taxable years beginning in 2005:

$5,000 or less	.7%
More than $5,000 but not more than $10,000	$35.00 plus 1.4% of the amount in excess of $5,000
More than $10,000 but not more than $15,000	$105.00 plus 2.9% of the amount in excess of $10,000
More than $15,000 but not more than $20,000	$250.00 plus 3.7% of the amount in excess of $15,000

More than $20,000 but not more than $40,000	$435.00 plus 4.4% of the amount in excess of $20,000
More than $40,000 but not more than $80,000	$1,315.00 plus 5.2% of the amount in excess of $40,000
More than $80,000 but not more than $100,000	$3,395.00 plus 5.9% of the amount in excess of $80,000
More than $100,000 but not more than $200,000	$4,575.00 plus 6.9% of the amount in excess of $100,000
More than $200,000	$11,475.00 plus 7.5% of the amount in excess of $200,000

For taxable years beginning in 2006:

$5,000 or less	.7%
More than $5,000 but not more than $10,000	$35.00 plus 1.4% of the amount in excess of $5,000
More than $10,000 but not more than $15,000	$105.00 plus 2.9% of the amount in excess of $10,000
More than $15,000 but not more than $20,000	$250.00 plus 3.7% of the amount in excess of $15,000
More than $20,000 but not more than $40,000	$435.00 plus 4.4% of the amount in excess of $20,000
More than $40,000 but not more than $80,000	$1,315.00 plus 5.2% of the amount in excess of $40,000
More than $80,000 but not more than $100,000	$3,395.00 plus 5.9% of the amount in excess of $80,000
More than $100,000 but not more than $200,000	$4,575.00 plus 6.9% of the amount in excess of $100,000
More than $200,000	$11,475.00 plus 7.3% of the amount in excess of $200,000

For taxable years beginning in 2007:

$5,000 or less	.7%
More than $5,000 but not more than $10,000	$35.00 plus 1.4% of the amount in excess of $5,000
More than $10,000 but not more than $15,000	$105.00 plus 2.9% of the amount in excess of $10,000
More than $15,000 but not more than $20,000	$250.00 plus 3.7% of the amount in excess of $15,000
More than $20,000 but not more than $40,000	$435.00 plus 4.4% of the amount in excess of $20,000
More than $40,000 but not more than $80,000	$1,315.00 plus 5.2% of the amount in excess of $40,000
More than $80,000 but not more than $100,000	$3,395.00 plus 5.9% of the amount in excess of $80,000
More than $100,000 but not more than $200,000	$4,575.00 plus 6.9% of the amount in excess of $100,000
More than $200,000	$11,475.00 plus 7.1% of the amount in excess of $200,000

For taxable years beginning on or after January 1, 2008:

$5,000 or less	.7%
More than $5,000 but not more than $10,000	$35.00 plus 1.4% of the amount in excess of $5,000
More than $10,000 but not more than $15,000	$105.00 plus 2.8% of the amount in excess of $10,000
More than $15,000 but not more than $20,000	$245.00 plus 3.7% of the amount in excess of $15,000
More than $20,000 but not more than $40,000	$430.00 plus 4.4% of the amount in excess of $20,000

More than $40,000 but not more than $80,000	$1,310.00 plus 5.2% of the amount in excess of $40,000
More than $80,000 but not more than $100,000	$3,390.00 plus 5.9% of the amount in excess of $80,000
More than $100,000	$4,570.00 plus 6.9% of the amount in excess of $100,000

(For taxable years beginning on or after January 1, 2008, the "More than $200,000" income tax bracket is eliminated.)

For taxable years beginning after 2008, the tax dollar amounts and tax rates remain the same as in 2008.

Inflation adjustments eliminated

(R.C. 5747.02(A))

Under current law, beginning in 2005, the Tax Commissioner is required to adjust the existing income tax brackets and tax dollar amounts to account for general price inflation. The bill eliminates this requirement.

$20 exemption credit eliminated and new credits created

(R.C. 5747.02, 5747.022, 5747.025, and 5747.98)

Currently, every income taxpayer may claim an exemption for the taxpayer, the taxpayer's spouse, and each dependent. For each exemption, a taxpayer receives a $20 credit. So, for example, an unmarried taxpayer with two dependents receives a $60 credit. The bill eliminates this credit for taxable years beginning on or after January 1, 2006. The bill replaces the credit with a nonrefundable credit equal to $80 for each dependent. (A "nonrefundable" credit is a credit that cannot be claimed if the taxpayer has no tax liability.) The bill requires that the Tax Commissioner adjust the amount of this new credit each year to account for general price inflation. The bill specifies that, in the case of a joint return, neither spouse is to be considered a dependent of the other. However, in the case of a return other than a joint return, a taxpayer's spouse is considered to be the taxpayer's dependent if the following conditions are satisfied:

(1) The taxpayer's spouse has no Ohio adjusted gross income;

(2) The taxpayer's spouse is not a dependent of another; and

(3) The taxpayer is entitled to two personal exemptions on the taxpayer's federal income tax return.

The bill creates an additional credit that is available to any taxpayer who files an income tax return in a taxable year beginning on or after January 1, 2006. A taxpayer who files a return other than a joint return may claim a nonrefundable credit equal to the lesser of the following amounts:

(1) $105, as adjusted each year by the Tax Commissioner to account for general price inflation; or

(2) The product of the amount specified in (1) times one of the following "qualifying percentages":

(a) For a taxpayer with an Ohio adjusted gross income of $100,000 or less, the qualifying percentage is 100%.

(b) For a taxpayer with an Ohio adjusted gross income greater than $100,000, the qualifying percentage is 100% minus the percentage ratio of a fraction the numerator of which is the lesser of $50,000 or the excess of the taxpayer's Ohio adjusted gross income over $100,000 and the denominator of which is $50,000.

So, if a taxpayer has an Ohio adjusted gross income of $125,000, the qualifying percentage would be 100% minus 50% ($25,000/$50,000), which equals 50%. Under the bill, this qualifying percentage is multiplied by $105 to obtain the amount of the credit. The result is a credit of $52.50.

In the case of a joint return, the credit is equal to the lesser of the following amounts:

(1) $210, as adjusted each year by the Tax Commissioner to account for general price inflation; or

(2) The product of the amount specified in (1) times one of the following "qualifying percentages":

(a) For a taxpayer with an Ohio adjusted gross income of $200,000 or less, the qualifying percentage is 100%.

(b) For a taxpayer with an Ohio adjusted gross income greater than $200,000, the qualifying percentage is 100% minus the percentage ratio of a fraction the numerator of which is the lesser of $100,000 or the excess of the taxpayer's Ohio adjusted gross income over $200,000 and the denominator of which is $100,000.

The calculation for joint returns would be carried out in the same manner as the example set forth above for returns other than joint returns. Taxpayers must claim the new nonrefundable credits in the order required by law (see R.C. 5747.98).

New credits excluded from the definition of "business credits"

(R.C. 5747.08)

Continuing law allows pass through entities (partnerships, limited liability companies, and S corporations) to file a single income tax return on behalf of investors in the pass-through entity. Continuing law provides that pass-through entity investors for whom the pass-through entity elects to file a single return must calculate the tax due before taking any "business credits" and are entitled to only their distributive share of any business credit. Existing law sets forth a number of credits that are not considered "business credits" because they are not directly related to business activities. The bill adds to this list of credits not included in the definition of "business credits" the new $80 dependent and filing credits created in the bill (see "***$20 exemption credit eliminated and new credits created***" above).

Personal exemptions eliminated

(R.C. 5747.022, 5747.025, and 5748.01)

As noted, current law provides for a personal exemption for each taxpayer, the taxpayer's spouse, and the taxpayer's dependents. The amount of the exemption is $1,050 for each taxpayer, spouse, and dependent. These exemptions are used in calculating school district income tax. Under continuing law, school districts may impose an annual tax on school district income of residents subject to Ohio personal income tax. For purposes of school district income tax, a taxpayer's taxable income is the taxpayer's adjusted gross income less the personal exemptions.

The bill eliminates the personal exemptions for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents for taxable years beginning on or after January 1, 2006. However, the bill provides that the exemption amounts will continue to be used in calculating taxable income for purposes of any school district income tax. For taxable years beginning after 2005, the exemption amounts used in calculating taxable income subject to a school district income tax will be the exemption amounts in existence on December 31, 2005.

Joint filing credit: increase for some couples

(R.C. 5747.05(G))

Married couples who file a joint income tax return are entitled to a joint filing credit if each spouse has at least $500 in earnings. The credit is intended to offset some of any additional tax they might owe by filing jointly as compared to filing separately. The credit is a percentage of the tax otherwise due from the couple. The percentage is greatest for lower income couples, and is reduced in three steps as joint income increases.

The bill increases the credit percentage for couples in the income ranges of $50,000 to $60,000 (from 10% to 15%) and $75,000 to $85,000 (from 5% to 10%). The increase would apply to taxable years beginning in 2006 or thereafter. The current and proposed credit percentages are summarized in the following table.

Credit %	Adjusted income	
	Current	Proposed (2006)
20%	$0 to 25,000	$0 to 25,000
15%	$25,000 to 50,000	$25,000 to 60,000
10%	$50,000 to 75,000	$60,000 to 85,000
5%	Over $75,000	Over $85,000

Resident credit: computing taxes paid to other states

(R.C. 5747.05(B)(3))

The income tax applies to all resident individuals, and to all nonresident individuals who earn or receive income in Ohio. The tax applies to the entire taxable income of those individuals, wherever it may be earned or received, but a credit is granted to diminish the extent to which an individual's income is also subject to taxation by another state. In the case of an Ohio resident with income taxable by another state, the credit equals the tax owed to the other state on that income, or the amount of Ohio tax that would be owed on that income, whichever is less.

The bill expressly reduces the credit available to an Ohio resident to the extent that the resident deducted taxes paid to another state in computing taxable income.

Reciprocity agreements with other states

(R.C. 5747.05(A)(3); Section 146.07)

Current law authorizes the Tax Commissioner to make agreements with other states providing for reciprocal income tax exemptions for residents of Ohio and residents of the other state. Under such an agreement, Ohio does not tax the Ohio earnings of residents of the other state, in exchange for the other state not taxing the earnings of Ohio residents in that other state.

The bill suspends such reciprocity agreements for five years: specifically, for a taxpayer's taxable years beginning between January 1, 2004, and December 31, 2008. The suspension affects any agreement, regardless of when it was made.

Trusts: make income tax permanent, refine residency rules

(R.C. 5747.01(A)(6) and (S), 5747.02(D))

The income tax applies to the income of trusts that "reside" in Ohio. The income tax applies to trust income for trusts' taxable years beginning in 2002, 2003, and 2004. Afterwards, the tax does not apply.

The bill applies the income tax to trusts' income permanently, so the tax will apply as well to all taxable years beginning after 2004. The bill also modifies the rules governing whether a trust (or some part of a trust) is considered to be a resident of Ohio, and thereby subject to the income tax.

IV. Municipal Taxation

Municipal corporation treatment of net operating losses

(R.C. 718.02 and 718.021)

Businesses and professions are subject to a municipality's income tax on net profits to the extent that the profits are attributable to business conducted within the municipality. Net operating losses can reduce a business' municipal income tax liability.

The bill establishes uniform rules with respect to net operating losses. Specifically, the bill requires that every municipality permit net operating losses to be carried forward for five ensuing taxable years. A key concept is that of

"apportioned net income," which the bill defines as the amount derived from the application of the statutory apportionment formula used by businesses to allocate income among the various municipalities in which they operate. (The statutory formula is a three-part allocation formula using payroll, sales, and real and tangible personal property, whether owned or rented, to determine the portion of the net profit of the business that is attributable to a municipality.) Under the bill, apportioned net income for any given taxable year is either negative (meaning the business has a net operating loss) or positive. If, for any taxable year, a taxpayer was not subject to the municipality's income tax, then the taxpayer's negative apportioned net income for that taxable year is presumed to be zero. As used in the bill, "apportioned net income" only includes amounts derived from the apportionment formula for taxable years beginning on or after January 1, 1999.

The bill provides that, for taxable years beginning on or after January 1, 2004, if a taxpayer has negative apportioned net income for any taxable year, then the taxpayer is not entitled to a refund of any amounts (other than amounts the taxpayer has paid in estimated taxes and any overpayment from a previous taxable year credited towards the taxable year in which apportioned net income is negative). However, for each of the next five ensuing taxable years, the taxpayer may reduce any positive apportioned net income attributable to that same municipal corporation by the lesser of the following two amounts:

(1) The positive apportioned net income for that ensuing taxable year; or

(2) The amount of the negative apportioned net income (expressed as a positive number) attributable to the year in which the loss was sustained reduced by any amount the taxpayer was allowed to deduct in a previous year.

So, for example, if with respect to a municipal corporation a taxpayer has $25,000 of negative apportioned net income for a taxable year and the following year, with respect to that same municipal corporation, the taxpayer has $20,000 in positive apportioned net income, the taxpayer may reduce the $20,000 in positive apportioned net income by $20,000. Now, suppose for the following taxable year, the taxpayer again has $20,000 in positive apportioned net income with respect to the municipal corporation, the bill permits the taxpayer to reduce that $20,000 of positive apportioned net income by $5,000 ($20,000 of the negative apportioned net income had already been used by the taxpayer to reduce positive apportioned net income the previous taxable year).

The bill provides that, if, during a period of five consecutive taxable years, a taxpayer has negative apportioned net income in more than one taxable year, the negative apportioned net income generated in the earliest of those taxable years is to be the first negative apportioned net income deducted. For example, if a taxpayer has $25,000 in negative apportioned net income in both 2003 and 2004,

and then has $20,000 in positive apportioned net income in 2005, under the bill, the taxpayer would use the $25,000 in negative apportioned net income from 2003 to reduce the $20,000 in positive apportioned net income from 2005. If in 2006 the taxpayer were to have, say, $5,000 in positive apportioned net income, the taxpayer would use the remaining $5,000 of negative apportioned from 2003 against this positive apportioned net income.

Municipal income tax collection

(R.C. 718.01; Sections 144.04 and 146.07)

The bill establishes a number of rules and procedures to govern municipal income tax collection. Specifically, the bill creates new rules to govern assessments, jeopardy assessments, penalties, amended returns, refunds, and appeals of tax administrators' decisions. (A "tax administrator" is the individual charged with administering a municipality's income tax.) The new rules apply to matters relating to taxable years beginning on or after January 1, 2003.

Assessments and jeopardy assessments

(R.C. 718.11 and 5703.47 (not in the bill))

The bill establishes procedures for municipal income tax administrators to follow in making assessments against employers and taxpayers who fail to file returns, file incorrect returns, or fail to remit the full amount of taxes due. Under the bill, a tax administrator may make an assessment for any deficiency for the period for which the return or tax is due based upon any information in the tax administrator's possession.

The bill provides that a tax administrator may not make an assessment more than three years after the date the return subject to assessment was filed or the date the return was required to be filed, whichever is later. This time limit may be extended if both the taxpayer and the tax administrator consent in writing to an extension. An extension of the three-year limitation period for making an assessment also extends the limitation period for obtaining a tax refund (see "***Refunds***" below). If a taxpayer fails to file a return or files a fraudulent return, there is no limitation on the period of time within which a tax administrator may make an assessment.

The bill requires that a tax administrator making an assessment give the taxpayer assessed written notice of the assessment by personal service or mail. Notice sent by mail must be sent to the address shown on the tax return or other documentation unless the taxpayer notifies the tax administrator of a different address.

A taxpayer subject to an assessment may petition for reassessment and may request a hearing on the petition. The notice of assessment must describe how to petition for reassessment and how to request a hearing. A petition for reassessment must be filed within 60 days of the mailing of the notice of assessment and must be signed by the taxpayer or by the taxpayer's authorized agent with knowledge of the facts surrounding the assessment. A tax administrator's unsuccessful attempt to mail notice of assessment does not cause the 60-day period for filing the petition to begin to run. The 60-day period does not begin to run until the notice of assessment is mailed to the location of the taxpayer. The petition must specify the taxpayer's objections to the assessment; however, the taxpayer may raise additional objections in writing at any time before the tax administrator's final determination on the assessment. If a party subject to an assessment does not file a petition for reassessment within the time prescribed, the assessment becomes final and the amount of the assessment becomes due and payable.

After filing a petition for reassessment, a taxpayer may pay all or a portion of the assessment that is the subject of the petition. The bill provides that payment of all or a portion of the assessment does not prejudice any claim for refund later filed by the taxpayer.

If a taxpayer files a petition for reassessment and requests a hearing, the tax administrator must assign a time and place for the hearing and must notify the taxpayer of the time and place. The tax administrator is permitted to continue the hearing from time to time if necessary.

After considering the petition for reassessment, the tax administrator may make any corrections to the assessment that the administrator considers proper. The tax administrator must serve a copy of the final determination upon the taxpayer by personal service or certified mail. After an assessment becomes final, if any portion of the assessment remains unpaid, including interest that accrued on the assessment, the tax administrator may file a certified copy of the entry making the assessment final with the clerk of court of common pleas for the county in which the municipal corporation is primarily located. The clerk must then enter a judgment against the taxpayer in the amount shown on the entry. The clerk may file the judgment in a loose-leaf book entitled "Special Judgments for Municipal Corporation of Income Taxes." The tax administrator may request execution of the judgment through seizure and sale of the taxpayer's property. Any portion of an assessment that is not paid within 60 days after the day the assessment was issued bears interest from the day the tax administrator issues the assessment until the assessment is paid. Interest accrues at the federal short-term rate (which is calculated each year by the Tax Commissioner) plus an additional 3%. Interest

must be paid in the same manner as the tax and may be collected by issuing an assessment.

The bill establishes procedures for tax administrators to follow in making jeopardy assessments. Under the bill, a tax administrator may make a jeopardy assessment if the administrator believes that collection of the tax will be jeopardized unless proceedings to collect the tax are immediately initiated. Immediately upon issuing a jeopardy assessment, the tax administrator must file an entry making the assessment final with the clerk of the court of common pleas, as described above. Within five days of the filing of the entry with the clerk, notice of the jeopardy assessment must be served upon the taxpayer assessed or the taxpayer's legal representative by personal service or certified mail.

The total amount assessed pursuant to a jeopardy assessment is immediately due and payable unless the taxpayer subject to the jeopardy assessment files a petition for reassessment in the manner described above. In addition to filing the petition, a taxpayer subject to a jeopardy assessment must provide security in a form satisfactory to the tax administrator and in an amount sufficient to pay the unpaid balance of the assessment. The bill provides that a taxpayer's full or partial payment of a jeopardy assessment has no effect on the tax administrator's consideration of the petition for reassessment and does not prejudice any claim for refund later filed by the taxpayer.

The bill provides that if a tax administrator, the Board of Tax Appeals, or any court (see "***Appeals from tax administrators' decisions***" below) determines that the amount due under an assessment is less than the amount of tax paid by the taxpayer, the taxpayer is entitled to a refund of the excess tax paid, with interest.

All money collected from an assessment is considered revenue arising from the tax imposed by the municipal corporation.

Civil penalties

(R.C. 718.111 and 5703.47 (not in the bill))

The bill prohibits municipal corporations from levying, assessing, or collecting any civil penalty other than the penalties enumerated in the bill. The bill establishes five different categories of civil penalty, as follows:

(1) If an employer or taxpayer required to file a return or remit tax fails to file a return within the time prescribed, then, for each month or fraction of a month elapsing between the due date and the day the return is filed (including the day of filing and periods of extension), the tax administrator may impose a penalty not exceeding the greater of the following two penalties:

(a) $50 per month or fraction of a month, not to exceed $500; or

(b) 5% per month or fraction of a month, not to exceed 50%, of the tax required to be shown on the return.

(2) If an employer or taxpayer required to pay estimated taxes fails to pay the taxes by the date prescribed for payment, then the tax administrator may impose a penalty of up to twice the interest owed for the delinquent payment.

(3) If an employer or taxpayer files a return that does not contain adequate information for judging its correctness or files a return that contains information that is, on its face, substantially incorrect, and the filing of the inadequate or incorrect return is due to the employer or taxpayer taking a frivolous position or a desire to avoid paying taxes, then the tax administrator may impose a penalty of up to $500.

(4) If an employer or taxpayer makes a fraudulent attempt to evade the reporting or payment of a tax, then the tax administrator may impose a penalty not exceeding $1,000 or 100% of the tax required to be shown on the return, whichever is greater.

(5) If any employer or taxpayer makes a false or fraudulent claim for a refund (see "***Refunds***" below), a municipal corporation may impose a penalty not exceeding $1,000 or 100% of the refund claim, whichever is greater. This penalty, any refund issued on the claim, and interest on the refund may be assessed under the procedures described above (see "***Assessments***" above). There is no limitation on the period of time within which a tax administrator may make the assessment.

Under the bill, civil penalties are calculated based upon the amount of the outstanding debt owed to the municipality. Therefore, any portion of a tax that is paid on or before the due date for filing the municipal income tax return, including extensions of the due date, is not included in the calculation of a penalty.

One or more of the civil penalties described in the bill may be imposed upon the same taxpayer. In addition, a tax administrator may abate all or any part of a penalty. The tax administrators may adopt rules governing the imposition and abatement of civil penalties. All amounts collected by a municipal corporation as civil penalties are considered revenue arising from the tax imposed by the municipal corporation.

Finally, the bill provides that the interest rate for any interest charges levied by a municipal corporation for the underpayment of tax shall be at the federal short-term rate determined by the Tax Commissioner plus an additional 3%.

Amended returns

(R.C. 718.11 and 718.112)

The bill establishes rules to govern the filing of amended municipal income tax returns. The bill provides that if any of the facts, figures, computations, or attachments in a taxpayer's annual return must be altered as a result of adjustments to the taxpayer's federal income tax return, then the taxpayer must file an amended return if the alterations in the federal return affect the taxpayer's municipal income tax liability. An amended return must be in the form prescribed by the tax administrator and must be filed within 60 days after the earlier of the following:

(1) The date on which the federal adjustment has been agreed to or finally determined; or

(2) The date any federal income tax deficiency or refund (or abatement or credit resulting therefrom) has been assessed or paid.

In the case of an underpayment, the amended return must be accompanied by payment of any additional tax together with interest. However, payment does not have to be made if the tax due is less than one dollar. An amended return is subject to assessment; but an amended return does not reopen facts, figures, computations, or attachments from a previously filed return if those facts, figures, computations, or attachments are not affected by the amended return and the previously filed return is no longer subject to assessment.

In the case of an overpayment, a taxpayer may file an application for a refund. The application must be filed within the 60-day period prescribed for filing the amended return. An application for refund resulting from adjustments to the federal income tax return does not have to be filed within the three-year period generally prescribed for obtaining municipal income tax refunds; however, the application itself must conform to the other laws governing refund applications (see "***Refunds***" below). If a request for refund is not made within three years after the overpayment, the application for refund may claim a refund of overpayments relating only to those facts, figures, computations, or attachments in the annual return that are affected, either directly or indirectly, by the alterations to the federal income tax return. In other words, a request for refund that is not filed within three years after the overpayment cannot reopen issues that are unaffected by the adjustment to the taxpayer's federal return.

Refunds

(R.C. 718.05, 718.11, and 718.12)

The bill establishes rules and procedures to govern municipal income tax refunds. Under the bill, an application for a refund of illegal, erroneous, or excessive tax payments must be filed with the tax administrator within three years after the date of payment or, if the period for making an assessment has been extended (see "***Assessments***" above), within the additional period prescribed for making an assessment. A refund application must be filed in the form prescribed by the tax administrator or on a generic form that contains all of the information required by the tax administrator.

If the tax administrator determines that the amount of refund to which the taxpayer is entitled is equal to or greater than the amount claimed by the taxpayer, the tax administrator must issue a refund. However, if the tax administrator determines that the amount to which the taxpayer is entitled is less than the amount claimed, the tax administrator must provide the taxpayer with notice of the amount of refund approved. Notice must be sent by ordinary mail to the address shown on the taxpayer's refund application unless the taxpayer notifies the tax administrator of a different address. Under the bill, the taxpayer has 60 days from the date the administrator mails the notice to provide additional information to the administrator, to request a hearing, or both. A tax administrator may refund the approved refund amount prior to the expiration of the 60-day period.

If the taxpayer neither provides additional information to the tax administrator nor requests a hearing within 60 days of receiving notice of the approved refund amount, the tax administrator's decision regarding the refund amount becomes final and is not subject to appeal.

If the taxpayer requests a hearing within 60 days of receiving notice of the approved refund amount, the tax administrator must assign a time and place for the hearing and must notify the taxpayer of the time and place. The tax administrator is permitted to continue the hearing from time to time. After the hearing, the tax administrator can make adjustments to the approved refund amount. The tax administrator must then issue a final determination and serve it upon the taxpayer by personal service or certified mail. The bill requires that the tax administrator refund any additional amount that he or she determines is owed to the taxpayer. The taxpayer may appeal the tax administrator's final determination to the Board of Tax Appeals (see "***Appeals from tax administrators' decisions***" below).

If the applicant does not request a hearing within 60 days of receiving notice of the approved refund amount but does provide additional information to the tax administrator within that period, the tax administrator must review the

information, make any adjustments to the approved refund amount, refund any additional amounts owed to the taxpayer, and serve a final determination upon the taxpayer by personal service or certified mail. Here again, the taxpayer may appeal the final determination to the Board of Tax Appeals.

A taxpayer may request that a refund be credited against his or her estimated tax payments for an ensuing taxable year. In addition, the bill provides that a tax administrator may apply a refund against any taxes or fees owed by the taxpayer to the municipal corporation, provided that the debts owed to the municipality have become final.

Under the bill, refunds include interest that accrues from the date of the overpayment until the date of the refund. (The bill does not specify the rate of interest.) However, if an overpayment is refunded within 90 days after the final filing date of the annual municipal income tax return or 90 days after the complete return is filed, whichever is later, no interest accrues on the refunded overpayment. Tax administrators are not required to issue refunds for amounts less than one dollar.

Refunds of amounts paid under assessment: preclusive effect of prior determinations

The bill provides that with respect to an application for refund of an amount paid pursuant to an assessment, only the taxpayer's objections to the assessment that were decided by the Board of Tax Appeals or a court on the merits will be given collateral estoppel or *res judicata* effect (see "***Appeals from tax administrators' decisions***" below). ("Collateral estoppel" is a legal doctrine that precludes relitigating issues that have already been tried and determined between the same parties. "*Res judicata*" is a similar doctrine. While collateral estoppel bars the relitigation of previously determined issues, *res judicata* bars relitigation of the same cause of action. A decision "on the merits" is one rendered after hearing arguments and making an investigation, as opposed to a decision rendered on technical or procedural grounds.) Thus, under the bill, a tax administrator's determinations with respect to an assessment are not given any preclusive effect in a subsequent refund request.

Appeals from tax administrators' decisions

(R.C. 718.11, 5717.011, 5717.03, and 5717.04 (not in the bill))

Currently, a taxpayer may appeal a decision issued by a municipal tax administrator to an appellate board created by the legislative authority of the municipality. The bill eliminates the requirement that municipalities maintain

these appellate boards and provides that appeals from final decisions issued by tax administrators are to be taken to the Board of Tax Appeals.

Under the bill, a taxpayer can take an appeal to the Board of Tax Appeals by filing a notice of appeal with the Board and the tax administrator within 60 days after the tax administrator serves the final determination upon the taxpayer. The taxpayer may file the appeal in person or by mail. If notice of appeal is filed by mail, the date of the postmark or the date of receipt recorded by the delivery service is considered the date of filing. The bill requires that the notice of appeal have attached to it a copy of the tax administrator's final determination and that the taxpayer specify the alleged errors in the final determination. Failure to attach a copy of the final determination or specify the alleged errors does not invalidate an appeal, however. The bill provides that, upon the filing of the notice of appeal, the tax administrator must certify to the Board a transcript of the proceedings before the tax administrator and all of the evidence considered by the tax administrator.

The bill authorizes the Board to hear the appeal at its Columbus office or in the county in which the taxpayer resides. Alternatively, the Board may have its examiners conduct hearings and report to it their findings for affirmation or rejection. While the Board may order the appeal to be heard upon the record and the evidence certified to it by the tax administrator, the Board must hear additional evidence when requested to do so by any interested party. The Board may make any investigation concerning the appeal that it considers appropriate.

The Board must send its order and the date of entry of its order upon its journal to every person who was a party to the appeal. The parties may appeal the Board's decision to the Ohio Supreme Court or the court of appeals for the county in which the taxpayer resides.

Municipal income tax withholding requirements

Automatic three-year withholding requirement eliminated

(R.C. 718.03)

Under continuing law, a municipality cannot require an employer that is not situated in the municipality to withhold municipal income taxes from an employee unless the total amount of tax required to be deducted and withheld for the municipal corporation on account of all of the employer's employees exceeds $150 for the calendar year. Currently, if the total amount withheld by an employer exceeds $150 for the year, the municipal corporation may require the employer to deduct and withhold taxes in each of the following three years even if the total amount deducted and withheld in each of those three years does not exceed $150. The bill eliminates the three-year withholding requirement beginning July 1, 2003.

Under the bill, the withholding requirements for nonresident employers are determined from year-to-year. A nonresident employer is not required to deduct and withhold municipal income taxes unless and until the total amount withheld from all employees for that municipal corporation exceeds $150 for the calendar year.

Withholding tax base established

(R.C. 718.01, 718.031, 14 U.S.C. 114, 26 U.S.C. 125, and 26 U.S.C. 3121)

Currently, each municipal corporation may define the tax base for employers to use when withholding municipal income taxes from their employees' compensation. For taxable years beginning after 2003, the bill prohibits municipal corporations from requiring any employer to withhold tax from any compensation other than qualifying wages that are directly or indirectly paid to the employee. The bill does not prohibit employers from withholding amounts on a basis greater than qualifying wages.

The bill defines "qualifying wages" as wages, as defined under the Internal Revenue Code, with the following adjustments:[125]

(1) Deduction of any amount included in wages to the extent the amount is compensation attributable to a nonqualified deferred compensation plan and is not included in an individual's federal gross income. (A "nonqualified deferred compensation plan" is a retirement plan or other type of deferred compensation plan that does not meet the requirements imposed on qualified deferred compensation plans by the Internal Revenue Code. One of the principal advantages of a nonqualified plan is that it can be offered to a few, select employees. Typically, a nonqualified plan serves as an adjunct to a qualified plan.)

(2) Addition of any amount not included in wages to the extent the amount constitutes compensation attributable to a nonqualified deferred compensation plan if the amount is included in an individual's federal gross income, but only to the extent the municipal corporation did not impose its tax on the nonqualified deferred compensation at the time the compensation was deferred. (This addition

[125] *The Internal Revenue Code defines "wages" as all remuneration for employment, including the cash value of all remuneration (including benefits), paid in any medium other than cash. The Internal Revenue Code sets forth an extensive list of payments that are excluded from the definition of wages. Among the payments excluded are payments made on account of sickness or accident disability, tips paid in a medium other than cash, and payments required for an employee under a state unemployment compensation plan (26 U.S.C. 3121(a)).*

is not made if the amount added represents retirement income of an individual who is not a resident or domiciliary of the municipal corporation. Taxation of this income is prohibited under federal law. In determining an employee's residency status, an employer may rely on an affidavit or other sworn statement from the employee that describes the employee's residency status.)

(3) Addition of any amount not included in wages to the extent the amount has been directly or indirectly paid to or for the benefit of any employee and is excluded from the employee's federal gross income because it is part of a cafeteria plan. (A "cafeteria plan" is a written benefit plan that an employer maintains under which all participants are employees and each participant has the opportunity to select particular benefits.)

Municipal income tax filing deadlines

Uniform deadline for filing municipal income tax returns

(R.C. 718.05 and 718.051)

While current law prohibits municipalities from establishing municipal income tax return filing deadlines that are earlier than the deadline required for filing the federal income tax return, current law does not prohibit municipalities from establishing a later deadline. As a result, filing deadlines can vary from municipality to municipality.

The bill establishes the date for filing the federal return as a uniform deadline for the filing of municipal income tax returns. The bill prohibits municipalities from establishing any other filing deadline for taxable years beginning after 2003.

Uniform extension periods

(R.C. 718.05 and 718.051)

Continuing law provides that any taxpayer who has requested an extension for filing a federal income tax return may request an extension for filing a municipal income tax return by filing a copy of the request for federal extension with the administrator of the municipal income tax. A municipality must grant the request for extension for a period that is at least as long as the federal extension. Current law does not prohibit a municipality from extending the deadline for the municipal income tax return beyond the deadline for filing the federal return. The length of the extension granted by municipalities can therefore vary from municipality to municipality.

The bill establishes a uniform extension period for the filing of municipal income tax returns for taxable years beginning after 2003. Under the bill, the extended due date of any municipal income tax return is the last day of the month to which the due date for the federal income tax return has been extended.

Ohio Business Gateway

(R.C. 125.30 (not in the bill), 718.031, 718.05, 718.051)

The bill establishes special filing requirements for taxpayers that file municipal income tax returns or requests for extension using the Ohio Business Gateway. The Ohio Business Gateway is an online computer network system that was initially created by the Department of Administrative Services (DAS). DAS established the system under a statutory mandate to create an online computer network system that allows private businesses to electronically file business reply forms with state agencies.

The bill provides that, for taxable years beginning on or after January 1, 2005, a taxpayer subject to a municipal tax on business net profit may file a municipal income tax return or estimated income tax return and pay any taxes due by using the Ohio Business Gateway or any electronic filing and payment system that the state may later develop. Similarly, beginning January 1, 2005, a taxpayer who is subject to a municipal tax on business net profit and who has received an extension to file a federal income tax return may use the Ohio Business Gateway or any successor electronic system to notify the Tax Commissioner of the federal extension. If a taxpayer notifies the Commissioner of the federal extension through the Ohio Business Gateway on or before the date for filing the municipal income tax return, then the taxpayer is not required to provide any notification to the municipal corporation. Under the bill, the taxpayer's municipal income tax return would then be due on the last day of the month to which the due date for filing the federal income tax return has been extended. Finally, the bill permits employers to use the Ohio Business Gateway or any successor electronic system to report and remit the amount of municipal income tax withheld from qualifying wages paid on or after January 1, 2007. (For a definition of "qualifying wages" see "***Withholding tax base established***" above.)

The bill provides that taxpayers and employers who file income tax returns or withholding tax returns through the Ohio Business Gateway must file by the due dates prescribed for taxpayers who do not file in an electronic format. The bill provides, further, that, notwithstanding its provisions authorizing electronic filing of requests for extension, returns, and payments, the state is not required to continue to make the Ohio Business Gateway available to taxpayers or to make available any successor electronic filing and payment system.

Municipal taxation of business net profit

Uniform tax base established

(R.C. 718.01 and 5745.01)

A business is subject to a municipality's tax on its net profit to the extent the profit is attributable to business conducted in the municipality. The bill establishes a uniform tax base for purposes of municipal taxation of net profits. Under the bill, the net profit subject to municipal taxation is the taxpayer's adjusted federal taxable income calculated on the basis of the Internal Revenue Code, as the Code exists on the bill's effective date. Beginning in 2004, a municipality may not tax a business' net profit using any base other than the business' adjusted federal taxable income.

Add-back for intercorporate transactions

(R.C. 718.01, 5745.01, 5745.042, and 5747.044)

The bill requires corporations, sole proprietorships, and other business entities subject to a municipal income tax to make certain adjustments in their taxable incomes to account for certain kinds of transactions between commonly owned or controlled business entities. The adjustments and the circumstances under which the adjustments must be made are analogous to those required under the current corporation franchise tax. The purpose of the adjustments is to diminish opportunities for tax avoidance strategies resulting from one company shifting otherwise taxable income to a related company that is not liable for municipal tax on that income. The adjustments apply to expenses or losses associated with intangible property (e.g., royalties, patents, copyrights, purchasing and disposing of accounts receivable) and interest expense from borrowing money. Since municipal corporations generally are prohibited from taxing intangible income, there is an opportunity for one company making operating profits to pay a related company, in the same or another municipal corporation, expenses for using the other company's intangible property or for borrowing money from the other company. To the extent that such a transaction reduces or eliminates the operating company's net profit, its tax liability is reduced. The transaction represents net income to the second company, but from an intangible source, so the additional net income is not subject to municipal taxation.

Companies can avoid the add-back by showing a transaction was not principally motivated by tax avoidance and that the related company paid the expense to (or incurred a loss with respect to) an unrelated entity in the same year. Any increased tax resulting from the add-back adjustment is limited so that it cannot be greater than the tax that would be due if a consolidated tax report had

been filed by the taxpayer paying the expense (or incurring the loss) and all related companies to which the expense was paid (or loss incurred), either directly, or indirectly through an intermediary. If a company required to make the add-back adjustment fails to do so, and has not made the adjustment and paid the additional tax, if any, including penalty and interest within one year, then the company is subject to an additional penalty equal to double the interest charged corporations for delinquent corporation franchise tax payments. A safe harbor is available if the additional tax attributable to the adjustment is less than 10% of the tax otherwise due and is less than $50,000.

In the case of corporations, the bill exempts expenses and losses from the proposed add-back requirement if the expenses are paid (or losses are incurred with respect to) a related company that is not subject to the federal income tax. Specifically, the exemption applies only if the corporation paying or incurring the expenses or losses is able to demonstrate, by clear and convincing evidence, that all of the four conditions described under "***Exemption for expenses paid to offshore affiliates***," under the corporation franchise tax heading, are satisfied: If a municipal corporation draws a "reasonable conclusion" that a corporation is attempting to avail itself of the exemption by engaging in sham transactions, transactions with no business purpose, or other primarily tax avoidance-motivated transactions, the corporation must refute that conclusion by clear and convincing evidence. If a corporation claims the exemption and is found not to be entitled to it, the required add-back is doubled in amount as a penalty (unless an advance pricing agreement applies).

Apportionment of net profit

(R.C. 718.02)

A business that operates both inside and outside of a municipality's boundaries must apportion its income among the various municipalities in which it operates. Under current law, if a business' books and records accurately show the portion of its net profit that is attributable to business conducted within the municipality, the tax may be calculated on that portion. However, in the absence of such business records, the taxpayer must use a statutory apportionment formula. The statutory formula is a three-part formula that examines the payroll, sales, and real and tangible personal property (whether owned or rented) within and outside the municipality to determine the portion of the net profit of the business that is attributable to the municipality.

The bill eliminates the option of apportioning net profit on the basis of books and records and requires that taxpayers apportion on the basis of the statutory formula (unless the formula does not produce an equitable result in which case another basis may be substituted). In addition, in calculating the ratio

of real and tangible personal property used within and outside a municipality, the bill requires taxpayers to use the original cost of the property instead of its net book value, as required under current law.

Nonqualified deferred compensation and retirement income exempt from municipal taxation

(R.C. 718.01(F), 26 U.S.C. 3121, and 4 U.S.C. 114)

Continuing law sets forth a list of items of income that are exempt from municipal income taxation. The bill adds several new items to this list. For taxable years beginning on or after January 1, 2004, with respect to a nonqualified deferred compensation plan, municipal corporations may not tax:

(1) Any amount that is not included in a person's federal gross income; and

(2) Any amount included in a person's federal gross income to the extent the municipal corporation imposed a tax on the nonqualified deferred compensation at the time the compensation was deferred.

(A "nonqualified deferred compensation plan" is a retirement plan or other type of deferred compensation plan that does not meet the requirements imposed on qualified deferred compensation plans by the Internal Revenue Code. One of the principal advantages of a nonqualified plan is that it can be offered to a few, select employees. Typically, a nonqualified plan serves as an adjunct to a qualified plan.)

The bill also prohibits municipal corporations from taxing the retirement income of any individual who is not a resident or domiciliary of the municipal corporation at the time the income is distributed. Taxation of this income is already prohibited under federal law.

V. Public Utility Taxation

Taxation of telephone companies and water transportation companies

Summary

The bill contains various tax changes that affect telephone companies and water transportation companies. Continuing law provides that any person is a "telephone company" when primarily engaged in the business of providing local exchange telephone service, excluding cellular radio service, in Ohio. Local exchange telephone service consists of making available or furnishing access and a dial tone to persons within a local calling area for use in originating and receiving voice grade communications over a switched network operated by the

service provider within the area, and for gaining access to other telecommunications services (R.C. 5727.01).

Under continuing law, any person is a "water transportation company" when engaged in the transportation of passengers or property, by boat or other watercraft, over any waterway, whether natural or artificial, from one point within Ohio to another point within it, or between points within and outside Ohio (R.C. 5727.01).

The first tax change the bill makes is to reduce the tax assessment rate for all telephone company tangible personal property over a period of time, so that by tax year 2007 and thereafter the rate is 25% of true value. For water transportation companies, the bill revises how their taxable property is apportioned to taxing districts in Ohio.

The bill also revises the law regarding the public utility excise tax on gross receipts so that telephone companies and water transportation companies are no longer subject to that tax. Instead, telephone companies and water transportation companies must pay the corporation franchise tax. As a result of that tax change by the bill, municipal corporations are allowed to levy income taxes on telephone companies. The bill does not address the municipal income taxation of water transportation companies.

Lastly, the bill makes sales of services by telephone companies and the transportation of persons or property by a water transportation company subject to sales or use taxes.

Assessment rate reduction for telephone companies

(R.C. 5727.111)

A telephone company pays taxes on its taxable property, which is all tangible personal property that on December 31 of the preceding year was located in Ohio and owned by it, or leased by it under a sale and leaseback transaction. Every year, the Tax Commissioner determines the true value of this taxable property, by a method of valuation using cost as capitalized on the company's books and records, less composite annual allowances prescribed by the Commissioner, and assesses it at a percentage of true value established by law. The resulting assessed value is the portion to which the local tax rate is applied to determine the tangible personal property taxes due.

Currently, the percentage used to determine the assessed value of all telephone company taxable property is 25% for taxable property first subject to taxation in Ohio for tax year 1995 or thereafter, and 88% for all other taxable

property. Beginning tax year 2005, the bill reduces the percentage for all other taxable property to 67% of true value. For tax year 2006, the percentage is 46%, and for tax years 2007 and thereafter, the percentage is 25% of true value.

Taxable property of a water transportation company

(R.C. 5727.06 and 5727.15(D); Section 144.02)

Under current law, a water transportation company pays taxes on its taxable property, which is all tangible personal property, except watercraft, owned or operated by the company in Ohio on December 31 of the preceding year, and all watercraft owned or operated by the company in Ohio during the preceding calendar year. When a water transportation company's taxable property is located in more than one taxing district, the Tax Commissioner apportions its taxable value among the taxing districts. The value of the property is apportioned to each taxing district in proportion to the entire value of that property within Ohio.

Under the bill, the water transportation company's taxable property is the same, except that beginning tax year 2003, watercraft owned or operated by the company in Ohio during the preceding calendar year, including non-watercraft property, that is located in Ohio on December 31 of the preceding year is apportioned to each taxing district in the proportion that the cost of the property physically located in each taxing district is of the total cost of all taxable personal property physically located in Ohio.

Public utility excise tax

(R.C. 5727.30, 5727.32, 5727.33, 5727.39, and 5727.44; Sections 144.07 and 146.07)

Telephone companies and water transportation companies are no longer subject to this excise tax. Under current law, telephone companies and water transportation companies pay an annual excise tax on their gross receipts. The tax is computed by multiplying taxable gross receipts by 4¾%. Under the bill, telephone companies and water transportation companies are removed from the public utility excise tax and instead subjected to the corporation franchise tax (see "***Corporation franchise tax***," below).

The bill provides that a telephone company's gross receipts billed to customers after June 30, 2004, are not subject to the public utility excise tax. Gross receipts billed by a telephone company to customers prior to July 1, 2004, must be included in the company's annual statement filed on or before August 1, 2004, which is the last statement or report the company has to file for purposes of the public utility excise tax. A telephone company cannot deduct from its gross

receipts included in that last statement any receipts it was unable to collect from its customers for the period of July 1, 2003, to June 30, 2004.

Under the bill, a water transportation company's gross receipts received after June 30, 2003, are not subject to the public utility excise tax. Gross receipts received by a water transportation company from May 1, 2002, to June 30, 2003, must be included in the company's annual statement filed on or before August 1, 2003, which is the last statement or report the company has to file for purposes of the public utility excise tax. The Tax Commissioner must assess receipts for that period as provided under the public utility excise tax law. The bill requires that the period of May 1, 2003, to June 30, 2003, be a separate privilege year, with a shortened measurement period (two months), for the payment of public utility excise taxes. A water transportation company's tax for that period must be reported and paid, or if applicable, refunded, with the statement it files for the May 1, 2002, through April 30, 2003, measurement period.

Repeal and transfer of tax credits. Effective December 31, 2004, the bill repeals two tax credits that telephone companies may claim against their public utility excise tax liability: (1) a credit for eligible nonrecurring charges for a telephone network used in providing 9-1-1 service, subject to an annual ceiling, and (2) a credit for providing a telephone service program to aid the communicatively impaired in accessing a telephone network. The bill reestablishes both credits in the corporation franchise tax law, to be applied against a telephone company's corporation franchise tax liability. The credits are fully reviewed below.

Corporation franchise tax

(R.C. 4905.79, 4931.45, 4931.47, 4931.48, 5733.04(I)(7) and (P), 5733.056(B)(5), 5733.09, 5733.55, 5733.56, 5733.57, and 5733.98; Section 146.07)

Telephone companies and water transportation companies must pay the tax. Current law provides that an incorporated company that owns and operates a public utility in Ohio and pays the public utility excise tax is not subject to the corporation franchise tax. The bill removes telephone companies and water transportation companies from the public utility excise tax law and no longer requires that they pay that tax; thus, they become subject to the corporation franchise tax. For purposes of the corporation franchise tax law, the bill retains the definitions of telephone company and water transportation company that are used in the property tax assessment law (R.C. 5727.01).

The bill provides that a telephone company that no longer pays the public utility excise tax on its gross receipts billed after June 30, 2004, is first subject to

the corporation franchise tax for tax year 2005. For that tax year, a telephone company with a taxable year beginning in 2003 and ending in 2004 is required to compute the corporation franchise tax, or must compute the net operating loss carry forward for tax year 2005, by multiplying the corporation franchise tax owed, net of all nonrefundable credits, or the loss for the taxable year, by 50%.

Under the bill, a water transportation company that no longer pays the public utility excise tax on its gross receipts after June 30, 2003, is first subject to the corporation franchise tax for tax year 2004. For that tax year, a water transportation company must compute the corporation franchise tax, or must compute the net operating loss carry forward for tax year 2004, by multiplying the corporation franchise tax owed, net of all nonrefundable credits, or the loss for the taxable year, by 50%.

Adjustments to net income and the value of stock. Under corporation franchise tax law, net income is the corporation's taxable income before operating loss deductions and special deductions, subject to certain adjustments. In determining its net income under that law, a corporation may deduct dividends or distributions received from a public utility if the corporation owns at least 80% of the utility's common stock. The bill provides that these dividends or distributions are not deducted from the net income of a corporation or financial institution, if the stock is telephone company or water transportation company stock.

Financial institutions base their franchise tax liability on the value of their issued and outstanding shares of stock. In calculating that value, a financial institution may exclude a portion of the investments in the capital stock and indebtedness of public utilities, if the financial institution owns at least 80% of the utility's stock. The bill provides that if the stock is telephone company or water transportation company stock, it cannot be excluded from the value calculation.

9-1-1 service tax credit for telephone companies. The bill transfers to the corporation franchise tax law the tax credit for a telephone company's eligible nonrecurring charges for the telephone network used in providing 9-1-1 service. The credit is similar to the 9-1-1 service tax credit repealed in the public utility gross receipts tax law, but is nonrefundable and based on a fixed ceiling established by the bill.

The bill provides that, beginning in tax year 2005, a telephone company may take a nonrefundable credit against its corporation franchise tax liability, equal to the amount of its eligible nonrecurring 9-1-1 charges. The credit must be claimed in the company's taxable year that covers the period in which the 9-1-1 service for which the credit is claimed becomes available for use. The credit must be claimed in a particular order under the corporation franchise tax law, after other nonrefundable tax credits are claimed. If the credit exceeds the total corporation

franchise taxes due for the tax year, the Tax Commissioner must credit the excess against those taxes due for succeeding tax years until the full amount of the credit is granted.

Under the bill, after the last day a return, with any extensions, may be filed by any telephone company that is eligible to claim the 9-1-1 service credit, the Commissioner must determine whether the sum of the credits allowed for all prior tax years plus the sum of the credits claimed for the current tax year exceeds a fixed ceiling of $15 million. If it does, the credits allowed under the corporation franchise tax law for the current tax year must be reduced by a uniform percentage, such that the sum of the credits allowed for the current tax year do not exceed $15 million. Thereafter, no credit may be granted under the corporation franchise tax law, except for the remaining portions of any credits allowed under that law.

A telephone company that is entitled to carry forward the 9-1-1 service tax credit against its public utility excise tax liability before the bill transferred it to the corporation franchise tax, may carry forward any amount of that credit remaining after its last public utility excise tax payment for the period of July 1, 2003, through June 30, 2004, and claim that amount as a credit against its corporation franchise tax liability. The bill provides that it does not authorize a telephone company to claim a credit under the corporation franchise tax for any eligible nonrecurring 9-1-1 charges for which it has already claimed as a credit under the public utility excise tax.

Tax credit for telephone service programs for the communicatively impaired. The bill repeals the tax credit against public utility excise tax liability for providing telephone service programs to aid the communicatively impaired in accessing a telephone network. But the bill reestablishes the credit in the corporation franchise tax law, with some changes, to be applied against a telephone company's corporation franchise tax liability. Beginning in tax year 2005, a telephone company that provides any telephone service program to aid the communicatively impaired in accessing the telephone network under existing Public Utilities Commission law is allowed a nonrefundable credit against the corporation franchise tax. (The credit was refundable under the public utility excise tax law.) The amount of the credit is the cost incurred by the company for providing the telephone service program during its taxable year, excluding any costs incurred prior to July 1, 2004. If the Tax Commissioner determines that the credit claimed by a telephone company is not correct, the Commissioner must determine the proper credit.

The credit must be claimed in a particular order under the corporation franchise tax law, after other nonrefundable tax credits are claimed. If the credit exceeds the total corporation franchise taxes due for the tax year, the

Commissioner must credit the excess against franchise taxes due for succeeding tax years until the full amount of the credit is granted. The bill states that it does not authorize a telephone company to claim a credit against its corporation franchise tax liability for any cost incurred for providing a telephone service program for which it is claiming a credit against its public utility excise tax liability.

Tax credit for small telephone companies. The bill creates a new tax credit against corporation franchise tax liability for a "small telephone company." Under the bill, a "small telephone company" is a telephone company with 25,000 or fewer access lines as shown on the company's annual report filed with the Public Utilities Commission and Office of Consumers' Counsel for the calendar year immediately preceding the tax year, and is an "incumbent local exchange carrier" under federal law (47 U.S.C. 251(h)).

The bill provides that, beginning in tax year 2005, a small telephone company is allowed a nonrefundable credit against corporation franchise tax liability equal to the product obtained by multiplying the "applicable percentage" by the "applicable amount." The "applicable amount" is determined by calculating the corporation franchise taxes due for the tax year, without regard to any credits available to the small telephone company, and **subtracting** from that the "gross receipts tax amount," meaning the product obtained by multiplying 4¾% by the amount of a small telephone company's taxable gross receipts (excluding the existing $25,000 deduction) that the Tax Commissioner would have determined under the public utility excise tax law for that small telephone company for the annual period ending on June 30 of the calendar year immediately preceding the tax year, as that law applied in the tax measurement period from July 1, 2002, to June 30, 2003. The resulting amount is then multiplied by the "applicable percentage," which, under the bill, is 100% for tax year 2005, 67% for tax year 2006, 34% for tax year 2007, and 0% for each subsequent tax year thereafter. This calculation results in the amount of the tax credit the small telephone company may claim.

The credit must be claimed in the order required by existing law. If the applicable amount for a tax year is less than zero, a small telephone company cannot claim the tax credit for that tax year.

Telephone company income becomes subject to taxation by municipal corporations

(R.C. 715.013, 718.01(F)(6), 718.02, 5745.01, 5745.02, and 5745.04)

Under continuing law, a municipal corporation may levy an income tax on taxpayers and businesses within the corporation's boundaries, but it cannot levy a

tax that is the same as or similar to certain other state taxes, including the public utility excise tax. Additionally, continuing law provides that a municipal corporation cannot tax the income of a public utility when the utility is subject to the public utility excise tax. Once a company is no longer subject to that tax, a municipal corporation is free to tax its income.

On and after January 1, 2004, a municipal corporation may levy a tax on the income of a telephone company, because, under the bill, telephone companies no longer pay the public utility excise tax and are transferred to the corporation franchise tax. Thus, if a municipal corporation has a municipal income tax, it is applicable to the income of telephone companies on and after that date. The bill requires that the income be taxed under uniform procedures that were originally adopted for administering municipal income taxes levied on electric light companies (R.C. Chapter 5745.). The bill is silent regarding the municipal income taxation of water transportation companies.

Generally, under those uniform procedures, the municipal income tax is levied on a uniform tax base, i.e., that portion of a taxpayer's Ohio net income that is apportioned to the municipal corporation. A taxpayer is required to file a single tax return and pay taxes to the state, rather than filing a separate return and making separate tax payments to each municipal corporation within which the taxpayer conducts business. The uniform procedures and enforcement remedies apply in lieu of the various municipal procedures and remedies.

Specifically, a telephone company is subject to municipal income taxes for any taxable year that begins on or after January 1, 2004. If its taxable year begins in 2003 and ends in 2004, it must compute the tax by multiplying the tax owed by the number of days in the taxable year that are in 2004, and dividing that result by the total number of days in the taxable year. The first taxable year any taxpayer is subject to municipal income taxation, the estimated taxes the taxpayer is required to remit must be based solely on the current taxable year and not on the liability for the preceding taxable year.

Determination of the sales factor in calculating income. Under the uniform procedures adopted for municipal income taxation of electric light companies, to which telephone companies are now subject, a company's Ohio net income must be calculated and apportioned to a municipal corporation. As part of that calculation, property, payroll, and sales factors are determined. The sales factor is the ratio of the company's total sales in Ohio during the taxable year to its total sales everywhere during the year. In determining the sales factor under existing law, receipts received by an electric company from public utilities are eliminated from the equation where the company owns at least 80% of the issued and outstanding common stock of the utility. The bill specifies that a telephone company is not a public utility for this purpose; thus receipts received from a

telephone company are included in the calculation of the sales factor, including in the calculation of a telephone company's sales factor.

Sales by telephone companies and water transportation companies are subject to sales or use taxes

(R.C. 5739.01(B)(3)(f) and (s), (AA), and 5739.02(B)(6) and (10))

Under existing law, sales by which telecommunications services are provided are subject to the sales or use tax, except for sales of those services by a company that is subject to the public utility excise tax. The bill provides that all sales of telecommunications services by a telephone company that are billed on and after January 1, 2004, are subject to the sales and use tax (see "***Sales and use tax revisions,***" below).

Under the bill, beginning July 1, 2003, the transportation of persons or property by a water transportation company is the sale of a service that is subject to sales or use taxes (see "***Classification as certain transactions as sales***," below).

Telegraph companies removed from the public utility excise tax and property tax assessment laws

(R.C. 5709.84, 5727.01, 5727.111, 5727.15, 5727.32, 5727.33, and 5739.02(B)(7))

Current law requires that telegraph companies pay the public utility excise tax on their gross receipts. Being a public utility, their property is assessed by the Tax Commissioner. According to the Department of Taxation, there are no longer any telegraph companies in Ohio. The bill removes telegraph companies from the public utility excise tax law. The bill also removes references to telegraph companies in the laws regarding assessment of their property by the Commissioner.

Taxation of a pipe-line company's gross receipts and property

Assessment rate reduction

(R.C. 5727.111)

Under continuing law, a pipe-line company pays taxes on its tangible personal property that on December 31 of the preceding year was located in Ohio and owned by it or leased by it under a sale and leaseback transaction. A "pipe-line company" is a person engaged in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partially within Ohio. Each year, the Tax Commissioner determines the true value of a pipe-line company's taxable property, generally by a method of valuation using cost as

capitalized on the company's books and records, less composite annual allowances prescribed by the Commissioner, and assesses the property at a percentage of true value established by law. The resulting assessed value is the portion to which the local tax rate is applied to determine the tangible personal property taxes due.

Currently, the percentage used to determine the assessed value of all pipe-line company tangible personal property is 88%. Beginning tax year 2005, the bill reduces the percentage to 67% of true value. For tax year 2006, the percentage is 46%, and for tax years 2007 and thereafter, the percentage is 25% of true value.

Removal of pipe-line companies from the public utility gross receipts tax and levy of a new excise tax on them

(R.C. 5727.24, 5727.30, and 5727.38; Sections 144.07 and 146.07)

The new tax. Current law requires that pipe-line companies pay an excise tax (the public utility excise tax) on their taxable gross receipts, computed by multiplying gross receipts by 6¾%. The bill exempts pipe-line companies from the public utility excise tax, but levies a new tax on their gross receipts derived from taxable activities that occur after June 30, 2003. The bill establishes new tax filing and payment dates in connection with the new tax.

For the purpose of providing revenue to meet the needs of the state, on and after July 1, 2003, the bill levies a new excise tax on the gross receipts of a pipe-line company. The tax is computed as follows:

(1) Multiply all gross receipts received by a pipe-line company that are not related to the storage of natural gas or oil, by the percentage of "pipeline miles" owned and used in Ohio by the company to generate that revenue in proportion to that owned and used everywhere by the company to generate that revenue. The bill defines "pipeline miles" as the pipeline miles reported by a pipe-line company in its annual report to the appropriate federal regulatory agency, or, if the pipe-line company does not file a federal report, to the Public Utilities Commission of Ohio, for the year preceding the period for which its tax return is being filed.

(2) Add to that any gross receipts received related to the storage of gas or oil in Ohio, including, but not limited to, charges for injection, storage, and withdrawal;

(3) Multiply the sum of (1) and (2) by 4¾%.

Gross receipts derived from sales of natural gas or oil by a pipe-line company are not included in the pipe-line company's gross receipts under (1). Those sales are subject to sales or use taxes, as appropriate, under existing law.

Transition to the new tax. To transition from the public utility excise tax to the new tax, the bill provides that, notwithstanding any other provision of law, gross receipts received by a pipe-line company from May 1, 2002, to June 30, 2003, must be included in the pipe-line company's annual statement filed on or before August 1, 2003, which is the last statement or report filed under the public utility excise tax by a pipe-line company. The Tax Commissioner is required to assess receipts for that period under the public utility excise tax law. A pipe-line company's receipts received after June 30, 2003, are subject to the new excise tax. The bill requires that the period of May 1, 2003, to June 30, 2003, be a separate privilege year, with a shortened measurement period (two months), for the payment of public utility excise taxes. A pipe-line company's public utility excise tax for that period must be reported and paid, or, if applicable, refunded, with the statement it files for the May 1, 2002, through April 30, 2003, measurement period.

Payment of the new tax

(R.C. 5727.25 and 5727.38)

Under the bill, pipe-line companies will pay the new excise tax in the same manner as natural gas companies currently pay their excise tax. Continuing law, as applied to pipe-line companies, requires a quarterly or annual return and a different payment period than under the public utility excise tax. Pipe-line companies must pay the tax due for the preceding quarter or year, rather than making payments in advance as was required under public utility excise tax law. Within 45 days after the last day of March, June, September, and December, a pipe-line company must file a return with the Treasurer of State and pay the full amount of tax due for the preceding calendar quarter, by electronic funds transfer.

There is an exception to the quarterly filing of tax returns and payment of the tax. A pipe-line company that has an annual tax liability for the preceding calendar year ending on December 31 of less than $325,000 may file an annual return for the next year and remit the taxes due for that year within 45 days of that date. The company is not required to remit the tax by electronic funds transfer. For the first year, pipe-line companies must pay the new tax on or before February 14, 2004, for the period of July 1, 2003, to December 31, 2003. The bill provides that the minimum tax for pipe-line companies (and natural gas companies, too) filing annually will be the same as that imposed on corporations under the corporation franchise tax law ($50 for 2003, and $300 for each calendar year thereafter).

Other requirements for pipe-line companies

(R.C. 5727.25(D), 5727.26, 5727.27, and 5727.33)

Under the bill, a pipe-line company is subject to the same late payment charges, assessment procedures for failure to file a return or pay taxes, record keeping requirements, and tax refund procedures as natural gas companies are under continuing law.

Public utility excise tax minimum payment

(R.C. 5727.38)

For public utilities that are subject to the public utility excise tax on gross receipts, the bill provides that the minimum tax for owning property or doing business in Ohio is $50 through 2003, and $300 for each year thereafter. This minimum tax is the same as that paid under the bill by corporations.

VI. Other Areas of Taxation

Cigarette tax increase

(R.C. 5743.02 and 5743.32; Section 144.11)

The state currently imposes a tax on cigarettes at the rate of 2.75¢ per cigarette (27.5 mills), which is equivalent to 55¢ per pack of 20 cigarettes. Revenue from the tax is paid into the General Revenue Fund. The tax is payable by wholesale and retail dealers, generally by the purchase of tax stamps that must be affixed to cigarette packages. (A "use" tax also is levied at the same rate on cigarettes purchased by consumers and on which a dealer has not yet paid the Ohio tax.)

The bill increases the total tax to 5¢ per cigarette, or $1 per pack of 20 cigarettes.

The increased rate takes effect July 1, 2003, or the bill's effective date, whichever is later. The tax increase applies to cigarettes on hand (i.e., in a dealer's inventory or not yet sold) on that date. In order for the increase to be collected for "on hand" cigarette stocks, the bill requires dealers to report and pay the additional tax on those cigarettes. The report and payment of the additional tax is due September 30, 2003. Dealers also must pay the increase for stamps they previously purchased but have not yet affixed to packages. A penalty and interest are imposed for each day a dealer is late in paying the increase for on hand cigarettes and not-yet-used stamps; the penalty equals $50 or 10% of the amount of tax due, whichever is greater. The state may enforce payment of the additional

"on hand" tax (and penalty and interest, if they apply) by assessment. If a dealer is assessed for a deficiency that was not in fact due, the dealer is entitled to a refund of any resulting overpayment, plus interest.

The bill affects only the rate of the state tax on cigarettes; it does not affect the rate at which counties are permitted to tax cigarettes, or the rate of the tax on tobacco products other than cigarettes.

Beer, wine, and liquor tax increase

(R.C. 4301.12, 4301.42, 4301.43, and 4305.01)

The bill doubles the state tax rates on beer, wine, liquor, and other alcoholic beverages. Most of the revenue from the taxes is credited to the General Revenue Fund. A small portion of revenue from the tax on wine, vermouth, and sparkling wine is credited to the Ohio Grape Industries Fund to encourage Ohio's grape industry: until June 30, 2003, three cents per gallon is credited to that fund; after that date, one cent per gallon is credited to that fund.

The tax rates are increased as follows:

Beverage	Current rate	Proposed rate
Spirituous liquor	$3.38/gal.	$6.76/gal.
Beer (12 oz. or less)	0.14¢/oz.	0.28¢/oz.
Beer (more than 12 oz)	0.84¢/six oz.	$1.68/six oz.
Beer (barrel)	$5.58/bl.	$11.16/bl.
Wine (up to 14% alc.)	30¢/gal.	60¢/gal.
Wine (14% to 21% alc.)	98¢/gal.	$1.96/gal.
Vermouth	$1.08/gal.	$2.16/gal.
Sparkling wine	$1.48/gal.	$2.96/gal.
Bottled mixed beverages	$1.20/gal.	$2.40/gal.
Cider	24¢/gal.	48¢/gal.

The bill does not affect the rate of the permissive tax that some counties may levy on beer, wine, liquor, and other alcoholic beverages.

Pass-through entity tax law: technical and conforming changes

(R.C. 5733.40)

A withholding tax currently is imposed on distributive shares held by nonresident investors in pass-through entities (e.g., partnerships, limited liability companies, S corporations) that have a taxable business presence in Ohio. The tax is imposed on the entity on the basis of the nonresident investors' respective tax liabilities to Ohio (whether corporation franchise or personal income, depending on the status of the investor). The tax helps ensure satisfaction of the investors' Ohio tax liabilities, especially if they lack any tax-related connection with Ohio other than their ownership of an entity doing business in Ohio.

The bill conforms the treatment of expenses and losses, used in the measurement of a nonresident investor's taxable share of a pass-through entity's income (the "adjusted qualifying amount"), with the treatment given compensation expenses of the entity paid to a related entity. Currently, an investor's adjusted qualifying amount includes the investor's share of expenses the entity pays to another related entity. Similarly, the adjusted qualifying amount includes an investor's share of losses incurred with respect to a related entity. It also includes the investor's share of compensation expenses paid to another related entity. But, as far as computing an investor's nonresident credit under the personal income tax (for any taxes the investor paid on the distributive share to another state), current law applies the apportionment of income provisions only to an investor's share of compensation expenses paid to a related entity.

The bill expressly extends the same apportionment treatment to a nonresident investor's share of expenses or losses paid to or incurred with respect to an entity related to the pass-through entity owned by the investor.

The bill also expressly provides that, for the purposes of the pass-through entity tax, a nonresident investor's distributive share of a pass-through entity (which is the basis for measuring the withholding tax on account of the investor) includes income amounts from a qualified subchapter S subsidiary ("QSSS"). A QSSS is a wholly-owned subsidiary of an S corporation that is treated as not being separate from the parent S corporation for federal tax purposes. The bill's treatment of QSSS distributive shares under the pass-through entity tax is consistent with the current treatment of distributive shares of a "disregarded entity," which is a company owned by a parent company but not treated as separate from the parent for tax purposes (e.g., a limited liability company with but a single member).

Property tax

Personal property tax on inventory: accelerated phase-out

(R.C. 5711.15 (not in the bill), 5711.16 (not in the bill), 5711.22(E), and 5727.01(H) (not in the bill))

Under continuing law, personal property used in business, including the inventories of merchants and manufacturers, is subject to taxation. Inventories are currently listed and assessed at a rate of 23% of their true value in money. Current law provides that, each tax year up to and including 2006, this assessment rate will be reduced by 1% if the total statewide collection of tangible personal property taxes for the second preceding year exceeded the total statewide collection of tangible personal property taxes for the third preceding year. So, for example, the 1% reduction will not occur for 2004 unless the total statewide collection of tangible personal property taxes for 2002 exceeded the total statewide collection of tangible personal property taxes for 2001. If no reduction in the assessment rate is made for a year, the rate remains the same as in the preceding year. Under current law, the annual 1% reduction becomes automatic beginning in tax year 2007. The assessment rate will reduced each year until it equals zero. During and after the tax year that the assessment rate equals zero, inventories will not be listed for taxation.

The bill accelerates the rate at which the inventory tax is phased out. The bill provides that, beginning in tax year 2005, the assessment rate will be reduced by the lesser of two percentage points or the assessment rate for the preceding year if the total statewide collection of tangible personal property taxes for the second preceding year exceeded the total statewide collection of tangible personal property taxes for the third preceding year. As under current law, if there is no reduction in the assessment rate for a year, the assessment rate remains the same as it was in the preceding year.

Under both current law and the bill, taxes collected from public utilities and interexchange telecommunications companies are not included in the calculation of the total statewide collection of tangible personal property taxes. (Interexchange telecommunications companies are businesses, other than telephone companies, engaged in the transmission of telephonic messages to, from, through, or in this state.)

Decrease in property tax rollbacks

(R.C. 319.302 and 323.152; Sections 144.02 and 146.07)

Currently, taxes against all real property are reduced by 10%. Taxes against manufactured and mobile homes also are reduced by 10%. Taxes are reduced by an additional 2-1/2% for owner-occupied residences (including manufactured and mobile homes). Local taxing districts are reimbursed by the state for the tax reductions.

The bill decreases the 10% rollback to 5% for real property used for commercial or industrial purposes, including buildings containing more than two dwellings, public utility real property, and mineral rights.

The 10% and 2-1/2% rollbacks continue for all but the most highly valued residences. If a residence, including the parcel on which it sets, is appraised at more than $1 million, both rollbacks apply only to the taxes charged against the first $1 million in appraised value. If the residence is a manufactured or mobile home, the rollbacks are applied first to the taxes on the land value up to $1 million; if the land is valued at less than $1 million, the rollback is then applied to the home's value, up to a combined land and home value of $1 million.

Agricultural property continues to be entitled to a 10% reduction.

Decreasing the real property tax rollbacks will reduce the amount of the state reimbursement for the rollbacks. The additional taxes charged against the affected property will be collected directly by taxing districts.

The decreased rollbacks first apply to tax year 2003 (i.e., taxes billed in 2004).

Reduce state reimbursement for $10,000 business property exemption

(R.C. 319.311 and 321.24; Section 146.07)

Current and ongoing law exempts the first $10,000 of a business' tangible personal property from property taxation. The state reimburses local taxing districts for the resulting revenue reductions.

The bill phases out the state's reimbursement for the exemption over ten years. In fiscal year 2004, the amount of the reimbursement will be reduced to 90% of the FY 2003 reimbursement. The reimbursement will be reduced by an additional ten percentage points each ensuing year (measured on the basis of the FY 2003 reimbursement amount) until FY 2012 and thereafter, when no further reimbursement will be paid.

Eliminate filing requirement for businesses with only exempt property

(R.C. 5711.02, 5711.13, and 5711.27; Sections 144.05 and 146.07)

Current law requires all businesses owning tangible personal property to list the property on annual returns filed with county auditors or the Tax Commissioner, even if the total value of the property is not more than $10,000, and therefore exempted from taxation.

The bill eliminates the filing requirement for businesses owning tangible personal property valued at $10,000 or less, beginning with tax year 2004 returns (i.e., taxes billed in 2004).

Abating late penalties

(R.C. 323.13, 4503.06, 5711.33, and 5715.39; Section 146.07)

Under ongoing law, penalties and interest are charged for late property tax payments. Property owners may seek to have penalties remitted (i.e., forgiven or abated) if they can show that one of four conditions caused or contributed to the late payment:

(1) An error or omission on the part of the county auditor or county treasurer.

(2) Failure to receive a tax bill on time (as long as the property owner attempted to obtain the bill with 30 days of the payment due date).

(3) Death, disability, or illness of the property owner (as long as the tax was paid within 60 days after the due date).

(4) The tax payment was mailed before the due date.

The bill adds a fifth, general condition: That there was good cause for the late payment, and it was not because of willful neglect.

Currently, the Tax Commissioner makes the initial decision on remission of penalties with respect to real property taxes and manufactured or mobile home taxes; the Commissioner's decision is appealable to the Board of Tax Appeals (BTA). County auditors and county treasurers make the initial decision with respect to tangible personal property tax penalties, with the decision appealable to the Tax Commissioner, and then to the BTA.

The bill makes real property and manufactured or mobile home tax penalty remission procedures similar to those for remission of tangible personal property

tax penalties: county auditors and county treasurers will make the initial remission decisions, which will be appealable to the Tax Commissioner, and then to the BTA.

The bill also specifies a 60-day deadline for filing appeals with the Tax Commissioner, for both tangible personal property tax penalties and real property and manufactured or mobile home tax penalties. The deadline is measured from the day the county auditor mails notice of the initial decision to the property owner.

Fee to defray Department of Taxation's property tax administrative costs

(R.C. 321.24 and 5703.80; Sections 144.13 and 146.07)

The bill provides for a percentage of real property tax rollback reimbursements to be diverted to a special fund to be used by the Department of Taxation to defray its costs of administering property taxation instead of being distributed to taxing districts. The Department oversees the equalization of real property valuation throughout the state, and administers the assessment of all public utility property and of tangible personal property of businesses operating in more than one county.

The fund, to be named the Property Tax Administration Fund, is funded from a portion of the state reimbursement that otherwise is payable to taxing districts for the 10% rollback for real property. The portion diverted to the fund is the sum of the following components:

- 0.3% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes);

- 0.15% of the taxes charged against public utility personal property;

- 0.75% of taxes charged against tangible personal property of businesses owning property in more than one county (the property of such businesses is assessed by the Department).

The fee is to be computed once each year by the Tax Commissioner, and one-fourth of the computed amount is to be paid from the General Revenue Fund four times during each fiscal year, on August 1, November 1, February 1, and May 1. The fee amount is computed separately for each taxing district based on the taxable property in the district, and the amount is deducted from the district's share of the 10% rollback reimbursement. The amount deducted may not be greater than the district's share of the reimbursement. But if the computed deduction

exceeds a district's share, the difference must be returned to the General Revenue Fund from the Property Tax Administration Fund.

In FY 2004, the fee may be determined at any time after the bill becomes law, and the deductions from reimbursements payable to taxing districts in FY 2004 may be made semiannually or all at once at the second reimbursement payment in February. The transfer of the fee from the GRF to the fund in FY 2004 may occur in three installments rather than four.

Technical corrections

(R.C. 5713.081 and 5713.082)

The bill makes several technical corrections to the laws governing the collection of delinquent taxes on publicly owned property and the laws governing the county auditor's placement of previously exempted property on the list of property subject to taxation.

Exemption of property in community reinvestment areas from real property taxation

Background

(R.C. 3735.65 (not in the bill), 3735.66 (not in the bill), 3735.67, and 3735.671)

Newly constructed or remodeled structures located in a community reinvestment area (CRA) may qualify for an exemption from real property taxation. A CRA is an area in which housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged. The designation of an area as a CRA is made by a resolution adopted by the legislative authority for the area.

To obtain an exemption, the owner of the property must file an application with the housing officer for the CRA in which the property is located. ("Housing officers" are officers or agencies, designated by the legislative authority in which the CRA is located, that administer the tax exemptions.) In addition, if any part of the new structure or remodeling to be exempted is to be used for commercial or industrial purposes, the owner and the legislative authority must first enter into a written agreement that authorizes the construction or remodeling before any exemption can be granted.

The exemptions from real property taxation can be granted on a continuing basis for a period of time specified by the legislative authority. The maximum

period of exemption is between ten and fifteen years depending upon the type of structure exempted.

Complaints concerning continued exemption

(R.C. 3735.67 and 5715.27; Sections 144.12 and 146.07)

In *Bd. of Edn. of Gahanna-Jefferson Local School Dist. v. Zaino*, 93 Ohio St.3d 231 (2001), the Ohio Supreme Court, interpreting existing statutory law, held that the Tax Commissioner has jurisdiction to hear a complaint challenging the continued exemption of property located in a CRA. The bill withdraws jurisdiction to hear these complaints from the Commissioner and confers it upon the housing officer that granted the exemption. The bill specifies that the Commissioner only has jurisdiction to hear complaints against the continued exemption of property for which the Commissioner has granted an exemption. Because exemptions for property in CRAs are granted by housing officers, the Commissioner would lack jurisdiction under the bill to hear complaints relating to these exemptions.

The bill provides that any person, board, or officer authorized to file complaints with a county board of revision may file a complaint against continued exemption of CRA property. The bill provides, further, that any complaint against exemption must be filed before December 31 of the tax year for which the complainant is requesting that the property be taxed. After determining whether the property that is the subject of the complaint continues to meet the requirements for exemption, the housing officer must certify the housing officer's findings to the complainant. If the housing officer determines that the property does not meet the requirements for exemption, the housing officer must notify the county auditor for the county in which the property is located so that the county auditor may adjust the list of property in the county that is exempt from taxation.

Under the bill, the Commissioner must certify to the housing officers any complaints filed with the Commissioner on or after the effective date of these provisions challenging the continued exemption of property in a CRA. With respect to a complaint filed before the effective date, the bill grants the Commissioner the option of hearing the complaint or certifying it to the housing officer. The bill provides that the filing date of any complaint certified to a housing officer by the Commissioner is the date on which the complaint was filed with the Commissioner.

Additional limitations on Tax Commissioner's involvement with CRA property tax exemptions

(R.C. 3735.671 and 5713.07; 5713.08)

The bill further limits the Tax Commissioner's involvement with CRA property tax exemptions by eliminating the requirement that copies of agreements between legislative authorities and owners of commercial or industrial property be forwarded to the Commissioner. In addition, under current law, county auditors are required to maintain a list of all real and personal property within the county that is exempt from taxation. Current law provides that no additions may be made to these lists and no additional items of property may be exempted from taxation without the consent of the Commissioner. The bill draws a distinction between property exempted by the Commissioner and property exempted by a housing officer. The bill specifies that no additional property in a CRA can be added to a list of exempt property without the housing officer's consent.

Enterprise zone incentives

(R.C. 5709.64, 5709.65, 5709.66, 5709.67, and 5717.02; Section 146.07)

The bill eliminates various state tax benefits currently available to companies that are located in enterprise zones and that hire new employees, at least 25% of whom are residents of the zone. The tax benefits to be eliminated are the following:

- New property is not considered an asset for the purpose of computing a company's corporation franchise tax.

- New property is excluded from the numerator of a company's property factor for the purpose of computing a company's corporation franchise tax (or, in the case of a pass-through entity, in computing the owners' taxable business income under the personal income tax).

- New employees' compensation is excluded from the numerator of a company's payroll factor for the purpose of computing a company's corporation franchise tax (or, in the case of a pass-through entity, in computing the owners' taxable business income under the personal income tax).

- Credits granted against the corporation franchise tax (or personal income tax) for reimbursements of child day-care expenses of certain employees and for reimbursements of employee training costs.

- Credits granted against the corporation franchise tax (or personal income tax) for new employees.

The elimination of these tax benefits applies prospectively, from the day the bill becomes law, to new agreements only.

Pollution control and other special-purpose tax-exempt facilities

(R.C. 123.01, 3745.11, 5709.20 to 5709.27, 6111.06, and various repealed sections; Section 146.07)

Under current law, property tax exemptions and other tax benefits are available for facilities used to control or reduce industrial pollutants, convert energy from one form to another, reduce industrial noise, or recover waste heat. The other tax benefits are exemptions from sales and use taxation of any property incorporated into such a facility, and exclusion of such property from the taxable Ohio franchise tax base. Eligibility for exemptions and tax benefits is evidenced by an "exemption certificate."

Changes in general administration

(R.C. 5709.20, 5709.211, 5709.22, and 5709.24)

The bill consolidates the various laws governing special-purpose tax-exempt facilities into a single body of law (collectively, the facilities are to be known as "exempt facilities"). The procedures for application, approval, and appeals are made uniform for all of the various kinds of facilities. The Tax Commissioner will administer the application and approval process for all facilities, but the Tax Commissioner will provide copies of applications to the Director of Environmental Protection and the Director of Development to obtain their opinions and recommendations with respect to the kinds of facilities each director oversees under current law. Currently, the Director of Environmental Protection administers the procedures for water pollution control facilities and cooperates with the Tax Commissioner in the procedures for certain other kinds of pollution control facilities. The Director of Development currently oversees the procedures for energy conversion and thermal efficiency facilities. Either director may request additional information from an applicant and is permitted to conduct inspections. Applicants are entitled to inspect copies of the opinion issued by either director with respect to the applicant's property. But an opinion by either director does not constitute a final action that may be appealed.

Eliminate exclusion from franchise tax base

(R.C. 5709.25)

Currently, real and tangible personal property comprising a pollution control facility is exempted from property taxation and is not considered an asset of a corporation for purposes of computing the corporation franchise tax.

The bill eliminates this exclusion from the Ohio corporation franchise tax base.

Application fee

(R.C. 5709.212 and 5709.25)

The bill imposes an application fee in the amount of $1,000. Currently, no fee is imposed, except for industrial water pollution control applications, for which a $500 fee is imposed. The fee must be paid when the application is filed, and is nonrefundable under any circumstance. The Tax Commissioner may allow an applicant to file a single application for multiple facilities as long as all of the facilities are in the same county. If an exemption certificate has been issued for a facility, a new application must be filed for additional property added to the facility if the cost of the additional property added in any calendar year (minus the cost of any retired property) is more than $500,000, but the application fee is only $500. If the cost is below that threshold, a new application need not be filed.

One-half of the fee is to be credited to the Exempt Facility Administrative Fund for use by the Department of Taxation to defray the costs of administering the exempt facility law. The fund to which the other one-half is credited depends on the kind of facility that is the subject of the application. If it is the kind that requires the opinion and recommendation of the Director of Environmental Protection (other than an industrial water pollution control facility), the other half is credited to the Clean Air Fund for use by the Director in carrying out the Director's responsibilities with respect to issuing opinions and recommendations to the Tax Commissioner and inspecting facilities. If the fee is paid in connection with an application for an industrial water control pollution facility, the other half of the fee is credited to the Surface Water Protection Fund for use by the Director in carrying out the Director's responsibilities with respect to industrial water pollution control facilities. If the fee is paid in connection with an energy conversion or thermal efficiency facility, the other half of the fee is credited to the Exempt Facility Inspection Fund for use by the Director of Development in performing the Director's duties with respect to energy conversion and thermal efficiency facilities.

Partial exemption

(R.C. 5709.21)

To be exempted under current law, property must not be used solely for the benefit of the business or solely for the benefit or protection of employees. Under the bill, property may not be exempted if it is used primarily for one or both of those purposes. If property is necessary for the operation of exempt property but used in other business operations ("auxiliary property"), part of the property's cost is eligible for exemption. In the case of auxiliary property used in support of the exempt facility for discrete periods of time, the exempt cost is proportional to the time it is so used. If auxiliary property replaces existing property and is necessary for operation of the exempt facility, the exempt part equals the excess of the cost of the auxiliary property over the original acquisition cost of the replaced property. If auxiliary property does not replace existing property but is necessary for the operation of the exempt facility, the exempt part of the property's cost equals the excess of the cost of the property over the amount the cost would be if it was not necessary for the operation of the exempt facility.

Revaluation

(R.C. 5709.25)

The bill prescribes a reduction in the exempt value of property if its book value is reduced for any reason, including its sale or its being affected by bankruptcy proceedings, as compared to the book value when the exemption certificate was issued. The percentage of the facility's cost that is exempted is reduced to the percentage that the exempt facility's "historical" cost is of the historical cost of all real and tangible personal property at the site of the exempt facility (as long as that percentage does not result in an exempt cost greater than the original exempt cost).

Effective date of exemption

(R.C. 5709.25)

Under current law, property comprising an exempt facility is taxable until an exemption certificate is issued, but the exemption, if ultimately granted, relates back to when the application was filed. (This can cause local taxing authorities to have to issue refunds from their treasuries, sometimes for several years' worth of taxes.)

The bill authorizes the Tax Commissioner to permit exemptions to take effect when an application is filed, and also provides procedures for collecting the taxes due by assessment if the application eventually is denied in whole or in part.

The assessment must be made within 180 days after the Commissioner issues the notice of denial unless a longer statute of limitations applies under another applicable law. Assessments must be issued in accordance with the law governing the applicable tax. If an assessment is issued in connection with an application that was denied in part only, then the only appealable matter is the denied part of the application. If a decision has not been rendered within two years, an applicant has the right to request a decision from the Tax Commissioner.

Appeals

(R.C. 5709.22 and 5709.25)

An applicant or a county auditor may appeal an exemption application decision to the Tax Commissioner within 60 days after the Tax Commissioner issues written notice of the decision to them. The Commissioner must hold a hearing on the appeal, and the Director of Environmental Protection or Director of Development must participate if either the Tax Commissioner, the applicant, or the county auditor requests their participation. A decision on an application is a final determination that is appealable to the Board of Tax Appeals as are other final determinations of the Tax Commissioner, but an appeal to the BTA is not available unless an administrative appeal is made first through the Tax Commissioner.

Revocation

(R.C. 5709.22)

The Tax Commissioner may revoke or modify an exempt facility certificate for one of four causes, one of which is added by the bill. Currently, an exemption certificate may be revoked or modified if it was obtained by fraud or misrepresentation, if the applicant did not follow through with the facility, or the facility is no longer used for an exempt purpose. A fourth cause is added: that the exemption was made erroneously. This fourth cause encompasses not only clerical mistakes, but "improper" issuance of an exemption certificate as a result of a final decision of the BTA (or a higher judicial authority) "that is adverse to the original exempt status of the facility." Revocation and modification decisions may be appealed to the BTA, and if the decision ultimately is overturned, a refund of any tax paid must be issued within 180 days.

Transitional provisions

(R.C. 5709.201)

Exemption certificates that are valid on the bill's effective date continue in effect after that date according to the terms of current law. Any pending

applications must be transferred to the Tax Commissioner, and they will be governed by the new law, except the application fee increase does not apply.

Notice to local taxing authorities

(R.C. 5709.23)

The bill retains provisions enacted in late 2002 providing for notification to local taxing authorities of pollution control facility exemption applications, which, when approved, often result in these authorities having to refund taxes collected from the facility while the application was pending, because the tax exemption relates back to when the exemption certificate was filed (Am. Sub. S.B. 180 of the 124th General Assembly). However, since the bill authorizes the Tax Commissioner to allow the tax exemption to take effect before a certificate is issued, the frequency and amounts of refunds may be diminished to the extent the Tax Commissioner uses that authority.

Motor fuel taxes

Refunds for water intentionally added to fuel

(R.C. 5735.14, 5735.15, and 5739.02(B)(5))

Continuing law establishes a refund procedure for motor fuel taxes that have been paid on motor fuel used for non-highway purposes, such as in stationary gas engines. The bill provides that any person who uses motor fuel in Ohio must be reimbursed for motor fuel use and motor fuel taxes paid on motor fuel that contains at least 9% water, when that water was intentionally added to the fuel. The refund must equal the amount of taxes paid on 95% of the water. When filing an application for refund, the person must state on the application the quantity of water intentionally added to the motor fuel. No person may claim reimbursement on fewer than 100 gallons of water.

Under continuing law, a seller of motor fuel must document that the seller has assumed liability to pay motor fuel taxes, and must state the number of gallons of motor fuel sold, along with other information. The bill requires that the seller also document the price paid for or the price per gallon of the motor fuel sold, and the number of gallons of water intentionally added to the motor fuel, and provide that documentation to purchasers.

Continuing law provides that sales of motor fuel on which other taxes have been imposed are exempt from sales taxes, but the exemption does not apply to the sale of motor fuel for which a refund has been given. The Tax Commissioner may deduct the amount of sales tax that applies to the price of motor fuel when granting a refund of motor fuel taxes. The bill provides that this exemption and

the Commissioner's deduction of sales taxes from motor fuel refunds does not apply where the refund was paid because water was intentionally added to the fuel.

Motor Fuel Tax Administration Fund

(R.C. 5735.05, 5735.053, 5735.23, 5735.26, 5735.291, and 5735.30)

The bill creates in the state treasury the Motor Fuel Tax Administration Fund for the purpose of paying the expenses of the Department of Taxation incident to the administration of the motor fuel laws. After the Treasurer of State, as required by continuing law, credits the Tax Refund Fund and makes transfers to the Waterways Safety Fund (and, under one of the motor fuel taxes, the Grade Crossing Protection Fund) out of motor fuel tax receipts, the Treasurer of State must then transfer to the Motor Fuel Tax Administration Fund .275% of the receipts.

One of the purposes for levying the additional motor fuel taxes under continuing law (R.C. 5735.25 and 5735.29) is to pay the expenses of the Tax Department incident to the administration of the motor fuel laws. The bill adds this purpose to two of the motor fuel taxes (R.C. 5735.05 and 5735.30).

VII. Tax Administration Provisions

Electronic filing of tax returns and payments

Tax Commissioner may require electronic filing

(R.C. 5703.054 and 5717.02)

Under current law, the Tax Commissioner may authorize an electronic or other alternative means for filing tax returns and making tax payments. The bill specifies, in a more specific manner, the Commissioner's authority to require electronic filing and payment. The bill provides that the Commissioner may require that any tax return or tax payment be filed or made in an electronic format prescribed by the Commissioner. The bill allows the Commissioner to require electronic filing or payment for all taxpayers or for only certain classes or groups of taxpayers. Under the bill, the Commissioner may require electronic filing or payment if either of the following conditions is satisfied:

(1) At least two months before the date the filing or payment is required to be made, the Commissioner mails to each affected taxpayer a notification stating that the tax return or tax payment and all subsequent tax returns or tax payments must be filed or made electronically in the format specified by the Commissioner; or

(2) A rule requiring electronic filing or payment is in effect at least four months before the date on which the filing or payment must be made.

The bill provides that the Commissioner's determination that a tax return or tax payment must be filed or made electronically is not an issue that may be appealed. Nor may anyone appeal a determination by the Commissioner that an electronic filing or payment must be made in the particular format specified by the Commissioner.

If a taxpayer who is required to file a return electronically instead files a paper return, the Commissioner may impose a penalty on the taxpayer of up to $500 for each paper return submitted by the taxpayer. The same penalty may be imposed on a taxpayer who fails to make an electronic tax payment in the format prescribed by the Commissioner. The Commissioner may impose a fine of up to $500 for each payment not made electronically. A penalized taxpayer may file an appeal challenging the penalty with the Board of Tax Appeals.

The bill provides that the Commissioner may grant extensions to make electronic filings; however, the extension may not exceed twenty days. The Commissioner may not consider any period of extension in calculating interest or penalties for failure to timely file a tax return or make a tax payment.

Finally, the bill provides that a tax return required by the Commissioner to be filed electronically is considered filed when transmitted in the format required by the Commissioner. Similarly, a tax payment required to be made electronically is considered made when received by the Treasurer of State or credited to an account designated by the Treasurer.

Electronic filing of sales tax returns and payments

(R.C. 5739.12)

Current law requires vendors to file sales tax returns and make sales tax payments on or before the twenty-third day of each month on forms prescribed by the Tax Commissioner. The bill requires that returns and payments filed on the twenty-third day of the month be filed electronically in a format prescribed by the Commissioner. However, the bill provides vendors the option of filing on paper forms. If a vendor chooses to file on paper forms, the vendor must file earlier--on or before the tenth day of each month. In addition, a vendor does not have the option of filing on paper forms if the Commissioner adopts rules requiring electronic filing (see "***Tax Commissioner may require electronic filing***" above).

The bill provides that a sales tax return filed electronically by a vendor is considered filed when transmitted in the format prescribed by the Commissioner.

A payment made electronically is considered made when the payment is received by the Treasurer of State or credited to an account designated by the Treasurer.

Existing electronic filing requirements unaffected

(R.C. 5739.12(A) and 5739.122)

Existing law requires vendors to file monthly sales tax payments electronically if the total amount of tax to be paid by the vendor for the calendar year exceeds $60,000. The bill provides that its provisions regarding electronic filing of sales tax returns and electronic payment of sales taxes do not affect these existing requirements, which take precedence over the requirements set forth in the bill.

Reconciliation returns

(R.C. 5739.12(C)(1))

In addition to monthly sales tax returns, current law authorizes the Tax Commissioner to require that the return for the last month of any annual or semiannual period be a reconciliation return that recaps the vendor's sales activity for the period. Under the bill, the Commissioner does not have the authority to require these reconciliation returns from vendors who file monthly returns.

Electronic filing of income tax returns and payments

(R.C. 5747.08)

Current law provides that, on or before April 15 of each year, taxpayers must file their income tax returns on forms prescribed by the Tax Commissioner, together with payment of the amount shown to be due on the forms. The bill permits taxpayers to file their returns and make their payments on April 30 if they are filed and made in an electronic format prescribed by the Commissioner. However, if the Commissioner adopts rules requiring electronic filing of returns or electronic payment of taxes (see "***Tax Commissioner may require electronic filing***" above), then taxpayers must make the electronic filing or payment required by the Commissioner on April 30 and do not have the option of filing on April 15 using paper forms.

The bill specifies that if an income tax return is filed electronically, it is considered filed when transmitted in the format prescribed by the Commissioner. A payment made electronically is considered made when the payment is received by the Treasurer of State or credited to an account designated by the Treasurer.

Estimated taxes: declarations and payments

(R.C. 5747.09)

Ohio taxpayers must make declarations of estimated taxes for the current taxable year if the amount of estimated taxes (i.e., the amount that the taxpayer estimates to be the taxpayer's combined income tax and school district income tax for the current taxable year), less the amount to be withheld from the taxpayer's compensation, exceeds $500. Under current law, a taxpayer required to file a declaration of estimated taxes must file the declaration on or before April 15 of each year or on or before the fifteenth day of the fourth month after the taxpayer becomes subject to the tax for the first time. In addition, taxpayers reporting on a fiscal year basis must file a declaration on or before the fifteenth day of the fourth month after the beginning of each fiscal year period. The bill provides that if, for the immediately preceding taxable year, the taxpayer filed an electronic income tax return and made electronic payment of amounts due with the return, declarations that have to be filed on April 15 do not have to be filed until April 30, and declarations that have to be filed on the fifteenth day of a fourth month do not have to be filed until the last day of the fourth month.

Under current law, taxpayers required to make declarations of estimated taxes must pay 22.5% of the tax liability for the taxable year on or before the fifteenth day of the fourth month after the beginning of the taxable year. The bill extends this payment date to the last day of the fourth month if, for the immediately preceding taxable year, the taxpayer filed an electronic income tax return and made electronic payment of amounts due with the return.

Centralized Tax Filing and Payment Fund created

(R.C. 5703.491; Section 103)

The bill creates the Centralized Tax Filing and Payment Fund in the state treasury and provides that, no later than August 1 of each fiscal year, the Director of Budget and Management must transfer $3 million from the General Revenue Fund to this new fund. The fund is to be administered by the Department of Taxation and used by the Department to finance modifications to the Ohio Business Gateway or successor electronic tax filing and payment systems.

Tax Commissioner's authority to inspect tax records

(R.C. 5703.19)

Current law

Current law authorizes the Tax Commissioner or any person employed by the Commissioner to inspect the books, accounts, records, and memoranda of any taxpayer subject to any law administered by the Commissioner. When one of the Commissioner's employees makes a demand for inspection, the employee must produce for the taxpayer upon whom the demand is made the employee's authority to make the inspection.

Under current law, if a taxpayer refuses to allow the Commissioner to inspect the taxpayer's records, the Commissioner is required to impose a penalty on that taxpayer of $500 for each day the taxpayer refuses to comply with the Commissioner's demand for inspection. The Commissioner may assess and collect the penalty in the same manner as other tax assessments.

Tax Commissioner's inspection powers extended to records maintained in electronic and digital formats

The bill authorizes the Tax Commissioner to demand inspection of records maintained in electronic or digital formats. Specifically, the bill provides that the "records" subject to the Commissioner's inspection include not only the books, memoranda, and accounts subject to inspection under existing law, but also electronically or digitally stored information, computer spreadsheets, computer databases, computer disks, and any other medium used to store information.

The bill further requires that taxpayers provide any record requested by the Commissioner in the particular format prescribed by the Commissioner. Records that are maintained electronically or digitally must be provided to the Commissioner on computer disk, through electronic data transfer, or in any other format that the Commissioner requests or approves.

Production of inspection authority

The bill provides that the Tax Commissioner's employees must produce their authority to make an inspection only when the taxpayer has made a reasonable request to see evidence of the employee's authority.

Changes to penalty provisions

(R.C. 5703.19, 5717.02, and 5717.04 (not in the bill))

Under the bill, if a taxpayer refuses to comply with a demand for inspection, the Tax Commissioner is permitted, but not required, to impose a penalty on the taxpayer. The bill grants the Commissioner discretion to set the amount of the penalty; however, the amount of the penalty may not exceed $500 for each day the taxpayer refuses to comply with the demand for inspection. The Commissioner may impose only one penalty for each day the taxpayer refuses to comply even if the demand for inspection concerns more than one tax or fee. The bill authorizes the Commissioner to assess and collect a penalty in the same manner as the tax or fee that is the subject of the demand for the inspection. Alternatively, the Commissioner may bill the penalty separately from the tax or fee.

The bill specifies the procedural rights to be afforded penalized taxpayers. Within 60 days after receiving notice of the penalty, the taxpayer must either pay the penalty or file with the Commissioner, either personally or by certified mail, a written request for reconsideration. The taxpayer or an authorized agent of the taxpayer with knowledge of the facts surrounding the penalty must sign the request for reconsideration. Unless the taxpayer waives his or her right to a hearing, the Commissioner must schedule a hearing on the request for reconsideration and must notify the taxpayer of the time and place of the hearing by personal service or certified mail.

The Commissioner must prepare a final determination that affirms, modifies, or cancels the penalty. The Commissioner is required to serve the final determination on the taxpayer by personal service or certified mail. After the Commissioner issues the final determination, the taxpayer may appeal the Commissioner's decision to the Board of Tax Appeals. Further appeals may be filed in a court of appeals or the supreme court.

The bill provides that any penalty, or portion of a penalty, that is upheld after reconsideration and appeal becomes due and payable within 60 days after the Commissioner issues the final determination or, if appeals are taken, within 60 days after all appeals have been exhausted. The penalty includes interest, which accrues from the day the taxpayer files the request for reconsideration until the day the penalty is paid. The bill directs the Commissioner to deposit the taxpayer's remittance in the general revenue fund.

Delegation of the Tax Commissioner's investigation powers

(R.C. 109.71, 2935.01, and 5703.58; Section 146.07)

Under current law, the Tax Commissioner, by journal entry, may delegate the Commissioner's investigation powers to employees of the Department of Taxation who have been certified by the Ohio Peace Officer Training Commission and are engaged in the enforcement of the motor fuel, sales and use, cigarette, or income tax laws. When that journal entry is completed, the employee to whom it pertains, while engaged within the scope of the employee's duties in enforcing the laws that the Commissioner is responsible for administering, has the power of a police officer to carry concealed weapons, make arrests, and obtain warrants for violations of those laws. No employee of the Department is permitted to divulge any information required as a result of an investigation, except as may be required by the Commissioner or a court.

The Commissioner cannot delegate any investigation powers to an employee who has been convicted of or has pleaded guilty to a felony. The Commissioner, at any time, may suspend or revoke the delegation of investigation powers by journal entry, and, by following specific procedures, must suspend or revoke the delegation under certain circumstances, such as if an employee pleads guilty to a felony. The prohibition against delegating powers if the employee has been convicted of a felony, and the revocation or suspension of a delegation, does not apply to an offense that was committed prior to January 1, 1997.

Current law requires that the Department cooperate with the Attorney General, local law enforcement officials, and appropriate agencies of the federal government and other states in the investigation and prosecution of violations of all laws relating to taxes and fees administered by the Commissioner.

The bill repeals the existing provisions in the motor fuel, sales and use, cigarette, and income tax laws, and enacts a general delegation of investigation powers provision. The bill provides that for the purposes of enforcing **all** laws relating to taxes and fees that the Tax Commissioner is responsible for administering, the Commissioner, by journal entry, may delegate investigation powers to an employee of the Department who has been certified by the Executive Director of the Ohio Peace Officer Training Commission. The bill retains in the general provision all of the current procedures and requirements for delegating investigation powers and suspending or revoking the delegation, but does not keep the prohibition against divulging information that was part of the provisions repealed by the bill. The general delegation provision also retains the cooperation with law enforcement requirement.

The bill provides that the general delegation provision does not limit the Tax Commissioner's ability to have other employees of the Department of Taxation conduct investigations as authorized by continuing laws regarding agents, tax auditor agents, and tax auditor agent managers, and the inspection of books by the Commissioner's employees.

Enforcement of the motor fuel use tax and motor fuel tax laws

(R.C. 5728.04, 5728.99, 5735.19, and 5735.99)

Motor fuel use permit violations

Continuing law provides that it is unlawful for a person to operate certain commercial cars or commercial tractors without a valid fuel use permit for them. The bill also makes it unlawful for a person to operate certain commercial cars or commercial tractors with a suspended or surrendered fuel use permit for the car or tractor, and provides that whoever violates this provision is guilty of a felony of the fifth degree. In addition, for a violation of continuing law or the provision enacted by the bill, the bill provides that the car or tractor involved in either violation may be detained until a valid fuel use permit is obtained or reinstated.

Inspections related to motor fuel

Continuing law authorizes the Tax Commissioner to examine records, books, and papers of motor fuel dealers, retail dealers, exporters, terminal operators, purchasers, or common carriers pertaining to motor fuel, to verify accuracy in reports or returns. The Commissioner may hold hearings and conduct investigations, but no person is permitted to disclose the information acquired by the Commissioner, except when required to do so in court.

The bill expands the Tax Commissioner's enforcement authority for purposes of the motor fuel use and fuel tax laws. In addition to examining records and books, the Commissioner may examine invoices, storage tanks, and any other equipment related to motor fuel to determine whether motor fuel taxes have been paid. The bill eliminates the prohibition against disclosing information.

The bill also permits an employee of the Department of Taxation, who is so authorized by the Tax Commissioner, to physically inspect, examine, or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of fuel, fuel dyes, or fuel markers, and books and records, if any, that are maintained at the place of inspection and are kept to determine motor fuel tax liability. Inspections may be performed at any place at which motor fuel is or may be produced or stored, or at any "designated inspection site." The bill defines a "designated inspection site" as any state highway

inspection station, weigh station, mobile station, or other similar location designated by the Commissioner to be used as a fuel inspection site.

Under the bill, an employee of the Department who has been delegated investigation powers by the Tax Commissioner (see "***Delegation of the Tax Commissioner's investigation powers***," above) may detain any motor vehicle, train, barge, ship, or vessel for the purpose of inspecting its fuel tanks and storage tanks. Detainment must be on the premises under inspection or at a designated inspection site. Detainment may continue for a reasonable period of time as is necessary to determine the amount and composition of the fuel.

The bill provides that an employee of the Department so authorized by the Tax Commissioner, or an employee that has been delegated investigation powers by the Commissioner, may take and remove samples of fuel in quantities as are reasonably necessary to determine the composition of the fuel.

No person may refuse to allow an inspection, and any person who does so is subject to revocation or cancellation of any license or permit issued under the motor fuel use tax or motor fuel tax laws. Refusing to allow an inspection is a first degree misdemeanor under the bill.

Forfeiture fund for Department of Taxation enforcement actions

(R.C. 2925.44 and 2933.43)

The bill establishes a fund to receive the proceeds from property or money seized in the course of enforcement actions by the Department of Taxation's enforcement division. Credited to the fund would be interest or other earnings arising from the investment of money or of proceeds from selling property seized by the Department and forfeited under federal law allowing state and local law enforcement agencies to retain some of the proceeds of such forfeitures. The fund generally would be subject to the same laws governing seizures made by the Department of Public Safety, the Highway Patrol, and local law enforcement agencies, among others. The Department must adopt an internal control policy for use of money in the fund, and it may use money in the fund only to pay for the costs of the enforcement division's tax law enforcement activities. The Tax Commissioner must report each year to the Attorney General on the use of money in the fund.

Extension of Tax Commissioner's power to disregard sham transactions

(R.C. 5703.56, 5733.111 (repealed), 5739.01, 5739.012 (repealed), 5741.01, 5741.011 (repealed), and 5747.131 (repealed))

The doctrines of "sham transaction," "economic reality," "step doctrine," and "substance over form" are sometimes used by the Tax Commissioner to identify a taxpayer's true tax liability. Currently, the Commissioner may apply these doctrines in making corporate franchise and income tax assessments. The Commissioner is also authorized to apply the doctrines to the up-front sales and use taxes paid on certain leases.

The bill extends the Tax Commissioner's authority to employ "sham transaction" and other similar doctrines. The bill defines a "sham transaction" as any transaction or series of transactions that have no economic substance because they lack a business purpose or expectation of profit and are designed merely to obtain tax benefits. The bill provides that the Commissioner may disregard a sham transaction in ascertaining any taxpayer's liability with respect to any tax.

The bill shifts the burden of proof in establishing the existence of a sham transaction depending upon whether the taxpayer involved in the transaction was a member of a "controlled group." The bill defines a "controlled group" as two or more persons related in such a way that one person directly or indirectly owns or controls the business operations of another member of the group. In the case of persons with stock or other equity, one person owns or controls another if the person directly or indirectly owns more than 50% of the other person's common stock with voting rights or other equity with voting rights. Under the bill, if the transaction occurred between members of a controlled group, then the taxpayer bears the burden of establishing by a preponderance of the evidence that the transaction was not a sham transaction. For taxpayers who are not members of a controlled group, the Tax Commissioner bears the burden of establishing by a preponderance of the evidence that the transaction was a sham.

If the Tax Commissioner disregards a sham transaction, the applicable statute of limitations for assessing the tax, interest, and penalties is extended. The length of the extension is equal to the length of the applicable statute of limitations.

The bill authorizes the Tax Commissioner to adopt rules as are necessary to apply the doctrine of sham transaction and other similar doctrines. Among the rules the Commissioner is authorized to adopt are rules establishing criteria for identifying sham transactions.

- Eliminates the Ohio Rail Development Commission as an independent agency of the state and transfers all authority and duties of the Rail Development Commission to the Department of Transportation as its successor, including the authority to issue bonds and the granting of franchises for rail systems.

Rail Development Commission

(R.C. 126.11, 163.06, 307.202, 505.69, 717.01, 4117.10, 5501.03, 5507.01, 5507.03, 5507.031, 5507.032, 5507.033, 5507.04, 5507.05, 5507.06, 5507.07, 5507.08, 5507.09, 5507.091, 5507.10, 5507.11, 5507.12, 5507.13, 5507.131, 5507.14, 5507.15, 5507.16, 5507.17, 5507.18, 5507.19, 5507.20, 5507.21, 5507.22, 5507.23, 5507.25, 5507.26, 5507.28, 5507.29, 5507.30, 5507.31, 5507.32, 5507.33, 5507.34, 5507.35, 5507.36, 5507.361, 5519.01, and 5507.19)

Current law

The Ohio Rail Development Commission was created in 1994 as the successor of the Ohio High Speed Rail Authority and the Division of Rail of the Department of Transportation (ODOT). It is an independent agency of the state within ODOT.

The Commission has comprehensive development authority over freight, intercity passenger, commuter, and high speed rail transportation services, including authority to make loans and issue bonds. It has authority to enter into exclusive franchise agreements with private corporations and may use bond proceeds to finance all or part of a privately operated passenger rail system; it also may appropriate property on behalf of a franchisee. The Commission may levy special assessments on real property, other than property owned by a railroad corporation, that has experienced an increase in value because of the existence of a rail system station or terminal.

The Commission consists of 14 public and private members who serve six-year terms. In addition to members appointed by the Governor and by legislative leadership, the Director of Transportation and the Director of Development serve as ex officio members of the Commission. The Commission may employ an executive director, a secretary-treasurer, and other employees.

Law enacted in conjunction with the Rail Development Commission Law requires a railroad company or other person operating passenger rail service on a right-of-way owned by another to indemnify and hold harmless the owner of the right-of-way from liability for any damages arising out of the passenger rail operations, including claims for damages for harm arising from any accident. Also, each railroad company or other person operating passenger rail service on a right-of-way owned by another must maintain liability coverage of at least $200 million. The railroad's liability under these circumstances, including any punitive damages, is limited by law to the limit of the liability coverage maintained. Under certain circumstances, the Commission indemnifies its franchisees for liability losses.

The bill

The bill abolishes the Ohio Rail Development Commission and designates ODOT as the successor to the Commission. The bill relocates the law governing the Commission's authority and duties to a new Chapter within the law governing ODOT. ODOT succeeds to the Commission's authority in all of the following areas of law:

(1) Development and promotion of rail services (R.C. 5507.03);

(2) Assistance from other state agencies and cooperation with the Director of Development (R.C. 5507.03(C) and (E));

(3) Recognition of rail transportation as a proper industrial activity for purposes of making loans and grants, and issuing bonds in accordance with the Ohio Constitution (R.C. 5507.031);

(4) Assistance to local or regional transportation authorities upon application (R.C. 5507.032 and 5507.05);

(5) Planning for intercity conventional or high speed passenger rail service (R.C. 5507.04);

(6) General purchase or lease of rail property and appropriation of real property (R.C. 5507.06);

(7) Modernization of rail property and implementation agreements with governmental and private organizations (R.C. 5507.07);

(8) Transfer of rail property and cooperation among states (R.C. 5507.08);

(9) General conditions for purchase of property, facilities, or equipment (R.C. 5507.10);

(10) Bonding authority and bond proceedings (R.C. 5507.11 to 5507.26);

(11) Levy and collection of special assessments (R.C. 5507.21);

(12) Waiver of application of other laws for rail projects, including Department of Administrative Services and municipal planning commission standards (R.C. 5507.26);

(13) General authority to enter into franchisee agreements with a private corporation for the construction and operation of all parts of a rail system (R.C. 5507.28 to 5507.34).

However, in the following areas of law the bill eliminates specific types of authority currently vested in the Rail Development Commission, in part because similar provisions presumably apply to ODOT elsewhere in law:

(1) Agreements with local governments to develop rail service (R.C. 307.202, 505.69, and 717.01);

(2) General corporate powers (R.C. 5507.14);

(3) Minority set-asides in contracts (R.C. 5507.03(G));

(4) Purchase of rail property conditioned upon Controlling Board approval (R.C. 5507.10(B));

(5) Acquisition and disposition of real or personal property (R.C. 5507.14(B));

(6) Making contracts (R.C. 5507.14(B));

(7) Receiving grants or money for rail service projects (R.C. 5507.14(B));

(8) Purchase of insurance (R.C. 5507.14(B));

(9) Franchisee indemnification agreements.

Transfer of authority. Under the bill, the duties, powers, and functions of the Rail Development Commission generally are transferred to ODOT. ODOT or the Director of Transportation is held to be the continuation of the Commission for the completion of all functions of the Commission. All rules, and decisions of the Commission continue in effect until further action by the Director. ODOT succeeds to the Commission in all references in law, including contracts and deeds. The bill specifies that any pending actions are not affected by the transfer and may be continued in the name of ODOT. (R.C. 5507.03.)

Indemnification. In regard to the requirement for a railroad company or other person operating passenger rail service on a right-of-way owned by another to indemnify the owner of the right-of-way from liability for any damages arising out of the passenger rail operations, the bill specifies that the indemnification requirement shall not be construed to apply to the state or any political subdivision of the state in violation of the Ohio Constitution or any municipal or county charter. It also specifies that the requirement for a railroad company to carry insurance shall not be construed to require the state to carry liability insurance. (R.C. 5507.033.)

In regard to indemnification of franchisees, the bill does both of the following:

(1) Eliminates the current authority of the Commission to enter into any indemnification agreements that are necessary to reimburse a franchisee for any injuries or losses suffered by any person and for which the franchisee is liable, if the injuries or losses are of such a nature that, if the Commission were the responsible party instead of the franchisee, the Commission would not be liable for the injuries or losses because of sovereign immunity (R.C. 5507.29(A)(8) and 5507.31(G));

(2) Eliminates the current authority of the Commission to indemnify a franchisee for third party claims arising out of franchisee design and construction activities performed without fault that were reviewed and approved by the Commission (R.C. 5507.33(A)).

Miscellaneous

The bill removes a statement from the Collective Bargaining Law establishing that collective bargaining agreements *do not* prevail over conflicting provisions in Commission bond arrangements and special assessments as necessary to comply with the federal Urban Mass Transportation Act of 1964 (R.C. 4117.10).

The Rail Development Fund and the Federal Rail Fund are placed under ODOT's authority, but all current uses of the funds are retained (R.C. 5507.09 and 5507.091).

In regard to bonding authority, current law requires the Commission to act by resolution; the bill generally eliminates this requirement and removes all references to resolutions. The bill also removes references to the official seal of the Commission, signatures or facsimile signatures, and Commission officers. A provision stating that Commission members or employees are not liable in their personal capacity under the bond proceedings is replaced by the bill with a

reference to existing law governing the civil liability of state officers and employees. (R.C. 5507.11 to 5507.26.)

In regard to franchise authority, the bill removes a provision of current law requiring approval of the General Assembly before a franchise agreement is extended beyond the terms of the original award (R.C. 5507.31(A)).

In regard to appropriation of property, the bill removes authority to use "quick take" (possession of property upon deposit of money with a court, but prior to an actual determination of value) for implementing rail services (R.C. 163.06). It also removes language allowing the Commission to appropriate property if it is unable to purchase property, subject to the approval of the Director of Transportation (R.C. 5519.01).

The bill relocates the "Interstate High Speed Intercity Rail Passenger Network Compact" and the "Midwest Interstate Passenger Rail Compact" (R.C. 5507.35, 5507.36, and 5507.361).

VETERINARY MEDICAL LICENSING BOARD

- Increases biennial licensing fees for veterinarians and registered veterinary technicians.

Increase in veterinary license and veterinary technician registration fees

(R.C. 4741.17)

Under continuing law, applicants for renewal licensure as a veterinarian and for renewal registration as a registered veterinary technician biennially must submit licensure or registration fees to the Ohio Veterinary Medical Licensing Board. The specified amounts of these fees depend upon whether they are postmarked or stamped by the Board on or before March 1, after March 1 but on or before April 1, or after April 1 each biennial period. In addition, continuing law permits the Veterinary Medical Licensing Board, subject to Ohio Controlling Board approval, to charge fees exceeding these specified amounts by up to 50%.

The bill increases specified biennial renewal fees, based on when they are postmarked or stamped by the Veterinary Medical Licensing Board, as follows:

	On/before March 1	On/before April 1	After April 1
Veterinary license	from $155 to $200	from $225 to $275	no change ($450)
Veterinary technician registration	from $35 to $45	from $45 to $55	from $60 to $65

DEPARTMENT OF YOUTH SERVICES

- Requires the Department of Youth Services (DYS) to set guidelines for minimum occupancy rates for community corrections facilities.
- Allows DYS to place any child committed to DYS directly into a community corrections facility if the facility is not meeting the minimum occupancy threshold.
- Grants the committing court the authority to approve or disapprove the placement of a child into a community corrections facility.
- Allows counties not associated with a community corrections facility to refer children to such a facility with the consent of the facility.
- Designates DYS to serve as the state agent for the administration of all federal juvenile justice grants awarded to Ohio.
- Specifies that all rules, orders, and determinations of the Office of Criminal Justice Services regarding the administration of federal juvenile justice grants that are in effect on the effective date of this provision continue in effect as rules, orders, and determinations of DYS.

Community corrections facilities

(R.C. 5139.36)

Existing law

The Department of Youth Services (DYS) is permitted to place in a community corrections facility that has received a grant under current law (R.C. 5139.36) any felony delinquent who has been committed to DYS if the committing court and the facility consent to the placement. During the period in

which the felony delinquent is in that facility, the felony delinquent remains in the legal custody of DYS.

DYS is required to make grants for the operation of community corrections facilities for felony delinquents. A community corrections facility seeking a grant must file an application with DYS and include a plan for (1) reducing the number of felony delinquents committed to DYS from the county or counties associated with the community corrections facility, and (2) ensuring equal access for minority felony delinquents to the programs and services for which a potential grant would be used. DYS must review each application submitted to determine whether the plan described, the community corrections facility, and the application comply with R.C. 5139.36 and any rules adopted under that section.

A community corrections facility also must satisfy at least all of the following requirements:

(1) Be constructed, reconstructed, improved, or financed by the Ohio Building Authority for the use of DYS and be designated as a community corrections facility;

(2) Have written standardized criteria governing the types of felony delinquents that are eligible for the programs and services provided by the facility;

(3) Have a written standardized intake screening process and an intake committee that at least screens all eligible felony delinquents who are being considered for admission to the facility in lieu of commitment to DYS and notifies, within ten days after the date of the referral of a felony delinquent to the facility, the committing court whether the felony delinquent will be admitted to the facility;

(4) Comply with all applicable fiscal and program rules that DYS adopts and demonstrate that felony delinquents served by the facility have been or will be diverted from a commitment to DYS.

Operation of the bill

Under the bill, DYS is required to adopt rules in accordance with the Administrative Procedure Act to establish the minimum occupancy threshold of community corrections facilities. If a community corrections facility is not meeting the minimum occupancy threshold, DYS is permitted to make referrals for the placement of children in its custody to a community corrections facility. The bill eliminates the requirement that DYS make the commitment only after receiving the consent of the court and the facility.

At least 45 days prior to the referral of a child, DYS must notify the committing court of its intent to place the child in a community corrections facility. The court has 30 days after the receipt of the notice to approve or disapprove the placement. If the court does not respond to the notice within that 30-day period, DYS must proceed with the placement and debit the county in accordance with its felony delinquent care and custody program.

Counties that are not associated with a community corrections facility may refer children to a community corrections facility with the consent of the facility. DYS must debit the county in accordance with its felony delinquent care and custody program that makes the referral.

Federal juvenile justice programs funds

(R.C. 5139.87)

Existing law creates in the state treasury the federal juvenile justice programs funds. A separate fund is established each federal fiscal year. All federal grants and other moneys received for federal juvenile programs are deposited into the funds, and all receipts deposited into the funds are required to be used for federal juvenile programs. And, all investment earnings on the cash balance in a federal juvenile program fund must be credited to that fund for the appropriate federal fiscal year.

The bill designates the Department of Youth Services to serve as the state agent for the administration of all federal juvenile justice grants awarded to Ohio. All rules, orders, and determinations of the Office of Criminal Justice Services regarding the administration of federal juvenile justice grants that are in effect on the effective date of this provision continue in effect as rules, orders, and determinations of the Department of Youth Services.

MISCELLANEOUS

- Permits a board of county commissioners to adopt a cost allocation plan for direct and indirect costs to be paid from any county special revenue fund, enterprise fund, or internal service fund to the county general fund.

- Increases the fees charged by a sheriff for specified actions in relation to civil and criminal actions and proceedings in the court of common pleas.

- Specifies that the fee for receiving, or discharging or surrendering, a prisoner does not apply to prisoners in certain work-release programs.

- Increases from $11 to $15 the additional costs a court generally is required to impose upon an offender who is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, and increases from $11 to $15 the amount that the court is required to add to any bail to be paid by a person who is charged with any offense other than a traffic offense that is not a moving violation.

- Increases from $11 to $15 the additional costs a juvenile court generally is required to impose upon a child who is found to be a delinquent child or a juvenile traffic offender for committing an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation.

- Permits the legislative body of a county, district, district activity, or institution to base its proportionate share of payment to the Public Insurance Fund of the workers' compensation State Insurance Fund on payroll, relative exposure, relative loss experience, or any combination of these factors, and specifies that transfers from any fund of these public entities to make these payments are not subject to the law prescribing fund transfer procedures of taxing authorities.

- Increases from $5 to $15 the fee that must be paid upon application for a gubernatorial commission of a person to act as a police officer for certain entities.

- Extends to October 16, 2005 the date of repeal (sunset) of a provision requiring a health insuring corporation to cover, if certain conditions exist, medically necessary skilled nursing care provided to a person in a facility that does not have a contract with the health insuring corporation.

County cost allocation plans

(R.C. 305.28)

The bill permits a board of county commissioners to adopt, by resolution, a cost allocation plan that identifies, accumulates, and distributes allowable direct and indirect costs that may be paid from any county special revenue fund, enterprise fund, or internal service fund to the county general fund. The plan must use cost principles like those in the United States Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal

Governments" and may include reasonable rates or charges that reflect actual costs for general fund direct and indirect costs, administrative services, and centrally budgeted costs.

The bill provides a procedure that has a board of county commissioners, by resolution, first declare its intention to allocate costs identified in its plan to special revenue funds, enterprise funds, or internal service funds; then notify the county elected officials or county boards, commissions, or other instrumentalities associated with any affected fund of the plan, its intent to allocate costs, and the estimated costs to be allocated to that fund in the next ensuing fiscal year; next permit those officials and instrumentalities to request a meeting and to comment on the specific rates or charges to be imposed; and finally, after reviewing their comments, adopt a resolution to proceed with the plan, including any amendments made to the rates or charges after the meetings. If any reimbursement of the general fund does not occur as charged, the board of county commissioners may authorize a transfer from the appropriate special revenue fund, enterprise fund, or internal service fund to the general fund without following current procedures for fund transfers in the treasury, or the board may take any other action to ensure that the rates or charges are collected and deposited in the general fund.

Increased sheriff's fees

(R.C. 311.17)

Service and return of writs and orders fees

Under existing law, a sheriff is required to charge specified fees in relation to civil and criminal actions and proceedings in the court of common pleas. The court or the clerk of the court is required to tax those fees in the bill of costs against the judgment debtor or those persons legally liable for the judgment. The bill increases those mandatory fees as follows:

Fee purpose	Existing fee	Proposed fee
For the service and return of an execution when money is paid without levy or when no property is found (division (A)(1)(a)).	$5.00	$20.00
For the service and return of an execution when levy is made on real property (division (A)(1)(b)).	$20.00 for the first tract and $5.00 for each additional tract	$25.00 for the first tract and $10.00 for each additional tract
For the service and return of an execution when levy is made on goods and chattels, including inventory (division (A)(1)(c)).	$25.00	$50.00

Fee purpose	Existing fee	Proposed fee
For the service and return of a writ of attachment of property, except for purpose of garnishment (division (A)(2)).	$20.00	$40.00
For the service and return of a writ of attachment for the purpose of garnishment (division (A)(3)).	$5.00	$10.00
For the service and return of a writ of replevin (division (A)(4)).	$20.00	$40.00
For the service and return of a warrant to arrest, for each person named in the writ (division (A)(5)).	$5.00	$10.00
For the service and return of an attachment for contempt, for each person named in the writ (division (A)(6)).	$3.00	$6.00
For the service and return of a writ of possession or restitution (division (A)(7)).	$20.00	$60.00
For the service and return of a subpoena, for each person named in the writ, if in a civil case (division (A)(8)).	$3.00	$6.00
For the service and return of a subpoena, for each person named in the writ, if in a criminal case (division (A)(8)).	$1.00	$6.00
For the service and return of a venire, for each person named in the writ, if in a civil case (division (A)(9)).	$3.00	$6.00
For the service and return of a venire, for each person named in the writ, if in a criminal case (division (A)(9)).	$1.00	$6.00
For the service and return of summoning each juror, other than on venire, if in a civil case (division (A)(10)).	$3.00	$6.00
For the service and return of summoning each juror, other than on venire, if in a criminal case (division (A)(10)).	$1.00	$6.00
For the service and return of a writ of partition (division (A)(11)).	$15.00	$25.00
For the service and return of an order of sale on partition (division (A)(12)).	$25.00 for the first tract and $5.00 for	$50.00 for the first tract and $25.00 for

Fee purpose	Existing fee	Proposed fee
sale on partition (division (A)(12)).	each additional tract	each additional tract
For the service and return of another order of sale of real property (division (A)(13)).	$20.00 for the first tract and $5.00 for each additional tract	$50.00 for the first tract and $25.00 for each additional tract
For the service and return for administering an oath to appraisers (division (A)(14)).	$1.50	$3.00
For the service and return for furnishing copies for advertisements (division (A)(15)).	$.50 for each 100 words	$1.00 for each 100 words
For the service and return of a copy of an indictment, for each defendant (division (A)(16)).	$2.00	$5.00
For the service and return of all summons, writs, orders, or notices (division (A)(17)).	$3.00 for the first name and $.50 for each additional name	$6.00 for the first name and $1.00 for each additional name

Other fees

In addition to the fees a sheriff must charge for the service and return of writs and orders, existing law permits, but does not require, a sheriff to charge fees for specified other duties. The bill makes each of those fees mandatory and increases them as follows:

Fee purpose	Existing fee	Proposed fee
For each summons, writ, order, or notice (division (B)(1)).	$.50 per mile for the first mile, and $.20 per mile for each additional mile, going and returning, with actual mileage charged on each additional name	$1.00 per mile for the first mile, and $.50 per mile for each additional mile, going and returning, with actual mileage charged on each additional name
For taking bail bond (division (B)(2)).	$1.00	$3.00
Jail fees for receiving a prisoner, and for discharging or surrendering a prisoner (division (B)(3)(a)).	$4.00	$5.00. The fee is not to be charged for the departure or return of a prisoner from or to a jail in

Fee purpose	Existing fee	Proposed fee
		connection with certain work-release programs.
Jail fees for taking a prisoner before a judge or court (division (B)(3)(b)).	$3.00 per day	$5.00 per day
Jail fees for calling action (division (B)(3)(c)).	$.50	$1.00
Jail fees for calling jury (division (B)(3)(d)).	$1.00	$3.00
Jail fees for calling each witness (division (B)(3)(e)).	$1.00	$3.00
Jail fees for bringing a prisoner before a court on habeas corpus (division (B)(3)(f)).	$4.00	$6.00
Poundage on all moneys actually made and paid to the sheriff on execution, decree, or sale of real estate (division (B)(4)).	1%	1.5%
For making and executing a deed of land sold on execution, decree, or order of the court, to be paid by the purchaser (division (B)(5)).	$25.00	$50.00

Miscellaneous

Existing law provides that, when any of the services described in the above two tables are rendered by an officer or employee whose salary or daily compensation is paid by the county, the applicable legal fees for the service must be taxed in the costs of the case and paid, when collected, into the county general fund. In addition to these legal fees, the bill allows any *other extraordinary expenses, including overtime*, apparently of the officer or employee in relation to the service to be taxed in the costs of the case and paid, when collected, into the county general fund.

Additional court costs or bail

(R.C. 2949.091)

Existing law

Under existing law, the court in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation[126] is required to impose the sum of $11 as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender. Similarly, the juvenile court in which a child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation is required to impose the sum of $11 as costs in the case in addition to any other court costs that the court is required or permitted by law to impose upon the delinquent child or juvenile traffic offender.

Whenever a person is charged with any offense other than a traffic offense that is not a moving violation and posts bail,[127] existing law requires the court to add to the amount of the bail the $11 required to be paid by the preceding paragraph.

Existing law prescribes procedures by which the additional moneys collected as costs are transmitted to the Treasurer of State for deposit into the General Revenue Fund. Existing law also prescribes procedures by which the $11 additional bail is either returned to the person or transmitted to the Treasurer of State for deposit into the General Revenue Fund. A court may waive the payment of the additional $11 costs only in specified circumstances, and a person may not be placed or held in a detention facility for failing to pay the additional $11 costs or bail.

---

[126] *"Moving violation" means any violation of any statute or ordinance, other than the Mandatory Seatbelt Law or a substantially equivalent municipal ordinance, that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles. "Moving violation" does not include the violation of any statute or ordinance that regulates pedestrians or the parking of vehicles. (R.C. 2949.091(D)(1) by reference to R.C. 2743.70(D)(1).)*

[127] *"Bail" means cash, a check, a money order, a credit card, or any other form of money that is posted by or for an offender to prevent the offender from being placed or held in a detention facility (R.C. 2949.091(D)(1) by reference to R.C. 2743.70(D)(2)).*

Operation of the bill

The bill increases this additional court cost or bail from $11 to $15.

Fund transfers for payment of workers' compensation premiums

(R.C. 4123.41)

For purposes of making workers' compensation premium payments, the bill permits the legislative body of a county, district, district activity, or institution to base its proportionate share of payment to the Public Insurance Fund on payroll, relative exposure, relative loss experience, or any combination of these factors.

Additionally, the bill specifies that a transfer from any fund of a county, district, district activity, or institution to the Public Insurance Fund to pay the proportionate share of contributions chargeable to the Public Insurance Fund is not subject to the law that prescribes the procedures a taxing authority must follow to make fund transfers.

Fee for the Governor's commissioning of certain persons

(R.C. 4973.17)

Upon the application of any of the following entities, the Governor may appoint and commission any persons who the Governor considers proper to act as police officers for the entity: a bank, savings and loan association, association of banks or savings and loan associations, a company owning or using a railroad in Ohio, any company under contract with the United States Atomic Energy Commission for the construction or operation of a plant at a site owned by the Commission, a hospital operated by a public hospital agency, or a hospital operated by a nonprofit hospital agency. In addition to other application requirements, existing law requires a fee of $5 to be paid for each commission applied for at the time the application is made. If the commission is not issued, the application fee must be returned. The bill increases the application fee to $15 for the commissioning of persons to act as police officers for these entities.

Health insuring corporation policy to cover return to long-term care facility

(Sections 132.03 and 132.04)

The bill extends, until October 16, 2005, a requirement under which, if certain conditions exist, a health insuring corporation that provides benefits for skilled nursing care through a closed panel plan must provide reimbursement for medically necessary covered skilled nursing care services an enrollee receives in a

skilled nursing facility, even though the facility does not participate in the plan.[128] This requirement was to expire October 16, 2003.

The following are the conditions that must exist:

(1) The enrollee or the enrollee's spouse, on or before September 1, 1997, resided in or had a contract to reside in the facility.

(2) The enrollee or the enrollee's spouse, immediately prior to the enrollee being hospitalized, resided in the facility or had a contract to reside in the facility and, following the hospitalization, the enrollee resides in a part of the facility that is a skilled nursing facility, regardless of whether the enrollee or spouse resided in or had a contract to reside in a different part of the facility prior to the hospitalization.

(3) The facility or home provides the enrollee the level of skilled nursing care the enrollee requires.

(4) The facility is willing to accept from the health insuring corporation all of the terms and conditions that apply to a facility that provides skilled nursing care and is participating in the corporation's closed panel plan. (R.C. 1751.68.)

NOTE ON EFFECTIVE DATES

(Sections 146.01 to 146.26)

Section 1d of Article II of the Ohio Constitution states that "laws providing for tax levies [and] 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." R.C. 1.471 implements this provision with regard to appropriations, providing 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 of 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 is to determine which sections go into immediate effect.

[128] *A closed panel plan is one in which services are covered only if provided by a facility or provider that has a contract with the health insuring corporation.*

The bill includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a *codified* section in the bill is subject to the referendum and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The bill also includes many exceptions to the default provision which provide that specified codified provisions are not subject to the referendum and go into immediate effect. For example, many of the bill's provisions that provide for or are essential to the implementation of a tax levy go into immediate effect.

The bill provides that its *uncodified* sections are not subject to the referendum and take effect immediately, except as otherwise specifically provided. The uncodified sections that are subject to the referendum are identified with an asterisk in the bill, and take effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-27-03	pp. 184-187

H0095-I-125.doc/jc:kl