Jennifer A. Parker
and other LSC staff

Legislative Service Commission

Am. Sub. H.B. 95*

125th General Assembly
(As Passed by the House)

Rep. Calvert

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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. The analysis concludes with a Local Government category and a Miscellaneous category.

Within each 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 AGING

DEPARTMENT OF AGRICULTURE

OHIO ARTS AND SPORTS FACILITIES COMMISSION

OHIO ATHLETIC COMMISSION

ATTORNEY GENERAL

OHIO BARBER BOARD

OFFICE OF BUDGET AND MANAGEMENT

BOARD OF CAREER COLLEGES AND SCHOOLS

OHIO CIVIL RIGHTS COMMISSION

DEPARTMENT OF COMMERCE

DEPARTMENT OF DEVELOPMENT

OHIO BOARD OF DIETETICS

DEPARTMENT OF EDUCATION

BOARD OF EMBALMERS AND FUNERAL DIRECTORS

STATE EMPLOYMENT RELATIONS BOARD

ENVIRONMENTAL PROTECTION AGENCY

OHIO ETHICS COMMISSION

GENERAL ASSEMBLY

DEPARTMENT OF MENTAL HEALTH

DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILIITES

DEPARTMENT OF NATURAL RESOURCES

OHIO BOARD OF NURSING

SECRETARY OF STATE

DEPARTMENT OF TAXATION

MISCELLANEOUS

- 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.

- Gives the Department of Administrative Services powers and duties that implement the Management Improvement Commission's recommendations concerning facilities planning and space utilization by state agencies.

- Allows state agencies to purchase services that cost more than $50,000 or supplies that cost more than $25,000 directly from the lowest of at least three solicited bidders rather than from or through the Department.

- Requires a state agency, when soliciting the required bids, to comply with competitive selection requirements.

- Eliminates a provision of existing law requiring reimbursements by state agencies to the Department 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 and its administrator, but retains the Department's 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, but retains Department 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.

- Prohibits public authorities planning to contract with a professional design firm for professional design service under the Public Improvements Law from seeking any form of fee estimate, fee proposal, or other estimate or measure of compensation before negotiating a contract.

- 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.

- Requires the Department, when exercising its statutorily granted powers, to actively promote and accelerate the use of electronic procurement by implementing the relevant recommendations concerning e-procurement

from the "2000 Management Improvement Commission Report to the Governor."

- Requires the Director to inquire into entering into multistate purchasing contracts and to report to the General Assembly with its findings and recommendations not later than December 31, 2003.

- Requires the Department to implement the recommendations of the 2002 report entitled "Administrative Analysis of the Ohio Fleet Management Program."

- Eliminates the current Fleet Management Program.

- Creates a new program that gives the Department exclusive authority over the acquisition and management of certain motor vehicles used by state agencies.

- Grants the Department authority to determine if motor vehicles will be purchased or leased.

- Makes motor vehicles available to state agencies and their employees and heads through (1) the provision of a motor vehicle on an intermittent or temporary basis, (2) the agency's motor vehicle pool, or (3) the provision of a personal motor vehicle.

- Requires, for the provision of a personal motor vehicle to any employee or head of a state agency, that the individual drive a certain amount of business miles per year and approval by the Department.

- Requires fuel for motor vehicles to be purchased through fuel plans negotiated by the Department.

- Grants the Department exclusive authority over the maintenance, insurance, operation, financing, and licensing of motor vehicles and requires all state employees involved in these activities to be employees of the Department.

- Requires all state agency motor vehicles driven 1,400 miles per month or less to be reassigned or sold by the Department.

- Establishes the Vehicle Management Commission within the Department to recommend to the Department and the General Assembly modifications to the Department's procedures and functions.

Vehicle Liability Fund

(R.C. 9.83 and 125.15)

Existing law requires all state agencies that must secure "contracts of insurance" from the Department of Administrative Services (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.

Duties relating to space allocation

(R.C. 123.01)

The bill gives DAS powers and duties that implement the Management Improvement Commission's recommendations concerning facilities planning and space utilization by state agencies. Specifically, the Department must do each of the following:

(1) Conduct biennially a census of agency employees assigned office space by state agency location;

(2) Require each state agency to categorize periodically the different uses of its space by office space, common areas, storage space, and other uses and report its findings to the Department;

(3) Create and update periodically a master space utilization plan incorporating space utilization metrics for all space allotted to state agencies;

(4) Conduct periodically a cost-benefit analysis to determine the effectiveness of state-owned buildings;

(5) Assess periodically the alternatives associated with consolidating the commercial leases for buildings located in Columbus; and

(6) Commission a comprehensive space utilization and capacity study to determine the feasibility of consolidating existing commercially leased state agency space into a new state-owned facility.

Purchases by state agencies

(R.C. 125.05, 125.06, 125.07, and 5513.01)

Continuing law

(R.C. 125.05, 125.06, and 125.07)

Continuing law allows state agencies to purchase services that cost $50,000 or less and supplies that cost $25,000 or less (both amounts as adjusted by the Consumer Price Index) directly from the supplier or through the Department of Administrative Services (DAS), whichever the state agency determines. For services and supplies whose cost is above these dollar amounts, state agencies must make the purchase from or through DAS. DAS, in turn must make the

purchase pursuant to competitive selection requirements. These requirements include, but are not limited to, advertisement of the intended purchases and notice of the time and place where bids or proposals will be accepted and opened. However, if the Director of DAS determines that it is not possible or not advantageous to the state for DAS to make the purchase, DAS can grant the agency a "release and permit" which allows the agency to directly purchase the supplies or services.

Changes made by the bill

(R.C. 125.05, 125.06, 125.07, and 5513.01)

The bill retains the provisions described in the immediately preceding paragraph, but grants state agencies another purchasing option. State agencies desiring to purchase services that cost more than $50,000 or supplies that cost more than $25,000 (both as adjusted by the Consumer Price Index) may solicit at least three bids for the services or supplies and make the purchase directly from the lowest bidder rather than from or through DAS. This exception applies, however, only if the state agency, based upon these solicited bids, determines that it is possible to purchase the services or supplies directly from one of the bidders at a lower price than making the purchase from or through DAS. In soliciting these bids, the agency must comply with the same competitive selection requirements mentioned in the immediately preceding paragraph with which DAS must comply.[1] Finally, if the state agency does so directly purchase services or supplies, it must provide the Department with written notification of the subject and amount of the purchase. (R.C. 125.05(B)(2).)

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

[1] *As a result of having to comply with the competitive bidding requirements of R.C. 125.07, it appears that state agencies, when making purchases that cost $50,000 or more pursuant to this new provision, will not have to obtain approval of the purchase by the Controlling Board because, under R.C. 127.16(A)(1), purchases or annual cumulative purchases of $50,000 or more need not be approved by the Controlling Board if the purchase is made through competitive selection.*

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. 9.01, 101.82, 149.011, 149.33, 149.331, 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.

Professional design firms for public improvements

(R.C. 153.691)

Continuing law

(R.C. 153.65, 153.66 (not in the bill), 153.67 (not in the bill), and 153.69 (not in the bill))

Continuing law requires the state, any county, township, municipal corporation, school district, or other political subdivision, or any public agency,

authority, board, commission, instrumentality, or special district of any of these (referred to as "public authorities"), that is planning to contract for services within the scope of practice of an architect or landscape architect or a professional engineer or surveyor (referred to as "professional design services") to encourage professional design firms to submit a statement of qualifications to the public authority, which the public authority keeps on file.

When the public authority finally decides to contract for a specific design project, it must publicly announce the contracts available in order to receive statements of qualification from professional design firms for that specific project. Following the announcement, the public authority must evaluate statements of qualification that were previously filed together with those that are submitted for that specific project. The public authority then selects and ranks at least three firms it considers qualified for the project. Finally, a contract must be negotiated with the design firm ranked most qualified.

Changes made by the bill

(R.C. 153.691)

The bill prohibits public authorities planning to contract for professional design services from seeking any form of fee estimate, fee proposal, or other estimate or measure of compensation from a professional design firm prior to the public authority's selection and ranking of the firms and the negotiation of a contract with the firm ranked most qualified to perform the required services for the project.

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 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.

Electronic procurement

(R.C. 125.073)

Under continuing law, whenever the Director of Administrative Services determines that the use of a reverse auction is advantageous to the state, the Director may purchase services or supplies by reverse auction. The bill requires the Department of Administrative Services (DAS), when exercising its statutorily granted powers, to actively promote and accelerate the use of electronic procurement (e-procurement), including reverse auctions, by implementing the relevant recommendations concerning e-procurement from the "2000 Management Improvement Commission Report to the Governor."[2, 3, 4] The bill also requires

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[2] *The bill does not define the terms "electronic procurement" or "e-procurement."*

[3] *R.C. 125.072(A)(2) defines "reverse auction" as a purchasing process in which offerors submit bids in competing to sell services or supplies in an open environment via the Internet.*

that beginning July 1, 2004, DAS must report annually to the House of Representatives and Senate committees dealing with finance on the effectiveness of e-procurement. (R.C. 125.072 (not in the bill) and 125.073.)

Multistate purchasing contracts

(Section 145.03P)

Under Chapter 125. of the Revised Code, the Department of Administrative Services is authorized to purchase supplies and services for use of certain state agencies. For purchases of supplies or services costing more than $25,000 or $50,000 respectively, agencies are required to make the purchase from or through the department. For purchases of an equal or lesser amount, agencies have the option of making the purchase directly.

The bill requires the Director of Administrative Services to inquire into entering into multistate purchasing contracts when purchasing supplies and services for the use of state agencies. By December 31, 2003, the Director must issue a report to the General Assembly that details the Director's findings and recommends any legislation necessary to authorize multistate purchasing contracts.

Ohio fleet management

(R.C. 125.831; Sections 142.02E, 145.03G, and 145.03H)

Current law

(R.C. 125.831)

Current law requires the Director of the Department of Administrative Services (DAS) to establish and operate a fleet management program for the purposes of cost-effective acquisition, maintenance, management, and disposal of all vehicles owned or leased by the state. This includes state departments, agencies, institutions, commissions, and boards but excludes the state-supported

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[4] *With regard to reverse auctions, it is not entirely clear what change the bill makes. Under current R.C. 125.072, the use of reverse auctions is dependent upon DAS determining that it is advantageous to the state. Thus, DAS may use the method if it meets this condition. It is unclear if R.C. 125.073, with its requirement that DAS actively promote and accelerate the use of electronic procurement, makes the use of reverse auctions mandatory or if it is only an attempt to stress to DAS the need to increase its efforts to determine when reverse auctions are advantageous to the state.*

institutions of higher education, the General Assembly, any legislative agency, and any court or judicial agency are excluded from the program.

Under the fleet management program, the Director of DAS is allowed to establish a reporting system and require the state departments, agencies, institutions, commissions, and boards to submit information concerning vehicles to be used in operating the program. Additionally, all requests for the purchase or lease of vehicles is subject to the Director's approval prior to acquisition.

Finally, current law entitles each of the following to receive a vehicle allowance to secure or lease transportation for that person's use in the scope of the person's employment or official duties:

- The Director of Budget and Management.
- The Director of Commerce.
- The Director of Transportation.
- The Director of Agriculture.
- The Director of Job and Family Services.
- The Director of Liquor Control.
- The Director of Public Safety.
- The Superintendent of Insurance.
- The Director of Development.
- The Tax Commissioner.
- The Director of DAS.
- The Director of Natural Resources.
- The Director of Mental Health.
- The Director of Mental Retardation and Developmental Disabilities.
- The Director of Health.
- The Director of Youth Services.
- The Director of Rehabilitation and Correction.

- The Director of Environmental Protection.
- The Director of Aging.
- The Director of Alcohol and Drug Addiction Services.
- The Administrator of Workers' Compensation.
- The Adjutant General.
- The Chancellor of the Ohio Board of Regents.
- The Chairperson of the Industrial Commission.
- The Director of the State Lottery Commission.
- The Superintendent of Public Instruction.
- The Chairperson of the Public Utilities Commission of Ohio.

Changes made by the bill

Exclusive authority of DAS (R.C. 125.831 and 125.832). The bill eliminates the current provisions concerning the fleet management program and replaces them with a requirement that DAS implement a new program by complying with the recommendations of the 2002 report entitled "Administrative Analysis of the Ohio Fleet Management Program." To accomplish this, the bill grants DAS exclusive authority over the acquisition and management of all state agency motor vehicles, which includes any automobile, automobile truck, tractor, or self-propelled vehicle not operated or driven on fixed rails or track but excludes vehicles used by a law enforcement officer or that have a one-ton or higher hauling capacity. "State agency," as the term is used in the program, means every organized body, office, or agency established by the laws of Ohio for the exercise of any function of state government, except for the General Assembly, any legislative agency, the Supreme Court, other courts of records in the state, and any judicial agency. Thus, as compared to current law, the new fleet management program created by the bill has broader application (e.g., the new program apparently applies to state-supported institutions of higher education) and thus extends the scope of DAS' powers.

Acquisition of motor vehicles (R.C. 125.832). Under the bill, DAS must approve the purchase or lease of each motor vehicle used by a state agency and may decide in which of these two manners motor vehicles will be obtained. Additionally, DAS must direct and approve all funds spent for the purchase, lease,

repair, maintenance, registration, and insuring, and all other expenses related to the possession and operation of the motor vehicles.

Use of motor vehicles (R.C. 125.83 (not in the bill), 125.832, and 125.834). The bill also sets forth several specific provisions governing state agencies' use of motor vehicles. First, motor vehicles are available to state agencies and their employees and heads in only the three following manners:

(1) Through DAS' provision of a motor vehicle on an intermittent or temporary basis from the fleet that is maintained by DAS in Columbus.

(2) Through a motor vehicle pool located at the central office of the state agency or at one or more of the state agency's regional offices. The bill grants DAS the authority to approve the location of each agency's pool.

(3) Through DAS' provision of a personal motor vehicle, at the request of a state agency, to an employee or head of the agency. The bill gives DAS sole discretion over the decision of whether a personal vehicle will be so granted. Additionally, an employee or agency head does not qualify for a personal vehicle unless the individual drives a certain minimum number of business miles per year, not to be less than 14,000 miles, that DAS must annually establish pursuant to a specific formula the bill establishes. If an individual does not drive the required amount of miles per year or is otherwise not granted approval by DAS for a personal motor vehicle, the individual must use either an agency pool motor vehicle or the individual's own motor vehicle. If the individual uses his or her own motor vehicle, the individual will be reimbursed at the travel reimbursement rate set by the Director of the Office of Budget and Management. Furthermore, if DAS approves a personal motor vehicle and the individual does not drive the required amount of business miles per year, the state agency must return the motor vehicle to DAS for reassignment and must reimburse DAS for all administrative costs incurred in the return and reassignment.

Additionally, the bill prohibits a state agency's employees or its head from receiving any additional salary, stipend, reimbursement, or any other form of compensation from the employee's or head's state agency for the use, ownership, lease, or operation of a motor vehicle *unless* the payment is made in accordance with rules adopted by DAS. The bill requires DAS to adopt these rules by December 31, 2003.

Reimbursement of costs (R.C. 125.834). The bill requires each state agency to reimburse DAS for all costs incurred by it in the assignment of motor vehicles to state agencies.

Fueling and maintenance (R.C. 125.832 and 125.834; Section 145.03G). DAS must negotiate with vendors to create fuel plans to provide fuel for the motor vehicles. Except in the case of an emergency, all fuel for the motor vehicles must be purchased through these plans. In the case of an emergency, the state agency or individual may be reimbursed, but only upon the approval of DAS.

The bill also grants DAS exclusive authority to determine how the motor vehicles will be maintained, insured, operated, financed, and licensed. To accomplish this, employees of DAS are the only state employees who are responsible for these responsibilities and, on September 1, 2003, the effective date of the provisions described in this section of the analysis, all state agency employees who are engaged in these activities are transferred to DAS.

Reporting requirement (Section 142.02E). By September 1, 2004, DAS must issue a report to the General Assembly indicating how it has implemented the recommendations from the 2002 report entitled "Administrative Analysis of the Ohio Fleet Management Program" report or explain why it has failed to do so.

Sales of excess motor vehicles (Section 145.03H). On September 1, 2003, all state agency motor vehicles that are driven 1,400 miles per month or less are considered excess. Each state agency that has these motor vehicles must transfer them to DAS. In turn, DAS may either reassign each motor vehicle or sell it. Proceeds from the sale of motor vehicles that were used by the Bureau of Workers' Compensation or the Industrial Commission must be paid to the credit of the State Insurance Fund (for workers' compensation). Proceeds from all other motor vehicles sold must go to the credit of the Budget Stabilization Fund (the Rainy Day Fund).

Vehicle management commission (R.C. 125.833). Finally, the bill establishes a Vehicle Management Commission within DAS. The Commission consists of the Director of DAS, two members of the House of Representatives appointed by the Speaker of the House, two members of the Senate appointed by the President of the Senate, and two members with experience in the vehicle leasing, purchasing, and maintenance industry who are appointed by the other members of the Commission. The initial appointment of legislative members must be made by September 1, 2003. Thereafter, legislative appointments to the committees are to be made within 15 days after the commencement of the first regular session of a General Assembly. The legislative members serve for the duration of that session and continue to serve until appointments are made during subsequent regular General Assembly sessions unless a Commission member

ceases to be a member of the General Assembly. Vacancies on the Committee are to be filled for the unexpired term in the same manner as an original appointment.[5]

The Commission must periodically review DAS' implementation of the new fleet management program created by the bill. Additionally, the Commission may recommend to DAS and the General Assembly modifications to DAS' procedures and functions and other statutory changes.

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.

- Exempts adult foster homes from the annual "bed" fee that long-term care facilities must pay for the support of regional long-term care ombudsperson programs.

- Requires the Department of Aging to adopt rules on deadlines for payment of the bed fee in accordance with the Administrative Procedure Act (R.C. Chapter 119.) rather than the procedures that do not require public hearings (R.C. Chapter 111.).

- Eliminates the Department of Aging's Long-Term Care Consumer Guide.

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

[5] *The bill does not indicate the length of the terms for the two members with experience in the vehicle leasing, purchasing, and maintenance industry. Thus, it is unclear if these two members serve continuously following their appointment by the other five original members or if subsequent legislative members appointed to the Commission (along with the Director of DAS) have the ability to select other persons in the future.*

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.

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 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.)

Current law also requires the Department of Aging to adopt rules on deadlines for payment of bed fees in accordance with R.C. 111.15, which does not require the Department to hold public hearings on proposed rules. The bill requires the Department to adopt the rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.), which requires the Department to hold public hearing on proposed rules.

The Long-Term Care Consumer Guide

(R.C. 173.45 to 173.59, repealed)

Current law requires the Department of Aging to publish the Ohio Long-Term Care Consumer Guide, a guide to Ohio nursing homes. The Guide must be available on the Internet, and is to be updated periodically. Every two years, the Department must publish an Executive Summary of the Guide, which must be available in electronic and printed media. In addition, current law specifies that, to the extent possible, annual customer satisfaction surveys must be conducted for use in the Guide. The Department may charge the nursing home a fee of up to $400 for each annual survey.

The bill eliminates the provisions regarding the publication of the Guide and Summary. Also repealed are the sections authorizing the annual customer

satisfaction survey and the Department's authority to charge a fee for those surveys.

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.

- Increases license and inspection fees related to nursery stock that are assessed under the Nursery Stock and Plant Pests Law, and requires the money collected from the new additional fees to be used to pay the costs of employing a minimum of two additional inspectors.

- 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 specified fees for performing those functions, and requires that the money from the fees be used to pay the costs of employing a minimum of two additional inspectors.

- 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 "***Changes in Nursery Stock and Plant Pests Law***"; "***Inspection of agricultural products by Director of Agriculture***," below).

Changes in Nursery Stock and Plant Pests Law

Increase in license and inspection fees related to nursery stock

(R.C. 921.151, 921.22, and 927.53; Sections 3.01, 3.02, 3.03, and 147.02)

Existing law establishes annual nursery stock collectors or dealers license fees, annual flat and per-acre inspection fees for woody nursery stock, and annual flat and per-acre inspection fees for nonwoody nursery stock. Under law not in the bill, money from the fees is credited to the General Revenue Fund. The bill increases the fees as follows:

License, inspection, and per-acre fee	Current fee	Proposed additional fee
Nursery stock collector or dealer license	$50	$25
Woody nursery stock inspection	$50	$15

License, inspection, and per-acre fee	Current fee	Proposed additional fee
Intensive production areas for woody nursery stock inspection, per acre	$4	50¢
Nonintensive production areas for woody nursery stock inspection, per acre	$2	$1.50
Nonwoody nursery stock inspection	$30	$35
Intensive and nonintensive production areas for nonwoody nursery stock inspection, per acre	$4	50¢

The money collected from the new additional fees must be deposited into the state treasury to the credit of the Pesticide Program Fund created in the Pesticides Law and must be used to hire a minimum of two additional inspectors. The bill specifies that the portion of the money in the Fund collected under the provisions governing the additional new fees must be used to carry out the purposes specified in those provisions and the portion of the money in the Fund collected under the Pesticides Law must be used to carry out the purposes of that Law.

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.

Under the bill, if the Director charges fees for any of the certificates, agreements, or inspections specified below, the fees must be as follows: (1) phyto sanitary certificates, $25, (2) compliance agreements, $20, (3) solid wood packing certificates, $20, and (4) vegetable, fruit, and field crop inspections, $65. The

Director may adopt rules that define the certificates, agreements, and inspections. The fees must be deposited into the state treasury to the credit of the Pesticide Program Fund created in the Pesticides Law. Money so credited to the Fund must be used to pay the costs incurred by the Department in employing a minimum of two additional inspectors. The bill specifies that the portion of the money in the Fund collected under the provisions governing agricultural product inspections must be used to carry out the purposes specified in those provisions and the portion of the money in the Fund collected under the Pesticides Law must be used to carry out the purposes of that Law.

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.

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)

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.

ATTORNEY GENERAL

- Modifies the law governing the Attorney General's collection of amounts due the state by (1) applying a different rate of interest to such claims and (2) permitting the addition of fees to recover the cost of processing checks returned for insufficient funds and the cost of providing electronic payment options.

- Eliminates the Attorney General's Drug Abuse Resistance Education Programs Fund (DARE Fund) and redirects the portion of the driver's license reinstatement money that it currently receives ($75) to two new funds: the Department of Transportation's Public Transportation Grant Programs Fund ($60) and the Department of Public Safety's Public Safety Investigative Unit Fund ($15).

Collection of moneys due the state

(R.C. 131.02)

Under ongoing law, money collected for the state by state officers, employees, and agents is to be paid by such persons into the state treasury in the manner prescribed by the Treasurer of State by rule. The bill clarifies that this requirement also applies to money collected for the state that is to be paid into a *custodial fund* of the Treasurer of State. (Custodial funds are in the custody of the Treasurer of State, but are not part of the state treasury.)

If an amount due the state is not paid within 45 days after payment is due, continuing law requires the officer, employee, or agent to certify the claim to the Attorney General for collection. Interest accrues on each such claim from the day on which the claim became due. Currently, the interest rate charged is the base rate per annum for advances and discounts to member banks in effect at the federal reserve bank in the second federal reserve district. Under the bill, the rate to be charged is the federal short-term rate, as determined by the Tax Commissioner on October 15 of each year, rounded to the nearest whole number percent, plus 3%.[6]

Ongoing law authorizes the Attorney General and the chief officer of the agency reporting a claim, acting together, to compromise the claim or extend the time for payment of the claim, if such action is in the "best interests of the state." The bill also permits them, if in the best interests of the state, to add fees to recover the cost of processing checks or other draft instruments returned for insufficient funds and the cost of providing electronic payment options.

OMVI driver's license reinstatement fee distribution

(R.C. 4503.234 and 4511.191)

Under current law, at the end of an OMVI-related driver's license suspension, the person whose license was suspended may apply to have the license reinstated. One condition for reinstatement is payment of a license reinstatement fee of $425. The reinstatement fee is deposited in the state treasury and credited as follows: (1) $112.50 to the Drivers' Treatment and Intervention Fund, to be used in a specified manner, (2) $75 to the Reparations Fund, (3) $37.50 to the Indigent Drivers Alcohol Treatment Fund, to be used in a specified manner, (4) $75 to the Ohio Rehabilitation Services Commission to be used in a specified manner, (5) $75 to the Drug Abuse Resistance Education Programs Fund (DARE Fund), to be used by the Attorney General for specified purposes, (6) $30 to the State Bureau of Motor Vehicles Fund, and (7) $20 to the Trauma and Emergency Medical Services Grants Fund.

The bill eliminates the DARE Fund described under (5) above and redirects the $75 as follows: (1) $60 to ODOT for the newly created Public Transportation Grant Programs Fund to be used to match available federal public transportation funds and for related operating expenses and (2) $15 to the Department of Public

[6] *"Federal short-term rate" is defined as the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the Internal Revenue Code, for July of the current year (R.C. 5703.47(A), not in the bill).*

Safety to the newly created Public Safety Investigative Unit Fund to be used for food stamp and liquor enforcement duties of the Investigative Unit.

Also under current law, any residual amount from the proceeds of the sale of a vehicle criminally forfeited because of OMVI-related offenses is shared by the Reparations Fund (50%), the DARE Fund (25%), and alcohol or drug addiction treatment programs specified by a juvenile court and certain law enforcement trust funds (25%). Under the bill, the Reparations Fund receives the portion of the proceeds of the sale of a forfeited vehicle currently directed to the DARE Fund, thus increasing the Reparation Fund's share to 75% of any residual distribution. The Reparations Fund is used primarily for crime victim compensation and related administrative expenses of the Attorney General.

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	from $50 to $75

Barber license and barber shop license	Fees
for each year expired	
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 licensure	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

- During the 2003-2005 biennium, limits the overall number of state employees (including university, college, and retirement system employees) to the overall level as of December 31, 2002, and requires the Director of Budget and Management to adopt procedures to ensure compliance.

- Repeals (1) a requirement that the Office of Budget and Management (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.

- Requires a state agency operating a state institutional facility that the Governor believes should be closed to conduct a survey and analysis of client needs to ensure those needs are met during the transition and in the client's new setting, and requires that the analysis, devoid of client identification, be submitted to the General Assembly at least two months before the closing.

- Requires that the information state agencies provide in their capital requests must include the effects and efficacy of projects relative to the needs of clients, customers, constituents, patients, inmates, or other persons based on a survey and analysis by the agency, requires that the Director of Budget and Management consider that efficacy in evaluating capital projects, and requires that a summary of the needs information for proposed projects be submitted to the General Assembly with the capital budget.

- Requires OBM to review all commercial services provided by the state and to issue a report identifying which of those services may be opened to competition with private enterprise and the manner in which they may be opened to competition, and requires, by July 1, 2004, OBM to open 5% of those services to competition.

- Requires OBM to develop a proposal, subject to approval by the General Assembly, for a program to provide incentives to public employees and to state agencies for identifying services that may be opened to competition with private enterprise and for implementing programs to open those services to competition.

- Requires OBM to review the structure of delivery of all administrative support services within the state for the purpose of determining the efficiency of the provision of those services, and to issue a report making recommendations for the consolidation, reformation, and restructuring of those services.

- Requires OBM to develop, and to submit to the General Assembly, a rating system for evaluating the effectiveness of all state programs.

- Requires the Governor, in submitting the proposed operating budget for the 2006-2007 biennium to the General Assembly, to include with the proposed budget a catalog indicating the rating received by each state program, if the rating system developed by OBM has been implemented.

- Creates the Asset and Enterprise Review Committee, the purposes of which are to (1) inventory and appraise all assets and enterprises of the state, (2) review those assets and enterprises to determine which of them may be sold, leased, or otherwise removed from state ownership or operation, (3) make recommendations for the disposal of those assets and

enterprises, and (4) make recommendations regarding the manner in which any resulting cost savings should be dispersed.

- Requires the Asset and Enterprise Review Committee to prepare its inventory, appraisal, and recommendations not later than December 31, 2003, and to file a written copy of them with the Governor, the Speaker of the House of Representatives, and the President of the Senate.

Employment cap on state employees

(Section 145.03Q)

The bill places an employment cap on the overall number of state employees during the biennium beginning July 1, 2003, and ending June 30, 2005, at the overall level as of December 31, 2002. For purposes of the employment cap, "state employee" includes, but is not limited to, a person employed by a state agency, board, or commission, a state institution of higher education, or a state retirement system. The bill also requires the Director of Budget and Management to adopt procedures to ensure compliance with the employment cap.

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.)

State agency "needs" analyses for closures and capital budgeting

(R.C. 107.31 and 126.03)

The bill provides a statutory requirement concerning the needs of clients served by a state institutional facility that the Governor believes should be closed. It requires the agency operating the facility to conduct a survey and analysis of the needs of each client housed at the facility to ensure that the client's identified needs are met during the transition and in the client's new setting. A copy of the analysis, devoid of any client identifying information, as well as the agency's proposal for meeting the clients' needs, must be submitted to the General Assembly at least two months before the closing.

The bill additionally modifies the state's capital planning and budgeting process as to any proposed state agency project that would affect the needs of clients, customers, constituents, patients, inmates, or other persons. Currently, the Director of Budget and Management must require from state agencies biennial recommendations as to real estate and public improvements that will be needed for at least the subsequent six years, including specified information about those recommendations. The Director must evaluate the recommended projects as to their validity and the comparative degree of need among them. The bill provides

that the information submitted with the agency recommendations must include the effects and efficacy of any improvement relative to meeting the needs of affected clients, customers, constituents, patients, inmates, or other persons based on a survey and analysis by the agency. It also requires the Director's evaluation of projects to consider their efficacy in meeting such needs based on the information submitted by the agencies. Additionally, a summary of an agency's "needs" information must be submitted with the biennial capital budget presented to the General Assembly for any projects included in the proposed budget.

State services review

Services of a commercial nature that are provided by the state

(Section 142.02A)

The bill requires the Office of Budget and Management (OBM) to review all commercial services provided by the state, including services provided by public universities, and to issue a report identifying which of those services may be opened to competition with private enterprise and the manner in which those services may be opened to competition.[7] The report must be issued to the Governor, the Speaker of the House of Representatives, and the President of the Senate not later than December 31, 2003. By July 1, 2004, OBM must implement a program to open at least 5% of the services identified in the report to competition.

OBM also must develop a proposal, subject to approval by the General Assembly, for a program to provide incentives to public employees and to state agencies for identifying services that may be opened to competition with private enterprise and for implementing programs to open those services to such competition. Incentives provided in the proposal may include, but are not limited to, cash payments made to employees, and state agencies retaining a percentage of any budgetary savings realized through the implementation of competition with private enterprise. The proposal must be submitted to the General Assembly not later than March 31, 2004.

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[7] *"Commercial" means performing services or providing goods that normally can be obtained from a private enterprise. "Private enterprise" means an individual, firm, partnership, joint venture, corporation, association, or other legal entity engaging, in the private sector, in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services for profit.*

The structure of delivery of administrative support services

(Section 142.02B)

The bill requires OBM to review the structure of delivery of all administrative support services within state government for the purpose of determining the efficiency of the provision of those services. The review must include, but is not limited to, each of the following categories of administrative support services: fiscal management and oversight, human resources, purchasing, printing, fleet management, and contracting.

For each category of administrative support services, the review must include an accounting of all personnel engaged in the relevant service, consideration of the responsibility and role of each service, a determination of the existence of duplicative equipment and systems, the appropriate level of oversight, existing oversight roles, operational efficiencies, and the cost of providing services. OBM must issue a report to the General Assembly, not later than January 31, 2004, making recommendations for the consolidation, reformation, and restructuring of those services and specifying any changes that must be made to statutory or uncodified law in order to implement those recommendations.

Rating the effectiveness of state programs

(Section 142.02C)

The bill requires OBM to develop a rating system for evaluating the effectiveness of all state programs. The rating system may consider the cost of the program, the accountability of spending, the appropriateness of state government providing the services offered, the program's impact, and whether the program is meeting its stated goals, if any. OBM must submit the rating system to the General Assembly not later than May 1, 2004. If the General Assembly fails to prohibit the rating system from taking effect within 60 days after it is submitted, OBM must implement the rating system. If the rating system is so implemented, the Governor, in submitting the proposed operating budget for the 2006-2007 biennium, must include with that budget a catalog indicating the rating received by each state program.

The Asset and Enterprise Review Committee

(Section 142.02D)

The bill creates the Asset and Enterprise Review Committee, the purposes of which are to (1) inventory and appraise all assets and enterprises of the state, (2) review those assets and enterprises to determine which of them may be sold, leased, or otherwise removed from state ownership or operation, (3) make

recommendations for the disposal of those assets and enterprises, and (4) make recommendations regarding the manner in which any resulting cost savings should be dispersed. In determining the manner in which cost savings should be dispersed, the Committee must consider recommending that the agency that owns or controls the asset or enterprise being disposed of be allowed to retain a portion of the savings realized through that disposal.

The Committee must consist of 13 members to be appointed as follows:

(1) The Director of Administrative Services or the Director's designee;

(2) The Director of Budget and Management or the Director's designee;

(3) Two members of the Governor's administration, to be appointed by the Governor;

(4) Three members of the House of Representatives, to be appointed by the Speaker of the House of Representatives;

(5) Three members of the Senate, to be appointed by the President of the Senate;

(6) One member of the private sector, to be appointed by the Governor;

(7) One member of the private sector, to be appointed by the Speaker of the House of Representatives;

(8) One member of the private sector, to be appointed by the President of the Senate.

Members must be appointed within 30 days after the bill's effective date, and vacancies on the Committee must be filled in the manner provided for original appointments. Members receive no compensation, but must be reimbursed for necessary expenses incurred in the performance of official duties. In appointing the legislative members of the Committee, the Speaker of the House of Representatives and the President of the Senate each must designate one member as a co-chairperson of the Committee. The co-chairpersons must convene such meetings of the Committee as they consider necessary to carry out its purposes.

Not later than December 31, 2003, the Committee must prepare its inventory, appraisal, and all required recommendations and file a written copy of them with the Governor, the Speaker of the House of Representatives, and the President of the Senate. When the Committee has filed its inventory, appraisal, and recommendations, it must cease to exist.

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; Section 3.04)

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.

- Establishes a two-year statute of limitations for actions alleging a violation of the Prevailing Wage Law.

- Requires an employee who files a written complaint with the Director of Commerce alleging a violation of the Prevailing Wage Law to include documented evidence to support the complaint.

- Extends the time in which an employee may file a lawsuit before being barred from further action under the Prevailing Wage Law from 60 days to 90 days from the date on which the Director of Commerce determines that there has been a violation of the Prevailing Wage Law.

- Transfers Office of State Fire Marshal from Department of Commerce to Department of Public Safety.

- Transfers responsibility for the regulation of underground storage tanks from the State Fire Marshal to the Superintendent of Industrial Compliance in the Department of Commerce.

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. 4104.01, 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.

Prevailing Wage Law

Statute of limitations

(R.C. 4115.21)

Currently, Ohio's Prevailing Wage Law generally requires public authorities engaging in the construction of a public improvement that costs above specified threshold amounts to ensure that workers employed on the project are paid the prevailing wage. The "prevailing wage" is the sum of the basic hourly rate of pay, certain employer contributions to funds, plans, and programs, and fringe benefit costs such as insurance and vacation leave. It is determined by the Director of Commerce and cannot be less than the prevailing wages payable in the same trade or occupation in the locality of the public improvement under collective bargaining agreements.

Under existing law, an interested party may file a complaint with the Director of Commerce alleging a violation of the Prevailing Wage Law. The Director, upon receipt of a complaint, must investigate. If the Director determines that no violation has occurred or that the violation was not intentional, or, if the Director has not ruled on the merits of the complaint within 60 days after its filing, the interested party may appeal the decision to the court of common pleas of the county where the violation is alleged to have occurred.

The bill requires an interested party to file this appeal within two years after the alleged violation occurred.

Complaint procedures

(R.C. 4115.10)

Under current law, any employee upon any public improvement who is paid less than the prevailing rate of wages applicable thereto may file a complaint in writing with the Director of Commerce on a form furnished by the Director. The prevailing wage is the rate paid for comparable work in the private sector under collective bargaining agreements in force within the county where the public improvement is to be undertaken. Under current law, at the written request of any employee paid less than the prevailing rate of wages, the Director is required to take an assignment of a claim in trust for the assigning employee and bring any legal action necessary to collect the claim.

Under the bill, an employee who files a written complaint with the Director is required to include with that written complaint, documented evidence to demonstrate that the employee was paid less than the prevailing wage in violation of the Prevailing Wage Law.

Procedure for filing a lawsuit

(R.C. 4115.10)

Existing law allows an employee to file suit for recovery within 60 days of the Director's determination of a violation of the Prevailing Wage Law. Under the bill, an employee is allowed to file suit for recovery within 90 days of the Director's determination of a violation of the Prevailing Wage Law.

State Fire Marshal transferred to the Department of Public Safety

(R.C. 121.04, 121.08, 3737.21, 3737.22, 3737.71, 3743.57, 3743.75, 3746.02, and 3901.86)

Under current law, the Fire Marshal is under the Department of Commerce. The Director of the Department of Commerce appoints the Fire Marshal, and the Department of Commerce is given all powers, and may perform all duties, vested in the Fire Marshal. The Fire Marshal has the responsibility for adopting and enforcing a state fire code, appointing fire marshals to enforce the fire code, conducting investigations into the cause and circumstances of fires and explosions and assisting in the prosecution of persons believed to be guilty of arson and related crimes, providing public education on fire safety, and for performing a number of other duties under Chapters 3737. and 3743. of the Revised Code.

The bill transfers the Office of the Fire Marshal to the Department of Public Safety. The Director of Public Safety is given the authority to appoint the Fire Marshal, to serve at the pleasure of the Director. Sections of the Revised Code that referred to the Fire Marshal as working for the Department of Commerce are amended to provide for the Fire Marshal's position under the Department of Public Safety; references in these sections to the Department of Commerce and the Director of Commerce are replaced with references to the Department of Public Safety and the Director of Public Safety.

Under current law, the Fire Marshal is assessed a share of the administrative costs of the Department of Commerce, with the assessment paid into the Division of Administration Fund. These sections of the bill assess the Fire Marshal a share of administrative costs of the Department of Public Safety, with the assessment paid into the Highway Safety Fund, created under section 4501.06 of the Revised Code. The funds are subject to appropriation solely for the expense of the operation and maintenance of the Department of Public Safety.

The State Fire Marshal's Fund, created by section 3737.71 of the Revised Code, receives fees from licenses, permits, testing, assessments on insurers selling fire insurance in this state, and assessments on fireworks manufacturers and wholesalers. Under current law, the use of the Fund must comply with rules of the Department of Commerce; these sections of the bill provide that the rules governing the Fund are established by the Department of Public Safety.

Responsibility for the regulation of underground storage tanks transferred from the Fire Marshal to the Superintendent of Industrial Compliance

(R.C. 3737.01, 3737.02, 3737.88, 3737.881, 3737.882, 3737.883, 3737.89, 3737.91, 3737.92, 3737.98, 3741.14, and 3741.15)

Under current law, the Fire Marshal has the responsibility for the implementation of the Underground Storage Tank Program and for taking corrective action in the event of releases from underground petroleum storage tanks. The Fire Marshal may adopt rules, conduct inspections, certify installers, require annual registration of underground storage tanks, issue citations, and perform other related duties. The bill transfers this responsibility, and the related authority, from the Fire Marshal to the Superintendent of Industrial Compliance in the Department of Commerce.

The bill replaces references to the Fire Marshal with references to the Superintendent of Industrial Compliance, in relation to the Fire Marshal's regulation of underground storage tanks, currently found in sections of the Underground Storage Tank Law, sections 3737.88 through 3737.89 of the Revised Code, and in other sections of Chapter 3737. of the Revised Code, including sections of the Underground Storage Tank Release Compensation Board Law, sections 3737.90 through 3737.98 of the Revised Code. The bill also replaces references to the State Fire Commission with references to the Board of Building Standards in connection with the filing of rules under the Underground Storage Tank Law; under these provisions, the Superintendent will file rules with the Board for the Board's review and recommendations.

The bill also requires the Superintendent of Industrial Compliance to adopt rules, as necessary to protect persons and property, governing the equipment, operation, and maintenance of filling stations. Under current law, the Fire Marshal has the responsibility for adopting these rules. A new provision gives to the Superintendent of the Division of Industrial Compliance exclusive responsibility for permitting and the inspection of, above-ground storage tanks containing petroleum or petroleum products at bulk plants and terminals in this state. The Superintendent, in consultation with the Board of Building Standards, is required to adopt rules as necessary to carry out this new responsibility.

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 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 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 and the Environmental Protection Agency for purposes of the brownfield portion of the Clean Ohio 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.

- Transfers the Ohio Coal Development Office, as of July 1, 2003, from the Department of Development to the Ohio Air Quality Development

Authority, and transfers, unchanged, all Office and coal development-related FY 2004-2005 budget items proposed for the Department of Development to the Authority's proposed budget.

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

(R.C. 122.25)

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.

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.

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 Coal Development Office transfer

(R.C. 1551.11, 1551.12, 1551.15, 1551.311, 1551.32 to 1551.35, 1555.02 to 1555.06, 1555.08, and 1555.17; Sections 13, 38, 38.07, 88.13, and 145.03E)

The general purpose of the Ohio Coal Development Office is to support research and development in the use of Ohio coal in an environmentally sound and economical manner, including by financing technology and facilities with the proceeds of state general obligation bonds. Currently, the Ohio Coal Development Office is part of the Department of Development, which generally has economic development and energy-related functions. The Office director is appointed by the Director of Development.

Changes made by the bill are those required to transfer the Coal Development Office, as of July 1, 2003, from the Department of Development to the Ohio Air Quality Development Authority (OAQDA), and to confer on OAQDA all of the current authority of the Director of Development related to the Office, including the duty to appoint the Office director. Currently, OAQDA generally assists Ohio businesses, government agencies, and not-for-profit organizations in complying with air quality regulations, by providing financing for air pollution control equipment through the issuance of revenue bonds; it also provides financial assistance for energy efficiency and conservation and for ethanol and other bio-fuel production facilities.

The bill provides that upon the transfer, instead of acting with the approval of the Director of Development, the Ohio Coal Development Office may act with

the affirmative vote of a majority of the seven OAQDA members. The OAQDA's members, currently and under the bill, consist of the Director of Environmental Protection and the Director of Health, and five members appointed by the Governor with the advice and consent of the Senate.

Under current law, the Coal Development Office is assisted by a technical advisory committee that consists of the following: (a) one representative each of coal production companies, the United Mine Workers of America, electric utilities, manufacturers that use Ohio coal, and environmental organizations, to be appointed by the Office director, (b) two people with coal research and development backgrounds, appointed by the Office director, (c) four legislators, (d) one member of the Public Utilities Commission appointed by the Office director, (e) the Director of Environmental Protection, representing the Environmental Protection Agency (EPA), (f) the Ohio Water Development Authority (OWDA), and (g) the OAQDA. The bill replaces OAQDA membership on the advisory committee with membership of the Director of Development, and clarifies that OWDA is to be represented by one of its members designated by OWDA.

The bill further contains standard, temporary law provisions necessary for the transfer of the Coal Development Office to OAQDA and specifically provides that, subject to the lay-off provisions of existing law, all of the employees of the Coal Development Office of the Department of Development are transferred to the Coal Development Office of the OAQDA, and they retain their positions and benefits. Under the bill, however, all Office employees will be in the unclassified service and serve at the pleasure of OAQDA. Additionally in temporary law, the bill transfers unchanged to the FY 2004-2005 OAQDA budget all of the proposed Office and coal development–related FY budget provisions that were proposed for coal development under the Department of Development's budget. Thus, the bill is revenue neutral as to the transfer of coal development-related budget items to OAQDA.

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 specified fees as follows:

(1) Initial license or reactivation of an inactive license--$125 (from $110).

(2) Reinstatement of a license that has been revoked, suspended, or lapsed--$180 (from $165).

(3) License renewal--$95 (from $80).

(4) Limited permit, or renewal of a limited permit--$65 (from $55).

DEPARTMENT OF EDUCATION

- Maintains the $5,088 and $5,230 per pupil base cost formula amounts specified in current law for FY 2004 and FY 2005, respectively, but eliminates the currently specified formula amounts for FY 2006 and FY 2007 in anticipation of the General Assembly enacting a new school funding system in the future.

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

- Continues the scheduled phase-in of parity aid at 60% in FY 2004 and 80% in FY 2005.

- Replaces formula ADM with monthly average daily attendance in the calculation of base cost and parity aid funding, beginning in FY 2005.

- Provides additional state transitional aid in FY 2005, when formula ADM is replaced by average daily attendance.

- Establishes an Enhanced Urban Attendance Improvement Initiative to pay additional state funds to Big Eight school districts that increase their attendance rates in FY 2005.

- Continues the phase-in of the six special education funding weights by establishing an 88% payment rate in FY 2004 and a 90% payment rate in FY 2005.

- Maintains for FY 2004 and FY 2005 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 and FY 2005.

- Grants most school districts a 2% increase in their FY 2004 and FY 2005 DPIA subsidies, regardless of any changes in the proportion of children receiving public assistance.

- 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.

- Establishes statutory authorization for two new state Head Start programs: "Head Start" and "Head Start Plus" to be operated by the Department of Education and funded with federal money transferred from the Department of Job and Family Services.

- 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 state Head Start and Head Start Plus programs.

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

- Requires the Legislative Office of Education Oversight to study partnership agreements between Head Start providers and child care providers.

- 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 language 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, 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 students' parents.

- 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.

- Permits an educational service center (ESC) to sponsor a community school in any challenged school district.

- Prohibits a community school whose contract has been terminated from entering into a new contract with another sponsor.

- Allows a community school to enter into a contract with a new sponsor, provided the school notifies its original sponsor within 180 days prior to the contract's expiration that it will not renew the contract.

- Requires the automatic withdrawal of a community school student after missing 105 *consecutive* (rather than *cumulative* as under current law) hours of learning opportunities without excuse.

- Specifies that the amount paid to community schools and deducted from the state aid of their students' home districts cannot exceed the home districts' total state payments and property tax rollback reimbursement.

- Requires the Department of Education to pay to community schools the per pupil amount of state parity aid funding that otherwise would be paid to their students' resident school districts and requires the Department to deduct the corresponding amount from the students' resident districts.

- Requires the Department of Education in fiscal years 2004 and 2005 to pay a subsidy to certain community schools in which at least half of the total number of enrolled students are severe behavior handicapped students.

- Makes other clarifications to the community school law.

- Eliminates the requirement that the Department of Education appoint transportation coordinators to oversee transportation of students by school districts.

- Removes a school district's authority to limit textbook purchases to only six subjects per year, and eliminates the prohibition against a school district changing or revising a textbook selection more frequently than once every four years.

- Provides that school district business managers, in general, are to be employed in the same manner as other administrators.

- Eliminates the requirement that school districts issue annual reports of school progress.

- Eliminates a public school's authority to operate a school savings system for students to deposit money into personal savings accounts.

- Eliminates the requirements that the State Board of Education adopt standards for service plans by educational service centers (ESCs), that the State Board approve such plans developed by ESCs, and that the State Board evaluate ESCs every five years.

- Eliminates the requirement that ESCs certify their operating budgets to the State Board of Education.

- Clarifies procedures for the Department of Education to follow in calculating payments to ESCs.

- Eliminates provisions for ESC superintendents to approve the employment of teachers, administrators, and superintendents by local school districts.

- Specifically permits ESCs to conduct searches and recruitment of candidates for employment in school districts.

- Eliminates provisions for ESC superintendents to approve the assignment of students and staff to respective schools in local school districts.

- Clarifies method of calculating cost of ESC office space provided by a board of county commissioners.

- Eliminates the requirement that ESCs gather from local school districts and submit to the State Board of Education on their behalf annual reports of district statistics.

- Eliminates the requirement that the State Board of Education adopt a standard establishing a maximum ratio of 25 pupils to one teacher in classes for bilingual multicultural pupils.

- Changes a school's minimum school year from 182 days to 455 hours for kindergarten students, 910 hours for students in grades 1 to 8, and 1,001 hours for students in grades 9 to12.

- Eliminates excused "calamity" days for schools.

- Eliminates the requirement that each county auditor file with the Superintendent of Public Instruction each school district's certificate of estimated appropriations and appropriation measure.

- Requires a board of education of a school district that receives a petition requesting a transfer of territory to an adjoining district to cause the board of elections to check the sufficiency of signatures on that petition.

- Requires the Department of Education to establish the Ohio Regional Education Delivery System (OREDS) by July 1, 2004, to provide services and technical assistance to school districts.

- Requires the Department, in consultation with stakeholders, to develop accountability systems for OREDS, educational service centers, data acquisition sites, and educational technology centers.

- Removes all Revised Code references to "regional professional development centers" to reflect the elimination of funding for the centers by the bill.

- Establishes a temporary pilot project for FY 2004 and 2005 under which the parent of a child identified as autistic who is eligible for special education and related services from the child's resident school district may receive a scholarship of up to $15,000 (which is deducted from the account of the child's resident district) to pay all or part of the tuition for a special education program provided by another school district, another public entity, or a nonpublic entity.

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.[8] In that decision, the Court held

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

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.[9]

On May 11, 2000, the Court held the new system unconstitutional on essentially the same grounds.[10] 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.[11]

Building on the previous legislative work, the 124th General Assembly substantially changed the state's academic accountability provisions, including a requirement that the Department of Education develop new academic standards to which new student diagnostic assessments and achievement tests are to be aligned.[12] In addition, in the 2001-2003 biennial budget act, the legislature made changes to the school funding system, including (among other things) enacting a

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[9] *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.*

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

[11] *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.*

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

new parity aid subsidy and creating a new system of six special education funding weights instead of three weights as under prior law.[13]

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*).[14] 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.[15] Settlement efforts were not successful, and the Court ruled again on the merits of the case on December 11, 2002 (*DeRolph IV*).[16] 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." Nevertheless, the Court did not establish a deadline for compliance with its order. Seventeen days later, the Court denied the plaintiffs' motion for attorney fees and expenses.[17]

Subsequently, the plaintiffs filed a motion in the Perry County Court of Common Pleas seeking an order for a compliance conference relative to the Supreme Court's order in *DeRolph IV*. In response, the state filed a motion in the Supreme Court seeking a writ of prohibition against Perry County Common Pleas Judge Linton Lewis, arguing that the Judge is without jurisdiction to hear the plaintiffs' motion before him. On April 2, 2003, the Supreme Court denied the state's motion for an emergency stay of any proceedings in the Perry County Court of Common Pleas in the *DeRolph* case and granted the motion of the *DeRolph* plaintiffs and the Ohio Coalition for Equity and Adequacy of School Funding to

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

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

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

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

[17] DeRolph v. State *(2002) 97 Ohio St.3d 1494.*

intervene in the case of the state's motion for a writ of prohibition.[18] However, the Court did not rule on the merits of the state's motion. To date, neither the Supreme Court nor the Common Pleas Court has ruled on any of the respective substantive motions before each court.

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).[19] 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:

[18] State ex rel. State v. Lewis, *2003 Ohio LEXIS 789.*

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

(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 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)[20]

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

[20] *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.*

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:

$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.[21] 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

[21] *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.*

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.

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).[22] 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:

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[22] *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.*

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

(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.[23] Under this formula, each district's payment for

[23] *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).[24] 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."[25] (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.

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[24] *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).)*

[25] *"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 %	Limit on Local Share of Categor-ical 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.

Switch from formula ADM to average daily attendance beginning in FY 2005 for base-cost and parity aid payments

(substantive provisions: R.C. 3317.01, 3317.02, 3317.022, 3317.0217, 3317.03, 3317.034, and 3317.16; Section 40.34)

(conforming amendments: R.C. 3311.52, 3313.647, 3313.90, 3313.981, 3323.12, and 3365.04)

Beginning in FY 2005, the bill replaces formula ADM with average daily attendance as the measure of a school district's enrollment for calculating base-cost funding and parity aid. (Formula ADM remains the enrollment measure for other state subsidies, including equity aid and school facilities assistance.)

Starting in October 2004, school districts must make monthly reports of their actual attendance figures to the State Board of Education. The monthly average daily attendance is the total student attendance for the previous month, on an FTE basis (as defined by the State Board), divided by the total number of days the district's schools were open for instruction that month. A student may be counted as attending if (1) attending school, (2) attending a school-sponsored field trip, (3) serving an in-school suspension, or (4) receiving instructional services from the district while serving an out-of-school suspension or an expulsion. Also, a special education student receiving home instruction may be counted. Students otherwise absent, with or without excuse, may not be counted. However, if a district allows a student to make up, during hours the student ordinarily does not attend school, instructional time missed due to an excused absence, the student's attendance during the make-up time may be counted on an FTE basis.

Once average daily attendance replaces formula ADM, base-cost and parity aid funding is to be recalculated monthly, based on the previous month's attendance figures, as reported by the districts.[26] Each month's payment is one-twelfth of the formula calculations. Payments in July, August, and September must be based on attendance figures for the previous May.

Also, because it is based on the ratio of state payment to the total calculated base cost, each district's state share percentage will vary from month to month. This percentage is used to calculate the state payment of special education, vocational education, and other categorical funding subsidies.

Transitional aid

(Section 40.33)

For FY 2005, the first year that average daily attendance is used, the bill directs that no school district's "SF-3 funding plus charge-off supplement" decrease by more than 5%. If any district's calculated payments decrease by more than 5%, the Department must pay the district additional state funds to reduce the decrease to 5%.

A district's "SF-3 funding plus charge-off supplement" comprises most of the state subsidies paid to school districts, including base-cost, special education, vocational education, transportation, DPIA, gifted education units, parity aid, and the charge-off supplement.

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[26] *The Department of Education currently distributes payments to school districts twice a month. The bill would not prevent that from continuing.*

Enhanced Urban Attendance Improvement Initiative

(Section 40.32)

Also in FY 2005, the bill provides additional funding to the Big Eight school districts (Akron, Canton, Cleveland, Cincinnati, Columbus, Dayton, Toledo, and Youngstown) if they improve student attendance rates from FY 2004 to FY 2005. The amount of the additional subsidy is up to 50% of the $5,230 formula amount, multiplied by the product of the increase in attendance rate from FY 2004 to FY 2005 times the FY 2004 average daily attendance. If the $15 million amount set aside for this initiative will not support 50% of the formula amount, however, the Department of Education must reduce the percentage to a level supported by the set-aside.

Amendments to statutes in anticipation of new funding system

Elimination of future school funding features

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

In apparent anticipation of the General Assembly enacting a new school funding system in the future, the bill revises several current statutes to prevent their application beyond FY 2005, as follows:

(1) The bill eliminates the statutory base-cost amounts for FY 2006 and 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)).

Two-year extension of other school funding components

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

The bill extends into fiscal years 2004 and 2005 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));[27]

(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(D)(2)); and

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

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 and FY 2005. 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 and FY 2005

(Section 40.10)

An uncodified provision of the bill directs that every school district is to receive a 2% increase in its FY 2004 and FY 2005 DPIA payment, unless it has received the same DPIA payment every year since FY 1998 because it is on the DPIA "guarantee," which entitles districts to receive no less in DPIA funds than they received under the old, pre-*DeRolph* DPIA program. This across-the-board increase 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).

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[27] *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.*

This uncodified stipulation of an across-the-board 2% increase for FY 2004 and FY 2005, therefore, appears to defer a change in the calculation of the DPIA index, which current law has scheduled for FY 2004. The current DPIA index measurement accounts 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.

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 currently specified in statute after FY 2003.

The bill continues the phase-in by specifying payment percentages of 88% for FY 2004 and 90% for FY 2005.

The bill requires the Department to submit a report to OBM by May 30 of 2004 and 2005 that specifies for each school district the amount of local, state, and federal pass-through funds allocated for special education and related services.

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 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.[28] 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.[29]

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.

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

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[28] 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.

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

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.[30]

Head Start and Head Start Plus

(R.C. 3301.31, 3301.33, 3301.34, 3301.35, 3301.36, 3301.40, 4511.75, 5104.01(T), 5104.02(B)(7), and 5104.30(C)(4); Sections 3.07, 3.08, 3.09, 40.19, and 58.21)

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 statutory language provides that 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.[31] The two departments are authorized under the bill to enter into an interagency agreement to develop procedures for the operation of the programs.

However, the bill's uncodified provisions negate these provisions for the biennium. Instead, they direct the Department of Job and Family Services to transfer funds each fiscal year from the TANF Block Grant to the Child Care and Development Fund, which contains other federal money, and then to the Head Start/Head Start Plus appropriation account of the Department of Education. They further specify that TANF restrictions on eligibility and services do not apply to Head Start and Head Start Plus, even though the bill's codified provisions state

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

[31] *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 funds to states to serve low-income families with children.*

otherwise. Essentially, the uncodified provisions intend to remove the state Head Start and Head Start Plus programs from the purview of TANF.

Under the uncodified provisions, the Department of Education will administer the program pursuant to an interagency agreement with the Department of Job and Family Services. The agreement must specify audit and reporting requirements applicable to the use of money from the Child Care and Development Fund.

Licensing of Head Start agencies

(R.C. 3301.37, 3301.52 to 3301.55, 3301.57, 3301.58, 5104.02, and 5104.32(B)(5), 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 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.[32] 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.[33]

LOEO study of Head Start and child care partnership agreements

(Section 145.03R)

The bill directs the Legislative Office of Education Oversight to study partnership agreements between Head Start providers and child care providers. As part of the study, LOEO is directed to examine the technical features of such agreements, the financial and intangible costs and benefits to children and providers, the impact on literacy-readiness, and whether any administrative entity such as a county department of job and family services oversees such agreements. LOEO must submit its study to the General Assembly by December 31, 2004.

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

[33] 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.)

Calculation of formula ADM

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

The formula ADM (average daily membership) is a variable currently used in school funding formulas to approximate a school district's enrollment and, even after the switch to average daily attendance in FY 2005, will continue to be used in calculating several state education subsidies. 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.[34] 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.[35]

(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 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.)

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[34] 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.

[35] 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.

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 language 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 language 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.[36]

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.

- 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

[36] *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.*

- 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.[37] 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 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.

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

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.[38] 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 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.

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

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.[39]

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.[40] Upon a fiscal emergency designation, a financial planning and supervision commission is established for the purpose of developing and implementing a financial recovery plan.

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.

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[39] 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.

[40] 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).

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.

Changes to community school law

Sponsorship of community schools by ESCs

(R.C. 3314.02(C)(1)(d))

Current law imposes a geographical restriction on where an educational service center (ESC) may sponsor a start-up community school. Specifically, an ESC can only sponsor a community school in a challenged school district in a county within the territory of the ESC or in a county contiguous to such county.[41] The bill removes this restriction and permits an ESC to sponsor a community school in *any* challenged school district.

New sponsors after contract termination or nonrenewal

(R.C. 3314.07)

Under continuing law, a sponsor may terminate a contract with a community school prior to its expiration date, or choose not to renew the contract, for any of the following reasons: (1) failure of the school to meet student performance requirements outlined in the contract, (2) fiscal mismanagement, (3) violations of state or federal law or provisions of the contract, or (4) other good cause. Notification of a sponsor's intent to terminate or not renew a contract must be given to the community school at least 90 days before the termination or nonrenewal.

The bill prohibits a community school whose sponsor has *terminated* its contract from entering into a new contract with another sponsor. Thus, the school

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[41] *A "challenged" school district is any one of the following: (1) a school district that is part of the Lucas County pilot project area, (2) a school district in a state of academic watch or academic emergency, (3) a Big-Eight school district (i.e., Akron, Canton, Cincinnati, Columbus, Cleveland, Dayton, Toledo, and Youngstown), or (4) an urban school district.*

would be forced to close permanently. A community school whose contract is *not renewed* is permitted to find a new sponsor as under current law.

Also, under the bill, if a community school does not wish to renew a contract with its sponsor, the school must notify the sponsor in writing of its decision at least 180 days prior to the contract's expiration date. Once the contract expires, the community school may enter into a contract with a new sponsor.

Automatic withdrawal of community school students

(R.C. 3314.03(A)(6)(b))

Current law requires the governing authority of a community school to automatically withdraw a student who fails without legitimate excuse to participate in 105 *cumulative* hours of learning opportunities offered to the student. The bill requires automatic withdrawal after missing 105 *consecutive* hours of learning opportunities without excuse.

Internet- or computer-based community schools

(R.C. 3314.02(A)(7) and 3314.08(N))

As defined in the bill, an Internet- or computer-based community school (sometimes called an electronic or e-school) is one where "students participate primarily in non-classroom-based learning opportunities provided via Internet-based, or other computer-based instructional methods." This definition replaces language in current law stating that students "work primarily from their residences" with the term "non-classroom-based learning opportunities," which under continuing law must be specified in the school's contract with its sponsor. The bill also adds that these learning opportunities may be provided by "noncomputer-based instructional methods." (R.C. 3314.02(A)(7).)

Current law also specifies that a student is not considered enrolled in an Internet- or computer-based community school until the student possesses or has been provided with all necessary hardware and software materials and those materials are "fully operational." Therefore, the school cannot receive any state funds for that student until this requirement is met. The bill further clarifies that a student is considered enrolled for the purpose of funding when the school has provided the student with "operational" hardware and software necessary to enable the student to participate fully in the learning opportunities prescribed in the school's contract.[42] (R.C. 3314.08(N).)

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[42] *Another provision, not changed by the bill, requires an Internet- or computer-based community school to provide each student enrolled in the school with a computer.*

Notification to parents of community school students

(R.C. 3314.041)

The bill requires each community school to distribute in writing a statutorily prescribed statement to parents of students at the time the students enroll in the school. This statement explains that community schools are public schools and that students enrolled in them are subject to achievement testing and other requirements stipulated by law. Current law requires that the statement be placed in a conspicuous manner in all documents distributed to parents and the general public.

Payments to community schools

(R.C. 3314.08)

Each community school receives a payment from the state for each student that attends the school. The payment is deducted from the amount of state moneys that the school district in which the student is entitled to attend school would otherwise receive for each student that is attending the community school. This payment is the sum of the formula amount (the base cost attributed to all students) times the cost-of-doing-business factor for the county in which the student's resident school district is located, any special education weights and vocational education weights (including local share) calculated for the student, and some Disadvantaged Pupil Impact Aid calculated for the student.

The bill specifies that the amount of state funds paid to community schools and deducted from the state aid of their students' home districts cannot exceed the total of the home districts' state payments and property tax rollback reimbursement.[43] If the total state payments calculated for all students attending community schools from a particular district is greater than the state payments plus the property tax rollback reimbursement calculated for that district, the payment to each community school must be prorated to balance the state aid distributed to the community schools and the district.

However, at the option of a parent who has more than one child enrolled in the school, the school may provide fewer than one computer per student as long as the household receives at least one computer. (R.C. 3314.032(A), not in the bill.)

[43] For the purpose of this provision, the bill defines the total state payment to a school district as the "SF-3 payment" (in reference to the worksheet used to calculate state payments to districts). This payment includes the formula amount, special education and vocational education weighted funding, gifted education units, transportation, and other categorical funding, as well as adjustments prescribed by law.

Parity aid funding for community schools

(R.C. 3314.08(C)(6) and (D)(7))

The bill requires the Department of Education to pay to each community school the per pupil amount of state parity aid funding calculated for each school district, in which students who are enrolled in the community school are entitled to attend school (the students' resident districts), times the number of each district's students enrolled in the community school.[44] That amount is then to be deducted from each school district's state aid account in the same manner as most other payments to a community school. (See "***Parity aid***" and "***Payments to community schools***" above.)

Temporary subsidy for community schools that enroll a high number of severe behavior handicapped students

(Section 40.35)

Community schools receive funds in addition to the formula amount for each special education student they enroll (see "***Payments to community schools***" above).[45] An additional subsidy is available under the bill for certain community schools to assist them in meeting special education costs.

The bill establishes a temporary subsidy for fiscal years 2004 and 2005 for any community school in which the number of students receiving special education and related services for "severe behavior handicap" conditions (SBH students) in each of those fiscal years is at least 50% of the total number of students enrolled in the school. This subsidy is not deducted from any amounts calculated for any school district. The amount of the subsidy for each fiscal year is the difference between the aggregate amount calculated for all the SBH students enrolled in the community school for that fiscal year and the aggregate amount calculated for such students for fiscal year 2001. If the difference is a negative number, the amount of the subsidy is zero.

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[44] The number of enrolled students multiplied by the per pupil amount of parity aid funding is the number of the district's students in grades one through twelve, plus one-half the number of the district's students in kindergarten, which is the same way students are counted for the district's state aid.

[45] The additional amount for a special education student depends upon the "weight" assigned the student based upon the student's special need classification. The weight attributed to each class is multiplied by the formula amount to determine the amount of additional payment for each special education student in that class. (R.C. 3317.022; see also R.C. 3314.08.)

For fiscal year 2001, the special education weight attributed to a SBH student was 3.01, but for fiscal years 2004 and 2005 under the bill, that weight is 1.5572 and 1.5926, respectively.[46] Even though the formula amounts for fiscal years 2004 and 2005 are higher than for fiscal year 2001, the reduced SBH weights could result in lower payments to community schools for each SBH student than in fiscal year 2001, when the special education weights were higher.[47] The bill then would essentially hold these community schools harmless for their fiscal year 2001 per pupil aid for SBH students. A similar provision was enacted for the 2002-2003 biennium.[48] Under the bill, each subsidy must be paid from the Department of Education's appropriation for base cost funding.

Transportation coordinators

(R.C. 3327.01 and 3327.011)

Under current law, not changed by the bill, school districts are generally required to transport to and from school their resident students in grades kindergarten through eight that live more than two miles from the public or nonpublic schools in which they are enrolled. Districts may transport students in other grades and who live less than two miles from school and may receive state funding for transporting most students they transport. Each school district employs at least one transportation coordinator to oversee the scheduling and management of its student transportation operations.

Current law also requires the Department of Education to appoint "coordinators of transportation" to oversee student transportation by school districts. The bill eliminates the requirement that the Department appoint such coordinators.

School district textbook and electronic textbook purchases

(R.C. 3329.06 and 3329.08)

Continuing law requires a school district to supply students with textbooks or electronic textbooks, free of charge. A school board determines what textbooks

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[46] *Continuing law sets the full weight for a SBH student at 1.7695, but all special education weights are phased in under the bill at 88% of their full value in FY 2004 and 90% of their full value in FY 2005 (R.C. 3317.013).*

[47] *Under the bill, the formula amount for fiscal year 2004 is $5,088 and for fiscal year 2005 is $5,230 (R.C. 3317.012). For fiscal year 2001, that amount was $4,294.*

[48] *Section 38 of Am. Sub. H.B. 405 of the 124th General Assembly.*

are necessary for classes in the district and all such textbooks are the property of the school district and are loaned to the students.

Current law specifies that a school district board of education is prohibited from changing or revising a textbook or electronic textbook selection more frequently than once every four years. Additionally, current law authorizes a school district board to limit purchases of textbooks and electronic textbooks to only six subjects per year, the cost of which does not exceed 25% of the "entire cost of adoption."[49] The bill eliminates both of these provisions. Thus, a school district board is permitted to change or revise textbooks as frequently as it chooses. Also, a school district board is no longer permitted to limit textbook purchases to only six subjects per year.

Employment of school district business managers

(R.C. 3319.02(A), 3319.03, and repealed R.C. 3319.06)

A school district is permitted to hire a business manager who is responsible for real and personal property of the school district and school district supplies and equipment. The business manager is also responsible for executing contracts and assisting in the preparation of the annual appropriation resolution.[50] Current law specifies that a school district may hire a business manager, licensed by the state board of education, in one of two manners. A business manager may either be elected by the school board, or a business manager may be appointed by the district superintendent and confirmed by the school board for a term not to exceed four years (R.C. 3319.03).

To suspend or remove a business manager from employment a board of education must have two-thirds of the members vote that there is cause for removal. In addition, the charges against the business manager must be in writing and the business manager must be afforded the opportunity to provide defense testimony which is to be included in records of the board (R.C. 3319.06).

The bill changes the terms of employment for a business manager. Under the bill, a business manager is to be employed in the same manner as assistant superintendents, principals, assistant principals, and other administrators. This requirement means that a business manager is first appointed by the board of education of the school district (R.C. 3319.03(B)). However, a business manager cannot be initially *employed* unless the superintendent of the school district nominates the person as business manager (R.C. 3319.02(C)).

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[49] *What is meant by the "entire cost of adoption" is unclear.*

[50] *R.C. 3319.04, not in the bill.*

After appointment and nomination, a business manager would be employed under an initial contract of up to three years. Upon the expiration of the initial contract, a board of education may reemploy a business manager provided either the superintendent of the school district nominates the individual for reemployment, or the board, with a vote of three-fourths of its members, votes to reemploy the business manager if the superintendent refuses to nominate the individual. Renewal contracts are typically for terms of two to five years.[51] If a school board fails to renew a contract or notify a business manager that it will not renew a contract, the contract automatically renews for a one- or two-year term, depending on how long the school board has employed the business manager.

In the same manner as for other school administrators, the bill requires a school district to follow procedures for an annual performance review of a business manager that would enable the school board to decide whether to renew a business manager's contract. Finally, a school board would only be permitted to terminate the contract of a business manager, for good cause, after a due process hearing.[52]

One issue the bill does not address is the status of a business manager who is employed by a school district at the time the bill becomes effective. Assuming a currently employed business manager has a contract with the school district, the U.S. and Ohio Constitutions generally prohibit a law from impairing a preexisting contract unless there is an important government purpose. Thus, the changes to the terms of employment of a business manager made by the bill may not apply to a currently employed business manager until the expiration of the business manager's current term of employment. Whether this is the intended result is unclear.

Another issue that is unclear from the bill, because of two conflicting provisions, is whether a business manager's compensation can be reduced during a contract period. The compensation of "other administrators," which includes business managers by operation of the bill, can be reduced if the reduction is part of a uniform plan affecting the entire district (R.C. 3319.02(C)). However, another provision of the Revised Code specifies that the compensation of business managers shall not be decreased during the business manager's term of office.[53] Which section of law controls the issue is not addressed by the bill.

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[51] *The board of education is permitted to renew a contract, once, for a one-year term if the superintendent of the district recommends (R.C. 3319.02(C)).*

[52] *The procedures for a termination hearing are included in R.C. 3319.16, not in the bill.*

[53] *R.C. 3319.05, not in the bill.*

Annual school progress reports

(Repealed R.C. 3313.94)

Current law requires each school district to issue an annual report of school progress for each school under its control and for the district as a whole. The following information must be included in the report: (1) a ten-year projection of enrollment by year and grade level, (2) financial data, including district revenue by source; per pupil expenditures; and expenditures for personnel, textbooks and other educational materials, utilities, permanent improvements, equipment, transportation, and extracurricular activities, (3) contact information for members of the State Board of Education and the General Assembly elected from districts within which the school district has territory, and (4) information about achievements, problems, plans, and improvements in the district. Copies of the report must be provided to local residents upon request.

The bill eliminates the requirement that school districts produce these annual reports. This change does not affect existing law requiring districts to submit five-year budget projections to the Department of Education or to develop continuous improvement plans when the district, or a school it operates, receives a report card rating lower than "effective."

Elimination of a public school's authority to operate a school savings system

(Repealed R.C. 3313.82 and 3313.83)

Current law permits a public school to operate a school savings system, which is a mechanism by which students may deposit money with the superintendent, principal, or some other person designated by the board of education. In order to serve as the school official responsible for collecting and depositing student funds, an individual must provide bond, any premium of which may be paid by the board of education. The school official who collects the money must then deposit the funds with a savings institution, such as a bank. Either the school official establishes separate accounts for each student or the school official establishes an account in the official's name in which the students' funds are deposited in trust. This latter option is only permissible if the individual students' funds are insufficient to open individual accounts.

The bill eliminates the authority of a public school to operate a school savings plan. Presumably, if any school is currently operating a school savings plan it must close the student accounts and return the principal and interest in each account to the students.

Changes affecting educational service centers

Background

An educational service center (ESC) is a regional public entity that provides some administrative oversight and a variety of other services to all "local" school districts within its service area. For providing these services, an ESC receives payments both from the state and from those local districts. In addition, ESCs are permitted to provide services to "city" and "exempted village" school districts that enter into agreements for those services.[54] ESCs do not have taxing authority and have only limited authority to issue bonds. Each ESC is administered by its own superintendent and is under the oversight of its own "governing board." An ESC governing board employs teachers and other professionals as necessary to carryout the ESC's functions. The territory of an ESC consists of the combined territory of the "local" school districts that receive its services. The members of an ESC governing board are generally elected by and must themselves be resident electors of the "local" school districts that make up the territory of the ESC.[55]

Until 1995, ESCs were called "county school districts" and their governing boards were called "county boards of education." In that year, along with providing for some consolidation of ESCs, the General Assembly changed the names of these entities to "educational service centers" but did not change their respective functions.[56]

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[54] *A city or exempted village school district that contracts for services from an educational service center is known as a "client school district" (R.C. 3317.11(A)(1)). A client school district cannot have a total student population that exceeds 13,000 students.*

[55] *R.C. 3311.05 and 3311.054, neither section in the bill.*

[56] *Since 1995, certain ESCs that serve fewer than 8,000 students have been required to merge with other ESCs, thus reducing the total number of ESCs. However, due to recent amendments fewer ESCs will be required to merge. (Section 45.32 of Am. Sub. H.B. 117 of the 121st General Assembly as most recently amended by Am. Sub. H.B. 282 of the 123rd General Assembly.) According to the Legislative Office of Education Oversight, as of July 1999 there were 61 ESCs in the state. (LOEO, "Status Report on the Consolidation of Educational Service Centers.")*

Elimination of minimum standards for service to school districts

(Repealed R.C. 3301.0719)

Under current law, each ESC must develop a service plan for the school districts within its territory. The plan must be approved by the State Board of Education. Minimum standards established by the State Board generally outline the functions an ESC must perform, which include the following: (1) fiscal monitoring of local districts, (2) evaluation of classroom activities, (3) provision of professional development, (4) curriculum services, (5) enforcement of the Compulsory Attendance Law, and (6) assistance in the provision of special accommodations and classes for disabled students. To monitor compliance with its standards, the State Board must evaluate each ESC and the services it provides every five years. If an ESC is not complying with its service plan, the State Board must revoke the ESC's charter. The State Board may also dissolve the ESC and transfer its territory to another ESC.

The bill eliminates all of these requirements. Thus, under the bill, ESCs are not required to develop service plans, the State Board does not have to set minimum standards for ESCs, and no state evaluations of ESCs are mandated.

Payments to ESCs

(R.C. 3317.11)

Certification of budgets. Current law requires that the governing board of each ESC annually prepare a budget in a format approved by the State Board of Education and certify that budget to the State Board. The budget is to indicate an amount for providing supervisory teachers to each local school district in the ESC's territory and a separate amount for specified per pupil payments from the state and each school district served. An ESC receives $37 per pupil (or $40.52 per pupil if formed from a merger of three or more smaller ESCs) from the state and $6.50 per pupil from each district served. (For discussion of how the amount of supervisory teacher units are calculated based on the cost of paying the salary and benefits for such teachers, see "***Changes in "unit" funding for certain services***" above.)[57] ESCs may also receive additional payments from school districts for other contractual services. The bill eliminates the requirement that each ESC governing board certify its annual budget to the State Board, but it does not change the specified amounts of funding.

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[57] *See R.C. 3317.11 as repealed by this bill (text not in the bill). The bill reenacts this section using simpler language regarding the calculation of payments to ESCs.*

Payment procedures. The bill also reenacts new, simpler language that essentially leaves unchanged the method the Department of Education uses to calculate payments to ESCs. The Department calculates the amounts due to each ESC and deducts the necessary amounts from each school district's state formula aid account. The bill does, however, add a provision permitting a majority of school districts served by a particular ESC (both local and client districts) to agree to pay for a greater number of supervisory units than otherwise specified by current law and the bill. If the majority of districts agree on higher amounts, the bill specifies that all districts served by the ESC are to pay the higher amounts and the Department is required to make such a deduction from each district's account.

Elimination of ESC approval of employment by local school districts of teachers, administrators, and superintendents

(R.C. 3319.01, 3319.02, 3319.07, and 3319.36)

Current law provides that the employment by a local school district of teachers, administrators, and superintendents is subject to the approval and oversight of the superintendent of the ESC. Generally, a local district board may not employ or reemploy a superintendent, assistant superintendent, principal, assistant principal, or teacher unless nominated by the ESC superintendent. However, current law also permits the district board to employ or reemploy such persons that the ESC superintendent refuses to nominate by a 3/4 vote of all the board members. In the case of the local district superintendent, the vote to employ or reemploy a person not nominated by the ESC superintendent may be taken only after the board has considered two persons for that position.

The bill eliminates all provisions requiring ESC boards or superintendents to approve the employment of superintendents, assistant superintendents, principals, assistant principals, other administrators, or teachers. It does, however, specifically permit a local school district board to contract with its ESC to conduct searches and recruitment activities for candidates for such positions.

Elimination of ESC approval of the assignment of local school district staff and students

(R.C. 3319.01)

Current law provides that the assignment of staff and students to the schools of a local school district must be approved by the superintendent of the ESC unless the district board enters into an agreement with the ESC board under which the district superintendent is authorized to make the assignments. The bill eliminates any requirement that the ESC superintendent approve the assignment of local school district staff and students.

Calculation of the cost of ESC office space

(R.C. 3319.19)

Prior to 2002, the board of county commissioners of the county in which an ESC is located was required to provide and equip office space and furnish water, light, heat, and janitorial services, for the ESC. If the service area of an ESC comprised territory in more than one county, the ESC governing board was required to designate one board of county commissioners to provide the office space, and the other boards of county commissioners had to share in the costs. Recent legislation provides instead for a four-year phase-out of the responsibility of any board of county commissioners to provide office space for an ESC. In fiscal year 2007 and thereafter, a board of county commissioners may provide office space and other facilities for an ESC by contract, but it is not required to do so.

Under these provisions, in fiscal years 2003-2006, each board of county commissioners responsible for ESC office space must submit a detailed estimate of its cost to provide that space and the associated water, heat, light, and janitorial services to the ESC superintendent. The superintendent must review the estimate and may submit objections to that estimate to the board of county commissioners. If the superintendent does not reply to the estimate within 20 days of receipt of the estimate, it is considered to be a final estimate. If the superintendent does file timely objections, the board of county commissioners may revise the estimate and resubmit it to the superintendent. The superintendent then must reply within ten days of receipt of the revised estimate. If the superintendent continues to object to the estimated costs, the probate judge of the county with the greatest number of resident local school district students under supervision of the ESC will determine the final estimate.

During the phaseout, the costs are to be divided between the county and the ESC. The county is responsible to pay the following:

- In fiscal year 2003, 80% of the final estimated cost;
- In fiscal year 2004, 60% of the final estimated cost;
- In fiscal year 2005, 40% of the final estimated cost;
- In fiscal year 2006, 20% of the final estimated cost.

Educational service centers themselves are responsible for the remaining portion of the costs of office space and for any unanticipated or unexpected increase beyond the final estimated costs. In fiscal year 2007 and thereafter, no

board of county commissioners is required to provide office space for an ESC or to pay any cost of providing such space.

The bill defines "actual cost per square foot" for purposes of estimating costs of office space provided to an ESC by the board of county commissioners. Under the bill, "actual cost per square foot" means all cost on a per square foot basis incurred by the board under a lease or rental agreement of property rented or leased by the board, or the fair rental value of property owned in fee simple by the board.[58] In addition, the bill clarifies that in fiscal year 2006 an ESC is responsible for paying the remainder of the actual cost of office space that is above 20% of the estimated cost.[59]

Elimination of ESC annual report on activities of local school districts

(R.C. 3319.33; repealed R.C. 3319.34; conforming amendment in R.C. 3317.09)

Current law provides that annually by August 1, each city and exempted village school district board must report to the State Board of Education "the school statistics of its district," including among other things information about litigation in which the district is involved. Current law also requires each local school district board to submit its report to the ESC. The ESC by August 15 must submit to the State Board an abstract of the local district returns. The bill eliminates the requirement that the ESC gather and submit this data and, instead, requires local school district boards to submit the data directly to the State Board in the same manner as required city and exempted village school districts.

Pupil-teacher ratios in bilingual multicultural classes

(Repealed R.C. 3301.078 and 3301.0724)

Current law requires the State Board of Education to adopt a standard restricting the size of any class providing services to bilingual multicultural students to no more than 25 pupils for one teacher licensed to teach such students. The bill eliminates this maximum ratio requirement, and thus a class for bilingual multicultural students could have more than 25 students.

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[58] *R.C. 3319.19(C).*

[59] *R.C. 3319.19(D)(1). The bill corrects a technical error made in the original enactment.*

Minimum school year requirements

(R.C. 3313.48, 3313.481, 2151.011, 3313.533, 3313.62, 3317.01(B), 3317.029(A)(10) and repealed R.C. 3313.482)

Current law

Current law regulates the length of the school year and school day for both public and nonpublic schools.[60] Public schools are, by statute, explicitly subject to a minimum school year and school day requirement.[61] Nonpublic schools, however, are not explicitly subject to these requirements. Rather, the State Board of Education has, by rule, made adherence to minimum school year and school day requirements applicable to both chartered and nonchartered nonpublic schools.[62]

Unless a public or nonpublic school obtains approval to operate on an alternative schedule, as discussed below, a school must be open for instruction, with students in attendance, at least 182 school days in a school year.[63] By statute, a school day for students in grades 1 to 6 must include *at least* five hours, with two 15-minute recesses permitted, and a school day for students in grades 7 to 12 must be *at least* five hours, with no provisions for recesses. The State Board of Education has rule-making authority to further define what comprises a school day. Those rules provide that a school day for public and nonpublic school students in grades 1 to 6 must be at least five hours, excluding a lunch period, and five and one-half hours for public school student in grades 7 to 12. Private school students in grades 7 to 12 need only have a school day of five hours, excluding a lunch period, which is the minimum prescribed in the statute.[64]

Notwithstanding the minimum school day requirement, a school day that is shortened by up to two hours because of hazardous weather conditions still counts as a school day towards satisfying the minimum 182-school-day requirement.[65] In

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[60] *Community schools ("charter" school) are not subject to the 182-day requirement, discussed below. Instead community schools must be open for instruction a minimum of 920 hours per year (see R.C. 3314.03(A)(11)(a), not in the bill).*

[61] *See, R.C. 3313.48 (not in the bill), R.C. 3313.481, and R.C. 3313.62.*

[62] *See, Ohio Administrative Code 3301-35-08 and 3301-35-12.*

[63] *R.C. 3313.48 (not in the bill). A school year begins on July 1 and ends the following June 30 (R.C. 3313.62).*

[64] *O.A.C. 3301-35-06, 3301-35-08, and 3301-35-12.*

[65] *R.C. 3317.01(B) (not in the bill).*

order to satisfy the 182-day requirement, a school may also count up to four days when classes are dismissed a half-day early for individual parent-teacher conferences or reporting periods, two days for teacher professional meetings, and up to five days for a public calamity, such as inclement we ather.[66]

Current law also requires a public school to have a school week of five days.[67] This requirement does not appear to be extended to nonpublic schools by either statute or administrative rule.[68]

As an alternative to operating on a traditional five-hour-a-day, 182-day calendar, current law permits a school district to operate a school on a different schedule in order to (1) provide a flexible school day for parent-teacher conferences and reporting days that require time in excess of the four half-days permitted by R.C. 3313.48, (2) operate on a calendar of quarters, trimesters, or pentamesters, or (3) establish a staggered attendance schedule. The approval of the Department of Education is required to implement any of these alternative schedules.[69]

If a school district obtains approval to operate an alternative schedule, the school must be open for instruction at least 910 hours a year. Included within this 910-hour requirement, a school may count two 15-minute daily recess periods for students in grades 1 to 6; ten hours for individualized parent-teacher conferences and reporting periods; ten hours for teacher professional meetings; and the number of hours students are not required to attend because of public calamity days. Current law does not appear to limit the number of calamity days for schools operating an alternative schedule.

The bill

The bill changes the minimum school year for school districts and nonpublic schools from 182 days to 455 hours for students in kindergarten, 910 hours for students in grades 1 to 8, and 1,001 hours for students in grades 9 to 12, beginning in the 2003-2004 school year (R.C. 3313.48). In addition, the bill

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[66] *R.C. 3313.48 and 3317.01(B) (neither section in the bill).*

[67] *R.C. 3313.62.*

[68] *Even though it does not appear that nonpublic schools are prohibited by current law from operating on a four-day schedule, a nonpublic school that adopted such a schedule would still be subject to the minimum five-hour day, 182-day school year requirement. Thus, adoption of a four-day school week calendar would result in more weeks of school.*

[69] *R.C. 3313.481.*

eliminates the requirements in current law that a school week be comprised of five days and a school month of four weeks (R.C. 3313.62) and that a school day be at least five hours in length (R.C. 3313.48). The effect of these changes is that a school may fulfill the hourly requirements by developing an attendance schedule of its own choosing. Thus, an elementary school could operate a four-day school week comprised of days that are longer than the currently mandated five hours, or a school could choose to have students in attendance for more weeks with days that are shorter than five hours.

In order to satisfy these hourly requirements, a school may count up to ten hours per year when classes are dismissed for individualized parent-teacher conferences and reporting periods and ten hours per year for teacher professional meetings. Additionally, for students in grades K through 6, a school may count morning and afternoon recess periods of not more than 15 minutes (R.C. 3313.48). Kindergarten students may be further excused for up to 15 hours in order to acclimate to school, and seniors in high school may be excused for up to 16.5 hours (R.C. 3317.01(B)). However, unlike under current law, a school is not permitted to count any "calamity" days toward its minimum hourly requirement.

As discussed above, a school is permitted under current law to excuse students for up to five days a year for "calamity" days, which are regularly scheduled hours a school is closed due to hazardous weather or comparable circumstances. The bill eliminates excused "calamity" days and eliminates a provision in current law that permits a school to count up to two hours a day if a school closes early or opens late because of hazardous weather conditions (R.C. 3317.01(B)). Thus, if a school is required to cancel classes because of inclement weather, it is the responsibility of the school to make up those hours as it chooses.

The bill makes several other changes as a result of shifting the minimum school year requirement from days to hours that can be fulfilled within the discretion of the individual school board or governing authority, in the case of nonpublic schools. First, it eliminates the provisions of law that permit a school to operate on an alternative schedule upon the approval of the Ohio Department of Education (repealed R.C. 3313.481). Second, as calamity days are eliminated, the bill also eliminates the requirement that schools adopt contingency plans to make up calamity days beyond the five calamity days they are permitted now (R.C. 3313.482). Third, school district boards of education are also to determine the school schedules of alternative schools (R.C. 3313.533(B)).[70] Fourth, the bill

[70] *Boards of education of school districts are permitted to establish alternative schools to serve students on suspension, who have truancy problems, or who have other academic or behavioral problems (R.C. 3313.533(A)(1)).*

modifies the definition of "all-day kindergarten" for purposes of Disadvantaged Pupil Impact Aid to reflect that all-day kindergarten means a kindergarten class that is in session for the same number of hours each week as for pupils in grades 1 through 6 (R.C. 3317.029(A)(10)). Finally, the bill modifies the definitions of a school day and school year for children in the custody of the Department of Youth Services to mirror the definitions of these terms for students in the regular public school system (R.C. 2151.011).

Filing of school district certificates of estimated appropriations and appropriation resolution

(R.C. 5705.39)

Current law, not changed by the bill, provides that an appropriation measure of any subdivision is not effective until the county auditor files with the appropriating authority a certificate stating that the total appropriations do not exceed the official estimate or amended official estimate of appropriations. It also provides that when the appropriation does not exceed the official estimate, the county auditor must give a certified copy of the appropriation measure to the appropriating authority. Current law further provides that, in the case of school district appropriations, the county auditor also must transmit both the certificate of estimated appropriations and the appropriation measure to the Superintendent of Public Instruction.[71] The bill eliminates this latter provision.

Verification of signatures on school district transfer petitions

(R.C. 3311.24)

Continuing law permits the electors of a city, exempted village, or local school district to petition to transfer territory from the school district to an adjoining city, exempted village, or local school district. In order for a petition to be valid, it must be signed by 75% of the qualified electors voting at the last general election who reside within the portion of the school district proposed to be transferred.

Existing law does not specify who is responsible for verifying the sufficiency of signatures on such a petition. However, the Attorney General has interpreted the provision as requiring the board of education of the district in which the proposal originates to verify those signatures. (1964 O.A.G. 1043.) Under the bill, a board of education of a city, exempted village, or local school

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[71] *The law does not, however, indicate what action the Superintendent of Public Instruction is to take in regard to the certificate of appropriations or the appropriation measure.*

district that receives a petition of transfer must cause the board of elections to check the sufficiency of signatures on the petition.

Ohio Regional Education Delivery System

(R.C. 3301.20)

By July 1, 2004, the Department of Education must establish the Ohio Regional Education Delivery System (OREDS) to provide services and technical assistance to school districts. This system would take over the services currently provided by various regional entities, including regional professional development centers, special education regional resource centers, area media centers, school improvement facilitators, and Ohio SchoolNet regional faculty. Up to 19 regional service centers distributed geographically throughout Ohio may be created as part of the system.

In consultation with stakeholders, the Department must also develop an accountability system for OREDS that includes minimum standards for operation and the provision of services. It must also establish benchmarks for performance based on each of the following: (1) student achievement, (2) the effectiveness and efficiency of service delivery, (3) the quality of implementation of state initiatives, and (4) satisfaction of school districts and other users with the system.

Finally, the bill requires the Department, in consultation with stakeholders, to develop accountability systems for each of these other entities: (1) educational service centers (ESCs), (2) data acquisition sites, which provide centralized computer services for their member school districts, and (3) educational technology centers.

Removal of references to "regional professional development centers"

(R.C. 3319.22, 3319.227, and 3319.302; Sections 131A and 131B)

The Department of Education currently operates 12 regional professional development centers (RPDCs), which are geographically distributed throughout the state. Each RPDC provides professional development services to school districts within its area. Classes offered by a RPDC count toward the coursework requirements for certain educator licenses. The bill does not earmark any funds for RPDCs in the 2004-2005 biennium. To reflect this, the bill eliminates all Revised Code references to RPDCs.

Pilot Project Special Education Scholarship Program

(Section 40.36)

The bill establishes a new temporary pilot program to pay scholarships to the parents of certain autistic children to be used toward paying tuition at public or nonpublic special education programs. Under the program, in FY 2004 and FY 2005, the Department of Education is required to pay a scholarship of up to $15,000 to the parent of a child identified as autistic and who is entitled to receive special education and related services at the child's resident school district in any grade from preschool to 12th grade. The scholarship is to be used only to pay part or all of the cost of sending the child to a public or nonpublic special education program other than the one provided by the child's resident school district. The bill further prescribes that the scholarship is to be used to pay for only those services specified in the child's "individualized education program."[72]

The amount of the scholarship is to be deducted from the state aid account of the child's resident school district. That district is authorized under the bill to count the child in its formula ADM (for purposes of base cost, categorical, and parity aid funding) and its category six special education formula ADM (for purposes of its weighted special education funding) (see "**Special Education Weights Under Current Law**" (chart) and "***Special education funding weights***" above). The district, then, will retain the balance of any amount of state funding it receives for the child in excess of the amount of the scholarship paid to the parent. The Department is required to proportionally reduce the amount of the scholarship in the case of a child that does not enroll in the special education program, for which the scholarship was awarded, for the entire school year.

The bill requires the State Board of Education, by October 1, 2003, to adopt rules prescribing procedures for the implementation of the program. These rules are to include at minimum application procedures and deadlines and procedures for the Department of Education to use in approving nonpublic entities for participation in the program.

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[72] *Under both federal and state law, an "individualized education program" (or IEP) must be developed for each child identified as disabled and eligible for special education and related services at a public school. The IEP specifies the services which the child is entitled to by right and are therefore guaranteed by law. It is developed by a team, including representatives of the child's resident school district (or community school) and the child's parent or the parent's counsel. (See R.C. 3323.01, not in the bill, and 20 U.S.C. 1400 et seq.)*

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 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
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 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.

- Increases from $60 to $70 the fee that is required to file an appeal with the Environmental Review Appeals Commission, and allows the Commission to reduce rather than waive the fee if the appellant demonstrates by affidavit that payment of the full amount would cause extreme hardship.

- 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.

- Requires the Director of Environmental Protection to issue or deny a permit under the Air Pollution Control Law, the Solid, Infectious, and Hazardous Waste Law, the Voluntary Action Program Law, or the Water Pollution Control Law within 120 days after receipt of an application for a permit, allows for a 45-day extension if the Director provides written notice to the applicant containing specified information, and provides for an additional, final extension if the applicant agrees to it.

- 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.

Environmental Review Appeals Commission filing fee

(R.C. 3745.04)

Current law establishes the Environmental Review Appeals Commission to hear appeals of actions of the Director of Environmental Protection. An appeal must be filed with the Commission and must set forth the action complained of and the grounds on which the appeal is based. The appeal must be accompanied by a filing fee of $60; however, the Commission, in its discretion, may waive it in cases of extreme hardship. The bill increases the fee to $70 and instead provides that the Commission, in its discretion, may reduce the fee if by affidavit the appellant demonstrates that payment of the full amount of the fee would cause extreme hardship.

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

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
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

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
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 per year of regulated pollutants emitted under current law	Annual emissions fee per facility beginning 1/1/94 under current law	Total tons per year of regulated pollutants emitted under the bill	Annual emissions fee per facility beginning 1/1/04 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 Current Law	Fee Subcategory under the Bill	Current Fee	Fee under the Bill
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 Bill
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 of Operator	Current Fee through June 30, 2004	Fee under Bill through June 30, 2006	Current Fee on and after July 1, 2004	Fee under Bill on and after July 1, 2006
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.

Timeline for issuance or denial of environmental permits

(R.C. 3745.15)

The bill requires the Director of Environmental Protection, notwithstanding any provision in the Air Pollution Control Law, the Solid, Infectious, and Hazardous Waste Law, the Voluntary Action Program Law, or the Water Pollution Control Law to the contrary, to either issue or deny a permit within 120 days after receipt of an application for a permit under any of those laws. The Director must send written notification to the applicant of the issuance or denial.

The Director may extend the 120-day period for an additional 45 days if the Director sends the applicant written notice that specifies the reasons for not issuing or denying the permit within the 120-day period and provides an explanation of the review that remains to be completed in order to issue or deny the permit within the additional 45-day period. If the Director fails to complete the review within the 45-day period, the Director may request a final extension from the applicant of not more than 45 days. If the applicant does not agree to such an extension, or if the Director fails to issue or deny the permit by the end of the 120-day period or any additional 45-day period, as applicable, the application is deemed approved, and the Director must issue the permit. The Director must send written notification to the applicant of the issuance.

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. 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
Member of United States Congress and General Assembly member	$25	$40
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.

- Creates the Legislative Budget Audit Commission to examine the operations of state agencies and make recommendations to the General Assembly on ways in which state agencies can operate more efficiently.

Legislative Budget Audit Commission

The bill creates the Legislative Budget Audit Commission consisting of ten members. The Commission must examine the operations of state agencies and make recommendations to the General Assembly on ways in which state agencies can operate more efficiently. Two members must be members of the Senate appointed by the President of the Senate, each of whom must be a member of a different political party. Two members must be members of the House of Representatives appointed by the Speaker of the House of Representatives, each of whom must be a member of a different political party. The President of the Senate and the Speaker of the House of Representatives must each appoint three members who are knowledgeable in finance and state government. (R.C. 106.01(A)(1).)

Terms of office; vacancies; compensation

Members of the Commission serve three-year terms. Each member must serve subsequent to the expiration of the member's term until a successor is appointed, or until 60 days has elapsed, whichever occurs first. No member can serve more than two consecutive terms. (R.C. 106.01(A)(2).) All vacancies must be filled in the same manner prescribed for original appointments and must be limited to the unexpired terms (R.C. 106.01(A)(3)).

Members of the Commission serve without compensation, but are reimbursed for their actual and necessary expenses incurred in the performance of their official duties (R.C. 106.01(A)(4)).

Executive director

The bill requires the Commission to appoint an executive director, who serves at the pleasure of the Commission. The Commission sets the salary of the executive director. (R.C. 106.01(B)(1).)

The executive director, with the approval of the Commission, employs all necessary staff and sets their salaries. The Commission meets at the call of the executive director. (R.C. 106.01(B)(2).)

Definition of "state agency" and "savings"

The bill states that "state agency" has the same meaning as in section 9.82 of the Revised Code (R.C. 106.02(A)(1)). Under that section, "state agency" means every organized body established by the laws of Ohio for the exercise of any function of state government, including the General Assembly, all legislative agencies, the Supreme Court, and the Court of Claims, but excluding institutions of higher education, PERS, and other retirement funds.

The bill defines "savings" as a reduction in expenditures resulting from the implementation, in whole or in part, of the recommendations made by the Legislative Budget Audit Commission (R.C. 106.02(A)(2)).

Recommendations

The bill requires the Commission to make recommendations to assist the General Assembly in developing policies to streamline state agency operations. The Commission must promptly answer reasonable requests about reducing or eliminating expenditures from members of the General Assembly and directors of state agencies. (R.C. 106.02(B).)

In examining the operations of state agencies, the commission must consider how they can better allocate their resources by doing any or all of the following:

(1) Streamlining, reorganizing, consolidating, contracting out, or eliminating functions performed by the agency;

(2) Reducing duplicative staffing;

(3) Improving space and property use, including exploring the sale or lease of surplus or unneeded property;

(4) Increasing the state agency's capacity to deliver services and improve responsiveness to citizens;

(5) Streamlining procurement procedures;

(6) Improving the use of cost-saving information technology in service delivery and in lessening the need for paperwork;

(7) Improving internal budgeting and financial administration procedures, including procedures to collect more efficiently past due accounts receivable;

(8) Improving the employee awards system established in existing law or devising other incentive programs;

(9) Contracting with the private sector to conduct activities currently performed by the agency;

(10) Establishing techniques for the measurement of productivity and the evaluation of employee performance; and

(11) Undertaking other methods or procedures designed to improve the use of state funds.

Not later than January 15, 2005, and not later than each January 15 thereafter, the Commission must submit a report of its findings and recommendations to the General Assembly. All reports submitted by the Commission after the initial report must include a review of previous recommendations and findings made by the Commission and a description of the savings realized by each state agency according to the report submitted by the Director of Budget and Management under the bill (see below). (R.C. 106.02(D).)

Legislative Budget Audit Commission Savings Fund

The bill creates in the state treasury the Legislative Budget Audit Commission Savings Fund. The Fund must provide amounts to fund the Commission. (R.C. 106.03.)

Requirements for state agencies

The bill requires state agencies to promptly respond to reasonable requests for information from the Legislative Budget Audit Commission (R.C. 106.04(A)).

Not later than December 1, 2006, and on December 1 of each second year thereafter, each state agency must provide a written report to the Director of Budget and Management describing any savings the agency realized during the immediately preceding two years that are directly attributable to implementing any recommendations made by the Commission (R.C. 106.04(B)).

Office of Budget and Management

The bill requires the Office of Budget and Management to compile all reports submitted by state agencies and provide the information in the reports to the Governor, the Speaker of the House of Representatives, and the President of the Senate (R.C. 106.04(C)).

In addition, the Director of Budget and Management must review the reports submitted by the Commission and the reports submitted by state agencies and determine the amount of any savings actually realized by each state agency during the immediately preceding two years that are directly attributable to the implementation of the Commission's recommendations (R.C. 106.05(A)). Not later than December 31, 2006, and on December 31 of each second year thereafter, the Director of Budget and Management must submit a report describing the actual savings realized by each state agency during the immediately preceding two years that are directly attributable to implementing the Commission's recommendations (R.C. 106.05(B)).

The bill specifies that the main operating appropriations bill for the period beginning July 1, 2007, and each main operating appropriations bill thereafter, must propose the transfer of an amount equal to the total savings that each state agency realized that exceeds the total biennial appropriations for the Legislative Budget Audit Commission for that biennium. The transfer must be made from the General Revenue Fund or from any other fund that provides funds to that state agency, as appropriate, to the Budget Stabilization Fund created in existing law. (R.C. 106.05(C).)

OFFICE OF THE GOVERNOR

- Creates the Governor's Office for Faith-based Nonprofit and Other Nonprofit Organizations.
- 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.

Governor's Office for Faith-based Nonprofit and Other Nonprofit Organizations

(R.C. 107.12; Section 58.06a)

The bill establishes within the office of the Governor the Governor's Office for Faith-based Nonprofit and Other Nonprofit Organizations.[73] The Office is to serve as a clearinghouse of information on federal, state, and local funding for

[73] *The bill defines "organization" as a faith-based or other organization that provides charitable services to needy Ohio residents and is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.*

charitable services performed by organizations; encourage organizations to seek public funding for their charitable services; and act as a liaison between state agencies and organizations. The Office must also advise the Governor, General Assembly, and the Advisory Board of the Governor's Office for Faith-based Nonprofit or Other Nonprofit Organizations on the barriers that exist to collaboration between organizations and governmental entities and on ways to remove the barriers.

The bill requires the Governor to appoint an executive assistant to manage the Office and perform or oversee the performance of the Office's duties. In addition, the bill establishes the Advisory Board for the Governor's Office for Faith-based Nonprofit and Other Nonprofit Organizations. It is to provide direction, guidance, and oversight to the Office. Advisory Board members are to serve one-year terms and are not to be compensated for their service. Any vacancy that occurs on the Board must be filled in the same manner as the original appointment. The following individuals must be appointed to the advisory board within 30 days of the bill's enactment:

(1) One employee from each of the Departments of Aging, Alcohol and Drug Addiction Services, Rehabilitation and Correction, Health, Job and Family Services, Mental Health, and Youth Services, designated by the department's Director;

(2) Two members of the House of Representatives appointed by the Speaker, each from a different political party. In addition, at least one of the appointees must be a member of the legislative Black Caucus, appointed by the Speaker in consultation with the President of the Black Caucus.

(3) Two members of the Senate appointed by the Senate President, each from a different political party;

(4) Nine representatives of the nonprofit faith-based and other nonprofit community, three each appointed by the Governor, Speaker of the House, and Senate President.

At its initial meeting, the Advisory Board must elect a chairperson from among its members who are also members of the House of Representatives. The Advisory Board must publish an annual report of the Office's activities and, on or before August 1 of each year, provide a copy of the report to the Governor, the Speaker and Minority Leader of the House, and the Senate and Minority Leader of the Senate.

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.

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.
- Changes the amount of general property tax duplicate each county is required to provide annually after fiscal year 2005 to the Department of Health for the program for medically handicapped children from not more than 3/10 of a mill to the current amount of not more than 1/10 of a mill.
- Eliminates the Office of Women's Health Initiatives in the Department of Health, and creates the Women's Health Program in the Department.
- Prohibits home visiting under the Help Me Grow Program unless requested by the child's parents.

- 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.

- Establishes the vital record category "still birth" and gives "still birth" the same definition that "fetal death" has under existing law.

- Changes the definition of the vital record category "fetal death" to mean a death caused by abortion after twenty weeks of gestation.

- Continues all certification and record requirements for live births and fetal deaths and requires that certification and records of still births be kept in the same manner.

- Requires a still birth certificate and that the Department of Health and the local registrar keep a separate record and index record of still birth certificates.

- 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 nursing homes and residential care facilities.

- 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.

- 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 to 13 (from five) the number of people that a food service operation may serve during a day without having to be licensed.

- 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.

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.

Funding for program for medically handicapped children

(R.C. 3701.024)

The Department of Health operates a program for medically handicapped children. To be eligible, an applicant must meet medical and financial eligibility

requirements established by Public Health Council rules and the Department's manual of operational procedures and guidelines for the program. The program pays for treatment services, service coordination, and related goods provided to eligible medically handicapped children.

The Department is required to determine the amount each county is to provide annually for the program. The amount is based on a proportion of the county's total general property tax duplicate and is not to exceed 1/10 of a mill through fiscal year 2005.[74] Thereafter, the amount is not to exceed 3/10 of a mill. The bill changes the amount to be provided by each county annually after fiscal year 2005 to not more than 1/10 of a mill.

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;

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[74] *The amount was temporarily reduced to 1/10 of a mil (from 3/10) by Am. Sub. H.B. 640 of the 123rd General Assembly. The bill makes the reduction permanent.*

(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.

Help Me Grow

(R.C. 3701.61)

Ohio provides early childhood services to children under age three through the Help Me Grow Program. The Program is directed by the Department of Health and coordinated on the county level by family and children first councils. Currently, the Revised Code contains no provision for the Help Me Grow Program. The bill includes in the Revised Code provisions authorizing the existing Help Me Grow Program.

Help Me Grow services are primarily in the nature of providing information to families about child development, identifying infants and toddlers who have or are at risk of having a disability or developmental delay, and making referrals for and coordinating specialized services. Families may also receive home visits under the Help Me Grow Program. The bill prohibits home visiting under the Help Me Grow Program unless requested by the child's parents.

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.[75]

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 bill 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:

(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.

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

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;[76]

(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;

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

(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.[77]

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.

Vital records of live births, still births, and fetal deaths

(R.C. 3705.01)

Under current law, vital records categories include "live birth" and "fetal death." "Fetal death" is defined as "death prior to the complete expulsion or extraction from its mother of a product of human conception of at least twenty weeks of gestation, which after such expulsion or extraction does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles." The bill establishes the vital record category "still birth" and gives the new category the same definition that fetal death has under current law. In turn, under the bill, "fetal

[77] *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).*

death" is newly defined as "a death caused by abortion prior to the complete expulsion or extraction from its mother of a product of human conception of at least twenty weeks of gestation."

Registration system for births, still births, and fetal deaths

(R.C. 3705.02, 3705.06, 3705.07, 3705.08, 3705.16, 3706.17, 3705.22, 3705.24, 3705.26)

Continuing law provides for a statewide system of registration of births and fetal deaths and other vital statistics. The system provides for certification of births and fetal deaths and requires that records of each be filed and permanently preserved and that a certificate be obtained prior to burial. The bill adds still births to that system and requires that records of still births be kept as a vital statistic in the same manner as fetal deaths and live births.

The bill continues all requirements under current law that relate to the certification and records of fetal death. Because of the bill's new definition for fetal death, the bill effectively requires that the registration system add information on deaths caused by abortion after twenty weeks of gestation. "Fetal death" as defined by the bill is the new information the bill requires to be recorded as a vital record while the "still birth" category under the bill continues to record the same information as is now recorded by the "fetal death" category under current law.

Still birth certificate

(R.C. 3705.201)

The bill requires that a still birth be registered on a still birth certificate, and that a still birth not be interred, deposited in a vault or tomb, cremated, or otherwise disposed of by a funeral director or other person until a still birth certificate or provisional certificate is filed with, and a burial permit issued by, the local registrar of vital statistics. The bill requires the funeral director or person in charge to obtain information for the certificate from the best qualified person or source available. The Department of Health and the local registrar must each keep a separate record and index of still birth certificates.

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 and residential care facility licensing fees

(R.C. 3721.02)

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

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.[78] 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:

(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;

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[78] *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."*

(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;[79]

(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.

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

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[79] *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 Secretary of the U.S. Department of Health and Human Services for a waiver to implement the Task Force's recommendations.

Nursing home administrator licensing 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.

Food service operations

(R.C. 3717.42)

Under current law, a food service operation that serves more than five people during a single day must be licensed by the Department of Health. The bill increases this limit so that a food service operation must be licensed only if it serves more than 13 people during a single day.[80]

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.

[80] *"Food service operation" is defined in current law as a place where food intended to be served in individual portions is prepared or served for a charge or required donation. (R.C. 3717.01.)*

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
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).

OHIO HIGHER EDUCATION FACILITY COMMISSION

- Provides that private college or university facilities used for sectarian instruction or religious worship are eligible for revenue bond financing from the Higher Education Facility Commission, but not facilities used exclusively for devotional activities.

- Eliminates a requirement that the Commission must determine that a private college or university admits students without discrimination by reason of creed before providing revenue bond financing.

Eligibility for financing

(R.C. 3377.01 and 3377.06)

Currently, the Higher Education Facility Commission is authorized to issue revenue bonds and bond anticipation notes to provide money to pay project costs associated with constructing, furnishing, or otherwise improving buildings, structures, or improvements used in connection with the operation of private colleges and universities. Facilities used for sectarian instruction, devotional activities, or religious worship are not eligible for commission financing. An additional condition of eligibility is that the commission must determine that the college or university admits students without discrimination by reason of race, creed, color, or national origin prior to issuing the bonds or notes.

Under the bill, only those facilities used exclusively as a place for devotional activities are excluded from eligibility for commission financing. Additionally, while the commission must still determine whether the college or university admits students without discrimination by reason of race, color, or national origin, it is not required to determine whether the college or university admits students without discrimination by reason of creed.

OHIO HISTORICAL SOCIETY

- Requires the Ohio Historical Society to charge Ohio public libraries a reasonable price, not to exceed 10% of the total cost of publication, for specified materials rather than supplying those materials at no charge and to charge Ohio schools a reasonable price, not to exceed 10% of the total cost of preparation, for specified materials on Ohio history rather than providing those materials at cost or near cost.

Charges for specified materials

(R.C. 149.30)

Existing law authorizes the General Assembly to appropriate money to the Ohio Historical Society each biennium to carry out certain public functions. An appropriation by the General Assembly to the Society constitutes an offer to contract with the Society to carry out those functions for which appropriations are made. An acceptance by the Society of the appropriated funds constitutes an acceptance by the Society of that offer and is considered an agreement to perform those functions in accordance with the terms of the appropriation and the law and to expend the funds only for the purposes for which they have been appropriated.

One of those functions is to publish books, pamphlets, periodicals, and other publications about history, archaeology, and natural science and to supply one copy of each regular periodical issue to all Ohio public libraries without charge. The bill requires the Society to offer, rather than supply, one copy of each of those periodicals and to charge a reasonable price, not to exceed 10% of the total cost of publication, for them.

Another function specified under current law is to provide Ohio schools with materials at cost or near cost that the Society may prepare to facilitate the instruction of Ohio history. The bill instead requires the Society to charge Ohio schools a reasonable price, not to exceed 10% of the total cost of preparation, for the materials on Ohio history.

DEPARTMENT OF JOB AND FAMILY SERVICES

I. General

- Requires the Ohio Department of Job and Family Services (ODJFS) to maximize its receipt of federal revenue.

- Changes dates for submission of ODJFS program participation reports and partnership agreement progress reports.

- Limits the activities of ODJFS and its divisions as a designated voter registration program agency to the duties and requirements prescribed by the Secretary of State and state and federal law.

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. Workforce Development

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

IV. 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 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.

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.

- Permits payments, in addition to reimbursements, to be made to providers of publicly funded child day-care.

- Specifies that federal funds from the Child Care and Development Block Grant may be used to make payments to Head Start programs in advance of their provision of publicly funded day-care and establishes annual reporting requirements and procedures for collecting overpayments from Head Start programs.

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 ODJFS 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 ODJFS 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 and cannot exceed the state's maintenance of effort percentage for Temporary Assistance for Needy Families.

VII. Medicaid

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

- Requires ODJFS to inform parents, both by oral and written communication, of the components of a Medicaid Health Check examination of a child.

- Requires ODJFS to obtain parental consent before performing a Health Check examination on a child.

- 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.

- Specifies that aged, blind, or disabled Medicaid recipients cannot be designated for participation in a county's care management system unless they reside in a county in which other Medicaid recipients are participating in the system.

- Requires a "request for proposals" process be used to select managed care organizations to be used for the aged, blind, or disabled participants in a care management system.

- 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.

- 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.

- Creates the Medication Management Incentive Payment Program to reimburse participating pharmacy providers that reduce Medicaid costs by providing consulting services.

- Requires ODJFS to determine the rate at which participating pharmacy providers are to be reimbursed and to adopt any rules necessary for the implementation and administration of the program.

- Requires the Pharmacy and Therapeutics Committee to accept written and oral testimony.

- Requires that an advisory council be appointed to review proposals submitted by individuals and private entities seeking to contract with ODJFS to administer the preferred drug list and supplemental drug rebate program under Medicaid and to select the individual or private entity to be awarded the contract.

- Requires the Medicaid program to continue to cover dental, podiatric, and vision care services for fiscal years 2004 and 2005 in at least the amount, duration, and scope it currently covers those 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.

- Requires 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 and requires that the modified or new manner include a provision for obtaining federal financial participation.

- 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.

- Requires ODJFS to pay children's hospitals an amount that equals the inflation adjustment not paid for the period beginning January 1, 2003 and ending May 31, 2003.

- Requires that Medicaid payments to children's hospitals for fiscal years 2004 and 2005 include the inflation adjustment provided for in rules in effect on December 30, 2002.

- Makes revisions to the Medicaid reimbursement formula applicable to nursing facilities' direct care and indirect care costs for fiscal years 2004 and 2005.

- Provides that, for fiscal years 2004 and 2005, a portion of the money in the Nursing Facility Stabilization Fund is to be used to make Medicaid payments to each nursing facility in an amount equal to $1.25, rather than $2.25, per Medicaid day.

- Requires ODJFS to decrease or increase nursing facilities' Medicaid per diem rates for fiscal year 2005 if the number of Medicaid days for which Medicaid payments are made to all nursing facilities during fiscal year 2004 exceeds or is less than 19,686,516.

- Requires ODJFS to decrease or increase nursing facilities' Medicaid per diem rates for the second half of fiscal year 2005 if the number of Medicaid days for which Medicaid payments are made to all nursing facilities during the first half of fiscal year 2005 exceeds or is less than 9,744,826.

- Provides that the mean total per diem rate for all ICFs/MR cannot exceed $228.89 for fiscal year 2004 and $233.47 for fiscal year 2005.

- 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.

- Requires the Nursing Facility Reimbursement Study Council to meet quarterly beginning August 1, 2003, and, in addition to issuing periodic reports, to issue a report on its activities and recommendations to the

Governor, Speaker of the House of Representatives, and President of the Senate by July 30, 2004.

- 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.

- Permits ODJFS to seek approval for one or more Medicaid waivers under which home and community-based services are provided in the form of either or both of the following: (1) early intervention services for children under age three that are provided or arranged by county board of mental retardation and developmental disabilities, (2) therapeutic services for children with autism.

- 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 programs 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.

- 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.

- Specifies that providers of home and community-based services offered through Medicaid waivers administered by the Department of Mental Retardation and Developmental Disabilities are not subject to the bill's requirements for criminal records checks of providers of services offered through waiver programs administered by ODJFS.

- Creates the Medicaid Medical Savings Account Study Committee to study the idea of implementing a medical savings account component in the Medicaid program.

- Creates the Ohio Commission to Reform Medicaid to conduct a comprehensive review of Ohio's Medicaid program.

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

Maximization of federal funds

(R.C. 5101.12)

The bill requires that the Ohio Department of Job and Family Services (ODJFS) maximize its receipt of federal revenues. ODJFS may fulfill this requirement by entering into contracts that maximize federal revenue without the expenditure of state money. In selecting entities with which to contract, ODJFS must engage in a request for proposals process.

The bill requires the Office of Budget and Management to compile data concerning the amount of federal revenue received by ODJFS and to establish procedures and requirements for ODJFS to follow in preparing and submitting a report that outlines ODJFS's success in maximizing federal revenue. Every January and July, ODJFS must submit the report outlining ODJFS's success in maximizing federal revenue to each of the following: (1) the Office of Budget and Management, (2) Speaker and Minority Leader of the House, (3) President and Minority Leader of the Senate, and (4) Legislative Service Commission.

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.

ODJFS is also required to complete progress reports on the partnership agreements between the Director of ODJFS and boards of county commissioners.[81] Current law provides that the progress reports are due not later than the *first* day of each July. Under the bill, the progress reports are due not later than the *last* day of each July. The bill provides that the progress reports be for the 12-month periods ending on the last day of June.

Voter Registration Program

(R.C. 3503.10)

The National Voter Registration Act of 1993 requires each state to designate agencies for the registration of voters in federal elections, including all offices in the state that provide public assistance (42 U.S.C. 1973gg-5). Because

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[81] *The Director of ODJFS is required to enter into a written partnership agreement with each board of county commissioners. The partnership agreements 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 by state law but that a county department assumes pursuant to an agreement entered into under continuing law; any other county department duties that the Director and board mutually agree to include in the agreement; and, if the county that the board serves is a local area under 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 and public children services agencies included in a plan of cooperation that the Director and board agree to include in the partnership agreement.*

ODJFS provides public assistance through several of its programs, such as the Ohio Works First program, ODJFS is designated a voter registration agency.

The Act requires that voter registration agencies make available all of the following services:

(1) Distribution of voter registration application forms;

(2) Unless refused by the applicant, assistance to applicants in completing voter registration application forms;

(3) Acceptance of completed voter registration application forms for transmittal to the appropriate state election official.

In accordance with federal law, state law also requires a voter registration agency to provide the services listed above in the home of a person with disabilities if the agency is primarily engaged in providing services to persons with disabilities under a state-funded program and provides those services in the person's home.

The bill limits the activities of ODJFS pertaining to the administration of the Voter Registration Program to those requirements prescribed by the Secretary of State, state law and the federal law.

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. Workforce Development

Agreements with one-stop operators and one-stop partners

(R.C. 5101.214)

The workforce development law requires each local area to participate in a one-stop system for workforce development activities.[82] 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."

IV. 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.

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[82] *A "local area" is a (1) 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) single county, (3) consortium of a (a) group of two or more counties in the state, (b) one or more counties and one municipal corporation in the state, or (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.*

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.[83] 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.

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[83] *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.*

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.

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.[84]

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.[85] The SASSS assistance, like SAMS assistance, is paid by a public children services

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[84] *Background information about the SAMS, SASSS, and PASSS programs was provided by a representative of ODJFS.*

[85] *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.*

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.

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.[86] 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.

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[86] *The bill not does specify what might be considered an "extraordinary circumstance."*

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 in locating appropriate homes for children.[87] 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.[88]

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.[89] 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.[90]

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[87] *R.C. 5103.154.*

[88] *The sanctions are provided for in existing law (R.C. 5101.24).*

[89] *Ohio Revised Code Section 2151.3516 (not in the bill).*

[90] *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.*

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.[91] 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.

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 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 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.)

[91] *"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.)*

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.[92] The bill requires that the Training Program Steering Committee 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).[93] 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. 5103.0312)

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

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[92] 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).)

[93] A recommending agency is a public or private agency that recommends that ODJFS issue, deny, or renew a foster home certificate.

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.

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.

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.

Payments to providers of publicly funded day-care

(R.C. 5104.04, 5104.30, and 5104.32)

Current law requires ODJFS to distribute state and federal funds for publicly funded child day-care, including appropriations of federal funds available under the Child Care and Development Block Grant. Eligible day-care providers currently receive reimbursement for services provided. In addition to reimbursing providers, the bill permits payments to be made to providers. The bill requires the adoption of rules establishing procedures for making payments and determining payment rates. Payment rates are to be based on information obtained from annual surveys of the amounts charged by day-care centers and Type A family day-care homes.

In the case of funds available under the Child Care and Development Block Grant, the bill specifies that one of the permitted uses is the provision of payments to Head Start programs in advance of their provision of publicly funded day-care. A Head Start program that receives advance payments must provide an annual report to ODJFS regarding the program's attendance, including the number of children who received publicly funded day-care. If ODJFS determines from the report that the advance payments exceeded the amount of publicly funded day-care provided, ODJFS must require the program to return the excess amount or withhold the amount from future advance payments. (See "***Head Start and Head Start Plus***," under the DEPARTMENT OF EDUCATION portion of this analysis.)

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.[94]

[94] *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.*

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. The bill provides that the funds ODJFS may distribute for publicly funded child day-care include federal funds available under the TANF block grant.

Ohio Works First

Ohio Works First (OWF) is Ohio's TANF program of time limited cash assistance to low income families with children.

Minor heads of household

(R.C. 5107.02)

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.[95] 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.

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.

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[95] *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).)*

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.[96]

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

[96] *The Aid to Dependent Children and Job Opportunities and Basic Skills Training programs were replaced by TANF programs.*

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 bill provides further that the percentage cannot exceed the state's maintenance of effort (MOE) percentage for Temporary Assistance for Needy Families.

The MOE percentage is obtained by determining the percentage that the state's qualified state expenditures is of the state's historic state expenditures. Under federal law, "qualified state expenditures" refers to the total expenditures by the state for cash assistance, child care assistance, educational activities designed to increase self-sufficiency, job training, and work with respect to eligible families, as well as administrative costs in connection with those expenditures and other allowable uses of funds. "Historic state expenditures" means the amount the state spent in federal fiscal year 1994 under the former Aid to Dependent Children and Job Opportunities and Basic Skills Training Programs. In order to receive the annual block grant, Ohio is required to meet an MOE percentage of 80% of what it spent in federal fiscal year 1994, which can be lowered to 75% if the state meets its work participation requirements. According to ODJFS, Ohio is currently meeting its work participation rates, and the MOE spending level for fiscal year 2003 is 77%.

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.

Health Check

(R.C. 5111.016)

Under current law, ODJFS provides medical examinations known as "Health Checks" to children of Medicaid recipients. Once a child has undergone a Health Check examination, the child is eligible to receive any medically necessary services under the Medicaid program. The bill provides that ODJFS must obtain parental consent before performing a Health Check examination on a child and specifies that the Department cannot require a parent to consent to a Health Check examination for the child as a condition of receipt of other Medicaid services.

Current law requires ODJFS to establish a combination of written and oral methods to provide information to the public about Health Check. The bill requires that, before a Health Check examination may be performed on a child, ODJFS must also inform the child's parent, through both oral and written communication, that the examination may include the following components: (1) a mental evaluation, (2) a physical assessment, and (3) an unclothed physical examination of the child's reproductive system, including a genital examination.

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 Recovery 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.[97] 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

[97] *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)).*

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.[98] The person responsible for the estate must indicate compliance with this requirement by marking the appropriate box on a probate form.

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.

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.[99]

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.

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[98] *"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).*

[99] *R.C. 5111.11.*

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 Recovery Program.[100] 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

[100] *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.*

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 of the participants in the care management system must include Medicaid recipients who are aged, blind, or disabled. The bill specifies, however, that aged, blind, or disabled Medicaid recipients cannot be designated for system participation unless they reside in a county in which other Medicaid recipients are participating in the system.

Under the care management system the bill proposes, ODJFS may do both of 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.

The bill also provides that if the Department requires or permits aged, blind, or disabled Medicaid system participants to obtain health care services through managed care organizations, a "request for proposals" process must be used in selecting the managed care organizations to be used for the aged, blind, and disabled participants.

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.

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.

Medication Management Incentive Payment Program

(Section 137B)

The bill requires ODJFS to establish the Medication Management Incentive Payment Program for state fiscal years 2004 and 2005 to reimburse participating pharmacy providers that reduce pharmacy costs by providing consulting services.[101] These consulting services may include recommendations for eliminating unnecessary and duplicative drug therapies, modifying inefficient drug regimens, and implementing safe and cost-effective drug therapies. Any pharmacy provider who provides pharmacy services to Medicaid recipients other than those living in a nursing facility or an intermediate care facility for the mentally retarded may elect to participate in the program.[102]

The bill requires ODJFS to do each of the following:

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[101] *As used in this section of the bill, "pharmacy provider" means a person who is engaged in the sale of dangerous drugs at retail, or any person, other than a wholesale distributor or a pharmacist, who has possession, custody, or control of dangerous drugs for any purpose other than for that person's own use and consumption, including pharmacies, hospitals, nursing homes, and laboratories and all other persons who procure dangerous drugs for sale or other distribution by or under the supervision of a pharmacist or licensed health professional authorized to prescribe drugs who meets the following requirements:*

(1) Has a valid Drug Enforcement Agency (DEA) number;

(2) Has a licensed pharmacist in full or actual charge of a pharmacy;

(3) Has signed an agreement with ODJFS to provide pharmacy services under the Medicaid program. (R.C. 4729.01; O.A.C. 5101:3-9-01.)

[102] *An existing ODJFS rule deals with consulting for pharmacy services provided to Medicaid recipients living in nursing facilities and intermediate care facilities for the mentally retarded (O.A.C. 5101:3-9-08.)*

(1) Determine the statewide monthly average cost of providing pharmacy services to Medicaid recipients other than those residing in a nursing home or intermediate care facility for the mentally retarded during the last quarter of the biennium that ends June 30, 2003;

(2) Establish a reimbursement rate for pharmacy services provided under the Medication Management Incentive Payment Program for the first quarter of the biennium ending June 30, 2005.

Under the program, if a participating pharmacy provider's average monthly cost of providing pharmacy services to a certain number of Medicaid recipients (specified by ODJFS) in a quarter after the first quarter of the biennium ending June 30, 2005, is equal to or exceeds the statewide average cost of providing pharmacy services during the last quarter of the biennium ending June 30, 2003, the pharmacy provider must be reimbursed at the rate established by ODJFS. If the pharmacy provider's average monthly cost of providing pharmacy services to a certain number of Medicaid recipients (specified by ODJFS) is less than the statewide average monthly cost of providing pharmacy services during the last quarter of the biennium ending June 30, 2003, the pharmacy provider must be reimbursed at an enhanced rate established by ODJFS.

The bill requires ODJFS to adopt, in accordance with the Administrative Procedure Act, any rules it considers necessary for the development and administration of the program. The rules may also provide for compensation for physicians who consult with pharmacy providers that participate in the program.

Pharmacy and Therapeutics Committee

(R.C. 5111.81)

The Pharmacy and Therapeutics Committee in ODJFS consists of eight members appointed by the Director of ODJFS.

The bill requires the committee to accept any written or oral testimony presented at any public meeting of the committee.

Advisory council to select Medicaid drug managers

(R.C. 5111.083)

The bill provides that, each time before the Director of ODJFS contracts with an individual or private entity to administer the Medicaid program's preferred drug list or supplemental drug rebate program, an advisory council be appointed. The advisory council is to review the proposals submitted by individuals and

private entities seeking the contract and to select the individual or private entity that is to be awarded the contract.

All of the following are to serve on an advisory council:

(1) The Director of ODJFS;

(2) Two members of the House of Representatives, one from each party, appointed by the Speaker of the House;

(3) Two members of the Senate, one from each party, appointed by the Senate President;

(4) Two representatives of patient advocates, one appointed by the Speaker and one appointed by the Senate President;

(5) One representative of the Ohio State Medical Association, appointed by that association's executive director;

(6) One representative of large businesses, appointed by the president of the Ohio Chamber of Commerce;

(7) One representative of small businesses, appointed by the state director of the Ohio chapter of the National Federation of Independent Businesses;

(8) One representative of local government, appointed by the executive director of the County Commissioners' Association of Ohio.

An advisory council is required to elect a chairperson from among its members. The bill specifies that a council is subject to the open meetings law. A council's members may vote to select the individual or private entity to be awarded the contract to administer the Medicaid program's preferred drug list or supplemental drug rebate program only if a quorum of the members is present at the meeting at which the vote is taken. A council's members are not to be reimbursed for their expenses incurred in their work on the council. A council is authorized to seek grants, donations, or other funds to pay for its activities. A council is to cease to exist when it selects the individual or private entity to be awarded the contract.

The bill requires that ODJFS provide to an advisory council copies of proposals submitted by each individual or private entity seeking the contract. ODJFS must redact from each copy of each proposal any proprietary information included in the proposal. ODJFS must contract with the individual or private entity selected by an advisory council.

Medicaid coverage of dental, podiatric, and vision care services

(Sections 58.24, 58.25, and 58.26)

Continuing law authorizes the Director of ODJFS to adopt rules establishing the amount, duration, and scope of medical services to be included in the Medicaid program. The Director has adopted rules under which dental, podiatric, and vision care services are covered by the Medicaid program.[103]

The bill requires that the Medicaid program continue to cover those services for fiscal years 2004 and 2005 in at least the amount, duration, and scope that it does under those rules on the effective date of this provision of the bill.

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

[103] *Ohio Administrative Code Chapters 5101:3-5, 5101:3-6, and 5101:3-7.*

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 requires 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. In modifying the manner or establishing a new manner, ODJFS must include a provision for obtaining federal financial participation for the cost each board incurs in its administration of alcohol, drug addiction, and mental health services. With the exception of amounts ODJFS is permitted to retain under existing law, ODJFS must pay the federal financial participation to the board that incurred the costs.

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 payments to children's hospitals

(Section 58.20)

ODJFS has adopted a rule (Ohio Administrative Code 5101:3-2-074(G)) that prescribes how ODJFS is to adjust for inflation the Medicaid payment rate that applies to children's hospitals. Under the current rule, for the rate year beginning January 1, 2003, and ending December 31, 2003, there is no adjustment from January 1, 2003 to May 31, 2003. From June 1, 2003 to December 31, 2003, the composite inflation factor is to be adjusted to 1.029. For other periods, the inflation values that are applied to produce a new composite inflation factor are based on the estimate of 23 price and wage indexes set forth in the rule.[104]

Under the bill, ODJFS is required to pay to each hospital participating in the Medicaid program an amount equal to the inflation adjustment not paid for the period beginning January 1, 2003 and ending May 31, 2003. The bill requires ODJFS to use the inflation adjustment provided for in the rule as it existed on December 30, 2002. Therefore, under the bill, the composite inflation factor for January 1, 2003 through May 31, 2003 is market basket minus 1%.

The bill also provides that for fiscal years 2004 and 2005, the Medicaid payments to children's hospitals must include the adjustment for inflation specified in the rule as it existed on December 30, 2002. Therefore, for June 1, 2003 through June 30, 2003, the composite inflation factor is to be adjusted to 1.029. For July 1, 2003 through December 31, 2003, the composite inflation factor must be adjusted to market basket minus 1%. For the period beginning January 1, 2004 and ending June 30, 2005, the composite inflation factor is to be based on the

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[104] *The categories included in the wage and price indexes used to determine the composite inflation factor include, for example, wages, benefits, professional fees, utilities, prescription pharmaceuticals, medical instruments, chemicals, machinery and equipment, food, and telephone services.*

estimate of 23 price and wage indexes set forth in the rule as it existed on December 30, 2002. Those factors and the weights assigned them did not change when the new rule went into effect on December 31, 2002.

Medicaid reimbursement of long-term care services

Background

Current law requires 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.[105] 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 hazardous medical waste collection; allocated other protected home office costs; and any additional costs included in ODJFS rules.

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[105] *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.*

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.

The bill makes revisions to the reimbursement formula applicable to nursing facilities' direct care and indirect care costs. The revisions are applicable only for fiscal years 2004 and 2005. They do not apply to ICFs/MR.

Revisions to direct care cost center for fiscal years 2004 and 2005

(R.C. 5111.23 and 5111.262)

Each nursing facility's Medicaid reimbursement rate for direct care costs is based on the facility's cost per case-mix unit, subject to the maximum cost per case-mix unit applicable to the nursing facility peer group to which the facility belongs.[106] For each peer group, the maximum cost per case-mix unit must be set at a percentage above the cost per case-mix unit of the nursing facility in the peer group that has the group's median Medicaid inpatient day for the calendar year preceding the fiscal year in which the rate will be paid. Under current law, the maximum cannot be less than the percentage above the median cost per case-mix unit for the nursing facility that has the median Medicaid inpatient day for calendar year 1992 for all nursing facilities that would result in payment of all desk-reviewed, actual, allowable direct care costs for 85% of the Medicaid inpatient days for nursing facilities for calendar year 1992.

The bill provides that, for fiscal year 2004, each peer group's maximum cannot be less than 118% of the cost per case-mix unit of the group's median nursing facility. For fiscal year 2005, the maximum cannot be less than 115%.

Under current law, costs reported in a nursing facility's cost report for purchased nursing services are allowable direct care costs up to 20% of the facility's costs specified in the cost report for services provided in a calendar year by registered nurses, licensed practical nurses, and nurse aides who are employees of the facility, plus one-half of the amount by which the reported costs for

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[106] *The Director of ODJFS is required to adopt rules specifying nursing facility peer groups based on findings of significant per diem direct care cost differences due to geography and facility bed size.*

purchased nursing services exceed that percentage. The bill lowers this percentage to 15% for fiscal year 2004 and 10% for fiscal year 2005.

Revisions to indirect care cost center for fiscal years 2004 and 2005

(R.C. 5111.24)

Nursing facilities' Medicaid reimbursement rate for indirect care costs is subject to a maximum rate established for each nursing facility peer group.[107] Current law provides that, for each peer group, the maximum for even-numbered fiscal years is the rate that is 12.5% above the desk-reviewed, actual, allowable, per diem indirect care cost of the nursing facility in the group that has the group's median Medicaid inpatient days for the calendar year preceding the fiscal year in which the rate will be paid, adjusted for inflation. For odd-numbered fiscal years, the maximum rate for each peer group is the group's maximum rate for the previous fiscal year, adjusted for inflation.

Under the bill, each peer group's maximum rate for fiscal year 2004 is 11% above the desk-reviewed, actual, allowable, per diem indirect care cost of the peer group's median nursing facility, adjusted for inflation. For fiscal year 2005, it is 9%.

Nursing Facility Stabilization Fund

(Sections 131X and 131Y)

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.[108]

Current law requires that a portion of the money in the Fund be used to make Medicaid payments to each nursing facility for fiscal years 2003, 2004, and 2005 in an amount equal to $2.25 per Medicaid day for the purpose of enhancing

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[107] As for direct care costs, the Director of ODJFS is required to adopt rules specifying nursing facility peer groups based on findings of significant per diem indirect care cost differences due to geography and facility bed size.

[108] 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.

quality of care.[109] The bill reduces, for fiscal years 2004 and 2005, this payment to $1.25 per Medicaid day.

Adjustments to nursing facilities' Medicaid per diem rates

(Section 58.23)

The bill requires ODJFS to decrease or increase nursing facilities' Medicaid per diem rates for fiscal year 2005 if the number of Medicaid days for which Medicaid payments are made to all nursing facilities during fiscal year 2004 exceeds or is less than 19,686,516. If the number exceeds that amount, ODJFS must reduce the total per diem rate for each nursing facility by an amount determined as follows:

(1) Subtract 19,686,516 from the number of Medicaid days for which Medicaid payments are made to all nursing facilities during fiscal year 2004;

(2) Multiply that difference by the average nursing facility per diem rate, weighted by Medicaid days, for fiscal year 2004;

(3) Divide that product by the number of Medicaid days for which Medicaid payments are made to all nursing facilities during fiscal year 2004.

If the number of Medicaid days for which Medicaid payments are made to all nursing facilities during fiscal year 2004 is less than 19,686,516, ODJFS must increase the total per diem rate for each nursing facility by an amount determined as follows:

(1) Subtract the number of Medicaid days for which Medicaid payments are made to all nursing facilities during fiscal year 2004 from 19,686,516;

(2) Multiply that difference by the average nursing facility per diem rate, weighted by Medicaid days, for fiscal year 2004;

(3) Divide that product by the number of Medicaid days for which Medicaid payments are made to all nursing facilities during fiscal year 2004.

The bill also requires ODJFS to decrease or increase nursing facilities' Medicaid per diem rates for the second half of fiscal year 2005 if the number of

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[109] "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.

Medicaid days for which Medicaid payments are made to all nursing facilities during the first half of fiscal year 2005 exceeds or is less than 9,744,826. If the number exceeds that amount, ODJFS must reduce the total per diem rate for each nursing facility by an amount determined as follows:

(1) Subtract 9,744,826 from the number of Medicaid days for which Medicaid payments are made to all nursing facilities during the first half of fiscal year 2005;

(2) Multiply that difference by the average nursing facility per diem rate, weighted by Medicaid days, for the first half of fiscal year 2005;

(3) Divide that product by the number of Medicaid days for which Medicaid payments are made to all nursing facilities during the first half of fiscal year 2005.

If the number of Medicaid days for which Medicaid payments are made to all nursing facilities in the first half of fiscal year 2005 is less than 9,744,826, ODJFS must increase the total per diem rate for each nursing facility by an amount determined as follows:

(1) Subtract the number of Medicaid days for which Medicaid payments are made to all nursing facilities during the first half of fiscal year 2005 from 9,744,826;

(2) Multiply that difference by the average nursing facility per diem rate, weighted by Medicaid days, for the first half of fiscal year 2005;

(3) Divide that product by the number of Medicaid days for which Medicaid payments are made to all nursing facilities during the first half of fiscal year 2005.

The decrease or increase to the second half of fiscal year 2005 is cumulative to the decrease or increase made for the whole of fiscal year 2005.

Adjustments to Medicaid per diem rates of ICFs/MR

(Section 58.22)

The bill establishes limitations on the Medicaid reimbursement rates for ICFs/MR for fiscal years 2004 and 2005. For fiscal year 2004, the mean total per diem rate for all ICFs/MR, weighted by Medicaid days and calculated as of July 1, 2003, cannot exceed $228.89. For fiscal year 2005, the mean total per diem rate, calculated as of July 1, 2004, cannot exceed $233.47. If the mean total per diem rate for either fiscal year exceeds the specified amount, ODJFS is required to

reduce the total per diem rate for each ICF/MR by a percentage that is equal to the percentage by which the mean total per diem rate exceeds the specified amount for the applicable fiscal year.

Medicaid provider agreements

(R.C. 5111.20, 5111.22, and 5111.222; ancillary sections: 5101.75, 5101.21, 5111.30, and 5111.31)

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.

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. 5111.65)

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.[110] 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 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:

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[110] 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.

(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. 5111.65)

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. 5111.65)

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, 5111.65, and 5111.66)

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. 5111.65 and 5111.67)

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.[111] The written notice must be provided to ODJFS not

[111] *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*

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;

(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.

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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.

Determination of potential Medicaid debt

(R.C. 5111.68)

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.[112] ODJFS must make the estimate using information available to ODJFS, including prior determinations of overpayments and other debts.

Withholdings and security

(R.C. 5111.25, 5111.251, and 5111.681)

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

[112] *See "**Provider agreement with entering operator**" below.*

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;[113]

(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. 5111.683, 5111.684, and 5111.685)

The bill requires an exiting operator to file with ODJFS a cost report unless ODJFS waives this requirement.[114] 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.[115] 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 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

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[113] 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.

[114] The bill gives ODJFS sole discretion over whether to waive the cost report requirement for an exiting operator.

[115] 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.

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. 5111.686)

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.[116]

Release of withholdings and security and collection of debt

(R.C. 5111.687, 5111.688, and 5111.689)

The bill establishes time frames for ODJFS to release the amount withheld from an exiting operator and the security provided to ODJFS. ODJFS must 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

[116] *Only the parts of the report concerning the following are subject to an adjudication conducted in accordance with the Administrative Procedure Act: (1) any audit disallowance that ODJFS makes as the result of an audit, (2) adverse findings that result from an exception review of resident assessment information conducted 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 an audit within 60 days of the request.*

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.[117] 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.[118]

Provider agreement with entering operator

(R.C. 5111.671, 5111.672, 5111.673, 5111.674, and 5111.675)

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

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[117] *See "**Provider agreement with entering operator**" below.*

[118] *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.*

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 documents relating to the change of operator, and (3) is eligible for Medicaid payments.[119]

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.[120]

(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;

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[119] 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.

*[120] See "**Withholdings and security**" and "**Final cost report**" above.*

(2) Comply with current law governing provider agreements and all other applicable state laws;

(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. 5111.676)

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. 5111.661)

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.[121] 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. 5111.677)

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. 5111.6810)

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.

[121] *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).)*

Penalties

(R.C. 5111.28)

Current law 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.[122] 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 a 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.[123]

Medicare certification

(R.C. 5111.21)

Under current law, a nursing facility that elects to obtain and maintain eligibility for payments under Medicare 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.

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*[122] See "**Change of operator, closure, and voluntary termination and withdrawal**" above.*

*[123] See "**Withholdings and security**" above. This would also include a penalty for not furnishing requested documentation regarding an audit.*

Nursing Facility Reimbursement Study Council

(R.C. 5111.34)

The Nursing Facility Reimbursement Study Council is required to review, on an ongoing basis, the system for reimbursing nursing facilities under the Medicaid program and recommend any changes it determines are necessary. The Council is also required to issue periodic reports on its activities, findings, and recommendations to the Governor, Speaker of the House of Representatives, and President of the Senate.

The bill requires the Council to meet quarterly beginning August 1, 2003. The bill requires the Council to issue, in addition to its periodic reports, a report on activities and recommendations to the Governor, Speaker of the House of Representatives, and President of the Senate by July 30, 2004.

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.

Medicaid waivers for early intervention services for young children and therapeutic services for children with autism

(R.C. 5111.87, 5111.871, 5111.872, 5111.873, 5123.01, 5126.01, and 5126.042)

Federal law permits the Secretary of Health and Human Services to waive requirements for a state's Medicaid program on application by the state. The bill authorizes the Director of ODJFS to apply to the United States Secretary of Health and Human Services for Medicaid waivers that operate for three to four years each under which home and community-based services are provided in the form of either or both of the following:

(1) Early intervention services for children under the age of three years that are provided or arranged by county boards of mental retardation and developmental disabilities;

(2) Therapeutic services for children with autism.

ODJFS is to enter into a contract with the Department of Mental Retardation and Developmental Disabilities (ODMRDD) under which ODMRDD administers those components of the Medicaid program in accordance with the waivers.

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;[124]

(3) Need the level of care provided by nursing facilities;

(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

[124] *Under the existing uncodified provision the recipient must have resided continuously in a nursing facility since January 1, 2001.*

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.[125] 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 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.

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[125] *O.A.C. 5101:3-12-03.*

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)).[126]

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."[127] 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

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[126] *"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. "Waiver agency" does not include a person or government entity that provides home and community-based waiver services offered through Medicaid waivers administered by the Department of Mental Retardation and Developmental Disabilities pursuant to a contract with ODJFS to provide eligible Medicaid recipients with home and community-based services as an alternative to placement in an intermediate care facility. (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).)

[127] *"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).)*

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 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).)[128]

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[128] *"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 an ODJFS-administered home and community-based services program providing home and community-based waiver services to consumers with disabilities. "Independent provider" does not include a person providing home and community-based waiver services offered through Medicaid waivers administered by the Department of Mental Retardation and*

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).)

Developmental Disabilities pursuant to a contract with ODJFS to provide eligible Medicaid recipients with home and community-based services as an alternative to placement in an intermediate care facility. (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 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. 5111.96(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 an ODJFS-administered home and community-based services program providing home and community-based waiver services to consumers with disabilities**" (R.C. 5111.86(A)(1)).*

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)):

(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)).

Medicaid Medical Savings Account Study Committee

(Section 58.27)

The bill creates the Medicaid Medical Savings Account Study Committee. The committee is required to study the idea of implementing a medical savings account component in the Medicaid program. As part of the study, the committee must examine the fiscal effects a medical savings account component would have on the Medicaid program, which groups of Medicaid recipients might benefit from a medical savings account, and other issues the committee determines relevant to its study. The committee is required to issue a report on its findings not later than one year after the effective date of this provision of the bill. The House of Representatives is required to provide the committee with meeting space and other support necessary for the committee to do its work.

The following are to serve on the committee:

(1) Two members of the House of Representatives, one from each party, appointed by the Speaker;

(2) Two members of the Senate, one from each party, appointed by the Senate President;

(3) One representative of ODJFS;

(4) Two representatives of the insurance industry, one appointed by the Speaker and one appointed by the Senate President.

Ohio Commission to Reform Medicaid

(Section 58.29)

The bill establishes the Ohio Commission to Reform Medicaid to conduct and complete a review of Ohio's Medicaid program and make recommendations for comprehensive reform and cost containment. The Commission must submit a report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate by January 1, 2005.

The bill specifies that the Commission is to have nine members: three appointed by the Governor, three by the Speaker of the House of Representatives, and three by the President of the Senate.[129] The members must be appointed within 90 days after the bill becomes effective, and the Commission may hire a

[129] *Vacancies are to be filled in the same manner.*

staff director and other employees to provide technical support. The bill provides that all members serve at the pleasure of the appointing authority and are not to be compensated.

The bill also requires the Director of ODJFS to seek federal financial assistance for the administrative costs of the Commission.

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

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.[130] 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

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[130] *The Disability Assistance program's income eligibility standards are established by ODJFS rule (R.C. 5115.05).*

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. 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 140B)

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 permits the Director to suspend acceptance of applications for assistance. During a suspension, no person can receive a determination or redetermination of eligibility for assistance unless the person was receiving the assistance during the month immediately preceding the suspension's effective date or the person submitted an application prior to the suspension's effective date and receives a determination of eligibility based on that application. 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.

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.

JOINT LEGISLATIVE ETHICS COMMITTEE

- Increases from $10 to $25 the registration fee that each legislative agent and employer, and each executive agency lobbyist and employer, are charged for filing an initial registration statement.
- Specifies that all money collected from these registration fees must be deposited into the General Revenue Fund of the state rather than the Joint Legislative Ethics Committee Fund.

Registration fees

(R.C. 101.72 and 121.62)

Under current law, each legislative agent and employer, and each executive agency lobbyist and employer, within ten days following the engagement of a legislative agent or an executive agency lobbyist must file with the Joint Legislative Ethics Committee an initial registration statement. Current law also establishes a registration fee of $10 for filing an initial registration statement.

The bill increases from $10 to $25 the registration fee that each legislative agent and employer, and each executive agency lobbyist and employer, must pay when filing an initial registration statement. The bill also specifies that all moneys collected from these registration fees must be deposited into the General Revenue Fund of the state, rather than be deposited to the credit of the Joint Legislative Ethics Committee Fund as current law requires.

LEGAL RIGHTS SERVICE COMMISSION

- Modifies the authority of the Legal Rights Service Commission.

Commission authority

(R.C. 5123.60)

The bill modifies the authority of the Legal Rights Service Commission. It specifies that the policy guidelines established by the Commission for the Legal Rights Service may include guidelines for the commencement of litigation. It gives rulemaking authority to the Commission to carry out its purposes and provides that rules adopted by the administrator may not conflict with the rules of the Commission. The bill requires the administrator of the Legal Rights Service (1) to provide the Commission with a copy of the Service's proposed budget at least 30 days before submitting the budget to the General Assembly and to include the Commission's written comments when it submits the budget, and (2) on request, to report to the Commission on specific litigation issues. The bill authorizes the Commission to create a grievance procedure for the determination of grievances against the Service by individuals who have been represented or denied representation by the Service, notwithstanding any objections of their legal guardians. The bill changes the tenure of the administrator from a term of five years, subject to removal for incapacity to perform the duties of the office, certain convictions, or other good cause, to serving at the pleasure of the Commission.

OHIO LOTTERY COMMISSION

- Enacts several statutory requirements concerning the State Lottery Commission's operation of lotteries using electronic lottery devices at horse racing tracks, but conditions the Commission's operation of these lotteries on a majority of the electors voting in the negative on the question of prohibiting the state from operating electronic lottery devices at those tracks.

- Requires the Director of the Commission to license holders of permits issued under the Horse Racing Law as electronic lottery sales agents, establishes licensure requirements, and provides for license renewal every five years.

- Requires the Commission to execute renewable agreements with these agents that provide for the distribution of the gross proceeds of the lotteries in accordance with statutory specifications and that contain other specified provisions.

- Requires the Commission to perform specified actions in conducting lotteries using electronic gaming devices, including the operation of all electronic gaming devices and of an on-line central communications system that provides security, auditing, and data and information retrieval.

- Establishes the responsibilities of electronic lottery sales agents.

- Requires the Commission to adopt rules addressing specified topics that are necessary to implement the bill's provisions.

- Precludes the Commission from conducting specified live casino table games, but authorizes it to conduct lotteries replicating them by electronic gaming devices.

- Prohibits the assessment on or collection from an agent of a license or excise tax or fee by any political subdivision by reason of the conduct of lotteries using electronic gaming devices at tracks.

- Requires the ballot question of prohibiting the state from operating electronic lottery devices to be submitted to the electors at the November 4, 2003 election.

- Sets the rate of the sales and use taxes at 5% on and after July 1, 2004, if a majority of the electors vote in the negative on the ballot question.

- Requires the Commission to implement the lotteries by October 31, 2003, but prohibits the Commission from conducting the lotteries unless a majority of the electors vote in the negative on the ballot question.

- Requires the Commission to commence conducting the lotteries by December 31, 2003, if a majority of the electors vote in the negative on the ballot question.

- Eliminates the 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.

- Requires the Director to deduct from lottery prize award payments amounts in satisfaction of certain state-owed debts.

Electronic gaming equipment at horse racing tracks

(R.C. 1711.09, 1711.11, 3770.02, 3770.03, 3770.05, 3770.06, 3770.061, 3770.08, 3770.21, 3770.22, 3770.23, 3770.24, 3770.25, 3770.26, 3770.27, 3770.28, 3770.29, 3770.30, and 4301.03; Sections 145.03U to 145.03AA)

Definitions

(R.C. 3770.21)

The bill defines the following terms:

(1) "Associated equipment" means any hardware or software that is connected to an electronic gaming device or the central communications system (see below) for the purpose of performing communications to, or validation, auditing, or data and information retrieval by, the State Lottery Commission. "Associated equipment" does not include telecommunications facilities and equipment of a public utility or electronic gaming devices (see below). (R.C. 3770.21(A).)

(2) "Central communications system" means the computer system operated and controlled by the Commission to which electronic gaming devices and their associated equipment communicate for security, auditing, data and information retrieval, and other purposes authorized under the bill (R.C. 3770.21(B)).

(3) "Electronic gaming device" means a device approved by the Commission for the purpose of conducting at tracks lotteries that provide immediate prize determinations for individual participants (R.C. 3770.21(C)).

(4) "Electronic lottery sales agent" means a person who is a permit holder (see below) and who holds a current license issued under the bill to assist the Commission in conducting lotteries through the use of electronic gaming devices at a track (R.C. 3770.21(D)).

(5) "Gross proceeds" means the amount of wagers by participants in lotteries minus payments to winning participants (R.C. 3770.21(E)).

(6) "Key gaming employee" means any individual employed by or under contract with an electronic lottery sales agent or an employee of a contractor that provides management or employee-related services to the agent, including gaming operator managers or assistant managers; facilities operator managers; electronic games managers; accounting department personnel; count room employees; cage department employees, including cashiers and main bank employees; vault department employees; surveillance and security department employees; floor managers; maintenance and security personnel, including custodians of electronic gaming devices and associated equipment and persons with access to cash and accounting records within such devices or equipment; and internal auditors of the agent (R.C. 3770.21(F)).

(7) "Permit holder" means a corporation, trust, partnership, limited partnership, association, person, or group of persons issued a permit under the Horse Racing Law to conduct a racing meeting other than the holder of a permit issued for a racing meeting at a county fair or an independent fair (R.C. 3770.21(G)).

(8) "Track" means any place, track, or enclosure where a permit holder conducts live horse racing for profit at a race meeting. "Track" includes facilities on premises contiguous or adjacent to tracks. (R.C. 3770.21(H).)

Establishment of lotteries using electronic gaming devices

(R.C. 3770.22; Section 145.03U)

The bill requires the State Lottery Commission to conduct lotteries that provide immediate prize determinations for individual participants through the use of electronic gaming or lottery devices (lotteries). However, the Commission's *operation* of these lotteries is conditioned on a majority of the electors voting in the negative on the question of prohibiting the state from operating electronic lottery devices (see "***Prohibition by electors***"). If not so prohibited, the Commission must conduct these lotteries only through electronic lottery sales agents (agents) that have conducted live horse-racing meetings during the past seven calendar years preceding their licensing as agents and only at tracks. If, on the bill's effective date, more than one permit holder conducted horse-racing meetings at a track during the previous calendar year, the permit holders must designate, by a written agreement, one permit holder, or a person or entity owning or owned by one or more permit holders, as the agent for that track. The agreement must be filed with the Commission prior to the issuance of an agent license and cannot be modified without the consent of the Commission. (R.C. 3770.22.)

Not later than October 31, 2003, the Commission must implement lotteries using electronic gaming devices based on the willingness and ability of each agent to cooperate in the implementation of the lotteries, except that the Commission cannot *conduct* the lotteries at that point. If a majority of the electors vote in the negative on the question of prohibiting the state from operating electronic lottery devices (see "***Prohibition by electors***"), then the Commission must commence conducting the lotteries by December 31, 2003. (Section 145.03X.)

Licensure of electronic gaming sales agents

(R.C. 3770.24)

Under the bill, the Director of the State Lottery Commission must license a permit holder as an electronic gaming sales agent. Each applicant for a license must do all of the following (R.C. 3770.24(A)(1) to (3)):

(1) Pay to the Commission a fee of $1,000;

(2) Present proof, in the form required by the Director, that the applicant is a permit holder;

(3) Prior to the approval of the application, obtain a letter of credit, or a surety or, if required by the Director, a fidelity bond, in an amount to be determined by the Director, but not to exceed $100,000. The bond may be with any company that complies with the bonding and surety laws of Ohio and requirements established by rules of the Commission adopted under the bill (see "***Rules***," below). The Director must certify to the Commission that the applicant has the required permit and letter of credit or bond.

The bill specifies that an agent's license is effective for five years. An agent, on or before the date established by the Director, must renew the agent's license and the agreement required by the bill (see "***Agreement between the Commission and electronic lottery sales agents***," below) and provide evidence that the agent is a current permit holder and has renewed the letter of credit or bond required by the bill. The Director must certify to the Commission that the applicant for the renewal has the required permit and letter of credit or bond. (R.C. 3770.24(B).)

The bill specifies that any violation of the State Lottery Law, including the bill's provisions, or of any rule adopted under that Law or the bill, is sufficient reason for the Commission to refuse to issue a license or for the Commission to suspend or revoke any license issued under the bill. With respect to the issuance, refusal, suspension, or revocation of a license, the action of the Commission is subject to the Administrative Procedure Act. (R.C. 3770.24(C).)

Relationship between the Commission and electronic lottery sales agents

(R.C. 3770.25)

The bill states that the relationship between the Commission and an agent is one of trust. An agent collects funds on behalf of the Commission through the sale of rights to participate in lotteries for which the agent receives a commission. An agent may not accept any thing of value from, or enter into an agreement with, a manufacturer, distributor, or vendor of electronic gaming devices and associated equipment before filing with the Commission a copy of the agreement or a document memorializing the offer of the thing of value. (R.C. 3770.25.)

Agreement between the Commission and electronic lottery sales agents

(R.C. 3770.26; Section 145.03AA)

Under the bill, the Commission must execute an agreement with each agent. Each agreement and renewed agreement must provide all of the following (R.C. 3770.26(A)(1) to (8); Section 145.03AA):

(1) That the agent pay a one-time licensing fee equal to $8,000 for each electronic lottery device located at the agent's premises to the Commission before a device can be operated. If a device is replaced by another device, no additional licensing fee is required for the replacement device.

(2) That a certain percentage of the gross proceeds of the lotteries using electronic gaming devices must be paid as a commission to the agent for services and personnel provided under the bill by the agent for the lotteries (see "***Responsibilities of an agent***," below); for the provision, maintenance, and repair of the buildings and grounds at the track where the electronic gaming devices are located; and for injury to the existing business of the agent as the result of the conduct of lotteries by the Commission at the track. From the date an agent pays the agent's licensing fee for electronic lottery devices through June 30, 2004, the percentage of the gross proceeds paid as a commission will be 40.5%. Then, from July 1, 2004 until a date determined by rules adopted by the Commission, the percentage will be decreased to 39%. Finally, following this date set by the Commission, the percentage will be decreased to 37.5%.

(3) That a certain percentage of the gross proceeds of the lotteries using electronic gaming devices must be credited to the agent for reimbursement of costs and damages pursuant to the bill (see below) as a result of the operation by the Commission of electronic gaming devices at the track. From the date an agent pays the agent's licensing fee for electronic lottery devices through June 30, 2004, the percentage of the gross proceeds credited as reimbursement will be 9%. Then,

from July 1, 2004 until a date determined by rules adopted by the Commission, the percentage will continue to be 9%. Finally, following this date set by the Commission, the percentage will be increased to 10.5%.

(4) That from the above percentage amount of the gross proceeds credited for reimbursement, a certain amount of the gross proceeds of lotteries conducted at a track during the previous month must be added by the agent to the purse money for live horse racing conducted at that track except as discussed below. From the date an agent pays the agent's licensing fee for electronic lottery devices through June 30, 2004, the percentage of the gross proceeds added to the purse money will be 8.5%. Then, from July 1, 2004 until a date determined by rules adopted by the Commission, the percentage will continue to be 8.5%. Finally, following this date set by the Commission, the percentage will be increased to 10%.[131]

(5) That from the above percentage amount of the gross proceeds credited for reimbursement, an amount equal to .25% of the gross proceeds of lotteries conducted at a track during the previous month must be paid by the agent to the county in which the track is located, and .25% of such gross proceeds must be paid to the municipal corporation in which the track is located or, if the track is not located within a municipal corporation, to the township in which the track is located. If the track is located in more than one county, and municipal corporation or township, the amounts payable must be divided equally among the counties, and municipal corporations or townships;

(6) That the agent must give to the Commission a written schedule that lists the installed cost of all fixtures and equipment supplied by the agent to assist the Commission in conducting lotteries using electronic gaming devices, and, if the Commission discontinues conducting the lotteries for any reason other than breach of the agreement by the agent or suspension or revocation of the agent's license issued under the bill or permit issued under the Horse Racing Law, that the Commission must reimburse the agent for the unamortized cost of the fixtures and equipment listed in the schedule;

(7) That the agent must conduct live horse-racing meetings and simulcast racing programs each calendar year on not less than the number of days required

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[131] *Section 145.03AA, which establishes the alternative percentage amounts of gross proceeds added to the agent's purse money states, "the ten percent referred to in section 3770.26(A)(2)." However, R.C. 3770.26(A)(2) does not refer to 10% added to an agent's purse money, but rather the 10.5% that is credited to the agent for reimbursement of costs and damages. The "10% added to an agent's purse money" reference is actually found in R.C. 3770.26(A)(3). Thus, it appears that the cross-reference found in Section 145.03AA is incorrect.*

by the Horse Racing Law pursuant to the permit issued by the State Racing Commission for that track;

(8) That not less than 1,800 nor more than 2,500 electronic gaming devices must be placed at a track without a determination by the Director of the State Lottery Commission or by the Commission that the number of devices is consistent with the bill's purposes and has been requested by the agent; and

(9) That lotteries using electronic gaming devices may not be conducted between the hours of 5:00 a.m. and 8:00 a.m. on any day.

Under the bill, the term of the agreement cannot exceed five years and cannot be terminated by the parties during its term, except for breach of a provision of the agreement or suspension or revocation of an agent's license issued under the bill or of a permit issued under the Horse Racing Law. If the Commission intends to terminate or not renew an agreement, it must provide the agent with an opportunity for an adjudication under the Administrative Procedure Act. (R.C. 3770.26(B).)

Special distribution of money

(Section 145.03Z)

The bill allows an electronic lottery sales agent and the Thoroughbred Horsemens Association or Ohio Harness Horsemens Association, prior to December 31, 2018, to agree in writing that an amount equal to 1% of the gross proceeds of the lotteries conducted under the bill be paid by the agent to one or more specified funds designated by the appropriate horsemens organization. The written agreement must be filed with the State Lottery Commission and the State Racing Commission. The funds that may be designated are the Ohio Fairs Fund, the Ohio Thoroughbred Race Fund, the Ohio Standardbred Development Fund, and the Ohio Quarter Horse Development Fund. If an agreement is entered into, the amount required to be added to the purse money by the electronic lottery sales agent under the bill (see above) must be reduced by 1%. (Section 145.03Z.)

Responsibilities of the Commission

(R.C. 3770.27)

The bill requires the Commission to do all of the following in conducting lotteries using electronic gaming devices (R.C. 3770.27(A) to (E)):

(1) Approve, qualify, certify, procure, install, maintain, repair, replace, and operate all electronic gaming devices, associated equipment, and intellectual property necessary for the conduct of the lotteries;

(2) Procure, install, establish, maintain, repair, replace, and operate the central communications system that provides security, auditing, and data and information retrieval as determined necessary by the Commission and that does not limit participation to only one electronic gaming device manufacturer, distributor, supplier, or provider. The central communications system must be on-line and in continuous communication with computers, electronic gaming devices, and associated equipment located at the tracks of agents;

(3) Select, qualify, certify, retain, pay, and terminate all contractors, suppliers, service companies, and vendors of the Commission necessary for the conduct of lotteries using electronic gaming devices, including those persons that provide electronic gaming devices, associated equipment, and the central communications system;

(4) Establish standards for the daily payment, by an agent through electronic transfer or other system mandated by the Director, of the gross proceeds of lotteries using electronic gaming devices, less the commission paid, and the reimbursement credited, to the agent under the bill (see above);

(5) Review advertising and promotion of the lotteries. The Commission must pay 50% of the cost of producing, distributing, and operating any approved advertising and promotion. The remainder must be paid by the electronic lottery sales agent that initiates the advertising or promotion.

Responsibilities of an electronic lottery sales agent

(R.C. 3770.28)

The bill requires an agent to do all of the following in assisting the Commission with the conduct of lotteries using electronic gaming devices (R.C. 3770.28(A) to (F)):

(1) Select the number, type, denomination, and location of and refill the electronic gaming devices that have been placed by the Commission at the track, and promptly report to the electronic gaming device manufacturer and the Commission any malfunctions of the devices or failures of the manufacturers or service technicians to promptly service and repair the devices or associated equipment;

(2) Provide, maintain, and repair necessary capital improvements for the facilities at the track at which electronic gaming devices are located;

(3) Hire and compensate adequate personnel to ensure compliance with the bill, including sufficient security personnel to protect and secure the devices and associated equipment and the track at which the devices are located;

(4) Hire, compensate and be responsible for the performance of the duties of, key gaming employees, ensuring that those employees have been and remain during the course of their employment duly licensed by the Commission;

(5) By electronic transfer or other system mandated by the Director, transfer or deliver daily to the Commission the gross proceeds of lotteries using electronic gaming devices, less the commission paid, and the reimbursement credited, to the agent under the bill (see above);

(6) Deliver payment to winning participants of prizes awarded by lotteries conducted by the Commission through electronic gaming devices at tracks.

Rules

(R.C. 3770.03)

Current law requires the State Lottery Commission to promulgate rules in accordance with the Administrative Procedure Act under which a statewide lottery may be conducted. The bill instead requires the Commission to promulgate rules in accordance with that Act under which lotteries, including, but not limited to, games providing immediate prize determinations for individual participants through the use of electronic gaming devices, must be conducted. (R.C. 3770.03(A).) It then slightly modifies the topics to be addressed by those rules to include language encompassing lotteries using electronic gaming devices.

In addition, current law requires the Commission to promulgate rules in accordance with the Administrative Procedure Act under which a statewide lottery and statewide joint lottery games may be conducted. The bill, however, requires the Commission to promulgate rules in accordance with that Act under which statewide joint lottery games may, and lotteries, including, but not limited to, games providing immediate prize determinations for individual participants through the use of electronic gaming devices must, be conducted. (R.C. 3770.03(B).) Current law requires the rules to include specified subjects. The bill modifies certain of those topics and adds others as discussed below.

Currently, the rules must address the manner in which lottery sales revenues are to be collected, including authorization for the Director to impose penalties for failure by lottery sales agents to transfer revenues to the Commission in a timely manner. The bill adds electronic lottery sales agents to these rules. (R.C. 3770.03(B)(2).)

Under current law, the rules must establish the amount of compensation to be paid licensed lottery sales agents. The bill retains the requirement, but creates an exception to it regarding the compensation to be provided to electronic lottery

sales agents in accordance with their agreements with the Commission that are required under the bill (see above). (R.C. 3770.03(B)(3).)

Additionally, under current law, the rules must establish the substantive criteria for the licensing of lottery sales agents and procedures for revoking or suspending their license. The bill requires those procedures to apply to the licenses of electronic lottery sales agents. (R.C. 3770.03(B)(4).)

The bill requires the following new topics to be included in the Commission's rules (R.C. 3770.03(B)(6) to (8)):

(1) The manner in which lotteries that use electronic gaming devices under the bill must be conducted and the security, licensing, and enforcement procedures necessary to ensure the integrity of those lotteries;

(2) Licensing requirements for key gaming employees of electronic lottery sales agents or agents' contractors that employ key gaming employees, provided that the maximum initial or yearly fee for a license issued by the Commission cannot exceed the Commission's cost and expenses of investigation and licensing; and

(3) Any other subjects the Commission determines are necessary for the conduct of lotteries using electronic gaming devices.

Prohibitions

(R.C. 3770.03 and 3770.08)

The bill prohibits the Commission from conducting, directly or in conjunction with any lottery sales agent or electronic lottery sales agent, the following live casino table games (R.C. 3770.03(D)(1)(a) to (c)):

(1) Card games, including poker, blackjack, twenty-one, casino war, or baccarat, played with persons dealing cards and participants wagering on outcomes determined by the dealt cards;

(2) Roulette, wheel of fortune, or any other game played with persons spinning wheels and participants wagering on outcomes determined by a spinning wheel;

(3) Craps, mah jong, sic bo, or any other game played with persons casting or dealing dice, tiles, or similar objects, and participants wagering on outcomes determined by the location or appearance of the objects cast.

However, the bill allows the Commission to conduct lotteries replicating card games, spinning-wheel games, or cast-object games by electronic gaming devices (R.C. 3770.03(D)(2)).

Current law prohibits any person other than a licensed lottery sales agent to sell lottery tickets, but that prohibition or the others discussed below cannot be construed to prevent any person from giving lottery tickets to another as a gift. A transfer of lottery tickets by any person that is made in connection with a marketing, promotional, or advertising program must be deemed to be a gift for the purposes of the State Lottery Law. For purposes of this prohibition and its related provision, the bill replaces "lottery tickets" with "rights to participate in lotteries" and expands the language to include electronic lottery sales agents in addition to lottery sales agents. (R.C. 3770.08(B).)

In addition, the bill prohibits any person from selling rights to participate in lotteries using electronic gaming devices to any person under 21 years of age. Additionally, no person under that age can attempt to purchase such rights. (R.C. 3770.08(C).)

Finally, current law prohibits anyone from inviting, soliciting, demanding, offering, or accepting any payment, contribution, favor, or other consideration to influence the award, renewal, or retention of a lottery sales agent license. The bill adds electronic lottery sales agent licenses to this prohibition. (R.C. 3770.08(D).)

These prohibitions are not conditioned upon the ballot question submitted to the electors.

Lottery money

(R.C. 3770.06 and 3770.061)

Current law requires that all gross revenues received from sales of lottery tickets, fines, fees, and related proceeds in connection with the statewide lottery and all gross proceeds from statewide joint lottery games be deposited into the State Lottery Gross Revenue Fund, which is in the custody of the Treasurer of State, but is not part of the state treasury. The bill replaces "lottery tickets" with "rights to participate in lotteries" for purposes of revenues received from lotteries that are to be deposited into the Fund. In addition, the bill requires the Director of the Commission to order the Treasurer of State each month to disburse to the Department of Alcohol and Drug Addiction Services money from the Fund in an amount equal to ½% of the gross proceeds attributed to lotteries conducted under the bill using electronic gaming devices during the preceding month. The Department must use the money for the treatment and prevention of problem gambling. (R.C. 3770.06(A) and 3770.061.)

Current law provides that except for gross proceeds from statewide joint lottery games, all revenues of the State Lottery Gross Revenue Fund that are not paid to holders of winning lottery tickets, that are not required to meet short-term prize liabilities, that are not credited to lottery sales agents in the form of bonuses, commissions, or reimbursements, that are not paid to financial institutions to reimburse those institutions for sales agent nonsufficient funds, and that are collected from sales agents for remittance to insurers under contract to provide sales agent bonding services must be transferred to the State Lottery Fund that is created in the state treasury. The bill expands this requirement by providing that except for gross proceeds from statewide joint lottery games, all revenues of the State Lottery Gross Revenue Fund that are not paid to winning participants, that are not required to meet short-term prize liabilities, that are not credited to lottery sales agents or electronic lottery sales agents in the form of bonuses, commissions, or reimbursements, that are not necessary for procuring, installing, maintaining, servicing, operating, repairing, advertising, promoting, and replacing electronic gaming devices, associated equipment, and the central communications system under the bill, that are not paid to financial institutions to reimburse those institutions for sales agent nonsufficient funds, that are not disbursed to the Department of Alcohol and Drug Addiction Services as discussed above, and that are not collected from sales agents for remittance to insurers under contract to provide sales agent bonding services must be transferred to the State Lottery Fund. (R.C. 3770.06(A).)

Miscellaneous provisions

(R.C. 1711.09, 1711.11, 3770.02, 3770.03, 3770.05, 3770.06, 3770.07, 3770.23, 3770.29, 3770.30, and 4301.03)

The bill states that the conduct of lotteries and the operation of electronic gaming devices at tracks under the bill cannot be deemed to change the character of the use of the tracks under any county, municipal, or township land use regulation, ordinance, or agreement (R.C. 3770.29(A)).

The bill prohibits any license or excise tax or fee from being assessed on or collected from an electronic lottery sales agent by any county, township, municipal corporation, school district, or other political subdivision of the state that has the authority to assess or collect a tax or fee by reason of the conduct of lotteries using electronic gaming devices at tracks (R.C. 3770.29(B)).

The bill also states that its provisions relating to the conduct of lotteries using electronic gaming devices do not modify the authority of the State Racing Commission to regulate horse racing in accordance with the Horse Racing Law or, except as provided in the bill, the rights and responsibilities of permit holders under that Law (R.C. 3770.30).

The bill requires an electronic gaming device to be connected to the central communications system and authorizes it to be linked with other electronic gaming devices for the purpose of lotteries providing prizes based in whole or part on the outcomes of other electronic gaming devices electronically connected and located at the same or other tracks. The Commission must evaluate and approve both the hardware of an electronic gaming device and the software that is used to operate it. The Commission cannot approve an electronic gaming device unless the software that is used to operate it will provide to participants a projected average return of more than 90%. (R.C. 3770.23.)

Under the bill, except as provided in the agreements required by the bill between the Commission and electronic lottery sales agents (see above), the number, type, denomination, and location of electronic gaming devices at a track must be within the judgment of the agent. During the first six months of conducting lotteries, not more than 40% of the electronic gaming devices operated by the Commission at an agent's track must be manufactured by the same entity. (R.C. 3770.23.)

Current law requires the Auditor of State to conduct annual audits of all lottery funds and any other audits that the Auditor or the General Assembly considers necessary. The Auditor may examine all records, files, and other documents of the Commission, and the records of lottery sales agents that pertain to their activities as agents, for purposes of conducting authorized audits. The bill includes the records of electronic lottery sales agents that are licensed under the bill. (R.C. 3770.06(D).)

The bill states that the Gambling Law does not apply to, affect, or prohibit lotteries conducted under the State Lottery Law (R.C. 3770.03(C)).

Finally, the bill makes necessary conforming changes in statutes that contain references to the existing lottery program (R.C. 1711.09, 1711.11, 3770.02, 3770.05, 3770.07, and 4301.03).

Prohibition by electors

Ballot question (R.C. 3770.22; Sections 145.03U and 145.03W). As previously noted, the bill conditions the Commission's operation of the lotteries using electronic lottery devices on a majority of the electors voting in the negative on the question of prohibiting the state from operating electronic lottery devices. Specifically, the question is: "Shall the State of Ohio be prohibited from operating electronic lottery devices at licensed horseracing tracks?" The Secretary of State must submit this question to the electors of the entire state at the election to be held on November 4, 2003.

Arguments for and against the question (Section 145.03W). The bill requires the Speaker of the House of Representatives and the President of the Senate to each appoint three individuals in favor of this question to draft arguments for the question and three against the question to draft arguments against the question. The arguments must be filed with the Secretary no later than 75 days before the November 4, 2003 election. Additionally, the arguments cannot exceed 300 words.

Once drafted and filed, the arguments are *not* to be printed nor included on the ballot. However, the Secretary must disseminate them in the same manner as arguments relating to constitutional amendments under current law (by direct mail or other written publication, broadcast, or other means or combination of means, as the Ohio Ballot Board may direct).

Repeal of sales and use tax increase

(Section 145.03Y)

The bill increases the rate of the sales and use taxes. However, if a majority of the electors vote in the negative on the question of prohibiting the state from operating electronic lottery devices, then the rate of the state sales and use taxes is reduced to 5% on and after July 1, 2004. (See "***State sales and use tax rate temporarily increased***" under "DEPARTMENT OF TAXATION," below.)

Certification of list of permit holders

(Section 145.03W)

The bill requires the Racing Commission, upon the filing of the act with the Secretary of State, to certify to the Ohio Lottery Commission (1) the names of the holders of permits to conduct racing meetings, other than holders of permits for racing meetings at a county or independent fair, and (2) the locations at which the permit holder conducted the live horseracing in the prior seven years.

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.

Deduction of state-owed debts from lottery prize award payments

(R.C. 3770.073)

The bill requires the Director of the Lottery Commission or the Director's designee to deduct from payments of lottery prize awards worth $100 or more and pay to the Ohio Attorney General an amount in satisfaction of any (1) tax, (2) workers' compensation premium, (3) unemployment contribution, (4) payment in lieu of unemployment contribution, or (5) charge, penalty, or interest arising from these debts that have become final and that the person entitled to the lottery prize owes.

If the prize award will be paid in a lump sum and the amount of the award is less than the amount of the debt, the entire amount of the prize award must be deducted and paid in partial satisfaction of the debt. If the prize award will be paid in annual installments, the deduction must be made on the date the installment payment is due and, if necessary to collect the full amount of the debt, on the dates of any subsequent annual installments, until the debt is fully satisfied.

Finally, if the person owes more than one debt and one of the debts is a tax debt resulting from the person being personally liable for a corporation's, limited liability company's, or business trust's failure to file either income or sales tax returns and make payment, deductions from prize awards must first be used to satisfy this tax debt. (R.C. 3770.073 and 5739.33 and 5747.07 (not in the bill).)

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.

Assertive community treatment in 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 provides 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.

- If certain conditions are satisfied, requires the Director of ODMR/DD to issue one or more residential facility licenses to an applicant without requiring the applicant to have development plans submitted, reviewed, or approved and notwithstanding the cap on the number of beds in residential facilities.

- Provides that an ICF/MR that obtains a residential facility license pursuant to the provision of the bill regarding licensure without development approval is subject to a $24.59 cost of ownership per diem cap under Medicaid, rather than a $19.76 cap.

- 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.

- 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.

- 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.

- Creates the Ohio Autism Task Force consisting of 21 members to study and make recommendations regarding the growing incidence of autism in Ohio and ways to improve the delivery of autism services in Ohio.

- Provides that the Task Force ceases to exist on submission of a report of its recommendations to the Governor, Speaker of the House of Representatives, and President of the Senate one year after the bill's effective date.

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).[132] In general, a residential facility is a home or facility in which a person with mental retardation or a developmental disability resides.[133] 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).[134]

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[132] *R.C. 5123.20 (not in the bill).*

[133] *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.*

[134] *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, 5123.197, 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.

The bill 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.[135] 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.

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[135] *"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 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 and 5123.196; 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.

With exceptions, 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 maximum number is not to be reduced by a bed taken out of service if 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. Also, the cap does not apply to the extent it would otherwise prevent the issuance of a license under the provision of the bill regarding obtaining a license without development approval.

Obtaining a license without development approval

(R.C. 5111.251, 5123.19, 5123.196, and 5123.1910)

One of the requirements for obtaining a residential facility license is that the Director of ODMR/DD be provided a copy of an ODMR/DD-approved plan for the proposed facility. To obtain development approval, an individual or entity must seek a recommendation from the county board of mental retardation and developmental disabilities (county MR/DD board) or, if the county MR/DD board is an applicant to provide residential services in the county, a committee the Director of ODMR/DD appoints. In determining whether to approve a proposed

MR/DD residential facility, ODMR/DD must consider the county MR/DD board or committee's recommendation, the availability of funds, and whether the individual or entity seeking approval meets the eligibility criteria for providing residential services established by ODMR/DD rules.

If certain conditions are satisfied, the bill requires the Director of ODMR/DD to issue one or more residential facility licenses to an applicant without requiring the applicant to have development plans submitted, reviewed, or approved and notwithstanding the cap created by the bill on the number of beds in residential facilities. The following are the conditions:

(1) The applicant must meet the requirements for the license established by statute and rules, other than any rule that requires an applicant to have development plans submitted, reviewed, or approved for the residential facility.

(2) The applicant must operate at least one licensed residential facility on the effective date of this provision of the bill.

(3) The applicant must provide services to individuals with MR/DD who have a chronic, medically complex, or technology-dependent condition that requires special supervision or care, the majority of whom received habilitation services from the applicant before attaining age 18.

(4) The applicant must have created directly or through a corporate affiliate a research center that has the mission of funding, promoting, and carrying on scientific research in the public interest related to individuals with MR/DD for the purpose of improving the lives of such individuals.

(5) If the applicant seeks two or more residential facility licenses, the facilities for which a license is sought after the effective date of this provision of the bill are located on the same or adjoining property sites.

(6) The facilities for which the applicant seeks licensure have not more than eight beds each and 48 beds total.

(7) The applicant, one or more of the applicant's corporate affiliates, or both employ or contract for, on a full-time basis, at least one physician who is certified by the American Board of Pediatrics or would be eligible for a certificate from that board if the physician passed an examination necessary to obtain certification from that board.

(8) The applicant, one or more of the applicant's corporate affiliates, or both have educational facilities suitable for the instruction of individuals under age 18 with MR/DD who have a medically complex or technology-dependent condition.

(9) The applicant has a policy for giving individuals with MR/DD who meet certain conditions priority over all others in admissions to one of the licensed residential facilities that the applicant operates on the effective date of this provision of the bill. The conditions are to (a) be under age 18, (b) have a chronic, medically complex, or technology-dependent condition that requires special supervision or care, (c) be eligible for Medicaid, and (d) reside in a nursing home or hospital prior to being admitted to the residential facility.

The bill includes a provision regarding Medicaid reimbursement of residential facilities that are licensed under this provision of the bill and obtain ICF/MR certification. ICFs/MR are subject to a maximum, or capped, cost of ownership per diem as part of their capital cost reimbursement under Medicaid. The amount of the cap differs for different ICFs/MR. The cap a particular ICF/MR is subject to depends on different factors: the number of beds in the facility, the date of the facility's licensure or development approval, when substantial commitments of funds were first made, and whether or not ODJFS gave the facility prior approval for construction. The cost of ownership per diem cap is $24.59 for an ICF/MR with eight or fewer beds that has a date of licensure or development approval on or after July 1, 1993, if substantial commitments of funds were not made before that date and the ICF/MR received ODJFS prior construction approval. Such an ICF/MR that did not receive prior approval for construction from ODJFS is subject to a $19.76 cost of ownership per diem.

The bill provides that an ICF/MR that obtains a residential facility license pursuant to this provision of the bill is subject to the $24.59 cost of ownership per diem cap, rather than the $19.76 cap, regardless of whether it receives prior construction approval from ODJFS.

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 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.

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.

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.

Ohio Autism Task Force

(Section 145.03A)

Membership

The bill creates the Ohio Autism Task Force consisting of the following 21 members:

(1) The following persons appointed by the Governor:

(a) A person diagnosed with autism;

(b) Four persons who are parents of children diagnosed with autism;

(c) A special education administrator of an Ohio school district;

(d) A representative of the Ohio Association of County Boards of Mental Retardation and Developmental Disabilities;

(e) A representative of the Ohio Developmental Disabilities Council;

(f) A representative of the Autism Society of Ohio;

(g) A developmental pediatrician who is a member of the Ohio Association of Pediatricians;

(h) Two representatives from private schools in Ohio that provide special education services to children diagnosed with autism;

(i) Two representatives from Ohio hospitals that provide services to children diagnosed with autism;

(2) Two members of the House of Representatives, one from the majority party and one from the minority party, appointed by the Speaker of the House of Representatives;

(3) Two members of the Senate, one from the majority party and one from the minority party, appointed by the President of the Senate;

(4) The Director of Mental Retardation and Developmental Disabilities or the Director's designee;

(5) The Director of Job and Family Services or the Director's designee;

(6) The Superintendent of Public Instruction or the Superintendent's designee.

All appointments and designations to the Task Force must be made not later than 30 days after the bill's effective date. Any vacancy that occurs on the Task Force must be filled in the same manner as the original appointment. The initial meeting of the Task Force must be held not later than 60 days after the bill's effective date. At its initial meeting, the Task Force must elect from its membership a chairperson and other officers it considers necessary. Thereafter, the Task Force is required to meet on the call of the chairperson. Task Force members are not to receive compensation for performing their duties as members. The Department of Mental Retardation and Developmental Disabilities is required to provide meeting space and other support as necessary for the Task Force.

Report on recommendations

The bill requires the Task Force to study and make recommendations about both of the following:

(1) The growing incidence of autism in Ohio;

(2) Ways to improve the delivery of autism services in Ohio.

Not later than one year after the bill's effective date, the Task Force is to submit a written report of its recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The Task Force ceases to exist on submission of its report.

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.

- Beginning not later than five years after the applicable effective date, requires one of the seven members of the Reclamation Commission to be an attorney who is familiar with mining issues.

- 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.

- 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.

- Allocates 20% of the money from the sale of standing timber from state forest lands and nurseries to the State Forest Fund and 80% to the General Revenue Fund rather than 100% to the GRF as in current law, clarifies that the money that is distributed to counties, townships, and school districts from the sale of products from state forest lands is from the sale of standing timber, and reduces the amount that is so distributed from 80% to 70% of the gross value of the standing timber.

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.

Membership of Reclamation Commission

(R.C. 1513.05)

Current law creates the Reclamation Commission, which hears appeals of decisions of the Chief of the Division of Mineral Resources Management in the Department of Natural Resources. The Commission generally consists of seven members appointed by the Governor with the advice and consent of the Senate,

except that when hearing appeals that involve mine safety issues, the Commission includes two additional members. Terms of office are for five years.

Two of the seven regular 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. The bill adds that, beginning not later than five years after the applicable effective date, at least one of the seven regular appointees to the Commission must be an attorney at law who is admitted to practice in Ohio and is familiar with mining issues.

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.

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 fee
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

License, permit, or stamp	Current fee	Proposed fee
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, 1533.40, 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 fee	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
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.[136] 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.

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[136] *Current law appears to use "permit" and "license" interchangeably.*

Allocation and distribution of money from state timber sales

(R.C. 1503.05)

Existing law authorizes the Chief of the Division of Forestry to sell timber and other forest products from the state forest and state forest nurseries whenever the Chief considers such a sale desirable. The Chief also may grant mineral rights on a royalty basis on state forest lands and nurseries with the approval of the Attorney General and the Director of Natural Resources. Currently, all moneys received from the sale of standing timber must be deposited into the General Revenue Fund. All moneys received from the sale of other forest products and minerals taken from those lands and nurseries, together with royalties from mineral rights, must be paid into the State Forest Fund, which must be used for the development, administration, and maintenance of the state forests, forest nurseries, and forest programs.

Under existing law, at the time of making such a payment or deposit, the Chief must determine the amount and gross value of all such products sold or royalties received from lands and nurseries in each county and in each township and school district within the county. After making the determination, the Chief must ensure that an amount equal to 80% of the gross value of the products and royalties is transferred to the county. The county auditor then must retain one-fourth of that amount for the use of the county general fund, pay one-fourth of that amount into the general fund of any affected township, and pay one-half of the amount into the appropriate fund or funds identified by the board of education of any affected school district.

The bill revises the allocation and distribution of money from the sale of standing timber. First, it requires 20% of the moneys from the sale of standing timber to be credited to the State Forest Fund and 80% to be credited to the General Revenue Fund. The crediting of moneys from the sale of other forest products, minerals, and royalties from mineral rights to the State Forest Fund remains unchanged. Next, the bill clarifies that the distribution of money to counties, townships, and school districts is from money that has been credited to the General Revenue Fund from the sale of standing timber. Finally, the bill decreases the percentage of money that is so distributed from 80% to 70% of the gross value of the standing timber that was sold. The formula for distributing the money among counties, townships, and school districts is unchanged.

- Permits a licensed practical nurse to qualify for an intravenous therapy card through a course of study completed in a prelicensure education program and specifies that an issuance fee for the card is not to be charged to nurses who qualify in this manner.

- Provides that licensed practical nurses who qualify for an intravenous therapy card by completing a 40-hour course, as specified in current law, must successfully demonstrate the skills needed for safe performance of intravenous procedures.

- 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.

- Permits the Board of Nursing to sponsor specified types of continuing education activities.

- Creates the Nurse Education Grant Program to award joint grants to nurse education programs and health care facilities to fund partnerships that increase the enrollment capacity of nurse education programs.

- Requires $10 of each biennial nursing license renewal fee to be deposited in the Nurse Education Grant Program Fund to fund the grants and administration of the program.

- Repeals the law authorizing the Nurse Education Grant Program on December 31, 2013.

- Clarifies that specified funds of the Board of Nursing are deposited into the Special Nursing Issue Fund and not into the Occupational Licensing and Regulatory Fund.

Administration of intravenous therapy to adults

(R.C. 4723.08 and 4723.17)

Current law provides that, except in limited circumstances, a licensed practical nurse (LPN) may administer adult intravenous therapy only if authorized

to do so by the Board of Nursing.[137] The Board may provide authorization to an LPN who has a current license, including authorization to administer medications, and who has successfully completed a 40-hour course in intravenous administration that has been approved by the Board. Once authorized by the Board, the LPN may administer intravenous therapy only when directed to do so by (1) a licensed physician, dentist, optometrist, or podiatrist who is present and readily available at the facility where the procedure is performed, or (2) a registered nurse (RN).

The bill also permits an LPN to obtain authorization on completion of a prelicensure education program approved by the Board or its equivalent in another jurisdiction. The prelicensure program must include didactic and clinical components, and must require the nurse to perform a successful demonstration of intravenous procedures, including all skills needed to perform them safely. The program must also include the curriculum requirements adopted by the Board.

The bill further alters the authorization requirements by changing the postlicensure class requirements. Current law requires the nurse to complete a course that includes a testing component requiring the successful performance of three supervised venipunctures. The bill changes this language to require the nurse to perform only one successful demonstration. That demonstration, however, must include the intravenous procedures and all skills necessary to perform them safely.

The bill requires the Board to issue an intravenous therapy card to an LPN who satisfies either the prelicensure or postlicensure course requirements. The Board may charge a fee of up to $25 for intravenous therapy cards issued pursuant to the postlicensure provisions. The Board cannot charge a fee for cards received pursuant to the prelicensure education program.

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[137] *An LPN who demonstrates the knowledge, skills, and ability to perform the procedure safely, may, at the direction of a registered nurse or licensed physician, dentist, optometrist, or podiatrist who is either on the premises or accessible by some form of telecommunication, do the following without Board authorization: (1) verify the type of peripheral intravenous solution being administered, (2) examine a peripheral infusion site and the extremity for possible infiltration, (3) regulate a peripheral intravenous infusion according to the prescribed flow rate, (4) discontinue a peripheral intravenous device at the appropriate time, and (5) perform routine dressing changes (R.C. 4723.171).*

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 that directly relate to statutes and rules pertaining to the practice of nursing in this state.

The bill creates the following new Board of Nursing fees: issuance of an intravenous therapy card after completion of a postlicensure education program, $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

Nurse Education Grant Program

(R.C. 4723.063)

The bill requires the Nursing Board to establish and administer the Nurse Education Grant Program from January 1, 2004, until December 31, 2013, when the law authorizing the program is repealed. During this period, $10 of each biennial nursing license renewal fee is to be deposited in the Nurse Education Grant Program Fund to fund the grants and administration of the program.

Under the program, the Board is to award joint grants to nurse education programs and health care facilities to fund partnerships to increase the enrollment capacity of nurse education programs.[138] Grants are to be used for hiring clinical faculty and preceptors and purchasing education equipment and materials. Any of the following facilities is, for purposes of the bill, a "health care facility":

(1) A hospital registered with the Ohio Department of Health;

(2) A nursing home licensed by the Department or by a political subdivision certified by the Department to license nursing homes;

(3) A county home or county nursing home certified by the Medicare program;

(4) A freestanding dialysis center;

(5) A freestanding inpatient rehabilitation facility;

(6) An ambulatory surgical facility;

(7) A freestanding cardiac catheterization facility;

(8) A freestanding birthing center;

(9) A freestanding or mobile diagnostic imaging center;

(10) A freestanding radiation therapy center.

Partnerships may be between one or more nurse education programs and one or more health care facilities. In awarding grants, the bill requires the Board to give preference to partnerships between nurse education programs and hospitals, nursing homes, and county homes or county nursing homes, but the Board may also award grants to fund partnerships with other health care facilities.

Under the bill, the Board must adopt rules in accordance with R.C. Chapter 119. (the Administrative Procedure Act) to establish the following:

(1) Eligibility requirements for receipt of a grant;

(2) Grant application forms and procedures;

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[138] *As used in the bill, "nurse education program" means a prelicensure nurse education program approved by the Nursing Board or a postlicensure nurse education program approved by the Board of Regents. (R.C. 4723.06 and 3333.06.)*

(3) The amounts in which grants may be made and the total amount that may be jointly awarded to a nurse education program and health care facility;

(4) A method whereby the Board may evaluate the effectiveness of a partnership between joint recipients in increasing the nurse education program's enrollment capacity;

(5) The percentage of the money in the fund that must remain in the fund at all times to maintain a fiscally responsible fund balance;

(6) Any other matters incidental to the operation of the program.

Deposit of funds into Special Nursing Issue Fund

(R.C. 4743.05)

The bill clarifies that specified funds the Ohio Board of Nursing collects or receives are to be deposited into the state treasury to the credit of the Special Nursing Issue Fund and not into the Occupational Licensing and Regulatory Fund, as is the case for other fees the Board collects. The specified funds are: (1) fees the Board collects for Board-sponsored continuing education activities, and (2) grants the Board receives to develop and maintain a program addressing patient safety and health care issues related to the supply of and demand for nurses and other health care workers.

STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS

- Abolishes the State Board of Orthotics, Prosthetics, and Pedorthics and transfers its duties and employees to the State Medical Board.

Duties transferred to State Medical Board

(R.C. 4779.05 to 4779.12, 4779.15 to 4779.18, 4779.20 to 4779.27, 4779.30, 4779.32, and 4779.33; Sections 132.15 and 145.03C)

The fields of orthotics, prosthetics, and pedorthics deal with rehabilitative treatment of conditions affecting the musculoskeletal system. Currently, the State Board of Orthotics, Prosthetics, and Pedorthics oversees the licensure of professionals in those fields. The bill abolishes that Board and transfers its duties and employees to the State Medical Board while retaining an existing sunset

clause that repeals the licensing requirement and all related laws on December 31, 2004.

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 DEFENDER COMMISSION

- Freezes at the level in effect on March 1, 2003, the maximum amounts for which the state will reimburse counties for legal services for indigent criminal defendants.

State reimbursement to counties for legal services to indigent defendants

(Section 83)

The bill freezes at the level in effect on March 1, 2003, the maximum amounts for which the state will reimburse counties for the period from July 1, 2003, through June 30, 2005, for legal services for indigent criminal defendants.

PUBLIC UTILITIES COMMISSION OF OHIO

- Codifies the creation of the Special Assessment Fund in the state treasury, to be used for Public Utilities Commission (PUCO) investigations.
- Codifies the creation of the Gas Pipe-line Safety Fund in the state treasury, to be used for PUCO oversight of intrastate transportation by pipeline.
- Codifies the creation of the Motor Carrier Safety Fund in the state treasury, to be used for PUCO 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 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 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.

- Establishes a cap of 6% (9% for The Ohio State University) on annual increases of in-state undergraduate instructional and general fees at state institutions of higher education, but allows institutions with fees below their "sector average" to charge incoming students an additional $300 fee.

- Recognizes the Miami University pilot tuition restructuring plan, which provides that all in-state undergraduate students attending the Oxford campus will be charged the same tuition as out-of-state students, with in-state students receiving financial assistance from the university.

- Excludes the cost of Miami University's tuition from the calculation of a price of a tuition credit under the Guaranteed College Savings Program for as long as Miami University implements the pilot tuition restructuring plan.

- Imposes a moratorium on the creation, acquisition, or expansion of academic programs, capital projects, real estate, and student centers by state universities and colleges in fiscal years 2004 and 2005, subject to certain exemptions.

- Requires the Board of Regents to submit to the General Assembly a comprehensive plan to eliminate duplication of graduate, professional, and doctoral programs, to recommend Ohio institutions as part of a Centers of Excellence program, and to consolidate the six state-supported medical schools into a Public Medical College System.

- Requires the Board of Regents to study the possibility of merging collocated institutions and the administrations of those institutions above the level of dean.

- Directs the Ohio Board of Regents to implement several policies that are intended to facilitate the transfer of students and credits between state institutions of higher education.

- Permits, on a pilot basis, the operation of new community college within the Warren County Career Center joint vocational school.

- Eliminates the requirement that at least five members of the board of trustees of the University of Cincinnati be residents of the city of Cincinnati.

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.

Cap on tuition charges at state-assisted institutions of higher education

(Section 88.05)

The bill imposes a limit on the amount of in-state undergraduate instructional and general fees the board of trustees of a state university, community college, state community college, technical college, and university branch (collectively, "state institutions") may charge. In general, the boards of trustees of these state institutions may only increase instructional and general fees for in-state undergraduate students 6% from the amount of such fees in the prior academic year. Although the bill does not explicitly state in which academic years this 6% cap is effective, presumably the bill means the 2003-2004 and 2004-2005 academic years. The Ohio State University, however, may increase such fees up to 9% from the amounts charged in the prior academic year for the 2003-2004 and 2004-2005 academic years.

Certain state institutions are permitted to charge incoming undergraduate students an additional fee. The bill provides that The Ohio State University and any other state institution with instructional and general fees below the "sector average" may charge incoming students a fee of $300, regardless of the general tuition cap. Who determines the "sector average" and what this term actually means are issues unaddressed by the bill. No board of trustees of these state institutions may authorize an increase in excess of 6% in a single vote.

Miami University pilot tuition restructuring plan

(Section 88.05)

In the spring of 2003, the board of trustees of Miami University intends to consider adopting a new tuition plan whereby all undergraduate students attending the Oxford campus would be charged the same tuition, based on the nonresident

tuition, regardless of whether the student is a resident or nonresident of Ohio.[139] This tuition plan would take effect in the summer term of 2003. According to the university, the increase in tuition for students who enroll prior to August of 2004 would only be an increase "on paper." These students would actually pay the amount the student was charged in the preceding year plus any increases approved by the board of trustees.

Currently, Miami charges resident students approximately $7,600 and nonresident students approximately $16,300. Thus, under the plan all undergraduate students would be charged $16,300 if the current cost of tuition remains in effect. The university would then award student financial assistance to resident students. According to the university, all resident students would receive financial assistance in an amount that reflects a per-student amount of funding received from the state, which Miami estimates is currently $4,400. Other resident students would be eligible for additional financial assistance based on various factors.

The bill recognizes this plan and, to enable Miami to implement the plan, the bill allows Miami University certain exceptions from provisions otherwise applicable to all state institutions of higher education. First, under the bill all state institutions of higher education, except Miami, are required to charge a tuition surcharge to nonresident students. Thus, Miami can charge nonresident students the same tuition as resident students. Second, all state institutions of higher education, except Miami, are required to delineate the amount of instructional fees, general fees, and the tuition surcharge for nonresident students on students' statements of account.

With respect to the issue of tuition caps, the bill specifies that while Miami University is exempted from any caps for the first term of implementation (summer of 2003), the university is subject to any tuition caps imposed by the General Assembly for all academic terms thereafter.[140]

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[139] *All background information about this tuition plan is available from Miami University's website: http://www.muohio.edu.*

[140] *As Miami University is proposing to adopt and implement this tuition plan before July 1, 2003, it would appear that exempting the university from any tuition cap for the first term of implementation is not strictly necessary, as current law, which expires June 30, 2003, imposes no tuition caps on state universities.*

Exclusion of the cost of tuition from the calculation of a price of a tuition credit under the Guaranteed College Savings Program

Under continuing law, the Ohio Tuition Trust Authority operates the Guaranteed College Savings Program, a savings program through which contributors may purchase tuition units on behalf of a designated beneficiary at approximately 1% of the weighted average tuition charged at public four-year universities in Ohio for the year the units are purchased.[141] The Tuition Trust Authority then invests the purchase price of the units so that when the beneficiary enrolls in college one unit pays for 1% of the weighted average tuition charged at public four-year universities for the year the beneficiary enrolls.

The bill excludes the amount of tuition charged by Miami University, for as long as Miami operates the pilot tuition restructuring plan, from the Tuition Trust Authority's calculation of the price of a tuition unit under the Guaranteed College Savings Plan. If the cost of Miami's tuition was not excluded from this calculation, the price of a tuition unit would increase. This exclusion means that the calculation of the weighted average tuition price would only be based on the average tuition at Ohio's other four-year public universities for as long as Miami implements the pilot plan.

Moratorium on certain expenditures of state universities and colleges

(Section 88.05)

The bill places a moratorium, for fiscal years 2004 and 2005, on the ability of individual boards of trustees of state-assisted universities, university branch campuses, community colleges, state community colleges, and technical colleges to create, acquire, or expand academic programs, capital projects, real estate, and student centers. There are exceptions to this moratorium, however.

First, projects that are specifically approved in legislation enacted between July 1, 1998, and June 30, 2003, are permitted. Second, an individual board of trustees may request an exemption from the moratorium from the Third Frontier Commission. In reviewing requests, the Third Frontier Commission may only approve projects that establish or enhance the research and development position of the state. Approval by the Controlling Board is also required for any project approved by the Third Frontier Commission. Third, an individual board of trustees is exempt from the moratorium if the Ohio Board of Regents has approved

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[141] *R.C. 3334.07, not in the bill. The cost of a tuition unit is also increased by a varying amount to maintain the actuarial soundness of the program. The Ohio Tuition Trust Authority also operates the Variable College Savings Program which is unaffected by the bill.*

a resolution prior to July 1, 2003, that permits the university or college to create, acquire, expand, or finance an academic program, capital project, real estate, or student center. Finally, if exceptional circumstances exist, the board of trustees of a state university or college may seek approval from the Controlling Board for exemption from the moratorium.

Comprehensive plan for higher education

(Section 88.14)

The bill requires the Board of Regents to develop and submit to the General Assembly, by April 1, 2004, a comprehensive plan for higher education that does all of the following:

(1) Seeks to eliminate duplication of academic programs at the graduate, professional, and doctoral levels using either a statewide or regional approach;

(2) Identifies public and private higher education institutions to recommend as part of an "Ohio Centers of Excellence" program; and

(3) Recommends that the six state-supported medical colleges be consolidated into a Public Medical College System consisting of (a) three institutions focusing on academics and research and (b) three institutions focusing on clinical teaching and clinical research.

Study of possible merger of collocated institutions

(Section 88.15)

The bill requires the Board of Regents to study the possibility of merging collocated state-assisted institutions of higher education and merging the administrations of those institutions, to optimize the use of state and student funds and to generate efficiencies. The administrations that are recommended for merger must exclude administrators at the levels of dean and below. The Board must report its findings and recommendations to the General Assembly by May 15, 2004.

Transfer of students between state institutions of higher education

(R.C. 3333.16)

Currently, Ohio has an Articulation and Transfer Policy, developed by the Ohio Board of Regents, that is intended to ensure that credits will transfer between

state institutions of higher education.[142] Under the policy, the transfer of credits and the application of those credits to the transferring student's program of study is dependent on whether the transferring student has completed an associate degree, the student's grade point average, and what courses the student has completed (e.g., a transferring student who intends to major in physics would need to take calculus-based physics in order to have a physics class count toward a physics major at the receiving institution).

In addition, the Policy requires state institutions to develop a "transfer module," which is a set of general education curriculum courses that represent a common body of knowledge required at all state institutions (e.g., English composition, mathematics, social and behavioral sciences, arts and humanities, and natural and physical sciences). A student who completes transfer module courses at one institution can transfer those courses to another state institution and have those courses fulfill the corresponding general education courses at the receiving institution.

The bill expands upon this existing transfer structure by directing the Board of Regents to implement several policies designed to further facilitate the transfer of students and credits between state institutions of higher education. First, the Board must require each state institution to make changes in its academic programs so that successful completion of any course in a particular field of study is recognized for full credit at another state institution toward satisfying the requirements of a degree or certification program in the same field of study.

Second, the Board must ensure that community colleges, university branches, technical colleges, and state community colleges comply with the requirement under current law that they offer college transfer programs or the initial two years of a baccalaureate degree.[143]

Third, the Board must develop and implement a "universal course equivalency classification system" to be used by all state institutions of higher education.

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[142] The Policy is available through the Ohio Board of Regents' website: http://www.regents.state.oh.us. The General Assembly required the development of the policy in Am. Sub. S.B. 268 and Am. Sub. H.B. 111 of the 118th General Assembly.

[143] R.C. 3333.20 requires community colleges, university branches, technical colleges, and state community colleges to demonstrate that they offer "college transfer programs or the initial two years of a baccalaureate degree for students planning to transfer to institutions offering baccalaureate degrees" (not in the bill).

Fourth, the Board is directed to develop a transfer system so that a student who completes an associate degree program that includes approved transfer module courses will be admitted to a baccalaureate program at another state institution and will have priority in admittance over out-of-state students with associate degrees and transfer students without such degrees. The only exception to this requirement that an associate degree student be admitted to a baccalaureate program at a state university is if the baccalaureate program has limited access or requires an audition before admittance. Presumably, transfer students applying to limited access or programs requiring an audition would go through the same competitive admittance process as other students.

Finally, the bill directs the Board to study the feasibility of requiring all state institutions to adopt either a quarter-hour or a semester-hour credit system.

By April 15, 2004 the Board of Regents must report to the General Assembly on its progress in meeting these requirements.

Pilot program for a combined joint vocational school and community college

(Section 137A)

The bill permits the creation of a joint vocational school-community college comprised of the Warren County Career Center joint vocational school and a new community college, on a pilot basis in fiscal years 2004 and 2005. To establish the joint vocational-community college, the Warren County Career Center joint vocational board of education and the local workforce policy board must approve the creation. The joint vocational board of education and the local workforce policy board must then submit to the Ohio Board of Regents a community college plan containing information such as the proposed organization of the college and the proposed budget for the first two years of the college's operation.[144]

Upon its creation, the bill specifies that the joint vocational-community college is governed by a board of education comprised of all members of the Warren County Career Center joint vocational school board and new members appointed by the Governor who represent business interests within the joint vocational school district. All members of the joint vocational-community college board of education are eligible for compensation and expenses in the same manner as joint vocational school board members are eligible.[145] In general, the joint

[144] *R.C. 3354.07, not in the bill.*

[145] *The compensation and expense reimbursement of members of joint vocational school boards is governed by R.C. 3311.19, not in the bill.*

vocational-community college board has all the same powers and duties as both a joint vocational school board and a community college board of trustees.

Subject to some exceptions, the joint vocational-community college is to act as both a joint vocational school district and a community college subject to all laws applicable to a joint vocational school district or a community college. This means that the joint vocational-community college is authorized to offer both career-technical education to secondary school students and two-year arts and sciences and technical programs for postsecondary school students. The Board of Regents must approve associate's degrees to be offered by the joint vocational-community college. The joint vocational-community college is also authorized to provide arts and sciences and technical instructional programs for secondary school students participating in the Postsecondary Enrollment Options program.

One limitation on the joint vocational-community college is that it is ineligible to receive state assistance for capital improvements otherwise available to community colleges. However, it *is* eligible to receive classroom facilities assistance through the Ohio School Facilities Commission.[146] A second limitation is that the joint vocational-community college is only eligible to receive 80% of the state subsidy for community colleges that would otherwise be available if the community college was an entity separate from the joint vocational school district.

As community college districts and joint vocational school districts are both permitted to issue bonds and levy taxes, the bill specifies that all revenues received to carry out joint vocational education duties are to be kept separate from all revenues received to carry out community college duties. Additionally, the community college district comprises the same territory as the joint vocational school district so that only those residents of the joint vocational school district are eligible to be taxed by the community college.

By June 30, 2005, the board of the joint vocational-community college must submit a report to the Board of Regents on the status of the pilot program. The report must include information on the effectiveness of the pilot, statistics about postsecondary school students enrolling for college credit, and any other relevant information.

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[146] *Under the laws permitting state assistance for joint vocational school districts' building projects, the Ohio School Facilities Commission may not provide state funding for any distinct part of a project that when completed will be used exclusively for adult education programs. (R.C. 3318.40(C), not in the bill).)*

Residency for board of trustee members of the University of Cincinnati

(R.C. 3361.01)

Continuing law vests the responsibility for the governance of the University of Cincinnati in a board of trustees. The Board of Trustees consists of 11 members appointed by the Governor, with the advice and consent of the Senate. Two of the 11 members are students of the university, appointed for two-year terms. The other nine members are appointed for nine-year terms. Only the nine members appointed for nine-year terms have voting power.

Current law requires that at least five of the nine voting members be residents of the city of Cincinnati.[147] The bill eliminates this residency requirement. Thus, the members of the board of trustees of the University of Cincinnati may reside anywhere and still be appointed as members of the board.

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.

- Requires the Parole Board to review the appropriateness of the length of sentences of current prisoners who were sentenced under the Felony Sentencing Law that was in effect prior to July 1, 1996, and to determine whether the length of any of those sentences should be adjusted; requires the Parole Board to submit a report of its findings and recommendations to the General Assembly within one year after the section's effective date.

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

[147] *This residency requirement for membership on university boards of trustees is unique to the University of Cincinnati.*

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.

Parole Board study of appropriateness of "pre-S.B. 2" sentences

(Section 145.03F)

Am. Sub. S.B. 2 and Am. Sub. S.B. 269 of the 121st General Assembly revised the Felony Sentencing Law and took effect on July 1, 1996. Among the changes these bills made was to change felony sentences from indefinite sentences to definite sentences. A person sentenced under an indefinite sentence was given a minimum sentence that the offender was required to serve before becoming eligible for parole and a maximum sentence beyond which the offender could not be imprisoned for the offense. Under certain circumstances, the minimum term could be reduced. A person sentenced under a definite sentence is given a specific term that generally may not be reduced, but additional types of terms, such as repeat violent offender terms, may also be imposed.

The bill requires the Parole Board to review the sentences of prisoners who are confined in state correctional institutions and who were sentenced under the Felony Sentencing Law that was in effect prior to July 1, 1996, to determine the appropriateness of those sentences and to determine whether the length of any of those sentences should be adjusted. The Parole Board must conduct this review in cooperation with the Department of Rehabilitation and Correction. The bill requires the Parole Board to prepare a report that contains its findings and makes recommendations regarding further action. Not later than one year after the effective date of the section, the Parole Board must submit the report to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, the chair of the House Criminal Justice Committee, and the chair of the Senate Judiciary Committee on Criminal Justice.

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 SCHOOL FACILITIES COMMISSION

- Terminates the following programs administered by the Ohio School Facilities Commission: the Short-Term Loan program, the Extreme Environmental Contamination program, the Emergency School Repair program, the School Building Emergency Assistance program, and the Disability Access program.

- Removes the 25% cap on funds that may be set aside from appropriations for classroom facilities assistance projects for the Exceptional Needs School Facilities Assistance program.

- Directs the Ohio School Facilities Commission, in each fiscal year, to allocate solely to the Classroom Facilities Assistance Program any funds left over from the prior fiscal year that had been appropriated and allocated to any assistance programs administered by the Commission.

- Eliminates the restriction against a school district simultaneously participating in the School Building Assistance Expedited Local Partnership Program and the Exceptional Needs School Facilities Program.

- Repeals and reenacts law that permits a school district to dedicate the proceeds of a permanent improvement levy or school district income tax to leverage securities to pay its local share of a state-funded school facilities project or to generate funds for maintenance of those facilities, and adds a new provision requiring the district to continue levying the tax as long as the securities are outstanding.

- Permits a school district participating in most classroom facilities assistance programs to apply certain expenditures of local resources made 24 months prior to notice of eligibility for state funds toward the district's share of the project costs.

- Permits a school district participating in the School Building Assistance Expedited Local Partnership Program to apply certain expenditures of local resources made 24 months prior to September 14, 2000 toward the district's share of the project costs.

- Prohibits the Ohio School Facilities Commission from releasing state funds for a state-assisted classroom facilities project to a school district until the district has complied with the existing requirement to first offer for sale to start-up community schools within the district any real property the district plans to dispose of before offering it for sale to others.

Classroom facilities assistance programs--background

State law authorizes several programs administered by the Ohio School Facilities Commission to help school districts construct, repair, or renovate school buildings. The main program is the Classroom Facilities Assistance Program (CFAP), which is intended to eventually permit all districts to receive state money to address all of their facilities needs in a single project.[148] It is a graduated, cost-sharing program where a school district's priority for funding and its portion of the cost of its project are based on the relative wealth of the district. Lower-wealth districts are served first and receive a larger percentage of their total needs than wealthier districts will receive when it is their turn to be served.

[148] *The Classroom Facilities Assistance Program is generally codified in R.C. 3318.01-3318.20 (not all sections in the bill).*

There are other programs designed to meet the special needs of certain districts. The Exceptional Needs School Facilities Assistance Program provides money to districts in the 50 lowest-wealth percentiles to construct a new facility needed to protect the health and safety of students on the same cost-sharing basis as under CFAP.[149] Under the Accelerated Urban School Building Assistance Program, the six remaining "Big-Eight" districts that have not yet received assistance under CFAP may begin applying for assistance.[150] This program essentially permits those districts to begin their projects earlier than they otherwise would be able to under CFAP. Finally, under the School Building Assistance Expedited Local Partnership Program, most districts that have not already been served under CFAP may enter into agreements with SFC permitting them to apply the expenditure of school district money on approved parts of their needs prior to their eligibility under CFAP toward their respective portions of their CFAP projects when they finally become eligible for that program.[151]

Generally, to participate in these programs, a district board, with voter approval, must issue bonds backed by a property tax to pay its portion of the cost of the project and must levy an additional property tax of one-half mill for 23 years to generate money to pay for maintenance of the new facilities. Recent legislation provides other options that the district may use to generate money to meet its obligations under the programs, including (among others) the use of donated money, credit for certain previously issued bonds to construct facilities, and the dedication of certain existing taxes to leverage new bonds. In addition to these programs and provisions designed to serve the facilities needs of city, exempted village, and local school districts, in 2003 joint vocational school districts (JVSD) will be eligible for classroom facilities assistance under a new program. Called the Vocational School Facilities Assistance Program, it is similar to CFAP but is designed specifically to address the circumstances of JVSDs.[152]

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[149] *R.C. 3318.37 (not in the bill).*

[150] *R.C. 3318.38 (not in the bill). The six districts to which this program applies are Akron, Cincinnati, Columbus, Cleveland, Dayton, and Toledo.*

[151] *R.C. 3318.021, 3318.36, 3318.361 (the preceding sections are not in the bill), and 3318.362.*

[152] *See, R.C. 3318.40-3318.46, not all sections in the bill.*

Termination of certain programs administered by the Ohio School Facilities Commission

(Repealed R.C. 3318.35 and 3318.351; Sections 131C, 131D, and 136A)

The bill terminates the following programs administered by the Ohio School Facilities Commission (OSFC): the Short-Term Loan program, the Extreme Environmental Contamination program, the Emergency School Repair program, the School Building Emergency Assistance program, and the Disability Access program. Except for the Disability Access program, which is terminated effective March 31, 2004, the other programs are terminated upon the effective date of the bill.

Under current law, the Short-Term Loan program allows the OSFC to make loans for up to three years to a school district that needs to make emergency repairs because of faulty design or construction and which flaws the school district is contesting with the contractor. The Extreme Environmental Contamination program provides funding to school districts that need to replace school buildings because of extreme environmental contamination. The Emergency School Repair program, which has been unfunded for several years, would provide emergency assistance to low-wealth districts to repair life safety systems. The School Building Emergency Assistance program provides funding to a school district that has damaged buildings due to an act of God. Funding is limited to any costs not covered by insurance or other public or private relief. The Disability Access program provides funding to lower wealth, non-urban school districts that need assistance improving access to school buildings by individuals with physical disabilities.

Modification of the set-aside cap for the Exceptional Needs School Facilities Assistance program

(R.C. 3318.37(B)(1))

The Exceptional Needs School Facilities Assistance program is intended to provide funding for new facilities in low-wealth school districts that have exceptional need for immediate assistance. Current law specifies that the OSFC may set aside up to 25% of the appropriations it receives for classroom facilities assistance projects for the Exceptional Needs program. The bill eliminates this maximum set-aside percentage. Consequently, more funds may be available for Exceptional Needs projects as the OSFC could set aside what it determines to be necessary to fund the Exceptional Needs program whether that amount is greater than or less than 25% of the classroom facilities assistance projects appropriation.

Allocation of classroom facilities project funds

(R.C. 3318.024)

Under continuing law, the Ohio School Facilities Commission administers various facility improvement programs, of which the main program is the Classroom Facilities Assistance Program (CFAP). CFAP is designed to eventually provide state assistance to all school districts on a graduated cost-sharing basis depending upon the relative wealth of each school district. Other classroom facilities programs administered by the Commission, that are not eliminated by the bill, include the Accelerated Urban School Building Assistance Program, the Exceptional Needs School Facilities Assistance Program, the Vocational School Facilities Assistance Program, and the Community Schools Classroom Facilities Loan Guarantee Program.

The bill requires the Ohio School Facilities Commission, in any fiscal year, to allocate only to CFAP any funds that are left over from the previous fiscal year that had been appropriated and allocated for any of the classroom facilities programs operated by the Commission. Presumably, under current law the Commission could allocate unspent or unencumbered funds to programs other than CFAP.

Participation in both the Exceptional Needs and the Expedited Local Partnership Programs

(R.C. 3318.37)

Under current law, a school district may not simultaneously participate in the School Building Assistance Expedited Local Partnership Program and the Exceptional Needs School Facilities Assistance Program. The bill eliminates this restriction and permits school districts to participate in both. However, it specifies that no district may receive assistance under the Exceptional Needs Program for a classroom facility that has been included in the discrete part of the district's needs identified and addressed pursuant to an Expedited Local Partnership agreement.

Under the Expedited Local Partnership Program, most districts that have not already been served under CFAP may enter into agreements with the Ohio School Facilities Commission permitting them to apply the expenditure of school district money on approved parts of their needs prior to their eligibility under CFAP toward their respective portions of their CFAP projects when they become eligible for that program. The Exceptional Needs Program provides state money to districts in the 50 lowest-wealth percentiles to construct a new facility needed to protect the health and safety of students on the same cost-sharing basis as under CFAP. (See "***Background***" above.)

Use of existing taxes to generate revenue for classroom facilities projects

(R.C. 3318.052)

Under current law, a school district generally finances its share of a state-funded school facilities project and meets its obligation to raise funds to maintain the buildings by having its voters approve a bond issuance and a property tax levy. As an alternative, a district has the option (without voter approval) to use the proceeds of an existing or newly approved permanent improvement levy or school district income tax, or both, to leverage bonds toward all or part of its local share and to generate funds to meet all or part of its obligation to raise funds for building maintenance. Current law does not, however, guarantee that the taxes earmarked for those purposes cannot be revoked or reduced by the district board or by the voters.

The bill repeals the existing statute and enacts a new one that authorizes the same dedication of taxes for classroom facilities projects, but adds a new provision requiring the continued collection of the taxes as long as the securities issued to pay the district's local share are outstanding. The bill's new language also permits school districts to issue notes in anticipation of receiving the proceeds from the dedicated taxes.

Credit for previous expenditures

Most programs

(R.C. 3318.033; conforming changes in R.C. 3318.01, 3318.03, and 3318.41)

Current law requires the School Facilities Commission to count toward a district's portion of the cost of its project any bonds issued for classroom facilities within 18 months prior to notification that the district is eligible for state assistance, as long as the facilities supported by the bond issue comply with the Commission's specifications. The bill adds a provision applying this credit to any expenditure of school district funds of not less than $1 million (not just those supported by a bond issue) for facilities that meet the Commission's specifications. In addition, the bill extends the time frame to qualifying expenditures made or bond issues approved 24 months (rather than 18 months) prior to a district's notification of eligibility.

Expedited Local Partnership Program

(R.C. 3318.364)

In 2000, in Am. Sub. S.B. 272, the 123rd General Assembly expanded the scope of the Expedited Local Partnership program making most school districts eligible to enter into an agreement to spend local resources for future credit in advance of eligibility for state funding. At that time, the General Assembly also permitted districts participating in the program to receive credit for some bond- or tax-supported expenditures made prior to entering into an Expedited agreement with the School Facilities Commission. Specifically, if a school district's voters approved within 18 months of the effective date of that act (September 14, 2000) a bond issue or tax levy for the construction of or additions or major repair to any classroom facility that meet the Commission's specifications, the district may apply that expenditure toward its share under the Expedited program.

The bill provides that this provision applies to any expenditure of not less than $1 million of local resources for classroom facilities that meet the Commission's specifications (not just those financed by bonds or dedicated taxes). In addition, the bill extends the time frame to qualifying expenditures that occurred within 24 months (rather than 18 months) prior to September 14, 2000.

Disposal of real property by school districts

(R.C. 3313.41 and 3318.34)

Under continuing law, when a school district decides to dispose of real property that is suitable for classroom space, the district must first offer the property for sale at fair market value to start-up community schools located within the district. If no community school accepts the offer within 60 days, the district may proceed to sell the property at public auction or dispose of it in any other manner permitted by law.

Under the bill, if a school district plans to dispose of real property as part of a state-assisted classroom facilities project, the Ohio School Facilities Commission cannot release any state funds to the district for the project until the district has complied with the requirement to offer the property for sale to start-up community schools in the district.

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.

- 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.

- Specifies that, for the purpose of signing petitions and signing and affixing signatures to documents filed under the Election Law, a "signature" generally means a person's written, cursive-style legal mark, written in the person's own hand.

- Specifies that, for a person who does not use a cursive-style legal mark in the course of the person's regular business and legal affairs, "signature" means the person's other legal mark that the person uses during the course of those affairs that is written in the person's own hand.

- Requires the mark of an elector as it appears on the elector's voter registration record to be considered the legal mark of that elector for the purpose of signing documents under the Election Law.

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.

Election Law signature requirements

(R.C. 3501.011)

Various existing provisions of the Election Law require documents filed with a board of elections or with the office of the Secretary of State to be signed by the person filing the document or to contain the signatures of electors. For example, petitions filed under that law must be signed by a specified number of electors, and the circulator of a petition must sign a statement regarding the validity of the signatures contained within the petition. However, existing law does not define what constitutes a "signature" for these purposes. Thus, it is unclear whether a person may "sign" a petition or a statement under the Election Law by printing the person's name or using another mark.

The bill specifies that, for the purpose of signing petitions and signing or affixing a signature to documents filed with or transmitted to a board of elections or the Secretary of State under the Elections Law, "sign" or "signature" means the person's written, cursive-style legal mark written in the person's own hand. For persons who do not use a cursive-style legal mark during the course of their regular business and legal affairs, "sign" or "signature" means the person's other legal mark that the person uses during the course of that person's regular business and legal affairs that is written in the person's own hand. Any voter registration record requiring a person's signature must be signed using the person's legal mark used in the person's regular business and legal affairs. For the purpose of the Election Law, the legal mark of a registered elector must be considered to be the mark of that elector as it appears on the elector's voter registration record.

DEPARTMENT OF TAXATION

- Makes new types of service transactions subject to the sales tax.
- Makes the storage of tangible personal property subject to the sales tax.
- Eliminates the sales tax exemption for using or consuming a thing transferred in the process of reclamation.
- Eliminates the sales tax exemption for motor vehicles used in vanpool arrangements.
- Requires that delivery charges and bundled telecommunication and cable television services be included in "price" for sales tax purposes and places the burden of proving any non-taxable charges on the vendor.

- Makes sales to persons who use motor vehicles and aircraft to transport persons exempt from the sales tax.

- Provides that sales to a mobile telecommunications vendor or satellite television service vendor of tangible personal property and service used in transmitting, receiving, or recording electromagnetic communications are exempt from taxation.

- Exempts from taxation the sale of telecommunications service to a provider of mobile telecommunications service for use in providing mobile telecommunications service.

- Increases the vendor discount for timely filing of sales tax returns from 3/4% to 1.1%.

- Increases the sales tax rate from 5% to 6% for sales made between July 1, 2003, and June 30, 2005, but reduces the rate back to 5% on and after July 1, 2004, if a majority of the electors vote in the negative on the question of prohibiting the state from operating electronic lottery devices at horse racing tracks.

- Permits taxpayers subject to a municipal income tax on business net profits to carry forward net operating losses for a period of five years.

- Provides that appeals from final decisions issued by municipal appellate boards may be taken to the Board of Tax Appeals or a court of common pleas.

- 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.

- Prohibits municipal corporations from requiring a municipal income tax return to be filed on any date other than April 15, 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 greater than adjusted federal taxable income, but this restriction does not apply to electric companies or sole proprietors.

- 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.

- By tax year 2007, reduces to 25% the tax assessment rate for all tangible personal property of a telephone company.

- Removes telephone companies from the public utility excise tax on gross receipts, and requires them to pay the corporation franchise tax, beginning tax year 2005.

- 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.

- Eliminates the bond requirement in connection with paying cigarette taxes by cigarette dealers in good credit standing and requires cigarette dealers to remit cigarette taxes electronically.

- 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.

- Expands the permissible uses for money in county real estate assessment funds.

- Temporarily authorizes the Tax Commissioner to abate the collection of past-due taxes that have been charged against exempt cemeteries because a tax exemption application was not filed.

- Allows the Tax Commissioner to withhold income tax returns from business entities or individuals who owe debts to the state for unpaid workers' compensation premiums or unpaid unemployment compensation contributions or payments in lieu of contributions.

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. 5739.01, 5739.02, 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)). 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.

- Satellite television service. Under the bill, "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 (YY)).

- 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 massotherapist, or the cutting, coloring, or styling of an individual's hair (R.C. 5739.01(B)(3)(r)). "Personal care service" does not include therapeutic massage performed by licensed professionals (e.g., physician, nurses, physician assistant, etc.).

- 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)(s) and 5739.02(B)(11)).

- Motor vehicle towing service. Under the bill, "motor vehicle towing service" means the towing or conveyance of a wrecked, disabled, or illegally parked motor vehicle. (R.C. 5739.01(B)(3)(t).)

- Snow removal service. The bill defines "snow removal" as the removal of snow by any mechanized means. (R.C. 5739.01(B)(3)(u).)

Tangible personal property subject to taxation

(R.C. 5739.01(B)(9))

Under the bill, 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, are considered sales subject to sales or use taxes (R.C. 5739.01(B)(9)).

Exemptions eliminated

Elimination of exemption for "things transferred" for reclamation (R.C. 5739.01(E)(4)). Current law exempts from taxation any sale in which the purpose of the consumer is to use or consume the thing transferred in the process of restoring land affected by surface mining (a process known as "reclamation"). The bill eliminates this exemption.

Elimination of sales tax exemption for motor vehicles used in vanpool arrangements (R.C. 5739.02(B)(38)). Under current law, the sale of a motor vehicle that is used exclusively for a vanpool ridesharing arrangement to a person participating in the vanpool is exempt if the vendor is selling the vehicle pursuant to a contract between the vendor and the Department of Transportation. The bill eliminates this tax exemption.

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.

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.

Bundled telecommunications services. The bill provides that, in the case of a transaction in which telecommunications service, mobile telecommunications service, or cable television 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. Upon the consumer's request, the vendor must disclose the selling price for the taxable service, included in the selling price for the taxable and nontaxable services billed on an aggregated basis. 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 and 5739.02)

The bill provides that sales and use taxes do **not** apply to any of the following sales:

- Sales, to a person providing taxable transportation services, of tangible personal property and services used directly and primarily in providing those services (see "***Classification of certain transactions as "sales"***," above) (R.C. 5739.01(B)(3)(s) and 5739.02(B)(42)).

- Sales of telecommunications service to a provider of mobile telecommunications service for use in providing mobile telecommunications service (R.C. 5739.01(AA)). 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 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. 5739.02(B)(34)). Sales to a telecommunications service vendor of these items are already exempt from sales and use taxes.

Increased discount for vendors

(R.C. 5739.12)

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 increases this discount to 1.1% of the amount shown on the return to be due.

State sales and use tax rate temporarily increased

(R.C. 5739.02(A), 5739.025 (not in the bill), 5741.02(A), and 5741.025 (not in the bill); Section 145.03Y)

State sales and use taxes are imposed at the rate of 5% per dollar. (Continuing law specifies the brackets to be applied to fractions of a dollar when sales are not in exact dollar amounts.) The bill temporarily increases the sales and use tax rate from 5% to 6%. The temporary increase applies to sales occurring between July 1, 2003, and June 30, 2005. (The increase also applies to sales occurring on those dates.) However, if a majority of the electors vote in the negative on the question of prohibiting the state from operating electronic lottery

devices at horse racing tracks, then the rate of sales and use taxes is reduced to 5% on and after July 1, 2004 (see "***Electronic gaming equipment at horse racing tracks***" under "OHIO LOTTERY COMMISSION," above).

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.

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.

The bill permits taxpayers to carry forward net operating losses arising in taxable years beginning before 2004 if permitted to do so by the municipal corporation imposing the tax.

Appeals from tax administrators' decisions

(R.C. 718.11, 5717.011, 5717.03, and 5717.04 (not in the bill))

Under continuing law, 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 provides that a taxpayer can take an appeal from a municipal appellate board to the Board of Tax Appeals by filing a notice of appeal with the Board of Tax Appeals, the tax administrator, and the municipal appellate board within 60 days after the municipal appellate board gives the taxpayer written notification of its decision. 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 municipal appellate board's decision and that the taxpayer specify the alleged errors in the decision. 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 municipal appellate board must certify

to the Board of Tax Appeals a transcript of the proceedings before it and all of the evidence considered by it.

The bill authorizes the Board of Tax Appeals 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 municipal appellate board, 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 of Tax Appeals 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.

The bill also permits a taxpayer to appeal municipal appellate board decisions to the courts of common pleas. However, the bill does not establish procedures for taking such an appeal.

Municipal income tax withholding requirements

Automatic three-year withholding requirement eliminated

(R.C. 718.03 (repealed))

Under current 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. 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. The bill does not address a municipality's authority to require non-resident employers to withhold municipal income taxes.

Withholding tax base established

(R.C. 718.01, 718.03, 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 greater than qualifying wages that are directly or indirectly paid to the employee. (This restriction does not apply to electric companies or sole proprietors.)

The bill defines "qualifying wages" as wages, as defined under the Internal Revenue Code, with the following adjustments:[153]

(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.

(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.)

The bill provides, further, that an employer's failure to withhold taxes from qualifying wages does not relieve the employee from liability for the tax. However, if an employer fails to remit withheld taxes, the employee is relieved

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[153] *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)). The bill provides that the exclusion of certain types of compensation from the definition of "qualifying wages" does not exempt the compensation from taxation as otherwise provided for by law (R.C. 718.03(D)).*

from responsibility for the taxes withheld, provided that the failure to remit did not result from collusion on the part of the employer and employee.

Employer reporting of deferred compensation

(R.C. 718.031)

The bill specifies that municipal tax administrators (i.e., the individuals directly responsible for administering municipal income taxes) may require each employer to notify the tax administrator of the name, address, and social security number of each employee for whom the employer deferred compensation (other than qualified deferred compensation). (For a description of qualified and nonqualified deferred compensation see "***Withholding tax base established***" above). The notification, if required, must be made by the last day of February and must specify the amount deferred.

Erroneous payment of tax or withholding

(R.C. 718.121(A))

The bill provides that if tax or withholding is mistakenly paid to a municipal corporation and the time period for seeking a refund of the amounts paid lapses, the municipal corporation to which the taxes or withholding should have been paid must allow a nonrefundable credit for the amounts mistakenly paid.

Tax and withholding on nonqualified deferred compensation

(R.C. 718.121(B))

The bill addresses the situation where tax or withholding is paid to a municipal corporation on nonqualified deferred compensation for a previous taxable year in which the compensation was deferred and another municipality later imposes a tax for the current taxable year on the payment of that same compensation. The bill specifies that the municipality imposing its tax for the current taxable year must allow a credit for the tax paid to the first municipal corporation.

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 April 15, 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), 718.03, 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.

Municipal corporations not responsible for operation and maintenance of the Ohio Business Gateway

(R.C. 718.051; Section 145.03K)

The bill provides that municipal corporations are not required to pay any fees or charges for the operation or maintenance of the Ohio Business Gateway. The bill specifies, further, that within 30 days of the bill's immediate effective date, at least one individual representing the interests of municipal governments must be appointed to the steering committee currently responsible for the continuing development of the Ohio Business Gateway.

In addition, the bill provides that the use of the Ohio Business Gateway by municipalities or taxpayers in no way affects their legal rights. Similarly, the bill specifies that use of the Ohio Business Gateway does not by itself make the state a party to the administration of municipal income taxes or to an appeal of a municipal income tax dispute (see "***Appeals from tax administrators' decisions***" above).

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. 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 5745.044)

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 following conditions are satisfied:

- The corporation paid the expenses to a related member either directly or through another related member that did not charge the corporation a fee for processing the payment.

- The corporation paid the expenses to a related member that was not subject to federal income taxation for the three years before the payment and the three years after the payment and was not required to file a federal income tax return during that six-year period.

- For three years before the expense payment and three years after, the related member receiving the expense payment did not pay any part of the payment to any other related member that was not subject to federal income taxation (and was not required to file a federal return) with respect to that payment during that six-year period.

- 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, (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.[154]

- 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.)

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

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[154] *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).*

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.

Telephone companies no longer taxed as public utilities

Summary

The bill contains various tax changes that affect telephone 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).

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.

The bill also revises the law regarding the public utility excise tax on gross receipts so that telephone companies are no longer subject to that tax. Instead, telephone 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.

Lastly, the bill makes sales of services by telephone companies 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.

Public utility excise tax

(R.C. 5727.30(D), 5727.32, 5727.33, 5727.39, and 5727.44; Sections 146.06 and 146.07)

Telephone companies are no longer subject to this excise tax. Under current law, telephone 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 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.

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), 5733.05(B)(2), 5733.056(B)(5), 5733.09, 5733.55, 5733.56, 5733.57, and 5733.98; Sections 146.06 and 146.07)

Telephone 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 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 definition of telephone company that is 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 ending in 2004 is required to compute the corporation franchise tax, and 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%.

Determination of the sales factor in calculating net income. The value of a corporation's issued and outstanding shares of stock is the base or measure of franchise tax liability. Continuing law requires that in determining the value of that stock, the corporation's net income must be calculated and allocated or apportioned to the state. As part of that calculation, property, payroll, and sales factor are determined. The sales factor is the ratio of the corporation's total sales in Ohio during the taxable year to its total sales everywhere during the year. In determining the sales factor under continuing law, receipts received by a corporation from a public utility are eliminated from the equation where the reporting corporation 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.

The bill provides that the Tax Commissioner may adopt rules providing for alternative allocation and apportionment methods, and alternative calculations of a corporation's base, that apply to corporations engaged in telecommunications.

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 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 stock, it cannot be excluded from the value calculation.

9-1-1 service tax credit. 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 prior tax years, beginning with tax year 2005, plus the sum of the credits claimed for the current tax year exceeds a fixed ceiling of $15 million claimed by all telephone companies for all tax years. 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 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 existing as such as of January 1, 2003, 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, 80% for tax year 2006, 60% for tax year 2007, 40% for tax year 2008, 20% for tax year 2009, 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.).

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 ends in 2004, it must compute the tax, or compute its net operating loss carried forward for that taxable year, by multiplying the tax, or the loss for the taxable year, by 50%. 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.

The bill further provides that the Tax Commissioner may adopt rules providing for alternative apportionment methods for a telephone company.

Sales by telephone companies are subject to sales or use taxes

(R.C. 5739.01(B)(3)(f) and (AA) and 5739.02(B)(7))

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***," above).

Payment of cigarette taxes; electronic payment

(R.C. 5743.05 and 5743.051)

Under continuing law, stamps or meter impressions are sold on credit to retail or wholesale cigarette dealers representing cigarettes for which the Ohio Cigarette Tax must be paid. Currently, a retail or wholesale cigarette dealer must file with the Tax Commissioner a bond in favor of the state, with a surety approved by the Treasurer of State, guaranteeing payment for any stamps or meter impressions issued on credit and payable within 30 days of delivery of the stamps or impressions.

The bill relieves a retail or wholesale cigarette dealer who has been in good credit standing for five consecutive years preceding the purchase of the stamps or meter impressions from the bond requirement as long as the dealer continues to pay any taxes due within 30 days of the delivery of stamps or impressions. Approval of the surety is transferred from the Treasurer of State to the Tax Commissioner.

The bill requires that stamps and meter impressions sold to a dealer not required to file a bond must be sold at face value to the dealer. In addition, the maximum amount that may be sold on credit to such a dealer is 110% of the dealer's average monthly purchases over the preceding calendar year, which maximum amount is to be adjusted as specified by the bill.

The bill prohibits the Treasurer of State from selling any additional stamps or meter impressions to any retail or wholesale cigarette dealer not required to file a bond that does not pay the taxes in full within the 30-day period, until the outstanding taxes are paid, including any penalties and interest prescribed by the Cigarette Tax Law. In addition, the Tax Commissioner may require the dealer to file a bond until the dealer is "restored to good standing." The bill is unclear as to whether a dealer is "restored to good standing" by again maintaining a good credit standing for five consecutive years or for some shorter period as determined by the Tax Commissioner.

The bill also requires retail or wholesale cigarette dealers, including those dealers not required to file a bond, to remit taxes due for tax stamps and meter impressions by electronic funds transfer. Under the bill, the electronic payment is to be in accordance with rules prescribed by the Treasurer of State and within the time required by the Cigarette Tax Law.

With respect to electronic tax payment, the bill assigns duties of the Tax Commissioner, including (1) notifying retail or wholesale cigarette dealers of the obligation to pay taxes electronically and keeping an updated list of dealers, (2)

adopting procedures for excusing a dealer from this obligation, and (3) upon appropriate contact from the Treasurer of State, actions the Tax Commissioner may take if a dealer fails to remit taxes by electronic payment and assessment of an additional charge equal to 5% of the amount due up to a maximum of $5,000. In addition, the bill specifies that if the Tax Commissioner fails to notify a dealer to remit taxes electronically, such omission does not relieve the dealer of the obligation to remit a tax payment by electronic transfer and specifies fiscal treatment of additional amounts assessed and collected. However, the bill permits a dealer after being notified to remit taxes electronically, to remit taxes by other means twice before an additional assessment is levied by the Tax Commissioner.

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).

Real estate assessment fund: permissible uses

(R.C. 325.31 and 5713.10)

Current law creates a county Real Estate Assessment Fund, consisting of certain percentages as determined by the county auditor, of (1) moneys collected by the county treasurer on the county's tax duplicate (excluding estate tax duplicates), and (2) advance payments of personal property and classified property taxes. This cost is apportioned and deducted from property tax revenue payable to the taxing authorities, specifically, the state, county, townships, municipal corporations, and school districts. (R.C. 319.54(B), not in the bill.)

Moneys in the Real Estate Assessment Fund generally are expended, upon appropriation by the board of county commissioners, for the purpose of defraying the cost incurred by the county auditor in assessing real estate and manufactured

and mobile homes. At the county auditor's discretion, the Real Estate Assessment Fund also may be used for the expenses incurred by the county board of revision. Expenditures from the Real Estate Assessment Fund must comply with rules of the Tax Commissioner. Money in the Fund may not be transferred to any other fund, and, if more than $5,000 remains unexpended in the Fund, the unexpended money must be apportioned and distributed back to the taxing authorities that contributed moneys to the Fund (specifically, the state, county, townships, municipal corporations, and school districts). (R.C. 325.31(B).)

Current law also provides for a set of tax maps, to show all parcels of land and to be used to enter property descriptions on tax duplicates. A board of county commissioners may designate the county engineer to provide for making, correcting, and keeping up to date the county tax maps and the county engineer may employ assistants for that purpose. The maps are for the use of the county board of revision and the auditor, and are kept in the auditor's office. (R.C. 5713.09, not in the bill.) Current law specifies that the salaries of the county engineer's assistants must be paid out of the county treasury in the same manner as other county officials (R.C. 5713.10).

The bill authorizes the use of moneys in the county Real Estate Assessment Fund for any costs related to county tax maps, including the salaries of assistants to the county engineer. Use of the Fund for tax map purposes is at the county auditor's discretion.

As noted above, expenditures from the Real Estate Assessment Fund must comply with rules of the Tax Commissioner. Under the current rules, allowable expenditures for the Fund consist of all costs incurred by the county auditor related to the assessment of real property for taxation purposes, including "[c]ontracts for the preparation of tax maps, which includes, but is not limited to, pilot projects, aerial photography, and the complete computerized appraisal mapping program with digital map files . . . [and] [c]osts incurred by the county auditor for the in-house preparation of tax maps." (Ohio Admin. Code § 5705-9-01(B)(2) and (11).) Thus, the permissible use of the Real Estate Assessment Fund under the bill for tax map purposes appears partially allowable under the Tax Commissioner's rules, provided it is an expense of the county auditor.

However, the rules *prohibit* using the Fund to pay expenses that the county *engineer* incurs in the drafting of tax maps (Ohio Admin. Code § 5705-9-01(C)(1)(h)). In regard to the county engineer's tax map expenses, including the salaries of assistants, the bill supersedes the current rule and allows the Real Estate Assessment Fund to be used for these purposes.

The bill also authorizes the following additional expenditures from real estate assessment funds: to pay for mapping or geographic information systems,

to pay for the county auditor's costs of collecting personal property taxes, or to pay the county auditor's costs of collecting estate taxes.

Tax abatement for cemetery property

(R.C. 5709.14 (not in the bill); Section 145.03I)

The bill provides a temporary procedure whereby "qualified property," which is property used as a not-for-profit cemetery, may be exempted from taxation, and all past-due taxes, penalties, and interest may be abated, even if more than three years' worth of past-due taxes have accrued because an exemption application was not filed.

To qualify for the special abatement and exemption, owners of qualified property are required to apply to the Tax Commissioner within six months of the bill's immediate effective date. The application must include the name of the county in which the property is located; a legal description of the property; its taxable value; the amount of outstanding taxes, penalties, and interest; the date of acquisition of title to the property; the use of the property during the time taxes accrued; and any other information required by the Tax Commissioner. Upon the request of the owner, any of this information must be supplied by the county auditor. Property owners also must obtain and include with this application for abatement a certificate from the county treasurer indicating that all special assessments have been paid in full, and that any taxes, penalties, and interest that were charged before the property was used for the exempt purpose have been paid in full.

If the Tax Commissioner determines that the applicant qualifies for exemption and abatement under the terms of the bill, the Commissioner must issue an order directing that the property be placed on the list of exempt property and that unpaid taxes, penalties, and interest be abated for every year the property qualified for exemption.

If, however, the Tax Commissioner determines that the property currently is being used for a purpose that would foreclose its right to exemption, the Commissioner must deny the application. If the Commissioner finds that the property is not entitled to exemption and abatement for any of the years for which exemption and abatement is sought, the Commissioner is required to order the county treasurer to collect all of the taxes, penalties, and interest due on the property for those years.

The bill permits the Tax Commissioner to apply the bill's provisions (1) to any qualified property that is the subject of an application for exemption pending on the immediate effective date of the bill, without requiring the property owner to

file an additional application, and (2) to such property that is the subject of an application for exemption filed on or after the bill's immediate effective date, but within six months of the immediate effective date, even if the application does not specifically request abatement of unpaid taxes.

Tax Commissioner's authority to apply income tax refunds toward the payment of unpaid workers' compensation premiums or unemployment compensation contributions or payments in lieu of contributions

(R.C. 5733.121 and 5747.12)

Under current law, the Ohio Tax Commissioner has the authority to apply the tax refund of a business entity or an individual toward any unpaid tax or fee administered by the Tax Commissioner that is paid to the state or to the clerk of courts, or any charge, penalty, or interest arising from the tax or fee.

The bill expands this authority to allow the Tax Commissioner also to apply the tax refund of a business entity or an individual toward any unpaid workers' compensation premium, unemployment compensation contribution, or unemployment compensation contribution in lieu of contribution. The bill also removes the limitation on applying a tax refund only to fees administered by the Tax Commissioner; instead, a tax refund may be applied toward any fee that is paid to the state or to the clerk of courts.

DEPARTMENT OF TRANSPORTATION

- Permits the Department of Transportation to sell commercial advertising space within or on the outside surfaces of any building located within any of its roadside rest areas in exchange for cash payment, and requires the money to be used to improve roadside rest areas.

Sale of advertising at roadside rest areas

(R.C. 5515.07 and 5515.08)

The bill permits the Department of Transportation (ODOT) to contract to sell commercial advertising space within or on the outside surfaces of any building located within any of its roadside rest areas in exchange for cash payment. ODOT must deposit these payments in the state treasury to the credit of the Roadside Rest Area Improvement Fund (which the bill creates) and use the money only to improve its roadside rest areas.

The advertising must comply with all of the following:

(1) It cannot be libelous or obscene and cannot promote any illegal product or service.

(2) It cannot promote illegal discrimination on the basis of the race, religion, national origin, handicap, age, or ancestry of any person.

(3) It cannot support or oppose any candidate for political office or any political cause, issue, or organization.

(4) It must comply with any controlling federal or state regulations or restrictions.

(5) To the extent physically and technically practical, it must state that the advertisement is a paid commercial advertisement and that the state does not endorse the product or service it promotes or make any representation about the accuracy of the advertisement or the quality or performance of the promoted product or service.

(6) It must conform to all ODOT rules applicable to such advertising, which the bill requires the Director of Transportation to adopt.

Advertising contracts must be awarded only to the qualified bidder who submits the highest responsive bid or according to uniformly applied rate classes.

Under the bill, no person, except an advertiser alleging a breach of contract or the improper awarding of a contract, has a cause of action against the state with respect to any such contract or advertising, and under no circumstances is the state liable for consequential or noneconomic damages with respect to any such contract or advertising.

The bill requires the Director, in accordance with the Administrative Procedure Act, to adopt rules to implement the advertising program. The rules must be consistent with the policy of protecting the safety of the traveling public and the national policy governing the use and control of roadside rest areas. The rules must regulate the awarding of contracts and may regulate the content, display, and other aspects of the commercial advertising.

TREASURER OF STATE

- Requires treasurers of political subdivisions other than counties and charter cities to complete continuing education programs on a biennial basis (rather than annually as under current law).

Continuing education for treasurers of political subdivisions

(R.C. 135.22)

Continuing law requires the Treasurer of State to provide continuing education programs for treasurers of political subdivisions to enhance their knowledge of investments, cash management, and ethics. Under current law, treasurers of political subdivisions other than counties and charter cities must complete the continuing education programs annually. The bill extends the period to complete the programs by requiring that the continuing education be taken on a biennial basis.[155]

STATE VISION BOARD

- Creates the State Vision Board, effective July 31, 2003, eliminating the Board of Optometry and the Optical Dispensers Board and combining their functions under the new State Vision Board.

[155] *A treasurer of a political subdivision other than a county or charter city is exempt from the requirement to complete continuing education programs if the treasurer invests or deposits public funds solely in the following investments: (1) interim deposits, (2) no-load money market mutual funds consisting exclusively of federally issued bonds, and (3) Ohio's Subdivision Fund. Current law requires a treasurer eligible for an exemption to notify the Auditor of State annually. Upon certification by the Treasurer of State, the treasurer is exempt from the continuing education requirement for that year. The bill retains this exemption, but removes the requirement to seek a formal exemption each year. Presumably, then, a treasurer of a political subdivision would need to file an exemption notice on a biennial basis to correspond with the time period allotted to complete the continuing education.*

Overview: Creation of the State Vision Board and conveying authority over both optometrists and opticians to the new board

(R.C. 4725.01, 125.22, 4725.02, 4725.03, 4725.04, 4725.05, 4725.06, 4725.07, 4725.08, 4725.09, 4725.10, 4725.11, 4725.12, 4725.13, 4725.15, 4725.16, 4725.17, 4725.171, 4725.18, 4725.19, 4725.20, 4725.21, 4725.22, 4725.23, 4725.24, 4725.26, 4725.27, 4725.28, 4725.29, 4725.31, 4725.33, 4725.34, 4725.99, 4734.99, and 5903.12; Sections 146.04, 146.05(B), and 146.09(A))

The bill creates the State Vision Board. The State Vision Board will assume the duties that currently are the responsibility of two boards, the State Board of Optometry and the Ohio Optical Dispensers Board, and the authority of those boards. The State Board of Optometry and the Ohio Optical Dispensers Board both are closed by these provisions on July 31, 2003, due to the elimination of all references to these boards from the Ohio Revised Code. In creating the State Vision Board, this portion of the bill repeals the sections of the Revised Code regulating opticians and the Ohio Optical Dispensers Board (R.C. 4725.40 to 4725.59) and amends the sections of the Revised Code currently applicable only to optometrists and the State Board of Optometry.

The State Vision Board Law closely resembles and operates like the current State Board of Optometry Law. The new law retains much of the language of the existing State Board of Optometry Law and the structure of the Law, amended only to sanction and spell out the broader authority of the new State Vision Board over both optometrists and licensed dispensing opticians. The amended sections include references to licensed dispensing opticians where appropriate and include language taken from the Ohio Optical Dispensers Board Law as necessary, such as when provisions in existing law applicable to opticians differ significantly from that applicable to optometrists (*see, e.g.,* R.C. 4725.12, regarding the application process and qualifying examinations for opticians).

There is one major difference from current law, relating to appointments to, the membership of, and the terms of office on, the new State Vision Board. The State Vision Board consists of seven Ohio residents, three appointed by the Governor, two appointed by the Speaker of the House of Representatives, and two appointed by the President of the Senate. The Board members hold office for a term of seven years, commencing on the 26th day of September and ending on the 25th day of September seven years later. Any person appointed to fill a vacancy on the Board holds office for the remainder of the term of office that the person has been appointed to complete. All members continue to hold office subsequent to the end of their term of office, until their successor takes office or until a period of 60 days has elapsed, whichever occurs first. No member is permitted to serve for more than two terms. Terms of office are staggered. Three of the initial appointments to the Board hold three-year terms of office. One of these members

is an appointment of the Governor, one an appointment of the Speaker of the House of Representatives, and one an appointment of the President of the Senate. Four of the initial appointments hold six-year terms of office. Two of those members are appointments of the Governor, one an appointment of the Speaker of the House of Representatives, and one an appointment of the President of the Senate.

Provisions in the State Vision Board Law relating to licensing, scope of practice, continuing education, disciplinary actions, liability, and fees are largely unchanged from the current State Board of Optometry and Ohio Optical Dispensers Board laws.

BUREAU OF WORKERS' COMPENSATION

- 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.

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.

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.
- Eliminates the Department of Youth Services' authority to adjust the amounts allocated out of the appropriation for the care and custody of felony delinquents for various costs when the Department's appropriation for a fiscal year is subsequently revised by law if the Governor orders it to reduce its expenditures.

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.

Allocation of appropriations for the care and custody of felony delinquents

(R.C. 5139.41)

Under current law, the Department of Youth Services' appropriation must be expended in accordance with a formula developed by the Department. The formula must follow certain guidelines that specify percentages of the appropriation that must be used for its contingency program, operational costs of certain facilities, per diem costs for the care and custody of felony delinquents, per diem costs of public safety beds, and the felony delinquent care and custody program. If the Department's appropriation for the care and custody of felony delinquents for a fiscal year is subsequently revised by law, or if it is ordered to reduce its expenditures by executive order, the Department may adjust the amounts that have been allocated under the above formula in a manner consistent with the revision or reduction.

The bill eliminates the Department's authority to adjust the amounts allocated under the above formula when the appropriation for the care and custody of felony delinquents is revised or it is ordered by executive order to reduce expenditures.

LOCAL GOVERNMENT

- Increases clerk's salaries in calendar year 2004 in townships with a budget of more than $6 million.

- Eliminates the prohibition against purchase orders by political subdivisions or taxing units extending beyond three months and specifies that purchase orders may be up to an amount set by the legislative authority of the subdivision or taxing unit.

- Increases from $15,000 to $25,000 the threshold above which county contracts must be awarded by competitive bidding.

- Exempts from county competitive bidding requirements contracts for the purchase of services related to information technology, including programming, that are proprietary or limited to a single source.

- Permits the notice of competitive bidding to be placed on a county's web site, and permits a county to eliminate the second newspaper notice of competitive bidding if the notice is posted on the county's web site and meets certain conditions.

- Permits certain township park districts to convert to township park land.

- 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.

- Authorizes a prosecuting attorney to require, as a condition of an accused's participation in a pre-trial diversion program, the accused to pay a reasonable fee for supervision services.

- Authorizes a board of county commissioners to fix rates and charges for the use of county drainage facilities in order to pay the costs of complying with certain federal storm water requirements, and, provided that specified conditions are met, authorizes those rates and fees to be paid annually or semiannually with real property taxes.

- Permits profits from a local correctional facility's commissary to be used for the salary and benefits of employees of the facility, or for any other persons, who work in or are employed for the sole purpose of providing service to the commissary.

- Permits profits from a county jail's commissary to be used for the salary and benefits of employees of the sheriff who work in or are employed for the purpose of providing service to the commissary.

- Prohibits fees received for medical treatment or services that are deposited into a commissary fund of a local detention facility from being used to pay any salary or benefits of any person who works in or is employed for the sole purpose of providing service to the commissary.

- Until January 1, 2004, allows counties with larger populations to combine the boards that were established in 1989 as separate boards: one with responsibility for mental health services and one with responsibility for alcohol and drug addiction services.

Increase in township clerk salaries

(R.C. 507.09)

The bill increases salaries for township clerks in townships with a budget of more than $6 million starting in 2004--the beginning of a new term of office for township clerks elected in 2003. If the township has a budget of more than $6 million, but not more than $10 million, in 2004 the clerk's salary is $22,087, and, in townships having a budget of more than $10 million, in 2004 the clerk's salary is $25,553. In calendar years 2005 through 2008, the clerk's salary will increase annually, as provided by current law, either by 3% or a percentage based on the increase in the Consumer Price Index, whichever is lower.

Purchase orders by political subdivisions or taxing units

(R.C. 5705.41)

Current law permits political subdivisions and taxing units to issue purchase orders of $5,000 or less when sufficient money has been appropriated for the purposes for which the funds are spent. Purchase orders cannot extend over a period exceeding three months or beyond the end of a fiscal year. The bill removes the $5,000 limit and instead specifies that purchase orders may be issued up to an amount established by resolution or ordinance of the legislative authority of the subdivision or taxing unit. Also, the bill eliminates the requirement that purchase orders not extend beyond three months. However, it retains current law prohibiting such expenditures from extending past the end of a fiscal year.

County competitive bidding requirements

(R.C. 307.86 and 307.87)

Existing law generally requires counties to award contracts for goods or services costing more than $15,000 by competitive bidding. Certain contracts, however, such as contracts for replacement or supplemental parts for equipment owned by the county where those parts are limited to a single supplier, are exempt from the competitive bidding requirement.

The bill increases from $15,000 to $25,000 the threshold above which counties generally must award contracts by competitive bidding. The amendment also adds to the types of contracts exempt from county competitive bidding contracts for the purchase of services related to information technology, such as programming services, that are proprietary or limited to a single source.

Whenever competitive bidding is required for county purchasing, notice of the bidding must be published once a week for not less than two consecutive

weeks preceding the day of the opening of bids in a newspaper of general circulation within the county. The contracting authority may also cause notice to be inserted in trade papers or other designated publications. Certain information, such as a general description of the subject of the contract and the time and place for filing bids, must be included in the notice.

The bill does not change the required content of the notice, but permits the notice of competitive bidding to be distributed by electronic means, including posting the notice on the contracting authority's Internet site on the World Wide Web. If the notice is posted on such a website, and if the first newspaper notice meets all of the following requirements, the contracting authority is permitted to eliminate the second notice that would otherwise have to be published in a newspaper of general circulation in the county:

(1) The notice is published at least two weeks before the opening of bids;

(2) It includes a statement that the notice is posted on the contracting authority's Internet site on the World Wide Web;

(3) It includes the Internet address of the contracting authority's Internet site on the World Wide Web;

(4) It includes instructions describing how the notice may be accessed on the contracting authority's Internet site on the World Wide Web.

Conversion of township park district to township park land

(R.C. 511.181)

The bill permits a board of township trustees to convert a township park district so that parks owned and operated by the park district become parks owned and operated by the township, but only if the following criteria are met:

(1) The township park district was created before 1955;

(2) The board of park commissioners of the township park district are appointed by the board of township trustees;

(3) The township has a population of less than 35,000 and a geographical area of less than 15 square miles;

(4) The board of township trustees adopts a resolution approving the conversion.

The park district will cease to exist upon the adoption of the board's resolution. The clerk of the board has 15 days to file a certified copy of that resolution with the county auditor.

All real and personal property of the district must be transferred to the township and the township will assume liability with respect to all contracts and debts of the district. The township will continue to collect any taxes levied within the former township park district and deposit them into the township treasury as funds to be used for the park purposes for which they were levied. District employees must become township employees. The board of township trustees may retain the former park commissioners upon terms they consider appropriate.

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
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	$20.00	$40.00

Fee purpose	Existing fee	Proposed fee
replevin (division (A)(4)).		
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 each additional tract	$50.00 for the first tract and $25.00 for 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

Fee purpose	Existing fee	Proposed fee
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 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	$.50	$1.00

Fee purpose	Existing fee	Proposed fee
(B)(3)(c)).		
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[156] is

[156] *"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*

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,[157] 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.

The bill increases this additional court cost or bail from $11 to $15.

Pre-trial diversion programs

(R.C. 2935.36)

Existing law authorizes a prosecuting attorney to establish pre-trial diversion programs for adults who are accused of committing criminal offenses and who meet certain criteria. An accused who enters a diversion program is required to agree, in writing, to the conditions of the diversion program established by the prosecuting attorney. The accused also must agree, in writing, to the tolling while in the program of all periods of limitation that apply to the offense with which the accused is charged and must waive, in writing, certain rights. If the accused satisfactorily completes the diversion program, the court is required to

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pedestrians or the parking of vehicles. (R.C. 2949.091(D)(1) by reference to R.C. 2743.70(D)(1).)

[157] "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)).

dismiss the charges against the accused. If the accused chooses not to enter the diversion program, or if the accused violates the conditions of the agreement, the accused may be brought to trial upon the charges.

The bill authorizes the prosecuting attorney to require, as a condition of an accused's participation in a pre-trial diversion program, the accused to pay a reasonable fee for supervision services that include, but are not limited to, monitoring and drug testing and requires the accused to agree, in writing, to pay that fee when entering a diversion program.

County drainage facilities rates and charges

(R.C. 6117.02)

Current law authorizes a board of county commissioners to fix reasonable rates and charges to be paid by any person or public agency owning or having possession or control of any properties that are connected with, capable of being served by, or otherwise served directly or indirectly by drainage facilities owned or operated by or under the jurisdiction of the county. The bill allows a board also to fix the rates and charges in order to pay the costs of complying with the requirements of phase II of the storm water program of the national pollutant discharge elimination system established under federal law. In addition, it states that those rates and charges may be paid annually or semiannually with real property taxes, provided that the board certifies to the county auditor information that is sufficient for the auditor to identify each parcel of property for which a rate or charge is levied and the amount of the rate or charge.

Profits from local correctional facility commissaries

(R.C. 307.93, 341.05, 341.25, 753.22, 2301.58, and 2929.38)

Local correctional facilities

Under existing law, the person or entity in charge of a workhouse, multicounty correctional center, municipal-county correctional center, multicounty-municipal correctional center, community-based correctional facility, or district-based correctional facility (a local correctional facility) may establish a commissary for the facility. If a commissary is established for the facility, the person or entity must establish a commissary fund for the facility. Commissary fund revenue over and above operating costs and reserve are considered profits. All profits from the commissary fund must be used to purchase supplies and equipment for the benefit of persons incarcerated in the facility.

The bill expands the purposes for which the commissary fund profits may be used to also permit the profits to be used to pay salary and benefits for

employees of the facility, or for any other persons, who work in or are employed for the sole purpose of providing service to the commissary.

Jails

Existing law authorizes the sheriff to establish a commissary for the jail. If the sheriff establishes a commissary, the sheriff also is required to establish a commissary fund for the jail. Commissary fund revenue over and above operating costs and reserve are considered profits. All profits from the commissary fund must be used to purchase supplies and equipment, and to provide life skills training and education or treatment services, or both, for the benefit of persons incarcerated in the jail. Also, under existing law, the compensation of jail staff is payable from the general fund of the county.

The bill expands the purposes for which the commissary fund profits may be used to also permit the profits to be used to pay salary and benefits for employees of the sheriff who work in or are employed for the sole purpose of providing service to the commissary.

Medical treatment

Under existing law, any public or private entity that operates a local detention facility of a specified type (including the types described above under "***Local correctional facilities***" and "***Jails***") may establish a policy that requires any prisoner who is confined in the facility as a result of pleading guilty to or having been convicted of an offense to pay a reasonable fee for any medical or dental treatment or service requested by and provided to that prisoner. The fee may not exceed the actual cost of the treatment or service provided. These fees must be paid to the commissary fund, if one exists for the facility, or if no commissary fund exists, to the general fund of the treasury of the political subdivision that incurred the expenses, in the same proportion as those expenses were borne by the political subdivision.

The bill specifies that fees received for medical treatment or services that are placed in the commissary fund must be used for the same purposes as profits from the commissary fund, except that they may not be used to pay any salary or benefits of any person who works in or is employed for the sole purpose of providing service to the commissary.

Boards of alcohol, drug addiction, and mental health services in counties with separate boards

(R.C. 340.021)

Revised Code provisions enacted in 1989 required a board of county commissioners in a county with a population of 250,000 or more to establish within 30 days of October 10, 1989, an alcohol and drug addiction services board as the entity responsible for providing alcohol and drug addition services in the county unless, prior to October 10, 1989, the Board adopted a resolution providing that the entity responsible for providing the services is a Board of Alcohol, Drug Addiction, and Mental Health Services (ADAMH board). If the board of county commissioners established an alcohol and drug addiction services board, the existing community mental health board continued to be the entity responsible for providing mental health services in that county.

The bill allows a board of county commissioners that did not adopt a resolution prior to October 10, 1989 providing for an ADAMH board to adopt a resolution establishing one if both of the following apply:

(1) The resolution is adopted no later than January 1, 2004;

(2) Before adopting the resolution, the board of county commissioners provides notice of the proposed resolution to the alcohol and drug addiction services board and to the community mental health board and provides both boards an opportunity to comment on the proposed resolution.

MISCELLANEOUS

- Eliminates the six-year statute of limitations during which the state, or an agency or political subdivision of the state, must enforce a lien.

- Eliminates the requirement that the state, or an agency or political subdivision of the state must file a notice of continuation of lien in order to renew statutory liens every six years.

- Eliminates the requirement that the state must renew judgment liens every ten years.

- Creates the Task Force to Eliminate Health Services Duplication to evaluate the feasibility of combining the Commission on Minority Affairs and the Departments of Aging, Alcohol and Drug Addiction Services, Health, Mental Health, and Mental Retardation and

Developmental Disabilities and creating a centralized services procurement point.

- Provides that, if an agency seeking to create or join a multiple-state prescription drug purchasing program intends to contract with an individual or private entity to administer the program, an advisory council must be appointed to review proposals and select the individual or private entity to be awarded the contract.

- Limits the right to appointed counsel in juvenile court in certain actions relating to the custody and support of a child and certain proceedings conducted under the Parentage Laws.

- 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.

- Authorizes the creation of Facilities Closure Commissions regarding the possible closing of state institutional facilities for the purpose of expenditure reductions or budget cuts.

- Requires the Directors of Agriculture, Rehabilitation and Correction, and Youth Services to develop a plan to optimize the quantity and use of food grown and harvested in state correctional institutions or in secure facilities operated by the Department of Youth Services in the most cost-effective manner and to submit the plan to designated government officials.

- Enacts the "Electronic Government Services Act," which prohibits a government agency from providing electronic commerce services that are duplicative of or competing with the private sector, other than specified cable and local fiber optic network services, unless the government agency complies with procedures established in the Act.

State enforcement of statutory lien

Existing law

(R.C. 2305.26)

Pursuant to current law, an action by the state or an agency or political subdivision of the state to enforce a lien upon real property or personal property created under specified circumstances or conditions must be brought within six years from the date when the lien or notice of continuation of the lien has been filed in the office of the county recorder.

A notice of continuation of lien may be filed in the office of the county recorder within six months prior to the expiration of the six-year period following the original filing of the lien or the filing of the notice of continuation of the lien. The notice must identify the original notice of lien and state that the original lien is still effective.

Operation of the bill

The bill eliminates the six-year statute of limitations during which the state, or an agency or political subdivision of the state, must enforce a lien upon real property or personal property. The bill also eliminates the requirement that the state, or an agency or political subdivision of the state, must file a notice of continuation of lien in order to renew statutory liens every six years. Therefore, a lien upon real property or personal property held by the state or an agency or political subdivision of the state will continue to be valid without the state or an agency or political subdivision of the state filing an action to enforce the lien or filing a notice of continuation of lien.

Judgment liens in favor of the state

(R.C. 2329.07)

Under current law, if a judgment against a judgment debtor rendered by any court of general jurisdiction, including district courts of the United States, within Ohio, is in favor of the state, the judgment will become dormant and will cease to operate as a lien against the estate of the judgment debtor if an execution on the judgment or a certificate of judgment is not issued within ten years from the date of the judgment or within ten years from the date of the issuance of the last execution or the issuance and filing of the last certificate, whichever is later.

If, in any county other than that in which a judgment was rendered, the judgment has become a lien by reason of the filing, in the office of the clerk of the common pleas court of that county, of a certificate of the judgment, and if the

judgment is in favor of the state, the judgment shall cease to operate as a lien upon lands and tenements of the judgment debtor within that county if no execution is issued for the enforcement of the judgment within that county, or no further certificate of the judgment is filed in that county within ten years from the date of issuance of the last execution for enforcement of the judgment within that county or the date of filing of the last certificate in that county, whichever is later.

Operation of the bill

The bill eliminates the requirement that the state must renew judgment liens against a judgment debtor every ten years. Therefore, judgment liens held by the state against a judgment debtor will continue to operate as a lien against the estate of the judgment debtor without the state executing the judgment or filing a certificate of judgment every ten years.

Task Force to Eliminate Health Services Duplication

(Section 145.03B)

Membership

The bill creates the Task Force to Eliminate Health Services Duplication consisting of the following members or their designees:

(1) The Director of Administrative Services;

(2) The Director of Aging;

(3) The Director of Alcohol and Drug Addiction Services;

(4) The Director of Health;

(5) The Director of Mental Health;

(6) The Director of Mental Retardation and Developmental Disabilities;

(7) The Director of Budget and Management;

(8) The Executive Director of the Commission on Minority Health.

The Director of Administrative Services is to serve as the Task Force's chairperson. The Commission on Dispute Resolution and Conflict Management is required to provide technical and support services for the Task Force. Except to the extent that service on the Task Force is part of their employment, Task Force members are not to be reimbursed for expenses they incur in carrying out their duties.

Duties

The Task Force is required to do all of the following:

(1) Evaluate the feasibility of combining all or parts of the Departments of Aging, Alcohol and Drug Addiction Services, Health, Mental Health, Mental Retardation and Developmental Disabilities, and the Commission on Minority Health to eliminate duplication of services;

(2) Evaluate the feasibility of establishing a central procurement point for basic operational services associated with each department, including human resources, training, research, legislative information, fiscal management, and public information;

(3) Submit a report of its findings and recommendations to the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate by March 31, 2004.

The Task Force is to cease to exist on submission of its report.

Advisory council for multi-state drug purchasing program

(R.C. 9.75)

The bill provides that, if a state agency seeks to enter into or administer an agreement or cooperative arrangement to create or join a multiple-state prescription drug purchasing program to negotiate discounts for dangerous drugs and intends to contract with an individual or private entity to administer the program, an advisory council must be appointed.[158] An advisory council is to review the proposals submitted by individuals and private entities seeking the contract and to select the individual or private entity that is to be awarded the contract. The following are to serve on an advisory council:

(1) The Director of Job and Family Services;

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[158] *A dangerous drug is (1) any drug that, under the Federal Food, Drug, and Cosmetic Act, is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription, (2) any drug that, under state law, may be dispensed only upon a prescription, (3) any drug that contains a schedule V controlled substance and that is exempt from the state's controlled substance law or to which that law does not apply, and (4) any drug intended for administration by injection into the human body other than through a natural orifice of the human body.*

(2) Two members of the House of Representatives, one from each party, appointed by the Speaker;

(3) Two members of the Senate, one from each party, appointed by the Senate President;

(4) Two representatives of patient advocates, one appointed by the Speaker and one appointed by the Senate President;

(5) A representative of the Ohio State Medical Association, appointed by that association's executive director;

(6) A representative of large businesses, appointed by the president of the Ohio Chamber of Commerce;

(7) A representative of small businesses, appointed by the state director of the Ohio chapter of the National Federation of Independent Businesses;

(8) A representative of local government, appointed by the executive director of the County Commissioners' Association of Ohio.

The bill provides that an advisory council is subject to the open meetings law. A council must elect a chairperson from among its members. A council's members are permitted to vote to select the individual or private entity to be awarded the contract to administer the multiple-state prescription drug purchasing program only if a quorum of the members is present at the meeting at which the vote is taken. A council's members are not to be reimbursed for any expenses incurred while serving on the council. A council is authorized to seek grants, donations, or other funds to pay for its activities. A council is to cease to exist when it selects the individual or private entity to be awarded the contract that the council was appointed to select.

A state agency seeking to create or join a multiple-state prescription drug purchasing program is required by the bill to provide an advisory council copies of proposals submitted by each individual or private entity seeking the contract to administer the program. The agency must redact from each copy of each proposal any proprietary information included in the proposal. The agency must contract with the individual or private entity selected by an advisory council.

Appointed counsel in juvenile court

(R.C. 2151.352)

Existing law

A child and the child's parents, custodian, or other person in loco parentis of the child are entitled to representation by legal counsel at all stages of the proceedings. If, as an indigent person, any such person is unable to employ counsel, that person is entitled to have counsel provided for the person pursuant to the Public Defender Law. Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more such parties conflict, separate counsel must be provided for each of them.

Operation of the bill

The bill provides that the right to appointed counsel described above under "***Existing law***" does not confer the right to court appointed counsel in the following types of civil actions:

(1) Actions to determine the custody of any child not a ward of another Ohio court;

(2) Actions relating to custody and support of children duly certified by the court of common pleas to the juvenile court after a divorce decree has been granted;

(3) Actions relating to child custody and child support matters under R.C. 3109.04, 3109.21 to 3109.36, and 5103.20 to 5103.28 and in child support matters under R.C. 3109.05;

(4) Proceedings conducted under the Parentage Laws relating to: (a) the duty of support, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child, (b) the payment of the reasonable expenses of the mother's pregnancy and confinement, (c) petitions of the father requesting that the father be designated the residential parent and legal custodian of the child or requesting visitation rights in a proceeding separate from any action to establish paternity, and (d) if the mother is unmarried, a complaint filed by the father, the parents of the father, any relative of the father, the parents of the mother, or any relative of the mother requesting the granting of reasonable companionship or visitation rights with respect to the child.

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.[159] 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.)

Facilities Closure Commissions

(R.C. 107.32 and 107.33; Section 145.03O)

Procedure for closing a state institutional facility for the purpose of expenditure reductions or budget cuts

Notwithstanding any other provision of law, the bill prohibits the Governor from ordering the closure of any state institutional facility,[160] for the purpose of

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[159] 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.

[160] "State institutional facility" means any institution or other facility for the housing of any person that is under the control of the Department of Rehabilitation and Correction, the Department of Youth Services, the Department of Mental Retardation and

expenditure reductions or budget cuts, other than in accordance with the following procedure. If the Governor determines that necessary expenditure reductions and budget cuts cannot be made without closing one or more state institutional facilities, all of the following apply:

(1) The bill requires the Governor to determine which state agency's institutional facility or facilities the Governor believes should be closed, to notify the General Assembly and that agency of that determination, and to specify in the notice the number of facilities of that agency that the Governor believes should be closed and the anticipated savings to be obtained through that closure or those closures. (This agency is the "target state agency.")

(2) Upon the Governor's provision of this notice, the bill requires a State Facilities Closure Commission to be created regarding the target state agency. Not later than seven days after the Governor provides the notice, the officials with the duties to appoint members of the Commission for the target state agency (see "***Constitution and duties of Facilities Closure Commissions***," below) are required to appoint the members of the Commission, and, as soon as possible after the appointments, the Commission must meet for the purposes described below. Not later than 30 days after the Governor provides the notice, the Commission must provide to the General Assembly, the Governor, and the target state agency a report that contains the Commission's recommendation as to the state institutional facility or facilities of the target state agency that the Governor may close. The anticipated savings to be obtained by the Commission's recommendation must be approximately the same as the anticipated savings the Governor specified in the Governor's notice, and, if the recommendation identifies more than one facility, it must list them in order of the Commission's preference for closure. A State Facilities Closure Commission created for a particular target state agency may make a report only regarding that target state agency and is prohibited from including recommendations regarding any other state agency or department in its report.

(3) Upon receipt of the State Facilities Closure Commission's report, if the Governor still believes that necessary expenditure reductions and budget cuts cannot be made without closing one or more state institutional facilities, the Governor may close state institutional facilities of the target state agency that are identified in the report recommendation. Generally, the Governor is prohibited from closing any state institutional facility of the target state agency that is not listed in the recommendation, and from closing multiple institutions in any order other than the order of the preference as specified in the recommendation. But, the

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Developmental Disabilities, the Department of Mental Health, or any other agency or department of state government (R.C. 107.32(A)(1)).

Governor is not required to follow the Commission's recommendation in closing an institutional facility if the Governor determines that a significant change in circumstances makes the recommendation unworkable.

Composition and duties of Facilities Closure Commissions

If more than one state agency or department is a target state agency, the bill requires that a separate State Facilities Closure Commission be created for each target state agency. Each Commission consists of 11 members. Three members must be members of the House of Representatives appointed by the Speaker of the House of Representatives, none of the members so appointed may have a state institutional facility of the target state agency in the member's district, two of the members so appointed must be members of the majority political party in the House of Representatives, and one of the members so appointed must not be a member of the majority political party in the House of Representatives. Three members must be members of the Senate appointed by the President of the Senate, none of the members so appointed may have a state institutional facility of the target state agency in the member's district, two of the members so appointed must be members of the majority political party in the Senate, and one of the members so appointed must not be a member of the majority political party in the Senate. One member must be the Director of Budget and Management. One member must be the director, or other agency head, of the target state agency. Two members must be private executives with expertise in facility utilization, with one of these members appointed by the Speaker of the House of Representatives and the other appointed by the President of the Senate, and neither of the members so appointed may have a state institutional facility of the target state agency in the county in which the member resides. One member must be a representative of the Ohio Civil Service Employees' Association or other representative association of the employees of the target state agency, appointed by the Speaker of the House of Representatives. The officials with the duties to appoint members of the Commission must make the appointments, and the Commission must meet, within the time periods specified in paragraph (2) of "***Procedure for closing a state institutional facility for the purpose of expenditure reductions or budget cuts***," above. The members of the Commission must serve without compensation. At the Commission's first meeting, the members are required to organize and appoint a chairperson and vice-chairperson.

The bill requires the Commission to determine which state institutional facility or facilities under the control of the target state agency for which the Commission was created should be closed. In making this determination, the Commission shall, at a minimum, consider the following factors:

(1) Whether there is a need to reduce the number of facilities;

(2) The availability of alternate facilities;

(3) The cost effectiveness of the facilities;

(4) The geographic factors associated with each facility and its proximity to other similar facilities;

(5) The impact of collective bargaining on facility operations;

(6) The utilization and maximization of resources;

(7) Continuity of the staff and ability to serve the facility population;

(8) Continuing costs following closure of a facility;

(9) The impact of the closure on the local economy;

(10) Alternatives and opportunities for consolidation with other facilities.

The Commission must meet as often as necessary to make its determination, may take testimony and consider all relevant information, and must prepare and provide a report containing its recommendations as described in paragraph (2) of "***Procedure for closing a state institutional facility for the purpose of expenditure reductions or budget cuts***," above. Upon providing the report regarding the target state agency, the Commission ceases to exist; another Commission is created for the same state agency if the agency is made a target state agency in another gubernatorial notice. Another Commission is created for a different state agency if that other agency is made a target state agency in a gubernatorial notice.

Privately operated and managed correctional facilities

Notwithstanding any other provision of law, if the closure of the particular facility is authorized under the bill's State Facilities Closure Commission provisions, the Governor may terminate any contract entered into under R.C. 9.06 for the private operation and management of any correctional facility under the control of the Department of Rehabilitation and Correction (including, but not limited to the initial intensive program prison established pursuant to R.C. 5120.033 as it existed prior to the effective date of the bill), and terminate the operation of, and close that facility. If the Governor takes an action of this nature, inmates in the facility must be transferred to another correctional facility under the control of the Department. If the initial intensive program prison is closed, R.C. 2929.13(G)(2)(a) and (b) (which apply to the intensive program prison) have no effect while the facility is closed.

Applicability

The bill's State Facilities Closure Commission provisions apply to all state institutional facilities that were in operation on or after January 1, 2003.

Optimize use of food grown at state correctional institutions and Department of Youth Services facilities

(Section 145.03T)

The bill requires, within 120 days after the effective date of the section, the Director of Agriculture, the Director of Rehabilitation and Correction, and the Director of Youth Services to develop a plan to optimize the quantity and use of food grown and harvested in state correctional institutions or secure facilities operated by the Department of Youth Services (DYS) in the most cost-effective manner.[161] The plan must include methods to increase production at farms operated by either department and must include methods to ensure that the highest possible percentage of food consumed at state correctional institutions and DYS operated secure facilities is food grown and harvested at a state correctional institution or DYS operated secure facility. The plan must consider possible amendments to the Revised Code, amendments to the Administrative Code, administrative changes, financial strategies, strategies to obtain a reliable workforce, and any other means to optimize the quantity and use of food of that nature in state correctional institutions and DYS operated secure facilities. The bill requires the plan and its findings, conclusions, and any recommendations and proposed legislation to be submitted to the Speaker of the House of Representatives, the President of the Senate, the Governor, the Director of Rehabilitation and Correction, and the Director of Youth Services.

Electronic Government Services Act

(R.C. 1306.20, 1306.25, 1306.26, 1306.27, 1306.28, and 1306.29)

Ban on government agencies competing with private enterprises in offering or expanding electronic commerce services

The bill enacts the Electronic Government Services Act (EGSA). (R.C. 1306.26(C).) Except as described below, the bill mandates that, if two or more competing private enterprises provide electronic commerce services, a government

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[161] *"State correctional institution" includes any institution or facility that is operated by the Department of Rehabilitation and Correction and that is used for the custody, care, or treatment of criminal, delinquent, or psychologically or psychiatrically disturbed offenders (R.C. 2967.01(A)).*

agency must not engage, through the expenditure of public moneys, in any activity to provide or offer those services or to expand similar services. Any provider of electronic commerce services that resides or does business in Ohio has standing to bring a cause of action for appropriate relief in a court of competent jurisdiction challenging the provision of those services by a government agency in a manner that is not in accordance with the bill's exception procedures described below. Nothing in the bill, however, prohibits a government agency from providing electronic commerce services to the public in the absence of two or more competing private enterprises providing those services. Nor does the bill apply "to any county, township, municipal corporation, or other political subdivision of the state that has expended public funds for the construction, deployment, or operation of a fiber optic network for a public purpose" before the EGSA becomes effective. (R.C. 1306.27.) Additionally, nothing in the bill applies to the installation, construction, expansion, maintenance, or operation of any physical infrastructure by a political subdivision that is a public cable service provider under the Cable Operations Law, whether on its own or in conjunction with other public cable service providers or private cable service providers, for the sole purpose of providing cable service as provided by law (R.C. 1306.29(A)).

The bill defines "electronic commerce services" as services relating to commercial activity (the performance of services or provision of goods that normally can be obtained from a private enterprise) that are the same as, similar to, or overlap information technology-based services provided to the public by two or more competing private enterprises. Those services include services made in connection with a transaction completed over a computer network, such as the buying of goods or services over the Internet. (R.C. 1306.25(A) and (C).)

Under the bill, a "government agency" means (1) every organized body, office, agency, institution, or other entity established for the exercise of any function of state government other than the General Assembly, any legislative agency, the Supreme Court, any court or record, or any judicial agency; or any similar agency of any political subdivision of this state or (2) any entity that is not majority-owned as private property and is established by law or by order or action of any entity described in (1), or an officer of an entity described in (1) (R.C. 1306.25(E)). "Private enterprise" is defined as an individual, firm, partnership, joint venture, corporation, association, or other legal entity engaging in the private sector in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services for profit (R.C. 1306.25(G)).

Exception to the ban

Public hearing. The bill authorizes a government agency to provide duplicative or competing electronic commerce services under specified conditions.

Before it does so, one condition is that it must hold a public hearing to allow public comment about its proposed electronic commerce services. (R.C. 1306.28(A) and (B)(1).)

The government agency must provide, in a specified format (see below), at least 30 days' public notice of the time and place of the public hearing in one or more newspapers of general circulation in the counties within its jurisdiction. During this 30-day period, the government agency also must make its proposal available for public inspection in a prominent public location those counties. (R.C. 1306.28(B)(2).)

"Factors" to be included in the public notice. The *public notice* must set forth all of the following (R.C. 1306.28(C)):

- The government agency's proposed findings of fact and conclusions of law describing the reasons why it believes it is necessary and in the public interest to provide duplicative or competing electronic commerce services and citing the legal authority that permits the government to do so.

- The initial and total lifecycle costs of those services, which include, but are not limited to, all technology, infrastructure, services, contracts, and "direct" or "indirect" personnel costs (see definitions below).

- The individual per taxpayer cost of those services on an annualized basis and their cost per user on an annualized basis.

- The government agency's reasons for believing that the cost benefits of providing those services require the expenditure of public moneys.

- An identification of unmet needs in the consumer marketplace that those services would fulfill.

- A description of how those services would differ from those provided by two or more competing private enterprises.

- An economic impact analysis demonstrating that the offering of those services by the government agency will not be anticompetitive in its effect on existing industry and will not adversely impact or distort the marketplace of two or more competing private enterprises providing the same or similar services.

The bill defines "direct costs" to mean all costs, whether capital costs, operating costs, or otherwise, that would be eliminated if the service or function to

which the costs relate is discontinued, and "indirect costs" to mean all costs, whether capital costs, operating costs, or otherwise, that are not direct costs (R.C. 1306.25(B) and (F)). For purposes of the public notice's factors, certain indirect costs must be allocated in a specified manner (see "***Annual report of a government agency about its electronic commerce services***," below) (R.C. 1306.28(F)).

Review of public comments. Following the public hearing and after reviewing the comments of the public, if the head of a government agency decides to proceed with offering duplicative or competing electronic commerce services, the head must sign factual and legal conclusions addressing the comments and each of the factors set forth in the public notice. The head of the government agency must then send a written notice to the Controlling Board (see "***Controlling Board approval***") that sets forth these conclusions and the agency's decision to proceed. (R.C. 1306.28(D)(1).)

Controlling Board approval. Finally, even after holding public hearings and reviewing public comments, a government agency may not offer duplicative or competing electronic commerce services without the approval of the Controlling Board. Additionally, following the Board's approval, the Board may continue to exercise oversight of its approval decision. (R.C. 1306.28(D)(2) and (3).)

Legal challenges

Any provider of electronic commerce services that resides or does business in Ohio has standing to bring a cause of action for appropriate relief in a court of competent jurisdiction challenging a government agency's provision of electronic commerce services not made in accordance with the procedures and requirements established in the bill (R.C. 1306.27(B)).

Annual report of a government agency about its electronic commerce services

Under the bill, any government agency providing electronic commerce services in a jurisdiction where a private enterprise provides the same services must prepare and publish an annual report about those services. The annual report must be substantially in accordance with full cost accounting and must disclose the amount, source, and cost of working capital utilized by the government agency for providing the services. (R.C. 1306.28(E).) "Full cost accounting" means accounting, in accordance with generally accepted accounting principles, for all direct costs and indirect costs (see their definitions under "***"Factors" to be included in the public notice***," above), including capital costs, that are incurred in

the ownership, management, or operation of electronic commerce services (R.C. 1306.25(D)).

For purposes of providing the public notice of the public hearing and the annual report, a government agency, by any reasonable method consistent with applicable generally accepted accounting principles, must allocate indirect costs that support multiple electronic commerce services or functions among those services and functions in proportion to the relative burden each service or function places on the cost category (R.C. 1306.28(F)).

Relationship of the bill to the Uniform Electronic Transactions Act

The Uniform Electronic Transactions Act (UETA) authorizes state agencies to utilize electronic records and electronic signatures. Generally, state agencies must determine if, and the extent to which, they will (1) send and receive electronic records and electronic signatures to and from other persons and (2) otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

The bill makes a state agency's authority under the UETA subject, in addition to the UETA's restrictions, to the bill's provisions (R.C. 1306.20(A)).

Findings and intent of the General Assembly

The bill states that the General Assembly finds and declares that (1) the growth of private enterprise is essential to the health, welfare, and prosperity of Ohio and (2) government competes with the private sector when it provides goods and services to the public (R.C. 1306.26(A)). The bill further states that it is the General Assembly's intent and the purpose of the bill to (1) protect economic opportunities for private industry against unfair competition by government agencies and (2) enhance the efficient provision of public goods and services (R.C. 1306.26(B)).

NOTE ON EFFECTIVE DATES

(Sections 146.01 to 146.30)

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.

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
Reported, H. Finance & Appropriations	04-08-03	pp. 336-337
Passed House (53-46)	04-09-03	pp. 343-429

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