



**Sub. H.B. 95\***

125th General Assembly

(As Reported by S. Finance and Financial Institutions)

**Rep. Calvert**

**Sens. Carnes, Jacobson, Blessing, Goodman**

---

**TABLE OF CONTENTS**

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

DEPARTMENT OF ADMINISTRATIVE SERVICES .....23

Vehicle Liability Fund .....25

Duties relating to space allocation.....26

State forms management.....27

Form Burden Law.....28

Office of State Records Administration .....28

Salaries of State Fire Commission Members .....29

Professional design services contracts.....30

Professional design firms for public improvements.....30

    Continuing law.....30

    Changes made by the bill .....31

Encouraging Diversity, Growth, and Equity Program creation,  
implementation, and bonding authority .....31

---

*\* 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.*

Creation and implementation of the program.....	31
Bond guarantee authority .....	33
Electronic procurement .....	34
Suspension of rental property commissions and fees .....	35
DEPARTMENT OF AGING .....	35
Resident Services Coordinator Program.....	36
Bed fee for regional long-term care ombudsperson programs.....	36
Golden Buckeye Card program .....	37
Prescription drug program.....	37
Annual report.....	39
The Long-Term Care Consumer Guide .....	39
Investigative authority of State Long-Term Care Ombudsman .....	40
DEPARTMENT OF AGRICULTURE .....	40
Family Farm Loan Program .....	42
Agricultural Financing Commission.....	43
Agricultural Districts.....	43
Division of Markets.....	44
Changes in Nursery Stock and Plant Pests Law .....	45
Increase in license and inspection fees related to nursery stock .....	45
Inspection of agricultural products by Director of Agriculture.....	46
Agricultural easements.....	46
Introduction.....	46
Acquisition and holding of agricultural easements by soil and water conservation districts .....	47
Clean Ohio Agricultural Easement Fund .....	47
Gypsy moth suppression.....	48
Indemnification for agricultural animals injured or killed by black vultures .....	49
Auctioneers Law .....	49
License fees and licensing procedures for auctioneers, apprentice auctioneers, and special auctioneers .....	49
Changes regarding single-auction licenses .....	50
Farm Service Agency Electronic Filing Fund .....	51
Background .....	51
Creation of the Fund .....	52
OHIO ARTS COUNCIL .....	52
Gifts and Donations Fund.....	53
OHIO ARTS AND SPORTS FACILITIES COMMISSION .....	53
Ohio arts facility .....	53
Ohio sports facility .....	54



OHIO ATHLETIC COMMISSION.....	54
Ohio Athletic Commission office in Youngstown .....	55
Fees relative to the regulation of boxing and wrestling.....	55
Athlete Agents Registration Fund.....	55
ATTORNEY GENERAL .....	56
Enforcement of the Tobacco Settlement Law.....	57
Certification requirements for tobacco product manufacturers.....	57
Directory of certified tobacco product manufacturers.....	59
Agent for service of process .....	61
Documentation of cigarettes sold and taxes paid.....	62
Reporting and sharing of reported information .....	63
Adoption of administrative rules.....	63
Criminal prohibitions and penalties .....	63
Injunctive relief and miscellaneous remedies.....	65
Tobacco product manufacturer escrow deposits.....	66
Collection costs for debts owed to the state .....	66
Collection of moneys due the state.....	66
AUDITOR OF STATE .....	67
Uniform accounting network and training programs .....	68
OHIO BALLOT BOARD .....	68
Membership term for certain members of the Ohio Ballot Board.....	69
OHIO BARBER BOARD.....	69
Fee increases .....	70
BOARD OF BUILDING STANDARDS.....	71
Rules for Gaseous Piping Systems .....	71
OFFICE OF BUDGET AND MANAGEMENT.....	71
Federal funds reports and expenditures .....	72
The Family Services Stabilization Fund.....	73
Transferring funds to cover identified shortfalls.....	73
Use of federal funds under the Jobs and Growth Tax Relief Reconciliation Act of 2003.....	74
Transfer and reimbursement of tobacco revenue .....	74
State agency "needs" analyses for facility closures.....	75
BOARD OF CAREER COLLEGES AND SCHOOLS .....	75
Deposit of funds .....	75



OHIO CIVIL RIGHTS COMMISSION.....	76
Civil Rights Commission General Reimbursement Fund.....	76
DEPARTMENT OF COMMERCE.....	76
Increase in liquor permit fees.....	79
Elimination of population ceiling for municipal corporations and townships in which the D-5i liquor permit can be issued.....	83
Sunday sales by a D-5g liquor permit holder.....	83
Changes in the political subdivisions in which the D-5j liquor permit may be issued.....	84
Repeal of travel agency and tour promoter registration requirement.....	84
Consumer Finance Fund; income and expenses administering High Cost Mortgage Law.....	85
Filing fee for appeal to the Board of Building Appeals.....	85
Boiler and pressure vessel inspections and fees.....	85
Pressure piping systems and welding and brazing regulations.....	86
Pressure piping systems regulation.....	86
Welding and brazing procedure regulation.....	87
Intent.....	89
Elevator certificate of operation fee increase and fee setting authority.....	89
Prevailing Wage Law.....	90
Statute of limitations.....	90
Complaint procedures.....	90
Procedure for filing a lawsuit.....	91
Authority to adopt State Fire Code transferred from State Fire Marshal to renamed Board of Building and Fire Standards.....	91
Code Advisory Committees.....	92
Enforcement of the State Fire Code and variances.....	93
State Fire Marshal transferred to the Department of Public Safety.....	94
Responsibility for the regulation of underground storage tanks transferred from the State Fire Marshal to the Superintendent of Industrial Compliance.....	94
Regulation of aboveground storage tanks.....	95
Delayed effective date.....	97
Aboveground Petroleum Storage Tank Study Committee.....	97
Sale of spirituous liquor in 50 milliliter containers.....	98
DEPARTMENT OF DEVELOPMENT.....	98
Duties of the Department.....	100
Office of Small Business.....	100
Defense Conversion Assistance Program.....	100
Director's determination on job relocation under Rural Industrial Park Loan Program.....	101
Clean Ohio Council membership.....	101



Use of investment earnings of Clean Ohio Revitalization Fund .....	102
Energy Efficiency Revolving Loan Program .....	102
Ohio Housing Finance Agency chairperson and vice-chairperson .....	103
Housing trust fund fees .....	103
Expenditures from the Housing Trust Fund.....	104
Authority to designate enterprise zones and enter into enterprise zone agreements extended.....	104
 OHIO BOARD OF DIETETICS.....	 105
Board of Dietetics fees.....	105
 COMMISSION ON DISPUTE RESOLUTION AND CONFLICT MANAGEMENT .....	 105
Abolishment of the Commission .....	106
 DEPARTMENT OF EDUCATION .....	 106
Background on state education financing litigation.....	114
Introduction--key concepts of the current school funding system .....	116
Base-cost funding.....	116
Future recalculation of the base cost.....	119
Equity aid phase-out .....	120
Parity aid.....	120
Categorical funding .....	121
Subsidies addressing reliance on property taxes .....	125
State funding guarantee .....	126
Elimination of three-year averaging of formula ADM.....	126
Percentage of JVSD students counted in the formula ADM of school districts..	127
Transitional aid .....	127
Amendments to statutes in anticipation of new funding system .....	128
Elimination of future school funding features .....	128
Two-year extension of other school funding components .....	128
GRADS personnel allowance .....	129
Across-the-board DPIA payment increase for FY 2004 and FY 2005.....	129
Special education funding weights.....	130
Expenditure of vocational education funding and reporting of that expenditure.....	130
Joint vocational school district special education funding and expenditures .....	130
Attribution and payment of excess costs.....	131
Requirement that joint vocational school districts spend the formula-calculated amounts on special education and related services .....	131
Head Start and Head Start Plus .....	132
Corrective action plan.....	134
Licensing of Head Start agencies .....	135

Head Start Partnership Study Council .....	136
LOEO study of Head Start and child care partnership agreements .....	137
Modification of due dates and scope of LOEO studies .....	137
Pupil-teacher ratio formula adjustment .....	137
Changes in "unit" funding for certain services .....	138
Reassignment of school buses .....	139
Renaming the Auxiliary Services Mobile Unit Repair and Replacement Fund.....	139
Changes to the Pilot Project Scholarship Program.....	140
Background .....	140
Scholarship amount .....	140
Additional tuition charges .....	140
Payments to tutorial assistance providers through the Pilot Project Scholarship Program.....	141
Modification of a school district's tax levy obligation when in fiscal emergency.....	142
Accounting requirements for school district "fiscal caution" designations .....	143
Changes to community school law.....	144
Background .....	144
New sponsors after contract termination or nonrenewal .....	144
Location of start-up community schools.....	145
Enrollment in Internet- or computer-based community schools.....	146
Standards for Internet- or computer-based community schools.....	146
Notification to parents of community school students .....	147
Payments to community schools .....	147
Temporary subsidy for community schools that enroll a high number of severe behavior handicapped students.....	148
Transportation coordinators .....	149
Thirty-minute travel time for busing .....	149
School district textbook and electronic textbook purchases .....	150
Employment of school district business managers.....	150
Administration of practice versions of the OGT to ninth graders .....	152
Background on OGT.....	152
Practice versions of the OGT.....	152
Intervention services .....	153
Annual school progress reports.....	154
Elimination of a public school's authority to operate a school savings system....	154
Changes affecting educational service centers .....	155
Background .....	155
Local school district option to change ESC membership .....	156
Elimination of minimum standards for service to school districts.....	157
Payments to ESCs .....	157
Elimination of ESC approval of employment by local school districts of teachers, administrators, and superintendents .....	159



Elimination of ESC approval of the assignment of local school district staff and students .....	160
Calculation of the cost of ESC office space.....	160
Elimination of ESC annual report on activities of local school districts.....	161
Transfer of authority to propose new local school districts.....	162
Pupil-teacher ratios in bilingual multicultural classes .....	163
Ratio of speech-language pathologists to students with disabilities.....	163
Certified software packages for reporting EMIS data.....	164
Filing of school district certificates of estimated appropriations and appropriation resolution.....	165
School district certificate of available resources.....	165
Verification of signatures on school district transfer petitions .....	166
Ohio Regional Education Delivery System .....	166
Membership of Ohio SchoolNet Commission.....	167
Disaggregation of performance data by vocational education students .....	167
Participation in National Assessment of Educational Progress (NAEP).....	168
Pilot Project Special Education Scholarship Program.....	168
Eye exams for disabled students.....	170
Sharing of results of educator licensure examinations with the Board of Regents .....	171
<b>BOARD OF EMBALMERS AND FUNERAL DIRECTORS .....</b>	<b>171</b>
Licensing fees .....	171
Exemption from continuing education.....	172
<b>STATE EMPLOYMENT RELATIONS BOARD.....</b>	<b>172</b>
Duties of the Chairperson and Executive Director.....	173
Appointment and cost of fact-finding panels for collective bargaining .....	173
<b>ENVIRONMENTAL PROTECTION AGENCY.....</b>	<b>174</b>
Use of investment earnings of Clean Ohio Revitalization Fund .....	178
Use of investment earnings of Clean Ohio Operating Fund.....	178
Elimination of Hazardous Waste Facility Board.....	179
Hazardous Waste Clean-up Fund.....	181
Continuation of and increase in solid waste disposal fee .....	181
Environmental Review Appeals Commission filing fee .....	181
Fees for permits issued under Air Pollution Control Law.....	182
Fees for existing permits and variances.....	182
Fees for permits to install issued on or after July 1, 2003.....	182
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.....	186
Synthetic minor facility fees .....	186

Water pollution control fees.....	187
Safe drinking water fees .....	188
Certification of operators of water supply systems or wastewater systems .....	191
Application fees under Water Pollution Control Law and Safe Drinking Water Law.....	192
Electronic submission of certain applications to Environmental Protection Agency .....	193
Fee for covenant not to sue under brownfield portion of Clean Ohio Program ...	193
 OHIO ETHICS COMMISSION.....	194
Filing and late fees for financial disclosure statements .....	194
 OFFICE OF THE GOVERNOR .....	195
Governor's Office for Faith-based Nonprofit and Other Nonprofit Organizations .....	196
Fee for the Governor's commissioning of certain persons .....	197
 DEPARTMENT OF HEALTH .....	197
Hemophilia program and advisory council .....	200
Funding for program for medically handicapped children.....	201
Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board....	202
Office of Women's Health Initiatives.....	202
Help Me Grow .....	203
Quality Monitoring and Inspection Program fees .....	203
Continuing effect of Certificates of Need.....	204
Notice of intent before commencing health activities .....	204
Moratorium on long-term care beds .....	205
Vital records .....	206
Fees for vital records.....	206
Uncertified vital records .....	207
Certificate recognizing delivery of a stillborn infant .....	207
Maternity licensure program fees.....	208
Nursing home and residential care facility licensing fees.....	208
The Nursing Facility Regulatory Reform Task Force .....	209
Nursing home administrator licensing fees.....	210
Definition of "home health agency" .....	210
Supervision of home health agency services .....	211
Agricultural labor camps .....	211
Camp licensing fees .....	211
Camp inspections .....	212
Fee increases for persons involved in asbestos hazard abatement .....	212
Asbestos Hazard Abatement Project Fee.....	213





Radiation control program fees for health care and radioactive waste facilities.....	213
Hearing Aid Dealers and Fitters Licensing Board fees .....	214
General Assembly concurrent resolution of approval .....	214
OHIO HIGHER EDUCATION FACILITY COMMISSION .....	214
Eligibility for financing .....	215
OHIO HISTORICAL SOCIETY .....	215
Charges for specified materials.....	216
Charges for specified activities performed by the Archives Administration.....	216
INSPECTOR GENERAL.....	217
Office of the Inspector General .....	217
Existing law.....	217
Operation of the bill.....	218
DEPARTMENT OF INSURANCE.....	219
Current limitations on insurers' use of genetic testing to be continued.....	219
Interest charged on money advanced to domestic insurers and HMOs.....	220
DEPARTMENT OF JOB AND FAMILY SERVICES .....	220
<i>I. General</i> .....	235
Agreements between Director of ODJFS and boards of county commissioners.....	235
Background.....	235
Fiscal agreements to replace partnership agreements.....	236
Contracts and grants incorporated into partnership agreement .....	240
Retroactive effective date.....	240
ODJFS publishing fiscal agreement materials.....	240
Requirement for hearing and planning committee review eliminated.....	240
Rules governing fiscal agreements.....	241
Report.....	241
When a fiscal agreement is not in effect .....	242
Operational agreements .....	243
Performance and other administrative standards .....	243
Designation of entity to serve as county family services agency.....	244
Exchange of information to improve services and other requirements .....	245
Reimbursement of county expenditures for food stamps and Medicaid .....	246
ODJFS action against a county regarding family services duties .....	246
Causes for taking action against the responsible entity.....	246
Actions ODJFS may take .....	248
Notice of proposed action .....	249

Administrative review .....	249
Other actions not subject to these provisions .....	252
Request for Attorney General to seek recovery against responsible entity .....	252
Reporting requirements .....	253
Maximization of federal funds .....	253
Dates for ODJFS reports .....	253
Voter Registration Program .....	254
Disclosure of information regarding public assistance recipients .....	254
Mandatory release of information .....	255
Discretionary release of information .....	255
Special restrictions governing the release of information regarding recipients of medical assistance .....	256
Authorization form for release of information .....	257
Sharing information regarding public assistance recipients with law enforcement agencies .....	258
No reimbursement of fees by an applicant, participant, or recipient of a family services program for appealing an administrative appeal decision .....	259
<i>II. Unemployment Compensation</i> .....	259
Federal Operating Fund .....	259
Job listings by persons or corporations that contract with the state .....	259
Penalties for employers' submission of incorrect unemployment compensation filings .....	260
Private industry councils .....	260
Unemployment compensation fund updates to coordinate with federal trade act law changes .....	260
<i>III. Workforce Development</i> .....	261
Agreements with one-stop operators and one-stop partners .....	261
<i>IV. Child Welfare</i> .....	262
Foster care and adoption assistance .....	262
Notice, public hearing, and JCARR rule-making requirements .....	262
Single cost reporting form and cost report monitoring procedures .....	262
Actions taken when fiscal accountability procedures not met .....	262
Recovery of Title IV-E funds .....	263
Child welfare subsidy .....	263
Adoption subsidy programs .....	264
Background .....	264
SAMS .....	264
SASSS .....	265
PASSS .....	265
The bill .....	265
University Partnership Program participants .....	268
Putative Father Registry Fund .....	268
Independent living for young adults .....	269



Repeal of domestic violence training program .....	269
Ohio Child Welfare Training Program .....	270
Training programs for foster caregivers and adoption assessors .....	270
Reimbursement of foster caregivers for attending training .....	271
Reimbursement of agencies for providing training programs .....	271
Grants to regional training centers .....	272
Effective date .....	272
<i>V. Child Day-Care</i> .....	272
Day-care rules .....	272
Background .....	272
Licensed Type A homes and day-care centers .....	273
Type B homes and in-home aides .....	273
Payments to providers of publicly funded day-care .....	273
Eligibility for publicly funded child day-care .....	274
<i>VI. Food Stamp Program</i> .....	275
Food Stamp Program work requirements .....	275
<i>VII. Title IV-A Temporary Assistance for Needy Families</i> .....	275
TANF funds for publicly funded child day-care .....	276
Ohio Works First .....	276
Minor heads of household .....	276
Learning, Earning, and Parenting (LEAP) Program .....	276
Prison nursery program .....	277
Prevention, Retention, and Contingency Program .....	277
Background .....	277
The bill .....	279
County share of public assistance expenditures .....	281
<i>VIII. Medicaid</i> .....	282
Treatment of trusts in Medicaid eligibility determinations .....	283
Background .....	283
Current law--regulation by administrative rule .....	283
The bill--partial codification of administrative rule .....	284
Medicaid Estate Recovery .....	284
Investigation regarding receipt of services .....	285
Claims against the estate .....	285
Release of the decedent's account proceeds .....	285
Priority of claims .....	286
Liens .....	286
Medicaid prenatal care and substance abuse screening .....	287
Care management system within Medicaid .....	287
Pilot program for care management of chronically ill children .....	288
Managed care organizations under Medicaid contracts .....	290
Prescription drug coverage by health insuring corporations .....	290
Appointment of temporary manager .....	290



Disenrollment of Medicaid recipients .....	291
Technical changes .....	291
Medicaid copayment program .....	292
Supplemental rebates .....	292
Medicaid coverage of dental, podiatric, and vision care services .....	292
Medicaid coverage of chiropractic services .....	293
Assertive community treatment and intensive home-based mental health services .....	293
Mental health and alcohol and drug addiction services .....	293
Medicaid payments to children's hospitals .....	295
Nursing home and hospital franchise permit fee .....	296
Medicaid inflation adjustment factor for hospital outpatient services .....	297
Medicaid reimbursement of long-term care services .....	297
Background .....	297
2004 and 2005 reimbursement rates for nursing facility services .....	299
2004 and 2005 reimbursement rates for ICF/MR services .....	301
Medicaid provider agreements .....	302
Copies of Medicaid rules .....	302
Change of operator, closure, and voluntary termination and withdrawal .....	303
Change of operator .....	303
Facility closure .....	304
Voluntary termination and withdrawal of participation .....	305
Notice of facility closure or voluntary termination or withdrawal .....	305
Notice of change of operator .....	306
Determination of potential Medicaid debt .....	307
Withholdings and security .....	308
Final cost report .....	309
Determination of actual Medicaid debt .....	310
Release of withholdings and security and collection of debt .....	310
Provider agreement with entering operator .....	312
Rate adjustment following change of operator .....	313
Compliance with federal law on voluntary withdrawal .....	314
Licensure determinations do not affect ODJFS's determinations .....	314
Rules .....	314
Penalties .....	315
Medicare certification .....	315
Conditional employment in adult day-care program and adult care facility .....	316
Nursing Facility Reimbursement Study Council .....	316
ICF/MR franchise permit fee .....	317
Medicaid waivers for alternatives to ICF/MR placement .....	317
Federal financial participation for county MR/DD board administrative costs .....	318
Ohio Access Success Project .....	318
Ohio Home Care Program .....	320

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 .....	321
Initiating the criminal records check.....	321
Offenses disqualifying an applicant from employment .....	322
Fees .....	324
Confidentiality .....	324
Special provision for existing employees.....	325
Conforming change in the BCII Law .....	325
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.....	325
Initiating the criminal records check.....	325
Offenses disqualifying a person from being an independent provider .....	327
Fees .....	328
Confidentiality .....	328
Conforming change in the BCII Law .....	329
Ohio Commission to Reform Medicaid.....	329
Study expanding Medicaid coverage for breast and cervical cancer treatment ....	329
<i>IX. Hospital Care Assurance Program.....</i>	<i>330</i>
Delayed termination of HCAP .....	331
Health Care Services Administration Fund.....	331
Changes to HCAP penalties .....	331
<i>X. Disability Financial and Medical Assistance .....</i>	<i>332</i>
Separation of financial and medical assistance.....	333
Eligibility for Disability Financial Assistance.....	333
Termination of existing financial assistance eligibility.....	333
Financial assistance amounts .....	334
Eligibility for Disability Medical Assistance.....	334
Extension of existing medical assistance eligibility.....	335
Medical services available.....	335
Time limits and program limits .....	335
Delegation of administrative duties.....	336
Investigations of administrative compliance.....	336
Disability advocacy programs .....	337
Recovery of erroneous payments .....	337
Eligibility determinations .....	337
Report to the General Assembly.....	338
Rule-making authority .....	338
Transition.....	339
Cross-reference changes .....	339

JOINT COMMITTEE ON AGENCY RULE REVIEW .....	339
Fiscal agent .....	339
JOINT LEGISLATIVE ETHICS COMMITTEE .....	340
Registration fees .....	340
Late filing fee for executive agency lobbyists and their employers.....	341
LEGAL RIGHTS SERVICE COMMISSION.....	342
Commission authority.....	342
OHIO LOTTERY COMMISSION .....	342
Transfer of lottery prize awards .....	343
Overview .....	343
Changes proposed by the bill.....	344
Unclaimed lottery prizes.....	344
Deduction of state-owed debts from lottery prize award payments.....	345
DEPARTMENT OF MENTAL HEALTH .....	345
Assertive community treatment in certification standards .....	345
DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES .....	346
Residential facilities for individuals with mental retardation or a developmental disability.....	348
Background .....	348
Rule-making authority.....	349
Licensed bed capacity.....	349
Transfer of Medicaid savings .....	350
Cap on number of residential facility beds .....	350
Obtaining a license without development approval .....	351
Use of county allocations for costs of state-operated ICF/MR.....	353
Priority category for county MR/DD board waiting list.....	353
Distribution of county MR/DD board subsidies.....	354
General purpose subsidy.....	354
Subsidy for employment of a business manager .....	355
Family support services subsidy.....	355
Service and support administration subsidy .....	355
Supported living services .....	356
Tax equity payments .....	356
Apprehension of MR/DD institution escapees .....	357
Personal items provided on discharge from MR/DD institutions .....	357
Ohio Autism Task Force.....	357
Membership .....	357



Report on recommendations .....	359
DEPARTMENT OF NATURAL RESOURCES .....	359
Repeal of Civilian Conservation Law .....	361
Membership of Reclamation Commission .....	362
Use of investment earnings of Clean Ohio Trail Fund .....	363
Dam construction permit fees .....	363
Annual fees for dams .....	364
Hunting and fishing license, permit, and stamp requirements and fees .....	365
Additional Division of Wildlife license, permit, and stamp requirements and fees .....	366
State timber sales .....	368
Allocation and distribution of money from state timber sales .....	368
Elimination of new formula for the distribution of money from the sale of state timber felled or damaged by natural conditions .....	369
Prohibition against entrance fees for state parks and nature preserves .....	369
OHIO BOARD OF NURSING .....	370
Administration of intravenous therapy to adults .....	371
Board of Nursing fees .....	372
Nurse Education Grant Program .....	372
Deposit of funds into Special Nursing Issue Fund .....	374
Community health worker certification program .....	375
Community health workers .....	375
Certification .....	375
Community health workers--supervision .....	376
Disciplinary actions .....	377
Community health worker training programs .....	377
Administrative procedures .....	378
STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS .....	380
State Board of Orthotics, Prosthetics, and Pedorthics .....	380
STATE PERSONNEL BOARD OF REVIEW .....	381
Transcript and Other Documents Fund .....	381
STATE BOARD OF PHARMACY .....	381
Administration of adult immunizations by pharmacists .....	381
DEPARTMENT OF PUBLIC SAFETY .....	382
Private investigator and security guard licensing .....	383
Department of Public Safety, Division of Homeland Security .....	383



The Motorcycle Safety and Education Program of the Department of Public Safety.....	384
Vehicle registration periods for buses.....	385
Motor vehicle certificate of title document retention.....	385
State Highway Safety Fund.....	386
PUBLIC UTILITIES COMMISSION OF OHIO .....	386
Special Assessment Fund .....	386
Gas Pipe-line Safety Fund.....	387
Motor Carrier Safety Fund .....	387
PUBLIC WORKS COMMISSION.....	387
Use of investment earnings of Clean Ohio Conservation Fund .....	387
STATE RACING COMMISSION.....	388
Deposit of entire ½ of 1% of all amounts wagered on exotic wagering into the State Racing Commission Operating Fund.....	388
State Racing Commission performance study .....	389
OHIO BOARD OF REGENTS .....	389
Increase in Ohio Instructional Grant (OIG) amounts.....	390
Denial of financial aid to students convicted of riot-related offenses .....	391
Cap on tuition charges at state-assisted institutions of higher education .....	392
Calculation of the previous year's instructional and general fees .....	392
Study of co-located institutions .....	393
Transfer of students between state institutions of higher education .....	393
Residency for board of trustee members of the University of Cincinnati.....	395
Conversion of Belmont Technical College to Belmont Community College .....	395
Creation of the Board of Regents Awards and Initiatives Fund.....	396
Commission on Higher Education and the Economy .....	397
DEPARTMENT OF REHABILITATION AND CORRECTION .....	397
Administrative resolution of small claims of inmates .....	397
Provision of water or sewage treatment services by state correctional institutions.....	398
STATE BOARD OF SANITARIAN REGISTRATION .....	398
Sanitarian and sanitarian-in-training registration fees .....	398
OHIO SCHOOL FACILITIES COMMISSION .....	399
Classroom facilities assistance programs--background.....	400
Termination of certain programs administered by the Ohio School Facilities Commission.....	402





Allocation of classroom facilities project funds .....	402
Authorization for certain large land area districts to participate in the Exceptional Needs program .....	403
Participation in both the Exceptional Needs and the Expedited Local Partnership programs .....	403
Use of existing taxes to generate revenue for classroom facilities projects.....	404
Use of an existing permanent improvement levy for maintenance of facilities acquired under a state-assisted project .....	404
Repeal of credit for previous expenditures.....	405
Most programs .....	405
Expedited Local Partnership program .....	405
Renovation of existing facilities in lieu of replacement by new construction.....	406
Additional assistance to correct oversights or deficiencies.....	406
Disposal of real property by school districts.....	407
Delegation authority of the School Facilities Commission.....	407
 SECRETARY OF STATE .....	407
Notary public fee increase and qualifications .....	409
Election Law changes .....	410
Presidential ballot certification deadlines .....	410
Election precinct size .....	411
Election supplies; ballot approval .....	411
Election Law signature requirements.....	412
 DEPARTMENT OF TAXATION .....	413
<i>I. Sales and Use Tax</i> .....	421
How state and local sales and use taxes work.....	421
State sales and use tax rate temporarily increased.....	421
Services and tangible personal property subject to taxation .....	422
Exemptions eliminated.....	423
Determination of "price"--items included in it .....	424
Sales that are not subject to sales or use taxes .....	424
Partial exemption for sales of fractional ownership program aircraft .....	426
Filing returns and paying taxes by electronic funds transfer; change in dates for accelerated tax payments .....	426
Increased discount for vendors .....	427
Corporation franchise tax: increased minimum tax .....	427
Sourcing of and licensing for the new services subject to taxation .....	428
Recovery of sales tax refund amounts .....	428
Personal liability for failure to file returns or remit taxes .....	429
Revisions made to comply with the Streamlined Sales and Use Tax Agreement.....	429
Background.....	429



Major tax base definitions and their impact on the tax base.....	430
Collection of sales and use taxes on leases and rentals .....	434
Simplification of administering exemptions .....	434
Restrictions on frequency of changes in local tax rates .....	435
Tax rate schedules .....	435
Uniform standards for attributing the source of transactions to taxing jurisdictions .....	436
Bad debt .....	442
Delay of certain sales and use tax provisions .....	442
<i>II. Municipal Taxation</i> .....	443
Appeals from tax administrators' decisions .....	443
Municipal income tax withholding requirements .....	444
Automatic three-year withholding requirement eliminated.....	444
Withholding tax base established.....	444
Erroneous payment of tax or withholding.....	446
Municipal income tax filing deadlines.....	446
Uniform deadline for filing municipal income tax returns .....	446
Uniform extension periods .....	446
Ohio Business Gateway.....	447
Municipal corporations not responsible for operation and maintenance of the Ohio Business Gateway.....	448
Tax Commissioner granted rulemaking authority with respect to the Ohio Business Gateway.....	448
Ohio Business Gateway Steering Committee created .....	448
Municipal taxation of business net profit .....	450
Uniform tax base established.....	450
Taxpayers that are neither individuals nor C corporations .....	451
Municipal corporations authorized to exempt certain income .....	451
Net profit from rental activity.....	451
Apportionment of net profit .....	452
Definition of "intangible income" clarified.....	452
Municipal tax administrators' authority to audit.....	453
Tax credit for "qualifying losses" on nonqualified deferred compensation plans .....	453
Municipal taxation of S corporation distributive shares: credit for resident shareholders.....	454
Background .....	454
Credit for resident S corporation shareholders .....	455
Telephone companies no longer taxed as public utilities.....	455
Summary.....	455
Assessment rate reduction for telephone companies .....	456
Public utility excise tax.....	456
Corporation franchise tax .....	457

Telephone company income becomes subject to taxation by municipal corporations.....	460
Sales by telephone companies are subject to sales or use taxes .....	462
Call center tax credit to offset future "anti-PIC" legislation.....	462
Current Agricultural Use Valuation.....	463
Exemption of property in community reinvestment areas from real property taxation.....	465
Background.....	465
Complaints concerning continued exemption .....	465
Additional limitations on Tax Commissioner's involvement with CRA property tax exemptions .....	466
<i>III. Other Areas of Taxation</i> .....	467
Bond requirement for cigarette dealers; electronic payment of cigarette taxes....	467
Defer tax recognition of book-tax differences.....	468
Motor fuel taxes .....	468
Refunds for water intentionally added to fuel .....	468
Property tax .....	469
Fee to defray Department of Taxation's property tax administrative costs.....	469
Enforcement of the motor fuel use tax and motor fuel tax laws .....	470
Motor fuel use permit violations .....	470
Inspections related to motor fuel.....	470
Motor Fuel Tax Administration Fund.....	472
Highway use tax clarification .....	472
Highway use tax .....	472
Reimbursement of school districts for new gas taxes .....	473
Real estate assessment fund: permissible uses .....	473
Tax maps .....	474
Personal property tax on inventory: accelerated phase-out .....	474
Reduce state reimbursement for \$10,000 business property exemption .....	475
Eliminate filing requirement for businesses with only exempt property.....	475
Tax abatement for "qualified property" .....	475
Changes to the job creation and job retention tax credits.....	477
Deferment of income tax liability for members of the armed forces serving in Operation Iraqi Freedom.....	478
Extension of Tax Commissioner's power to disregard sham transactions .....	479
Tax reduction for new manufacturing machinery and equipment.....	480
Tax replacement payments for taxing districts having a nuclear power plant .....	482
Pollution control and other special-purpose tax-exempt facilities.....	483
Changes in general administration.....	484
Eliminate exclusion from franchise tax base .....	484
Application fee.....	484
Partial exemption.....	485
Revaluation .....	486

Effective date of exemption .....	486
Appeals .....	486
Revocation.....	487
Transitional provisions .....	487
Notice to local taxing authorities.....	487
Abating late penalties.....	488
Preneed funeral trusts.....	489
Allocation of lottery proceeds under the corporate franchise tax.....	489
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 .....	490
Forfeiture fund for Department of Taxation enforcement actions .....	490
Delegation of the Tax Commissioner's investigation powers.....	490
Department of Taxation Enforcement Fund--for property or cash forfeited under the Corrupt Activity Forfeiture Law, Felony Drug Abuse Offense Forfeiture Law, or Contraband Forfeiture Law or under federal law .....	492
Corrupt Activity Forfeiture Law .....	492
Felony Drug Abuse Offense Forfeiture Law .....	493
Contraband Forfeiture Law.....	495
DEPARTMENT OF TRANSPORTATION.....	500
Audits of force accounts and penalties for violations .....	500
Existing law.....	500
Changes made by the bill .....	501
OHIO VETERANS HOME AGENCY.....	502
Ohio Veterans' Home Agency pharmaceutical and supply purchases.....	502
BUREAU OF WORKERS' COMPENSATION .....	502
Fund transfers for payment of workers' compensation payments .....	503
DEPARTMENT OF YOUTH SERVICES .....	503
Community corrections facilities.....	504
Existing law.....	504
Operation of the bill.....	505
Federal juvenile justice programs funds .....	506
Allocation of appropriations for the care and custody of felony delinquents.....	506
RECLAIM formula .....	507
Operation of the bill--RECLAIM formula.....	507
Operation of the bill--DYS felony care and custody program .....	510
Operation of the bill--contingency program .....	511
Existing law--RECLAIM formula.....	511
Existing law--DYS felony care and custody program.....	513

Existing law--contingency program.....	514
DYS reports to Governor and the legislature.....	515
Existing law.....	515
Operation of the bill.....	516
Definition of "public safety beds".....	516
Existing law.....	516
Operation of the bill.....	517
Miscellaneous.....	517
Technical changes.....	518
LOCAL GOVERNMENT.....	518
Metropolitan housing authorities.....	522
Change in appointment method in specified counties.....	522
Resident members.....	522
Powers of a regional transit authority.....	523
Offense of misconduct involving a public transportation system.....	523
Restricting the use of a street or highway lane to buses only.....	524
Agricultural societies.....	524
Use of credit cards.....	524
Agreements to obtain loans and credit.....	525
Purchase or lease of real estate.....	525
Increase in township clerk salaries.....	525
Purchase orders by political subdivisions or taxing units.....	526
County competitive bidding requirements.....	526
Counties authorized to create "local funding options" for construction of convention centers.....	527
Board of township trustees of limited home rule townships.....	527
Water supply projects of boards of county commissioners.....	527
Conversion of township park district to township park land.....	528
Increased sheriff's fees.....	529
Service and return of writs and orders fees.....	529
Other fees.....	531
Miscellaneous.....	532
Additional court costs or bail.....	532
Existing law.....	532
Pre-trial diversion programs.....	533
County drainage facilities rates and charges.....	534
Profits from local correctional facility commissaries.....	534
Local correctional facilities.....	534
Jails.....	535
Medical treatment.....	535
Boards of alcohol, drug addiction, and mental health services in counties with separate boards.....	536



Additional veterans service commission appointments.....	536
Overview.....	536
Additional memberships in certain counties.....	537
Water resource projects of regional water and sewer districts.....	538
Regional water and sewer district contracts.....	538
 MISCELLANEOUS .....	 538
Gambling and Charitable Bingo Laws .....	544
Prohibition against schemes of chance .....	544
Bingo license fees.....	544
Compensation of bingo game operators.....	545
Conducting instant bingo.....	545
Raffles.....	546
Regulation of a "charitable instant bingo organization" .....	547
Maintenance of records .....	548
Distribution of the net profits from the proceeds of the sale of instant bingo .....	548
Veteran's or fraternal organization conduct of instant bingo .....	549
Liquor law changes .....	550
Prizes.....	550
Definitions.....	550
Miscellaneous .....	552
Schedules of rates for certain public employees.....	552
Overview.....	552
Adjustment of schedules of rates.....	553
Step advancement moratorium .....	553
Longevity pay adjustment moratorium.....	554
Background.....	554
Operation of the bill.....	555
Two per cent pay supplement .....	555
In general .....	555
Qualifications .....	556
Proration.....	556
Retirement system caveat .....	556
Child support law caveat .....	556
0.08 blood alcohol concentration reverter.....	556
Commercial driver's licenses (CDL) .....	557
Railroad crossing traffic laws .....	558
State enforcement of statutory lien.....	558
Existing law.....	558
Operation of the bill.....	559
Judgment liens in favor of the state.....	559
Operation of the bill.....	559

Prohibiting government entities from contracting with persons against whom an unresolved finding for recovery has been issued.....	560
Retail installment contract charges.....	561
Monitoring of home care services provided to dependent adults.....	562
Appointed counsel in juvenile court .....	563
Existing law.....	563
Operation of the bill.....	564
Crime Victims Reparations Awards.....	564
Health insuring corporation policy to cover return to long-term care facility .....	565
Facilities Closure Commissions .....	565
Procedure for closing a state institutional facility for the purpose of expenditure reductions or budget cuts .....	565
Composition and duties of Facilities Closure Commissions .....	567
Privately operated and managed correctional facilities.....	568
Applicability .....	569
Optimize use of food grown at state correctional institutions and Department of Youth Services facilities.....	569
Legislative Audit Commission Study Committee.....	569
Muskingum River Advisory Council.....	570
Increase from \$15,000 to \$25,000 in the competitive bidding threshold for certain political subdivision contracts.....	571
Increase from \$10,000 to \$25,000 in the competitive bidding threshold for certain political subdivisions.....	571
Governmental Television/Telecommunications Operating Fund .....	572
Certification of special police .....	572
Current law.....	572
Operation of the bill.....	572
Public notice and meeting for reemployed PERS retirants .....	573

---

## DEPARTMENT OF ADMINISTRATIVE SERVICES

- Codifies the Vehicle Liability Fund.
- Requires the Director of Administrative Services, through the Office of Risk Management, to operate the Vehicle Liability Fund on an actuarially sound basis, including maintaining reserves necessary and adequate to cover potential liability claims, expenses, fees, or damages.
- Requires contributions from state agencies and state bodies for the purpose of purchasing liability insurance or administering self-insurance programs to be deposited to the credit of the Vehicle Liability Fund.

- 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.
- 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.
- Eliminates an obsolete reference to a non-existent pay range for State Fire Commission Members.
- 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."
- Prohibits public authorities, except state agencies under certain circumstances, 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 selecting and ranking firms.



- 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."
- Suspends the authority of the Director of Administrative Services to collect commissions and fees arising from the rental of real property during the period beginning July 1, 2003, and ending June 30, 2005.

### **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.

### **State forms management**

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

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

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

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

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

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

### **Form Burden Law**

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

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

### **Office of State Records Administration**

(R.C. 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)).

### **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 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 professional design services as indicated by the technical training, education, and experience of its personnel, the ability of the firm in terms of its workload and the availability of qualified personnel, equipment, and facilities 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."

### **Professional design firms for public improvements**

(R.C. 153.691)

#### **Continuing law**

(R.C. 153.65 and R.C. 153.66 to 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 will keep on file. The public authority relatedly may institute prequalification requirements for professional design firms seeking to provide services to the public authority. Submitted statements of qualifications to the public authority as part of the requirements serve to create "prequalified firms" and to facilitate the creation of a "list of prequalified firms."

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 the statements of qualifications of prequalified firms on file together with those that are submitted by other professional design firms for that specific project. The public authority

then generally must select and rank at least three design firms it considers most qualified for the project. Finally, a contract must be attempted to be negotiated with the design firm ranked most qualified.

**Changes made by the bill**

(R.C. 153.691)

The bill generally prohibits public authorities planning to contract for professional design services from requiring any form of fee estimate, fee proposal, or other estimate or measure of compensation prior to the public authority's selecting and ranking of professional design firms. However, this prohibition does not apply in instances when design firms are selected and ranked by a state agency from a list of prequalified firms on file and the state agency's payment of funds for the services has been preapproved by the Controlling Board.

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

(R.C. 122.041, 122.87, 122.88, 122.90, and 123.152)

**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."<sup>1, 2, 3</sup> The bill also requires 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.)

---

<sup>1</sup> *The bill does not define the terms "electronic procurement" or "e-procurement."*

<sup>2</sup> *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.*

<sup>3</sup> *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.*

## *Suspension of rental property commissions and fees*

(Section 8.22)

Current law (enacted in the most recent capital appropriations bill, H.B. 675 of the 124th General Assembly) authorizes the Director of Administrative Services to fix and collect commissions and fees arising from the rental of property (R.C. 123.10, not in the bill). The bill suspends this authority during the period beginning July 1, 2003, and ending June 30, 2005.

---

### **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.
- Increases to \$6 (from \$3) the annual "bed" fee that long-term care facilities must pay for the support of regional long-term care ombudsperson programs and exempts adult foster homes from paying the fee.
- 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.).
- Limits who is considered a person with a disability for purposes of Golden Buckeye Card program eligibility.
- Permits the administrator to use without restriction any rebates negotiated with a drug manufacturer under the prescription drug discount component of the Golden Buckeye Card program.
- Requires the Department of Aging to alternate the annual customer satisfaction survey included in the Ohio Long-Term Care Consumer Guide between a survey of nursing facility residents and a survey of families of nursing facility residents.

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

**Resident Services Coordinator Program**

(R.C. 173.08)

The bill establishes the Resident Services Coordinator Program in the Department of Aging under which resident service coordinators provide information and assistance to low-income and special-needs tenants, including the elderly, living in subsidized rental housing complexes. The coordinators aid tenants in obtaining community and program services and other benefits for which they are eligible. The bill also establishes the Resident Services Coordinator Fund to receive moneys from the Department of Development (proposed to come from the Housing Trust Fund) and moneys the General Assembly appropriates to the Fund.

**Bed fee for regional long-term care ombudsperson programs**

(R.C. 173.26)

Under current law, a nursing home, residential care facility, adult care facility, adult foster home, or other specified long-term care facility must annually pay to the Department of Aging \$3 for each bed the facility maintained for use by a resident during any part of the previous year. The funds are used to pay the costs of operating regional long-term care ombudsperson programs. The bill increases the amount to \$6 per bed and 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.

### **Golden Buckeye Card program**

(R.C. 173.06)

Current law requires the Director of Aging to establish a Golden Buckeye Card program and provide a golden buckeye card to any Ohio resident who applies and is 60 or older or disabled. A disabled person is either (1) a person who has some impairment of body or mind that makes the person unfit to work at any substantially remunerative employment the person is substantially able to perform and that will, with reasonable probability, continue for a period of at least 12 months without any present indication of recovery, or (2) a person who has been certified as permanently and totally disabled by an agency of this state or the United States having the function of so classifying persons.

For persons with a disability, the bill limits eligibility for the Golden Buckeye Card program to Ohio residents who apply for the card and are at least 18 years old. The bill also narrows the scope of who is to be considered a person with a disability for purposes of the program to include only persons who both have some impairment of body or mind and have been certified as permanently and totally disabled by an agency of this state or the United States having the function of so classifying persons.

### **Prescription drug program**

(R.C. 173.061, 173.062, 173.07, and 173.071)

Current law requires the Director of Aging to establish one or more prescription drug discount card programs that enable cardholders to receive discounts on prescription drugs dispensed at participating pharmacies. A card must be provided to any Ohio resident who is at least age 60 or disabled and applies for the card in accordance with administrative rules the Director adopts.

The Director is required to solicit and accept proposals from entities separate from the Department to act as a program administrator. The proposals must provide for administration consistent with rules adopted by the Director and specify certain information, including, to the extent that discounts on prescription drugs are to be achieved through rebates or discounts in prices that the entity negotiates with drug manufacturers, the proportion of the rebates or discounts to be used to do all of the following: (a) reduce any costs to the cardholders, (b) achieve discounts for cardholders, and (c) cover costs for administering the program. Further, once an administrator has been chosen for the program, to the extent that the administrator achieves a discount on prescription drugs through rebates or discounts in prices negotiated with drug manufacturers, the administrator is required to use the rebates or discounts to do all of the following:

(a) reduce costs to the cardholders, (b) achieve discounts for cardholders, and (c) cover costs for administering the program.

The bill provides instead that the Director must establish one or more prescription drug programs that enable cardholders to receive reduced prices on prescription drugs dispensed at participating pharmacies. Proposals submitted to the Director by potential program administrators must provide for administration of the program consistent with rules adopted by the Director and specify certain information, including, to the extent that an entity negotiates rebates with drug manufacturers, the proportion of the rebates to be used to do any of the following: (a) reduce any costs to the cardholders, (b) cover costs for administering the program, and (c) offer any other benefits to cardholders.

The bill defines a "rebate" to mean a refund of a certain portion of the wholesale price of a drug to the program administrator based on a negotiated agreement between the manufacturer and the administrator and in consideration of market share performance or continued access or availability of the drug under the administrator's prescription drug program. Under the bill, when determining Medicaid drug rebates, an administrator is subject to best price calculations promulgated by the Centers for Medicare and Medicaid Services in the federal Department of Health and Human Services. An administrator may use rebates negotiated with a drug manufacturer without restriction, including sharing a portion of the rebate with the administrator's clients, prescription drug program participants, or participating pharmacies. To the extent that an entity negotiates rebates with drug manufacturers, the proportion of the rebates to be used to do any of the following: (a) reduce any costs to the cardholders, (b) cover costs for administering the program, and (c) offer any other benefits to cardholders.

The bill permits a program administrator to negotiate with drug manufacturers to have the prescription drug program or programs established by the Department serve as a single enrollment point for the manufacturer's discount program. The bill defines a "drug discount" as reimbursement of a certain portion of the wholesale price of a drug to the program administrator for funds accrued or paid in connection with a reduction in cost of the drug by the manufacturer to the prescription drug program cardholder pursuant to an agreement between the manufacturer and the administrator and in consideration of the administrator's agreement to return 100% of the non-negotiated discounts to the cardholder at the point of sale. A discount is not tied to and does not vary based on market share performance.

To the extent that discounts are offered by manufacturers through the program, the discounts are exempt from the best price calculations when determining Medicaid drug rebates under federal law, if all of the following apply:

(1) The manufacturer's program provides prescription drug assistance to a limited group of persons without negotiations between the manufacturer and a third party regarding the amount of assistance;

(2) The manufacturer establishes the amount of the benefit to be given to persons without negotiations between the manufacturer and a third party regarding the amount of the benefit;

(3) The entire amount of the discount is used to benefit an individual without providing an opportunity for the administrator, participating pharmacies, or any other third party to reduce or take for its use a portion of the benefit;

(4) A participating pharmacy is reimbursed based on the lower of a calculated formula equal to the average wholesale price less a defined percentage plus a dispensing fee, or the pharmacy's usual and customary price for the drug;

(5) Other than the benefit amount, a participating pharmacy collects no additional payment from the manufacturer's discount program.

To the extent that drug discounts on prescription drugs are achieved through reduced prices an administrator obtains from drug manufacturers, the administrator is required to use the drug discounts to reduce prescription drug costs for cardholders. The bill requires the Director to adopt rules permitting an administrator to work with one or more drug manufacturers to obtain drug discounts.

### **Annual report**

(R.C. 173.071)

Current law requires the Director to issue a report on the operation of each prescription drug discount card program no later than four months after the end of each 12-month period that one or more programs are in operation. Each report must be based on the information the Director receives from the administrator or administrators and specify certain information about each program. The bill requires that the report include information specifying the drugs for which rebates are offered under the program, listed according to major drug category.

### **The Long-Term Care Consumer Guide**

(R.C. 173.54)

Current law requires the Department of Aging to publish the Ohio Long-Term Care Consumer Guide, a guide to Ohio nursing facilities. The Guide must be available on the Internet, and is to be updated periodically. To the extent



possible, annual customer satisfaction surveys must be conducted for use in the Guide. The Department may charge nursing facilities a fee of up to \$400 for each annual survey.

Under current law, the annual satisfaction surveys must include surveys of both nursing facility residents and families of nursing facility residents. The bill provides instead that the annual surveys are to alternate between a survey of nursing facility residents and a survey of families of nursing facility residents.

**Investigative authority of State Long-Term Care Ombudsman**

(R.C. 173.14)

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

---

**DEPARTMENT OF AGRICULTURE**

- Extends the Family Farm Loan Program through October 15, 2005.
- Extends until October 15, 2006, the Agricultural Financing Commission's authority to advise and make recommendations to the Director of Agriculture regarding the Family Farm Loan Program.
- Revises the definition of "agricultural production," for purposes of placing land in an agricultural district, to include tracts, lots, or parcels of land or portions thereof that are used for conservation practices, provided that the land so used comprises not more than 25% of land that is otherwise devoted exclusively to agricultural use and for which an agricultural district application is filed, and authorizes the supervisors of a soil and water conservation district to assist the county auditor upon request to determine whether a conservation activity is a conservation practice for that purpose.
- 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 administering the Nursery Stock and Plant Pests Law, including paying 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 administering the Nursery Stock and Plant Pests Law, including paying the costs of employing a minimum of two additional inspectors.
- Authorizes soil and water conservation districts to acquire agricultural easements, and authorizes the Director of Agriculture to make matching grants to the districts for that purpose.
- Provides that the value of an agricultural easement that is purchased with the assistance of a matching grant from the Clean Ohio Agricultural Easement Fund may be determined either by a general real estate appraiser who is certified under the Real Estate Appraisers Law, as under existing law, or through a points based appraisal system that is recommended by the Director of Agriculture, and requires the method of appraisal to be determined by the Director.
- 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.
- Adds injury or killing of certain agricultural animals by black vultures, in addition to by coyotes as in current law, as a basis for claims against the Agro Ohio Fund.
- 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.
- Effective immediately, creates in the state treasury the Farm Service Agency Electronic Filing Fund consisting of money appropriated to it together with money reimbursed to the Fund by the Farm Service Agency (FSA) in the United States Department of Agriculture, and requires the Director of Agriculture to use money in the Fund to pay the Secretary of State for fees charged in advance for the electronic filing by the FSA of financing statements related to agricultural loans that the FSA disburses.

### **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.

### **Agricultural Financing Commission**

(R.C. 901.63)

Current law requires the Agricultural Financing Commission to advise and make recommendations to the Director of Agriculture regarding the Family Farm Loan Program until July 1, 2003. The bill extends the requirement until October 15, 2005.

### **Agricultural Districts**

(R.C. 929.01, 1515.08, and 5713.30)

Current law establishes requirements for placing land in an agricultural district. Land that is in an agricultural district is exempt from certain assessments. In addition, agricultural activities on the land may not be subject to nuisance actions. One of the requirements with which land in an agricultural district must comply is that it must be used for agricultural production. Current law defines "agricultural production" to mean commercial aquaculture, apiculture, animal husbandry, or poultry husbandry; the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, or sod; the growth of timber for a noncommercial purpose if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use; or any combination of such husbandry, production, or growth; the term also includes the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with such husbandry, production, or growth.

The bill revises the definition to include conservation practices, provided that the tracts, lots, or parcels of land or portions thereof that are used for conservation practices comprise not more than 25% of tracts, lots, or parcels of land that are otherwise devoted exclusively to agricultural use and for which an application is filed for the establishment of an agricultural district. "Conservation practices" includes, but is not limited to, the installation, construction, development, planting, or use of grass waterways, terraces, diversions, filter strips, field borders, windbreaks, riparian buffers, wetlands, ponds, and cover crops to abate soil erosion. The bill authorizes the supervisors of a soil and water conservation district to assist the county auditor when requested in determining whether a conservation activity that is conducted in conjunction with agricultural activities is a conservation practice for that purpose.

## 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:

<b>License, inspection, and per-acre fee</b>	<b>Current fee</b>	<b>Proposed additional fee</b>
Nursery stock collector or dealer license	\$50	\$25
Woody nursery stock inspection	\$50	\$15
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 administer the Nursery Stock and Plant Pests Law, including paying the costs of hiring 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) agricultural products and their conveyance 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 administering the Nursery Stock and Plant Pests Law, including paying the cost of 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.

## **Agricultural easements**

### **Introduction**

Current law authorizes the creation of agricultural easements to retain the use of land predominantly in agriculture. The Director of Agriculture, municipal corporations, counties, and townships may acquire and hold agricultural easements. Current law also explicitly authorizes charitable organizations that are exempt from federal income taxation and organized for certain land preservation or protection purposes to acquire and hold agricultural easements.

Under current law, "agricultural easement" means an incorporeal right or interest in land that is held for the public purpose of retaining the use of the land



predominantly in agriculture; that imposes any limitations on the use or development of the land that are appropriate at the time of the creation of the easement to achieve that purpose; that is in the form of articles of dedication, easement, covenant, restriction, or condition; and that includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions (R.C. 5301.67, not in the bill).

**Acquisition and holding of agricultural easements by soil and water conservation districts**

(R.C. 317.32, 901.21, 901.22, 5301.68, and 5301.691)

The bill retains current law that authorizes an owner of land to grant an agricultural easement to the Director or to a charitable organization, municipal corporation, county, or township and adds that an owner of land may grant an agricultural easement to a soil and water conservation district. Similarly, it specifies that the board of supervisors of a soil and water conservation district, with money in any fund not required by law to be used for other specified purposes or with money provided to the board through matching grants for the purchase of agricultural easements, may purchase agricultural easements or may acquire them by gift, devise, or bequest. As under current law, the agricultural easements must be on land that is valued for purposes of real property taxation at its current value for agricultural use or that constitutes a homestead when the easement is granted.

In addition, the bill makes applicable to soil and water conservation districts all existing requirements and other provisions governing the creation, holding, supervising, and extinguishment of agricultural easements. Further, the bill makes available to soil and water conservation districts matching grants provided by the Director for the purchase of agricultural easements. The matching grants currently are available to charitable organizations, municipal corporations, counties, and townships for that purpose.

**Clean Ohio Agricultural Easement Fund**

(R.C. 901.21 and 901.22)

**Appraisal of agricultural easements receiving matching grants from Fund.** Current law creates the Clean Ohio Agricultural Easement Fund, which must be used for purposes of the agricultural easements program. Under current law, matching grants for the purchase of agricultural easements that are made as discussed above using moneys from the Fund may provide up to 75% of the value of an agricultural easement as determined by a general real estate appraiser who is



certified under the Real Estate Appraisers Law. Alternatively, the bill provides that the value of the agricultural easement may be determined through a points based appraisal system that is recommended by the Director. The bill requires the Director to determine the method of appraisal that is used.

**Use of investment earnings.** The Clean Ohio Agricultural Easement Fund currently consists of 12½% of net proceeds of general obligation bonds issued and sold for agricultural and conservation projects. 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.

**Indemnification for agricultural animals injured or killed by black vultures**

(R.C. 955.51)

Current law requires an owner of horses, sheep, cattle, swine, mules, goats, domestic rabbits, or domestic fowl or poultry that have an aggregate fair market value of \$10 or more and that have been injured or killed by a coyote to notify the dog warden within three days after the loss or injury has been discovered. The dog warden promptly must investigate the loss or injury and determine whether it was made by a coyote. If the dog warden finds that the loss or injury was made by a coyote, the dog warden promptly must notify a wildlife officer. If the wildlife officer affirms the finding or is uncertain about that finding, the owner may proceed with an indemnification claim against the Agro Ohio Fund. The bill adds that an injury or killing of those animals by black vultures, in addition to coyotes, is a basis for claims against the Fund.

**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.

### **Farm Service Agency Electronic Filing Fund**

(R.C. 901.85; Section 146.05)

#### **Background**

Farmers may apply for crop loans that are administered by county offices of the Farm Service Agency (FSA) in the United States Department of Agriculture. In exchange for providing a crop loan, the FSA obtains a contractual security interest in the crop, and thus the crop becomes collateral for the loan. The FSA is required to file a Uniform Commercial Code (UCC) financing statement with the Secretary of State in order to perfect its security interest and to ensure that if the farmer defaults on the loan, the FSA legally would be first in line ahead of any

other of the farmer's creditors to receive the proceeds from the sale of the crop and thus to obtain repayment of the loan. This financing statement must be filed before the FSA can disburse the loan to the farmer.

The Secretary of State recently has developed an electronic system for the filing of UCC financing statements that enables the financing statements to be filed more quickly than is possible through other means of filing. An entity that files a significant volume of filing statements may enter into an agreement with the Secretary of State under which it can file its financing statements via computer in exchange for setting up a pre-payment account for filing fees with the Secretary of State. The entity must deposit in the pre-payment account an amount of filing fees to cover the volume of filings that the entity anticipates it will make during a specified period of time in the future. The FSA would like to participate in the electronic filing option in order to file financing statements more quickly and thus to expedite the disbursement of crop loans to farmers, but it is unable to file electronically because it is federally prohibited from entering into pre-payment arrangements.

#### **Creation of the Fund**

To enable the FSA to file its financing statements electronically, the bill creates in the state treasury the Farm Service Agency Electronic Filing Fund, which consists of money reimbursed to the Fund by the FSA together with any money appropriated to the Fund by General Assembly, effective immediately. The Director of Agriculture must use money credited to the Fund to pay the Secretary of State for fees that the Secretary of State charges in advance for the electronic filing by the FSA of financing statements related to agricultural loans that the FSA disburses. The creation of the Fund enables the Director to pre-pay the filing fees on behalf of the FSA in exchange for the FSA's subsequent reimbursement to the Fund of the amount of the pre-paid filing fees, thus allowing the FSA to avoid the federal pre-payment prohibition.

---

### **OHIO ARTS COUNCIL**

- Creates a Gifts and Donations Fund in the state treasury for the Ohio Arts Council's operating expenses.

### *Gifts and Donations Fund*

(R.C. 3379.11)

The bill creates in the state treasury, the Gifts and Donations Fund consisting of gifts and donations made to the Ohio Arts Council and fees paid for conferences the Council sponsors. The Fund is to be used to pay for the Council's operating expenses, which include payroll, personal services, maintenance, equipment, and subsidy payments. Fund moneys are to be received and expended pursuant to the Council's duty to foster and encourage the development of the arts in Ohio and the preservation of the state's cultural heritage.

---

### **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:

<b>Purpose</b>	<b>Fee</b>
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

- Requires tobacco product manufacturers whose cigarettes are sold in this state to certify specified information, including information on escrow account payments and tobacco brands, to the Attorney General by April 30 of each year.
- Requires the Attorney General to develop and publish on the office's website a directory listing all of the tobacco product manufacturers that are in compliance with the certification requirements.
- Prohibits tax stamps from being affixed to cigarettes, and prohibits cigarettes from being sold, offered for sale, or possessed for sale, if the tobacco product manufacturer that produces the cigarettes, or the brand family to which the cigarettes belong, is not included in the directory.
- Establishes criminal and civil enforcement remedies for selling cigarettes in violation of these provisions.
- Establishes procedures for the appointment of an agent for the service of process and for providing notice and reporting required information from tobacco product manufacturers and stamping agents to the Tax Commissioner or the Attorney General.
- Authorizes the Attorney General and the Tax Commissioner to adopt additional procedures for the Tobacco Settlement Law by administrative rule.
- Revises the refund terms for funds placed in escrow by tobacco manufacturers not participating in the tobacco Master Settlement Agreement.
- 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.
- Authorizes the Attorney General to assess collection costs to the amount due when debts are owed to the state and not paid in a timely manner.



## Enforcement of the Tobacco Settlement Law

### Certification requirements for tobacco product manufacturers

(R.C. 1346.04 and 1346.05(A); Section 145.03FF; R.C. 1346.01--not in the bill)

**In general.** The bill requires every tobacco product manufacturer whose cigarettes are sold in this state either directly or through a distributor, retailer, or other intermediary, to execute and deliver to the Attorney General an annual certification. The certification must be made under penalty of falsification, on a form prescribed by the Attorney General, and filed not later than April 30 of each year.<sup>4</sup> The certification must state that, as of its date, the tobacco product manufacturer is either a participating manufacturer or a nonparticipating manufacturer in full compliance with the existing Tobacco Settlement Law, including full compliance with all quarterly installment payment requirements, if required to make such payments by an administrative rule adopted by the Attorney General. A "participating manufacturer" is a participating manufacturer as defined in section II(jj) of the Master Settlement Agreement entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers, including all amendments to that agreement. A "nonparticipating manufacturer" is any tobacco product manufacturer that is not a participating manufacturer.

**Participating manufacturers.** Each participating manufacturer must include in its certification a list of its brand families. "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s." "Brand family" includes cigarettes sold under any brand name (whether that name is used alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indicia of product identification identical or similar to, or identifiable with, a previous brand of cigarettes. Thirty days before making any additions to or modifications of its brand families, a participating manufacturer must update its brand family list by executing and delivering a supplemental certification to the Attorney General.

**Nonparticipating manufacturers.** Each nonparticipating manufacturer must include all of the following in its certification:

---

<sup>4</sup> *But, the bill provides in uncodified law that a tobacco product manufacturer's first certification is due within 45 days after the bill's effective date.*

(1) A list of all of its brand families and the number of units sold during the preceding calendar year for each brand family, and a list of all of its brand families that have been sold in the state at any time during the current calendar year. "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state. The list must indicate, by an asterisk, any brand family that was sold in the state during the preceding calendar year and that is no longer being sold in the state as of the date of the certification, and also must identify by name and address any other manufacturer in the preceding or current year of the brand families included on the list. Thirty days before making any additions to or modifications of its brand families, a nonparticipating manufacturer must update its brand family list by executing and delivering a supplemental certification to the Attorney General.

(2) A statement that the nonparticipating manufacturer is registered to do business in Ohio or has appointed an agent for service of process in this state and provided notice of that appointment as required (see "Agent for service of process," below).

(3) A certification that the nonparticipating manufacturer has established and continues to maintain a qualified escrow fund as required under the Tobacco Settlement Law and that the fund is governed by a qualified escrow agreement executed by the nonparticipating manufacturer and approved by the Attorney General. A "qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1 billion where the arrangement requires that the financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with the Tobacco Settlement Law.

(4) All of the following information regarding the qualified escrow fund the nonparticipating manufacturer must establish and maintain under the Tobacco Settlement Law and the rules adopted under it: (a) the name, address, and telephone number of the financial institution at which the nonparticipating manufacturer has established the fund, (b) the account number of the fund and any subaccount number for the state, (c) the amount that the nonparticipating manufacturer deposited in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any evidence or verification the Attorney General deems necessary to confirm those deposits, and (d) the amount and date of any withdrawal or transfer of funds the

nonparticipating manufacturer made at any time from any qualified escrow fund into which it ever made payments under the Tobacco Settlement Law or the rules adopted under it.

(5) A statement that the nonparticipating manufacturer is in full compliance with the existing Tobacco Settlement Law, the bill's provisions requiring tobacco product manufacturers to be registered to do business in Ohio or to appoint an agent for the service of process, and the bill's provisions requiring tobacco product manufacturers to document their sales of cigarettes in Ohio (see "Documentation of cigarettes sold and taxes paid," below).

**Miscellaneous.** A participating manufacturer is prohibited from including a brand family in its certification unless it affirms that the cigarettes in the brand family must be deemed its cigarettes for the purpose of calculating its payments under the Master Settlement Agreement for the relevant year in the volume and shares determined pursuant to the Agreement. A nonparticipating manufacturer is prohibited from including a brand family in its certification unless the it affirms that the cigarettes in the brand family must be deemed its cigarettes for the purpose of the Tobacco Settlement Law. But, the bill's certification provisions do not limit, and cannot be construed to limit, the state's authority to determine that the cigarettes in a brand family constitute the cigarettes of another tobacco product manufacturer for the purpose of calculating payments under the Master Settlement Agreement or for the purpose of the Tobacco Settlement Law.

The bill requires each tobacco product manufacturer to maintain all invoices and documentations of sales and other information relied upon for its certification for a period of at least five years.

#### **Directory of certified tobacco product manufacturers**

(R.C. 1346.04 and 1346.05(B); Section 145.03FF)

**In general.** The bill requires the Attorney General to develop and publish on the office's website a directory listing all tobacco product manufacturers that have provided current and accurate required certifications, and all of the brand families listed in those certifications.<sup>5</sup> The Attorney General must update the directory as necessary to correct mistakes or to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the bill's requirements.

---

<sup>5</sup> *The bill requires in uncodified law that the Attorney General publish the directory within 90 days after the bill's effective date.*

**Additions to and removal from the directory.** At least ten days before any tobacco product manufacturer or brand family is added to or removed from the directory, the Attorney General must publish notice of the pending addition or removal online in the directory and must notify the Tax Commissioner of those pending changes. Also, at least ten days before the addition or removal, the Tax Commissioner must transmit by electronic mail or other practicable means to each stamping agent notice of the pending addition or removal. A "stamping agent" is a person who is authorized to affix tax stamps to packages or other containers of cigarettes under the Cigarette Tax Law or a person who is required to pay the excise tax imposed on cigarettes and other tobacco products under that law. Each stamping agent must provide an electronic mail address to the Tax Commissioner for the purpose of receiving the notifications and must update that address with the Tax Commissioner as necessary.

Unless an agreement between a stamping agent and a tobacco product manufacturer otherwise provides, a tobacco product manufacturer that is removed or whose brand family is removed from the directory must refund to the stamping agent any money paid by the agent to the manufacturer for cigarettes that are in the agent's possession at the time the agent receives notice of the pending removal of the manufacturer or brand family from the directory. The Tax Commissioner must notify the Attorney General of any tobacco product manufacturer that fails to make such a refund. The Attorney General must not restore the tobacco product manufacturer or any brand family of the manufacturer to the directory until the manufacturer has paid the required refund to the stamping agent. Once the refund has been paid, the Tax Commissioner must notify the Attorney General of that payment.

The Attorney General must not include or retain in the directory a nonparticipating manufacturer or a brand family of a nonparticipating manufacturer if any of the following applies:

- The nonparticipating manufacturer fails to provide the required certification, or the Attorney General determines that a certification does not comply with the statutory requirements, unless the Attorney General determines, to the Attorney General's satisfaction, that the violation has been cured.
- The Attorney General determines that any escrow payment required under the Tobacco Settlement Law for any period for any brand family of the nonparticipating manufacturer, regardless of whether the brand family is listed by the nonparticipating manufacturer in its certification, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General.

- The Attorney General determines that the nonparticipating manufacturer has not fully satisfied any outstanding final judgment, including interest, for a violation of the Tobacco Settlement Law.

**Agent for service of process**

(R.C. 1346.06)

**General requirement.** The bill requires any nonresident or foreign nonparticipating manufacturer that has not registered to do business in this state as a foreign corporation or business entity, before having its brand families included or retained in the directory, to appoint, and to continually engage without interruption the services of, an agent in Ohio to act as agent for the service of all process pertaining to any action or proceeding in an Ohio court against the manufacturer concerning or arising out of the enforcement of the Tobacco Settlement Law. A nonparticipating manufacturer must provide the Attorney General, to the Attorney General's satisfaction, with proof of the appointment of, and notice of the name, address, telephone number, and availability of, the manufacturer's agent. Service on the nonparticipating manufacturer's agent constitutes legal and valid service of process on the manufacturer.

**Termination circumstances.** If a nonparticipating manufacturer decides to terminate its agent's appointment, the manufacturer must provide notice of that termination to the Attorney General 30 calendar days before the termination. And, the manufacturer must provide proof, to the Attorney General's satisfaction, of the appointment of a new agent not less than five calendar days before the termination. If a nonparticipating manufacturer's agent decides to terminate the agency, the manufacturer must provide notice of the termination to the Attorney General. The manufacturer then must provide proof, to the Attorney General's satisfaction, of the appointment of a new agent within five calendar days of the termination.

**Deemed appointment.** Any nonparticipating manufacturer whose cigarettes are sold in Ohio and who has not appointed and continually engaged an agent must be deemed to have appointed the Secretary of State as the manufacturer's agent and may be proceeded against in any action or proceeding in the courts of this state by service of process on the Secretary of State. However, the deemed appointment of the Secretary of State as a nonparticipating manufacturer's agent does not satisfy the requirement that a nonparticipating manufacturer that has not registered to do business in Ohio must appoint an agent

for service of process prior to the manufacturer's certification permitting the manufacturer's brand families to be included or retained in the directory.<sup>6</sup>

**Documentation of cigarettes sold and taxes paid**

(R.C. 1346.04 and 1346.07(A); Section 145.03FF; R.C. 1346.01--not in the bill)

Not later than the last day of each month, or less frequently if so directed by the Tax Commissioner, each stamping agent must submit information for the previous month or for the relevant time period (if directed by the Tax Commissioner to make the submissions less frequently) which the Tax Commissioner requires to facilitate compliance with the provisions of the Tobacco Settlement Law enacted by the bill.<sup>7</sup> The information must include, but is not limited to, a list by brand family of the total number of cigarettes, or, in the case of roll-your-own, the equivalent stick count, for which the stamping agent during the period covered by the report affixed stamps or otherwise paid the tax due. "Roll-your-own" means any tobacco that, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

The stamping agent must maintain and make available to the Tax Commissioner all invoices and documentations of sales of all nonparticipating manufacturer cigarettes, and any other information the agent relies upon in submitting information to the Tax Commissioner, for a period of five years from the date of each submission.

---

<sup>6</sup> *The provision deeming the Secretary of State to be the agent for the service of process for a nonparticipating manufacturer appears to apply only if the manufacturer is illegally selling cigarettes in Ohio. R.C. 1346.05 prohibits a tobacco product manufacturer from selling cigarettes or offering them for sale unless the manufacturer is included in the directory published by the Attorney General. To be included in the directory, a nonresident or foreign nonparticipating manufacturer that is not registered to do business in Ohio must first appoint an agent for the service of process. A nonparticipating manufacturer that fails to so appoint an agent for the service of process, then, cannot legally sell cigarettes in this state.*

<sup>7</sup> *But, the bill provides in uncodified law that the first such report of a stamping agent to the Tax Commissioner is due on the last day of the month following the month in which the bill takes effect.*



### **Reporting and sharing of reported information**

(R.C. 1346.07 (B), (C), and (D))

At any time, the Attorney General may require a nonparticipating manufacturer to provide proof, from the financial institution in which the manufacturer has established a qualified escrow fund, of the amount of money in the fund, exclusive of interest, the amount and date of each deposit into the fund, and the amount and date of each withdrawal from the fund. The Attorney General also may require a stamping agent or tobacco product manufacturer to submit any additional information necessary to enable the Attorney General to determine whether a manufacturer is in compliance with the bill's Tobacco Settlement Law provisions. The information that the Attorney General may require includes, but is not limited to, samples of the packaging or labeling of each brand family.

The Tax Commissioner and the Attorney General must share information received under the bill's Tobacco Settlement Law provisions for the purpose of determining compliance with and enforcement of those provisions. They also may share information so received with federal, state, or local agencies for the purpose of enforcement of the Tobacco Settlement Law or corresponding laws of other states.

### **Adoption of administrative rules**

(R.C. 1346.08)

The bill permits the Tax Commissioner and the Attorney General to adopt administrative rules necessary to implement the bill's Tobacco Settlement Law provisions. Specifically, the Attorney General may adopt an administrative rule requiring a tobacco product manufacturer to make required escrow deposits in quarterly installments during the year in which the sales covered by the deposits are made. If the Attorney General adopts such a rule, the Tax Commissioner may require a tobacco product manufacturer or a stamping agent to produce information sufficient to enable the Tax Commissioner and the Attorney General to determine the adequacy of the amount of an installment deposit.

### **Criminal prohibitions and penalties**

(R.C. 1346.05(C), 1346.10, and 5743.21)

**Under the Tobacco Settlement Law.** The bill prohibits a person from doing any of the following:

(1) Affixing a tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or a brand family that is not included within the directory;

(2) Selling, offering for sale, or possessing for sale in Ohio cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory;

(3) Selling or distributing cigarettes that have had a tax stamp affixed while the tobacco product manufacturer or brand family of those cigarettes was not included in the directory;

(4) Acquiring, holding, owning, possessing, transporting, importing, or causing to be imported cigarettes that the person knows or should know are intended for distribution or sale in this state and that have had a tax stamp affixed while the tobacco product manufacturer or brand family of those cigarettes was not included in the directory;

(5) Acquiring, holding, owning, possessing, transporting, importing, or causing to be imported cigarettes that the person knows or should know are intended for distribution or sale in Ohio and that are the cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory.

A violation of any of these prohibitions generally is a misdemeanor of the first degree. But, if the offender has a previous conviction for a violation of any of these prohibitions, the violation is a felony of the fourth degree. Any cigarettes sold, offered for sale, or possessed for sale in violation of any of these prohibitions must be considered contraband under the Cigarette Tax Law and are subject to seizure and forfeiture under that law. Cigarettes so seized and forfeited must not be resold and must be destroyed.

In lieu of or in addition to any of these criminal remedies or the injunctive remedy or miscellaneous remedies discussed below, upon a determination that a *stamping agent* violated any of the prohibitions mentioned above or any rule adopted under the bill's Tobacco Settlement Law provisions, the Tax Commissioner may revoke the stamping agent's license. And, in addition to any other penalty, for *each violation* of the prohibitions, the Tax Commissioner may impose a fine in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or \$5,000. The fine must be imposed in accordance with the Cigarette Tax Law, and, for the purpose of this fine, each stamp affixed to a package of cigarettes and each sale or offer for sale of cigarettes constitutes a separate violation.



**Under the Cigarette Tax Law.** The bill also prohibits (1) a person from affixing a stamp required by the Cigarette Tax Law to any package that is produced by a tobacco product manufacturer or is part of a brand family that is not included in the directory, and (2) a person from selling or offering to sell any roll-your-own tobacco to any person in Ohio if that tobacco is not included in the directory. Any roll-your-own tobacco in the possession of a retail dealer in Ohio must be considered prima facie evidence of offering to sell to a person in this state.

In addition to any fine or imprisonment provided under the Cigarette Tax Law, the bill specifies that, whenever the Tax Commissioner discovers any packages to which stamps have been affixed in violation of that law's prohibitions, or any roll-your-own tobacco sold or offered for sale in violation of that law's prohibitions, the Tax Commissioner may seize the packages or roll-your-own tobacco, which then are forfeited to the state, and must order their destruction.

**Injunctive relief and miscellaneous remedies**

(R.C. 1346.09; Section 145.03EE)

**Injunctive relief.** The Attorney General, on behalf of the Tax Commissioner, may seek an injunction to restrain a threatened or actual violation of the bill's Tobacco Settlement Law provisions by a stamping agent and to compel the stamping agent to comply with those provisions.

**Disgorged moneys.** If a court determines in a criminal or civil action under the bill's Tobacco Settlement Law provisions that a person has violated any of the prohibitions or other new provisions of the Law, the court must order that person's profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the state's General Revenue Fund.

**Recoverable amounts.** In any action brought by the state to enforce the bill's Tobacco Settlement Law provisions, the state is entitled to recover the costs of the investigation, expert witness fees, court costs, and reasonable attorney's fees.

**Cumulative nature.** Unless otherwise expressly provided, the remedies and penalties provided under the Tobacco Settlement Law are cumulative to each other and to the remedies or penalties available under other Ohio laws.<sup>8</sup>

---

<sup>8</sup> *The bill specifies in uncodified law that, if a court finds any conflict that cannot be harmonized between the existing Tobacco Settlement Law's provisions (R.C. 1346.01 to 1346.03) and the bill's provisions added to the Law (R.C. 1346.04 to 1346.10), the existing provisions must control. In addition, if any of the bill's provisions added to the Law cause the existing provisions to no longer constitute a qualifying or model statute*

### **Tobacco product manufacturer escrow deposits**

(R.C. 1346.02; Section 145.03LL)

Current law requires that tobacco product manufacturers not participating in the Master Settlement Agreement place into an escrow account 1.67539¢ for each cigarette sold in the state. (In 2007, this amount increases to 1.88482¢ per cigarette.) Currently, to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the Master Settlement Agreement had it been a participating manufacturer, the excess must be released from escrow and revert back to the manufacturer.

The bill revises this provision, to instead provide that the excess may be released to the manufacturer if the amount the manufacturer was required to place into escrow in a particular year was greater than the payments that the manufacturer would have been required to make if the manufacturer was a party to the Agreement. However, the bill reinstates the current refund terms for such escrow accounts if the amendments made by the bill are invalidated by a court of competent jurisdiction.

### **Collection costs for debts owed to the state**

(R.C. 131.02)

Current law establishes procedures for the Attorney General to collect a debt owed to the state when it is not paid in a timely manner to the agency to which it is due. The bill authorizes the Attorney General to assess collection costs for the collection of such a debt to the amount due and to prescribe the amount and manner of the assessment.

### **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

---

*(as defined in the Master Settlement Agreement), the bill's provision in question is invalid. Finally, if any part of the bill's provisions added to the Law is held to be invalid, unlawful, or unconstitutional, the remaining portion of those provisions remains valid.*

*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%.<sup>9</sup>

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.

---

### AUDITOR OF STATE

- Requires the Auditor of State to provide, operate, and maintain a uniform and compatible computerized financial management and accounting system known as the "uniform accounting network."
- Authorizes the Auditor of State to provide training or other appropriate educational programs in collaboration with other public or private entities.
- Expands the time period within which the Auditor of State must hold training programs for newly elected local officials.

---

<sup>9</sup> "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).

### **Uniform accounting network and training programs**

(R.C. 117.101 and 117.44)

Under current law, the Auditor of State is authorized to establish and maintain a uniform and compatible computerized financial management and accounting system known as the "uniform accounting network." The network must be designed to provide public offices, other than state agencies and the Ohio education computer network and public school districts, with efficient and economical access to data processing and management information facilities and expertise. The bill *requires* the Auditor of State to establish, operate, and maintain the uniform accounting network. (R.C. 117.101.)

Under current law, the Auditor of State provides specified training programs for newly elected township clerks, city auditors, and village clerks, as well as an annual continuing education training program for village clerks. The training programs are designed to enhance local officials' background and working knowledge of government accounting, budgeting and financing, financial report preparation, and the Auditor of State's rules. Any interested person also may be allowed to attend a training program upon payment of a registration fee. The bill authorizes the Auditor of State's office, alone or in collaboration with any other public or private entity, to provide any other appropriate training or educational program. Funding for these programs will be derived from the existing State Training Program Fund made up of participants' registration fees. (R.C. 117.44.)

Currently, the training programs for newly elected township clerks, city auditors, and village clerks must be conducted after the general election between December 1 and February 15. The bill extends this period to April 1 following the general election. (R.C. 117.44.)

---

### **OHIO BALLOT BOARD**

- Specifies that the term of office for any member of the Ohio Ballot Board who also is a member of the General Assembly who was appointed to the Board by an authorized officer of the General Assembly must end upon the earlier of (1) the expiration of the term for which the member was appointed to the Ballot Board or (2) the expiration of the member's General Assembly term.

### **Membership term for certain members of the Ohio Ballot Board**

(R.C. 3505.061)

Continuing law requires the Ohio Ballot Board to prescribe the ballot language for constitutional amendments proposed by the General Assembly to be printed on the questions and issues ballot and to prepare the arguments and explanations for certain statewide issues. The Board consists of the Secretary of State and four appointed members; no more than two of the appointed members may be of the same political party. The following persons must each appoint one member of the Board: the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives. Each appointment must be made no later than the last Monday in January in the appropriate year. If any appointment is not made, the Secretary of State must appoint as many qualified members associated with the appropriate political party as necessary. The term of office for those appointed members is four years, with each term ending on the first Monday in February. Any vacancy on the Board must be filled in the manner provided for original appointments.

The bill changes the term of office for members of the Board who also are members of the General Assembly. If a member of the General Assembly is appointed to the Board by an authorized General Assembly officer, the member's Board term must end on the earlier of (1) the ending date of the Board term for which the member was appointed or (2) the ending date of the member's term as a member of the General Assembly. Thus, a Board term for a member of the House of Representatives could be no longer than two years, to correspond with the ending date of the member's House of Representatives term. Appointments to fill any vacancies arising from the different ending dates of General Assembly and Board terms must be filled as under existing law.

---

### **OHIO BARBER BOARD**

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

**Fee increases**

(R.C. 4709.12)

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

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

<b>Barber school license</b>	<b>Fees</b>
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

<b>Barber student registration and teacher licensure</b>	<b>Fees</b>
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

---

### **BOARD OF BUILDING STANDARDS**

- Clarifies that the Board of Building Standards may place rules for gaseous piping systems in the "Ohio Building Code" or with the "Ohio Pressure Piping Systems Rules."

#### **Rules for Gaseous Piping Systems**

(R.C. 4104.44)

The bill clarifies that the Board of Building Standards may place the rules it adopts for gaseous piping systems either in the "Ohio Building Code," or with the "Ohio Pressure Piping Systems Rules" both of which set of rules the Board currently is empowered to adopt.

---

### **OFFICE OF BUDGET AND MANAGEMENT**

- 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.
- Reestablishes the Family Services Stabilization Fund.
- Specifies how the Director of Budget and Management is to allocate moneys received from the federal Jobs and Growth Tax Relief Reconciliation Act of 2003.
- 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 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.

**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.

### **The Family Services Stabilization Fund**

(R.C. 131.41)

The bill reestablishes the Family Services Stabilization Fund in the state treasury, as it existed before its elimination by Am. Sub. H.B. 94 of the 124th General Assembly. The bill provides that the Fund is to contain money deposited into it pursuant to acts of the General Assembly, and specifies that any of the Fund's investment earnings are to be credited to the Fund.

### **Transferring funds to cover identified shortfalls**

Under the bill, if there are identified shortfalls for family service activities,<sup>10</sup> the Director of Budget and Management, with advice from the Director of Job and Family Services, may transfer money from the Fund into the General Revenue Fund for the Department of Job and Family Services (ODJFS). Before such a transfer can be made, the Director of Budget and Management is required to exhaust the possibilities for monetary transfers within ODJFS.

The bill specifically prohibits using this type of transfer to fund policy changes not contemplated by acts of the General Assembly.

---

<sup>10</sup> Shortfalls may be due to higher caseloads, federal funding changes, and unforeseen costs due to significant state policy changes.

**Use of federal funds under the Jobs and Growth Tax Relief Reconciliation Act of 2003**

(Section 137E)

The bill specifies the manner in which moneys from the federal Jobs and Growth Tax Relief Reconciliation Act of 2003 are to be allocated.

For funds received that are restricted to Medicaid use,<sup>11</sup> the Director of Budget and Management is directed to first allocate funds to ODJFS to provide temporary Medicaid coverage for certain parents with family incomes up to 100% of the federal poverty guideline; the bill appropriates any funds so allocated. The remainder of these funds are to be transferred to the Family Services Stabilization Fund.

Under the bill, moneys received under the provision of the federal Act providing temporary state fiscal relief in federal fiscal years 2003 and 2004<sup>12</sup> to provide essential government services and cover the costs of compliance with federal intergovernmental mandates are to be transferred to the Budget Stabilization Fund.

**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

---

<sup>11</sup> *These funds are received pursuant to the provision of the federal Act that increases the federal medical assistance percentage for the third and fourth calendar quarters of federal fiscal year 2003 and the first, second, and third calendar quarters of federal fiscal year 2004. Federal fiscal year 2003 commences in October 2002 and ends in October 2003; federal fiscal year 2004 commences in October 2003 and ends in October 2004.*

<sup>12</sup> *Federal fiscal year 2003 begins in October 2002 and ends in October 2003; federal fiscal year 2004 begins in October 2003 and ends in October 2004.*

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 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 facility closures**

(R.C. 107.31)

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.

---

**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

- Increases by 100% all current liquor permit fees of \$300 or less and by 25% all such fees of more than \$300.
- Allows the D-5i liquor permit to be issued to a retail food establishment or food service operation that meets specified criteria and is located in any municipal corporation or township, rather than just in a municipal corporation or township with a population of 50,000 or less, as current law requires.
- Requires the issuance of a Sunday sales permit, whether or not the sales have been authorized by a Sunday sales election, to a liquor permit holder that is a nonprofit corporation that owns or operates a national professional sports museum (D-5g permit holder).

- Eliminates the 20,000 minimum population of a municipal corporation requirement for the issuance of a D-5j liquor permit to a premises located in a community entertainment district in a municipal corporation.
- Allows the D-5j permit to be issued within a community entertainment district located in a township.
- 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 the filing of administrative actions with the Director of Commerce 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.
- Renames the Board of Building Standards the Board of Building *and Fire* Standards and adds five members.
- Adds two members to the State Board of Building Appeals.
- Creates the five-member Ohio Building Code Advisory Committee and the five-member Ohio Fire Code Advisory Committee to assist the Board of Building and Fire Standards in building and fire code development.
- Transfers authority to adopt the State Fire Code from the State Fire Marshal to the Board of Building and Fire Standards.
- Requires the Superintendent of Industrial Compliance to propose rules to the Board of Building and Fire Standards for the adoption of an Aboveground Petroleum Storage Tank Program and gives the Superintendent primary responsibility, with specified exceptions, for administering that Program.
- Creates a 16-member Aboveground Petroleum Storage Tank Study Committee for the purpose of submitting a recommendation whether unregulated aboveground petroleum storage tanks should be regulated.
- Authorizes the Division of Liquor Control to sell at wholesale spirituous liquor in 50 milliliter sealed containers to any holder of a liquor permit that authorizes the sale of spirituous liquor for consumption on the premises where sold rather than limiting the authority of the Division to sell those containers only to hotels that sell spirituous liquor by means of

controlled access alcohol and beverage cabinets located in guest rooms as required under current law.

**Increase in liquor permit fees**

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

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

<b>Liquor Permit</b>	<b>Current Fee</b>	<b>Fee Proposed by the Bill</b>
<b>A-1</b> (beer manufacturer)	\$3,125 for each plant	\$3,906 for each plant
<b>A-1-A</b> (retail beer and liquor sales on premises of a beer or wine manufacturer)	\$3,125	\$3,906
<b>A-2</b> (wine manufacturer)	\$63 per plant producing 100 wine barrels, of 50 gallons each, or less annually, plus 10¢ per barrel for each such barrel over 100 barrels annually	\$126 per plant producing 100 wine barrels, of 50 gallons each, or less annually, plus 10¢ per barrel for each such barrel over 100 barrels annually
<b>A-3</b> (spirituous liquor manufacturer)	\$3,125 per plant or \$2 per barrel if less than 500 barrels, of 50 gallons each, are produced annually	\$3,906 per plant or \$2 per barrel if less than 500 barrels, of 50 gallons each, are produced annually
<b>A-4</b> (mixed beverage manufacturer)	\$3,125 per plant	\$3,906 per plant
<b>B-1</b> (beer wholesale distributor)	\$2,500 per distributing plant or warehouse	\$3,125 per distributing plant or warehouse
<b>B-2</b> (wine wholesale distributor)	\$250 per distributing plant or warehouse plus 10¢ for each 50-gallon barrel over 1,250 barrels distributed annually	\$500 per distributing plant or warehouse plus 10¢ for each 50-gallon barrel over 1,250 barrels distributed annually





<b>Liquor Permit</b>	<b>Current Fee</b>	<b>Fee Proposed by the Bill</b>
<b>B-3</b> (sacramental wine wholesale distributor)	\$62	\$124
<b>B-4</b> (mixed beverage wholesale distributor)	\$250 per distributing plant or warehouse plus 10¢ for each 50- gallon barrel over 1,000 barrels distributed annually	\$500 per distributing plant or warehouse plus 10¢ for each 50- gallon barrel over 1,000 barrels distributed annually
<b>B-5</b> (wine wholesale distributor)	\$1,250	\$1,563
<b>C-1</b> (beer retailer for sales for off-premises consumption)	\$126	\$252
<b>C-2</b> (wine and mixed beverage retailer for sales for off-premises consumption)	\$188	\$376
<b>C-2x</b> (beer retailer for sales for off-premises consumption)	\$126	\$252
<b>D-1</b> (beer retailer for sales for on and off-premises consumption--hotels, certain restaurants, clubs, amusement parks, drug stores, lunch stands, boats, or vessels)	\$188	\$376
<b>D-2</b> (wine and mixed beverage retailer for sales for on- and off-premises consumption--hotels, certain restaurants, clubs, boats, or vessels)	\$282	\$564
<b>D-2x</b> (beer retailer for sales for on- and off-premises consumption)	\$188	\$376
<b>D-3</b> (spirituous liquor retailer for sales for on-premises consumption--hotels, certain restaurants, clubs, boats, or vessels)	\$600	\$750

<b>Liquor Permit</b>	<b>Current Fee</b>	<b>Fee Proposed by the Bill</b>
<b>D-3x</b> (wine retailer for sales for on-premises consumption)	\$150	\$300
<b>D-3a</b> (spirituous liquor retailer for sales for on-premises consumption)	\$750	\$938
<b>D-4</b> (beer and liquor sales at private club)	\$375	\$469
<b>D-4a</b> (beer and liquor sales at airline-sponsored private club at an airport)	\$600	\$750
<b>D-5</b> (beer and liquor sales at restaurant or night club)	\$1,875	\$2,344
<b>D-5a</b> (beer and liquor sales at hotel or motel with at least 50 rooms and a restaurant)	\$1,875	\$2,344
<b>D-5b</b> (beer and liquor sales at enclosed shopping center)	\$1,875	\$2,344
<b>D-5c</b> (beer and liquor sales at certain restaurants)	\$1,250	\$1,563
<b>D-5d</b> (beer and liquor sales at restaurants at certain publicly owned airports)	\$1,875	\$2,344
<b>D-5e</b> (beer and liquor sales on riverboats)	\$975	\$1,219
<b>D-5f</b> (beer and liquor sales at restaurants along navigable rivers)	\$1,875	\$2,344
<b>D-5g</b> (beer and liquor sales at a national professional sports museum)	\$1,500	\$1,875
<b>D-5h</b> (beer and liquor sales at a fine arts museum)	\$1,500	\$1,875
<b>D-5i</b> (beer and liquor sales at large restaurants)	\$1,875	\$2,344

<b>Liquor Permit</b>	<b>Current Fee</b>	<b>Fee Proposed by the Bill</b>
<b>D-5j</b> (beer and liquor sales at restaurants in a community entertainment district)	\$1,875	\$2,344
<b>D-5k</b> (beer and liquor sales at a botanical garden)	\$1,500	\$1,875
<b>D-6</b> (Sunday liquor sales)	\$250 (all permits except C-2 permit); \$200 (C-2 permit)	\$500 (all permits except C-2 permit); \$400 (C-2 permit)
<b>D-7</b> (beer and liquor sales in a resort area)	\$375 per month	\$469 per month
<b>D-8</b> (retail sale of tasting samples of beer, wine, and mixed beverages)	\$250	\$500
<b>E</b> (beer and liquor sales on airplanes and railroad cars)	\$250	\$500
<b>F</b> (beer sales at special events)	\$20 per event	\$40 per event
<b>F-1</b> (consumption of beer and liquor by nonprofit organizations' members in convention facilities)	\$125 per three days	\$250 per three days
<b>F-2</b> (beer and liquor sales at special events)	\$75 per event	\$150 per event
<b>F-3</b> (beer, wine, and mixed beverage samplings at a beer, wine, or mixed beverages industry convention)	\$150 for five days	\$300 for five days
<b>F-4</b> (wine samplings at wine festivals)	\$30 per day	\$60 per day
<b>G</b> (sale of alcohol for medicinal purposes by pharmacies)	\$50	\$100
<b>H</b> (beer and liquor transportation by common carriers)	\$150	\$300

<b>Liquor Permit</b>	<b>Current Fee</b>	<b>Fee Proposed by the Bill</b>
<b>I</b> (sale of alcohol by wholesale druggists)	\$100	\$200
<b>W</b> (storage of beer and liquor in warehouses by manufacturers and suppliers)	\$1,250 per warehouse	\$1,563 per warehouse

**Elimination of population ceiling for municipal corporations and townships in which the D-5i liquor permit can be issued**

(R.C. 4303.181(I))

Existing law creates the D-5i permit and allows the holder of this permit to sell beer and intoxicating liquor by the drink in the glass and from the container, for consumption on the premises where sold, and for consumption off the premises where sold in the same manner as holders of D-1 (beer sales) and D-2 (wine and mixed beverages sales) permits may do. Existing law allows the D-5i liquor permit to be issued to a retail food establishment or food service operation that (1) is licensed under the Retail Food Establishments and Food Service Operations Law, (2) meets specified criteria relating to seating capacity, square footage, the nature of the meals it offers, the value of its property, and the percentage of its total gross receipts derived from beer and liquor sales, and (3) is located in a municipal corporation or township *with a population of 50,000 or less*. The bill instead allows the D-5i permit to be issued to a retail food establishment or food service operation that is licensed under the Retail Food Establishments and Food Service Operations Law, meets the specified criteria, and is located in *any* municipal corporation or township.

**Sunday sales by a D-5g liquor permit holder**

(R.C. 4303.182)

Under current law, D-6 liquor permits, which allow sales between either 10 a.m. and midnight, or 1 p.m. and midnight, on Sunday, generally must be issued to specified liquor permit holders, including a D-5g permit holder (beer and intoxicating liquor at retail, only by the individual drink in glass and from the container, for on premises consumption), only if Sunday sales have been authorized in a Sunday sales (local option) election. (R.C. 4303.182(A).) A D-5g permit holder is a nonprofit corporation that is either the owner or the operator of a national professional sports museum (R.C. 4303.181(G)). The bill generally retains these provisions but specifically requires the issuance of a D-6 permit to a

D-5g permit holder regardless of whether Sunday liquor sales have been authorized at the national professional sports museum in a Sunday sales election. Permitted sales there on Sunday would be between 10 a.m. and midnight. (R.C. 4303.182(A) and (H).)

**Changes in the political subdivisions in which the D-5j liquor permit may be issued**

(R.C. 4301.181(J))

Current law creates the D-5j liquor permit, which may be issued to the owner or operator of a retail food establishment or a food service operation licensed under the Retail Food Establishments and Food Service Operations Law. The holder of a D-5j permit may sell beer and intoxicating liquor (1) only by the drink in glass and from the container, for consumption on the premises where sold, and (2) for consumption off the premises where sold similar to the holders of D-1 (beer sales) and D-2 (wine and mixed beverages sales) permits.

The D-5j permit can only be issued within a community entertainment district that a municipal corporation with a population of *at least 100,000* designates under procedures specified in current law.<sup>13</sup> The bill eliminates this minimum population requirement. And, it also allows the D-5j permit to be issued within a community entertainment district located in any township.

**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

---

<sup>13</sup> "Community entertainment district" means a bounded area that includes or will include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments within close proximity to some or all of the following types of establishments within the district, or other types of establishments similar to these: (a) hotels, (b) restaurants, (c) retail sales establishments, (d) enclosed shopping centers, (e) museums, (f) performing arts theaters, (g) motion picture theaters, (h) night clubs, (i) convention facilities, (j) sports facilities, (k) entertainment facilities or complexes, or (l) any combination of the establishments described in items (a) through (k) that provide similar services to the community (R.C. 4301.80(A), not in the bill). Continuing law prohibits (a) more than one D-5j permit from being issued within each community entertainment district for each five acres of land located within the district and (b) more than 15 D-5j permits from being issued within a single community entertainment district.

licensed financial institution guaranteeing the tour promoter's performance in an amount not less than \$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 the party's complaint with the Director within two years after the completion of the public improvement project upon which the violation is alleged to have 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.

**Authority to adopt State Fire Code transferred from State Fire Marshal to renamed Board of Building and Fire Standards**

(R.C. 3701.82, 3737.03, 3737.22, 3737.65, 3737.82, 3737.83, 3737.84, 3737.85, 3737.86, 3741.14, 3781.07, 3781.19, and 3781.22; Sections 145.03OO and 145.03PP)

Currently the Board of Building Standards, which administers and enforces the Building Standards Law (R.C. Chapter 3781.) and the Ohio Building Code adopted pursuant to that law, is comprised of ten members. The bill adds to the Board the State Fire Marshal, the Superintendent of Industrial Compliance, and three members appointed by December 29, 2003, by the Governor. Of the three new appointed members, one must be a building official, one must be a fire chief, and one must be a fire fighter chosen from recommendations made by specified organizations.

The bill also adds a fire protection engineer and a certified building official to the State Board of Building Appeals.

Under the bill, the Board of Building Standards is renamed the Board of Building and Fire Standards and authority to adopt the State Fire Code is transferred from the State Fire Marshal to the Board. The bill specifies that the State Fire Code adopted by the State Fire Marshal as it exists on the effective date of these changes to the law remains effective until the Board of Building and Fire Standards adopts changes to it. The bill also requires the Board of Building and Fire Standards, instead of the State Fire Marshal, as under current law, to adopt rules governing the equipment, operation, and maintenance of filling stations as necessary to protect persons and property.

### Code Advisory Committees

(R.C. 3781.071 and 3781.072)

The bill creates the Ohio Building Code Advisory Committee and Ohio Fire Code Advisory Committee whose purpose is to assist the Board in building and fire code development. The Governor must make appointments to both advisory committees within 90 days after the effective date of this provision. Terms of office for members of both committees are three years. Advisory committee members receive no salary, but do receive their actual and necessary expenses incurred in the performance of their duties. The advisory committees are not subject to the statutory sunset provision applicable to boards, commissions, and committees generally. In providing advice concerning adoption of the Ohio Building Code and the State Fire Code, the advisory committees must make joint recommendations to the Board as those advisory committees determine appropriate.

The Ohio Building Code Advisory Committee consists of the Superintendent of Industrial Compliance and four persons appointed by the Governor. Of the Advisory Committee's members, one must be a building official recommended by the Ohio Building Officials Association; one must be a licensed architect recommended by the Ohio Chapter of the American Institute of Architects, one must be a registered professional engineer recommended by the Ohio Association of Consulting Engineers; and one must be a registered professional engineer recommended by the Ohio Association of Professional Engineers.

The Advisory Committee must do all of the following:

- (1) Advise the Board concerning adoption of the Building Code, including the mechanical code, plumbing code, fuel gas code, and other codes relative to buildings and structures other than the Fire Code;
- (2) Advise the Board regarding the establishment of standards for certification of building officials who enforce the Building Code;
- (3) Assist the Board in providing information and guidance to contractors and building officials who enforce the Building Code;
- (4) Advise the Board regarding the interpretation of the Building Code;
- (5) Make recommendations to the Board regarding other matters that may impact upon the specific duties and areas of concern assigned to the Advisory Committee;

- (6) Provide other assistance as it considers necessary.

The Ohio Fire Code Advisory Committee consists of the State Fire Marshal and four persons appointed by the Governor. Of the Advisory Committee's members, one must be recommended by the Ohio Association of Professional Fire Fighters; one must be recommended by the Ohio State Fire Fighters Association, one must be recommended by the Ohio Fire Chiefs Association; and one must be recommended by the Ohio Fire Officials Association.

The Advisory Committee must do all of the following:

- (1) Advise the Board concerning adoption of the State Fire Code;
- (2) Advise the Board regarding the interpretation of the State Fire Code;
- (3) Make recommendations to the Board regarding other matters that may impact upon the specific duties and areas of concern assigned to the Advisory Committee;
- (4) Any additional duties required by the Board.

Under the bill, the State Fire Commission no longer recommends revisions to the State Fire Code. Corresponding to the transfer of authority from the State Fire Marshal to the Board of Building and Fire Standards to adopt the State Fire Code, under the bill, the State Fire Marshal no longer files a copy of proposed rules with the Chairman of the State Fire Commission and no longer must wait 60 days after such filing before adopting rules. Nor must the State Fire Marshal file a response to the State Fire Commission's recommendations.

#### **Enforcement of the State Fire Code and variances**

(R.C. 3737.22)

The bill authorizes the State Fire Marshal to adopt rules necessary to enforce the State Fire Code. Additionally, the State Fire Marshal may grant a variance to any provision of the State Fire Code upon written application by an affected party and upon demonstration by that party of both of the following:

- (1) That a literal enforcement of the provision will result in an unnecessary hardship to the party;
- (2) Either that the variance will not threaten the public health, safety, or welfare or that the party will provide measures to protect the public health, safety, and welfare that are substantially equivalent to the measures otherwise required under the State Fire Code.



**State Fire Marshal transferred to the Department of Public Safety**

(R.C. 121.04, 121.08, 3737.21, 3737.22, 3737.71, 3737.81, 3743.57, 3743.75, 3746.02, 3901.86, and 5502.01)

Under current law, the State Fire Marshal is under the Department of Commerce. The Director of Commerce appoints the State Fire Marshal, and the Department of Commerce is given all powers, and may perform all duties, vested in the State Fire Marshal. The State Fire Marshal has the responsibility for adopting and enforcing a State Fire Code, appointing fire marshals to enforce the State 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 State Fire Marshal to the Department of Public Safety. The Director of Public Safety is given the authority to appoint the State Fire Marshal who serves at the pleasure of the Director.

Under current law, the State 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. The bill instead assesses the State Fire Marshal a share of administrative costs of the Department of Public Safety, with the assessment paid into the Highway Safety Fund. 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 State Fire Marshal to the Superintendent of Industrial Compliance**

(R.C. 3737.01, 3737.02, 3737.22, 3737.88, 3737.881, 3737.882, 3737.883, 3737.89, 3737.91, 3737.92, 3737.98, and 3741.15)

Under current law, the State 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 State 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 State Fire Marshal to the Superintendent of Industrial Compliance in the Department of Commerce.

The bill replaces references in law to the State Fire Marshal with references to the Superintendent of Industrial Compliance, in relation to the State Fire Marshal's regulation of underground storage tanks. The bill also replaces references to the State Fire Commission with references to the Board of Building and Fire 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.

### **Regulation of aboveground storage tanks**

(R.C. 3741.15)

The bill gives the Superintendent of Industrial Compliance "*primary*" responsibility under Title 37 of the Revised Code for the implementation and administration of the Aboveground Petroleum Storage Tank Program, except as provided under the Air Pollution Control Law (R.C. Chapter 3704.), the Solid and Hazardous Wastes Law (R.C. Chapter 3734.), the Emergency Planning Law (R.C. Chapter 3750.), the Hazardous Substances Law (R.C. Chapter 3751.), the Cessation of Regulated Operations Law (R.C. Chapter 3752.), and the Risk Management Program Law (R.C. Chapter 3753.).<sup>14</sup> To implement the Program, the Superintendent must propose rules to the Board of Building and Fire Standards and the Board cannot adopt the proposed rules until the State Fire Code Advisory Committee has filed in the Board's office recommendations for revisions in the proposed rules or until a period of 60 days has elapsed since the proposed rules, whichever occurs first. The Board must consider any recommendations made by the Advisory Committee before adopting the proposed rules, but may accept, reject, or modify the recommendations so long as any rule proposed is consistent with the State Fire Code. The Board must adopt the rules under this section in accordance with the Administrative Procedure Act.

In proposing the rules to the Board for the implementation and administration of the Aboveground Petroleum Storage Tank Program, the Superintendent must require a method of "permitting" for the installation, removal,

---

<sup>14</sup> *The bill does not delineate what constitutes "primary" responsibility for the Aboveground Petroleum Storage Tank Program over and against the laws that are excepted under this provision.*

modification, and repair of aboveground storage tanks containing petroleum or petroleum products at terminal and bulk plants in the state. The Superintendent must propose rules allowing for the delegation of authority to conduct inspections related to permitting of aboveground petroleum storage tanks. The Superintendent may consider and propose rules for annual registration of aboveground petroleum storage tanks and the Superintendent may propose fees for registration, permitting, and inspection as are consistent with this Program. Within seven days of the receipt of an application for a permit under this section, the Superintendent must notify in writing the State Fire Marshal and the fire department having jurisdiction of the proposed permitted activity. The State Fire Marshal or the fire department having jurisdiction may waive the notification requirements of this paragraph.<sup>15</sup>

The bill specifies that nothing in this provision can prohibit the State Fire Marshal or a certified fire safety inspector having jurisdiction from inspecting terminal and bulk plants in this state. If, upon inspection or investigation, the State Fire Marshal, an assistant fire marshal, or a certified fire safety inspector having jurisdiction finds a violation of the State Fire Code, the State Fire Marshal, an assistant fire marshal, or a certified fire safety inspector may take enforcement actions as provided for under the Fire Safety Law (R.C. Chapter 3737.) or rules adopted under that Law.

When any permit is issued by the Superintendent, the structure and every particular thereof represented by that permit and disclosed therein must, in the absence of fraud or a serious safety hazard, be conclusively presumed to comply with the Fire Safety Law or any rule issued pursuant thereto, if constructed, altered, or repaired in accordance with that permit and any such rule in effect at the time of approval.

Upon application by an affected party regulated under these provisions, the Superintendent may grant a variance from the State Fire Code or rules adopted for the implementation and administration of the Aboveground Petroleum Storage Tank Program if the Superintendent determines that a literal enforcement of the requirement will result in unnecessary hardship and the variance will not be contrary to the public health, safety, or welfare.

---

<sup>15</sup> *The bill does not clarify the types of tanks regulated under this provision or the entities designated to administer and enforce the regulation provisions.*

### **Delayed effective date**

(Section 146.12A)

The bill delays the effective date of the above-described provisions concerning the State Fire Marshal, Board of Building and Fire Standards, and Superintendent of Industrial Compliance until October 1, 2003.

### **Aboveground Petroleum Storage Tank Study Committee**

(Section 145.03NN)

The bill creates the Aboveground Petroleum Storage Tank Study Committee comprised of the State Fire Marshal, the Superintendent of Industrial Compliance, a member of the House of Representatives appointed by the Speaker of the House of Representatives, a member of the Senate appointed by the President of the Senate, and 12 members appointed by the Governor. The legislative members must be from different political parties. The Speaker of the House of Representatives, the President of the Senate, and the Governor must make these appointments within 60 days after the effective date of this provision.

Of the appointments made by the Governor, two must be representatives of petroleum refiners, two must be representatives of petroleum marketers, and one member must be appointed for each of the following interest groups: municipal corporations, counties, townships, agricultural interests, the highway construction industry, the trucking industry, the Fire Service Alliance, and the public.

The Committee must determine and recommend whether aboveground petroleum storage tanks that are not regulated by the Superintendent of Industrial Compliance should be registered, and if they are to be registered, the annual fee for registration, and any other regulation needed to insure the safety of such tanks and the vicinities in which the tanks are located.<sup>16</sup>

The Committee must make its recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate not later than December 31, 2004.

---

<sup>16</sup> *The bill does not clarify the types of aboveground petroleum storage tanks that are not regulated by the Superintendent of Industrial Compliance.*

**Sale of spirituous liquor in 50 milliliter containers**

(R.C. 4301.19)

Under current law, the Division of Liquor Control must sell at wholesale spirituous liquor in 50 milliliter sealed containers to hotels that sell spirituous liquor by means of controlled access alcohol and beverage cabinets in guest rooms, but only for purposes of resale by the hotel in sealed containers by means of controlled access alcohol and beverage cabinets. The bill instead authorizes the Division to sell at wholesale spirituous liquor in 50 milliliter sealed containers to any holder of a liquor permit that authorizes the sale of spirituous liquor for consumption on the premises where sold.

---

**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.

- Permits financial assistance for projects under the Energy Efficiency Revolving Loan Program to be provided by the Director of Development in the form of direct loans, or grants, or through lending institutions in the form of loan participation agreements at below market rates or linked deposits.
- Prohibits the total of all grants provided in any one fiscal year from exceeding 10% of the revenues paid into the Energy Efficiency Revolving Loan Fund during the previous year.
- Specifies that any project in Ohio receiving moneys from the Energy Efficiency Revolving Loan Fund must include an investment in products, technologies, or services which include energy efficiency or "renewable energy" for low income housing, and further specifies that the investment be for "commercial and industrial business" or other types of customers specified in continuing law.
- Specifies that any project in Ohio receiving moneys from the Energy Efficiency Revolving Loan Fund must improve energy efficiency, provide for the use of renewable energy, or monitor energy usage in a cost-efficient manner by using certain standards and best practices.
- Removes purpose-necessity language pertaining to the establishment of the Energy Efficiency Revolving Loan 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, and

provides that cities designated as urban clusters in rural statistical areas may designate areas within their boundaries as enterprise zones.

### **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.

### *Energy Efficiency Revolving Loan Program*

(R.C. 4928.62 and 4928.63)

Current law requires the Director of Development to administer the Energy Efficiency Revolving Loan Program. The Director may authorize the use of moneys in the Energy Efficiency Revolving Loan Fund for financial assistance for projects in Ohio. The assistance currently must be made or provided through approved lending institutions in the form of loans at below market rates, loan guarantees for such loans, and linked deposits for such loans. The bill instead *permits* assistance under the Program to be provided (1) by the Director in the form of *direct* loans, or *grants*, or (2) through lending institutions in the form of *loan participation agreements* at below market rates or linked deposits. The bill also prohibits the total of all grants provided in any one fiscal year from exceeding 10% of the revenues paid into the Fund during the previous fiscal year. (R.C. 4928.62(A).)

Continuing law prohibits the Director from authorizing financial assistance under the Program unless the Director determines certain criteria are associated with a project. One of them is that the project includes an investment in products, technologies, or services (including energy efficiency for low-income housing) for residential, *small* commercial and *small* industrial business, local government, educational institution, nonprofit entity, or agricultural customers of an electric distribution utility or a participating municipal electric utility or electric cooperative in Ohio. The bill specifies that the investment must include energy efficiency or *renewable energy* for low-income housing and be for commercial and industrial business (instead of "small" businesses of those types) or for any of the other types of customers listed above. (R.C. 4928.62(A)(1).)

Another criterium under existing law is that the project must improve energy efficiency in a cost-efficient manner. The bill instead provides that a project must (1) improve energy efficiency, (2) provide for the use of renewable energy, or (3) monitor energy usage in a cost-efficient manner. As under current law, this must involve the use of both the most appropriate national, federal, or other standards for products as determined by the Director and the best practices for use of technology, products, or services in the context of the total facility or building. (R.C. 4928.62(A)(2).)

Finally, the bill removes certain purpose-necessity language pertaining to the establishment of the Program (R.C. 4928.63).

### **Ohio Housing Finance Agency chairperson and vice-chairperson**

(R.C. 175.03)

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

### **Housing trust fund fees**

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

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

The new housing trust fund fees are deposited in the Low- and Moderate-Income Housing Trust Fund, which exists under continuing law and is one source of revenue for Department of Development (DOD) and Ohio Housing Finance



Agency (OHFA) programs. The new fees provide a dedicated source of funding for the DOD and the OHFA because the fees are included in "permanent" law and the county auditor transfers the fees to the Treasurer of State for deposit directly into the Housing Trust Fund.

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

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

#### **Expenditures from the Housing Trust Fund**

(R.C. 175.21 and 175.22)

The bill stipulates new requirements for the expenditure of money from the Low- and Moderate-Income Housing Trust Fund. New areas that receive specified funding amounts under the bill include: transitional and permanent housing programs (not more than 6% of the current year appropriation authority); training and technical assistance to nonprofit development organizations in underserved areas (at least \$100,000); emergency shelter housing grants programs (not more than 7%); the resident services coordinator program in the Department of Aging, proposed elsewhere in the bill (at least \$250,000). In another new expenditure area, the bill requires that grants and loans be made from the Fund to community development corporations and the Ohio Community Development Finance Fund, a private nonprofit corporation (not more than 5%).

#### **Authority to designate enterprise zones and enter into enterprise zone agreements extended**

(R.C. 5709.61, 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 current law, only a municipal corporation that is defined by the United States Office of Management and Budget as a central city of a metropolitan statistical area may designate areas within the municipality 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.

In addition, the bill permits a city designated as an urban cluster in a rural statistical area to designate areas within the city as enterprise zones. (The bill does not define the phrase "urban cluster in a rural statistical area." Nor does the bill specify the entity that designates cities as such.)

---

### **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).

---

### **COMMISSION ON DISPUTE RESOLUTION AND CONFLICT MANAGEMENT**

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



### **Abolishment of the Commission**

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

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

---

### **DEPARTMENT OF EDUCATION**

- Maintains the \$5,088 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.
- Eliminates the practice of substituting a school district's three-year average formula ADM in the base-cost formula, in place of its current year formula ADM, if the three-year average is greater than the current-year number.
- Reduces from 25% to 10%, beginning in FY 2005, the percentage of joint vocational school district (JVSD) students that may also be included in the formula ADM of city, local, and exempted village school districts or community schools.
- Provides additional state transitional aid in FY 2004 and FY 2005 to prevent any school district's state "SF-3 funding plus charge-off supplement" from decreasing by more than 5% from the previous fiscal year.

- 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.
- Requires joint vocational school districts receiving weighted funding for vocational education and associated services to spend those funds as approved by the Department of Education and specifies that those expenses approved by the Department for all school districts include only "career-technical programming."
- Requires school districts and the Department of Education annually to report data regarding the expenditure of weighted funding for vocational education and associated services.
- 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.
- Beginning FY 2005, establishes new state Head Start programs: "Title IV-A Head Start" and "Title IV-A Head Start Plus" to be operated by the



Department of Education and funded with federal 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 Title IV-A Head Start and Title IV-A Head Start Plus programs.
- Beginning September 1, 2003, authorizes the Department of Job and Family Services to license Head Start programs, instead of the Department of Education as under current law.
- Creates the Head Start Partnership Study Council to provide advice and assistance to the Departments of Education and Job and Family Services in FY 2004 and FY 2005 in planning and implementing the new Title IV-A Head Start Plus Program.
- Requires the Legislative Office of Education Oversight to study partnership agreements between Head Start providers and child care providers.
- Permits the Legislative Committee on Education Oversight to modify the due dates and scope of studies assigned by the General Assembly to the Legislative Office of Education Oversight (LOEO) in order to accommodate the availability of data and resources.
- 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."
- Increases, from \$2,500 to \$3,000 per student, the maximum scholarship award amount under the Pilot Project Scholarship Program (Cleveland voucher program).
- Increases (from \$250 as under current law) the amount of additional tuition a private school may charge a student receiving a scholarship award of 75% of the maximum award under the Pilot Project Scholarship Program to the difference between the school's actual tuition charge and 75% of the maximum award amount.
- 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.
- Prohibits the Superintendent of Public Instruction from including, in guidelines for declaring a school district to be under a "fiscal caution," a requirement that a district submit financial statements according to "Generally Accepted Accounting Principles" ("GAAP").
- 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.



- Eliminates "Urban-21 school districts" that are not also "Big-Eight school districts" from the definition of "challenged school districts" in which start-up community schools may be located.
- Permits any existing start-up community school that has been established in an Urban-21 school district (not otherwise meeting the definition of a challenged school district) prior to the bill's effective date to continue to operate.
- Requires the State Board of Education to adopt rules establishing standards governing the operation of Internet- or computer-based community schools and requires such schools to comply with those standards.
- 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 in FY 2004 and FY 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.
- Specifies that the starting point for measuring travel time to determine if a school district must transport a student to a nonpublic or community school is the public school to which the student would otherwise be assigned.
- 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.

- Requires "academic watch" and "academic emergency" school districts to administer practice versions of the Ohio Graduation Tests (OGT) to ninth graders beginning in the 2003-2004 school year.
- Requires certain high schools in "academic emergency" districts to provide intervention services to students whose scores on the practice OGT indicate that the students are unlikely to pass the real OGT to qualify for a diploma.
- 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.
- Permits the board of education of a local school district to propose severing the district from the educational service center (ESC) to which it currently belongs and instead annexing the district to an ESC adjacent to its current ESC, subject to approval of the governing board of the ESC to which the district would be annexed and the State Board of Education, and subject to a referendum of the district voters, if a petition is filed within 60 days.
- Eliminates the requirements that the State Board of Education adopt standards for service plans by 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.
- Allows an ESC that sponsors a community school (other than an Internet- or computer-based community school) to receive state per pupil payments for the students of that school in FY 2004 and FY 2005, but only if sufficient funds are appropriated to first pay all ESCs for the students of the school districts they serve.

- 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.
- Transfers authority to propose the creation of a new local school district from ESCs to the State Board of Education.
- 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.
- Limits a full-time speech-language pathologist employed by a school district to providing services to a maximum of 55 students with disabilities at any one time.
- 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.
- Specifies that school district officials are not required to attach a certificate of available resources to current payrolls for or employment contracts with "any" employees or officers of the school district, instead of those payrolls for or contracts with only "regular" employees as under current law.
- Requires school districts and community schools to convert to a software package that is certified by the Department of Education for the management and reporting of data under the Education Management Information System (EMIS) by July 1, 2005.

- 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, in consultation with stakeholders, to recommend a plan to the General Assembly for the establishment of an Ohio Regional Education Delivery System (OREDS) by January 31, 2004, to provide services and technical assistance to school districts and chartered nonpublic schools.
- Requires the Department, in consultation with stakeholders, to develop an accountability system for OREDS.
- Adds two voting members appointed by the Governor to the Ohio SchoolNet Commission.
- Eliminates the disaggregation of vocational education students' performance data on school district and building report cards.
- Requires school districts and schools selected by the Superintendent of Public Instruction for participation in the National Assessment of Educational Progress (NAEP) to participate in the assessment.
- 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.
- Requires students initially identified with a disability in the 2004-2005 or 2005-2006 school year to undergo, at private expense, a comprehensive eye exam by a licensed optometrist or physician prior to receiving special education services.
- Requires the Department of Education to provide the results of educator licensure examinations to the Ohio Board of Regents.
- Requires the Legislative Office of Education Oversight to conduct a formative evaluation of the pilot project special education program,

established by the bill, and to report findings to the General Assembly by March 1, 2005.

### **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.<sup>17</sup> In that decision, the Court held that the state's then-current school funding system did not provide a "thorough and efficient system of common schools" as required under Article VI, Section 2 of the Ohio Constitution. Responding to that order, in 1997 and 1998, the 122nd General Assembly enacted several bills dealing with the financing and performance management of public schools.<sup>18</sup>

On May 11, 2000, the Court held the new system unconstitutional on essentially the same grounds.<sup>19</sup> 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.<sup>20</sup>

---

<sup>17</sup> *DeRolph v. State (1997)*, 78 *Ohio St.3d* 193.

<sup>18</sup> *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.*

<sup>19</sup> *DeRolph v. State (2000)*, 89 *Ohio St.3d* 1.

<sup>20</sup> *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*



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.<sup>21</sup> In addition, in the 2001-2003 biennial budget act, the legislature made changes to the school funding system, including (among other things) enacting a new parity aid subsidy and creating a new system of six special education funding weights instead of three weights as under prior law.<sup>22</sup>

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*).<sup>23</sup> 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.<sup>24</sup> Settlement efforts were not successful, and the Court ruled again on the merits of the case on December 11, 2002 (*DeRolph IV*).<sup>25</sup> 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."

Subsequently, the plaintiffs filed a motion in the Perry County Court of Common Pleas seeking an order for a compliance conference relative to the

---

*amended the school district solvency assistance program and modified requirements of some school district mandates.*

<sup>21</sup> *Am. Sub. S.B. 1 of the 124th General Assembly.*

<sup>22</sup> *Am. Sub. H.B. 94 of the 124th General Assembly.*

<sup>23</sup> *DeRolph v. State (2001), 93 Ohio St.3d 309.*

<sup>24</sup> *DeRolph v. State (2001), 93 Ohio St.3d 628.*

<sup>25</sup> *DeRolph v. State (2002), 97 Ohio St.3d 434.*

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 May 16, 2003, the Supreme Court granted the state's motion, holding that "it is beyond doubt that Judge Lewis and the common pleas court patently and unambiguously lack jurisdiction over any post-DeRolph IV proceedings." The Court further stated that in granting the writ of prohibition, it was bringing to an "end any further DeRolph litigation." According to the Court, "the duty now lies with the General Assembly to remedy an educational system that has been found by the majority in DeRolph IV to still be unconstitutional."<sup>26</sup> Apparently, any challenge to any provisions for a new school funding system enacted by the General Assembly will be filed as a new case.

### **Introduction--key concepts of the current school funding system**

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

#### **Base-cost funding**

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

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

**State and local shares.** The school funding system essentially equalizes 23 mills of property tax for base-cost funding. It does this by providing sufficient state money to each school district to ensure that, if all districts in the state levied

---

<sup>26</sup> *State ex rel. State v. Lewis* 2003 Ohio LEXIS 1370.

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).<sup>27</sup> To accomplish this equalization, the base-cost formula uses five variables to compute the amount of state funding each district receives for its base cost:

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

(2) An adjustment to the formula amount known as the "**cost-of-doing-business factor**." This variable is a cost factor intended to reflect differences in the cost of doing business across Ohio's 88 counties. Each county is assigned a factor by statute. The formula amount is multiplied by the cost-of-doing-business factor for the appropriate county to obtain the specific guaranteed per pupil 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:

---

<sup>27</sup> *One mill produces \$1 of tax revenue for every \$1,000 of taxable property valuation.*

(formula amount X cost-of-doing-business factor X formula ADM) minus  
(.023 X the district's adjusted total taxable value)<sup>28</sup>

**Sample FY 2003 calculation.** If Hypothetical Local School District were located in a county with a cost-of-doing-business factor of 1.025 (meaning its cost of doing business was assumed to be 2.5% higher than in the lowest cost county), its formula ADM were 1,000 students, and it had an adjusted valuation of \$75 million, its FY 2003 state base-cost funding amount would have been \$3,348,000, calculated as follows:

\$4,949	FY 2003 formula amount
x <u>1.025</u>	District's cost-of-doing-business factor
\$5,073	District's adjusted formula amount
x <u>1,000</u>	District's formula ADM (approximate enrollment)
\$5,073,000	District's base-cost amount
- <u>\$1,725,000</u>	District's charge-off (assumed local share based on 23 mills charged against the district's \$75 million in adjusted property valuation)
<b>\$3,348,000</b>	<b>District's state payment toward base-cost amount</b>
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.<sup>29</sup> The standard for that performance adopted by the

---

<sup>28</sup> 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.*

<sup>29</sup> *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,*

General Assembly in 2001 was meeting in FY 1999 at least 20 of the 27 state academic performance standards. In essence, the General Assembly developed an "expenditure model" by examining the average per pupil expenditures of school districts deemed to be performing satisfactorily. From the initial group of these districts, it eliminated "outriders" (the top and bottom 5% in property wealth and personal income) and arrived at 127 districts to include in the model. The base cost derived from analyzing that group's FY 1999 expenditures was \$4,814 per pupil for FY 2002. That amount is increased by an inflation factor of 2.8% for each of the following five fiscal years, through FY 2007.

**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.

---

*DPIA, special education services, and similar requirements that vary from district to district.*



### **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).<sup>30</sup> 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

---

<sup>30</sup> *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.*

circumstances of the district itself (such as its location in a higher-cost area of the state). Some categorical funding, namely the cost-of-doing-business factor and some adjustments to local property value, is actually built into the base-cost formula. But most categorical funding is paid separately from the base cost, including:

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

(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**

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

**Vocational Education Weights  
Under Current Law**

<b>Categories</b>	<b>Weight</b>
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.<sup>31</sup> Under this formula, each district's payment for

---

<sup>31</sup> *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).<sup>32</sup> 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."<sup>33</sup> (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.

---

<sup>32</sup> *The statute presents the following model of the formula based on an analysis of FY 1998 transportation data:  $51.79027 + (139.62626 \times \text{daily bus miles per student}) + (116.25573 \times \text{transported student percentage})$ . The law directs that the formula be updated each year to reflect new data. (R.C. 3317.022(D)(2).)*

<sup>33</sup> *"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**

<b>Fiscal Year</b>	<b>Base Cost Amount</b>	<b>Special Education Weight Phase-In %</b>	<b>Limit on Local Share of Categorical Funding*</b>	<b>Districts Eligible for Parity Aid</b>	<b>Parity Aid Phase-In %</b>	<b>Districts Eligible for Equity Aid</b>	<b>Equity Aid Phase-Out %</b>
<i>FY 2001<sup>†</sup></i>	\$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.

<sup>†</sup>Prior law.

### Elimination of three-year averaging of formula ADM

(R.C. 3317.022 and 3317.16)

The bill eliminates the practice under current law of substituting a school district's three-year average formula ADM in the base-cost formula, in place of its current-year formula ADM, if the three-year average is greater than the current-year number. (The three-year average is calculated using the district's formula ADM for the current and previous two fiscal years.)

**Percentage of JVSD students counted in the formula ADM of school districts**

(R.C. 3317.03(A)(3), 3313.981(C)(4), 3314.08(B)(2)(e), and 3317.023(A)(4); Section 40.34a)

Beginning in FY 2005, the bill reduces from 25% to 10% the percentage of joint vocational school district (JVSD) students that may also be included in the formula ADM of city, local, and exempted village school districts or community schools.

Under current law, JVSD students are counted on a full-time equivalency basis not only in the formula ADM of their JVSDs, but they each are also counted as  $\frac{1}{4}$  student in the formula ADM of the city, local, or exempted village school districts where they otherwise are entitled to attend school (or, in some circumstances, in the enrollment of a community school). That is, a full-time JVSD student is counted as 1 student in the JVSD's formula ADM and  $\frac{1}{4}$  student in the formula ADM of the student's city, local, or exempted village school district (or the student's community school). Therefore each JVSD student generates additional state funds for the city, local, or exempted village district (or community school). Presumably, this additional funding to the school district or community school is to cover any administrative duties the district or school has relative to JVSD students.

**Transitional aid**

(Section 40.40)

For FY 2004 and FY 2005, 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.

**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));<sup>34</sup>

(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

---

<sup>34</sup> *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.*



(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).

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.

### **Expenditure of vocational education funding and reporting of that expenditure**

(R.C. 3317.014, 3317.022(E), and 3317.16(C)(1))

The bill provides some new statutory instruction as to how school districts are to spend vocational education weighted funding. Specifically, the bill requires that each joint vocational school district receiving weighted funding for vocational education and associated services spend those funds for such services as approved by the Department of Education. This provision is similar to one under current law that applies to city, exempted village, and local school districts. The bill further specifies that the vocational educational expenses approved by the Department for *all* school districts include only expenses "connected to the delivery of career-technical programming to career-technical students." In addition, the bill requires the Department to require each city, exempted village, local, and joint vocational school district to report data annually so that the Department may monitor the district's compliance with the requirements regarding the manner in which vocational education funding may be spent. Finally, the bill requires the Department to annually report to the Governor and the General Assembly the amount of weighted funding for vocational education and associated services that is spent by each school district and joint vocational school district specifically for those 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.<sup>35</sup> 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.<sup>36</sup>

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

---

<sup>35</sup> *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.*

<sup>36</sup> *See, R.C. 3323.01(G) and 3323.012, neither section in the bill.*

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

A similar provision applying to city, local, and exempted village school districts was enacted in 2001.<sup>37</sup>

### **Head Start and Head Start Plus**

(R.C. 3301.31, 3301.33, 3301.34, 3301.35, 3301.36, 3301.38, 3301.40, and 5104.01(T); Sections 3.07, 3.08, 3.09, 40.19, and 58.34)

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 an inter-agency agreement between the Department of Job and Family Services and the Department of Education, currently operates a Head Start funding program that provides assistance to local agencies in operating their programs. These Head Start programs are funded separately from any state-funded preschool programs operated by school districts.

Beginning in FY 2005, the bill replaces the current authorization for the state Head Start Program with authorization for two new programs: "Title IV-A Head Start" and "Title IV-A Head Start Plus." (It does not affect the federal direct aid to Head Start agencies.) The new state programs are to be operated by the Department of Education and funded with federal TANF moneys transferred from the Department of Job and Family Services to the Department of Education.<sup>38</sup> The two departments are authorized under the bill to enter into an interagency agreement to develop procedures for the operation of the programs. Title IV-A Head Start will provide traditional head start services and Title IV-A Head Start

---

<sup>37</sup> See, division (C)(4) of R.C. 3317.022.

<sup>38</sup> 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.

Plus will provide year-round head start services along with child care services. Both programs are restricted to providing only TANF-eligible services to only TANF-eligible individuals. Only agencies that are approved by the Department of Education for participation in the programs may receive reimbursements for services provided to eligible individuals. The eligible services are those that are allowable under Title IV-A of the Social Security Act, but they cannot be benefits and services that federal regulations include in the term "assistance."<sup>39</sup> Under both programs, the Department of Education will contract directly with Head Start agencies to provide local services and will reimburse those agencies directly for services provided to eligible persons. Each county department of job and family services is required under the bill to determine the eligibility of individuals for those Title IV-A services. In addition, each county department is required to assist the Department of Education in administering the local Title IV-A Head Start Plus programs by establishing co-payment requirements in accordance with state Department of Job and Family Services rules, ensuring that the reimbursements to agencies are for allowable expenses, and monitoring the local agencies in their use of funds.

The bill also prescribes specific other administrative duties of the Department of Education. Among others, it requires the Department of Education:

(1) To adopt policies and procedures for the approval, suspension, and removal of Title IV-A Head Start and Title IV-A Head Start Plus agencies from the list of approved providers;

---

<sup>39</sup> *Accordingly, these services cannot include "cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses)." It must, however, include:*

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

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

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

*(4) Refundable earned income tax credits;*

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

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

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

(2) To provide technical assistance to Title IV-A Head Start agencies and to both Title IV-A Head Start Plus agencies and the child care partners, with whom those agencies contract for day care services;

(3) To distribute the programs' funds on a per-pupil basis, which the Department may adjust so that the per pupil amount multiplied by the number of eligible children enrolled and receiving services on December 1 (or the first business day following that date) equals the amount allocated;

(4) To prescribe an assessment instrument and target levels for critical performance indicators to assess Title IV-A Head Start and Title IV-A Head Start Plus agencies; and

(5) To require Title IV-A Head Start and Title IV-A Head Start Plus agencies to do all of the following:

(a) Address federal Head Start education and assessment performance standards and state pre-kindergarten math and literacy content standards;

(b) Comply with the Department's prescribed assessment requirements (which are to be aligned with the assessment system for kindergarten through twelfth grade);

(c) Comply with federal Head Start performance standards for comprehensive services in health, nutrition, mental health, family partnership, and social services as required by federal regulations;

(d) Require teachers to attend a minimum of 20 hours of professional development regarding the implementation of content standards and assessment; and

(e) Document and report child progress using research-based indicators as prescribed by the Department.<sup>40</sup>

**Corrective action plan**

(R.C. 3301.38(I))

The bill requires a Title IV-A Head Start or Title IV-A Head Start Plus agency to propose and implement a corrective action plan that has been approved

---

<sup>40</sup> *The bill also prescribes that costs for developing and administering a Title IV-A Head Start or Title IV-A Head Start Plus program may not exceed 15% of the total approved costs of the program.*



by the Department of Education when the Department determines either of the following:

(a) The financial practices of the agency are not in accordance with "standard accounting principles" and federal requirements or do not meet financial standards required in the agency's contract with the Department; or

(b) The agency fails to substantially meet the Head Start performance standards prescribed by the Department (see just above) or exhibits below average performance as measured against those performance indicators.

The corrective action plan must include a schedule of monitoring by the Department of Education. The Department may withhold funding to the agency, and if it fails to satisfactorily complete a corrective action, the Department may suspend or terminate part or all of the funding to the agency and may remove the agency from the list of approved providers.

#### **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. Beginning September 1, 2003, 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.<sup>41</sup> 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 September 1, 2005. To continue operating after that date, an agency must obtain a license issued by the Department of Job and Family Services.<sup>42</sup>

---

<sup>41</sup> *The bill does not affect the Department of Education's authority to license regular preschool programs operated by school districts.*

<sup>42</sup> *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.)*



### *Head Start Partnership Study Council*

(Section 40.38)

The bill creates a temporary "Head Start Partnership Study Council" to provide advice and assistance to the Departments of Education and Job and Family Services in planning and implementing the new Title IV-A Head Start Plus programs. The Council is to consist of the following 17 members:

- (1) Two employees of the Department of Job and Family Services appointed by the Director of Job and Family Services;
- (2) Two employees of the Department of Education appointed by the Superintendent of Public Instruction;
- (3) Three members of the House of Representatives, not more than two of whom are members of the same political party, appointed by the Speaker;
- (4) Three members of the Senate, not more two of whom are members of the same political party, appointed by the President of the Senate;
- (5) Two representatives of Head Start agencies appointed by the Ohio Head Start Association;
- (6) Two representatives of child care providers appointed by the Ohio Association of Child Care Providers;
- (7) One representative appointed by the Ohio Day Care Council;
- (8) One representative appointed by the County Commissioner's Association of Ohio; and
- (9) One representative appointed by the Association of Directors of County Departments of Job and Family Services.<sup>43</sup>

The bill specifies that in FY 2004, the Council is to advise the Departments in planning for the implementation of the Title IV-A Head Start Plus Program and to report to the General Assembly on the plans for that program by December 31, 2003. It also specifies that in FY 2005, the Council must monitor the implementation of the Title IV-A Head Start Plus program and provide advice to the Departments in that implementation. Finally, it prescribes that unless

---

<sup>43</sup> *The Speaker of the House and the President of the Senate are to jointly appoint the chairperson of the Council.*

reauthorized by the General Assembly, the Council will cease to exist on July 1, 2005.

**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.

**Modification of due dates and scope of LOEO studies**

(R.C. 3301.68)

The Legislative Committee on Education Oversight is established by statute as a subcommittee of the Legislative Service Commission. Its membership consists of five members of the House, appointed by the Speaker, and five members of the Senate, appointed by the Senate President. The Committee directs the work of the Legislative Office on Education Oversight (LOEO), which conducts studies of specific education-related issues at the request of the Committee or the entire General Assembly. Generally, the directive for such a study outlines the topics to be examined and the date by which LOEO must issue a final report.

The bill permits the Committee to modify the scope and due date of any study assigned to LOEO by the General Assembly to accommodate the availability of necessary data and resources.

**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.<sup>44</sup>

**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
- 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.<sup>45</sup> In addition, it conforms the law regarding approval of units for handicapped preschool education to the federal law on reporting the ages of

---

<sup>44</sup> *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.*

<sup>45</sup> *Current law already specifies that gifted education units and educational service center supervisory units are approved by the Department, rather than the State Board.*

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 nonpublic school or special education program. In reassigning buses, the Department may reassign the bus to either a county MR/DD board for the transportation of special education students or to a school district for the transportation of special education or nonpublic school students.

**Renaming the Auxiliary Services Mobile Unit Repair and Replacement Fund**

(R.C. 3317.064)

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

severance to school district personnel who provide services to students of chartered nonpublic schools.

### **Changes to the Pilot Project Scholarship Program**

#### **Background**

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.

#### **Scholarship amount**

(R.C. 3313.978(C)(1))

The bill increases the amount of maximum scholarship award (voucher amount) under the program to \$3,000 per student. Currently, the maximum scholarship award is \$2,500 per student.<sup>46</sup>

#### **Additional tuition charges**

(R.C. 3313.976(A)(8) and (9))

Under the program a student is eligible for a scholarship of either 90% or 75% of the maximum award amount, depending upon family income. The remaining 10% or 25%, respectively, is to be provided by "a political subdivision, a private nonprofit or for profit entity, or another person."<sup>47</sup> Under current law, a school enrolling a student under the program must agree not to charge any tuition to "low-income families" in excess of 10% of the maximum award amount. In other words, under current law, the most any such student's family is charged is (\$250) 10% of the maximum \$2,500 scholarship). The bill does not change this 10% tuition cap for students who receive 90% of the maximum award amount. However, for students who receive 75% of the maximum award amount, the bill permits a private school to charge the difference between the school's actual tuition charge and 75% of the maximum award amount. For example, a student

---

<sup>46</sup> *Funding for the program is deducted from the amount of Disadvantaged Pupil Impact Aid (DPIA) allocated to the Cleveland School District. The bill earmarks a maximum of \$11.9 million from Cleveland's allocation in each of FY 2004 and FY 2005.*

<sup>47</sup> *R.C. 3313.978(C)(4).*

eligible for a 75% scholarship would receive \$2,250 (75% of the bill's new \$3,000 maximum). If the school's actual tuition charge is \$3,000, the parent would be charged the entire \$750 balance.

**Payments to tutorial assistance providers through the Pilot Project Scholarship Program**

(R.C. 3313.979)

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.<sup>48</sup> 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.

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.<sup>49</sup>

---

<sup>48</sup> R.C. 3313.978.

<sup>49</sup> 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

## **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.<sup>50</sup> 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.

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, the bill directs the financial planning and supervision commission to request the school district board of education to "work with" either the county auditor or tax commissioner to estimate the amount and rate of a tax levy that is needed to generate a positive fiscal year end cash balance by the fifth year of the district's five-year forecast. The board of education, then, is required to explain to the commission whether it supports or opposes asking the voters for such a tax levy. Taking into consideration the board of education's recommendation, the commission must adopt a resolution specifying whether a tax levy is submitted to the voters. If a tax levy request is made, the bill does *not* require the request be for a tax levy at the rate and in an amount necessary to generate a positive fund balance by the fifth year of the district's five-year forecast.

---

*significant enough to create a new constitutional question is unclear from the Zelman v. Simmons-Harris opinion.*

<sup>50</sup> *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).*



## Accounting requirements for school district "fiscal caution" designations

(R.C. 3316.031(A))

The Auditor of State may declare a school district to be in either a state of "fiscal watch" or "fiscal emergency" if current information about its revenues and expenditures indicate that the district is or will shortly be operating under a budget deficit.<sup>51</sup> In addition, the state Superintendent of Public Instruction may declare a district to be under a "fiscal caution" if the Superintendent determines from the district's five year forecast that it is engaging in practices that could, if uncorrected, result in a future declaration of fiscal watch or fiscal emergency. Upon such a declaration, the district must submit written proposals for correcting these practices or budgetary conditions that resulted in the declaration.<sup>52</sup> The Superintendent in consultation with the Auditor of State is required to develop guidelines for identifying the practices that may be used as a basis for placing a district under a fiscal caution.

The bill specifies that these guidelines for placing districts under a fiscal caution are not to include a requirement that a school district submit financial statements according to "Generally Accepted Accounting Principles" (often referred to as "GAAP").

GAAP are standardized accounting rules published by the Financial Accounting Standards Board and the Governmental Accounting Standards Board. Currently, the Auditor of State requires the use of GAAP by school districts and other local subdivisions in submitting their annual financial statements.<sup>53</sup> Failure to use GAAP in those filings is currently included in the "Guidelines for Fiscal Caution," and according to the Department of Education, 12 districts have been placed under a fiscal caution for non-use of GAAP. Under the bill, the Superintendent would not be permitted to place a district under a fiscal caution for failure to use GAAP, but the bill does not prohibit the Auditor of State from requiring the use of GAAP.

---

<sup>51</sup> R.C. 3316.03 and 3316.04. *Upon such declarations, the district must establish a plan to alleviate its adverse fiscal conditions and may be subject to various levels of other state intervention depending upon the severity and duration of the conditions.*

<sup>52</sup> R.C. 3316.031(B) and (C).

<sup>53</sup> Section 117-2-03 of the Ohio Administrative Code.

## Changes to community school law

### Background

Community schools (often called "charter schools") are public, nonprofit, nonsectarian schools that operate independently of any school district but under a contract with a sponsoring entity.<sup>54</sup> The schools are exempt from many education laws and regulations and often serve a limited number of grades or a particular purpose. Conversion community schools may be sponsored by any school district in the state. Start-up community schools are new schools that may be sponsored only in certain defined "challenged school districts." (See "Location of start-up community schools" below.) The schools are funded with state funds that are deducted from the state aid account of the school districts in which the enrolled students are entitled to attend school (their resident school districts). For each student enrolled, the school receives the formula amount times the cost-of-doing-business factor for the student's resident school district plus any applicable weighted amounts for special education or vocational education and some DPIA amounts that are attributable to that student.

### 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

---

<sup>54</sup> *The sponsor of a start-up community school, which must be approved by the Department of Education, may be any of the following: the school district in which the school is located, a school district located in the same county as the district in which the school will be located has a major portion of its property, a joint vocational school district serving the same county as the district in which the school will be located has a major portion of its property, an educational service center serving the same county as the district in which the school will be located has a major portion of its property or an adjacent county, a sponsoring authority appointed by the board of trustees of a state university under certain specified conditions, and a qualified federally tax exempt entity under certain specified conditions. Until the enactment of Sub. H.B. 364 of the 124th General Assembly, effective April 8, 2003, the State Board of Education was authorized to sponsor start-up community schools. That bill permits the State Board to continue to sponsor schools for up to two school years while the school looks for new sponsors, after which time the State Board may sponsor any community schools only in specified exigent circumstances. That bill also permits certain other sponsors under prior law to continue to sponsor existing and new schools without being subject to Department of Education approval as a sponsor.*

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 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.

### **Location of start-up community schools**

(R.C. 3314.02)

As stated above, start-up community schools can be located only in "challenged" school districts. Under current law, a challenged school district is any of the following:

- (1) A "Big-Eight" school district;
- (2) An "Urban-21" school district;
- (3) A school district that is either in a state of academic watch or academic emergency as declared by the Department of Education; or
- (4) A school district that is in the former Pilot Project Area (Lucas County).<sup>55</sup>

The bill eliminates "Urban-21" districts that are not also "Big-Eight" districts from the definition of challenged school districts. The effect of this change is that additional start-up community schools may not be located in an urban, non-Big-Eight district unless the district is declared to be in a state of academic emergency or academic watch. The bill does, however, permit any start-

---

<sup>55</sup> *The "Big-Eight" school districts are: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown. The "Urban-21" school districts are all of the Big-Eight districts plus Cleveland Heights, East Cleveland, Elyria, Euclid, Hamilton, Lima, Lorain, Mansfield, Middletown, Parma, South-Western, Springfield, and Warren.*

up school that is already located in an Urban-21 district that would not otherwise meet the definition of a challenged school district to continue to operate after the effective date of the bill.

**Enrollment in Internet- or computer-based community schools**

(R.C. 3314.08(N))

Current law 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.<sup>56</sup> (R.C. 3314.08(N).)

**Standards for Internet- or computer-based community schools**

(R.C. 3314.033)

The bill requires the State Board of Education within 90 days after the effective date of the bill to adopt rules establishing standards governing the operation of Internet- or computer-based community schools and of other educational courses delivered primarily through electronic media. In addition, the bill provides that each Internet- or computer-based community school must comply with those standards regardless of whether the school's contract with its sponsor includes a stipulation requiring that compliance.

---

<sup>56</sup> *Current law, not changed by the bill, defines an Internet- or computer-based community school (sometimes called an "electronic school" or "e-school") as a community school "in which the enrolled students work primarily from their residences on assignments provided via an Internet- or other computer-based instructional method that does not rely on regular classroom instruction" (R.C. 3314.02(A)(7)).*

*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 (R.C. 3314.032, not in the bill). 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.)*

### *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.<sup>57</sup> 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.

---

<sup>57</sup> 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.

**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).<sup>58</sup> 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.

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.<sup>59</sup> 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.<sup>60</sup> 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

---

<sup>58</sup> *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.)*

<sup>59</sup> *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).*

<sup>60</sup> *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.*

for the 2002-2003 biennium.<sup>61</sup> 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.

### **Thirty-minute travel time for busing**

(R.C. 3327.01)

Continuing law requires school districts to provide transportation to nonpublic and community school students in kindergarten through eighth grade who reside in the district and live more than two miles from the school they attend. Districts may also transport high school students to and from their nonpublic and community schools.<sup>62</sup> A district, however, is not required to transport students of any age to and from a nonpublic or community school if the direct travel time by school bus is more than 30 minutes.

Under current law, the 30 minutes is measured from the "collection point" (*i.e.*, where the student is picked up) to the school of attendance. The bill specifies

---

<sup>61</sup> Section 38 of Am. Sub. H.B. 405 of the 124th General Assembly.

<sup>62</sup> *These are the same requirements that apply to the transportation of students to and from schools operated by the districts. Also, districts must provide transportation for all students who "are so crippled that they are unable to walk to and from the school. . .which they attend." When transportation by the district is impractical, the district may offer payment to a student's parent or guardian in lieu of providing the transportation.*



instead that the time must be measured from the district school the student would otherwise attend if not enrolled in the nonpublic or community school.

**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 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."<sup>63</sup> 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.<sup>64</sup> 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

---

<sup>63</sup> What is meant by the "entire cost of adoption" is unclear.

<sup>64</sup> R.C. 3319.04, not in the bill.

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)).

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.<sup>65</sup> 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.<sup>66</sup>

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.

---

<sup>65</sup> *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)).*

<sup>66</sup> *The procedures for a termination hearing are included in R.C. 3319.16, not in the bill.*

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.<sup>67</sup> Which section of law controls the issue is not addressed by the bill.

### **Administration of practice versions of the OGT to ninth graders**

(R.C. 3301.0710 and 3301.0711; Section 40.03)

#### **Background on OGT**

Under continuing law, the Class of 2007 is the first class of students required to pass the Ohio Graduation Tests (OGT) to be eligible for a high school diploma. The OGT are achievement tests given in the subject areas of reading, writing, math, science, and social studies. Students will take the five OGT for the first time in the spring of 2005 when they are in the tenth grade. They generally must attain at least the score designated by the State Board of Education on each test to qualify for a diploma.<sup>68</sup> Students who do not achieve the required scores on one or more tests in the tenth grade have multiple opportunities to retake those tests in the eleventh and twelfth grades.

#### **Practice versions of the OGT**

Under the bill, in the 2003-2004 school year, when the Class of 2007 is in the ninth grade, each "academic watch" and "academic emergency" school district must give a half-length practice version of each OGT to all ninth grade students in

---

<sup>67</sup> R.C. 3319.05, not in the bill.

<sup>68</sup> To receive a diploma from a public school (including a community school) or chartered nonpublic school, a student must (1) successfully complete the curriculum required by the student's high school or the individualized education program (IEP) developed for the student and (2) pass all five OGT (R.C. 3313.61, 3313.611, 3313.612, 3314.03(A)(11)(f), and 3325.08 (none in the bill); see also R.C. 3313.614, not in the bill).

Alternative graduation testing requirements exist for students who must take the OGT to graduate from high school, but who fail one of the tests by ten points or less. (R.C. 3313.615, not in the bill.)

the district.<sup>69</sup> Beginning in the 2004-2005 school year, *full-length* practice tests must be given annually to ninth grade students in those districts. This one-year delay in administering full-length versions of the OGT is necessary to allow time for the development of the tests. Although all practice tests must be given in September, districts may choose the specific days, times, and method of administration. Each district must also score the practice tests.

### **Intervention services**

"Academic emergency" districts must require their high schools to provide intervention services to students who perform poorly on the practice tests to the extent that the districts receive state funding appropriated for the services. The requirement to provide intervention services does not apply to "academic watch" districts, but such districts could offer remediation at their discretion using other funds. If an academic emergency district does not receive sufficient state funds to provide intervention services in all of its high schools, it must determine which high schools will receive all or part of the available funds and, consequently, must offer intervention services. Priority in allocating the state funds must be based on each school's graduation rate and scores on the practice tests. If reading and math achievement tests for the eighth grade are adopted by the State Board, districts must also consider the scores attained by ninth graders on those tests in the eighth grade when deciding how to distribute money for intervention services.<sup>70</sup> The bill does not prohibit academic emergency districts from supplementing their state funds for intervention services with funds from other sources to increase the number of high schools that participate in the intervention program.

High schools selected to provide intervention services must offer them to each student whose practice test results indicate that the student is making unsatisfactory progress toward being able to pass the OGT.<sup>71</sup> The intervention

---

<sup>69</sup> An "academic watch" school district is one that meets six to eight of 17 performance indicators adopted by the State Board or an equivalent number of indicators if the State Board adopts more than 17 total indicators. An "academic emergency" district meets five or less of the performance indicators, or the equivalent. (R.C. 3302.03.)

<sup>70</sup> Current Ohio law does not require reading and math achievement tests in the eighth grade. However, under the federal "No Child Left Behind Act of 2001," states must begin administering annual reading and math assessments in grades three through eight by the 2005-2006 school year (20 U.S.C. 6311(b)(3)(C)(vii)). Am. Sub. H.B. 3 of the 125th General Assembly, which was passed by the House on May 21, 2003, adds reading and math achievement tests in each of those grades in which such tests are not already required under current state law.

<sup>71</sup> Special education students are exempted from receiving these intervention services under the bill because their IEPs dictate their course of instruction.

services must be provided in each skill in which the student scored poorly and must be commensurate with the student's test performance. Schools can offer the intervention services at any one, or a combination, of the following times: (1) during the ninth grade year, (2) in the summer after ninth grade, or (3) during the tenth grade year.

**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.<sup>72</sup> 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 carry out 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.<sup>73</sup>

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.<sup>74</sup>

---

<sup>72</sup> 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.

<sup>73</sup> R.C. 3311.05 and 3311.054, neither section in the bill.

<sup>74</sup> 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.")



### Local school district option to change ESC membership

(R.C. 3311.059; conforming changes in R.C. 3311.05 and 3319.19(B) and (D)(3))

Current law authorizes the transfer of a local school district from the territory of its present ESC to the territory of an adjoining ESC, either by proposal of the governing board of the ESC wishing to transfer the territory or of the voters certified in a petition. In some circumstances the action by the ESC governing board to accept the transfer is subject to a referendum election. The transferred school district becomes part of another local school district that is located in the territory of the adjoining ESC. The transferred district loses its identity as a separate district.<sup>75</sup>

The bill provides an alternative method for a local school district to change its ESC membership under which the district may retain its identity as a separate local school district. Under the bill, a local school district board of education, by a resolution approved by a majority of all its members, may propose to sever the district from the territory of the ESC in which the district is currently included and to instead annex the district to the territory of another ESC that is adjacent to the district's current ESC. The resolution must be filed with the governing board of each ESC affected by the proposal and with the Superintendent of Public Instruction. The resolution may not be effective unless it is approved by *both* the governing board of the ESC to which the board of education proposes to annex the district and the State Board of Education. In addition, the proposal may be subject to a referendum election of the voters of the local school district if a petition asking for such an election is filed with the applicable board of elections within 60 days after the resolution proposing the change is adopted by the local school district board. The petition must be signed by a number of district's voters equal to 20% of the number of those who voted for the office of Governor in the most recent general election.<sup>76</sup> The change may not be effective until one year after the first day of July that next succeeds the later of (1) the date that the governing

---

<sup>75</sup> R.C. 3311.231, not in the bill. Presumably, a new school district made up of the territory of the old transferred district could be created under a separate statutory mechanism that requires approval of the State Board of Education, but for a while at least the old transferred district must become part of another local school district.

<sup>76</sup> Under the bill, the petition must be filed with the board of elections of the county in which the local school district is located. If the district is located in more than one county, the petition must be filed with the board of elections in which the majority of the district's territory is located. The referendum election must be held on the date of the next general or primary election that is at least 75 days after the board of elections certifies the validity and sufficiency of the signatures on the petition.



board of the ESC to which the local school district is proposed to be annexed approves the resolution or (2) the date the board of elections certifies the results of the referendum election if one is held. Upon the effective date of the change of membership, the bill requires the governing board of each ESC affected to take steps for the election of members and organization of the governing board.

**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. 3313.843 and 3317.11; Section 40.25)

**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.)<sup>77</sup> 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.

**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.

**State payments for pupils of contracting city and exempted village school districts** (Section 40.25(B)). In calculating their state per pupil payments, current law allows ESCs to receive payment not only for the pupils of their constituent local school districts, but also for the pupils of the city and exempted village school districts that have contracted to receive services from the ESCs. But since FY 2000, budget legislation has stipulated that ESCs may receive state per pupil funding for the students of city and exempted village districts only if the contract was entered into prior to January 1, 1997. The bill continues this stipulation for FY 2004 and FY 2005. An exception to that requirement is made, as in prior biennia, for a local district that converts to a city district if the contract with the ESC is entered into within one year of the conversion.

**Payment for students of ESC-sponsored community schools** (Section 40.25(C)). The bill allows an ESC that sponsors a community school to receive a state per-pupil payment in FY 2004 and FY 2005 for students of that community school. The payment is to equal the per pupil amount paid to ESCs for students in the school districts they serve. However, the payment can be made only if there first is sufficient funding to fully pay all ESCs for the students in the school districts they serve (see "**Contingency in the event of insufficient appropriation,**" below). Moreover, no ESC may receive payment for any student enrolled in an Internet- or computer-based community school ("e-school").

The bill states that the General Assembly's intent is to provide an incentive for ESCs to take over sponsorship of community schools from the State Board of

---

<sup>77</sup> 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.

Education. The State Board's authority to sponsor community schools is being phased out over the next two years under Sub. H.B. 364 of the 124th General Assembly.

**Contingency in the event of insufficient appropriation** (Section 40.25(D)).

In past biennia, the General Assembly has prescribed directions for the Department of Education to prioritize state payments to ESCs if the amount appropriated for the payments turns out to be insufficient. The bill continues this custom for FY 2004 and FY 2005, directing the Department to distribute state per pupil funding to ESCs in the following order of priority:

(1) First, the Department must pay each ESC \$37 (\$40.52 if the ESC consists of three or more former ESCs that merged) for each pupil enrolled in the ESC's constituent local school districts.

(2) Second, the Department must distribute remaining funds among the ESCs for students in the city and exempted village school districts that contracted with them before January 1, 1997.

(3) Third, and only if the Department was able to distribute the full per pupil amount to all ESCs for the students enrolled in the school districts they serve, the Department may pay ESCs for the students enrolled in community schools that they sponsor (except for Internet- or computer-based schools).

**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.<sup>78</sup> 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.<sup>79</sup>

**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,

---

<sup>78</sup> R.C. 3319.19(C).

<sup>79</sup> R.C. 3319.19(D)(1). *The bill corrects a technical error made in the original enactment.*

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.

**Transfer of authority to propose new local school districts**

(R.C. 3311.26)

Current law establishes procedures whereby the governing board of an educational service center (ESC) may propose the creation of a new local school district from all or part of one or more existing local school districts. Except for requests made to an ESC prior to the effective date of this section, as discussed below, the bill eliminates the authority of ESCs to propose the creation of new local school districts and transfers that authority to the State Board of Education.<sup>80</sup> However, the general process for creating a new local school district remains substantially the same under the bill as in current law.

Thus, under the bill, the State Board must adopt a resolution by a majority vote of its members proposing the creation of a new local school district. A copy of the proposal, including a map of the affected territory, must be filed with each school district that would be altered by the proposal. At the State Board's next regular meeting that occurs not earlier than 30 days after the adoption of the resolution, the State Board must adopt another resolution making the creation of the new district effective before the start of the next school year. If, prior to the end of the 30-day period, however, at least 35% of qualified voters residing within the territory of the proposed district and voting in the last general election file a petition of referendum against the new district with the Superintendent of Public Instruction, the State Board must arrange for the board of elections to place the proposal on the ballot at the next general or primary election, or at a special election if necessary, occurring at least 75 days later. If the proposal is approved by a majority of the voters voting on it, then the State Board must create the new district before the next school year starts.

Once a new local school district is created, the State Board must appoint a board of education for the district until members are duly elected. It also must equitably divide the existing funds of any district losing some of its territory to the new district between the remaining part of that district and the new local school

---

<sup>80</sup> *Continuing law permits the State Board to propose the consolidation of contiguous local school districts, or parts of such districts, after conducting a study of possible improvements in district organization and the desires of affected residents. However, the newly created district need not be a local school district. (See R.C. 3311.37, not in the bill.) The bill does not affect the authority of an ESC to propose the transfer of all or part of a local school district to an adjoining city or exempted village school district (see R.C. 3311.231, not in the bill).*



district. An accurate map of the new district's boundaries must be filed by the State Board with the county auditor of each county affected by the creation of the new district. Finally, if the new district consists of territory in two or more counties, the State Board must determine to which ESC the new local school district is assigned.

The bill does provide a window of time during which a local school district board of education or a group of citizens may request the applicable ESC, instead of the State Board of Education, to propose the creation of a new local school district. A local school district or a group of citizens may make a proposal to the ESC before the amended section is effective (within 90 days of the effective date of the bill). If such a request is made, the ESC has one year from the date of request to adopt a resolution proposing a new local school district in the same manner as it could before the bill transferred this authority from the ESC to the State Board of Education.

**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.

**Ratio of speech-language pathologists to students with disabilities**

(R.C. 3317.15)

Continuing law requires each school district to employ one speech-language pathologist per 2,000 students enrolled in the district. A rule adopted by the State Board of Education further specifies that a speech-language pathologist cannot serve more than 80 students with disabilities.<sup>81</sup> The bill overrides the administrative rule by further limiting the number of disabled students a speech-language pathologist may serve. Under the bill, each full-time speech-language pathologist can provide services to a maximum of 55 students with disabilities at any one time. Districts with a large number of such students would presumably need to hire additional pathologists to meet the lower ratio.

---

<sup>81</sup> O.A.C. 3301-51-09.



### *Certified software packages for reporting EMIS data*

(R.C. 3301.0714 and 3314.17; Section 40.06)

Under continuing law, the Department of Education maintains the Education Management Information System (EMIS), which serves as a database of information on school districts and schools. The data compiled by EMIS includes information on student academic performance, personnel, classroom enrollment, discipline, and fiscal expenditures. All school districts and community schools are required to report data electronically to EMIS. Some districts rely on data acquisition sites around Ohio, which offer centralized computer services for their member districts, to report the necessary data to EMIS.

Current law permits the Department, after consultation with the Ohio Education Computer Network, to provide uniform computer software to districts free of charge for use in reporting data to EMIS. Districts, however, are not required to use the Department's software if they are already reporting EMIS data on time and in a format compatible with the Department's computer system. These provisions are removed by the bill.

Under the bill, school districts, community schools, and data acquisition sites cannot acquire, change, or update their student software packages used for EMIS reporting unless the new packages are certified by the Department. Districts and community schools must convert to a software package that meets the Department's certification criteria by July 1, 2005. If districts or community schools are not in compliance by that date, the Department must work with them to obtain appropriate software or other necessary services. This change effectively allows districts and community schools to continue using their current software packages until July 1, 2005, at which time they must ensure that those packages are approved by the Department or they must convert to new ones that are properly certified.

For the purpose of the certification process, the Department must develop a common set of definitions, business practices, and formatting standards for data reported to EMIS. An advisory group comprised of districts, community schools, and other education-related entities must meet with the Department on an annual basis to review the data standards and the certification process and criteria. The advisory group can make recommendations for improvement to ensure that Ohio's system reflects best practices, meets the needs of its users, and is aligned with federal initiatives. Surveys of the software industry and education departments in other states must be used in formulating recommendations.

**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.<sup>82</sup> The bill eliminates this latter provision.

**School district certificate of available resources**

(R.C. 5705.412)

School districts are generally required to attach a certificate of available resources to every contract for an expenditure that exceeds the lesser of \$500,000 or 1% of the total revenue for the current fiscal year that will be credited to the district's general revenue fund. The certificate must indicate that the district has or will have adequate revenue in approved tax levies, state funding, and other resources to cover the amount of the contract for the entire term of the contract. The certificate must be signed by the district treasurer, the president of the district board of education, and the district superintendent.<sup>83</sup> A contract that lacks the required certificate of available resources is void, and the law provides for a civil action to recover the funds illegally spent and to levy a fine against any district officer who in absence of good faith violated the requirement.

Current law does not require the attachment of a certificate of available resources "for current payrolls of, or contracts of employment with, regular employees or officers" of a school district. The bill specifies that this exception

---

<sup>82</sup> *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.*

<sup>83</sup> *If the district has been declared to be in a state of fiscal emergency under R.C. Chapter 3316., a designated member of the district's financial planning and supervision commission is to sign the certificate in lieu of the other district officers.*

applies to current payrolls of or employment contracts with "any" employees or officers of the school district.

**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 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**

(Section 40.37)

By January 31, 2004, the Department of Education must recommend a plan to the General Assembly for the establishment of an Ohio Regional Education Delivery System (OREDS) to provide services and technical assistance to school districts and chartered nonpublic schools.<sup>84</sup> The Department's plan must address how OREDS would take over the services currently provided by various regional entities, including educational service centers (ESCs), regional professional development centers, special education regional resource centers, area media centers, school improvement facilitators, Ohio SchoolNet regional service providers, data acquisition sites, and educational technology centers. Regional service centers recommended as part of the system must be distributed geographically throughout the state.

The Department must also recommend an accountability system for OREDS that includes minimum standards for operation and the provision of

---

<sup>84</sup> *Although assistance to chartered nonpublic schools in meeting their obligations under Ohio law must be part of the Department's plan, the system need not offer additional services to such schools beyond those provided to school districts.*

services. The accountability system must include 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.

All recommendations regarding OREDS must be developed by the Department in consultation with stakeholders. However, if the Department and stakeholders are unable to reach an agreement on plans for OREDS by January 31, 2004, the Department must proceed to develop the plans entirely on its own. In that case, the Department must make its recommendations to the General Assembly by February 15, 2004.

### **Membership of Ohio SchoolNet Commission**

(R.C. 3301.80)

The Ohio SchoolNet Commission provides financial and technical assistance to school districts and other educational entities in the acquisition and use of educational technology. Currently, the Commission consists of seven voting members: the Superintendent of Public Instruction, Director of Budget and Management, Director of Administrative Services, Chairperson of the Public Utilities Commission, and Director of the Ohio Educational Telecommunications Network Commission, or their respective designees; one public member appointed by the Speaker of the House; and one public member appointed by the President of the Senate. It also consists of four nonvoting legislative members, one each from the majority and minority parties in the House and Senate.

The bill adds two voting members to the Commission, bringing the voting membership to nine and the total membership to 13. The two additional members are appointed by the Governor. As with voting members appointed by the Speaker of the House and the President of the Senate, the Governor's appointees serve two-year terms but may be removed at any time. They are also eligible for reappointment and reimbursement for official expenses.

### **Disaggregation of performance data by vocational education students**

(R.C. 3302.03(D))

Continuing law requires student performance data on the state school district and school building report cards to be disaggregated according to several categories. Current categories include (1) gender, (2) racial and ethnic groups, (3) economically disadvantaged status, (4) age, (5) mobility, (6) enrollment in a conversion community school, and (7) participation in a vocational education

program. The bill eliminates the requirement that the performance data of vocational education students be disaggregated on the report cards.

**Participation in National Assessment of Educational Progress (NAEP)**

(Section 40.28)

The National Assessment of Educational Progress (NAEP) is a set of tests administered to a nationally representative sample of students in various subject areas such as reading, math, science, and history. Results are used to determine long-term trends in student performance.<sup>85</sup> Continuing law grants the Department of Education authority to require school districts to participate in NAEP as a means of conducting research on factors that improve district performance. The bill states the General Assembly's intent that the Superintendent of Public Instruction provide for districts to take part in NAEP for this purpose. Any school district or school chosen by the Superintendent to participate in NAEP must do so.

**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."<sup>86</sup> Moreover, the bill specifies that a

---

<sup>85</sup> Also, under the "No Child Left Behind Act of 2001," states must participate in biennial administrations of NAEP in reading and math in the fourth and eighth grades as a gauge of the validity of the results from their own state assessments (20 U.S.C. 6311(c)(2)).

<sup>86</sup> 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

scholarship may not be awarded to the parent of a child who attends a public special education program under a contract, compact, or other bilateral agreement between the student's resident school district and another district or other public provider. Nor may a scholarship be awarded to the parent of a child who attends a community school (charter school).

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 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 January 1, 2004, 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.

Finally, the bill requires the Legislative Office of Education Oversight (LOEO) to conduct a "formative evaluation" of the program and to report its findings to the General Assembly by March 1, 2005. In conducting this study, LOEO is required to the extent possible to gather comments from parents who have been awarded scholarships under the program, school district officials, and representatives of registered private providers, educators, and representatives of educational organizations.<sup>87</sup>

---

*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.)*

*87 In a separate provision, the bill permits the Legislative Committee of Education Oversight to modify the scope and due date of a study required of LOEO to accommodate the availability of data and resources (R.C. 3301.68). The bill specifically makes the report on the Pilot Project Special Education Scholarship Program not subject to that provision.*





## Eye exams for disabled students

(Section 40.39)

Under the bill, in the 2004-2005 and 2005-2006 school years, school districts must require each student who is identified for the first time as having a disability to undergo a comprehensive eye exam prior to receiving any special education services under the individualized education program (IEP) prepared for the student.<sup>88</sup> This requirement would not apply to students who have already begun receiving special education services before July 1, 2004. The eye exam must be performed by a licensed optometrist or by a licensed physician who is "comprehensively trained and educated in the treatment of the human eye, eye disease, or comprehensive vision services," as defined by the Director of Health.<sup>89</sup>

The bill specifies that neither the state nor the school district is responsible for covering the cost of an eye exam. Presumably, a student's parent must pay for the exam or otherwise arrange for it.<sup>90</sup> District superintendents, in determining whether a student has met the eye exam requirement, may take into account any special circumstances of the student or the student's family that could prevent the student from having the exam before starting special education services.<sup>91</sup>

---

<sup>88</sup> *An IEP outlines the services to be provided to a student with disabilities, the extent to which the student is to be educated in a traditional classroom setting, educational objectives, and evaluation procedures for determining if instructional goals are being achieved (see R.C. 3323.01, not in the bill).*

<sup>89</sup> *The Director of Health also must adopt other rules to implement the eye exam provision, in accordance with the Administrative Procedure Act (R.C. Chapter 119.).*

<sup>90</sup> *Some districts must conduct a "Healthcheck" program at the request of the Department of Job and Family Services for their students who are Medicaid recipients. Other districts may voluntarily run such a program. Each Healthcheck program provides a thorough medical examination, including a vision assessment, by a physician or nurse. If a student is found to need a service deemed medically necessary and the student is eligible for Medicaid, that service is covered by Medicaid. (See R.C. 3313.714 and R.C. 5111.016, neither section in the bill.)*

<sup>91</sup> *The federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et seq.) requires states to provide a free appropriate public education to all students with disabilities. State eligibility for federal funds for special education are contingent on compliance with this basic requirement of IDEA. It is possible that basing a student's access to special education services on undergoing and paying for a comprehensive eye exam, as under the bill, may be construed to violate a disabled student's right to a free appropriate public education under IDEA.*



## *Sharing of results of educator licensure examinations with the Board of Regents*

(R.C. 3319.22(A)(2))

Under continuing law, the State Board of Education establishes the standards and eligibility requirements for various types of educator licenses. Current State Board rules specify that to qualify for a provisional educator license, an applicant must pass an examination of subject matter knowledge and general skills known as the Praxis II test. All applicants for a professional teacher license must successfully complete an entry-year program and the Praxis III assessment, which involves observations of teachers' skills in the classroom.<sup>92</sup>

The bill directs the Department of Education to provide the results of any examinations required by the State Board for licensure to the Ohio Board of Regents. Presumably, this provision would apply to results of both the Praxis II and Praxis III assessments. All results must be provided to the Board of Regents in the form and manner it requests.

---

### **BOARD OF EMBALMERS AND FUNERAL DIRECTORS**

- Increases licensing, registration, and filing 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 a manager or actually in charge of and ultimately responsible for a 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.

---

<sup>92</sup> See O.A.C. 3301-24-05 for the requirements for educator licenses.

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
Issuance of an embalmer or funeral director registration	\$25	\$100
Filing an embalmer or funeral director certificate of apprenticeship	\$10	\$50
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 a manager or actually in charge of and ultimately responsible for a 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 8% to 11%, for public water systems that are not community water systems and serve nontransient populations by 9% to 14%, and for public water systems that are not community water systems and serve transient populations by 14%.
- Replaces the classification of systems supplied by surface water, springs, or dug wells with systems designated as using a surface water source, but retains the license fee of \$792 as in current law for public water systems that are in that classification and that are not community water systems and serve transient populations; and requires public water systems designated as using a surface water source to pay a license fee that is the greater of \$792 or the amount calculated using the fee schedules for either public water systems that are community water systems or public water systems that are not community water systems and serve nontransient populations.
- 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, (2) increases the lower fees by 560% to 1,300%, (3) renames the inorganic chemical category and the chemical/radiological category as trace metals, and (4) generally aligns the categories within the two schedules for evaluation so that the categories are the same regardless of whether an evaluation occurs before or after July 1, 2006, and establish new fees as necessary to complete the schedules.

- 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: (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 \$35 and the lower fee at \$25, (3) increases the higher examination fees for certification in the existing categories of operator certification by 24% to 33% 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, (5) requires a person who requests a replacement certificate to pay a \$25 fee at the time the request is made, and (6) revises the timeframes for applying the fees for both the applications and the examinations for certification.
- Extends for two years the levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Law.
- Generally enables an applicant to submit an electronic application for a registration certificate, permit, variance, or plan approval under the Solid, Infectious, and Hazardous Waste Law, Safe Drinking Water Law, or Water Pollution Control Law, requires the payment of the applicable application fee as expeditiously as possible after such submission, and prohibits the review or processing of a registration certificate, permit, variance, or plan approval until the required fee is paid.



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

**Use of investment earnings of Clean Ohio Revitalization Fund**

(R.C. 122.658)

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

**Use of investment earnings of Clean Ohio Operating Fund**

(R.C. 3745.40)

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

### **Elimination of Hazardous Waste Facility Board**

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

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

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

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

Current law requires the Board to hold a public hearing after receiving a completed application and to hold an adjudication hearing at which it must hear and decide all disputed issues respecting the approval or disapproval of the application. The bill requires a permit applicant, prior to submitting a complete application to the Director, to hold at least one meeting in the township or municipal corporation in which the facility is proposed to be located, whichever is

geographically closer to the proposed location. The meeting must be open to the public and be held to inform the community of the proposed hazardous waste management activities and to solicit questions from the community concerning the activities.

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

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

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

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

make the same finding and determination, the bill removes the option for the applicant to show that procedures will be in effect to remove the waste before flood waters can reach it.

**Hazardous Waste Clean-up Fund**

(R.C. 3734.28)

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

**Continuation of and increase in solid waste disposal fee**

(R.C. 3734.57)

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

**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:

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

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

<b>Generating capacity (mega watts)</b>	<b>Fee under the bill for permit to install issued on or after 7/1/03</b>
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:

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

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

<b>Process weight rate (pounds per hour)</b>	<b>Fee under current law for permit to install issued on or after 1/1/94</b>	<b>Fee under the bill for permit to install issued on or after 7/1/03</b>
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:

<b>Process weight rate (pounds per hour)</b>	<b>Fee under current law for permit to install issued on or after 1/1/94</b>	<b>Fee under the bill for permit to install issued on or after 7/1/03</b>
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:

<b>Gallons (max. useful capacity) under current law</b>	<b>Gallons (max. useful capacity) under the bill</b>	<b>Fee under current law for permit to install issued on or after 1/1/94</b>	<b>Fee under the bill for permit to install issued on or after 7/1/03</b>
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:

<b>Total tons per year of regulated pollutants emitted under current law</b>	<b>Annual emissions fee per facility beginning 1/1/94 under current law</b>	<b>Total tons per year of regulated pollutants emitted under the bill</b>	<b>Annual emissions fee per facility beginning 1/1/04 under the bill</b>
		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:

<b>Number of Service Connections</b>	<b>Current Fee</b>	<b>Fee Under the Bill</b>	<b>Current Average Cost per Connection</b>	<b>Average Cost per Connection Under the Bill</b>
Not more than 49	\$56	\$112		
50 to 99	\$88	\$176		
100 to 2,499			\$.96	\$1.92
2,500 to 4,999			\$.92	\$1.48
5,000 to 7,499			\$.88	\$1.42
7,500 to 9,999			\$.84	\$1.34
10,000 to 14,999			\$.80	\$1.16
15,000 to 24,999			\$.76	\$1.10
25,000 to 49,999			\$.72	\$1.04
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:

<b>Population Served</b>	<b>Current Fee</b>	<b>Fee Under the Bill</b>
Fewer than 150	\$56	\$112
150 to 299	\$88	\$176
300 to 749	\$192	\$384
750 to 1,499	\$392	\$628
1,500 to 2,999	\$792	\$1,268
3,000 to 7,499	\$1,760	\$2,816
7,500 to 14,999	\$3,800	\$5,510
15,000 to 22,499	\$6,240	\$9,048
22,500 to 29,999	\$8,576	\$12,430
30,000 or more	\$11,600	\$16,820

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:

<b>Number of Wells Supplying System</b>	<b>Current Fee</b>	<b>Fee Under the Bill</b>
1	\$56	\$112
2	\$56	\$112
3	\$88	\$176
4	\$192	\$278
5	\$392	\$568
<b>System designated as using a surface water source (system supplied by surface water, springs, or dug wells in current law)</b>	\$792	---

The bill also requires a public water system designated as using a surface water source to pay \$792 or the amount calculated using the tables for public water systems that are community water systems or that are not community water systems and serve a transient population, whichever is greater.

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:

<b>Fee Category under Current Law</b>	<b>Fee Subcategory under the Bill</b>	<b>Current Fee</b>	<b>Fee under the Bill</b>
Microbiological		\$1,650	
	MMO-MUG		\$2,000
	MF		\$2,100
	MMO-MUG and MF		\$2,550
Organic Chemical		\$3,500	\$5,400
Inorganic Chemical	Trace Metals	\$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-methylumbelliferyl-beta-D-glucuronide, and "ONPG" to mean o-nitrophenyl-beta-D-galactopyranoside.

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

Fee Category under Current Law	Fee Category under the Bill	Current Fee	Fee under the Bill
Microbiological		\$250	\$1,650
	Organic Chemicals		\$3,500
Chemical/Radiological	Trace Metals	\$250	\$3,500
	Standard Chemistry		\$1,800
Nitrate/Turbidity	Limited Chemistry	\$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 on and after December 1, 2003, and requires that fee to be paid through November 30, 2006. In addition, the bill increases the \$10 fee to \$25 and requires that fee to be paid on and after December 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 applies the existing higher fee schedule through November 30, 2003, establishes an increased higher fee schedule from December 1, 2003 through November 30, 2006, and applies the existing lower fee schedule on and after December 1, 2006. However, it also increases the fees in the lower fee schedule and adds certification as a class A operator to the higher and lower fee schedules. The following table shows the classes of operators and the corresponding fees under the existing and proposed schedules:



<b>Class of Operator</b>	<b>Current Fee through June 30, 2004 (November 30, 2003 under the Bill)</b>	<b>Fee under Bill through November 30, 2006</b>	<b>Current Fee on and after July 1, 2004</b>	<b>Fee under the Bill on and after December 1, 2006</b>
A	-	\$35	-	\$25
I	\$45	\$60	\$25	\$45
II	\$55	\$75	\$35	\$55
III	\$65	\$85	\$45	\$65
IV	\$75	\$100	\$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:

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

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

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

(R.C. 3745.11(S))

Existing law requires any person applying for a permit other than an NPDES permit, variance, or plan approval under the Safe Drinking Water Law or

the Water Pollution Control Law to pay a nonrefundable fee of \$100 at the time the application is submitted through June 30, 2004, and a nonrefundable fee of \$15 if the application was submitted on or after July 1, 2002. The bill extends the \$100 fee through June 30, 2006, and applies the \$15 fee on and after July 1, 2006.

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

**Electronic submission of certain applications to Environmental Protection Agency**

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

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

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

(R.C. 3746.13)

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

---

## OHIO ETHICS COMMISSION

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

### Filing and late fees for financial disclosure statements

(R.C. 102.02)

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

Beginning January 1, 2004, the bill increases the amount of the filing fees that must be paid in conjunction with the filing of required financial disclosure statements with the appropriate ethics commission for all candidates and the holders of all offices. 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	Current filing fee	New filing fee
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	\$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.

---

### 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.<sup>93</sup> The Office is to serve as a clearinghouse of information on federal, state, and local funding for 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;

---

<sup>93</sup> *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.*

(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.
- Requires the Department to continue to pay insurance premiums for individuals enrolled in the Insurance Premium Payment Program until new rules are adopted as required by the bill and requires that the rules be adopted within 12 months.
- 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.
- Transfers the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board to the Department of Health.
- 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.
- Eliminates the requirement that a notice of intent be filed with the Director of Health and relevant health service agency prior to commencing high-cost and high-technology health activities that were removed from certificate of need review under laws enacted in 1995.
- 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.
- Requires the issuance of a certificate recognizing the delivery of a stillborn infant if a parent requests a certificate.
- Requires the Director of Health to develop guidelines by rule for the form of a certificate recognizing the delivery of a stillborn infant.
- Specifies that a certificate recognizing the delivery of a stillborn infant is not proof of a live birth for tax purposes.
- 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.
- Provides a definition of "home health agency" for purposes of law requiring a criminal records check of home health agency employees and other sections of law using that definition.

- Specifies that a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may supervise services provided by a home health agency if such supervision is permitted by the nurse's standard care arrangement with a physician or podiatrist.
- Increases licensing fees for agricultural labor camps.
- Eliminates the requirement that at least one Department of Health permanent staff member assigned to inspect agricultural labor camps speaks English and Spanish fluently and eliminates the requirement of two post-licensing inspections of the camps during occupancy.
- Increases fees for granting and renewing licenses, certifications, and approvals for persons involved in asbestos hazard abatement.
- Increases from \$25 to \$65 the fee that an asbestos hazard abatement contractor must pay to the Department of Health for each asbestos hazard abatement project the contractor conducts.
- 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.

Under the bill, the Director of Health must continue to provide, through contracts with or grants to hemophilia treatment centers, for health insurance premiums to be paid for individuals who (1) are at least 21 years of age, (2) have been diagnosed with hemophilia or a related bleeding disorder, and (3) receive that type of assistance from the existing hemophilia program that the bill abolishes. The assistance is to continue until the effective date of initial rules adopted to govern the new hemophilia program that the bill requires the Department to establish and mandates that those rules be adopted within 12 months. The bill permits money in the Medically Handicapped Children Audit Fund 477 (appropriation item 440-627) to be used for residents who are over the age of 21 and suffering from hemophilia.

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's duties are to include the monitoring of care and treatment of children and adults who suffer from hemophilia or from other similar blood disorders. 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.<sup>94</sup> 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.

**Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board**

(R.C. 3701.02, 4755.03, and 4755.031)

Under current law the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board operates independently. The bill transfers the Board to the Department of Health, and requires the Director of Health adopt any rules required to be adopted by any section of the Board on behalf of that section. The Director, when the Director considers it appropriate, must consult with or accept comments from any section of the Board when adopting rules for that section of the Board.

**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,

---

<sup>94</sup> *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.*

including the duties of the Chief, are repealed and no new ones are created for the Women's Health Program.

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

- (1) Assist the Director of Health in the coordination of women's and infant's health programs;
- (2) Advocate for women's health by requesting that the Department fund research and establish programs for women's health;
- (3) Collect research and provide access to that research;
- (4) Apply for grants.

### **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.<sup>95</sup>

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.

**Notice of intent before commencing health activities**

(R.C. 3702.581, primary (repealed); 3702.529, 3702.53, 3702.532, 3702.54, 3702.543 (repealed), 3702.544, 3702.55, 3702.60, and 3702.61)

In 1995, Am. Sub. S.B. 50 of the 121st General Assembly eliminated the requirement of obtaining a certificate of need to engage in certain high-cost and high-technology health activities. Any person or government entity proposing to engage in one of these activities is required, however, to file a "notice of intent" at least 60 days before commencing the activity.<sup>96</sup> The notice must be filed with the

---

<sup>95</sup> *The counties included in this provision are Butler, Hamilton, Warren, Clermont, Clinton, Brown, Highland, and Adams counties.*

<sup>96</sup> *The following activities are subject to the notice of intent requirement: (1) the obligation by or on behalf of a health care facility of a capital expenditure associated with the provision of a health service, other than to acquire an existing health care facility, in an amount of \$2 million or more, (2) the addition of a health service with an*

Director of Health and the health service agency for the area where the project will be located. If a private entity fails to provide the notice, the Director must impose a civil money penalty in an amount equal to 10% of the gross revenue of the health activity for the period beginning with initial operation of the activity and ending with the Director's discovery of the violation.

The bill eliminates the requirement that a notice of intent to engage in the affected activities be filed, as well as the penalty for failing to provide the notice. The bill retains references to the eliminated requirement and penalty where necessary for clarity and to provide for settlement of pending cases.

### **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;

---

*average annual operating cost of \$750,000 or more for the first three full years of operation that was not offered by or on behalf of a health care facility within the preceding 12 months, (3) the addition of a megavoltage radiation therapy service operated by or on behalf of a health care facility, (4) the addition of an extracorporeal shockwave lithotripsy service, (5) the acquisition of medical equipment with a cost of \$1 million or more, (6) the establishment, development, or construction of a new health care facility or change from one category of health care facility to another, other than a situation that remains subject to CON review, (7) a change in bed capacity of a health care facility other than a change in long-term care, perinatal, or pediatric intensive care bed capacity, and (8) the acquisition, regardless of cost, of a magnetic resonance imaging unit, a cobalt radiation therapy unit, a linear accelerator, extracorporeal shockwave lithotripsy equipment, cardiac catheterization equipment or a cardiac catheterization laboratory, or a gamma knife.*



(3) An increase of hospital beds registered as long-term care beds or skilled nursing facility beds or recategorization of hospital beds that would result in an increase of beds registered as long-term care beds or skilled nursing facility beds.

The Director continues to be required to accept for review a CON application for nursing home beds in a health care facility, or skilled nursing facility beds or nursing facility beds in a county home or county nursing home, if the application concerns replacing or relocating existing beds within the same county. The Director also must accept for review an application seeking CON approval for existing beds located in an infirmary that is operated exclusively by a religious order, provides care exclusively to members of religious orders who take vows of celibacy and live by virtue of their vows within the orders as if related, and was providing care exclusively to members of the religious order on January 1, 1994.

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

### **Vital records**

#### **Fees for vital records**

(R.C. 3705.24 and 3709.09)

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

- (1) A certified copy of a vital record or certification of birth;<sup>97</sup>
- (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;

---

<sup>97</sup> 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.)

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

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

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

(7) Any other documents or services for which the public health council considers the charging of a fee appropriate.<sup>98</sup>

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.

### **Certificate recognizing delivery of a stillborn infant**

(R.C. 3705.01 and 3705.23)

Continuing law includes the vital records categories of "live birth" and "fetal death," which refer to whether a child was born alive or dead after 20 weeks

---

<sup>98</sup> *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).*

of gestation. Continuing law requires that a birth certificate be registered for each live birth and a fetal death certificate be registered for each fetal death.

The bill introduces the term "stillborn," which means an infant suffered a fetal death, and requires that the Director of Health or the State Registrar prepare a certificate recognizing the delivery of a stillborn infant on the receipt of an application signed by either parent. The bill also requires the Director to prescribe by rule guidelines for the form of the certificate and specifies minimum content of the certificate. The bill specifies that no fee may be charged for the certificate and that the certificate is not proof of a live birth for purposes of federal, state, and local taxes.

**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.<sup>99</sup> 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;
- (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.

---

<sup>99</sup> *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."*

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;<sup>100</sup>

(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 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 \$250 (from \$210).

#### **Definition of "home health agency"**

(Primary R.C. 3701.881; R.C. 1337.11 and 2133.01)

Under current law, a chief administrator of a home health agency must ask the Superintendent of the Bureau of Criminal Identification and Investigation to conduct a criminal records check with respect to each applicant for appointment or employment with a home health agency. In addition, the laws regarding durable power of attorney for health care and do-not-resuscitate orders also use the term,

---

<sup>100</sup> *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.*

"home health agency." However, "home health agency" is not defined in the Revised Code because the definition was repealed by Sub. H.B. 94 of the 124th General Assembly.

The bill defines a "home health agency" as a private or government entity that has the primary function of providing the following services to a patient at a place of residence used as the patient's home: (1) skilled nursing care, (2) physical therapy, (3) speech-language pathology, (4) occupational therapy, (5) medical social services, and (6) home health aide services.

### **Supervision of home health agency services**

(R.C. 4723.431)

Under current law, a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner must practice in accordance with a standard care arrangement entered into with each physician or podiatrist with whom the nurse collaborates. A standard care arrangement is a written agreement that includes criteria for referral of a patient by these kinds of nurses and processes and procedures the nurses must follow in working with physicians and podiatrists and providing patient services.<sup>101</sup>

The bill specifies that a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may supervise services provided by a home health agency if such supervision is permitted by the nurse's standard care arrangement.

### **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).

---

<sup>101</sup> R.C. 4723.431.

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

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

**Camp inspections**

(R.C. 3733.45)

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

**Fee increases for persons involved in asbestos hazard abatement**

(R.C. 3710.05)

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

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

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



**Asbestos Hazard Abatement Project Fee**

(R.C. 3710.07)

Under current law, an asbestos hazard abatement contractor must pay a fee of \$25 to the Department of Health for each asbestos hazard abatement project the contractor conducts. The bill increases this fee to \$65.

**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.

<b>Inspection or registration fee</b>	<b>Current fee</b>	<b>New fee</b>
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).

**General Assembly concurrent resolution of approval**

(R.C. 3701.342)

Existing law requires the Public Health Council, after it consults with the Public Health Standards Task Force, to adopt rules establishing (1) minimum standards for boards of health and local health departments that satisfy certain criteria as well as (2) optimum achievable standards for those boards and departments. The Public Health Council also must adopt rules establishing a formula for distribution of state health district subsidy funds (a) only to boards of health and local health departments that meet the minimum standards and (b) at higher funding levels to those boards and "districts" that meet the optimum achievable standards. None of these rules can take effect unless the General Assembly approves of them in a concurrent resolution. The bill eliminates the requirement for a General Assembly concurrent resolution before these rules may become effective.

---

**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.

- Specifies that a private college or university receiving financing is not prohibited from requesting of its applicants that they demonstrate beliefs or principles consistent with the mission of the college or university.

### **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 college or university is required to admit students without discrimination by reason of race, creed, color, or national origin to be eligible for commission financing, the bill specifies that the college or university is not prohibited from requesting that its applicants for admission demonstrate beliefs or principles consistent with the college or university's mission.

---

## **OHIO HISTORICAL SOCIETY**

- Requires the Ohio Historical Society to charge Ohio public libraries a reasonable price, not to exceed 110% more than 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 110% more than the total cost of preparation and delivery, for specified materials on Ohio history rather than providing those materials at cost or near cost of preparation.
- Authorizes the Archives Administration in the Society to establish a fee schedule, which may include the cost of labor, for specified activities related to providing copies of public records, and requires revisions of the

fee schedule to be subject to the approval of the board of trustees of the Society.

**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 110% more than 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 110% more than the total cost of preparation and delivery, for the materials on Ohio history.

**Charges for specified activities performed by the Archives Administration**

(R.C. 149.31)

Under current law, the Society functions as the Archives Administration for the state and its political subdivisions and, as such, must preserve government archives, documents, and records of historical value that may come into its possession from public or private sources. The bill authorizes the Archives Administration, notwithstanding any other provision of state law to the contrary, to establish a fee schedule, which may include the cost of labor, for researching, retrieving, copying, and mailing copies of public records in the state archives. Revisions to the fee schedule are subject to approval by the board of trustees of the Society.

---

## INSPECTOR GENERAL

- Authorizes the Inspector General to enter into agreements with state agencies for reimbursement of investigation costs and to accept from private parties reimbursement of costs of investigations resulting in judicial or administrative proceedings against the parties, and creates in the state treasury the Inspector General Reimbursement Fund as the repository of the reimbursement of those investigation costs.
- Modifies the definition of "state agency" for purposes of the Inspector General Law to include the Ohio Retirement Study Council, Public Employees Retirement System, State Teachers Retirement System, School Employees Retirement System, Ohio Police and Fire Pension Fund, State Highway Patrol Retirement System, and Ohio Historical Society.

### Office of the Inspector General

#### Existing law

Existing law requires the Inspector General, among other duties, to: (1) investigate the management and operation of state agencies on the Inspector General's own initiative in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees and (2) receive complaints from any person alleging wrongful acts and omissions, determine whether the information contained in those complaints allege facts that give reasonable cause to investigate, and, if so, investigate to determine if there is reasonable cause to believe that the alleged wrongful act or omission has been committed or is being committed by a state officer or state employee. Each state agency, and every state officer and state employee, must cooperate with, and provide assistance to, the Inspector General and any Deputy Inspector General in the performance of any investigation. (R.C. 121.42(A) and (B) and 121.45--not in the bill.)

For purposes of the existing Inspector General Law, "state agency" is defined generally as every organized body, office, or agency established by the laws of the state for the exercise of any function of state government. "State agency" does *not* include the General Assembly, any court, or the Secretary of

State, Auditor of State, Treasurer of State, or Attorney General and their respective offices. (R.C. 121.41 and R.C. 1.60--not in the bill.)

The Attorney General rendered two opinions regarding the investigative authority of the Inspector General. In 1996 OAG No. 96-032, the Attorney General stated that the Inspector General has no jurisdiction to investigate the Public Employees Retirement System, Police and Firemen's Disability and Pension Fund, State Teachers Retirement System, School Employees Retirement System, and State Highway Patrol Retirement System, because the systems are not state agencies, as that term is defined in R.C. 121.41(D) and R.C. 1.60, for purposes of the statutes governing the powers and duties of the Inspector General. In 1997 OAG No. 97-048, the Attorney General stated that because the trustees, officers, and employees of the Ohio Historical Society are not "state officers" or "state employees," as those terms are defined in R.C. 121.41(F) and (E), respectively, R.C. 121.42(B) does not authorize the Inspector General to investigate whether those persons have committed wrongful acts or omissions. ("State employee" means any person who is an employee of a *state agency* or any person who does business with the state, and "state officer" means any person who is elected or appointed to a public office in a *state agency* (R.C. 121.41(E) and (F)).)

### **Operation of the bill**

**Reimbursement of investigation costs.** The bill authorizes the Inspector General to (1) enter into agreements with state agencies for reimbursement of the costs of investigations by the Inspector General and (2) accept from private parties reimbursement of the costs of investigations by the Inspector General that result in judicial or administrative proceedings against the parties (R.C. 121.48).

The bill creates in the state treasury the Inspector General Reimbursement Fund and requires that all amounts received by the Inspector General as reimbursement of the costs of investigation as described in the preceding paragraph be paid into the state treasury to the credit of the Fund. Moneys in the Fund must be used for the expenses of the Office of the Inspector General. (R.C. 121.482.)

**Definition of "state agency."** The bill modifies the definition of "state agency" for purposes of the Inspector General Law to specifically include any of the following: (1) Ohio Retirement Study Council, (2) Public Employees Retirement System, (3) State Teachers Retirement System, (4) School Employees Retirement System, (5) Ohio Police and Fire Pension Fund, (6) State Highway Patrol Retirement System, and (7) Ohio Historical Society (R.C. 121.41(D)(1)).

---

## DEPARTMENT OF INSURANCE

- Postpones, to 2014, scheduled changes to limitations on the use of genetic screening and testing in connection with applications for health care coverage.
- Eliminates a cap on interest charged on funds advanced to domestic insurers and health insuring corporations.

### **Current limitations on insurers' use of genetic testing to be continued**

(R.C. 3901.491 and 3901.501; Section 2 of Am. Sub. H.B. 71 of the 120th General Assembly and Section 6 of Am. Sub. S.B. 67 of the 122nd General Assembly)

Existing law, scheduled for repeal in 2004, prohibits sickness and accident insurers, self-insured government entities, and health insuring corporations, from taking any of the following actions in processing an application for health care coverage: (1) requiring the applicant to submit to genetic screening or testing, (2) taking the results of genetic screening or testing into consideration, (3) inquiring about the results of genetic screening or testing, (4) making a decision adverse to the applicant based on entries in medical records or other reports of genetic screening or testing, (5) canceling or refusing to issue or renew coverage based on the results of genetic screening or testing, and (6) limiting policy or plan benefits based on the results of genetic screening or testing. Under the bill, the current prohibitions would not be repealed until February 9, 2014, ten years later than the currently scheduled repeal date. The law defines "genetic screening or testing" as a laboratory test of a person's genes or chromosomes for abnormalities, defects, or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease, or other disorders, whether physical or mental, which test is a direct test for abnormalities, defects, or deficiencies, and not an indirect manifestation of genetic disorders.

After the repeal of the current prohibitions, health insuring corporations, sickness and accident insurers, and self-insured government entities would be prohibited from both of the following: (1) considering any information obtained from genetic screening or testing in processing an application or in determining individual's insurability, (2) inquiring, directly or indirectly, into the results of genetic screening or testing, or using the results, in whole or in part, to cancel, refuse to issue or renew, or limit benefits under, a health care policy, plan, contract, or agreement. The Superintendent of Insurance and the courts would



continue to be permitted to take action against, and impose penalties on, persons violating any of these prohibitions.

**Interest charged on money advanced to domestic insurers and HMOs**

(R.C. 3901.72)

The bill eliminates a cap that the Revised Code currently places on the amount of interest a person may charge on funds advanced to domestic insurers and HMOs. Interest is currently capped at 10% per year or the total of 400 basis points plus the rate on United States treasury notes or bonds closest in maturity to the final repayment date of the money, whichever is greater. Persons may advance funds needed by an insurer or HMO, for business, to comply with the law, or for use as a cash guarantee fund, the funds and interest to be repaid only out of the insurer's or HMO's surplus earnings.

---

**DEPARTMENT OF JOB AND FAMILY SERVICES**

**I. General**

- Authorizes the Director of the Ohio Department of Job and Family Services (ODJFS) to enter into one or more fiscal agreements, rather than requiring the Director to enter into a partnership agreement, with each board of county commissioners.
- Specifies what a fiscal agreement must do, including providing for ODJFS to award financial assistance for the family services duties included in the agreement.
- Provides that a board of county commissioners is not required to conduct a public hearing or consult with the county family services planning committee before entering into or amending a fiscal agreement.
- Establishes conditions and requirements for ODJFS awarding financial assistance for family services duties when there is no fiscal agreement in effect between the Director of ODJFS and a board of county commissioners.
- Permits the Director of ODJFS to enter into one or more operational agreements with boards of county commissioners.

- Requires ODJFS to require a county department of job and family services (CDJFS), child support enforcement agency (CSEA), or public children services agency (PCSA) to develop, submit to ODJFS for approval, and comply with a corrective action plan if ODJFS determines that the CDJFS, CSEA, or PCSA has failed to comply with a performance or other administrative standard, other than a standard required by federal law or established for an incentive.
- Eliminates the authority of a board of county commissioners to designate any private or government entity to serve as the county's workforce development agency.
- Provides that fiscal agreements are not required to (1) permit the exchange of information needed to improve services and assistance to individuals and families and the protection of children, (2) be coordinated and not conflict with certain plans and procedures, or (3) prohibit discrimination in hiring and promotion against applicants for and participants of the Ohio Works First program and the Prevention, Retention, and Contingency program.
- Provides that ODJFS may, at its sole discretion and subject to available federal funds and appropriations made by the General Assembly, reimburse county expenditures for administration of food stamps and Medicaid even though the expenditures meet or exceed the maximum allowable reimbursement if the board of county commissioners has entered into a fiscal agreement.
- Revises the law governing ODJFS taking action against a board of county commissioners, CDJFS, CSEA, or PCSA regarding family services duties, including modifying the reasons why ODJFS may take action and modifying and increasing the actions ODJFS may take.
- Revises the administrative review process available under certain circumstances to a board of county commissioners, CDJFS, CSEA, or PCSA against which ODJFS proposes to take action.
- Permits ODJFS to certify a claim to the Attorney General for the Attorney General to take action against the responsible entity to recover funds that ODJFS determines the responsible entity owes ODJFS for certain actions ODJFS takes against the responsible entity.

- Permits ODJFS to adopt rules establishing reporting requirements for family services duties.
- Requires ODJFS to maximize its receipt of federal revenue.
- Changes dates for submission of ODJFS program participation 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.
- Provides for establishment of procedures to be followed when releasing information regarding a public assistance recipient.
- Requires law enforcement agencies to provide, on request, certain information about a public assistance recipient to ODJFS or a county agency to enable ODJFS or the county agency to determine public assistance eligibility.
- Specifies that appeals of decisions involving family services programs not subject to reimbursement of attorney fees.

## **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.
- Provides that if an employer makes a filing with respect to unemployment compensation and the filing contains incorrect information, no penalty may be imposed upon the employer if the employer voluntarily identifies and corrects the incorrect information, but specifies that a penalty may be imposed with respect to any false information knowingly submitted by an employer for the purpose of avoiding unemployment compensation contributions.
- 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 director of a public children services agency to waive the requirement that a newly hired caseworker undergo 90 hours of in-service training during the first year of employment if the caseworker is a social work graduate and participated in the University Partnership Program.
- Permits 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."

- 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.
- Prohibits ODJFS from reducing the initial and continued eligibility level for publicly funded child day-care below 150% of the federal poverty line during fiscal years 2004 and 2005.
- Prohibits ODJFS from disenrolling, during the fiscal biennium, families that have incomes at or below 165% of the federal poverty line and do not otherwise cease to qualify for publicly funded child day-care if (1) the family enrolls in the program before June 9, 2003 or (2) the family's income at the time of enrollment is at or below 150% of the federal poverty line.

## **VI. Food Stamp Program**

- Requires ODJFS to implement a federally authorized exemption to the Food Stamp Program's work requirement for fiscal years 2004 and 2005.

## **VII. 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 provide 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.

### **VIII. Medicaid**

- Enacts in the Revised Code portions of a current ODJFS rule governing the treatment of certain trusts when determining Medicaid eligibility.
- 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 a pilot program to be operated as part of the Medicaid care management system in at least three counties to determine whether acute illnesses and hospitalizations among chronically ill children can be prevented or reduced through a system of "care coordination."
- Requires the pilot program to be operated for two years, unless ODJFS determines that the program is not cost-effective or the program's cost reaches \$3 million.
- 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 and excludes persons from being required to obtain health services through such organizations unless they are at least age 21.
- 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.
- Specifies that, if the Director of Job and Family Services establishes a Medicaid supplemental rebate program with a drug manufacturer under current law, drugs produced by the manufacturer for the treatment of mental illness, HIV, or AIDS must be exempt from the program and from "prior authorization or any other restriction" unless there is a generic equivalent.

- 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.
- Provides for a specified inflation adjustment under Medicaid for hospital outpatient services for each year in the 2004-2005 biennium.
- Increases the franchise permit fee on nursing home and hospital long-term care beds from \$4.30 to \$4.75 for fiscal years 2004 and to \$4.95 for fiscal year 2005.
- Eliminates requirements on how money in the Nursing Facility Stabilization Fund is to be used, other than a general requirement that the money be used to make Medicaid payments to nursing facilities.
- Requires ODJFS to increase the fiscal year 2004 Medicaid reimbursement rate for nursing facilities as follows: (1) to the maximum extent possible using \$16,489,281, (2) by 45¢ per Medicaid day using funds generated by the increase in the franchise permit fee, and (3) to the maximum extent possible using funds remaining from the franchise permit fee increase.
- Requires ODJFS to increase the fiscal year 2005 Medicaid reimbursement rate for nursing facilities as follows: (1) to the maximum extent possible using \$93,591,290, (2) by 20¢ per Medicaid day using funds generated by the increase in the franchise permit fee, and (3) to the maximum extent possible using funds remaining from the franchise permit fee increase.
- Requires ODJFS to increase the fiscal year 2004 Medicaid reimbursement rate for ICFs/MR to the maximum extent possible using \$2,516,128, except that no ICF/MR's rate for that fiscal year may exceed 102% of its June 2003 rate.
- Requires ODJFS to increase the fiscal year 2005 Medicaid reimbursement rate for ICFs/MR to the maximum extent possible using

\$11,153,895, except that no ICF/MR's rate for that period may exceed 102% of its June 2004 rate.

- Provides that a nursing facility or ICF/MR operator may enter into Medicaid provider agreements for more than one facility.
- Eliminates a requirement that ODJFS provide copies of proposed and final Medicaid rules and proposed rules to nursing facilities and ICFs/MR that participate in Medicaid.
- Establishes requirements for nursing facilities and ICFs/MR that undergo a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation in Medicaid.
- Requires a nursing facility operator participating in Medicaid to qualify all of the facility's Medicaid-certified beds in the Medicare program.
- Adds a representative of Medicaid recipients residing in nursing facilities to the Nursing Facility Reimbursement Study Council.
- Shortens to 30 days (from 60) the time certain health-care facilities are permitted to employ without the results of a criminal background check an individual to provide direct care to an older adult.
- 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.
- Requires the Director of Job and Family Services to seek federal funds to defray certain administrative costs incurred by a county MR/DD board

pursuant to its Medicaid local administrative authority if the county board has claimed the costs in accordance with rules promulgated by ODJFS.

- 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 an ODJFS-administered home and community-based waiver 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 Ohio Commission to Reform Medicaid to conduct a comprehensive review of Ohio's Medicaid program.



- Requires the Department of Job and Family Services to complete a study by October 1, 2003, of the feasibility of expanding Medicaid coverage for breast and cervical cancer treatment by including women who received screenings that were not paid for with federal funds distributed as grants to early detection programs.

#### **IX. 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.

#### **X. Disability Financial and Medical Assistance**

- Replaces the current Disability Assistance Program with separate programs for financial assistance (Disability Financial Assistance) and medical assistance (Disability Medical Assistance).
- Limits eligibility for Disability Financial Assistance to persons who are either (1) unable to do any substantial or gainful activity due to physical or mental impairment lasting at least nine months or (2) age 60 or older on the day before the bill's effective date and applied before that deadline.
- Limits eligibility for Disability Medical Assistance to persons who are "medication dependent," but permits medical assistance to continue for persons receiving it under the current program until their eligibility has been redetermined.
- Authorizes the adoption of rules for either program that establish maximum benefits, time-limits for receiving assistance, limits on the total number of persons to receive assistance, procedures for suspending

acceptance of new applications, and other revisions for limiting program costs.

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

## I. General

### *Agreements between Director of ODJFS and boards of county commissioners*

(R.C. 307.98, 307.981, 329.06, 5101.21, 5101.211 (renumbered 5101.214), 5101.211 (new), 5101.212 (new), 5101.213 (new), and 5101.97; ancillary sections: 127.16, 329.04, 329.05, 3125.12, 5101.212 (renumbered 5101.215), and 5153.16)

#### *Background*

Under current law, the Director of the Ohio Department of Job and Family Services (ODJFS) is required to enter into a written partnership agreement with each board of county commissioners. Each partnership agreement must include provisions regarding all of the following: administration and design of the Ohio Works First program; the Prevention, Retention, and Contingency program; family services activities that are not assigned to county departments of job and family services (CDJFSs) by state law but that a county department assumes pursuant to an agreement entered under continuing law; any other CDJFS duties that the Director and a board mutually agree to include in the agreement; and, if a county board serves is a local area under state law governing workforce development activities, workforce development activities provided by the county's workforce development agency. Each partnership agreement is permitted to include provisions regarding the administration and design of the duties of child support enforcement agencies (CSEAs) and public children services agencies (PCSAs) included in a plan of cooperation that the Director and a board agree to include in the agreement.<sup>102</sup>

---

<sup>102</sup> *Continuing law requires each board of county commissioners to enter into a written plan of cooperation with the CDJFS, CSEA, PCSA, and workforce development agency to enhance the administration of the Ohio Works First program; Prevention, Retention, and Contingency program; and other family services duties and workforce development activities the board and agencies agree to include in the plan.*

### **Fiscal agreements to replace partnership agreements**

The bill replaces partnership agreements with fiscal agreements and permits, rather than requires, the Director and boards of county commissioners to enter into such agreements. A fiscal agreement is to provide for the award of financial assistance for family services duties included in the agreement.<sup>103</sup> Unlike a partnership agreement, a fiscal agreement is not to include provisions regarding workforce development.<sup>104</sup> Current law defines "family services duties" as a duty state law requires or allows a CDJFS, CSEA, or PCSA to assume. The bill provides that family services duties include financial and general administrative duties.

The bill provides for boards of county commissioners to select which family services duties to include in a fiscal agreement. If a board of county commissioners elects to include family services duties of PCSAs and a county children services board serves as the county's PCSA, the board of county commissioners and county children services board must jointly enter into the fiscal agreement with the Director. If a board of county commissioners elects to include family services duties of a CSEA and the entity serving as the county's CSEA is an elected official of the county, the board of county commissioners and county elected official must jointly enter into the fiscal agreement with the Director.

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

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

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

---

<sup>103</sup> Current law defines "family services duty" as a duty state law requires or allows a CDJFS, CSEA, or PCSA to assume. The bill provides that this includes financial and general administrative duties but does not include a duty funded by the United States Department of Labor.

<sup>104</sup> The bill provides for workforce development issues to be addressed in grant agreements. See "**Grant agreements to replace partnership agreements**," below.

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

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

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

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

(7) Dispute resolution procedures;

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

(9) Specify the date the agreement is to commence or end;

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

The bill requires a fiscal agreement to do the following:

(1) Specify the family services duties included in the agreement and private and government entities designated to serve as the CDJFS, CSEA, or PCSA to perform the family services duties;<sup>105</sup>

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

(3) Specify the form of the award of financial assistance, which may be an allocation, cash draw, reimbursement, or, to the extent authorized by an appropriation made by the General Assembly and to the extent practicable and not

---

<sup>105</sup> See "*Designation of entity to serve as county family services agency*" below.

in conflict with a federal or state law, a consolidated allocation for two or more family services duties included in the agreement;

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

(5) Include the assurance of the board of county commissioners, and county children services board and CSEA county elected official if required to sign the agreement, that they will (a) ensure that the financial assistance is used, and the family services duties are performed, in accordance with requirements for the duties established by ODJFS, a federal or state law, or any of the following that concern family services duties included in the agreement and are published by ODJFS: state plans for receipt of federal financial participation, federal grants, and executive orders issued by the Governor, (b) ensure that the board, CDJFS, CSEA, and PCSA utilize a financial management system and other accountability mechanisms for the financial assistance that meet requirements ODJFS establishes, (c) require the CDJFS, CSEA, and PCSA to monitor all private and governmental entities that receive a payment from the financial assistance to ensure that each entity uses the payment in accordance with requirements for the family services duties and take action to recover payments that are not used in accordance with the requirements, (d) require the CDJFS, CSEA, and PCSA to promptly reimburse ODJFS the amount that represents the amount an agency is responsible for of funds ODJFS pays to any entity because of an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty, (e) require the CDJFS, CSEA, and PCSA to take prompt corrective action, including paying amounts resulting from an adverse finding, sanction, or penalty, if ODJFS, the Auditor of State, federal agency, or other entity authorized by federal or state law to determine compliance with requirements for a family services duty determines compliance has not been achieved, and (f) require, if ODJFS establishes a consolidated funding allocation for two or more family services duties included in the agreement, the CDJFS, CSEA, or PCSA to use funds available in the consolidated funding allocation only for the purpose for which the funds are appropriated;<sup>106</sup>

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

---

<sup>106</sup> See "ODJFS publishing fiscal agreement materials," below.

(7) Provide for dispute resolution procedures in accordance with the provision of the bill regarding ODJFS taking action against counties;<sup>107</sup>

(8) Except as provided in rules, begin on the first day of July of an odd-numbered year and end on the last day of June of the next odd-numbered year.

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

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

(2) Provide for ODJFS taking action against the board, CDJFS, CSEA, or PCSA under certain circumstances;<sup>108</sup>

(3) Provide for audits required by federal and state law and require prompt release of audit findings and prompt action to correct problems identified in an audit;<sup>109</sup>

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

Also as required under current law for a partnership agreement, the bill requires ODJFS to make payments authorized by a fiscal agreement on vouchers it prepares and permits ODJFS to include any funds appropriated or allocated to it for carrying out the family services duties, including funds for personal services and maintenance. Unlike current law governing partnership agreements, the bill does not provide that family services duties included in a fiscal agreement are vested in the board. The bill maintains, however, authority for ODJFS to take action against a board, CDJFS, CSEA, or PCSA regarding family services duties.<sup>110</sup> A board is required by the bill to enter into the agreement on behalf of the CDJFS, CSEA, and PCSA, other than a CSEA or PCSA that signs the agreement.

---

<sup>107</sup> See "**ODJFS taking action against a county regarding family services duties**" below.

<sup>108</sup> See "**ODJFS taking action against a county regarding family services duties**" below.

<sup>109</sup> The bill requires a fiscal agreement to provide for timely audits.

<sup>110</sup> See "**ODJFS taking action against a county regarding family services duties**" below.

### **Contracts and grants incorporated into partnership agreement**

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

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

### **Retroactive effective date**

The bill authorizes the Director of ODJFS to provide for a fiscal agreement to have a retroactive effective date on the first day of July of an odd-numbered year if (1) the agreement is entered into after that date and before the last day of that July, (2) the board of county commissioners requests the retroactive effective date, and (3) the board provides the Director good cause satisfactory to the Director for the reason the agreement was not entered into on or before the first day of that July. Regarding a fiscal agreement for the 2004-2005 biennium, the Director may provide for the agreement to have a retroactive effective date of July 1, 2003, if the agreement is entered into after July 1, 2003 and before August 29, 2003, and the board of county commissioners requests the retroactive effective date.

### **ODJFS publishing fiscal agreement materials**

ODJFS is required by the bill to publish in a manner accessible to the public all of the following that concern family services duties included in fiscal agreements: state plans for receipt of federal financial participation, grant agreements between ODJFS and a federal agency, and executive orders issued by the Governor. ODJFS is permitted to publish the materials electronically or otherwise.

### **Requirement for hearing and planning committee review eliminated**

Current law requires a board of county commissioners to conduct a public hearing and consult with the county family services planning committee before



entering into or substantially amending a partnership agreement.<sup>111</sup> The bill does not require a board to conduct a public hearing and consult with the planning committee before entering into or amending a fiscal agreement.

### **Rules governing fiscal agreements**

The bill requires that the Director of ODJFS adopt rules governing fiscal agreements. The rules are exempt from Joint Committee on Agency Rule Review (JCARR) requirements but the Director is required to give the public an opportunity to review and comment on the proposed rules before adopting them. The rules must establish methodologies to be used to determine the amount of financial assistance to be awarded under the agreements and establish terms and conditions under which an agreement may be entered into after the first day of July of an odd-numbered year. The rules may (1) govern the establishment of consolidated funding allocation and specify the time period for which a consolidated funding allocation is to be provided if the effective date of the agreement is after the first day of July of an odd-numbered year, which may include a time period before the effective date of the agreement, (2) govern the establishment of other allocations, (3) specify allowable uses of the financial assistance, and (4) establish reporting, cash management, audit, and other requirements the Director determines are necessary to provide accountability for the use of the financial assistance and determine compliance with requirements established by ODJFS, a federal or state law, state plan for receipt of federal financial participation, federal grant, or executive order. The bill provides that a requirement of a fiscal agreement established by a rule is applicable to a fiscal agreement without having to be restated in the agreement.

### **Report**

ODJFS is required under current law to complete a progress report on the partnership agreements not later than the first day of each July. The report must include a review of whether CDJFSs, CSEAs, PCSAs, and workforce development agencies satisfied performance standards included in the agreements and whether ODJFS provided assistance, services, and technical support specified

---

<sup>111</sup> *A board of county commissioners is required to obtain, through the public hearing and consultation with the county family services planning committee, comments and recommendations concerning what would be the county's obligations and responsibilities under the partnership agreement.*

in the agreements to aid the agencies in meeting the performance standards. The bill does not require ODJFS to continue the reports for fiscal agreements.<sup>112</sup>

**When a fiscal agreement is not in effect**

The bill provides that if a fiscal agreement between the Director and a board of county commissioners is not in effect, all of the following apply:

(1) ODJFS is to award to the county the board serves financial assistance for family services duties in accordance with a methodology for determining the amount of the award established by rules.

(2) The financial assistance may be provided in the form of allocations, cash draws, reimbursements, and property, but may not be made in the form of a consolidated funding allocation.

(3) The award of the financial assistance is subject to the availability of federal funds and appropriations made by the General Assembly.

(4) The county family services agencies performing the family services duties for which the financial assistance is awarded must (a) use the financial assistance, and perform the family services duties, in accordance with requirements for the duties established by ODJFS, a federal or state law, or any of the following that concern the duties: state plans for receipt of federal financial participation, grant agreements between the department and a federal agency, and executive orders issued by the Governor, (b) utilize a financial management system and other accountability mechanisms for the financial assistance that meet requirements ODJFS establishes, (c) monitor all private and government entities that receive a payment from the financial assistance to ensure that each entity uses the payment in accordance with requirements for the family services duties and take action to recover payments that are not used in accordance with the requirements for the family services duties, (d) promptly reimburse ODJFS the amount that represents the amount an agency is responsible for of funds ODJFS pays to any entity because of an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty, (e) take prompt corrective action, including paying amounts resulting from an adverse finding, sanction, or penalty, if ODJFS, the Auditor of State, a federal agency, or other entity authorized by federal or state law to determine compliance with requirements for a family services duty determines compliance has not been achieved.

---

<sup>112</sup> *Unlike current law governing partnership agreements, the bill does not provide for a fiscal agreement to establish performance or other administrative standards.*

The Director is required to adopt rules as necessary to implement this provision of the bill. The rules are exempt from JCARR requirements but the Director must give the public an opportunity to review and comment on the proposed rules before adopting them. The rules must establish methodologies to be used to determine the amount of financial assistance to be awarded and may do any or all of the following:

(1) Govern the establishment of funding allocations;

(2) Specify allowable uses of the financial assistance;

(3) Establish reporting, cash management, audit, and other requirements the Director determines are necessary to provide accountability for the use of the financial assistance and determine compliance with requirements established by ODJFS, a federal or state law, state plan for receipt of federal financial participation, grant agreement between ODJFS and a federal entity, and executive order.

### **Operational agreements**

(R.C. 5101.216)

The Director of ODJFS is permitted by the bill to enter into one or more written operational agreements with boards of county commissioners to do one or more of the following regarding family services duties:

(1) Provide for the Director to amend or rescind a rule the Director previously adopted;

(2) Provide for the Director to modify procedures or establish alternative procedures to accommodate special circumstances in a county;

(3) Provide for the Director and board to jointly identify operational problems of mutual concern and develop a joint plan to address the problems;

(4) Establish a framework for the Director and board to modify the use of existing resources in a manner that is beneficial to ODJFS and the county the board serves and improves family services duties for the recipients of the services.

### **Performance and other administrative standards**

(R.C. 5101.22, 5101.221, and 5101.222)

ODJFS is permitted under current law to establish performance and other administrative standards for the administration and outcomes of family services

duties and workforce development activities and determine at intervals ODJFS decides the degree to which a CDJFS, CSEA, PCSA, or workforce development agency complies with a standard. Current law provides that such a standard does not apply to a CDJFS, CSEA, PCSA, or workforce development agency if a different standard is specified for the agency's administration of the family services duty or workforce development activity pursuant to a partnership agreement. This exception is not continued for fiscal agreements. The bill also eliminates ODJFS's authority to establish performance and other administrative standards for the administration and outcomes of workforce development activities.

If ODJFS determines that a CDJFS, CSEA, or PCSA has failed to comply with a performance or other administrative standard, other than a standard required by federal law or established for an incentive, ODJFS must require the agency to develop, submit to ODJFS for approval, and comply with a corrective action plan. If a CDJFS, CSEA, or PCSA fails to develop, submit to ODJFS, or comply with a corrective action plan, or ODJFS disapproves the agency's corrective action plan, ODJFS may require the agency to develop, submit to ODJFS for approval, and comply with a corrective action plan that requires the agency to commit existing resources to the plan. ODJFS may not require a CDJFS, CSEA, or PCSA to develop a corrective action plan for failure to comply with a performance or other administrative standard if federal law requires ODJFS to establish the standard or the standard is established for an incentive.

The bill permits the Director of ODJFS to adopt rules to implement ODJFS's authority to establish the performance and other administrative standards. The rules are not subject to notice, public hearing, or JCARR requirements.

**Designation of entity to serve as county family services agency**

(R.C. 307.981)

Current law permits a board of county commissioners to designate any private or government entity within the state to serve as any of the following:

- (1) The CDJFS, CSEA, or PCSA;
- (2) The CDJFS and CSEA or PCSA;
- (3) The CDJFS, CSEA, and PCSA;
- (4) The workforce development agency;
- (5) The workforce development agency and CDJFS;

(6) The workforce development agency, CDJFS, and one or two of the other agencies (CSEA and/or PCSA).

A board may also make a redesignation by designating another private or government entity.

A board's authority to make the designation is limited to the extent permitted by federal and state law. The bill provides that a board's authority to make a redesignation is similarly limited. The bill eliminates a board's authority to designate and make redesignations regarding the workforce development agency.

Current law permits the Director of ODJFS to require a partnership agreement to be amended if the Director determines that a designation or redesignation constitutes a substantial change from what is in the partnership agreement. The bill permits the Director to require a fiscal agreement to be amended if a designation or redesignation constitutes a change from the designation in the fiscal agreement.

#### **Exchange of information to improve services and other requirements**

(R.C. 307.987)

Current law provides that, to the extent permitted by federal and state law, the following must permit the exchange of information needed to improve services and assistance to individuals and families and the protection of children; be coordinated and not conflict with each other; prohibit discrimination in hiring and promotion against applicants for and participants of the Ohio Works First program and the Prevention, Retention, and Contingency program; comply with federal and state law; be adopted by resolution of a board of county commissioners; and specify how they may be amended:

- (1) A partnership agreement;
- (2) A contract designating a private or government entity to serve as a CDJFS, CSEA, PCSA, or workforce development agency or to perform a family services duty or workforce development activity;
- (3) A plan of cooperation between a board and CDJFS, CSEA, PCSA, and workforce development agency to enhance the administration of the Ohio Works First program; Prevention, Retention, and Contingency program; and other family services duties and workforce development activities;

(4) A regional plan of cooperation to enhance the administration, delivery, and effectiveness of family services duties and workforce development activities;<sup>113</sup>

(5) A transportation work plan regarding the transportation needs of low income residents seeking or striving to retain employment;

(6) Procedures for providing services to frequently relocated children.

The bill provides that fiscal agreements are not subject to these requirements.

**Reimbursement of county expenditures for food stamps and Medicaid**

(R.C. 5101.162)

ODJFS is permitted under current law to use available federal funds to reimburse county expenditures for county administration of food stamps or Medicaid even though the county expenditures exceed the maximum allowable reimbursement established by ODJFS rules if the board of county commissioners has not entered into a partnership agreement. The bill provides instead that ODJFS may, at its sole discretion, make such reimbursement, subject to available federal funds and appropriations made by the General Assembly, even though the county expenditures meet or exceed, rather than just exceed, the maximum allowable reimbursement if the board has, rather than has not, entered into a fiscal agreement.

**ODJFS action against a county regarding family services duties**

(R.C. 5101.24 and 5101.242; ancillary section: 5101.46)

**Causes for taking action against the responsible entity**

ODJFS is permitted by current law to take certain actions against a board of county commissioners, CDJFS, CSEA, or PCSA if ODJFS determines any of the following apply:

---

<sup>113</sup> A board of county commissioners may enter into a regional plan of cooperation with (1) one or more other boards of county commissioners, (2) the chief elected official of one or more municipal corporations that, for the purpose of the state's workforce development system, are single unit local areas, or (3) both boards of county commissioners and such chief elected officials.

(1) The CDJFS, CSEA, or PCSA fails to meet a performance standard specified in a partnership agreement or established by ODJFS for a family services duty;

(2) The CDJFS, CSEA, or PCSA fails to comply with a requirement established by federal or state law for a family services duty;

(3) The CDJFS, CSEA, or PCSA is solely or partially responsible for an adverse audit or quality control finding, final disallowance of federal financial participation, or other sanction or penalty regarding a family services duty.

Whether ODJFS will take action against the board or CDJFS, CSEA, or PCSA depends on which is the responsible entity. Current law defines "responsible entity" as the board if the family services duty involved is included in the board's partnership agreement with the Director of ODJFS and as the CDJFS, CSEA, or PCSA if the family services duty is not included in the partnership agreement.

The bill revises the reasons for which ODJFS may take action and the definition of "responsible entity." Under the bill, ODJFS may take action against the responsible entity if ODJFS determines any of the following are the case:

(1) A requirement of a fiscal agreement that includes the family services duty is not complied with;

(2) A CDJFS, CSEA, or PCSA fails to develop, submit to ODJFS, or comply with a corrective plan that requires the agency to commit existing resources to the plan, or ODJFS disapproves the plan;

(3) A requirement for the family services duty established by ODJFS, federal or state law, state plan for receipt of federal financial participation, federal grant, or executive order issued by the Governor is not complied with;

(4) The responsible entity is solely or partially responsible, as determined by the Director of ODJFS, for an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty regarding the family services duty.

The definition of "responsible entity" is changed to mean a board of county commissioners or CDJFS, CSEA, or PCSA, whichever the Director of ODJFS determines is appropriate to take action against. The fact that a family services duty is performed by a CDJFS, CSEA, or PCSA, a private or government entity designated to serve as the CDJFS, CSEA, or PCSA, or a private or government provider of family services duties does not affect the Director's authority to



determine whether the board or the CDJFS, CSEA, or PCSA is the responsible entity.

**Actions ODJFS may take**

The bill also revises the law governing the actions that ODJFS make take against the responsible entity. Current law permits ODJFS to take one or more of the following actions:

(1) Require the responsible entity to submit to and comply with a corrective action plan pursuant to a time schedule ODJFS specifies;

(2) Require the responsible entity to share with ODJFS a final disallowance of federal financial participation;

(3) Require the responsible entity to pay the federal government or another entity the amount, or reimburse ODJFS the amount ODJFS pays the federal government or another entity that represents the amount, the agency is responsible for of an adverse audit or quality control finding, final disallowance of federal financial participation, or other sanction or penalty issued by the federal government or other entity;

(4) Impose a financial or administrative sanction or adverse audit issued by ODJFS against the responsible entity;<sup>114</sup>

(5) Perform, or contract with a government or private entity for the entity to perform, the family services duty until ODJFS is satisfied that the responsible entity ensures that the duty will be performed satisfactorily and spend funds in the county treasury appropriated for the duty or withhold funds allocated to the responsible entity for the duty and spend the withheld funds for the duty;

(6) Ask the Attorney General to bring mandamus proceedings to compel the responsible entity to take or cease the action that enables ODJFS to take action against the responsible entity.

The bill modifies some of the actions that ODJFS may take. If ODJFS requires the responsible entity to submit to a corrective action plan, the plan is to be established or approved by ODJFS and may or may not require a CDJFS, CSEA, or PCSA to commit existing resources to the plan that the agency identifies. If ODJFS performs or contracts with an entity to perform a family services duty, ODJFS is not required to choose either to spend funds in the county

---

<sup>114</sup> *The sanction may be increased if ODJFS has previously taken action against the responsible entity.*

treasury for the duty or to withhold funds allocated for the duty but, rather, may take either or both actions. Also, ODJFS may withhold reimbursements due to the responsible entity for the family services duty, rather than just withhold allocations. The bill also authorizes ODJFS to take additional actions. ODJFS may require the responsible entity to pay ODJFS the final amount that represents the amount the responsible entity is responsible for of an adverse audit finding or adverse quality control finding. If ODJFS is authorized to take action because a requirement for a family services duty is not complied with, ODJFS may withhold funds allocated or reimbursement due to the responsible entity until ODJFS determines that the responsible entity is in compliance with the requirement. ODJFS must release the funds when ODJFS determines that compliance has been achieved. Finally, the bill eliminates ODJFS's authority to impose a financial sanction or adverse audit but maintains ODJFS's authority to impose an administrative sanction.

### **Notice of proposed action**

ODJFS is required by current law to notify the responsible entity and county auditor if ODJFS decides to take action against the responsible entity. The bill requires the notice if ODJFS proposes to take action and provides that the notice must specify the action ODJFS proposes to take. ODJFS is required by the bill to send the notice by regular United States mail.

### **Administrative review**

Current law permits the responsible entity to request an administrative review of a proposed action, other than a proposed action to request that the Attorney General bring mandamus proceedings. To request an administrative review, the responsible entity must send a written request to ODJFS within a certain amount of time. If the proposed action is for the responsible entity to submit to a corrective action plan, the responsible entity must send the request not later than 15 days after ODJFS mails the notice. If the proposed action is for the responsible entity to share a final disallowance of federal financial participation; the responsible entity to pay, or reimburse ODJFS for, an amount the responsible entity is responsible for; ODJFS to impose a sanction or adverse audit; or ODJFS to perform, or contract with another entity to perform, a family services duty, the responsible entity must send the request not later than 45 days after ODJFS mails the notice. If a timely request for an administrative review is made, ODJFS is required to attempt to resolve the dispute with the responsible entity within a certain amount of time. The time is 15 days if the proposed action is for the responsible entity to submit to a corrective action plan. Otherwise, the time is 60 days. If the administrative review does not resolve the dispute, ODJFS must

conduct an adjudication hearing in accordance with the Administrative Procedure Act.<sup>115</sup>

The bill revises the administrative review process. It continues to provide that the process is not available for ODJFS's request that the Attorney General begin mandamus proceedings and provides that the process is also not available for any of the following:

(1) ODJFS requiring the responsible entity to share a final disallowance of federal financial participation or to pay, or reimburse ODJFS for, an amount for which the responsible is responsible if the federal government, State Auditor, or entity other than ODJFS has identified a CDJFS, CSEA, or PCSA as being solely or partially responsible for an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty;

(2) An adjustment to an allocation, cash draw, advance, or reimbursement to a CDJFS, CSEA, or PCSA that ODJFS determines necessary for budgetary reasons;

(3) Withholding of a cash draw or reimbursement due to noncompliance with a reporting requirement established in ODJFS rules.<sup>116</sup>

The bill provides that the 15 days that the responsible entity has to request an administrative review if ODJFS proposes to require the responsible entity to submit to a corrective action plan is 15 *calendar* days. This applies only if the plan does not require the commitment of existing resources. The bill reduces from 45 days to 30 calendar days the amount of time the responsible entity has to request an administrative review if ODJFS proposes that the responsible entity share a final disallowance of federal financial participation; the responsible entity pay, or reimburse ODJFS for, an amount the responsible entity is responsible for; ODJFS impose a sanction; or ODJFS perform, or contract with another entity to perform, a family services duty. The 30 calendar day time limit is also applied to a request for an administrative review of ODJFS's proposal to (1) require the responsible entity to pay ODJFS the amount that represents the amount the responsible entity is responsible for of an adverse audit finding or adverse quality control finding, (2) require the responsible entity to submit to a corrective action

---

<sup>115</sup> *ODJFS is not required to schedule the adjudication hearing within 15 days of the responsible entity's request as otherwise required by the Administrative Procedure Act.*

<sup>116</sup> *See "Reporting requirements" below.*

plan that requires the commitment of existing resources, or (3) withhold funds allocated or reimbursement due to the responsible entity.

A request for an administrative review must state specifically (1) the proposed action for which the review is requested, (2) the reason why the responsible entity believes the proposed action is inappropriate, (3) all facts and legal arguments that the responsible entity wants ODJFS to consider, and (4) the name of the person who will serve as the responsible entity's representative in the review. If ODJFS's notice specifies more than one proposed action and the responsible entity does not specify all of the proposed actions in its request, the proposed actions not specified in the request are not subject to administrative review and the parts of the notice regarding those proposed actions are final and binding on the responsible entity. If the responsible entity requests an administrative review for ODJFS's proposal to require the responsible entity to share a final disallowance of federal financial participation or to pay, or reimburse ODJFS for, an amount for which the responsible entity is responsible, the request may not include disputes over a finding, final disallowance of federal financial participation, or other sanction or penalty issued by an entity other than ODJFS.

The bill provides that the responsible entity loses the right to request an administrative review, and the notice becomes final and binding on the responsible entity, if the responsible entity fails to request the review within the required time.

If the responsible entity requests the administrative review within the required time, ODJFS must postpone taking the proposed action to allow a representative of ODJFS and a representative of the responsible entity an informal opportunity to resolve the dispute. The postponement is for 15 calendar days if the proposed action is to require the responsible entity to submit to a corrective action plan that does not require the commitment of existing resources. For any other proposed action, the postponement is for 30 calendar days. In either case, however, the Director of ODJFS and representative of the responsible entity may enter into a written agreement extending the time period for attempting an informal resolution of the dispute.

If the responsible entity and ODJFS are unable to resolve the dispute informally within the regular or extended time period, the Director of ODJFS is required by the bill to appoint an administrative review panel to conduct the review. The panel must consist of ODJFS employees and one director or other representative of a CDJFS, CSEA, or PCSA, whichever type of agency is the subject of the dispute, that serves a different county than the county served by the responsible entity. No individual involved in ODJFS's proposal to take action against the responsible entity may serve on the review panel. The panel is required to review the responsible entity's request and may require that ODJFS and the responsible entity submit additional information and schedule and conduct an

informal hearing to obtain testimony or additional evidence. As under current law, a review of a proposal to require the responsible entity to share a final disallowance of federal financial participation or to pay, or reimburse ODJFS for, an amount for which the responsible entity is responsible is to be limited solely to the issue of the amount the responsible entity must share, reimburse, or pay. The panel is not required to make a stenographic record of its hearing or other proceedings.

An administrative review panel is required to submit a written report to the Director of ODJFS setting forth its findings of fact, conclusions of law, and recommendations for action after finishing the review. The Director is permitted to approve, modify, or disapprove the recommendations. If the Director modifies or disapproves the recommendations, the Director must state the reasons and actions to be taken against the responsible entity. The Director's approval, modification, or disapproval is final and binding on the responsible entity and is not subject to further ODJFS review.

**Other actions not subject to these provisions**

The bill provides that the provision of state law authorizing ODJFS to take these actions against the responsible entity does not apply to other actions ODJFS takes against the responsible entity pursuant to authority granted by another state law unless the other state law requires ODJFS to take the action in accordance with this provision of state law.

**Request for Attorney General to seek recovery against responsible entity**

The bill permits ODJFS to certify a claim to the Attorney General for the Attorney General to take action against the responsible entity to recover funds that ODJFS determines the responsible entity owes ODJFS for certain actions ODJFS takes against the responsible entity.<sup>117</sup> The actions are (1) requiring the responsible entity to submit to a corrective action plan that requires the commitment of existing resources, (2) requiring the responsible entity to share a final disallowance of federal financial participation, (3) requiring the responsible entity to pay, or reimburse ODJFS for, an amount the responsible entity is responsible for, (4) ODJFS imposing a sanction, and (5) ODJFS performing, or contracting with another entity to perform, a family services duty.

---

<sup>117</sup> ODJFS's certification of such a claim is not subject to the administrative review process.

### **Reporting requirements**

(R.C. 5101.243)

The Director of ODJFS is permitted by the bill to adopt rules establishing reporting requirements for family services duties. The rules are not subject to JCARR requirements but the Director must give the public an opportunity to review and comment on the proposed rules before adopting them.

### **Maximization of federal funds**

(R.C. 5101.12)

The bill requires that 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 specifically authorizes ODJFS to enter into contracts with public entities that provide revenue maximization services.

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.

## **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 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.

## **Disclosure of information regarding public assistance recipients**

(R.C. 5101.26 and 5101.27)

In general, current law prohibits a person or government entity from soliciting, disclosing, receiving, using, or knowingly permitting or participating in the use of any information regarding a public assistance recipient for any purpose not directly connected to the administration of a public assistance program.<sup>118</sup>

---

<sup>118</sup> *Public assistance is financial assistance, medical assistance, or social services administered by ODJFS or a county agency, including Temporary Assistance for Needy Families (TANF), publicly funded day-care, Medicaid, and Disability Assistance. A county agency is a county department of job and family services or a public children services agency.*



### **Mandatory release of information**

To the extent permitted by federal law, ODJFS and county agencies are required by existing law to do all of the following:

(1) Release information regarding a public assistance recipient for purposes directly connected to program administration to a government entity responsible for administering a public assistance program or any other state, federal, or federally assisted program that provides cash or in kind assistance or services directly to individuals based on need or for the purpose of protecting children to a government entity responsible for administering a children's protective services program;

(2) Provide information to a law enforcement agency for the purpose of any investigation, prosecution, or criminal or civil proceeding relating to the administration of that public assistance program.

(3) Provide access to information regarding a public assistance recipient to the recipient, the recipient's authorized representative, the parent or guardian of the recipient, and the recipient's attorney (if the attorney has the recipient's written authorization).

The bill eliminates the requirement that ODJFS and county agencies release information concerning public assistance recipients to other state, federal, or federally assisted programs that provide cash or in kind assistance or services to individuals based on need if the release is not directly connected to the administration of a public assistance program. Additionally, ODJFS and county agencies are no longer required to provide information to a government entity responsible for administering a children's protective services program for the purpose of protecting children. Further, under the bill, access to information regarding a public assistance recipient must be provided to the recipient's legal guardian, rather than to the recipient's parent or guardian.

### **Discretionary release of information**

Under current law, ODJFS and county agencies are permitted to release information about a public assistance recipient if the recipient gives voluntary, written consent that specifically identifies the persons or government entities to which the information may be released. ODJFS and county agencies may release the information only to the persons or government entities specified in the consent, which may be time-limited or ongoing and may be rescinded at any time. The bill instead permits ODJFS and county agencies to release information about a public assistance recipient when the recipient consents only if the consent is provided in a written authorization containing information specified by the bill.

The bill also permits ODJFS and county agencies to release information about a public assistance recipient to other state, federal, or federally assisted programs that provide cash or in kind assistance or services to individuals based on need even if the release is not directly connected to the administration of a public assistance program. Further, ODJFS and county agencies may provide information to a government entity responsible for administering a children's protective services program for the purpose of protecting children. Under current law, the release of this information is mandatory.

**Special restrictions governing the release of information regarding recipients of medical assistance**

ODJFS or a county agency may release information regarding the receipt of Medicaid only if (1) the release of information is for purposes directly connected to the administration of the Medicaid program or services provided under programs created within the Medicaid program and (2) the information is released to persons or government entities that are subject to standards of confidentiality and safeguarding information substantially comparable to those established for the Medicaid program.

The bill broadens these restrictions to encompass other medical assistance programs. Under the bill, ODJFS or a county agency is permitted to release information concerning the receipt of medical assistance provided under a public assistance program<sup>119</sup> only if all of the following conditions are met:

- (1) The release of information is for purposes directly connected to the administration of or provision of medical assistance provided under a public assistance program;
- (2) The information is released to persons or government entities that are subject to standards of confidentiality and safeguarding information substantially comparable to those established for medical assistance provided under a public assistance program;
- (3) ODJFS or the county agency has obtained consent that meets the bill's requirements.

Information concerning the receipt of medical assistance under a public assistance program may be released only if the release complies with the bill and

---

<sup>119</sup> "Medical assistance provided under a public assistance program" means medical assistance provided under Medicaid, the Disability Assistance Program, Refugee Assistance Program, State Legalization Impact Assistance Program, Children's Health Insurance Program, and the State Child Health Plan. R.C. 5101.26(E).

rules adopted by ODJFS or, if more restrictive, the federal Health Insurance Portability and Accountability Act of 1996 and regulations adopted by the United States Department of Health and Human Services to implement that Act.

**Authorization form for release of information**

(R.C. 5101.271)

For purposes of release of information regarding a public assistance recipient, the bill requires that authorization be made on a form that uses language understandable to the average person and contains all of the following:

(1) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;

(2) The name or other specific identification of the person or class of persons authorized to make the requested use or disclosure;

(3) The name or other specific identification of the person or class of persons authorized to make the requested use or disclosure;

(4) A description of each purpose of the requested use or disclosure of the information;<sup>120</sup>

(5) The date on which the authorization expires or an event related either to the individual who is the subject of the request or to the purposes of the requested use or disclosure, the occurrence of which will cause the authorization to expire;

(6) A statement that the information used or disclosed pursuant to the authorization may be disclosed by the recipient of the information and may no longer be protected from disclosure;

(7) The signature of the individual or the individual's authorized representative and the date on which the authorization was signed;

(8) If signed by an authorized representative, a description of the representative's authority to act for the individual;

---

<sup>120</sup> *When an individual requests information regarding the individual's receipt of public assistance and does not wish to provide a statement of purpose, the statement "at the request of the individual" is a sufficient description for purposes of describing each purpose of the requested use or disclosure of the information.*

(9) A statement of the individual or authorized representative's right to prospectively revoke the written authorization in writing, along with one of the following:

(a) A description of how the individual or authorized representative may revoke the authorization;

(b) If the ODJFS's privacy notice contains a description of how the individual or authorized representative may revoke the authorization, a reference to that privacy notice.

(10) A statement that treatment, payment, enrollment, or eligibility for public assistance cannot be conditioned on signing the authorization unless the authorization is necessary for determining eligibility for the public assistance program.

Unless release of information regarding a public assistance recipient is required as described above, ODJFS or the county agency may release information only in accordance with the written authorization. ODJFS or the county agency must provide a free copy of each written authorization to the individual who signed it.

**Sharing information regarding public assistance recipients with law enforcement agencies**

(R.C. 5101.28)

Current law requires ODJFS to enter into written agreements with law enforcement agencies to share information concerning applicants for, or recipients or former recipients of, public assistance. This information sharing may be used only to assist law enforcement agencies, ODJFS, and county agencies in determining whether an individual is a fugitive felon or is violating a condition of probation, a community control sanction, parole, or a post-release control sanction.

The bill provides instead that, at the request of ODJFS or a county agency, a law enforcement agency must provide information regarding public assistance recipients to enable ODJFS or the county agency to determine for eligibility purposes whether an individual is a fugitive felon or is violating a condition of probation, a community control sanction, parole, or a post-release control sanction. A county agency may enter into a written agreement with a local law enforcement agency establishing procedures concerning access to information and providing for compliance with reporting requirements that exist under current law.

In addition to requiring the information sharing agreements, current law requires ODJFS and county agencies to provide information regarding recipients

of TANF or Disability Assistance to a law enforcement agency on request for the purpose of any investigation, prosecution, or criminal or civil proceeding that is within the scope of the law enforcement agency's official duties. The bill maintains this requirement to the extent permitted by federal law, with the exception of information directly related to the receipt of medical assistance or medical services.

**No reimbursement of fees by an applicant, participant, or recipient of a family services program for appealing an administrative appeal decision**

(R.C. 5101.35)

The bill specifies that the appeal of an administrative appeal decision of the Director of Job and Family Services by an applicant, participant, or recipient of a family services program to a court of common pleas is not governed by the provision of the Administrative Procedure Act that allows an eligible prevailing party to file a motion to receive compensation for fees the party incurred in connection with the hearing.

## **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.

**Penalties for employers' submission of incorrect unemployment compensation filings**

(R.C. 4141.201)

Continuing law requires that employers make contributions to finance unemployment compensation payments to unemployed workers. Employers are required to keep employment records and to make filings with the Department of Job and Family Services, including the filing of quarterly contribution and wage reports. The Department may impose fines on employers for failure to make timely and complete filings.

The bill limits the circumstances under which the Department can impose fines upon employers. Specifically, the bill provides that if an employer submits a form, report, record, or makes any other filing with the Department and the filing contains incorrect information, the employer cannot be required to pay any penalty with respect to the filing if the employer voluntarily identifies and corrects the incorrect information. However, under the bill, a penalty may be imposed with respect to any false information knowingly included by the employer in any filing for the purpose of avoiding unemployment compensation contributions.

**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.<sup>121</sup> 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.

---

<sup>121</sup> 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.



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.

##### **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.<sup>122</sup> If a PCSA fails to comply with the procedures a second or subsequent time or fails to achieve the goals of the corrective action plan, ODJFS must (1) impose a financial or administrative sanction or adverse audit, (2) perform, or contract with another entity to perform, the service, or (3) request that the Attorney General bring mandamus proceedings. If a PCPA or PNA fails to comply with the procedures a second or subsequent time or fails to achieve the goals of the corrective action plan, ODJFS must cancel any Title IV-E allowability rates for the agency or revoke the agency's certificate.

The bill requires ODJFS to take these actions against a government entity providing Title IV-E reimbursable placement services to children if the entity fails to comply with the fiscal accountability procedures. If the government entity fails to comply with the procedures a second or subsequent time or fails to achieve the goals of the corrective action plan, ODJFS must cancel any Title IV-E allowability rates for the entity.

#### **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 and is not the result of directives ODJFS gave to the agency or entity.

#### **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

---

<sup>122</sup> *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.*

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.<sup>123</sup>

#### **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

---

<sup>123</sup> *Background information about the SAMS, SASSS, and PASSS programs was provided by a representative of ODJFS.*

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.<sup>124</sup> The SASSS assistance, like SAMS assistance, is paid by a public children services agency pursuant to a pre-adoption agreement between the agency and the child's adoptive parent. SASSS assistance is for unusual, rather than routine, needs and may not be used for maintenance costs. SASSS assistance may be used to cover a child's medical, psychiatric, psychological, or counseling services.

### **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

---

<sup>124</sup> *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.*

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 but permits an individual who attains age 18 during a school year to continue to receive SAMS payments for the duration of the school year.

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 but permits an individual who attains age 18 during a school year to continue to receive PASSS payments for the duration of the school year. 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.<sup>125</sup> The bill permits a public children services agency to waive the payment

---

<sup>125</sup> *The bill does not specify what might be considered an "extraordinary circumstance."*

requirement for adoptive parents whose gross annual income is not more than 200% of the federal poverty guideline.

Currently, each child receiving PASSS assistance must undergo an annual redetermination of need process to assess the child's ongoing need for PASSS assistance. The bill requires ODJFS to establish clinical standards to evaluate a child's physical or developmental handicap or mental or emotional condition and assess the child's need for services.

**Rules.** Current law requires ODJFS to adopt rules establishing procedures for administration of the SAMS and PASSS programs. The bill requires ODJFS to adopt rules to establish the following:

- (1) An application process for the SAMS and PASSS programs;
- (2) A method to determine the amount of SAMS assistance a child may receive;
- (3) A process whereby a child's continuing need for SAMS assistance is annually redetermined;
- (4) A method to determine the amount, duration, and scope of PASSS services a child may receive;
- (5) Any other rule the department considers appropriate for the implementation of the SAMS and PASSS programs.

**ODJFS disciplinary actions.** Ohio law requires ODJFS to maintain a list of individuals who wish to adopt children and individuals who wish to adopt special needs children. At least quarterly, ODJFS must forward the list to all public children services agencies and private child placing agencies to assist them in locating appropriate homes for children.<sup>126</sup> 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,

---

<sup>126</sup> R.C. 5103.154.

including a financial or administrative sanction, against a public children services agency that fails to meet its reporting requirements.<sup>127</sup>

**University Partnership Program participants**

(R.C. 5153.122)

Current law requires caseworkers employed by a public children services agency to undergo 90 hours of in-service training during the first year of employment. The bill permits the director of a public children services agency to waive the in-service requirement for University Partnership Program participants. The University Partnership Program provides financial support, in the form of grants, to social work students who are interested in pursuing a career in public child welfare. The grants cover tuition and fees for three quarters of study at a participating school. Program participants are required to have a field placement in a public children services agency and to work for one year in an Ohio public children services agency after graduation.<sup>128</sup>

**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.<sup>129</sup> 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

---

<sup>127</sup> *The sanctions are provided for in existing law (R.C. 5101.24).*

<sup>128</sup> *As of March 2003, there were nine students at The Ohio State University and six students at the University of Akron participating in the program. (R.C. 5101.141; The Public Children Services Association of Ohio, [www.pcsao.org](http://www.pcsao.org) visited 5-27-03.)*

<sup>129</sup> *Ohio Revised Code Section 2151.3516 (not in the bill).*



development, publication, and distribution of the forms and materials ODJFS is required to provide.<sup>130</sup>

### **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.<sup>131</sup> 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.

### **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.

---

<sup>130</sup> A "putative father" is a man who may be a child's father and to whom all of the following apply: he is not married to the child's mother at the time of the child's conception or birth; he has not adopted the child; and paternity has not been established. The Putative Father Registry is a database established and maintained by ODJFS containing the names and addresses or telephone numbers of putative fathers. A man who has sexual intercourse with a woman is on notice that if a child is born as a result and he is the putative father of the child, the child may be adopted without his consent 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.)

<sup>131</sup> "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.)

## 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 Training Program. The bill also requires the Program to provide education programs for adoption assessors.<sup>132</sup> The training under the Program for public children services agency caseworkers and supervisors must be conducted, under the bill, in accordance with ODJFS rules adopted under R.C. 111.15 (no notice or public hearing required).

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

---

<sup>132</sup> *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).)*

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).<sup>133</sup> 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 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

---

<sup>133</sup> *A recommending agency is a public or private agency that recommends that ODJFS issue, deny, or renew a foster home certificate.*

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.)

**Eligibility for publicly funded child day-care**

(Section 58.21)

ODJFS is required by current law to adopt rules specifying the maximum amount of income a family may have for initial and continued eligibility for publicly funded child day-care. The maximum amount may not exceed 200% of the federal poverty line. Current law also requires ODJFS to monitor the anticipated future expenditures of county departments of job and family services for publicly funded child day-care and compare the anticipated future expenditures to available federal and state funds for day-care. Whenever ODJFS determines that the anticipated future expenditures will exceed the available funds, ODJFS must promptly notify the county departments and, before the available funds are used, issue and implement an administrative order. The order may do any or all of the following: (1) suspend enrollment of all new participants, (2) limit enrollment of new participants to those with incomes at or below a specified percentage of the federal poverty line, and (3) disenroll existing participants with income above a specified percentage of the federal poverty line.

The bill prohibits ODJFS from reducing the initial and continued eligibility level for publicly funded child day-care below 150% of the federal poverty line during fiscal years 2004 and 2005. The bill also prohibits ODJFS from disenrolling, during the fiscal biennium, families that have incomes at or below 165% of the federal poverty line and do not otherwise cease to qualify for publicly funded child day-care if (1) the family enrolls in the program before June 9, 2003 or (2) the family's income at the time of enrollment is at or below 150% of the federal poverty line.

## **VI. Food Stamp Program**

The Food Stamp Program is a federal program administered by ODJFS and county departments of job and family services. It is designed to raise the nutritional levels of low-income individuals and families.

### **Food Stamp Program work requirements**

(Section 58.36)

Under federal law governing the Food Stamp Program, no physically and mentally fit individual age 18 to 50 is eligible for food stamp benefits if, during the preceding 36-month period, the individual received food stamp benefits for not less than three months during which the individual failed to (1) work at least 20 hours per week, averaged monthly, (2) participate in and comply with the requirements of a work program for 20 hours or more per week, or (3) participate in and comply with the requirements of a workfare program. The federal law provides certain exceptions to this work requirement.

One of the exceptions is that a state may request that the United States Secretary of Agriculture waive the applicability of the work requirement to any group of individuals in the state if the Secretary makes a determination that the area in which the individuals reside has an unemployment rate of over 10% or does not have a sufficient number of jobs to provide employment for the individuals. The bill requires ODJFS to request the Secretary to waive the applicability of the work requirement during fiscal years 2004 and 2005 to food stamp benefit recipients who reside in a county of this state that ODJFS determines has had an unemployment rate of over 10% for each of the four months before the month in which the waiver is in effect for the county. ODJFS is required to make monthly determinations of which counties the waiver is to be in effect in. No individual may be exempted from the work requirements for more than a total of nine months during the fiscal biennium.

ODJFS is required by the bill to report to the Speaker and Minority Leader of the House of Representatives and President and Minority Leader of the Senate on receipt or rejection of the waiver.

## **VII. 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.<sup>134</sup>

**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.<sup>135</sup> 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

---

<sup>134</sup> *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.*

<sup>135</sup> *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).)*

participation in the LEAP Program to individuals who are under age 18, or age 18 and in school, instead of under age 20.

The bill also requires county departments of job and family services, subject to availability of funds, to provide LEAP participants with support services, including publicly funded day-care, transportation, and other services.

### **Prison nursery program**

(R.C. 5107.37)

Current law provides that an individual who resides in a county home, city infirmary, jail, or other public institution is ineligible to participate in Ohio Works First. The bill provides that the disqualification does not apply to a child residing with his or her mother who participates in a prison nursery program. The Department of Rehabilitation and Correction is permitted by current law to establish a prison nursery program in one or more of the institutions for women the Department operates. An inmate participating in a prison nursery program is permitted to reside in the institution with a child born to the inmate while the inmate is in the Department's custody.

### **Prevention, Retention, and Contingency Program**

(Primary R.C. 5108.01; R.C. 5101.83, 5108.03, 5108.04, 5108.05, 5108.06, 5108.07, 5108.09, 5108.10, 5108.11, and 5108.12)

### **Background**

The Prevention, Retention, and Contingency (PRC) Program is a TANF program that is intended to help persons overcome immediate barriers to achieving and maintaining self-sufficiency and personal responsibility. ODJFS is required to administer the program in accordance with the federal TANF block grant, federal TANF regulations, state law, and the state TANF plan submitted to the United States Secretary of Health and Human Services.

The help provided under the PRC Program may be, with one restriction, any allowable use of federal TANF funds. This means that it must be reasonably calculated to (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives, (2) end the dependency of needy parents on government benefits by promoting job preparation, work, and marriage, (3) prevent and reduce the incidence of out-of-wedlock pregnancies, or (4) encourage the formation and maintenance of two-parent families. PRC help is also an allowable use of federal TANF fund if the state could have used federal funds under the former Aid to Families with Dependent Children Program or Job

Opportunities and Basic Skills Training Program, as those programs existed on September 30, 1995, or, at the state's option, August 21, 1996, to provide the help.

The restriction is that PRC help may not be "assistance," as that term is defined in a federal TANF regulation, but must be help of a type excluded from the definition. The federal regulations define "assistance" as including cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs for such things as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. "Assistance" includes such benefits even when they are provided in the form of payments to individual recipients and conditioned on participation in work experience, community service, or other work activities provided by federal TANF law. Unless specifically excluded, "assistance" also includes supportive services such as transportation and child care provided to unemployed families.

The following types of help may be given under the PRC Program because they are excluded from the definition of "assistance":

- (1) Nonrecurrent, short-term benefits that are designed to deal with a specific crisis situation or episode of need, are not intended to meet recurrent or ongoing needs, and will not extend beyond four months;
- (2) Work subsidies such as payment to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training;
- (3) Supportive services such as child care and transportation provided to employed families;
- (4) Refundable earned income tax credits;
- (5) Contributions to, and distributions from, Individual Development Accounts;
- (6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support;
- (7) Transportation benefits provided under a Job Access or Reverse Commute project to an individual who is not otherwise receiving assistance.

Consistent with the requirement that it not be "assistance," the PRC Program provides help in the form of benefits and services.

### *The bill*

*Written statement of policies governing the PRC Program* (R.C. 5108.03, 5108.04, 5108.05, 5108.06, and 5108.07). ODJFS is required by current law to develop a model design for the PRC Program. A county department of job and family services (CDJFS) may adopt the model design or develop its own policies for the program. The model design must specify eligibility requirements, the help to be provided under the program, administrative requirements, and other matters determined necessary.

The bill eliminates the requirement that ODJFS develop a model design for the PRC Program. Instead, each CDJFS must adopt a written statement of policies governing the program for the county. The statement of policies must be adopted by October 1, 2003 and updated at least once every two years. The county director of job and family services is required to sign and date the statement of policies and any amendment to it. Within ten calendar days of adopting it, the CDJFS must provide ODJFS a written copy of the statement of policies or any amendment.

In adopting its statement of policies, each CDJFS is to establish or specify all of the following:

- (1) The benefits and services to be provided under the program;
- (2) Restrictions on the amount, duration, and frequency of the benefits and services;
- (3) Eligibility requirements;
- (4) Fair and equitable procedures for the certification of eligibility for benefits and services that do not have a financial need eligibility requirement and for the determination and verification of eligibility for benefits and services that have a financial need eligibility requirement;
- (5) Objective criteria for the delivery of benefits and services;
- (6) Administrative requirements;
- (7) Other matters the CDJFS determines are necessary.

The statement of policies may also specify the benefits and services to be provided under the PRC Program that prevent and reduce the incidence of out-of-wedlock pregnancies or encourage the formation and maintenance of two-parent families and how the CDJFS will certify individuals' eligibility for the benefits and services.

The statement of policies must be consistent with the plan of cooperation developed by the board of county commissioners and the review and analysis of the county family services committee. The CDJFS must either give the public and local government entities at least 30 days to submit comments on the statement of policies or have the county family services planning committee review the statement of policies before the county director signs and dates it. Each statement of policies must also include the board of county commissioners' certification that the CDJFS complied with the law governing the PRC Program in adopting the statement of policies. The board must revise its certification if an amendment to the statement of policies that the board considers to be significant is adopted.

**Hearings and administrative appeals** (R.C. 5108.09). Currently, the decision in a hearing or administrative appeal regarding the PRC Program, is to be based on the ODJFS model design if the CDJFS has adopted it or on the CDJFS's written statement of policies and any amendments to the statement. Under the bill, the decision is to be based on the CDJFS's written statement of policies and amendments to the statement if the CDJFS provides a copy of the statement of policies and all amendments to the hearing officer, director, or director's designee at the hearing or appeal.

**Application and determination of eligibility** (R.C. 5108.10). Under existing law, an assistance group seeking to participate in the PRC Program must apply to a CDJFS using an application containing information the CDJFS requires. When a CDJFS receives the application, it has to make a prompt investigation and record of the circumstances of the applicant in order to ascertain the facts surrounding the application and to obtain such other information as may be required. On completion of the investigation, the CDJFS is required to determine whether the applicant is eligible to participate, the benefits or services the applicant should receive, and the approximate date when participation is to begin.

The bill requires that eligibility for a benefit or service under the PRC Program be certified in accordance with CDJFS's statement of policies if the benefit or service does not have a financial need requirement. Eligibility for the benefit or service is to be determined in accordance with the statement of policies and based on an application containing information the CDJFS requires if the benefit or service has a financial need eligibility requirement. When a CDJFS receives an application for such benefits and services, it must follow verification procedures established by the statement of policies in order to ascertain the facts surrounding the application and to obtain such other information as may be required. On completion of the verification procedure, the CDJFS must determine whether the applicant is eligible for the benefits and services and the approximate date the benefits and services are to begin.

**Contracts to make eligibility determinations and certifications** (R.C. 5108.11). The bill permits a board of county commissioners to enter into a contract with a private or government entity to certify eligibility for benefits and services that do not have a financial need eligibility requirement and accept applications and determine and verify eligibility for benefits and services that have a financial need eligibility requirement. If the board does so, the CDJFS must do all of the following: (1) ensure that eligibility is certified, or determined and certified, in accordance with its statement of policies, (2) ensure that the entity maintains all records that are necessary for audits, (3) monitor the private or government entity for compliance with federal and state law and the statement of policies, and (4) take actions that are necessary to recover any funds that are not spent in accordance with federal law or the law governing the PRC Program.

**Funds expended or claimed in an impermissible manner** (R.C. 5108.12). The bill provides that each CDJFS is responsible for funds expended or claimed under the county's PRC Program that ODJFS, Auditor of State, United States Department of Health and Human Services, or other government entity determines is expended or claimed in a manner that federal or state law or policy does not permit.

**Benefits and services for groups with common needs** (R.C. 5101.83 and 5108.05). In addition to providing benefits and services for assistance groups that apply to participate in the program, current law provides that the ODJFS model design and a CDJFS's policies may establish eligibility requirements for, and specify benefits and services to be provided to, types of groups, such as students in the same class, that share a common need for the benefits and services. The ODJFS model design and a CDJFS's policies may also specify benefits and services that a CDJFS may provide for the general public, including billboards that promote the prevention and reduction in the incidence of out-of-wedlock pregnancies or encourage the formation and maintenance of two-parent families. The bill eliminates these provisions, so that these types of benefits and services are no longer expressly provided for in the Revised Code.

**County share of public assistance expenditures**

(R.C. 5101.16)

Counties are responsible for a share of the costs of certain public assistance programs, including the Ohio Works First (OWF) and Prevention, Retention, and Contingency (PRC) programs. Current law provides that a county's share of the costs of OWF and PRC for a state fiscal year is the county's share of program and administrative expenditures during federal fiscal year 1994 for assistance and

services, other than child day-care, provided under the former Aid to Dependent Children and Job Opportunities and Basic Skills Training Programs.<sup>136</sup>

The bill provides that henceforth a county's share of the costs of OWF and PRC for a state fiscal year is a percentage of what would otherwise be the county's share of those expenditures, as established by rule adopted by the Director of ODJFS. The rules must provide for a percentage of at least 75% and not more than 82%. The 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.

### **VIII. 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.

---

<sup>136</sup> *The Aid to Dependent Children and Job Opportunities and Basic Skills Training programs were replaced by TANF programs.*



## *Treatment of trusts in Medicaid eligibility determinations*

(R.C. 5111.151)

### *Background*

The county department of job and family services (CDJFS) of the county in which an individual resides is responsible for determining the individual's eligibility for medical assistance reimbursed by Medicaid.<sup>137</sup> In making an eligibility determination, a CDJFS must decide which of the individual's assets and income is a "countable resource," "countable income," both countable income and a countable resource, or not countable as income or a resource. "Countable income" includes the Medicaid applicant's income from any source, regardless of whether it is taxable or nontaxable. A "countable resource" is cash or anything of value that is capable of being converted to cash that an applicant could use to pay for support and maintenance.

### *Current law--regulation by administrative rule*

Currently, whether, and to what extent, a CDJFS must count a trust as income, a countable resource, or both income and a countable resource is governed by administrative rule.<sup>138</sup> The administrative rule provides that a trust falls into one of five categories: (i) self-settled trusts established before August 11, 1993 (also referred to as "Medicaid qualifying trusts"), (ii) self-settled trusts established on or after August 11, 1993, (iii) exempt trusts, (iv) trusts established by someone else for the benefit of a Medicaid applicant or recipient, and (v) trusts established by will for the benefit of a surviving spouse.

Self-settled trusts are trusts not established by will. Besides the dates they were created, the primary differences between the two types are who creates them (pre-August 1993: Medicaid applicant or recipient only; post-August 1993: applicant or recipient, spouse, court, or administrative body); whose assets form the corpus of the trust (pre-August 1993: no restrictions; post-August 1993: assets of applicant or recipient used to form all or part); and who may be a beneficiary of the trust (pre-August 1993: applicant or recipient must be able to become a beneficiary of all or part; post-August 1993: no restrictions). In general, a pre-August 1993 self-settled trust will be income or a countable resource to the extent payments from the trust could be made to or for the benefit of the applicant or recipient, regardless of whether the trust is revocable or irrevocable. In contrast, a post-August 1993 trust will be countable as income or a countable resource

---

<sup>137</sup> R.C. 5111.012; O.A.C. 5101:1-38-01(F).

<sup>138</sup> O.A.C. § 5101:1-39-271

depending on whether the trust is revocable or irrevocable and to what extent payments from the trust could be made to or for the benefit of the applicant or recipient.

Exempt trusts are trusts in which the principal or income is not counted as a countable resource. A distinguishing characteristic of exempt trusts is that all or a portion of the assets remaining in an exempt trust at a recipient's death must be paid to the state to the extent the recipient received Medicaid benefits. These trusts include special needs trusts for disabled persons under age 65; "qualifying income trusts" (QIT) that consist only of a Medicaid applicant or recipient's pension, Social Security, or other income sources, and any interest gained on these assets; "pooled trusts" that contain only the assets of a disabled individual and are established and managed by nonprofit associations; and "supplemental services trusts" established under a will for the benefit of certain disabled persons, regardless of age.

A trust established by someone else for the benefit of a Medicaid applicant or recipient is, as the name implies, established by someone other than the applicant or recipient, names the applicant or recipient as a beneficiary, and is funded with assets or property for which the applicant or recipient never held an ownership interest. Any portion of this type of trust is a countable resource only if the trust permits the trustee to expend principal or corpus or assets of the trust for the applicant or recipient's medical care, care, comfort, maintenance, health, welfare, general well-being, or a combination of those purposes.

A trust established by will for the benefit of a surviving spouse is a countable resource to the extent that payments from the trust could be made to or for the benefit of the applicant or recipient's surviving spouse. Any payment actually made to or for the benefit of the surviving spouse from either the corpus or income is considered income.

### **The bill--partial codification of administrative rule**

The bill enacts in the Revised Code (codifies) those portions of the administrative rule dealing with the treatment of self-settled trusts established after August 11, 1993, exempt trusts, and trusts established by someone else for the benefit of a Medicaid applicant or recipient (types (ii), (iii), and (iv), above). The bill does not address the treatment of self-settled trusts established before August 11, 1993, or trusts established by will for the benefit of surviving spouses.

### **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.<sup>139</sup> If the decedent was a recipient, the person responsible for the estate must notify the administrator of the Medicaid Estate Recovery Program. This notice must be in writing and be provided within 30 days after the occurrence of any of the following: (1) the granting of letters testamentary, (2) the administration of the estate, or (3) the filing of an application for release from administration.<sup>140</sup> 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.<sup>141</sup>

---

<sup>139</sup> 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)).

<sup>140</sup> "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).

<sup>141</sup> R.C. 5111.11.

The bill permits the administrator of the Medicaid Estate Recovery Program to present an affidavit to a financial institution requesting the release of the decedent's account proceeds. The affidavit must specify: (1) the decedent's name, (2) the name of anyone who notified the Program of the decedent's receipt of Medicaid assistance, (3) the name of the financial institution, (4) the account number, (5) a description of the claim for estate recovery, and (6) the amount of funds sought. A financial institution may release account proceeds only if all of the following apply: (1) the decedent held an account at the financial institution, (2) the account was held in the decedent's name only, (3) no estate has been opened, (4) it is reasonable to assume that no estate will be opened, (5) the decedent has no outstanding debts known to the Program's administrator, and (6) the financial institution has received no objections to the release, or has determined that no valid objections to the release have been received. The release of funds is permissive.

If ODJFS receives notice of a valid claim to funds released pursuant to the bill that has a higher priority than that of the Medicaid Estate Recovery Program, ODJFS is permitted to release those funds either to the financial institution or to the person or government entity making the claim.

#### **Priority of claims**

(R.C. 2117.25)

Current law specifies the order in which a decedent's debts are to be paid. The bill provides that claims of the Medicaid Estate Recovery Program are to be given the same priority as other amounts owed to the state. (These amounts are seventh in the list of nine priorities.)

#### **Liens**

(R.C. 5111.111)

Current law permits ODJFS to place a lien on the property of a Medicaid recipient or a recipient's spouse to facilitate recovery under the Medicaid Estate Recovery Program.<sup>142</sup> 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

---

<sup>142</sup> *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.*

this language so that the lien is for all amounts paid before filing, as well as amounts paid afterwards.

**Medicaid prenatal care and substance abuse screening**

(R.C. 5111.017, repealed)

The bill eliminates the provisions of current law that require ODJFS to establish a program for substance abuse assessment and treatment referral for pregnant Medicaid recipients required by statute or ODJFS rule to receive medical services through a managed care organization. The elimination extends to corresponding provisions that apply to Medicaid-participating managed care organizations and the persons who provide prenatal care. Under these provisions, a screening for alcohol and other drug use must occur at the woman's first prenatal medical examination. If it is determined that there may be a substance abuse problem, the woman must be referred to a certified treatment program and be given information on the possible effects of alcohol and drug use on the fetus.

**Care management system within Medicaid**

(R.C. 5111.16 and 5111.17)

Under current law, ODJFS may establish a managed care system in some or all counties under which designated Medicaid recipients are required to obtain health care from providers designated by ODJFS. ODJFS may enter into contracts with managed care organizations to authorize the organizations to provide, or arrange for the provision of, health care services to Medicaid recipients participating in a managed care system.

As part of the Medicaid program, the bill requires ODJFS to establish in some or all counties a "care management system." If necessary, ODJFS must submit a request to the United States Department of Health and Human Services for a waiver of federal Medicaid requirements that would otherwise be violated in the implementation of the system. ODJFS must designate the Medicaid recipients who are required or permitted to participate in the system.

By July 1, 2004, some 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 provides that if ODJFS requires or permits aged, blind, or disabled Medicaid recipients 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 by the aged, blind, and disabled participants. It further provides that these individuals cannot be required to obtain services through such organizations unless they are at least age 21.

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.).

**Pilot program for care management of chronically ill children**

(R.C. 5111.161; Section 146.05)

The bill requires ODJFS to develop a pilot program under which chronically ill children are included among the Medicaid recipients who are required to participate in the bill's care management system. The pilot program will include children who are not more than 21 years of age and meet the federal standards to be considered blind or disabled for purposes of the Supplemental Security Income Program.

The bill requires ODJFS to ensure that the pilot program is operated in Hamilton county, Muskingum county, and at least one other county ODJFS selects. Operation of the program may extend into the areas surrounding the counties in which it is operated.

The pilot program must be implemented not later than October 1, 2003. The statutory authority to operate the program ends October 1, 2005, but the program must cease operation before that date if either of the following occurs: (1) ODJFS determines that requiring chronically ill children to participate in the care management system is not a cost-effective means of providing Medicaid services or (2) the combined state and federal cost of operating the program reaches \$3 million.

The bill specifies that the purpose of the pilot program is to determine whether occurrences of acute illnesses and hospitalizations among chronically ill children can be prevented or reduced by establishing a "medical home" for the children where care is administered proactively and in a manner that is accessible,

continuous, family-centered, coordinated, and compassionate. In establishing a medical home for a chronically ill child, the bill specifies that all of the following apply:

(1) A physician must serve as the care coordinator for the child. The care coordinator may be a board-certified pediatrician, pediatric subspecialist, or provider for the Bureau of Children with Medical Handicaps within the Ohio Department of Health. If the physician is in a group practice, any member of the group practice may serve as the child's care coordinator. The duties of the care coordinator may be performed by a person acting under the supervision of the care coordinator.

(2) The child may receive care from any health care practitioner appropriate to the child's needs, but the care coordinator must direct and oversee the child's overall care.

(3) The care coordinator must establish a relationship of mutual responsibility with the child's parents or other persons who are responsible for the child. Under this relationship, the care coordinator must commit to developing a long-term disease prevention strategy and providing disease management and education services, while the child's parents or other persons who are responsible for the child must commit to participate fully in implementing the child's care management plan.

(4) Medicaid is required to provide reimbursement for the reasonable and necessary costs of the services associated with care coordination, including, but not limited to, case management, care plan oversight, preventive care, health and behavioral care assessment and intervention, and any service modifier that reflects the provision of prolonged services or additional care.

The bill requires ODJFS to conduct an evaluation of the pilot program's effectiveness. As part of the evaluation, statistics must be maintained on physician expenditures, hospital expenditures, preventable hospitalizations, and other matters ODJFS considers necessary to conduct the evaluation.

ODJFS is required to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) as necessary to implement the pilot program. The rules must specify standards and procedures to be used in designating the chronically ill children who are required to participate in the pilot program.



**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.

### **Supplemental rebates**

(R.C. 5111.082)

Under current law, if the Director of ODJFS establishes a program under which drug manufacturers are required to pay ODJFS a supplemental rebate as a condition of having their drugs covered by Medicaid without prior approval, drugs produced by a manufacturer for the treatment of mental illness, HIV, or AIDS must be exempt from the program. The bill requires drugs produced by a manufacturer to treat mental illness, HIV, or AIDS to also be exempt from "prior authorization or any other restriction" unless there is a generic equivalent.<sup>143</sup>

### **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.<sup>144</sup>

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.

---

<sup>143</sup> *The bill does not indicate what is meant by "prior authorization or any other restriction."*

<sup>144</sup> *Ohio Administrative Code Chapters 5101:3-5, 5101:3-6, and 5101:3-7.*

### **Medicaid coverage of chiropractic services**

(R.C. 4734.15)

Under current law Medicaid covers physician services and a chiropractor may be reimbursed for services under that program. The bill removes chiropractors from the definition of "physician" for the purpose of the Medicaid program.

### **Assertive community treatment and intensive home-based mental health services**

(R.C. 5111.022)

Under current law, the state Medicaid plan must include the provision of specified mental health services when provided by community mental health facilities that have quality assurance programs accredited by the Joint Commission on Accreditation of Healthcare Organizations or certified by the Department of Mental Health or Department of ODJFS. Those services include partial hospitalization mental health services of three to 14 hours per service day, rendered by persons directly supervised by a mental health professional. The bill requires the Director of ODJFS to seek federal approval to include assertive community treatment and intensive home-based mental health services in the community mental health component of Medicaid. The Director is required to seek the federal approval not later than May 1, 2004.

The bill also requires the Director to adopt rules, on receipt of the federal approval, establishing statewide access and acuity standards for partial hospitalization and for assertive community treatment and intensive home-based mental health services provided under the community mental health Medicaid component. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The Director is required to consult with the Department of Mental Health in adopting the rules.

### **Mental health and alcohol and drug addiction services**

(R.C. 340.03, 5101.11, 5101.022, 5111.025, 5111.911, 5111.912, 5111.913, and 5119.61)

Under current law, reimbursement for community mental health services covered by Medicaid is based on the prospective cost of providing the services. The bill eliminates that requirement. The bill instead 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.<sup>145</sup>

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 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.

---

<sup>145</sup> *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.*

### *Nursing home and hospital franchise permit fee*

(R.C. 3721.51, 3721.56, and 3721.561; Section 146.05)

ODJFS is required to assess an annual franchise permit fee on long-term care beds in nursing homes and hospitals.<sup>146</sup> The fee is applied to each nursing home bed, Medicare-certified skilled nursing facility bed, and Medicaid-certified nursing facility bed, and each bed in a hospital that is registered as a skilled nursing facility bed or long-term care bed or licensed as a nursing home bed.

Except for fiscal years 2002 through 2005, the amount of the franchise permit fee is \$1 for each such bed a nursing home or hospital has multiplied by the number of days in the fiscal year for which the fee is assessed. And except for those fiscal years, all the money generated by the franchise permit fee and penalties associated with the fee must be deposited into the Home and Community-Based Services for the Aged Fund. Money in that fund must be used for (1) the Medicaid program, (2) the PASSPORT program, and (3) the Residential State Supplement program.

Under current law, the franchise permit fee is \$4.30 for fiscal years 2003 through 2005.<sup>147</sup> Of the money generated by the fee and associated penalties for these fiscal years, 23.26% is to be deposited into the Home and Community-Based Services for the Aged Fund and 76.74% is to be deposited into the Nursing Facility Stabilization Fund. For the purpose of reimbursing nursing facilities a portion of the franchise permit fee, ODJFS is required to use money in the Nursing Facility Stabilization Fund to make payments to each nursing facility for each Medicaid day in fiscal years 2003 through 2005 in an amount equal to 76.74% of the franchise permit fee a nursing facility pays for the fiscal year ODJFS makes the payment divided by the nursing facility's inpatient days for the calendar year preceding the calendar year in which that fiscal year begins.<sup>148</sup> ODJFS is also required to use funds in the Nursing Facility Stabilization Fund to make payments to nursing facilities under the law governing Medicaid payments to nursing

---

<sup>146</sup> *ODJFS is required to cease implementation of the franchise permit fee if the federal government determines that it would be an impermissible health care related tax under federal Medicaid law.*

<sup>147</sup> *The franchise permit fee was \$3.30 per bed per day for fiscal year 2002.*

<sup>148</sup> *A Medicaid day is a day during which a resident who is a Medicaid recipient occupies a bed in a nursing facility that is included in the facility's Medicaid certified capacity. 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.*



facilities and in an amount equal to \$2.25 per Medicaid day for the purpose of enhancing quality of care.

The bill increases the franchise permit fee from \$4.30 to \$4.75 for fiscal year 2004 and to \$4.95 for fiscal year 2005. The additional revenue generated by the increase is to be deposited into the Nursing Facility Stabilization Fund.<sup>149</sup> The bill eliminates requirements on how money in that fund is to be used, other than a general requirement that the money be used to make Medicaid payments to nursing facilities.<sup>150</sup>

### **Medicaid inflation adjustment factor for hospital outpatient services**

(Section 58.20a)

The bill requires ODJFS to increase the total amount it pays all hospitals, other than children's hospitals, under the Medicaid program for outpatient services provided during fiscal years 2004 and 2005. For each fiscal year, the increase is to be the maximum amount possible using \$9,811,136.<sup>151</sup> ODJFS is required to make the increase in accordance with an inflation adjustment factor for outpatient hospital services the Director of ODJFS is to establish in rules. The rules must be adopted in accordance with the Administrative Procedure Act.

### **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.<sup>152</sup> The

---

<sup>149</sup> *In fiscal year 2004, 21.05% of the total revenue generated by the franchise permit fee is to be deposited into the Home and Community-Based Services for the Aged Fund. In fiscal year 2005, 20.2% of the generated revenues is to be deposited into that fund. The remaining amount of the generated revenues is to be deposited into the Nursing Facility Stabilization Fund.*

<sup>150</sup> *See "Medicaid reimbursement of long-term care services" below.*

<sup>151</sup> *Of the \$9,811,136, \$4,000,000 is state share. The remaining amount is the federal match. Because the increase is for fiscal years 2004 and 2005, the total state cost of the increase is \$8,000,000.*

<sup>152</sup> *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.*

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.

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.

Under the bill, Medicaid reimbursement rates for nursing facility and ICF/MR services provided during fiscal years 2004 and 2005, other than ICF/MR services provided by an ICF/MR operated by the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD), are to be based on June 2003 reimbursement rates with certain increases specified by the bill. Only

ICFs/MR operated by ODMR/DD are to have their 2004 and 2005 reimbursement rates determined in accordance with current law.<sup>153</sup>

**2004 and 2005 reimbursement rates for nursing facility services**

(Section 58.32)

The bill provides that the Medicaid reimbursement rate for nursing facility services provided during fiscal years 2004 and 2005 is to be as follows:

(1) If a nursing facility provider has a valid Medicaid provider agreement regarding the facility on June 30, 2003, or June 30, 2004, the provider's rate for the facility is to be the same as the provider's rate in effect on June 30, 2003, or June 30, 2004, increased in accordance with the bill.

(2) If a nursing facility undergoes a change of operator on July 1, 2003, or July 1, 2004, the entering operator's rate is to be the same as the exiting operator's rate that is in effect on June 30, 2003, or June 30, 2004, increased in accordance with the bill.<sup>154</sup>

(3) If a nursing facility undergoes a change of operator after July 1, 2003, (other than on July 1, 2004) the entering operator's rate is to be the same as the exiting operator's rate that is in effect on the day before the effective date of the entering operator's Medicaid provider agreement.

(4) If a nursing facility both obtains initial Medicaid certification as a nursing facility and begins participation in the Medicaid program after June 30, 2003, the provider's rate for the facility is to be the median of all rates paid to nursing facilities on July 1, 2003 (for fiscal year 2004) and July 1, 2004 (for fiscal year 2005).

(5) If one or more Medicaid certified beds are added to a nursing facility on July 1, 2003, or July 1, 2004, the provider's rate for the added beds is to be the same as the provider's rate that is in effect on June 30, 2003 (for fiscal year 2004) and June 30, 2004 (for fiscal year 2005) for the Medicaid certified beds that are in

---

<sup>153</sup> Current law authorizes ODJFS to compute the Medicaid reimbursement rate for ODMR/DD-operated ICFs/MR according to the reasonable cost principles of federal Medicare law. (R.C. 5111.291, not in the bill.)

<sup>154</sup> See "**Change of operator, closure, and voluntary termination and withdrawal**" below for a discussion of the terms "change of operator," "entering operator," and "exiting operator."

the facility on June 30, 2003, or June 30, 2004, increased in accordance with the bill.

(6) If one or more Medicaid certified beds are added to a nursing facility after July 1, 2003 (other than on July 1, 2004), the provider's rate for the added beds is to be the same as the provider's rate for the Medicaid certified beds that are in the facility on the day before the new beds are added.

The bill provides for three increases to nursing facilities' June 30, 2003, and June 30, 2004, Medicaid reimbursement rates. First, ODJFS must increase rates to the maximum extent possible using \$16,489,281 for fiscal year 2004 reimbursements and \$93,591,290 for fiscal year 2005 reimbursements.<sup>155</sup> Second, ODJFS must increase each nursing facility's rate by 45¢ per Medicaid day for fiscal year 2004 and by 20¢ per Medicaid day for fiscal year 2005.<sup>156</sup> The funds for this increase is generated by an increase in the nursing home and hospital franchise permit fee.<sup>157</sup> Third, ODJFS must increase rates to the maximum extent possible using funds remaining from the franchise permit fee increase.<sup>158</sup> The Director of ODJFS is required to adopt rules in accordance with the Administrative Procedure Act governing the payment of the rate increases.

A nursing facility's reimbursement rate for services provided during any part of fiscal year 2004 or 2005 is to be adjusted to reflect each audit adjustment made to each cost report used to establish the June 30, 2003, rate on which the facility's rate for services provided during fiscal year 2004 or 2005 is based. An adjustment does not affect nursing facilities whose reimbursement rate is based on the median of nursing facilities' rates.

---

<sup>155</sup> This amount is based on \$50 million in state funds that the House of Representatives added to ODJFS's Medicaid budget and the \$60,080,571 federal match. These state and federal funds are for both nursing facility and ICF/MR services.

<sup>156</sup> A "Medicaid day" is each day during which a resident who is a Medicaid recipient occupies a bed in a nursing facility that is included in the facility's Medicaid certified capacity. Therapeutic or hospital leave days for which payment would be made under current law if not for the bill are considered Medicaid days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days.

<sup>157</sup> See "Nursing home and hospital franchise permit fee" above.

<sup>158</sup> The franchise permit fee increase is expected to generate \$28,572,499 (state and federal) for fiscal year 2004 and \$50,795,553 (state and federal) for fiscal year 2005.

### 2004 and 2005 reimbursement rates for ICF/MR services

(Section 58.32)

The bill provides that the Medicaid reimbursement rate for ICF/MR services provided during fiscal years 2004 and 2005 is to be as follows:

(1) If an ICF/MR provider has a valid Medicaid provider agreement regarding the facility on June 30, 2003, or June 30, 2004, the provider's rate for the facility is to be the same as the provider's rate in effect on June 30, 2003, or June 30, 2004, increased in accordance with the bill.

(2) If an ICF/MR undergoes a change of operator on July 1, 2003, or July 1, 2004, the entering operator's rate is to be the same as the exiting operator's rate that is in effect on June 30, 2003, or June 30, 2004, increased in accordance with the bill.<sup>159</sup>

(3) If an ICF/MR undergoes a change of operator after July 1, 2003 (other than on July 1, 2004), the entering operator's rate is to be the same as the exiting operator's rate that is in effect on the day before the effective date of the entering operator's Medicaid provider agreement.

(4) If an ICF/MR both obtains initial Medicaid certification as an ICF/MR and begins participation in the Medicaid program after June 30, 2003, the provider's rate for the facility is to be the median of all rates paid to ICFs/MR on July 1, 2003 (for fiscal year 2004) and July 1, 2004 (for fiscal year 2005). ICFs/MR operated by ODMR/DD are excluded from the calculation of the median.

(5) If one or more Medicaid certified beds are added to an ICF/MR on July 1, 2003, or July 1, 2004, the provider's rate for the added beds is to be the same as the provider's rate that is in effect on June 30, 2003 (for fiscal year 2004) and June 30, 2004 (for fiscal year 2005) for the Medicaid certified beds that are in the facility on June 30, 2003, or June 30, 2004, increased in accordance with the bill.

(6) If one or more Medicaid certified beds are added to an ICF/MR after July 1, 2003 (other than on July 1, 2004), the provider's rate for the added beds is to be the same as the provider's rate for the Medicaid certified beds that are in the facility on the day before the new beds are added.

---

<sup>159</sup> See "**Change of operator, closure, and voluntary termination and withdrawal**" below for a discussion of the terms "change of operator," "entering operator," and "exiting operator."

The bill provides for one increase to ICF/MR's June 30, 2003, and June 30, 2004, Medicaid reimbursement rates. ODJFS must increase rates to the maximum extent possible using \$2,516,128 for fiscal year 2004 reimbursements and \$11,153,895 for fiscal year 2005 reimbursements.<sup>160</sup> However, no ICF/MR's rate for fiscal year 2004 may exceed 102% of its rate on June 30, 2003, and no ICF/MR's rate for fiscal year 2005 may exceed 102% of its rate on June 30, 2004. The Director of ODJFS is required to adopt rules in accordance with the Administrative Procedure Act governing the payment of the rate increases.

An ICF/MR's reimbursement rate for services provided during any part of fiscal year 2004 or 2005 is to be adjusted to reflect each audit adjustment made to each cost report used to establish the June 30, 2003, rate on which the facility's rate for services provided during fiscal year 2004 or 2005 is based. An adjustment does not affect ICFs/MR whose reimbursement rate is based on the median of the rates of ICFs/MR.

### **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.

---

<sup>160</sup> This amount is based on \$50 million in state funds that the House of Representatives added to ODJFS's Medicaid budget and the \$60,080,571 in federal match the \$50 million would draw down. These state and federal funds are for both nursing facility and ICF/MR services.



## **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.<sup>161</sup> 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

---

<sup>161</sup> The bill defines "entering operator" as the individual or private or governmental entity that will become the operator of a nursing facility or ICF/MR when a change of operator occurs. "Exiting operator" is defined as (1) an operator that will cease to be the operator of a nursing facility or ICF/MR on the effective date of a change of operator, (2) an operator that will cease to be the operator of a nursing facility or ICF/MR on the effective date of a facility closure, (3) an operator of an ICF/MR that is undergoing or has undergone a voluntary termination, or (4) an operator of a nursing facility that is undergoing or has undergone a voluntary withdrawal of participation. The "operator" is the individual or private or governmental entity responsible for the daily operating and management decisions for a nursing facility or ICF/MR.



state law or the partners agree that the change does not constitute a change in operator;

(6) If the operator is a corporation, dissolution of the corporation, a merger of the corporation with another corporation that is the survivor of the merger, or a consolidation of one or more other corporations to form a new corporation.

The following, alone, do not constitute a change of operator:

(1) A contract for an entity to manage a nursing facility or ICF/MR as the operator's agent, subject to the operator's approval of daily operating and management decisions;

(2) A change of ownership, lease, or termination of a lease of real or personal property associated with a nursing facility or ICF/MR if an entering operator does not become the operator in place of an exiting operator;

(3) If the operator is a corporation, a change of one or more members of the corporation's governing body or transfer of ownership of one or more shares of the corporation's stocks, if the same corporation continues to be the operator.

### **Facility closure**

(R.C. 5111.65)

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.<sup>162</sup> The written notice must be provided to ODJFS not later than 45 days before the effective date of the change of operator if the change does not entail the relocation of residents. The written notice is due not later than 90 days before the effective date of the change of operator if the change entails the relocation of residents. The effective date of a change of operator is the day the entering operator becomes the operator. The notice must include all of the following:

- (1) The name of the exiting operator and, if any, the exiting operator's authorized agent;
- (2) The name of the nursing facility or ICF/MR that is the subject of the change of operator;
- (3) The exiting operator's Medicaid provider agreement number;
- (4) The name of the entering operator;
- (5) The effective date of the change of operator;
- (6) The manner in which the entering operator becomes the facility's operator, including through sale, lease, merger, or other action;
- (7) If the manner in which the entering operator becomes the facility's operator involves more than one step, a description of each step;
- (8) Written authorization from the exiting operator or owner and entering operator for ODJFS to process a Medicaid provider agreement for the entering operator;

---

<sup>162</sup> *The bill defines "owner" as an individual or private or governmental entity that has at least 5% ownership or interest, either directly, indirectly, or in any combination, in any of the following regarding a nursing facility or ICF/MR: (1) the land on which the facility is located, (2) the structure in which the facility is located, (3) any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure on or in which the facility is located, or (4) any lease or sublease of the land or structure on or in which the facility is located.*

- (9) The signature of the exiting operator's or owner's representative.

The entering operator is required to include a completed application for a Medicaid provider agreement with the notice. Also, the entering operator must attach all the proposed or executed leases, management agreements, merger agreements and supporting documents, and sales contracts and supporting documents relating to the facility's change of operator.

**Determination of potential Medicaid debt**

(R.C. 5111.68)

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.<sup>163</sup> ODJFS must make the estimate using information available to ODJFS, including prior determinations of overpayments and other debts.

---

<sup>163</sup> See "**Provider agreement with entering operator**" below.

### *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 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;<sup>164</sup>

(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.<sup>165</sup> 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.<sup>166</sup> 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.

---

<sup>164</sup> *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.*

<sup>165</sup> *The bill gives ODJFS sole discretion over whether to waive the cost report requirement for an exiting operator.*

<sup>166</sup> *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.*

All payments under Medicaid for the period the cost report covers are deemed overpayments until the date ODJFS receives the properly completed cost report if the exiting operator fails to file the cost report within the required time. ODJFS is permitted to impose on the exiting operator a penalty of \$100 for each calendar day the properly completed cost report is late. The penalty is subject to an adjudication conducted in accordance with the Administrative Procedure Act.

The bill prohibits ODJFS from providing an exiting operator final payment under Medicaid until ODJFS receives all properly completed cost reports required by current law and the bill.

**Determination of actual Medicaid debt**

(R.C. 5111.686)

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.<sup>167</sup>

**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

---

<sup>167</sup> 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.



made 181 days after the date ODJFS issues the waiver unless ODJFS issues the report on actual Medicaid debt not later than 180 days after the date ODJFS waives the cost report. If ODJFS issues the report on actual Medicaid debt not later than 90 days after the cost report is filed or 180 days after the date the cost report is waived, the release must be made not later than 15 days after the exiting operator agrees to a final fiscal audit resulting from the report.

The amount released is to be reduced by any amount the exiting operator owes ODJFS and CMS under Medicaid. If the actual amount withheld and the security are inadequate to pay the exiting operator's debt to ODJFS and CMS or if ODJFS is required to release the withholdings and security before ODJFS is paid the exiting operator's debt, ODJFS must collect the debt from the exiting operator. ODJFS may also collect the debt from the entering operator if ODJFS is unable to collect the entire debt from the exiting operator and the entering operator enters into a Medicaid provider agreement that requires the entering operator to assume the exiting operator's remaining Medicaid debt.<sup>168</sup> 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.<sup>169</sup>

---

<sup>168</sup> See "**Provider agreement with entering operator**" below.

<sup>169</sup> 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.

**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 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.<sup>170</sup>

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.<sup>171</sup>

(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

---

<sup>170</sup> *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.*

<sup>171</sup> *See "Withholdings and security" and "Final cost report" above.*

operator does not entail the relocation of residents. The number of days is 90 if the change entails the relocation of residents.

The provider agreement must satisfy all of the following requirements:

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

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.<sup>172</sup> 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

---

<sup>172</sup> *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).)*

applicable after the effective date of a voluntary withdrawal that differ from the reimbursement methodology and other procedures that would otherwise apply.

### **Penalties**

(R.C. 5111.28)

Current law authorizes ODJFS to penalize a nursing facility or ICF/MR owner that fails to provide notice of sale of the facility or voluntary termination of Medicaid participation within the required time.<sup>173</sup> 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.<sup>174</sup>

### **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

---

<sup>173</sup> See "**Change of operator, closure, and voluntary termination and withdrawal**" above.

<sup>174</sup> See "**Withholdings and security**" above. This would also include a penalty for not furnishing requested documentation regarding an audit.

in which a nursing facility must comply with the requirement. If adopted, the rules must be adopted in accordance with the Administrative Procedure Act.

**Conditional employment in adult day-care program and adult care facility**

(R.C. 3721.121 and 3722.151)

An individual who has been convicted of or pleaded guilty to certain offenses<sup>175</sup> may not be employed in a job that involves providing direct care to a person age 60 or older in a nursing home, residential care facility, home for the aging, the Ohio Veteran's Home, adult care facility, skilled nursing facility, or nursing facility unless the individual meets personal character standards.<sup>176</sup> Under current law, an individual may be employed conditionally for up to 60 days pending the results of a criminal background check. The bill shortens the conditional employment period to 30 days.

**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 increases the Council's membership to 18 by adding a representative of Medicaid recipients residing in nursing facilities. The Governor is required to make the appointment within 90 days. The bill also requires the

---

<sup>175</sup> *The offenses include, for example, murder, manslaughter, assault, failure to provide for a functionally impaired person, aggravated menacing, patient abuse/neglect, kidnapping, abduction, extortion, coercion, rape, sexual imposition, importuning, voyeurism, public indecency, robbery, aggravated burglary, breaking and entering, theft offenses, Medicaid fraud, insurance fraud, domestic violence, weapons offenses, and drug-related offenses.*

<sup>176</sup> *Personal character standards are specified in rules of the Department of Health that set forth standards an individual with a criminal history must meet to be employed by any of the health-care facilities described above. The rules provide that an individual is automatically disqualified from employment for certain offenses but that an employer may hire the individual if the employer determines that the individual is unlikely to harm an older adult. A number of factors the employer is to consider in making that determination are specified in the rule. Ohio Administrative Code § 3701-13-06.*

Council to meet quarterly beginning August 1, 2003 and 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.



**Federal financial participation for county MR/DD board administrative costs**

(R.C. 5126.058, 5111.92)

The bill requires the Director of Job and Family Services to seek federal funds to defray certain administrative costs incurred by a county MR/DD board pursuant to its Medicaid local administrative authority if the county board has claimed the costs in accordance with rules promulgated by ODJFS.<sup>177</sup> Under the bill, the Director must seek federal funding for the following costs if they are associated with home and community-based services, habilitation center services, or the service and support administration provided in conjunction with either of those services: business management, contract management, general administration, personnel management, and contract services for certain legal or representational activities.

The bill provides that 1% of the federal funds obtained under this provision must be deposited into ODMR/DD's administrative and oversight fund, and the remainder be paid to the county board that made the claim. The bill specifically prohibits ODJFS from retaining or collecting any portion of funds obtained under this provision.

The bill requires the Director of Job and Family Services, in consultation with the Director of ODMR/DD, to adopt rules for the implementation of this section. The bill specifies that the rules must be in accordance with federal regulations governing the Medicaid program, and must include the following provisions: (1) a county board cannot claim more than 15% of its administrative costs for home and community-based services and habilitation services, (2) a county board may not claim more than 50% of its administrative costs for service and support administration provided in conjunction with those services, (3) a county board must verify the costs for which it seeks federal funds in accordance with a time study or actual billing provided for in the rules, and (4) a county board may claim administrative costs incurred before, on, or after the effective date of this provision.

**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

---

<sup>177</sup> *Current law provides that a county MR/DD board has Medicaid local administrative authority to conduct various activities, including the performance of assessments and evaluations. (R.C. 5126.055.)*

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;<sup>178</sup>
- (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 established under 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.

---

<sup>178</sup> Under the existing uncodified provision the recipient must have resided continuously in a nursing facility since January 1, 2001.

## Ohio Home Care Program

(R.C. 5111.97)

ODJFS currently operates the Ohio Home Care Program pursuant to rule. The Program serves three categories of Medicaid recipients: (1) those under age 60 whose medical condition or functional abilities would otherwise require them to live in a nursing home, (2) those of any age whose chronic, unstable medical condition would otherwise require long-term hospitalization or institutional placement, and (3) those of any age who have both a developmental disability and a physical or cognitive impairment that would otherwise require institutional placement. Individuals may be eligible for one of several benefit packages offered by ODJFS depending on the level of care (hours of home care service, number of nursing and skilled therapy visits, and so on) that a recipient needs per week.<sup>179</sup> 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;

---

<sup>179</sup> O.A.C. 5101:3-12-03.

(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.

**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)).<sup>180</sup>

---

<sup>180</sup> "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 an ODJFS-administered home and community-based waiver. "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 receive services in a home setting rather than a nursing facility or hospital. Home and community-based waiver services are approved by the Centers for Medicare and Medicaid for specific populations and are not otherwise available under the Medicaid state plan. (R.C. 5111.95(A)(4).)

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."<sup>181</sup> If an applicant for whom a criminal records check request is required does not present proof of having been an Ohio resident for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the Superintendent has requested information about the applicant from the FBI in a criminal records check, the chief administrator must request that the Superintendent obtain information from the FBI as part of the criminal records check of the applicant. Even if an applicant for whom a criminal 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;

---

<sup>181</sup> "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).)

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 waiver 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).)<sup>182</sup>

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

---

<sup>182</sup> *"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. (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)).*

prescribed form used to obtain information necessary to conduct a criminal records check and a standard fingerprint impression sheet and to obtain the completed form and impression sheet and fee from the independent provider. ODJFS then is required to forward the completed form, impression sheet, and fee to the Superintendent of BCII. An independent provider given information about obtaining the form and fingerprint impression sheet who fails to complete the form or provide fingerprint impressions may not be approved as an independent provider. (R.C. 5111.96(C).)

**Offenses disqualifying a person from being an independent provider**

Except as provided in rules adopted by ODJFS described below, ODJFS may not issue a new provider agreement to, and must terminate an existing provider agreement of, an independent provider if the person has been convicted of or pleaded guilty to any of the following (R.C. 5111.96(D)):

(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 RC. 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)).

### **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.<sup>183</sup> The members must be appointed within 90 days after the bill becomes effective, and the Commission may hire a 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.

### **Study expanding Medicaid coverage for breast and cervical cancer treatment**

(Section 58.35)

Am. Sub. H.B. 94 of the 124th General Assembly enacted a provision requiring the Director of Job and Family Services to seek an amendment to the state Medicaid plan from the United States Secretary of Health and Human Services for purposes of implementing the Breast and Cervical Cancer Prevention and Treatment Act of 2000.<sup>184</sup> Pursuant to this amendment, certain women would qualify for Medicaid during the period for which treatment for breast or cervical cancer was needed. To qualify, a woman had to (1) be under age 65, (2) not otherwise be eligible for Medicaid, (3) meet the definition of "screened for breast and cervical cancer under the Centers for Disease Control and Prevention Breast

---

<sup>183</sup> *Vacancies are to be filled in the same manner.*

<sup>184</sup> *Revised Code § 5111.0110.*

and Cervical Cancer Early Detection Program," (4) need treatment for breast or cervical cancer, and (5) not otherwise be covered under creditable coverage.<sup>185</sup> The amendment was approved and rules issued to implement it.<sup>186</sup>

Beginning in January 2001, the Centers for Medicare and Medicaid Services (CMS) issued guidance to assist state health officials in their implementation of the Breast and Cervical Cancer Prevention and Treatment Act of 2000.<sup>187</sup> As part of this guidance, CMS stated that the CDC allows Title XV grantees (the various states) the flexibility to expand the population of women qualifying for Medicaid by extending the definition of "screened for breast and cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program" to include two additional groups of women: (1) those who are screened under a Title XV-funded Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program but whose screenings were not paid for with Title XV funds distributed as grants, and (2) those who are screened by any provider or entity and the state has elected to include screening activities by that provider or entity as Title XV screening activities.<sup>188</sup>

The bill requires the Department of Job and Family Services to complete a study and to prepare a report by October 1, 2003, considering the feasibility of extending Medicaid coverage to include the women in the two additional groups.

## **IX. 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

---

<sup>185</sup> *All of the following are creditable coverage: (1) a group health plan, (2) health insurance, (3) Part A or B of Medicare, (4) Medicaid, other than for pediatric vaccines, (5) United States armed forces medical and dental care, (6) a medical care program of the Indian Health Service or a tribal organization, (7) a state health benefits risk pool, (8) a health plan offered under federal law to federal government employees, (9) a public health plan, and (10) a health benefit plan under the Peace Corps Act.*

<sup>186</sup> *Ohio Administrative Code Chapter 5101:1-4.*

<sup>187</sup> *Breast and Cervical Cancer Prevention and Treatment Act of 2000* <<http://cms.hhs.gov/bccptfaq.pdf>> (visited June 2, 2003).

<sup>188</sup> *Title XV of the Public Health Service Act, 42 United States Code Annotated 201 et seq., permits the United States Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, to make grants to the states to establish programs to detect and control breast and cervical cancer.*



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.

## **X. 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.<sup>189</sup> To be eligible, a person must be one of the following:

(1) Under 18 years of age;

(2) Age 60 or older;

(3) Pregnant;

(4) Unable to do any substantial or gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for not less than nine months;

(5) A resident of a residential treatment center certified as an alcohol or drug addiction program by the Ohio Department of Drug and Alcohol Addiction Services;

(6) Medication dependent, as determined by a physician, who has certified to a county department of job and family services that the person is receiving ongoing treatment for a chronic medical condition requiring continuous prescription medication for an indefinite, long-term period of time and for whom loss of the medication would result in a significant risk of medical emergency and loss of employability lasting at least nine months. Persons in this category do receive medical assistance, but not financial assistance.

---

<sup>189</sup> *The Disability Assistance program's income eligibility standards are established by ODJFS rule (R.C. 5115.05).*

### **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.
- Requires the Joint Legislative Ethics Committee (JLEC) to impose a late filing fee of \$12.50 per day, up to a maximum fee of \$100, upon an executive agency lobbyist or a lobbyist's employer who fails to file a registration statement or an amended registration statement on time or within a 15-day period after receiving a specified notice.
- Eliminates the requirement that JLEC notify the Attorney General and other public officials of an executive agency lobbyist's or the lobbyist's employer's failure to so file a registration statement or amended registration statement.

#### Registration fees

(R.C. 101.72(E) and 121.62(E))

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 (JLEC) 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.

**Late filing fee for executive agency lobbyists and their employers**

(R.C. 121.62(G))

As noted above, continuing law requires an executive agency lobbyist and the lobbyist's employer to file an initial registration statement with JLEC within ten days following the lobbyist's engagement. Thereafter, the executive agency lobbyist and employer must file an updated registration statement not later than the last day in January, May, and September in each year. The Executive Director of JLEC is responsible for reviewing each registration statement filed and determining whether it contains the required information. If JLEC determines that a registration statement does not contain all of the required information or that an executive agency lobbyist or the lobbyist's employer has failed to file a registration statement, JLEC must send a written notification by certified mail to the person who filed the registration statement regarding the deficiency in the statement or to the person who failed to file the registration statement regarding the failure. Any person so notified must file, not later than 15 days after receiving the notice, a registration statement or an amended registration statement that contains all of the required information.

Under existing law, if a person who receives a notice fails to file a registration statement or an amended registration statement within that 15-day period, JLEC must notify the Attorney General. The Attorney General may investigate and, in the event of an apparent violation, must report the findings of the investigation to the Franklin County prosecuting attorney, who then must institute appropriate proceedings. If JLEC notifies the Attorney General, JLEC also must notify each elected executive official and the director of each state administrative department of the pending investigation.

The bill eliminates the requirement that JLEC notify the Attorney General, each elected executive official, and the director of each state administrative department regarding the failure of an executive agency lobbyist or the lobbyist's employer to file a required registration or amended registration statement; the Attorney General still would retain, however, existing independent authority to conduct an investigation for compliance of individuals with the Executive Agency Lobbying Law and the existing duty to refer violations found to the Franklin County prosecuting attorney for appropriate proceedings (R.C. 121.69--not in the bill). Instead, under the bill, if an executive agency lobbyist or the lobbyist's employer fails to file a registration statement or an amended registration statement within the 15-day period after receiving a notice, JLEC generally must assess a

late filing fee of \$12.50 per day, up to a maximum fee of \$100, upon that person. However, JLEC may waive the late filing fee for good cause shown.

---

## LEGAL RIGHTS SERVICE COMMISSION

- Modifies the authority of the Legal Rights Service Commission and of the administrator of the Legal Rights Service.

### 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 advise the administrator in establishing and annually reviewing a strategic plan and 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. Under that procedure, any such person may appeal the decision of the Service to the Commission, 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

- Eliminates the State Lottery Commission's power to conduct lotteries in order to disburse unclaimed prize awards as well as the Unclaimed Lottery Prizes Fund.



- Amends the definition of "court of competent jurisdiction" for purposes of the Lottery Prize Award Transfer (LPAT) Law.
- Eliminates the requirement in the LPAT Law that, in order for a court to approve a transfer of a lottery prize award when the transferor is a prize winner, the court must find that the prize winner has established that the transfer is fair and reasonable and in the prize winner's best interest.
- Provides in the LPAT Law that, if all other conditions necessary for a court's approval of a transfer of a lottery prize award are met, the transfer must be presumed to be fair and reasonable and in the best interests of the prize winner.
- 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.

### **Transfer of lottery prize awards**

(R.C. 3770.10, 3770.12, and 3770.13 (not in the bill))

#### **Overview**

Under continuing provisions of the Lottery Prize Award Transfer Law, a lottery prize winner can enter into a "transfer agreement." This agreement provides for the transfer of all or any part of the prize winner's lottery prize award to a transferee. But, before the transfer can occur, a court of competent jurisdiction must approve the transfer agreement. Current law defines a "court of competent jurisdiction" as the probate court of the county in which the prize winner resides, or, if the prize winner is not an Ohio resident, the probate court of Franklin county or a federal court having jurisdiction over the lottery prize award. In order to approve the transfer, the court must find that certain conditions exist. Examples of these conditions include the following when the transferor is a prize winner:

- That the transferee has provided to the prize winner a specified disclosure statement, and the prize winner has confirmed receipt of the disclosure statement.

- That the prize winner has established that the transfer is fair and reasonable and in the best interests of the prize winner.
- That the prize winner has received independent professional advice regarding the legal and other implications of the transfer.

### **Changes proposed by the bill**

The bill makes two changes to the Lottery Prize Award Transfer Law. First, the definition of "court of competent jurisdiction" is expanded to mean the *general division* or the *probate division* of the court of common pleas of the county in which the prize winner resides or, if the prize winner is not an Ohio resident, the *general division* or the *probate division* of the court of common pleas of Franklin county (or, as in continuing law, a federal court having jurisdiction over the lottery prize award), rather than just "the probate court" as under current law (R.C. 3770.10(A)).

Second, the bill eliminates current law's requirement that, in order for a court of competent jurisdiction to approve a transfer of a lottery prize award when a prize winner is the transferor, the court must find that the prize winner has established that the transfer is fair and reasonable and in the prize winner's best interest. The bill replaces this requirement with a presumption: if the court determines that all other conditions necessary for approval of a transfer are met, the transfer of the lottery prize award must be presumed to be fair and reasonable and in the best interests of the prize winner. (R.C. 3770.12.)

### **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 \$5,000 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 DISABILITIES**

- 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 certain criteria are met.
- Permits the Ohio Department of Job and Family Services (ODJFS), if the licensed capacity of a residential facility that is an ICF/MR is reduced, to transfer to ODMR/DD the nonfederal share of Medicaid expenditures saved, which are to be used to cover the committed 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.
- 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.
- Provides that a county MR/DD board may use until December 31, 2005, rather than December 31, 2003, rules establishing criteria for determining the order in which two or more individuals with the same priority for Medicaid-funded home and community-based services administered by ODMR/DD may be offered the services.
- Continues for the 2004 and 2005 biennium a limitation that not more than 400 individuals may receive priority on county MR/DD boards' waiting lists for ODMR/DD-administered home and community-based services on the basis of being under age 22 and meeting certain other conditions.
- Requires ODMR/DD to distribute certain existing payments to county MR/DD boards quarterly.
- 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 22 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 not later than 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).<sup>190</sup> In general, a residential facility is a home or facility in which a person with mental retardation or a developmental disability resides.<sup>191</sup> 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).<sup>192</sup>

---

<sup>190</sup> R.C. 5123.20 (not in the bill).

<sup>191</sup> *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.*

<sup>192</sup> *Certain facilities with ICF/MR beds are subject to nursing home licensing requirements rather than residential facility licensing requirements. These are nursing homes that on June 30, 1987 had beds that obtained ICF/MR certification before that date and nursing homes that on that date had an application pending to convert intermediate care facility beds to ICF/MR beds. However, such a nursing home becomes subject to residential facility licensing requirements if the home's certification or provider agreement as an ICF/MR is subject to a final order of nonrenewal or termination with respect to which all appeal rights have been exhausted and the home intends to apply for recertification. Also, such a nursing home must seek a residential facility license for new ICF/MR beds added after June 30, 1987. (R.C. 5123.192, not in the bill.)*

**Rule-making authority**

(R.C. 5123.19)

Continuing law requires the Director of ODMR/DD to adopt rules for licensing and regulating the operation of residential facilities. The bill requires that the rules include rules for ICFs/MR. The rules for ICFs/MR may differ from the rules for other residential facilities.

**Licensed bed capacity**

(R.C. 5123.19 and 5123.198)

Among the rules the Director of ODMR/DD must adopt for licensing and regulating residential facilities are rules establishing the maximum number of persons who may be served in a particular type of residential facility. This number is sometimes referred to as the licensed bed capacity of the facility.

Under the bill, when a resident of a residential facility is committed to a state-operated ICF/MR, ODMR/DD must reduce by one the facility's licensed bed capacity. A reduction is to be done pursuant to an adjudication order issued in accordance with the Administrative Procedure Act. However, the reduction in licensed bed capacity is not to happen if any of the following are the case:

(1) The residential facility admits an individual who resides in a state-operated ICF/MR on the date of the commitment of the residential facility's resident to a state-operated ICF/MR;

(2) There are no individuals in a state-operated ICF/MR on the date of the commitment who have needs that the residential facility can meet;

(3) The residential facility admits an individual who resides in another residential facility on the date of the commitment, has needs the residential facility can meet, and is designated for transfer to the residential facility by ODMR/DD not later than 90 days after the date of the commitment;

(4) There are no individuals residing in another residential facility on the date of the commitment who have needs that the residential facility can meet;

(5) ODMR/DD fails within the 90-day period to designate for transfer to the residential facility an individual who has needs that the residential facility can meet and resides in another residential facility on the date of the commitment;

(6) Every individual ODMR/DD designates within the 90-day period for transfer to the residential facility, or the parents or guardians of every such individual, refuses placement in the facility.<sup>193</sup>

**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 the licensed bed capacity of a residential facility that is an ICF/MR 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 (1) 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 and (2) the number of beds for which the license holder voluntarily converts to use for supported living on or after July 1, 2003.<sup>194</sup> The

---

<sup>193</sup> *The bill requires that the admissions, discharges, and transfers comply with ODMR/DD rules.*

<sup>194</sup> *"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).)*

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. The cap does not bar ODMR/DD from issuing an interim license to a residential facility or issuing a waiver allowing a residential facility to admit more residents than the facility is licensed to admit.<sup>195</sup> 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.

---

<sup>195</sup> *Current law authorizes ODMR/DD to issue an interim residential facility license to an applicant for a permanent license if ODMR/DD determines that (1) an emergency exists requiring immediate placement of persons in a residential facility, insufficient licensed beds are available, and the facility is likely to receive a permanent license within 30 days after issuance of the interim license or (2) the issuance of an interim license is necessary to meet a temporary need for a residential facility. An interim license is valid for 30 days and may be renewed for up to 150 days.*

(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, but who does not currently receive residential services or supported living, priority in circumstances specified in statute. The bill continues to limit until July 1, 2005, the individuals who may receive this latter priority to not more than 400 individuals.

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, and choose to move to 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, 2005. 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.

### **Distribution of county MR/DD board subsidies**

#### **General purpose subsidy**

(R.C. 5126.12)

ODMR/DD is required to pay each county board of MR/DD a general purpose subsidy in semiannual installments of equal amounts. The bill changes

the payment of general purpose subsidies to county MR/DD boards by ODMR/DD from semiannual installments of equal amounts to quarterly installments of equal amounts made no later than September 30, December 31, March 31, and June 30.

**Subsidy for employment of a business manager**

(R.C. 5126.121)

Current law provides that a county board of MR/DD may be eligible to receive a subsidy from ODMR/DD for the employment of a business manager if the county board employs the business manager in accordance with standards adopted by ODMR/DD in rules. The bill specifies that the subsidy be distributed to eligible county boards in quarterly installments of equal amounts, to be paid not later than September 30, December 31, March 31, and June 30.

**Family support services subsidy**

(R.C. 5126.11)

County boards of MR/DD are required to establish a family support services program under which the board makes payments to an individual with MR/DD or the family of such an individual who desires to remain in and be supported in the family home.<sup>196</sup> ODMR/DD is required by current law to distribute to county boards money appropriated for family support services on July 1 of each year. The bill requires instead that the money be distributed in quarterly installments of equal amounts, not later than September 30, December 31, March 31, and June 30.

**Service and support administration subsidy**

(R.C. 5126.15)

Subject to available funds, current law requires ODMR/DD to pay county boards of MR/DD an annual subsidy for service and support administration.<sup>197</sup>

---

<sup>196</sup> *Payments are made for costs incurred or estimated to be incurred for services that would promote self-sufficiency and normalization, prevent or reduce inappropriate institutional care, and further the unity of the family by enabling the family to meet the individual's special needs and live as much like other families as possible.*

<sup>197</sup> *Individuals employed by or under contract with a county board of MR/DD as service and support administrators are required to (1) establish eligibility for services, (2) assess individual needs for services, (3) develop individual service plans, (4) establish budgets for services, (5) assist individuals in making provider selections, (6) ensure that services are effectively coordinated and provided by appropriate providers, (7) establish and implement a system of monitoring the individual service plans, (8) perform quality*

The bill changes the distribution of the subsidy from semiannual installments paid no later than August 31 and January 31 to quarterly installments of equal amounts to be paid no later than September 30, December 31, March 31, and June 30.

**Supported living services**

(R.C. 5126.44)

ODMR/DD is required to make allocations to county boards of MR/DD to be used for planning, development, contracting for, and providing supported living pursuant to rules it adopts. Under current law, the money is to be distributed in two installments annually, which are paid no later than July 31 and December 31. The bill requires instead that the money be distributed to the county boards of MR/DD in quarterly installments, to be paid no later than September 30, December 31, March 31, and June 30.

**Tax equity payments**

(R.C. 5126.18)

ODMR/DD is required by existing law to provide for payment to each county board (from money appropriated for the purpose) of the amount by which the statewide yield per enrollee exceeds the county yield per enrollee multiplied by the adult services enrollment of the county board, subject to certain reductions.<sup>198</sup> The money is to be paid on or before September 30 of each year. The bill provides instead that ODMR/DD must make the payments in quarterly installments of equal amounts, to be paid no later than September 30, December 31, March 31, and June 30.

---

*assurance reviews, (9) incorporate the results of quality assurance reviews and identified trends and patterns of unusual incidents and major unusual incidents into amendments of an individual's service plan, and (10) ensure that each individual receiving services has a designated person responsible for providing the individual with representation, advocacy, advice, and assistance with coordination of service in accordance with the individual's service plan.*

<sup>198</sup> *The county yield per enrollee means the product obtained by multiplying the statewide average tax millage by the per-mill yield of the county board divided by the adult enrollment of the board. The statewide yield per enrollee means the quotient obtained by dividing the sum of the county yields of all county board by the sum of the adult enrollments of all county boards.*

### **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 22 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;
- (7) The Director of Health or the Director'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.
- 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 25% of the money from the sale of standing timber from state forest lands and nurseries to the State Forest Fund and 75% 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 consists of amounts that have been credited to the GRF from the sale of standing timber; and changes the amount that is so distributed from 80% of the gross value to 65% of the net value of the standing timber.

- Repeals uncodified law that establishes a new two-year formula for the distribution of money from the salvage and sale of timber and other forest products from the state forests other than the Shawnee Wilderness Area that have been felled or damaged by weather or other natural forces or conditions.
- Prohibits the Department of Natural Resources from charging a fee in fiscal years 2004 and 2005 for the privilege of entering a state park or a nature preserve.

### **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:

<b>Construction cost estimate</b>	<b>Current law's fee amount (% of construction cost estimate)</b>	<b>Bill's fee amount (% of construction cost estimate)</b>
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:

<b>License, permit, or stamp</b>	<b>Current fee</b>	<b>Proposed fee</b>
Hunting license for resident	\$14	\$18
Hunting license for nonresident whose state has reciprocity agreement with Ohio	\$14	\$18
Hunting license for nonresident whose state does not have reciprocity agreement	\$90	\$124
Tourist's hunting license (renamed small game license by bill)	\$24	\$39
Fishing license for resident	\$14	\$18
Fishing license for nonresident whose state has reciprocity agreement with Ohio	\$14	\$18
Fishing license for nonresident whose state does not have reciprocity agreement	\$23	\$39
Tourist's fishing license	\$14	\$18
One-day fishing license	40% of tourist's fishing license fee	55% of tourist's fishing license fee
Fur taker permit	\$10	\$14
Special deer or special wild turkey permit	\$19	\$23
Wetlands habitat stamp	\$10	\$14
Reissuance of licenses, permits, or stamps	\$2	\$4

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:

<b>License, permit, or stamp</b>	<b>Current fee</b>	<b>Proposed fee</b>
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.<sup>199</sup> The annual license fee is \$10. Current law also establishes requirements governing specified activities of such permit holders. The bill eliminates the

---

<sup>199</sup> *Current law appears to use "permit" and "license" interchangeably.*

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.

### **State timber sales**

#### **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 25% of the moneys from the sale of standing timber to be credited to the State Forest Fund and 75% 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. The bill also specifies that when the Chief initially deposits money from the sale of standing timber into the General Revenue Fund, he must determine the net value, rather than the gross value, of all such standing timber sold from lands and nurseries in each county and in each township and school district within the county. Finally, the bill changes the percentage of money that is distributed to counties, townships, and school districts from 80% of the gross value to 65% of the net value of the standing timber that was sold. The formula for distributing the money among counties, townships, and school districts is unchanged.

**Elimination of new formula for the distribution of money from the sale of state timber felled or damaged by natural conditions**

(Section 132.14B)

The bill repeals an uncodified provision enacted by Am. Sub. H.B. 87 of the 125th General Assembly (the transportation budget bill) that provides, for a two-year period, for the redistribution of money from state timber sales and that authorizes the Chief of the Division of Forestry to salvage and sell timber and other forest products from the state forests, with the exception of the Shawnee Wilderness Area, that have been felled or damaged by weather, natural forces, or other conditions with the approval of the Attorney General and the Director of Natural Resources.

**Prohibition against entrance fees for state parks and nature preserves**

(Section 73.02)

Currently, the Department of Natural Resources does not charge entrance fees for state parks or nature preserves. The bill ensures that this will continue during fiscal years 2004 and 2005 by prohibiting the Department from charging a fee during those years for the privilege of entering a state park or a nature preserve.

---

## OHIO BOARD OF NURSING

- 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.
- Provides for the certification of community health workers by the Board of Nursing.

## 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.<sup>200</sup> 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

---

<sup>200</sup> *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).*

to the postlicensure provisions. The Board cannot charge a fee for cards received pursuant to the prelicensure education program.

**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.

<b>License</b>	<b>Current fee</b>	<b>Fee under the bill</b>
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 grants to nurse education programs that have partnerships with other education programs, community health agencies, or health care facilities to fund partnerships to increase the enrollment capacity of nurse education programs.<sup>201</sup> Methods of increasing enrollment capacity may include: hiring faculty and preceptors, purchasing education equipment and materials, and other actions acceptable to the Board. Grant money cannot be used to construct or renovate buildings.

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 a nurse education program and one or more other education programs, community health agencies, and 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

---

<sup>201</sup> 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.)



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;
- (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) The percentage of available grants to be awarded to licensed practical nurse education programs, registered nurse education programs, and graduate programs;
- (7) 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.

### **Community health worker certification program**

(R.C. 4723.81, 4723.01, 4723.06, 4723.07, 4723.08, 4723.271, 4723.34, 4723.35, 4723.63, 4723.82, 4723.83, 4723.84, 4723.85, 4723.86, 4723.87, and 4723.88)

#### **Community health workers**

(R.C. 4723.81 and 4723.82)

Under the bill, the Board of Nursing must develop and implement a program for the certification of community health workers and begin issuing certificates by not later than February 1, 2005.<sup>202</sup> Only the holder of a current, valid community health worker certificate may use the title, "certified community health worker" or "community health worker," and when providing services within the community, may represent to the public that the certificate holder is providing services under either title. However, the certificate program does not require an individual to obtain a community health worker certificate as a means of authorizing the individual to perform any of the activities that certified community health workers perform.

The bill requires the certification program to "reflect the Board's recognition of individuals who, as community representatives, advocate for individuals and groups in the community by assisting them in accessing community health and supportive resources through the provision of education, role modeling, outreach, home visit, and referral services." These services may be targeted toward an individual, family, or entire community. The certification program must also "reflect the Board's recognition of community health workers as members of the community with a unique perspective of community needs that enables them to develop culturally appropriate solutions to problems and to translate the solutions into practice."

#### **Certification**

(R.C. 4723.83, 4723.84, and 4723.85)

Under the bill, an individual seeking to provide services as a certified community health worker must apply to the Board for a certificate. The application must include the application fee established by the Board in rules. To receive a certificate, the applicant must be 18 years of age or older, possess a high school diploma or a high school equivalence diploma, and have completed a

---

<sup>202</sup> *The bill defines "certified community health worker" as an individual who holds a current, valid certificate as a community health worker issued by the Board of Nursing. The bill addresses only certified community health workers.*

community health worker training program approved by the Board.<sup>203</sup> The applicant must also undergo a criminal records check by the Bureau of Criminal Identification and Investigation.<sup>204</sup> The Board must issue a certificate to each applicant who meets the requirements specified in the bill and in rules adopted by the Board.

Certificates expire biennially and may be renewed in accordance with a schedule and procedures established by the Board in rules. To renew a certificate, the holder must successfully complete the continuing education requirements and meet all other renewal requirements established by the Board.

### **Community health workers--supervision**

(R.C. 4723.82)

A community health worker certificate does not authorize its holder to administer medications or perform any other activity that requires judgment based on nursing knowledge or expertise. Nursing-related activities must be delegated to a community health worker by a registered nurse in accordance with procedures established by the Board in rules. Further, to perform any nursing-related activity, a certified community health worker must be under the supervision of a registered nurse, and when performing any health-related activities, under the supervision of a health professional acting within the scope of the professional's practice. A registered nurse who supervises a certified community health worker must do so in accordance with procedures established by the Board in rules, including rules limiting the number of certified community health workers who may be supervised at any one time.

The bill provides to a registered nurse who delegates activities to or supervises a certified community health worker immunity from any liability for

---

<sup>203</sup> *The bill permits this requirement to be waived for an applicant employed in a capacity that is substantially the same as that of a community health worker. To be eligible, the applicant must meet certain requirements established by the Board in rules and must provide documentation from the employer attesting to the employer's belief that the applicant is competent to perform activities as a certified community health worker (R.C. 4723.84(B)).*

<sup>204</sup> *The results of any criminal records check requested for the purposes of applying for community health worker certification, and any report containing those results, are not public records and must not be made available to any person except for use in determining whether the individual who is the subject of the check should be issued a community health worker certificate. The results may also be made available to the individual who is the subject of the records check (R.C. 4723.83(B)).*

civil damages to any person or government entity that allegedly arises from an action or omission of the certified community health worker in performing the activities, provided that the nurse delegated the activities or provided the supervision in accordance with rules adopted by the Board.

**Disciplinary actions**

(R.C. 4723.34 and 4723.86)

The Board may, by vote of a quorum, deny, revoke, or suspend a community health worker certificate. The bill also permits the Board to impose one or more sanctions against an applicant or certificate holder for reasons established by the Board in rules.<sup>205</sup>

The bill requires every employer of certified community health workers to report to the Board the name of any current or former employee who holds a community health worker certificate who has engaged in conduct that constitutes grounds for disciplinary action by the Board. The bill also requires community health worker associations to report to the Board the name of any certified community health worker who has been investigated and found to constitute a danger to the public health, safety, and welfare because of conduct that constitutes grounds for disciplinary action by the Board. An association is not, however, required to report the individual's name if the individual is maintaining satisfactory participation in a peer support program approved by the Board.

The bill also requires that, if the prosecutor in a case involving a charge of a misdemeanor committed in the course of employment, a felony charge, or a charge of gross immorality or moral turpitude, including a case dismissed on technical or procedural grounds, knows or has reason to believe that the person charged holds a community health worker certificate, the prosecutor must notify the Board.

**Community health worker training programs**

(R.C. 4723.87)

A person or government entity that seeks to operate a training program to prepare individuals to become certified community health workers must apply to the Board for approval by submitting to the Board a completed application and the application fee specified by the Board in rules. To receive approval, the Board

---

<sup>205</sup> *The rules specify that the reasons for the imposition of sanctions should be "substantially similar" to those for which sanctions are imposed on registered nurses, licensed practical nurses, and dialysis technicians under R.C. 4723.28. These reasons may be generalized as ethical and legal infractions.*

must ensure that the program meets certain minimum standards and offers a curriculum that enables individuals to use the training as a basis for entering programs that lead to other careers, including nursing education programs. The Board's approval of a training program expires biennially and may be renewed in accordance with the schedule and procedures adopted by the Board in rules.

If an approved training program ceases to meet the Board's standards for approval, the Board may either withdraw its approval of the program, refuse to renew its approval of the program, or place the program on provisional approval. In placing a program on provisional approval, the Board must specify the period of time for which the provisional approval is valid. At the end of that period, the Board must reconsider whether the program meets the standards for approval. If the program does meet the standards, the Board must either reinstate its full approval or renew its approval of the program. If the program does not meet the standards, the Board must either withdraw its approval or refuse to renew its approval of the program.

#### **Administrative procedures**

(R.C. 4723.06, 4723.07, 4723.08, 4723.271, 4723.35, 4723.63, and 4723.88)

The bill requires the Board of Nursing to adopt rules to administer and enforce the community health workers certification program. In addition to the rules specifically required by the bill, the rules must also include any other standards or procedures the Board considers necessary and appropriate for the administration and enforcement of the certification program. All rules must be adopted in accordance with the Administrative Procedure Act (Revised Code Chapter 119.) and must establish the following:

- (1) Standards and procedures for issuance of community health worker certificates;
- (2) Standards for evaluating the competency of an individual who applies to receive a certificate on the basis of having been employed in a capacity substantially the same as a community health worker before the Board implemented the certification program;
- (3) Standards and procedures for renewal of community health worker certificates, including the continuing education requirements that must be met for renewal;
- (4) Standards governing the performance of activities related to nursing care that are delegated by a registered nurse to certified community health

workers. In establishing the standards, the Board must specify limits on the number of certified community health workers a registered nurse may supervise at any one time.

(5) Standards and procedures for assessing the quality of the services that are provided by community health workers;

(6) Standards and procedures for denying, suspending, and revoking a community health worker certificate, including reasons for imposing the sanctions that are substantially similar to the reasons that sanctions are imposed by the Board on registered nurses, licensed practical nurses, and dialysis technicians;

(7) Standards and procedures for approving and renewing the Board's approval of training programs that prepare individuals to become certified community health workers. In establishing the standards, the Board must specify the minimum components that must be included in a training program, require that all training programs offer the standardized curriculum, and ensure that the curriculum enables individuals to use the training as a basis for entering programs leading to other careers, including nursing education programs.

(8) Standards and procedures for withdrawing the Board's approval of a training program, refusing to renew the approval of a training program, and placing a training program on provisional approval;

(9) Fee amounts for the following: application for a certificate, verification of a certificate to another jurisdiction, written verification of a certificate when the verification is performed for purposes other than verification to another jurisdiction, providing a replacement copy of a certificate, biennial renewal of a certificate, processing of a late application for renewal of a certificate, reinstatement of a lapsed certificate, applications for approval of a training program, and biennial renewal of the approval of a training program.

The act also extends many of the Board of Nursing's existing administrative powers and duties pertaining to its regulation of nurses to the act's requirement that the Board regulate community health workers. These powers and duties include the following:

(1) The duty to approve peer support programs for community health workers and to maintain a list of approved programs;

(2) The duty to adopt rules establishing requirements for restoring an inactive or lapsed certificate and for reinstating a suspended certificate;

(3) The duty to provide a replacement copy of a certificate and to verify a person's certification to another jurisdiction;

(4) The authority to impose fees on community health workers;

(5) The duty to collect and maintain a file of all community health worker certificates granted by the Board.

In addition, the bill authorizes the Board to contract for services pertaining to the process of providing written verification of a nursing license, certificate of authority, dialysis technician certificate, or community health worker certificate when the verification is performed for purposes other than providing verification to another jurisdiction. The contract may include provisions regarding the collection of the fee charged for providing the verification service, and the Board may permit the contractor to retain a portion of the fees as compensation, before any amounts are deposited in the state treasury.

---

### **STATE BOARD OF ORTHOTICS, PROSTHETICS AND PEDORTHICS**

- Removes the sunset provision in current law that has the effect of eliminating on December 31, 2004, the State Board of Orthotics, Prosthetics, and Pedorthics and the law it administers.

#### **State Board of Orthotics, Prosthetics, and Pedorthics**

(R.C. 4779.08, 4779.17, 4779.18; Section 3 of Am. Sub. S.B. 238 of the 123rd General Assembly)

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.

Under current law, the Board is scheduled to be "sunsetting" on December 31, 2004, which has the effect of eliminating the Board and the law that it administers unless the laws that create the Board and its licensing authority and duties is reenacted by the General Assembly on or before that date. The bill removes this sunset provision so that the Board and the law that it administers will continue beyond 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).

---

## STATE BOARD OF PHARMACY

- Allows a pharmacist to administer adult immunizations, regardless of the method of administration.

### *Administration of adult immunizations by pharmacists*

(R.C. 4729.01 and 4729.41; Section 146.05)

Under current law, a pharmacist who has undergone the appropriate training may administer--by injection only--immunizations to adults against influenza, pneumonia, tetanus, and hepatitis A and B. The bill removes a provision specifying that the immunizations be administered by injection so that, beginning on the bill's effective date, a pharmacist who has undergone the

appropriate training may administer these immunizations to adults, regardless of the method of administration.

---

## DEPARTMENT OF PUBLIC SAFETY

- Effective January 1, 2004, relocates regulatory authority for private investigators and security guard providers from the Division of Real Estate and Professional Licensing in the Department of Commerce to the Department of Public Safety.
- Requires the Department of Public Safety to coordinate all homeland security activities of all state agencies and be a liaison between state agencies and local entities for those activities and related purposes and creates a Division of Homeland Security within the Department to perform those duties; also places the Division in charge of the systems operations of the multi-agency radio communications system (MARCS).
- Eliminates the \$25 maximum limit on the tuition fee that may be charged for the Motorcycle Safety and Education Program if earmarked funds prove insufficient, and provides instead that a "reasonable" tuition fee, as determined by the Director of Public Safety, may be charged.
- Permits the Director to authorize private entities to offer the safety course, but makes them ineligible for any kind of reimbursement or subsidy from the state Motorcycle Safety and Education Fund.
- Excludes commercial buses from the staggered and biennial registration periods established by Am. Sub. H.B. 87 of the 125th General Assembly.
- Requires electronic motor vehicle dealers and electronic dealers in off-highway motorcycles and all-purpose vehicles to retain original title applications documents for a period of time determined by the Registrar of Motor Vehicles, rather than forwarding the documents to a clerk of a court of common pleas.

### **Private investigator and security guard licensing**

(R.C. 121.08, 4749.01, 4749.02, 4749.03, 4749.04, 4749.05, 4749.06, 4749.07, 4749.08, 4749.10, 4749.11, 4749.12, 4749.13, 4749.14, and 5502.01; Sections 29 and 84)

Current law allows any person to be licensed as a private investigator, security guard provider, or both, if the person meets several qualifications (including no felony convictions for 20 years; two years experience in investigatory or security services work; passing an examination; having liability insurance in specified amounts; and payment of a \$25 examination fee) and pays an annual \$250 license fee. No person who is not licensed may engage in the business of private investigation or security services. The Department of Commerce, through the Division of Real Estate and Professional Licensing, administers the licensing of private investigators and security guard providers. The Director of Commerce may investigate any applicant for a license or any licensee and may revoke, suspend, or refuse to renew a license for violation of any applicable law or rule relating to the license.

Beginning January 1, 2004, the bill moves the administration of the laws and rules relative to private investigators and security guard providers from the Department of Commerce to the Department of Public Safety. The bill specifically transfers the employees, equipment, and functions of regulating private investigators and security guard providers from the Department of Commerce to the Department of Public Safety. The Department of Public Safety generally succeeds the Department of Commerce in all ongoing business, functions, rules, contracts, and legal actions concerning private investigators and security guard providers.

### **Department of Public Safety, Division of Homeland Security**

(R.C. 5502.01 and 5502.03)

The bill requires the Department of Public Safety to coordinate "all homeland security activities of all state agencies" and be a liaison between state agencies and local entities for those activities and related purposes.<sup>206</sup> To carry out those duties, the bill creates a Division of Homeland Security within the

---

<sup>206</sup> *The bill does not detail the extent of authority the Department of Public Safety or the Division of Homeland Security has when coordinating all homeland security activities of all state agencies. For example, it is not clear under the bill how the authority to coordinate all homeland security activities may interact with health-related statutory duties such as quarantine, mandatory vaccinations, or drug stock piling that are given to a particular state agency but that may arise as security issues.*

Department. The bill also establishes the intent of the General Assembly that the creation of the Division of Homeland Security not result in an increase of funding appropriated to the Department.

The bill requires the Director of Public Safety to appoint an executive director, who serves at the pleasure of the Director and heads the Division of Homeland Security. The executive director regularly must advise the Governor and the Director on matters pertaining to homeland security. Subject to the direction and control of the Director, the executive director is authorized to appoint and maintain necessary staff and enter into any necessary agreements. The Division is given two distinct duties.

First, the Division must "coordinate all homeland security activities of all state agencies" and be the liaison between state agencies and local entities for the purposes of "communicating homeland security funding and policy initiatives." The bill states that, except as otherwise provided by law, it is not to be construed to give the Director or the executive director authority over the incident management structure or responsibilities of local emergency response personnel.

Second, the Division is placed in charge of the systems operations of the multi-agency radio communications system (MARCS), in accordance with any rules that the Director may adopt. The bill requires the Director to appoint a steering committee to advise the Director in the operation of the MARCS. The steering committee is comprised of persons who represent the users of that system. The Director or his designee chairs the steering committee.

### **The Motorcycle Safety and Education Program of the Department of Public Safety**

(R.C. 4508.08)

The Department of Public Safety administers the state's Motorcycle Safety and Education Program, which under current law is comprised of courses that must meet standards established by the Motorcycle Safety Foundation. The bill instead requires the program courses to meet standards in rules the Department adopts in accordance with the Administrative Procedure Act.

If sufficient funds are not available in the state Motorcycle Safety and Education Fund to pay all the costs of the program, current law allows a tuition fee not exceeding \$25 per student to be charged. The bill permits any reasonable tuition fee, as determined by the Director of Public Safety. The bill also permits the Director to authorize private organizations or corporations to offer the course without any tuition fee restrictions, but these entities are not eligible for subsidies or any reimbursement of expenses from the Fund.

### **Vehicle registration periods for buses**

Am. Sub. H.B. 87 of the 125th General Assembly (effective June 30, 2003) required the Registrar of Motor Vehicles to adopt rules for reassigning commercial cars, buses, trailers, and semitrailers and rental car fleets to registration expiration dates so that the registrations of approximately 1/12 of the vehicles expire on the last day of each month of a calendar year, thus evenly spreading out the number of expirations each month of the year. The bill excludes commercial buses from the staggered registration periods established by Am. Sub. H.B. 87. Under the bill, no specific provision of law establishes a registration date or period for commercial buses; presumably, the registration of such buses will be established under the general authority of the Registrar to adopt rules to establish a system of motor vehicle registration based on the type of vehicle to be registered, the type of ownership of the vehicle, the class of license plate to be issued, and other relevant factors determined by the Registrar. (R.C. 4503.101.)

Am. Sub. H.B. 87 also required the Registrar to adopt rules to permit an application for certain motor vehicle registrations to be made for the next two succeeding registration years. Under that act, persons receiving an apportioned license plate for commercial vehicles (under the International Registration Plan) and the owners of commercial cars used solely in intrastate commerce are not eligible for biennial registration. The bill also excludes the owner of a commercial bus from the option for biennial registration. (R.C. 4503.103.)

### **Motor vehicle certificate of title document retention**

Generally, when a person applies for a certificate of title to a motor vehicle, the application is made to a clerk of the court of common pleas and the clerk retains the evidence of title presented by the applicant. However, if an electronic dealer in motor vehicles or off-highway motorcycles and all-purpose vehicles electronically files an application for a certificate of title on behalf of the purchaser, current law requires the clerk to retain the completed electronic record to which the dealer converted the certificate of title application and other required documents and also requires the dealer to forward the actual application and all other documents relating to the sale to any clerk within 30 days after the certificate of title is issued. The current law requires the Registrar of Motor Vehicles, after consultation with the Attorney General, to adopt rules governing the location and manner of storing the actual application and all other documents relating to the sale when an electronic dealer files the application for a certificate of title electronically on behalf of the purchaser.

The bill replaces the procedure described above for the treatment of these actual certificate of title application documents and instead requires an electronic dealer to retain the original title application documents for a period of time

determined by the Registrar and to make all of the documents available for inspection by the Registrar upon the Registrar's request. The clerk continues to retain the electronic record, but does not receive the actual application documents. The Registrar also must make the original application documents available to the Attorney General upon request. (R.C. 4505.06 and 4519.55.)

### **State Highway Safety Fund**

(R.C. 4501.06)

Current law lists those sections of the Revised Code that direct the taxes, fees, and fines imposed by those sections to be deposited into the State Highway Safety Fund. The bill adds two conforming Revised Code cross-references to that list. Specifically, the references being added are to the new \$11 fee for vehicle registration and the new \$5 fee for a temporary license placard, both of which were established in Am. Sub. H.B. 87 of the 125th General Assembly and both of which are currently required to be deposited into the State Highway Safety Fund.

---

## **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.

---

### STATE RACING COMMISSION

- Requires, from July 1, 2003, to June 30, 2005, that the entire  $\frac{1}{2}$  of 1% of all money that is wagered on wagering pools other than win, place, and show and that is retained by horse-racing permit holders must be paid to the Tax Commissioner and deposited into the State Racing Commission Operating Fund.
- Requires the State Racing Commission, not later than January 1, 2004, to conduct a specified performance study and to make recommendations to the Governor and the General Assembly regarding possible staff reductions and ways to improve the efficiency of its operations.

#### **Deposit of entire $\frac{1}{2}$ of 1% of all amounts wagered on exotic wagering into the State Racing Commission Operating Fund**

(R.C. 3769.087)

Current law requires horse-racing permit holders to retain an additional  $\frac{1}{2}$  of 1% of all moneys wagered on wagering pools other than win, place, and show. Of this additional amount,  $\frac{1}{4}$  of 1% must be paid as a tax to the Tax Commissioner, who in turn must pay this percentage into the State Racing Commission Operating Fund. The remaining  $\frac{1}{4}$  of 1% must be retained by the permit holder with  $\frac{1}{2}$  of it to be used for purse money and the permit holder to retain the remainder. (R.C. 3769.087(B).)

The bill instead requires, from July 1, 2003, through June 30, 2005, that the entire  $\frac{1}{2}$  of 1% of all moneys wagered on wagering pools other than win, place, and show that is retained by horse-racing permit holders be paid as a tax to the Tax Commissioner, who in turn must pay the amount into the State Racing Commission Operating Fund (R.C. 3769.087(C)).

### State Racing Commission performance study

(Section 145.03BB)

The bill requires the State Racing Commission to conduct a performance study of the Commission based upon its current level of full-time employees. Not later than January 1, 2004, the Commission must make recommendations to the Governor and General Assembly regarding possible staff reductions and ways to improve the efficiency of the Commission's operations.

---

### OHIO BOARD OF REGENTS

- Increases the Ohio Instructional Grants (OIG Grants) for most digible independent students with dependents at percentage increases that grow larger the farther the student is from maximum grant eligibility.
- Denies, permanently, state-supported financial assistance at an institution of higher education to any person who is convicted of certain riot-related offenses.
- 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 to increase fees an additional 3% if the increase is used exclusively to fund scholarships for low-income students or for another special purpose approved by the Board of Regents.
- Defines how state institutions are to calculate the amount of the previous year's instructional and general fees for purposes of implementing the cap on those fees.
- Requires the Board of Regents to study the operation and effectiveness of co-located institutions, with particular attention to improved responsiveness to community needs and improved transfer of course work.
- 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.

- 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.
- Directs the Board of Regents to recognize the conversion of Belmont Technical College to a community college named Belmont Community College.
- Creates a custodial fund of the Treasurer of State to be funded from such awards, prizes, grants, and gifts received by the Board of Regents as the Board determines appropriate and to be used in support of awards and other initiatives approved by the Board.
- Directs the Commission on Higher Education and the Economy to study ways to improve Ohio's higher education system.

**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.

**Denial of financial aid to students convicted of riot-related offenses**

(R.C. 3333.38)

If an individual is convicted of, pleads guilty to, or is adjudicated delinquent of certain riot-related offenses, the bill bars that individual, permanently, from receiving any student financial assistance supported with state funds at any public or private Ohio institution of higher education (including career schools). The offenses that trigger permanent denial of student aid are the following:

- (1) Aggravated riot, in violation of R.C. 2917.02;
- (2) Riot, in violation of R.C. 2917.03;
- (3) Failure to disperse, in violation of R.C. 2917.04, provided the violation is a misdemeanor of the fourth degree and occurs within the proximate area where four or more others are acting in the course of disorderly conduct, in violation of R.C. 2917.11;
- (4) Misconduct at an emergency, in violation of R.C. 2917.13, provided the violation is either a misdemeanor of the first or fourth degree and occurs

within the proximate area where four or more others are acting in the course of disorderly conduct, in violation of R.C. 2917.11.

**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.

The bill permits state institutions to impose an additional 3% increase on instructional and general fees in each academic year, if the proceeds of this increase are used for "Access Scholarship Grants," which are scholarships for low-income students. Alternatively, the Board of Regents has the authority to approve the use of the additional revenue for other special purposes. Except for the board of trustees of The Ohio State University, no board of trustees of these state institutions may authorize an increase in excess of 6% in a single vote. The Ohio State University may authorize an increase of up to 9% in a single vote.

**Calculation of the previous year's instructional and general fees**

The bill also prescribes how a state institution is to calculate the permissible increase in instructional and general fees. Because the permissible increase is a percentage increase from the previous year's instructional and general fees, the bill specifies that the previous year's instructional and general fees equal one of the following:

(1) If a state institution is on a quarter system and the institution *does not* increase instructional and general fees during the summer term, the previous year's instructional and general fees are the sum of the instructional and general fees charged to a full-time student in the fall, winter, and spring quarters.

(2) If a state institution is on a quarter system and the institution *does* increase instructional and general fees during the summer term, the previous year's instructional and general fees are three-fourths of the sum of the instructional and

general fees charged to a full-time student in the fall, winter, spring, and summer quarters.

(3) If a state institution is on a semester system and the institution *does not* increase instructional and general fees during the summer term, the previous year's instructional and general fees are the sum of the instructional and general fees charged to a full-time student in the fall and spring semesters.

(4) If a state institution is on a semester system and the institution *does* increase instructional and general fees during the summer term, the previous year's instructional and general fees are two-thirds of the sum of the instructional and general fees charged to a full-time student in the fall, spring, and summer semesters.

### **Study of co-located institutions**

(Section 88.15)

Co-located institutions of higher education are those institutions that have agreements to share facilities, student services, or other necessities of operating a college. Currently, seven of Ohio's eight technical colleges are co-located with a university branch.

The bill requires the Board of Regents to study the operation and effectiveness of co-located university branch campuses and technical colleges, with particular attention to improved responsiveness to community needs and improved transfer of coursework. 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.<sup>207</sup> 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

---

<sup>207</sup> 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.

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 modifies 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. However, except for these modifications, the bill states that the existing Policy remains in effect.

First, the Board must establish policies and procedures with which all state institutions must comply that ensure that students can transfer from one state institution to another without unnecessary duplication of coursework or institutional barriers. In complying with these policies and procedures a state institution is required to strengthen course content, if necessary, so that a particular course is transferable to another state institution.

Second, the Board must develop and implement a "universal course equivalency classification system" to be used by all state institutions of higher education.

Third, 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 a specific baccalaureate program has limited access or a major has admission requirements other than academic performance. Presumably, transfer students applying to such excepted programs would go through the same competitive admittance process as other students.

Fourth, the bill directs the Board to study the feasibility of developing a transfer marketing agenda through which Ohioans are informed of the availability of transfer options, and adults are encouraged to return to higher education.



Finally, the bill directs the Board to study the feasibility of articulation and transfer policies for students with associate degrees from career schools and colleges that have certificates of registration from the State Board of Career Colleges and Schools under Chapter 3332. of the Revised Code who transfer to state institutions of higher education. According to the bill, these policies should be based on any criteria developed by the Board of Regent's Articulation and Transfer Advisory Council.

By April 15, 2004, the Board of Regents must report to the General Assembly on its progress in meeting these requirements.

**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.<sup>208</sup> 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.

**Conversion of Belmont Technical College to Belmont Community College**

(Section 88.16)

A technical college is a two-year state-supported institution of higher education that is only authorized to offer programs that are technical in nature.<sup>209</sup> To carry out this mission, technical colleges have the statutory authority to propose the issuance of bonds and the imposition of a tax levy to the voters of the technical college district.<sup>210</sup> A community college is a two-year state institution of higher education that is permitted to offer both arts and sciences and technical

---

<sup>208</sup> *This residency requirement for membership on university boards of trustees is unique to the University of Cincinnati.*

<sup>209</sup> *See Chapter 3357. of the Revised Code.*

<sup>210</sup> *R.C. 3357.11 (not in the bill).*

programs. Community colleges also have the authority to issue bonds and impose tax levies upon voter approval.<sup>211</sup>

While current law contains a mechanism whereby a technical college may convert to a *state* community college, current law contains no similar mechanism for conversion from a technical college to a community college.<sup>212</sup> Thus, the bill directs the Board of Regents to recognize the conversion of Belmont Technical College from a technical college to a community college named Belmont Community College. As the bill does not address how this conversion is to occur, presumably the details of this conversion are the responsibility of Belmont Technical and the Board of Regents.

### **Creation of the Board of Regents Awards and Initiatives Fund**

(R.C. 3333.50)

The bill creates the Board of Regents Awards and Initiatives Fund. The fund is to be a custodial fund of the Treasurer of State, rather than a "state fund"; as such, it will not be in the state treasury and will not need appropriations from the General Assembly in order for money to be spent from it.

The bill authorizes the Chancellor of the Board of Regents to deposit into the fund such receipts from awards, prizes, grants, and gifts received by the Board as the Board determines appropriate. No revenues derived from appropriations made by the state or from student fees or charges are to be deposited into the fund. Any portion of the fund not needed for immediate use is to be invested by the Treasurer of State in the same manner as funds in the state treasury are invested, and all investment earnings of the fund are to be credited to the fund.

The bill authorizes the Chancellor to use the fund in support of awards and other initiatives approved by the Board. Payments from the fund are to be made

---

<sup>211</sup> R.C. 3354.11 (not in the bill).

<sup>212</sup> *State community colleges, authorized under Chapter 3358. of the Revised Code, and community colleges, authorized under Chapter 3354. of the Revised Code, are similar in that both are two-year institutions permitted to offer arts and sciences and technical programs. Where the two entities differ, however, is (1) in the ability to generate funds from local levies and bonds and (2) in what court suit may be brought against the institution. State community colleges are unable to generate funds from local levies and bonds whereas community colleges have this authority. State community colleges must be sued in the Court of Claims whereas community colleges are sued in courts of common pleas.*

by the Treasurer of State pursuant to vouchers (authorizations for payment) signed by the Chancellor.

**Commission on Higher Education and the Economy**

(Section 88.01)

The Governor has appointed various individuals, including representatives of higher education, government officials, and members of the business community, to the Commission on Higher Education and the Economy. The purpose of the Commission is to study ways to improve Ohio's higher education system. As part of its function, the bill directs the Commission to recommend a strategy to improve the quality and efficiency of Ohio's higher education system which must include studying the elimination of unnecessary duplication and ways to harmonize higher education with the goals of the Third Frontier. The bill also instructs the Commission to study a ten-year plan for higher education in the context of curricula, the number of higher education institutions, and the types of degrees as relate to meeting the needs of the Third Frontier and other high technology economic initiatives.

---

**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.
- Authorizes state correctional institutions to provide water or sewer treatment services to any contracting party.

**Administrative resolution of small claims of inmates**

(R.C. 2743.02)

Under current law, an inmate of a state correctional institution who wants to pursue a claim against the state for property damage must bring a civil action in the Court of Claims, regardless of the size of the claim. The bill requires that an inmate who has a claim of \$300 or less for the loss of or damage to property first attempt to settle the claim through an administrative procedure established by rule by the Director of Rehabilitation and Correction. The inmate must file the claim within the time allowed for bringing an action in the Court of Claims. If the state admits or compromises the claim, the Director makes payment from a fund

designated by the Director for that purpose. If the state denies or fails to compromise the claim at least 60 days before the expiration of the time allowed for commencing a civil action in the Court of Claims, the inmate may bring an action in the Court of Claims.

**Provision of water or sewage treatment services by state correctional institutions**

(R.C. 5120.52)

The bill authorizes the Department of Rehabilitation and Correction (DRC) to enter a contract under which a specified type of state correctional institution will provide *water or* sewage treatment services, rather than just sewage treatment services as authorized by current law, to *any contracting party*, rather than to just a political subdivision as authorized by current law. The institution involved must have a water or sewage treatment facility with sufficient excess capacity to provide the services. The contract must include (among other items) limitations on the quantity of potable water that the facility will provide which are compatible with the needs of the institution involved, if the contract provides for water services.

The bill also renames the Correctional Institution Sewage Treatment Facility Services Fund as the Correctional Institution Water and Sewage Treatment Facility Services Fund and requires DRC to use the Fund to pay costs associated with operating and maintaining water and sewage treatment facilities.

---

**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 Emergency School Repair program, and the Disability Access program.
- Permits school districts with territories larger than 350 square miles to participate in the Exceptional Needs School Facilities Assistance program regardless of wealth ranking.
- Directs the Commission to allocate solely to the Classroom Facilities Assistance program any leftover funds that had been appropriated and allocated during a biennium to any other classroom facilities assistance programs administered by the Commission.
- Eliminates the restriction against certain low-wealth school districts simultaneously participating in the School Building Assistance Expedited Local Partnership program and the Exceptional Needs 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.
- Removes the requirement that an existing permanent improvement levy be for at least two mills in order to satisfy the maintenance obligation under a state-assisted classroom facilities project.
- Repeals the current provision that permits a school district participating in most classroom facilities assistance programs to apply certain expenditures of local resources made 18 months prior to notice of eligibility for state funds toward the district's share of the project costs.

- Except for continued application to certain school districts, repeals the current provision that permits a school district participating in the Expedited Local Partnership program to apply certain expenditures of local resources made 18 months prior to September 14, 2000, toward the district's share of the project costs.
- Permits a school district to renovate rather than replace an existing classroom facility under a state-assisted project using project funds up to the estimated amount of new construction as long as certain conditions are satisfied.
- Lengthens the maximum period of the reimbursement schedule from five years (under current law) to ten years for a school district to pay back its share of additional costs incurred in order to correct oversights or deficiencies in the initial assessment of the district's facilities needs.
- Prohibits the Commission from releasing state funds for a state-assisted classroom facilities project to a school district, except for certain funds for demolition, 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.
- Specifically permits the School Facilities Commission to delegate to any of its members, executive director, or other employees the Commission's powers and duties.

### **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.<sup>213</sup> 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

---

<sup>213</sup> *The Classroom Facilities Assistance Program is generally codified in R.C. 3318.01-3318.20 (not all sections in the bill).*

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.

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.<sup>214</sup> 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.<sup>215</sup> 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.<sup>216</sup>

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.<sup>217</sup>

---

<sup>214</sup> R.C. 3318.37.

<sup>215</sup> R.C. 3318.38 (not in the bill). The six districts to which this program applies are Akron, Cincinnati, Columbus, Cleveland, Dayton, and Toledo.

<sup>216</sup> R.C. 3318.021, 3318.36, 3318.361, and 3318.362 (not in the bill).

<sup>217</sup> See, R.C. 3318.40 to 3318.46, not all sections in the bill.



**Termination of certain programs administered by the Ohio School Facilities Commission**

(Repealed R.C. 3318.35; Section 136A)

The bill terminates the following programs administered by the Ohio School Facilities Commission (OSFC): the Short-Term Loan program, the Emergency School Repair 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 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 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.

**Allocation of classroom facilities project funds**

(R.C. 3318.024)

Under continuing law, the Ohio School Facilities Commission administers various classroom 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 the first year of a capital biennium, to use only for CFAP any funds that are left over from the previous capital biennium that had been appropriated and allocated for any of the classroom facilities programs operated by the Commission. Presumably, under current law the Commission can allocate unspent or unencumbered funds to classroom facilities programs other than CFAP. The bill also requires the Commission, in the second year of a capital biennium, to use only for CFAP any funds that are appropriated to the Commission for classroom facilities projects that

are left over from the previous year to the extent that the funds exceed half of the appropriations for classroom facilities programs during the biennium.

**Authorization for certain large land area districts to participate in the Exceptional Needs program**

(R.C. 3318.37(A)(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, not changed by the bill, 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 permits any school district with a territory larger than 350 square miles (referred to as a "large land area school district") to participate in the program, regardless of the district's wealth ranking.

**Participation in both the Exceptional Needs and the Expedited Local Partnership programs**

(R.C. 3318.37(A)(2) and (3) and (C))

Under current law, no school district may simultaneously participate in the School Building Assistance Expedited Local Partnership program and the Exceptional Needs School Facilities Assistance program. The bill eliminates this restriction for certain specified school districts. Under the bill, the Exceptional Needs program is available to Expedited Local Partnership districts that were selected for participation in that latter program prior to the effective date of Am. Sub. S.B. 272 of the 123rd G.A. (September 14, 2000). That bill expanded the scope of the Expedited Local Partnership program to include all school districts as under current law, instead of only low-wealth school districts. Prior to that date, the School Facilities Commission could serve only five low-wealth school districts each year who were selected by the Commission.<sup>218</sup> The bill, therefore, permits those ten districts that were selected in 1999 and 2000 to participate in both programs.

The bill also specifies that no district may receive assistance under the Exceptional Needs program for a classroom facility that has been included in the

---

<sup>218</sup> For purposes of the program, low-wealth school districts were those in the 50 lowest wealth percentiles. The Commission used a lottery to select the ten districts for participation in the Expedited Local Partnership program in 1999 and 2000 from among the districts that applied.

discrete part of the district's needs identified and addressed pursuant to an Expedited Local Partnership agreement.

**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.

**Use of an existing permanent improvement levy for maintenance of facilities acquired under a state-assisted project**

(R.C. 3318.05(C), 3318.06(A)(2)(b), and 3318.08(C)(2)(b))

In 1999, the General Assembly permitted a school district that had in place an existing permanent improvement levy of at least two mills that could be used for maintenance of facilities to dedicate the proceeds of that tax to pay the maintenance obligation of the district under its state-assisted classroom facilities project.<sup>219</sup> The bill removes the requirement that the existing levy be for at least two mills.

---

<sup>219</sup> This provision was enacted in Am. Sub. H.B. 282 of the 123rd General Assembly about one year prior to the enactment of R.C. 3318.052, which permits a broader use of existing taxes to raise both the district portion of the project cost and the required funds for maintenance. See "**Use of existing taxes to generate revenue for classroom facilities projects**" above.

## **Repeal of credit for previous expenditures**

### **Most programs**

(Repealed R.C. 3318.033; conforming changes in R.C. 3318.01, 3318.03(A), 3318.05(A), 3318.06(A)(1), 3318.08(A), 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 eliminates this provision.

### **Expedited Local Partnership program**

(Section 132.14C)

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, under current law, 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 repeals this provision, except for application to certain school districts already participating in the Expedited Local Partnership program. To qualify for credit for previous expenditures under this provision, a district must meet both of the following conditions by no later than 180 days after the effective date of the repeal (which is 90 days after the effective date of the bill):

(1) The district must have entered into an agreement with the OSFC to acquire the discrete part of the project under the Expedited program, as identified by the school district board; and

(2) The district's project must have been conditionally approved by the OSFC and subsequently approved by the Controlling Board.

**Renovation of existing facilities in lieu of replacement by new construction**

(R.C. 3318.03(C))

The OSFC has a policy to recommend replacement rather than renovation of a facility if the estimated cost of renovation is 66% or greater of the estimated cost of new construction. However, the OSFC has approved renovation costs in excess of that amount, up to 100% of the cost of new construction, in cases of special circumstances. The bill specifically permits a school district to renovate rather than replace an existing facility under a state-assisted project, using project funds up to the estimated cost of new construction, as long as:

(1) The school district board has made a determination that the facility has historical value or for other good cause that the facility should be renovated; and

(2) The facility when completed will be "operationally efficient," will meet the future needs of the district, conforms to "sound educational practice" (required under current law) and will have a capacity of at least 350 students (also as required under current law).

**Additional assistance to correct oversights or deficiencies**

(R.C. 3318.042)

Generally, once a school district has been served under CFAP, it may not receive additional assistance under the program for 20 years after its original project was begun. Current law, however, does permit a district whose project is under construction, and that meets prescribed conditions related to the discovery of oversights or deficiencies in the initial assessment or plan, to receive additional assistance to correct those conditions. If OSFC provides the additional assistance, the school district is to pay its portion of the additional cost. If after making a financial evaluation of the district, OSFC determines that the district is unable without undue hardship to pay its portion of the increase, the state and the school district must enter into an agreement whereby the state will pay the portion of the cost increase attributable to the school district and the district must thereafter reimburse the state (without interest). OSFC is responsible for establishing the district's schedule for reimbursing the state, which must not extend beyond five years. The district's portion of this additional cost is the same percentage of that cost as was the district's portion of the original project cost.

The bill lengthens to ten years the maximum period of the reimbursement schedule. In addition, the bill permits the OSFC to lengthen the term of any existing reimbursement schedule as long as the total term is not longer than ten years.

### **Disposal of real property by school districts**

(R.C. 3313.41 and 3318.08(U) and (V))

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 most 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. The bill specifically provides that the OSFC include in its agreement with the school district a stipulation requiring the district to comply with the right to first refusal provision throughout the project in order for the district to be eligible for continued release of state funds for the project. It also clarifies that the OSFC may not approve a contract for demolition of a facility unless (1) the district has complied or (2) the demolition is to clear a site for construction of a replacement facility included in the district's project.

### **Delegation authority of the School Facilities Commission**

(R.C. 3318.30 and 3318.31)

The School Facilities Commission is made up of three voting members--the Director of Budget and Management, the Director of Administrative Services, and the Superintendent of Public Instruction or their respective designees--and four legislative, nonvoting members. The Commission is authorized to appoint an executive director, who in turn may appoint other employees to manage and direct the operations of the Commission's programs. The bill specifically permits the Commission "[i]n its discretion . . . to delegate to any of its members, executive director, or other employees any of the Commission's powers and duties to carry out its functions."

---

### **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.
- Changes from the 75th day before the general election to the 60th day before the general election the date by which candidates nominated by the national convention of a political party and candidates selected by an intermediate or minor political party must be certified to the Secretary of State for placement on the presidential ballot.
- Changes from the 60th day before the general election to the 55th day before the general election the date on which the Secretary of State must certify the form of the official presidential ballot to the boards of elections in each county.
- 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 access sibility 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*

### *Presidential ballot certification deadlines*

(R.C. 3505.01 and 3505.10)

Persons may be nominated or certified as candidates for President or Vice-President of the United States in one of three ways: (1) by nomination at the national convention of a political party to which delegates and alternates were elected in Ohio at the preceding primary election, (2) by nominating petition, or (3) by certification by authorized party officials of an intermediate or minor political party that has held a state or national convention for the purpose of choosing those candidates or that is permitted, without a convention, to certify those candidates in accordance with the procedure adopted by its party rules (R.C. 3505.10).

Existing law requires the nomination or certification to be made for all candidates on or before the 75th day before the day of the general election. The bill changes this time period with respect to candidates (1) nominated at the national convention of a political party to which delegates and alternates were elected in Ohio at the preceding primary election or (2) certified by authorized party officials of an intermediate or minor political party that has held a state or national convention for the purpose of choosing those candidates or that is permitted, without a convention, to certify those candidates in accordance with the procedure adopted by its party rules. Under the bill, the names of those candidates must be certified to the Secretary of State on or before the 60th day before the day of the general election. Candidates nominated by nominating petition must continue to file nominating petitions on or before the 75th day before the day of the general election. The bill specifies that the additional time for candidates nominated by nominating petition is to provide sufficient time to verify the sufficiency and accuracy of signatures on the petition. (R.C. 3505.10(B)(1), (2), and (3).)

The Secretary of State must certify to the board of elections of each county the forms of the official ballots to be used at the next general election, together with the names of the candidates to be printed on those ballots whose candidacy is to be submitted to the electors of the entire state. In the case of a presidential ballot for a general election, existing law requires that certification is to be made on the 60th day before the day of the general election. The bill changes the date on which the Secretary of State must make that certification from the 60th day to the 55th day before the day of the general election. (R.C. 3505.01.)

### **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

### I. Sales and Use Tax

- 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, 2005.
- 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, and 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 of property and services to persons who use them to transport persons exempt from the sales tax.
- Provides that sales to a mobile telecommunications vendor or satellite broadcasting 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.
- Exempts sales of certain parts and repair services for aircraft used primarily in a fractional aircraft ownership program from the sales and use tax.
- Partially exempts sales of fractional ownership program aircraft from the sales tax, so that the maximum tax on each program aircraft does not exceed \$800.
- Raises the threshold for paying sales and use taxes by electronic funds transfer (EFT), from \$60,000 to \$75,000.

- Requires that direct payment permit holders and vendors that are required to pay sales taxes by EFT, and sellers and consumers that must pay use taxes in the same manner, pay those taxes on or before three specified dates each month.
- Increases the vendor discount for the timely filing of sales tax returns and payment of taxes, from  $\frac{3}{4}\%$  to 1.1%, but reduces the discount to  $\frac{3}{4}\%$  on and after July 1, 2005.
- Increases the minimum corporation franchise tax from \$50 to \$1,000 for corporations with worldwide annual gross receipts of \$5 million or more or employing at least 300 persons worldwide.
- Requires that the Tax Commissioner recover from counties or transit authorities the amount of refunds paid from current sales tax receipts that did not arise out of a tax or fee levied by the state.
- Extends to direct payment permit holders personal liability under existing law for failure to file a return or pay sales tax due, and creates a similar personal liability provision in the use tax law.
- Revises sales and use tax definitions to conform them to the major tax base definitions in the Streamlined Sales and Use Tax Agreement.
- Consolidates exemptions and exceptions to sales and use taxation into one provision.
- Revises existing law regarding how local tax rates are levied or changed, to reflect the requirements in the Agreement.
- Eliminates the tax rate schedules, effective July 1, 2006, and changes how rounding should occur when computing the tax owed, to comply with the Agreement.
- Adopts the uniform standards in the Agreement for attributing the source of transactions to taxing jurisdictions for direct mail purchases; sales, leases, and rentals of transportation equipment; lease and rentals of tangible personal property; and sales of telecommunications service, information service, or mobile telecommunications service.
- Establishes how bad debt refunds and allowances should be claimed, in accordance with the Agreement.

- Delays until January 1, 2004, the effective date of existing sales tax laws regarding the issuance of direct payment permits to consumers, the timing of local sales tax rate increases or decreases, and the uniform sourcing standards for determining where sales occur.

## **II. Municipal Taxation**

- 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 following the month to which the due date of the federal return has been extended.
- Permits taxpayers subject to a municipal tax on net business profit to use the Ohio Business Gateway to file municipal income tax returns and payments.
- Provides that a taxpayer who is subject to a municipal tax on net business profit and who uses the Ohio Business Gateway to notify the Tax Commissioner of an extension to file a federal income tax return automatically receives an extension to file the municipal income tax return to the last day of the month to which the due date of the federal return has been extended.
- Permits employers to use the Ohio Business Gateway to report and remit municipal income taxes withheld from employees' compensation.



- Prohibits municipal corporations from taxing businesses' net profits using any base other than adjusted federal taxable income, but this restriction does not apply to electric companies or sole proprietors.
- Grants the Tax Commissioner rulemaking authority with respect to the Ohio Business Gateway.
- Creates the Ohio Business Gateway Steering Committee.
- Authorizes municipal corporations to exempt from taxation certain compensation attributable to stock options and nonqualified deferred compensation plans.
- Specifies that net profit from rental activity not constituting a business or profession is subject to tax only by the municipal corporation in which the property that generated the profit is located.
- Provides that with respect to net profit from rental activity required to be reported on Internal Revenue Code Schedule E, municipal corporations are prohibited from using as the tax base any amount other than the net profit from rental activities required to be reported by the taxpayer on Schedule E for the taxable year.
- Clarifies the types of intangible income that are exempt from municipal taxation.
- Authorizes tax administrators to examine or audit a taxpayer to determine whether that taxpayer has properly reported adjusted federal taxable income or net profit required to be reported on Internal Revenue Code Schedules C, E, or F, and authorizes the tax administrator to make all corrections and adjustments necessary to accurately determine the amount.
- Requires municipal corporations to extend a tax credit to taxpayers for certain losses associated with nonqualified deferred compensation plans.
- 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.
- Extends a tax credit to S corporation shareholders whose incomes from an S corporation are subject to taxation by multiple 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.

### **III. Other Areas of Taxation**

- Grants a special, nonrefundable tax credit to a call center corporation to offset any additional tax liability that might result from any future legislation expanding the addback for intercompany expenses.
- Increases the maximum term of the existing job retention tax credit from ten to 15 years.
- Revises the definition of "land devoted exclusively to agricultural use," for purposes of determining the current agricultural use value of real property for tax purposes, to include tracts, lots, or parcels of land or portions thereof that are used for conservation practices, provided that the land so used comprises 25% or less of the total of the tracts, lots, or

parcels of land included as being devoted exclusively to agricultural use, and authorizes the supervisors of a soil and water conservation district to assist the county auditor upon request to determine whether a conservation activity is a conservation practice for that purpose.

- Withdraws from the Tax Commissioner and grants to housing officers jurisdiction to hear complaints concerning real property tax exemptions for property located in community reinvestment areas, and provides additional limitations on the Commissioner's involvement with these property tax exemptions.
- 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.
- Prohibits operating certain commercial cars and commercial tractors with a suspended or surrendered motor fuel use permit, and creates a penalty.
- Expands the Tax Commissioner's power to conduct inspections related to enforcement of the motor fuel and motor fuel use tax laws, and permits the Commissioner to authorize employees to conduct inspections at designated inspection sites.
- Allows persons paying motor fuel and motor fuel use taxes to obtain refunds for taxes paid on fuel that contains at least 9% water, when water was intentionally added to it. Refunds must equal the amount of taxes paid on 95% of the water.
- Diverts a portion of the state reimbursement for real property tax rollbacks to the Property Tax Administration Fund created by the bill, to be applied to the Department of Taxation's costs of administering property taxation.
- 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.
- Deducts a local government share of the "use tax" phase-out on a monthly, rather than annual, basis.

- Modifies the gas tax reimbursement available to school districts by allowing a joint vocational school district or educational service center to file for reimbursement and allowing reimbursement for any motor fuel used for school district or service center operations.
- Expands the permissible uses for money in county real estate assessment funds.
- Extends the maximum period for which a taxpayer may receive a credit for creating or retaining jobs from ten to 15 years, and provides that if a municipal corporation grants a corresponding job creation or retention credit against its income tax, the maximum term of the credit is to be 15 rather than ten years.
- Authorizes the Director of Development to issue a job retention tax credit certificate to an employer who has retained less than 90% of the full time employment positions required under the agreement between the taxpayer and the Tax Credit Authority as long as the Authority has, by resolution and in the agreement, authorized a lower rate of job retention.
- Defers the income tax liabilities of members of the armed forces serving in Operation Iraqi Freedom.
- Extends the Tax Commissioner's authority to disregard sham transactions--currently limited to corporate franchise tax assessments, income tax assessments, and the up-front collection of sales taxes on certain leases--to every tax administered by the Tax Commissioner.
- Reduces taxes on new manufacturing machinery and equipment by reducing its true and taxable value.
- Increases the annual reduction in the assessment rate for inventory property from 1% to 2%, beginning in tax year 2005.
- Phases out the state reimbursement to local taxing districts for the \$10,000 exemption for business personal property.
- Temporarily authorizes the Tax Commissioner to abate the collection of past-due taxes that have been charged against certain exempt property because a tax exemption application was not filed.

- Consolidates and revises the laws governing tax treatment of pollution control and other special-purpose property, to be administered by the Department of Taxation, and changes the application fee for such treatment.
- Creates a general "reasonable cause" basis for property tax penalties to be forgiven; reposes in the county auditor and treasurer the authority to forgive real property and manufactured home tax penalties; and prescribes the method for taxpayers to appeal refusals to forgive such penalties to the Tax Commissioner.
- Eliminates the tangible personal property tax filing requirement for businesses with no more than \$10,000 in taxable property.
- Provides personal property tax replacement payments to taxing districts having a nuclear power plant for losses incurred due to a reduction in the assessed value of electric company tangible personal property between tax years 2000 and 2001.
- Exempts preneed funeral trusts from the temporary tax on trust income even if they are not "qualified" funeral trusts.
- Spells out the conditions under which lottery proceeds are allocable to Ohio under the corporate franchise tax, and clarifies that lottery prize awards and related gain with respect to lotteries sponsored outside Ohio are allocable outside Ohio.
- 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.
- Creates a fund for accepting certain moneys arising from enforcement actions of the Department of Taxation for use in enforcing the tax laws.
- Expands the Tax Commissioner's authority to delegate investigation powers to employees that have been certified by the Ohio Peace Officer Training Commission, by creating a general delegation provision that permits such delegation for the purposes of enforcing all laws relating to taxes and fees that the Commissioner is responsible for administering.

- Expands provisions in the existing Corrupt Activity Forfeiture Law, Felony Drug Abuse Offense Forfeiture Law, and Contraband Forfeiture Law that pertain to distribution of the proceeds of a sale of forfeited property or of forfeited cash to specifically provide for distribution to the Department of Taxation Enforcement Fund (created by the bill) when the Department's Enforcement Division substantially conducted the investigation or made the seizure of the property or cash; and in the existing Felony Drug Abuse Offense Forfeiture Law and Contraband Forfeiture Law, provides that if the Department obtains forfeiture of seized property under federal law, all interest and earnings earned regarding the forfeited property must be deposited into the Fund.

## **I. 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 sales or use taxes cannot be levied on a retail sale if the state sales or use tax does not apply to it.

### **State sales and use tax rate temporarily increased**

(R.C. 5739.02(A), 5739.025(A) to (C), and 5741.02(A))

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.) The bill provides that on and after July 1, 2005, the sales and use tax rates are 5%.

The bill adds tax rate schedules specifying the brackets to be applied during the period the tax increases to 6%.

### *Services and tangible personal property subject to taxation*

(R.C. 165.09, 902.11, 4981.20, 5739.01, 5739.012, 5739.03, 5739.17, and 5741.02)

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, and supplying towels, linens, articles of clothing, or other fabric items. 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. Existing law excludes WATS and 1-800 service from the definition, but the bill provides that the service must be for business use to be excluded. The bill also provides that the WATS and 1-800 service that is excluded does not include local exchange service. The bill also defines the type of private communications service that is excluded.
- Satellite broadcasting service. Under the bill, "satellite broadcasting service" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite, and includes all service and rental charges, premium channels or other special services, installation and repair service charges, and any other charges having any connection with the provision of the service (R.C. 5739.01(B)(3)(q) and (XX)).



- Personal care service, meaning skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services, but not 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., physicians, nurses, physician assistants, 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 an ambulance service or 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).)

Under the bill, 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)(8)).

### **Exemptions eliminated**

(R.C. 5739.01(E)(4) and 5739.02(B)(38))

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 surface mining reclamation. The bill eliminates this exemption.

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 (4) 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. The bill revises the definition for purposes of the Streamlined Sales and Use Tax Administration Agreement (see "**Revision of major tax base definitions and the impact on the tax base**," below, for an explanation).

The bill also 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 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 services 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. Telecommunication and mobile telecommunications services are defined in existing law and in the bill, but cable television service is not defined.

**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 (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 (R.C. 5739.01(VV)). Sales of telecommunications service to a service provider for use in providing that service is already exempt from sales and use taxes.

- Sales to a satellite broadcasting 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.
- Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft used primarily in a fractional aircraft ownership program, and sales of services for the repair, modification, and maintenance of such aircraft, and machinery, equipment, and supplies primarily used to provide those services (R.C. 5739.02(B)(45)). The bill defines a "fractional aircraft ownership program" as a program in which persons within an affiliated group sell and manage fractional ownership program aircraft, provided that at least 300 airworthy aircraft are operated in the program and the program meets all of the following criteria:
  - (1) Each program aircraft is owned or possessed by at least one fractional owner. "Program aircraft" means a turbojet aircraft that is owned or possessed by a fractional owner and that has been included in a dry-lease aircraft interchange arrangement and agreement, or an aircraft a program manager owns or possesses primarily for use in a fractional aircraft ownership program.
  - (2) Management services are provided by at least one program manager within an affiliated group on behalf of the fractional owners.<sup>220</sup> The bill defines "management services" as administrative and aviation support services furnished under a fractional aircraft ownership program in accordance with a management services agreement, and offered by the program manager to the fractional owners, including, at a minimum, the establishment and implementation of safety guidelines; the coordination of the scheduling of the program aircraft and crews; program aircraft maintenance; program aircraft insurance; crew training for crews employed, furnished, or contracted by the program manager or the fractional owner; the satisfaction of record keeping requirements; and

---

<sup>220</sup> An "affiliated group" is defined in continuing law as two or more persons related in such a way that one person owns or controls the business operations of another member of the group. For corporations, one corporation owns or controls another if it owns more than 50% of the other corporation's common stock with voting rights.

the development and use of an operations manual and a maintenance manual for the fractional aircraft ownership program.

- (3) Each fractional owner owns or possesses at least a 1/16 interest in at least one fixed-wing program aircraft.
- (4) A dry-lease aircraft interchange arrangement is in effect among all of the fractional owners;
- (5) Multi-year program agreements are in effect regarding the fractional ownership, management services, and dry-lease aircraft interchange arrangement aspects of the program (R.C. 5739.01(KKK)).

**Partial exemption for sales of fractional ownership program aircraft**

(R.C. 5739.01(KKK) and 5739.025(G); Sections 145.03N and 146.06)

Effective July 1, 2003, the bill partially exempts sales of fractional ownership program aircraft from the sales tax by amending the law that contains the sales tax schedules. With respect to a sale of program aircraft used primarily in a fractional aircraft ownership program, including all accessories attached to the aircraft, the state and local sales taxes apply, but the bill requires that the Tax Commissioner modify the tax calculations so that the maximum tax on each program aircraft is \$800. In the case of a sale of a fractional interest that is less than 100% of the program aircraft, the tax charged on the transaction is \$800 multiplied by a fraction, the numerator of which is the percentage of ownership or possession in the aircraft being purchased in the transaction, and the denominator of which is 100%. The bill requires that the tax paid with respect to the sale of program aircraft be credited to the General Revenue Fund.

**Filing returns and paying taxes by electronic funds transfer; change in dates for accelerated tax payments**

(R.C. 5739.032, 5739.122, and 5741.121)

Under current law, a direct payment permit holder or a vendor pays sales taxes, and a seller or consumer pays use taxes, by electronic funds transfer (EFT) if the total amount of tax required to be paid by it in a calendar year equals or exceeds \$60,000. Am. Sub. H.B. 40 of the 125th General Assembly established an accelerated tax payment schedule by requiring that direct payment permit holders and consumers pay on or before the 11th, 18th, and 25th of each month  $\frac{1}{4}$  of their total tax liability for the same month in the preceding calendar year, and on or before the 23rd of each month, pay taxes due for the previous month minus amounts already paid for that month. H.B. 40 required that vendors and sellers pay taxes the same way as direct payment permit holders and consumers, or they

could elect to pay taxes collected during the first seven days of the month on or before the 11th, during the 8th through the 14th day of the month on or before the 18th, and during the 15th through the 21st day of the month on or before the 25th; on or before the 23rd of each month, they pay taxes collected for the previous month minus amounts already paid for that month.

Beginning July 1, 2003, the bill raises the EFT trigger to \$75,000, and requires that tax payments be made three times a month, rather than four. Under the bill, direct payment permit holders and consumers are required to pay on or before the 15th and 25th days of each month 37.5% of their total tax liability for the same month in the preceding calendar year, and on or before the 23rd day of each month, pay taxes due for the previous month minus amounts already paid for that month. The bill requires that vendors and sellers pay taxes the same way as direct payment permit holders and consumers, or they may elect to pay taxes collected during the first 11 days of the month on or before the 15th, and during the 12th through the 21st day of the month on or before the 25th; on or before the 23rd of each month, they pay taxes collected for the previous month minus amounts already paid for that month.

**Increased discount for vendors**

(R.C. 5739.12(B))

Under current law, a vendor that, on or before the due date for a tax return, files the 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 on and after July 1, 2003, but before July 1, 2005, to 1.1% of the amount shown on the return to be due. On and after July 1, 2005, the discount drops back down to the existing discount of .75%.

**Corporation franchise tax: increased minimum tax**

(R.C. 5733.06(E); Section 145.03JJ)

Currently, every corporation subject to the corporation franchise tax must pay a minimum tax of \$50 if its tax computed on the basis of net income or net worth yields a tax of less than \$50.

The bill increases the minimum tax to \$1,000 for some larger corporations. The increased minimum tax applies to corporations having either (1) \$5 million or more in worldwide gross receipts for its taxable year, or (2) 300 or more employees worldwide at any time during its taxable year. The minimum tax remains at \$50 for other corporations. The increased minimum tax applies to tax years 2004 and thereafter.

### **Sourcing of and licensing for the new services subject to taxation**

(R.C. 5739.033 and 5739.17)

Continuing law provides that a person making retail sales subject to the sales tax must have a license. For selling most of the services and property now subject to taxation under the bill, a vendor's license is required. For selling satellite television service and snow removal service, the bill requires a person to obtain a service vendor's license.

Continuing law requires that certain standards be followed to determine where a sale occurs so that taxes are paid to the appropriate local taxing jurisdiction. The situs of the sale of certain services, such as recreation and sports club service, is the vendor's place of business where the service is performed or the contract for the service was made or the purchase order was received. The bill adds sales of personal care service, transportation service of persons by motor vehicle or aircraft, motor vehicle towing service, and the storage of tangible personal property to the sales situated in this manner. Continuing law also provides if a vendor provides certain services, such as landscaping and lawn care service, the situs of the sale of the service is the location of the consumer where the service is performed or received. The bill adds satellite television service and snow removal service to sales situated in this manner.

### **Recovery of sales tax refund amounts**

(R.C. 5703.052 and 5739.21)

Under continuing law, tax refunds of most taxes are paid out of the Tax Refund Fund. Upon certification of a tax refund by the Tax Commissioner to the Treasurer of State, the Treasurer **may** place the amount certified to the credit of the Fund and the amount transferred is derived from current receipts of the same tax from which the refund arose. If current receipts are inadequate to make a transfer of the amount certified, the Treasurer **may** transfer the amount from current sales tax receipts.

Under the bill, the Treasurer of State **must** place the amount certified to the credit of the Fund, and, if current receipts are inadequate to make the transfer, **must** transfer the amount from the sales tax receipts. The bill further provides that when the Treasurer of State provides for the payment of a refund from current sales tax receipts, and the refund is for a tax or fee that is not levied by the state, the Tax Commissioner must recover the amount of that refund from the next distribution of that tax or fee that otherwise would be made to the local taxing jurisdiction. If the amount to be recovered would exceed 25% of the next distribution, the Commissioner may spread the recovery over more than one future

distribution, taking into account the amount to be recovered and the amount of the anticipated future distributions. In no event may the Commissioner spread the recovery over a period to exceed 24 months.

Continuing law requires that where a county or transit authority levies a local sales tax, the Commissioner must certify the amount of the proceeds of those taxes that are to be returned to the county or transit authority. The bill provides that the amount to be returned to a county or transit authority must be reduced by the amount of any county or transit authority tax refunds paid to vendors or consumers who pay taxes directly to the Treasurer of State or the Commissioner, or refunds made from the Tax Refund Fund.

On a periodic basis, using the best information available, the bill requires the Commissioner to distribute any amount of a county or transit authority tax that cannot be distributed under the procedures in continuing law. Through audit or other means, the Commissioner must attempt to obtain the information necessary to make distributions under continuing law and, on receipt of that information, must make adjustments to distributions previously made on a periodic basis.

#### **Personal liability for failure to file returns or remit taxes**

(R.C. 5739.33 and 5741.25)

Continuing law provides that if any corporation, limited liability company, or business trust that is required to file returns and pay sales taxes fails to do so, its employees or officers who have fiscal responsibility are personally liable for the failure. The bill adds holders of direct payment permits to the responsible entities to which this personal liability provision applies.

The bill also creates a new personal liability provision in the use tax law. The provision is similar to the one in the sales tax law.

#### **Revisions made to comply with the Streamlined Sales and Use Tax Agreement**

##### **Background**

In 2002, Am. Sub. S.B. 143 of the 124th General Assembly enacted the Simplified Sales and Use Tax Administration Act (R.C. Chapter 5740.), a model act recommended by the National Conference of State Legislatures for the development of a voluntary, streamlined system for the collection of sales and use taxes from remote sellers. S.B. 143 required Ohio to participate in multi-state discussions to develop the system through a Streamlined Sales and Use Tax Agreement (interstate agreement) recommended by NCSL, which provided states with the structure to simplify their collection systems by changing state statutes to establish the system envisioned by the model act. In S.B. 143, Ohio revised some



of its state and local sales and use tax laws to reflect simplification and administration requirements contained in the model act that were required for Ohio to become one of the Streamlined Sales and Use Tax Implementing States with the power to structure and amend the interstate agreement.

Since that time, Ohio has been participating in the multi-state discussions and, on November 12, 2002, the Implementing States approved the interstate agreement. To come into effect, at least ten states comprising at least 20% of the total population of all states imposing a state sales tax must be found to be in compliance with the interstate agreement's requirements. This means that some states will have to revise their laws to reflect the requirements contained in the current interstate agreement in order to become member states under the agreement, which entitles a state to collect taxes from sellers that have registered with the central electronic registration system established by the member states.

Generally, the interstate agreement focuses on improving collection systems through the state-level administration of sales and use tax collections, uniformity in the state and local tax bases, uniformity of major tax base definitions, a central, electronic registration system for all member states, simplification of state and local tax rates, uniform sourcing rules for all taxable transactions, simplified administration of exemptions, simplified tax returns, protection of consumer privacy, and simplification of tax remittances.

To reflect the requirements in the interstate agreement, the bill revises sales and use tax definitions, sourcing provisions, the tax rate schedules, and the laws regarding how local tax rates are levied or changed. Except as indicated otherwise in each topic heading, the effective date of most of the bill's revisions is July 1, 2003.

### **Major tax base definitions and their impact on the tax base**

The bill revises the following definitions to conform them to the major tax base definitions in the interstate agreement:

**"Price."** Generally, the differences between the current definition of "price" and the interstate agreement's definition is that the agreement includes delivery charges, money received as a deposit refundable to a consumer upon return of a beverage container or a carton or case used for returnable containers, and consideration received as a refundable security deposit for the use of tangible personal property are included in the definition of "price" (R.C. 5739.01(H)(1)). Thus, sales or use taxes will be levied on these items since the "price" of tangible personal property or a service is the base on which those taxes are levied. Additionally, under the use tax, the bill provides that if a consumer produces tangible personal property for sale and removes that property from inventory for

the consumer's own use, the price is the produced cost of that tangible personal property (R.C. 5741.01(G)).

**"Lease" or "rental."** The bill revises the definition of "lease" by also calling it a "rental," and expands the existing definition to include future options to purchase or extend, and qualified motor vehicle operating agreements that contain terminal rental adjustment clauses (described in 26 U.S.C. 7701(h)(1)) covering motor vehicles and trailers, where the amount of consideration may be increased or decreased by reference to the amount realized upon the sale or disposition of the property (R.C. 5739.01(UU) and 5741.01(O)). The new definition does not apply to leases or rentals that existed before the bill's effective date. The definition has this meaning regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, Title XIII of the Revised Code (which addresses commercial transactions), or other federal, state, or local laws.

Under the bill, "lease" or "rental" excludes (1) a transfer of possession or control of tangible personal property under a security agreement or a deferred payment plan that requires the transfer of title upon completion of the required payments, or under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of \$100 or 1% of the total required payments, and (2) providing tangible personal property along with an operator for a fixed or indefinite period of time, if the operator is necessary for the property to perform as designed (the operator must do more than maintain, inspect, or set-up the tangible personal property).

**"Food."** The sales tax does not apply to sales of food for human consumption off the premises where sold or to school students in a cafeteria or dormitory, to persons using food stamps, or to persons licensed to conduct food service operations where the food basically is prepared and resold. The current definition of "food" specifically names the items that are or are not food. The interstate agreement's definition is broader and defines the term as substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. The bill adopts the interstate agreement's definition, effective July 1, 2004. Generally, the differences between the current definition of "food" and the interstate agreement's definition is that the agreement's definition includes gum, blended fruit juices, bottled or carbonated water, and ice, all of which are taxed under current law. This means that under the bill, those items are not subject to the sales tax. Additionally, tobacco is excluded from "food" and defined in the agreement's definition, alcoholic beverages and soft drinks remain excluded as in existing law, but are defined in the agreement's definition, and "dietary supplements" are excluded in the agreement's definition. The agreement defines

"dietary supplements" as any product, other than tobacco, that is intended to supplement the diet and that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or, if not intended for ingestion in such a form, is not represented as conventional food for use as a sole item of a meal or of the diet; that is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label, as required by federal law, and that contains a vitamin; mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or a concentrate, metabolite, constituent, extract, or combination of any of these ingredients (R.C. 5739.01(EEE)).

The bill adds the following definitions to the sales tax law to comply with the major tax base definitions in the interstate agreement:

**"Tangible personal property."** The uniform definition of "tangible personal property" is personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of the sales and use tax laws, "tangible personal property" includes motor vehicles, electricity, water, gas, steam, and prewritten computer software (R.C. 5739.01(YY)). Because electricity is considered to be tangible personal property subject to the sales or use tax under this definition, the bill, in effect, continues existing law's exclusion of electricity from taxation by specifically stating in existing law that the tax does not apply (R.C. 5739.02(B)(7)). The bill defines "prewritten computer software" as computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances computer software of which the person is not the author or creator, the person is deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement is not prewritten computer software (R.C. 5739.01(DDD)).

**"Direct mail," "computer," "computer software," and "delivered electronically."** These definitions are used in the bill's sourcing standards that are

required by the interstate agreement, discussed below under "Uniform standards for attributing the source of transactions to taxing jurisdictions."

"Drug" and "prescription." Under current law, sales of drugs dispensed by a licensed pharmacist upon the order of a licensed health professional are exempt from sales and use taxes, along with certain listed items, such as insulin (R.C. 5739.02(B)(18)). Current law does not define "drug," nor does it use the term "prescription" in the exemption, but the interstate agreement does. Under the bill, the exemption is worded to exclude from taxation sales of drugs for a human being, dispensed pursuant to a prescription. The bill defines a "drug" as a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food, dietary supplements, or alcoholic beverages that is recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official national formulary, and supplements to them; is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or is intended to affect the structure or any function of the body (R.C. 5739.01(FFF)). A "prescription" is an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue a prescription (R.C. 5739.01(GGG)). These changes broaden the number of drugs that are exempt from taxation.

"Durable medical equipment," "mobility enhancing equipment," and "prosthetic device." Current law exempts from sales and use taxes sales of artificial limbs, braces, crutches, prosthetic devices, wheelchairs, and other designated tangible personal property (R.C. 5739.02(B)(19)). Current law does not define these items; rather, it lists the items with some description of them in the exemption. The interstate agreement defines "durable medical equipment," "mobility enhancing equipment," and "prosthetic device," so the bill revises the exemption to exempt sales of prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment, when made pursuant to a prescription and when such devices or equipment are for use by a human being.

The bill adopts the interstate agreement's definitions. The bill defines "durable medical equipment" as equipment, including repair and replacement parts for such equipment, that can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is not worn in or on the body (R.C. 5739.01(HHH)). "Mobility enhancing equipment" is equipment, including repair and replacement parts for such equipment, that is primarily and customarily used to provide or increase the ability to move from one place to another and is appropriate for use either in a home or a motor vehicle, that is not generally used by persons with normal mobility, and that does not include any motor vehicle or equipment on a

motor vehicle normally provided by a motor vehicle manufacturer (R.C. 5739.01(III)). The bill defines "prosthetic device" as a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body, but does not include corrective eyeglasses, contact lenses, or dental prosthesis (R.C. 5739.01(JJJ)).

**Collection of sales and use taxes on leases and rentals**

(R.C. 5739.02(A) and 5741.02(A))

The current definition of "price" indicates when the sales tax should be collected for the lease of a motor vehicle that does not carry a load of more than one ton, a watercraft, an outboard motor, or an aircraft, or the lease of tangible personal property to be used in business, and how the tax should be calculated on that lease (R.C. 5739.01(H)(4), 5739.02(A)(2), and 5741.02(A)). The bill moves this provision into the statutes that levy the sales and use taxes. The bill provides that, in the case of the lease or rental of those types of property, with a fixed or indefinite term of more than 30 days, the sales or use tax must be collected by the vendor or seller at the time the lease or rental is consummated and calculated by the vendor or seller on the basis of the total amount to be paid by the lessee or renter under the lease or rental agreement. If the total amount of the consideration for the lease or rental includes amounts that are not calculated at the time the lease or rental is executed, the tax must be calculated and collected by the vendor or seller at the time such amounts are billed to the lessee or renter.

For an open-end lease or rental, the sales or use tax must be calculated by the vendor or seller on the basis of the total amount to be paid during the initial fixed term of the lease or rental, and for each subsequent renewal period as it comes due.

If the price consists in whole or part of the lease or rental of tangible personal property, other than the property just discussed, continuing law requires that sale or use taxes be measured by the installments of that lease or rental.

**Simplification of administering exemptions**

(R.C. 5739.01(E) and 5739.02(B)(43))

By virtue of being amended many times throughout the years, Ohio's sales and use tax laws have exemptions and exceptions to taxation spread out in various provisions. The bill consolidates many of those exceptions and exemptions into the tax levy and exemption statute, R.C. 5739.02, to simplify administering

exemptions, as required by the interstate agreement. The bill moves the retail sales exceptions to the list of sales and use tax exemptions. The only exception the bill eliminates is the exception for "things transferred" for reclamation (see "Exemptions eliminated," above).

### **Restrictions on frequency of changes in local tax rates**

(R.C. 5739.021, 5739.022, 5739.023, and 5739.026; Sections 131G to 131K, 145.03N, and 146.06)

The interstate agreement requires that member states restrict the frequency of local sales and use tax rate changes to lessen the difficulties faced by sellers when there is a change in a tax rate or base. S.B. 143 revised the local sales and use tax laws to require that a resolution that levies or changes local sales and use taxes becomes effective on the first day of a calendar quarter following the expiration of 60 days from the date of its adoption. If a vendor that is registered with the central electronic registration system makes a sale in Ohio by printed catalog, and the consumer computed the tax on the sale based on local rates published in the catalog, S.B. 143 required that the tax levied or rate changed could not apply until the first day of a calendar quarter following the expiration of 120 days from the date of notice by the Tax Commissioner to the vendor, or to the vendor's certified service provider, if the vendor has selected one. These changes were to take effect July 1, 2003.

The bill delays the effective date of these local tax rate provisions, until January 1, 2004. The bill provides that a resolution that levies or changes local sales and use taxes becomes effective on the first day of a calendar quarter following the expiration of 65, rather than 60, days from the date of its adoption. The bill provides that the Tax Commissioner, upon receipt from a board of county commissioners or board of elections of a certified copy of a resolution or notice of the results of an election, must give notice of a tax rate change in a manner that is reasonably accessible to all affected vendors, at least 60 days prior to the effective date of the rate change. The bill also applies the catalog notice provision to the law regarding the repeal or increase of local permissive sales taxes adopted as an emergency measure.

### **Tax rate schedules**

(R.C. 5739.025(E), 5739.10, 5741.021, 5741.022, and 5741.023; Sections 145.03N and 146.06)

The interstate agreement requires that a uniform method of calculating and rounding the amount of taxes owed be used to simplify state and local tax rates. Under current law, a vendor or seller calculates and collects sales and use taxes



based on schedules set forth in the sales tax law. In lieu of collecting the tax pursuant to the schedules, a vendor or seller may compute the tax so that, on sales of 15¢ or less, no tax applies, and on sales in excess of 15¢, the price is multiplied by the aggregate rate of state and local sales or use taxes in effect. The computation must be carried out to six decimal places, and then increased to the next highest cent.

Effective January 1, 2006, the bill eliminates the schedules and the exemption on sales of 15¢ or less, and requires that the vendor must compute the tax on each sale by multiplying the price by the aggregate rate of taxes in effect. The computation must be carried out to three decimal places, and if the tax owed is a fractional amount of a cent, the tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. A vendor may elect to compute the tax due on a transaction on an item or an invoice basis.

**Uniform standards for attributing the source of transactions to taxing jurisdictions**

**Sourcing standards for most transactions.** Under the interstate agreement, member states must have uniform standards for attributing the source of transactions to taxing jurisdictions. These standards are used to determine where a sale occurred (sometimes termed the "situs" or the "source"). Under S.B. 143, Ohio's general sourcing law that applies to most transactions was revised to conform with the agreement's uniform sourcing proposal, and was to take effect July 1, 2003. The bill delays the effective date of that law until January 1, 2004 (Sections 3.09A to 3.09C and 131G to 131K).

The bill makes further changes to that law, once it takes effect in 2004, to comply with the interstate agreement (Section 3.09A). The bill provides that the general sourcing law applies only to a vendor's or seller's obligation to collect and remit state and local sales or use taxes, and does not affect the obligation of a consumer to remit use taxes on the storage, use, or other consumption of tangible personal property or on the benefit realized of any service provided, to the jurisdiction of that storage, use, or consumption, or benefit realized.

The bill revises the part of the general sourcing law that requires consumers to file with vendors multiple points of use exemption forms when consumers purchase tangible personal property or a service for use in business, and the property or service is available for use in more than one taxing jurisdiction. The bill applies the law to "computer software delivered electronically" or a service for use in business, rather than tangible personal property. The bill defines "computer" as an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions; "computer



software" is a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task; and "delivered electronically" means delivery of computer software from the seller to the purchaser by means other than tangible storage media (R.C. 5739.01(AAA) to (CCC)).

**Sourcing standards for direct mail purchases.** The bill also establishes in the general sourcing law a new sourcing requirement for a purchaser of "direct mail" that is not a holder of a direct payment permit (Sections 3.09A to 3.09C). The bill requires that type of purchaser to provide to the vendor in conjunction with the purchase either a direct mail form prescribed by the Tax Commissioner, or information to show the jurisdictions to which the direct mail is delivered to recipients. The bill defines "direct mail" as printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the consumer or at the direction of the consumer when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the consumer to the direct mail vendor for inclusion in the package containing the printed material, but excludes multiple items of printed material delivered to a single address (R.C. 5739.01(ZZ)).

Upon receipt of a direct mail form, the vendor is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay that tax on a direct pay basis. A direct mail form remains in effect for all future sales of direct mail by the vendor to the purchaser until it is revoked in writing.

Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the vendor is required to collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the vendor is relieved of any further obligation to collect tax on any transaction where the vendor has collected tax pursuant to the delivery information provided by the purchaser.

If the purchaser of direct mail does not have a direct payment permit and does not provide the vendor with either a direct mail form or delivery information, the vendor must collect the tax under an existing sourcing provision that requires that the sale be sourced to the address from which tangible personal property was shipped, or from which the service was provided, disregarding any location that merely provided an electronic transfer of the property sold or service provided. The bill provides that this provision does not limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

If a purchaser of direct mail provides the vendor with documentation of direct payment authority, the purchaser cannot be required to provide a direct mail form or delivery information to the vendor.

**Sourcing standards for sales, leases, and rentals of transportation equipment.** Under the bill, a sale, lease, or rental of transportation equipment must be sourced under the existing general sourcing law. For purposes of sourcing (and the interstate agreement), the bill defines "transportation equipment" as locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce; trucks and truck-tractors with a gross vehicle weight rating of greater than 10,000 pounds, trailers, semi-trailers, or passenger buses that are registered through the International Registration Plan and are operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce; or aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate or foreign commerce. Containers designed for use on and component parts attached to or secured on these items are also "transportation equipment" (Section 3.09A).

**Sourcing standards for leases and rentals of tangible personal property without recurring payments.** The bill provides that a lease or rental of tangible personal property that does not require recurring periodic payments must be sourced under the existing general sourcing law (Section 3.09A).

**Sourcing standards for leases or rentals of tangible personal property with periodic payments.** The bill establishes a sourcing provision for the lease or rental of tangible personal property that requires recurring periodic payments (Section 3.09A). The bill provides that recurring periodic payments must be sourced as follows:

- In the case of a **motor vehicle**, other than a motor vehicle that is transportation equipment, the lease or rental must be sourced to the primary property location. The bill defines the "primary property location" as an address for tangible personal property provided by the lessee or renter that is available to the lessor or owner from its records maintained in the ordinary course of business, when use of that address does not constitute bad faith. The primary property location must be determined as follows:

- (1) For a lease or rental for which the tax is collected by the vendor at the time the lease or rental is consummated and is calculated on the basis of the total amount to be paid by the lessee or renter under the agreement, the primary property location is the address of the lessee or renter used for titling the motor vehicle under existing law regarding applications for certificates of title, at the time the lease or rental is consummated.

(2) For a lease or rental for which the tax is measured by the installments of the lease or rental, the primary property location for each lease or rental installment is the primary property location for the period covered by the installment.

- In the case of an **aircraft**, other than an aircraft that is transportation equipment, the lease or rental must be sourced to the primary property location as follows:

(1) For a lease or rental for which the tax is collected by the vendor at the time the lease or rental is consummated and is calculated on the basis of the total amount to be paid by the lessee or renter under the agreement, the primary property location is the primary property location at the time the lease or rental is consummated.

(2) For a lease or rental for which the tax is measured by the installments of the lease or rental, the primary property location for each lease or rental installment is the primary property location for the period covered by the installment.

- In the case of a **watercraft** or an **outboard motor** required to be titled in Ohio under the existing watercraft certificate of title law, the lease or rental must be sourced to the primary property location as follows:

(1) For a lease or rental for which the tax is collected by the vendor at the time the lease or rental is consummated and is calculated on the basis of the total amount to be paid by the lessee or renter under the agreement, the primary property location is the address of the lessee or renter shown on the title.

(2) For a lease or rental for which the tax is measured by the installments of the lease or rental, the primary property location for the initial lease or rental installment is the address of the lessee or renter shown on the title. For each subsequent installment, the primary property location is the primary property location for the period covered by the installment.

- In the case of a lease or rental of **all other tangible personal property**, other than transportation equipment, the lease or rental must be sourced as follows:

(1) For a lease or rental for which the tax is collected by the vendor at the time the lease or rental is consummated and is calculated on the basis of the total amount to be paid by the lessee or renter under the agreement, the lease or rental must be sourced under the existing general sourcing provision, at the time the lease or rental is consummated.

(2) For a lease or rental for which the tax is measured by the installments of the lease or rental, the initial lease or rental installment must be sourced under the existing general sourcing provision. Each subsequent installment must be sourced to the primary property location for the period covered by the installment.

**Sourcing telecommunications sales.** S.B. 143 enacted a law for determining the source of sales of mobile telecommunications service, which took effect August 1, 2002. Since that time, the interstate agreement established a sourcing standard for sales of various types of telecommunications. The bill repeals the existing mobile telecommunications sourcing law and adopts the interstate agreement's sourcing standard, effective July 1, 2003 (R.C. 5739.034). Under the bill, the amount of state and local sales taxes due on sales of telecommunications service, information service, or mobile telecommunications service, is the sum of those taxes imposed at the sourcing location of the consummation of the sale, determined as follows:

(1) Except for the telecommunications services described in (3), below, the sale of telecommunications service sold on a call-by-call basis must be sourced to each level of taxing jurisdiction where the call originates and terminates in that jurisdiction, or each level of taxing jurisdiction where the call either originates or terminates and in which the service address also is located. Under the bill, "call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls. "Service address" means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid, or if that location is not known, the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. If neither location is known, "service address" means the location of the customer's place of primary use.

(2) Except for the telecommunications services described in (3), below, a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use. "Customer" means the person or entity that contracts with a seller of telecommunications service, but excludes a reseller of telecommunications or mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area. If the end user (person who utilizes the service) of telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "Place of primary use" means the residential street address or primary business street address where the customer's use of the telecommunications service

primarily occurs. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider (generally, the facilities-based carrier or reseller with which the customer contracts for service).

(3) The sale of the following telecommunications services must be sourced to each level of taxing jurisdiction as follows:

(a) A sale of mobile telecommunications service, other than air-to-ground radiotelephone service (common carriers provide this service for hire to subscribers in aircraft) and prepaid calling service, is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act. Under continuing law, "mobile telecommunications service" is commercial mobile radio service--generally, a mobile service that is provided for profit, is interconnected with the public switched network, and is available to the public.

(b) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by the service provider's telecommunications system, or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service, and includes a telecommunications service that would be a prepaid calling service, but for the fact that it is not exclusively a telecommunications service.

(c) A sale of prepaid calling service is sourced in accordance with the existing general sourcing law; but in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, in lieu of sourcing that service under the general sourcing law, the service may be sourced to the location associated with the mobile telephone number. "Prepaid calling service" means the right to access exclusively a telecommunications service that must be paid for in advance, that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

### **Bad debt**

(R.C. 5739.121)

Under the concepts of simplified tax returns and simplification of tax remittances, the interstate agreement addresses how bad debt refunds should be obtained. The bill follows this concept. Continuing law provides that a vendor may deduct from its taxable receipts the amount of bad debt it has incurred. Generally, bad debt is any debt that has become worthless or uncollectible for at least six months and that may be claimed as a federal tax deduction, but does not include, among other items, any accounts receivable that have been sold to a third party for collection. Under the bill, bad debt includes accounts receivable that have been sold to a third party for collection.

The bill also provides that in any reporting period in which the amount of bad debt exceeds the amount of taxable sales for the period, the vendor may file a refund claim for any tax collected on the bad debt in excess of the tax reported on the return. The refund claim must be filed in accordance with the existing law's procedure, except that the claim may be filed within four years of the due date of the return on which the bad debt first could have been claimed.

When a vendor's filing responsibilities have been assumed by a certified service provider, the certified service provider must claim the bad debt allowance on behalf of the vendor. The certified service provider must credit or refund to the vendor the full amount of any bad debt allowance or refund.

The bill provides that no person, other than the vendor in the transaction that generated the bad debt or a certified service provider, may claim the bad debt allowance.

### **Delay of certain sales and use tax provisions**

(Sections 131.05 to 131.07)

The bill delays until January 1, 2004, the effective date of the sales tax law in S.B. 143 and other acts, regarding the issuance of direct payment permits to consumers so that they can pay sales taxes directly to the state (R.C. 5739.031).

## II. Municipal Taxation

### 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 or a tax administrator can take an appeal from a municipal appellate board to the Board of Tax Appeals or court of common pleas by filing a notice of appeal with the Board of Tax Appeals or court of common pleas (whichever the case may be), the tax administrator, and the municipal appellate board within 60 days after the municipal appellate board gives the appealing party 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 with the Board of Tax Appeals, 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 municipality in which the dispute arose is primarily located.



## **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 and 718.03)

Currently, each municipal corporation may define the tax base for employers to use when withholding municipal income taxes from their employees' compensation. For taxable years beginning after 2003, the bill prohibits municipal corporations from requiring any employer to withhold tax from any compensation other than qualifying wages. The bill defines "qualifying wages" as wages, as defined under the Internal Revenue Code, with the following adjustments:<sup>221</sup>

(1) Deduction of any amount included in wages that is compensation attributable to a cafeteria plan described in section 125 of the Internal Revenue Code. (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.)

---

<sup>221</sup> *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)).*

(2) Addition of any amount not included in wages solely because the employee was employed by the employer prior to April 1, 1986.

(3) Addition of any amount not included in wages if the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option, and the municipal corporation has not, by resolution or ordinance, exempted the amount from withholding and taxation (see "**Municipal corporations authorized to exempt certain income**," below).

(4) Addition of any amount not included in wages if the amount is a cash or deferred arrangement described in section 401(k) of the Internal Revenue Code or a deferred compensation plan of the state government, a local government, or a tax-exempt organization described in section 457 of the Internal Revenue Code. (The bill specifies that this addition is required only for employee contributions and employee deferrals.)

(5) Addition of any amount that constitutes supplemental unemployment compensation not included in wages.

(6) Deduction of any amount attributable to a nonqualified deferred compensation plan or program if the compensation is included in wages and the municipal corporation has, by resolution or ordinance, exempted that amount from withholding and taxation (see "**Municipal corporations authorized to exempt certain income**," below). (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. Generally, nonqualified plans defer an employee's recognition of income, which means that the employee is not taxed on the compensation deferred until he or she receives it. These plans also defer the date on which an employer may claim a deduction for the compensation.)

(7) Deduction of any amount included in wages if the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of a stock purchased under a stock option, and the municipal corporation has, by resolution or ordinance, exempted the amount from withholding and taxation.

Under the bill, an employer is not required to make any withholding with respect to an individual's disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual is not an employee of the corporation for which the stock option was issued. The bill also provides that compensation deferred before the bill's immediate effective date is not subject to

municipal income tax withholding requirements to the extent the deferred compensation does not constitute qualifying wages at the time the deferred compensation is paid or distributed to the employee.

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 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.

**Erroneous payment of tax or withholding**

(R.C. 718.121(A))

The bill provides that if tax or withholding is paid to a municipal corporation and the time period for seeking a refund of the amounts paid lapses, a second municipal corporation imposing a tax on that income or wages must allow a nonrefundable credit for the amounts paid to the first municipal corporation. If the tax rate in the second municipal corporation is less than the tax rate in the first, the credit is to be calculated on the basis of the second municipal corporation's tax rate.

**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 following 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)

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. 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).

**Tax Commissioner granted rulemaking authority with respect to the Ohio Business Gateway**

(R.C. 718.051(H))

The bill grants the Tax Commissioner limited rulemaking authority with respect to the Ohio Business Gateway (for a definition of "Ohio Business Gateway," see "**Ohio Business Gateway**," above). Specifically, the bill specifies that the Commissioner is to adopt rules establishing the format of documents to be used by taxpayers to file returns and make payments through the Ohio Business Gateway. The bill also requires that the Commissioner adopt rules specifying the information taxpayers are to submit with filing municipal income tax returns through the Ohio Business Gateway (see "**Ohio Business Gateway**," above). The bill requires that the Commissioner consult with the Ohio Business Gateway Steering Committee before adopting these rules (see "**Ohio Business Gateway Steering Committee created**," below).

**Ohio Business Gateway Steering Committee created**

(R.C. 5703.56)

The bill creates the Ohio Business Gateway Steering Committee and charges it with the responsibility of directing the development of the Ohio Business Gateway and overseeing its operations (for a definition of "Ohio Business Gateway," see "**Ohio Business Gateway**," above). The bill requires that the Committee consider all banking, technological, administrative, and other issues associated with the Ohio Business Gateway and make recommendations to

the Department of Administrative Services about enhancements that will improve the system. The bill makes the Committee part of the Department of Taxation for administrative purposes.

The bill establishes the membership of the Committee. Specifically, the bill specifies that the Committee will consist of the following individuals appointed by the governor with the advice and consent of the Senate:

- (1) No more than two representatives of the business community;
- (2) No more than three representatives of municipal tax administrators;
- (3) No more than two tax practitioners.

In addition, the Committee consists of the following state officials:

(1) The director or other highest officer of each state agency that has tax reporting forms or other tax documents filed with it through the Ohio Business Gateway;

(2) The Secretary of State or the Secretary of State's designee;

(3) The Treasurer of State or the Treasurer's designee;

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

(5) The Tax Commissioner or the Commissioner's designee.

A member who is appointed to the Committee is to serve until he or she resigns or is removed by the Governor. The bill provides that vacancies on the Committee are to be filled in the same manner as the original appointment. Under the bill, a vacancy on the Committee does not impair the right of the other members to exercise all of the functions of the Committee.

The presence of a majority of the members of the Committee constitutes a quorum. The concurrence of at least a majority of the members of the Committee is necessary for any action to be taken by the Committee. The bill provides that members of the Committee are to be reimbursed for actual and necessary expenses incurred by them in the discharge of their Committee duties.

The bill requires that, each year, the Governor select a member of the Committee to serve as its chairperson. The Chairperson must appoint an official or employee of the Department of Taxation to act as the Committee's secretary. The secretary is required to keep minutes of the Committee's meetings and to

maintain a journal of all of the Committee's meetings, proceedings, findings, and determinations. The Committee is to hire necessary professional, technical, and clerical staff.

**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 adjusted as follows:

(1) Deduction of intangible income (e.g., interest, dividends, and capital gains) to the extent the taxpayer includes it in federal taxable income. The deduction is allowed regardless of whether the intangible income relates to assets used in a trade or business or held for the production of income.

(2) Addition of 5% of the intangible income deducted under (1) above but not that portion of intangible income that directly relates to the sale, exchange, or other disposition of capital assets described in section 1221 of the Internal Revenue Code (e.g., stock in trade that would properly be included in the taxpayer's inventory at the close of the taxable year, a copyright, or a government publication not acquired by purchase at the price at which it is sold to the public).

(3) Addition of any losses allowed as a deduction in computing federal taxable income if the losses directly relate to the sale, exchange, or other disposition of a capital asset described in section 1221 or 1231 of the Internal Revenue Code.

(4) Deduction of income and gain included in federal taxable income to the extent the income and gain directly relates to the sale, exchange, or other disposition of a capital asset described in section 1221 or 1231 of the Internal Revenue Code. (However, this deduction is not required to the extent the income or gain is a gain from the disposition of certain depreciable property under section 1245 or 1250 of the Internal Revenue Code.)

(5) Addition of taxes on or measured by net income allowed as a deduction in the computation of federal taxable income.

(6) In the case of each real estate investment trust and regulated investment company, addition of all amounts with respect to dividends, distributions, and



amounts credited to the benefit of investors and allowed as a deduction in the computation of 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. (However, this restriction does not apply to the net profits of electric companies, telephone companies, and sole proprietorships.)

**Taxpayers that are neither individuals nor C corporations**

(R.C. 718.01(A)(1)(g))

The bill provides that if a taxpayer is neither a C corporation nor an individual, the taxpayer must compute "adjusted federal taxable income" as if the taxpayer were a C corporation; however, the bill specifies that guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member, or former member are not deductible expenses. In addition, with respect to each of the taxpayer's owners or owner-employees, no deduction may be taken for amounts paid or accrued to a qualified self-employed retirement plan or amounts paid or accrued to health or life insurance.

**Municipal corporations authorized to exempt certain income**

(R.C. 718.01)

The bill authorizes a municipal corporation to exempt from its income tax and withholding requirements the following amounts:

(1) Compensation arising from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option; or

(2) Compensation attributable to a nonqualified deferred compensation plan or program.

The bill provides that any municipal corporation that wishes to exempt these amounts must do so by passing an ordinance or adopting a resolution.

**Net profit from rental activity**

(R.C. 718.01 and 718.02)

The bill provides that with respect to net profit from rental activity required to be reported on Internal Revenue Code Schedule E, municipal corporations are prohibited from using as the tax base any amount other than the net profit from

rental activities required to be reported by the taxpayer on Schedule E for the taxable year. The bill provides, further, that net profit from rental activity that does not constitute a business or a profession is subject to tax only by the municipal corporation in which the property generating the net profit is located.

**Apportionment of net profit**

(R.C. 718.02)

A business that operates both inside and outside of a municipality's boundaries must apportion its income among the various municipalities in which it operates. Under current law, if a business' books and records accurately show the portion of its net profit that is attributable to business conducted within the municipality, the tax may be calculated on that portion. However, in the absence of such business records, the taxpayer must use a statutory apportionment formula. The statutory formula is a three-part formula that examines the payroll, sales, and real and tangible personal property (whether owned or rented) within and outside the municipality to determine the portion of the net profit of the business that is attributable to the municipality.

The bill eliminates the option of apportioning net profit on the basis of books and records and requires that taxpayers apportion on the basis of the statutory formula (unless the formula does not produce an equitable result in which case another basis may be substituted). In addition, in calculating the ratio of real and tangible personal property used within and outside a municipality, the bill requires taxpayers to use the original cost of the property instead of its net book value, as required under current law.

**Definition of "intangible income" clarified**

(R.C. 718.01(A)(5) and (F)(3))

Continuing law prohibits municipal corporations from taxing intangible income, which is income yield, interest, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property. The bill adds capital gains to this list of examples of intangible income and specifies that the intangible property that gives rise to intangible income includes patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. Finally, the bill provides that intangible income exempt from municipal taxation does not include prizes, awards, or other income associated with lottery winnings or other similar games of chance.

### **Municipal tax administrators' authority to audit**

(R.C. 718.01)

The bill provides that every tax administrator has the authority to examine or audit a taxpayer in order to determine whether that taxpayer has properly reported adjusted federal taxable income or net profit required to be reported on Internal Revenue Code Schedules C, E, or F. The bill specifies, further, that if a tax administrator determines that a taxpayer has not properly reported these amounts, the tax administrator may make all corrections and adjustments necessary to determine the amount.

### **Tax credit for "qualifying losses" on nonqualified deferred compensation plans**

(R.C. 718.021)

The bill requires that municipal corporations extend to taxpayers a refundable credit for certain losses incurred with respect to nonqualified deferred compensation plans. (A "refundable" credit is a credit that can be claimed by a taxpayer regardless of whether the amount of the credit exceeds the taxpayer's tax liability.) 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. Generally, nonqualified plans defer an employee's recognition of income for any compensation for which there is a "substantial risk of forfeiture." This means that the employee is not taxed on the compensation deferred until he or she receives it. However, there is no deferral of taxation on deferred compensation that is not subject to a substantial risk of forfeiture. The bill requires municipal corporations to extend a tax credit to taxpayers who pay municipal income tax on nonqualified deferred compensation before the compensation is received but then never receive the deferred compensation because the taxpayer's employer has become insolvent or because the employee failed to satisfy all of the terms and conditions necessary to receive the nonqualified deferred compensation.

The amount of the credit allowed under the bill is equal to the product of the taxpayer's "qualifying loss" and "qualifying tax rate." The qualifying loss is the amount by which the total amount of compensation deferred under the plan exceeds the amount of income that the taxpayer has recognized for federal income tax purposes with respect to the nonqualified deferred compensation plan. If the taxpayer has not paid municipal income tax on the entire amount of compensation deferred, the qualifying loss is the excess of the total amount of compensation deferred over the amount recognized for federal income tax purposes multiplied

by that percentage of the total amount of compensation deferred upon which the taxpayer has paid municipal income tax.

The qualifying tax rate is the applicable tax rate for the taxable year for which the taxpayer paid income tax with respect to any portion of the total amount of compensation deferred. If different tax rates applied for different taxable years, the qualifying tax rate is the weighted average of those different tax rates. The qualifying tax rate is multiplied against the qualifying loss to arrive at the amount of the credit.

The bill specifies that a taxpayer may claim the credit from each municipal corporation to which the taxpayer paid municipal income tax with respect to the nonqualified deferred compensation. If a taxpayer paid tax to more than one municipal corporation, then the amount of the credit that a taxpayer may claim from each municipal corporation is to be calculated on the basis of each municipal corporation's proportionate share of the total municipal income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.

Under the bill, income taxes that have been withheld with respect to a nonqualified deferred compensation plan are considered to be income taxes paid to the municipal corporation. However, income taxes that have been refunded or otherwise credited for the benefit for the taxpayer are not considered to have been paid to the municipal corporation.

**Municipal taxation of S corporation distributive shares: credit for resident shareholders**

(R.C. 718.01 and 718.14)

**Background**

An S corporation is a corporation that elects special tax treatment under federal income tax law. S corporations, like partnerships, are given pass-through tax treatment under the Internal Revenue Code. "Pass-through tax treatment" means that for tax purposes the entity's attributes (income, deductions, losses, credits) flow through the entity to its owners. S corporations and other pass-through entities record transactions undertaken by the entity and report the results to the government, but pay no federal tax on the results of their operations. Rather, the tax characteristics (i.e., the income, deductions, losses, tax credits, etc.) of the corporation's operating results are passed through the entity directly to its shareholders on a pro rata basis and are reported on the shareholder's individual tax returns for federal (and Ohio income) tax purposes.

Current law prohibits municipalities from taxing an S corporation shareholder's distributive share of net profits to the extent the distributive share would not be allocated or apportioned to Ohio if the S corporation were a corporation subject to the income allocation and apportionment rules of Ohio's corporate franchise tax law. Thus, under current law, municipal corporations *may* tax distributive shares that would be income allocated or apportioned to Ohio under the corporate franchise tax law.<sup>222</sup>

### **Credit for resident S corporation shareholders**

Under current law, effective January 1, 2003, municipal corporations are required to grant a credit to resident owners of pass-through entities for taxes paid to another municipality. The purpose of the credit is to diminish the possibility and extent of multiple municipalities taxing the same S corporation income--once at the entity level, and again at the shareholder level. Current law provides that the credit must be extended to every owner of a pass-through entity except a shareholder in an S corporation. The bill extends the credit to S corporation shareholders whose incomes from the S corporation are subject to taxation by multiple municipalities.

### **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

---

<sup>222</sup> *Municipal corporations are always permitted to tax any portion of a distributive share that represents wages paid to the shareholder or net earnings from self-employment (R.C. 718.01(F)(9)).*

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 4<sup>3</sup>/<sub>4</sub>%. 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 derived customer billings after June 30, 2004, are not subject to the public utility excise tax. Gross receipts from billings before 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 from customer billings 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).

**Call center tax credit to offset future "anti-PIC" legislation**

(R.C. 122.171)

The bill authorizes a new, nonrefundable tax credit for any corporation operating a call center and also qualifying for the existing "job retention" tax credit. The new credit is designed to offset any additional tax liability that a call center might incur under any future change in the law that requires corporations to more fully reflect intercompany transactions in reporting their taxable income. The credit also is available to companies that are related to the corporation through 20% or more stock ownership or control.

For a corporation or its related companies to qualify for the new credit, the corporation must satisfy the definition of an "applicable corporation." An applicable corporation is defined by five criteria:

(1) The corporation develops software applications "primarily to provide telecommunication billing and information services through outsourcing or licensing to domestic or international customers."

(2) Sales and licensing of software generated at least \$600 million in revenue during the taxable year immediately preceding the tax year the corporation is first entitled to claim the job retention tax credit.

(3) The corporation, or one or more of its related companies, provides "customer or employee care and technical support for clients through one or more contact centers within this state."

(4) The corporation and its related companies together have a daily average of at least 500,000 "successful customer contacts" through one or more contact centers (which need not be located in Ohio). A successful customer contact is

defined as "contact with an end user via telephone, including interactive voice recognition or similar means, where the contact culminates in a conversation or connection other than a busy signal or equipment busy."

(5) The corporation is eligible for the job retention tax credit for the same tax year.

The corporation must claim the credit against the corporation franchise tax. The amount of the credit equals the "applicable difference," which is the tax increase, if any, that would result from any future change in the law that now requires corporations, in computing their taxable income, to reflect certain transactions with related companies. Currently, that law requires corporations to add interest and certain intangibles-related expenses paid to related companies (e.g., royalties and "technical" fees). For example, if the law were to be expanded in the future to require such an add-back for other kinds of expenses (as was proposed in the introduced version of the bill), the bill allows an "applicable corporation" and its related companies to claim the new credit for an amount that entirely offsets the additional tax resulting from the add-back--but only if the corporation also qualifies for the job retention tax credit in the same year.

The bill also increases the maximum term of the existing job retention tax credit, from ten to 15 years.

### **Current Agricultural Use Valuation**

(R.C. 1515.08 and 5713.30)

Current law establishes requirements for determining the current agricultural use value of real property for tax purposes. One requirement is that the real property must be devoted exclusively to agricultural use. Current law defines "land devoted exclusively to agricultural use" to include all of the following:

(1) Tracts, lots, or parcels of land totaling not less than ten acres that, during the three calendar years prior to the year in which an application is filed to have the land valued at its current agricultural use, and through the last day of May of that year, were devoted exclusively to commercial animal or poultry husbandry, aquaculture, apiculture, the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental trees, sod, or flowers, or the growth of timber for a noncommercial purpose if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use, or were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with a federal agency;



(2) Tracts, lots, or parcels of land totaling less than ten acres that, during the three calendar years prior to the year in which an application is filed to have the land valued at its current agricultural use and through the last day of May of that year, were devoted exclusively to commercial animal or poultry husbandry, aquaculture, apiculture, the production for a commercial purpose of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental trees, sod, or flowers where those activities produced an average yearly gross income of at least \$2,500 during the three-year period or where there is evidence of an anticipated gross income of that amount from those activities during the tax year in which application is made, or were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with a federal agency; and

(3) Tracts, lots, or parcels of land, or portions thereof that, during the previous three consecutive calendar years, have been designated as land devoted exclusively to agricultural use, but the land has been lying idle or fallow for up to one year and no action has occurred to the land that is either inconsistent with the return of it to agricultural production or converts the land so that it is no longer devoted exclusively to agricultural use. The land must remain designated as land devoted exclusively to agricultural use, provided that beyond one year, but less than three years, the landowner proves good cause as determined by the board of revision.

The bill revises the definition to include tracts, lots, or parcels of land or portions thereof that are used for conservation practices, provided that the tracts, lots, or parcels of land or portions thereof comprise 25% or less of the total of the tracts, lots, or parcels of land that satisfy the criteria in items (1), (2), or (3), above, together with the tracts, lots, or parcels of land or portions thereof that are used for conservation practices. Under the bill, "conservation practices" includes, but is not limited to, the installation, construction, development, planting, or use of grass waterways, terraces, diversions, filter strips, field borders, windbreaks, riparian buffers, wetlands, ponds, and cover crops to abate soil erosion. The bill authorizes the supervisors of a soil and water conservation district to assist the county auditor when requested in determining whether a conservation activity that is conducted in conjunction with agricultural activities is a conservation practice for that purpose.



## **Exemption of property in community reinvestment areas from real property taxation**

### **Background**

(R.C. 3735.65 (not in the bill), 3735.66 (not in the bill), 3735.67, and 3735.671)

Newly constructed or remodeled structures located in a community reinvestment area (CRA) may qualify for an exemption from real property taxation. A CRA is an area in which housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged. The designation of an area as a CRA is made by a resolution adopted by the legislative authority for the area.

To obtain an exemption, the owner of the property must file an application with the housing officer for the CRA in which the property is located. ("Housing officers" are officers or agencies, designated by the legislative authority in which the CRA is located, that administer the tax exemptions.) In addition, if any part of the new structure or remodeling to be exempted is to be used for commercial or industrial purposes, the owner and the legislative authority must first enter into a written agreement that authorizes the construction or remodeling before any exemption can be granted.

The exemptions from real property taxation can be granted on a continuing basis for a period of time specified by the legislative authority. The maximum period of exemption is between ten and 15 years depending upon the type of structure exempted.

### **Complaints concerning continued exemption**

(R.C. 3735.67 and 5715.27; Sections 145.03HH and 146.06)

In *Board of Educ. of Gahanna-Jefferson Local School Dist. v. Zaino*, 93 Ohio St.3d 231 (2001), the Ohio Supreme Court, interpreting existing statutory law, held that the Tax Commissioner has jurisdiction to hear a complaint challenging the continued exemption of property located in a CRA. The bill withdraws jurisdiction to hear these complaints from the Commissioner and confers it upon the housing officer that granted the exemption. The bill specifies that the Commissioner has jurisdiction to hear complaints against only the continued exemption of property for which the Commissioner has granted an exemption. Because exemptions for property in CRAs are granted by housing officers, the Commissioner would lack jurisdiction under the bill to hear complaints relating to these exemptions.

The bill provides that any person, board, or officer authorized to file complaints with a county board of revision may file a complaint against continued exemption of CRA property. The bill provides, further, that any complaint against exemption must be filed before December 31 of the tax year for which the complainant is requesting that the property be taxed. After determining whether the property that is the subject of the complaint continues to meet the requirements for exemption, the housing officer must certify the housing officer's findings to the complainant. If the housing officer determines that the property does not meet the requirements for exemption, the housing officer must notify the county auditor for the county in which the property is located so that the county auditor may adjust the list of property in the county that is exempt from taxation.

Under the bill, the Commissioner must certify to the housing officers any complaints filed with the Commissioner on or after the effective date of these provisions challenging the continued exemption of property in a CRA. With respect to a complaint filed before the effective date, the bill grants the Commissioner the option of hearing the complaint or certifying it to the housing officer. The bill provides that the filing date of any complaint certified to a housing officer by the Commissioner is the date on which the complaint was filed with the Commissioner.

**Additional limitations on Tax Commissioner's involvement with CRA property tax exemptions**

(R.C. 3735.671 and 5713.07; 5713.08)

The bill further limits the Tax Commissioner's involvement with CRA property tax exemptions by eliminating the requirement that copies of agreements between legislative authorities and owners of commercial or industrial property be forwarded to the Commissioner. In addition, continuing law specifies that these agreements contain a description of the real property to be exempted under the agreement. Current law requires that the Commissioner adopt rules prescribing the manner in which the property is to be described. The bill eliminates this rulemaking function. Finally, under current law, county auditors are required to maintain a list of all real and personal property within the county that is exempt from taxation. Current law provides that no additions may be made to these lists and no additional items of property may be exempted from taxation without the consent of the Commissioner. The bill draws a distinction between property exempted by the Commissioner and property exempted by a housing officer. The bill specifies that no additional property in a CRA can be added to a list of exempt property without the housing officer's consent.

### III. Other Areas of Taxation

#### *Bond requirement for cigarette dealers; electronic payment of cigarette taxes*

(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.

**Defer tax recognition of book-tax differences**

(R.C. 5733.04, 5733.0511 and 5745.01)

The bill prescribes how any differences between the book value and the tax value (i.e., adjusted basis) of a telephone company's assets are to be treated under the franchise tax and municipal income taxes. The tax effects of the differences are to be amortized in equal installments over a ten-year period beginning in 2010, rather than recognized immediately. (Accounting conventions require the current and future effects of tax law changes on book value/tax value differences to be recognized in the year the change takes effect.)

Only assets shown on a company's books and records on December 31, 2003, qualify for this treatment. The provision applies to those assets of a telephone company that was subject to the public utility excise tax during the last 12 months the excise tax applies to telephone companies. It also applies to any other company that received the assets of such a telephone company in a reorganization or series of reorganizations for which gains and losses were not recognized for federal income tax purposes.

**Motor fuel taxes**

**Refunds for water intentionally added to fuel**

(R.C. 5735.14, 5735.15, and 5739.02(B)(6))

Continuing law establishes a refund procedure for motor fuel taxes that have been paid on motor fuel used for non-highway purposes, such as in stationary gas engines. The bill provides that any person who uses motor fuel in Ohio must be reimbursed for motor fuel use and motor fuel taxes paid on motor fuel that

contains at least 9% water, when that water was intentionally added to the fuel. The refund must equal the amount of taxes paid on 95% of the water. When filing an application for refund, the person must state on the application the quantity of water intentionally added to the motor fuel. No person may claim reimbursement on fewer than 100 gallons of water.

Under continuing law, a seller of motor fuel must document that the seller has assumed liability to pay motor fuel taxes, and must state the number of gallons of motor fuel sold, along with other information. The bill requires that the seller also document the price paid for or the price per gallon of the motor fuel sold, and the number of gallons of water intentionally added to the motor fuel, and provide that documentation to purchasers.

Continuing law provides that sales of motor fuel on which other taxes have been imposed are exempt from sales taxes, but the exemption does not apply to the sale of motor fuel for which a refund has been given. The Tax Commissioner may deduct the amount of sales tax that applies to the price of motor fuel when granting a refund of motor fuel taxes. The bill provides that this exemption and the Commissioner's deduction of sales taxes from motor fuel refunds does not apply where the refund was paid because water was intentionally added to the fuel.

### **Property tax**

#### **Fee to defray Department of Taxation's property tax administrative costs**

(R.C. 321.24 and 5703.80; Sections 145.03GG and 146.06)

The bill provides for a percentage of real property tax rollback reimbursements to be diverted to a special fund to be used by the Department of Taxation to defray its costs of administering property taxation instead of being distributed to taxing districts. The Department oversees the equalization of real property valuation throughout the state, and administers the assessment of all public utility property and tangible personal property of businesses operating in more than one county.

The fund, to be named the Property Tax Administration Fund, is funded from a portion of the state reimbursement that otherwise is payable to taxing districts for the 10% rollback for real property. The portion diverted to the fund is the sum of the following components:

- 0.3% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes);

- 0.15% of the taxes charged against public utility personal property;
- 0.75% of taxes charged against tangible personal property of businesses owning property in more than one county (the property of such businesses is assessed by the Department).

The fee is to be computed once each fiscal year by the Tax Commissioner, and one-fourth of the computed amount is to be paid from the General Revenue Fund four times during each fiscal year, on August 1, November 1, February 1, and May 1. The fee amount is computed separately for each taxing district based on the taxable property in the district, and the amount is deducted from the district's share of the 10% rollback reimbursement. The amount deducted may not be greater than the district's share of the reimbursement. But if the computed deduction exceeds a district's share, the difference must be returned to the General Revenue Fund from the Property Tax Administration Fund.

In FY 2004, the fee may be determined at any time after the bill becomes law, and the deductions from reimbursements payable to taxing districts in FY 2004 may be made semiannually or all at once at the second reimbursement payment in February. The transfer of the fee from the GRF to the fund in FY 2004 may occur in three installments rather than four, on November 1, 2003, February 1, 2004, and May 1, 2004.

**Enforcement of the motor fuel use tax and motor fuel tax laws**

(R.C. 5728.04, 5728.99, 5735.19, and 5735.99)

**Motor fuel use permit violations**

Continuing law provides that it is unlawful for a person to operate certain commercial cars or commercial tractors without a valid fuel use permit for them; a violation of this prohibition is a fourth degree misdemeanor. The bill also makes it unlawful for a person to operate certain commercial cars or commercial tractors with a suspended or surrendered fuel use permit for the car or tractor, and provides that whoever violates this provision is guilty of a felony of the fifth degree. In addition, for a violation of continuing law or the provision enacted by the bill, the bill provides that the car or tractor involved in either violation may be "detained" until a valid fuel use permit is obtained or reinstated.

**Inspections related to motor fuel**

Continuing law authorizes the Tax Commissioner to examine records, books, and papers of motor fuel dealers, retail dealers, exporters, terminal operators, purchasers, or common carriers pertaining to motor fuel, to verify

accuracy in reports or returns. The Commissioner may hold hearings and conduct investigations, but no person is permitted to disclose the information acquired by the Commissioner, except when required to do so in court.

The bill expands the Tax Commissioner's enforcement authority for purposes of the motor fuel use and fuel tax laws. In addition to examining records and books, the Commissioner may examine invoices, storage tanks, and any other equipment related to motor fuel to determine whether motor fuel taxes have been paid. The bill eliminates the prohibition against disclosing information.

The bill also permits an employee of the Department of Taxation, who is so authorized by the Tax Commissioner, to physically inspect, examine, or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of fuel, fuel dyes, or fuel markers, and books and records, if any, that are maintained at the place of inspection and are kept to determine motor fuel tax liability. Inspections may be performed at any place at which motor fuel is or may be produced or stored, or at any "designated inspection site." The bill defines a "designated inspection site" as any state highway inspection station, weigh station, mobile station, or other similar location designated by the Commissioner to be used as a fuel inspection site.

Under the bill, an employee of the Department who is a duly authorized inspection agent may detain any motor vehicle, train, barge, ship, or vessel for the purpose of inspecting its fuel tanks and storage tanks. Detainment must be on the premises under inspection or at a designated inspection site. Detainment may continue for a reasonable period of time as is necessary to determine the amount and composition of the fuel.

The bill provides that an employee of the Department authorized by the Tax Commissioner, or an employee who is a duly authorized inspection agent, may take and remove samples of fuel in quantities as are reasonably necessary to determine the composition of the fuel, provided the employee has been properly trained.

No person may refuse to allow an inspection, and any person who does so is subject to revocation or cancellation of any license or permit issued under the motor fuel use tax or motor fuel tax laws. Refusing to allow an inspection is a first degree misdemeanor under the bill.



### **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).

### **Highway use tax clarification**

(R.C. 5728.06)

Current law levies a highway use tax on the amount of fuel consumed by commercial trucks in Ohio that was purchased outside of Ohio. The current fuel use tax is 3¢ per gallon; this is in addition to the excise tax of 22¢ per gallon. In addition to increasing the fuel excise tax by a total of 6¢ per gallon over the next three years, Am. Sub. H.B. 87 of the 125th General Assembly phased out the additional 3¢ per gallon highway use tax by reducing it to 2¢ per gallon on July 1, 2004, and eliminating the additional tax rate on July 1, 2005. The bill revises the language phasing out the highway use tax by specifying that the additional use tax "shall be reduced to" 2¢ per gallon of fuel used "from July 1, 2004 through June 30, 2005." Continuing law specifies that there be no additional use tax on and after July 1, 2005.

### **Highway use tax**

(R.C. 5735.23)

Am. Sub. H.B. 87 of the 125th General Assembly phases out the current 3¢ per gallon highway use tax by July 1, 2005 and also requires specified amounts *annually* be deducted from the local government share of the gas tax and credited to the Highway Operating Fund (these specified amounts presumably are intended as the local governments' "share" of the use tax reduction); the bill requires the specified deductions from the local government share of the gas tax be made on a

monthly basis, which multiplies the local government deductions in Am. Sub. H.B. 87 by 12.

**Reimbursement of school districts for new gas taxes**

(R.C. 5735.142)

Am. Sub. H.B. 87 of the 125th General Assembly increases one component of the motor vehicle fuel tax by 2¢ per gallon effective July 1, 2003, an additional 2¢ per gallon effective July 1, 2004, and an additional 2¢ per gallon effective July 1, 2005. Am. Sub. H.B. 87 also permits any city, local, or exempted village school district that pays the new gas tax increases to file applications with the Tax Commissioner for reimbursement of all but 2¢ of the amount of the specified taxes paid on fuel used for providing transportation for pupils in a vehicle that the district owns or leases. The bill clarifies that the entire 6¢ of the new tax is subject to reimbursement while schools remain liable for the 2¢ tax imposed by this component of the fuel taxes prior to Am. Sub. H.B. 87.

The bill modifies the requirement for the Tax Commissioner to reimburse a school district, as follows: (1) allows a joint vocational school district or educational service center to file for reimbursement of the tax, (2) allows the exemption for any motor fuel used for school district or service center operations, rather than only for fuel used for transporting pupils in a vehicle the district owns or leases, and (3) prohibits a school district or educational service center from applying for a refund on taxes paid on motor fuel that the district or center sells.

**Real estate assessment fund: permissible uses**

(R.C. 325.31 and 5713.10)

The bill adds some new uses for money in the Real Estate Assessment Fund and specifies some particular uses related to real property taxation. One additional use is to defray the county auditor's costs of collecting estate taxes (whether money in the fund is used for collecting estate taxes is "at the county auditor's discretion"). Another new use is defraying the auditor's costs of preparing the personal property tax list and collecting personal property taxes (again, at the auditor's discretion). The specific uses enumerated by the bill are to pay expenses of preparing the real property and public utility property tax list; pay administrative costs related to real property taxes and special assessments; pay costs of real property tax rollbacks and the homestead exemption; and pay expenses of defending property valuation in proceedings before the board of revision, Board of Tax Appeals, and courts. Another specific use for the money is the cost of geographic information systems, mapping programs, and technological

advances in those systems and programs. Use of the fund for any of these specific uses is at the county auditor's discretion. (R.C. 325.31(B).)

**Tax maps**

Continuing law provides for a set of tax maps, to show all parcels of land and to be used to enter property descriptions on tax duplicates. 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.)

The bill expressly acknowledges that any costs "related to" tax maps may be paid from the Real Estate Assessment Fund. The Tax Commissioner's rules already permit money in the fund to be used for this purpose, and limits use of such money to the county auditor's costs. The salaries of county engineer employees may not be paid from the fund under the bill or under the administrative rules (as was proposed in a prior version of the bill).

**Personal property tax on inventory: accelerated phase-out**

(R.C. 5711.15 (not in the bill), 5711.16 (not in the bill), 5711.22(E), and 5727.01(H) (not in the bill))

Under continuing law, personal property used in business, including the inventories of merchants and manufacturers, is subject to taxation. Inventories are currently listed and assessed at a rate of 23% of their true value in money. Current law provides that, each tax year up to and including 2006, this assessment rate will be reduced by 1% if the total statewide collection of tangible personal property taxes for the second preceding year exceeded the total statewide collection of tangible personal property taxes for the third preceding year. So, for example, the 1% reduction will not occur for 2004 unless the total statewide collection of tangible personal property taxes for 2002 exceeded the total statewide collection of tangible personal property taxes for 2001. If no reduction in the assessment rate is made for a year, the rate remains the same as in the preceding year. Under current law, the annual 1% reduction becomes automatic beginning in tax year 2007, and the assessment rate then will be reduced each year until it equals zero. During and after the tax year that the assessment rate equals zero, inventories will not be listed for taxation.

The bill accelerates the rate at which the inventory tax is phased out. The bill provides that, beginning in tax year 2005, the assessment rate will be reduced by 2% each year if the total statewide collection of tangible personal property taxes for the second preceding year exceeded the total statewide collection of tangible personal property taxes for the third preceding year. As under current

law, if there is no reduction in the assessment rate for a year, the assessment rate remains the same as it was in the preceding year.

Under both current law and the bill, taxes collected from public utilities and interexchange telecommunications companies are not included in the calculation of the total statewide collection of tangible personal property taxes. (Interexchange telecommunications companies are businesses, other than telephone companies, engaged in the transmission of telephonic messages to, from, through, or in this state.)

**Reduce state reimbursement for \$10,000 business property exemption**

(R.C. 319.311 (repeal) and 321.24(G))

Current and ongoing law exempts the first \$10,000 of a business' tangible personal property from property taxation. The state reimburses local taxing districts for the resulting revenue reductions.

The bill phases out the state's reimbursement for the exemption over ten years. In fiscal year 2004, the amount of the reimbursement will be reduced to 90% of the FY 2003 reimbursement. The reimbursement will be reduced by an additional 10% each ensuing year (measured on the basis of the FY 2003 reimbursement amount) until FY 2012 and thereafter, when no further reimbursement will be paid.

**Eliminate filing requirement for businesses with only exempt property**

(R.C. 5711.02, 5711.13, and 5711.27; Section 146.06)

Current law requires all businesses owning tangible personal property to list the property on annual returns filed with county auditors or the Tax Commissioner, even if the total value of the property is not more than \$10,000, and therefore exempted from taxation.

The bill eliminates the filing requirement for businesses owning tangible personal property valued at \$10,000 or less, beginning with tax year 2004 returns (i.e., taxes billed in 2004).

**Tax abatement for "qualified property"**

(R.C. 3313.44 (not in the bill), 5709.07 (not in the bill), 5709.08 (not in the bill), 5709.10 (not in the bill), 5709.12 (not in the bill), 5709.121 (not in the bill), and 5709.14 (not in the bill); Section 145.03I)

The bill provides a temporary procedure whereby certain "qualified property" 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. Under the bill, the "qualified property" eligible for abatement and exemption includes all of the following:

- (1) Real or personal property owned by a board of education.
- (2) Certain school, church, and university property, including schoolhouses and the books and furniture in them, property used for church retreats, and the land and buildings connected with public colleges and academies.
- (3) Real or personal property owned by the state or federal government and used exclusively for a public purpose.
- (4) Certain property owned by counties, municipalities, and townships and used for public purposes, including halls, public squares, parking facilities, and fairgrounds.
- (5) Lands, houses, and other buildings belonging to a county, township, or municipality and used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision for public purposes.
- (6) Real and tangible personal property belonging to institutions that is used exclusively for charitable purposes.
- (7) Property owned and used by a nonprofit organization exclusively as a home for the aged.
- (8) Real property held by charitable organizations for the purpose of constructing or rehabilitating residences for eventual transfer to low-income families.
- (9) Land used exclusively as a graveyard and held by the owner with no view to a profit or to speculating in the sale of the land.

To qualify for the special abatement and exemption, owners of qualified property are required to apply to the Tax Commissioner within 24 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 the 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 12 months of the immediate effective date, even if the application does not specifically request abatement of unpaid taxes.

### **Changes to the job creation and job retention tax credits**

(R.C. 122.17, 122.171, 718.15, and 718.151)

Under continuing law, Ohio's Tax Credit Authority may enter into agreements with employers whereby the employer undertakes the creation or retention of Ohio jobs in exchange for tax credits against the corporate franchise and personal income taxes. Similarly, continuing law authorizes municipal corporations to grant job retention or creation tax credits against their income taxes to taxpayers who have been granted a credit from the Tax Credit Authority. Under current law, the term of a tax credit issued by the Tax Credit Authority or a municipal corporation may not exceed ten years. The bill extends the maximum term of the credit from ten to 15 years.

The bill also alters the employment requirements that make a taxpayer eligible for the job retention tax credit. Under current law, the agreement between

the Tax Credit Authority and an employer for a job retention tax credit must include a requirement that the taxpayer retain a specified number of full-time employment positions for the term of the credit, including a requirement that the taxpayer continue to employ at least one thousand employees in full-time positions at a designated site. If a taxpayer satisfies this and other conditions in the agreement, the Director of Development issues the taxpayer a tax credit certificate demonstrating the taxpayer's eligibility for the credit and specifying the amount of the credit to which the taxpayer is entitled. (The taxpayer must submit the certificate to the Tax Commissioner when claiming the credit.) Current law prohibits the Director from issuing a certificate for any year in which the total number of full-time employment positions for each day of the calendar year divided by 365 is less than 90% of the employment positions required to be retained under the taxpayer's agreement with the Tax Credit Authority. Thus, under current law, a taxpayer is ineligible for a credit if the taxpayer retains less than 90% of the positions that the taxpayer is required to retain under the agreement with the Tax Credit Authority. The bill creates an exception to the 90% retention requirement. Under the bill, the 90% retention requirement does not apply if the Tax Credit Authority, in a resolution and in the agreement, authorizes a lower retention rate for the taxpayer.

**Deferment of income tax liability for members of the armed forces serving in Operation Iraqi Freedom**

(R.C. 5747.026)

The bill defers the income tax liabilities of service members serving in Operation Iraqi Freedom for taxable years beginning on or after January 1, 2002. Specifically, the deferment is available to any member of the National Guard or member of a reserve component of the United States armed forces called to active or other duty under Operation Iraqi Freedom.

The bill provides that eligible military personnel may apply to the Tax Commissioner for an extension for filing income tax returns and paying income taxes for the period of the applicant's duty service under Operation Iraqi Freedom and for 60 days thereafter. An application for deferment must be filed on or before the sixtieth day after the applicant's duty terminates. An applicant must provide to the Tax Commissioner any information that the Tax Commissioner believes is necessary to support the application.

If the Tax Commissioner determines that an applicant is qualified for deferment, the Tax Commissioner is permitted to enter into a contract with the applicant for the payment of taxes in installments. The installment payments begin on the sixty-first day after the applicant's duty under Operation Iraqi Freedom terminates. The applicant is not required to file any return, report, or



other tax document before the sixty-first day after the applicant's duty terminates. The bill allows the Tax Commissioner to establish appropriate contract terms; however, the Tax Commissioner may not treat deferred taxes as delinquent and may not require any payments of penalties or interest with respect to the deferred taxes.

The bill directs the Tax Commissioner to establish rules necessary to administer the deferment program created in the bill. Specifically, the Tax Commissioner is directed to establish criteria for eligibility under the program, a schedule for repayment of deferred taxes, and forms and procedures by which applicants may apply for extensions.

### **Extension of Tax Commissioner's power to disregard sham transactions**

(R.C. 5703.56, 5733.059, 5733.0611, 5733.111 (repealed), 5733.45, 5739.01, 5739.012 (repealed), 5741.01, 5741.011 (repealed), 5747.131 (repealed), and 5747.31)

The doctrines of "sham transaction," "economic reality," "step doctrine," and "substance over form" are sometimes used by the Tax Commissioner to identify a taxpayer's true tax liability. Currently, the Commissioner may apply these doctrines in making corporate franchise and income tax assessments. The Commissioner also is authorized to apply the doctrines to the up-front sales and use taxes paid on certain leases.

The bill extends the Tax Commissioner's authority to employ "sham transaction" and other similar doctrines. The bill defines a "sham transaction" as any transaction or series of transactions that have no economic substance because they lack a business purpose or expectation of profit and are designed merely to obtain tax benefits. The bill provides that the Commissioner may disregard a sham transaction in ascertaining any taxpayer's liability with respect to any tax.

The bill shifts the burden of proof in establishing the existence of a sham transaction depending upon whether the taxpayer involved in the transaction was a member of a "controlled group." The bill defines a "controlled group" as two or more persons related in such a way that one person directly or indirectly owns or controls the business operations of another member of the group. In the case of persons with stock or other equity, one person owns or controls another if the person directly or indirectly owns more than 50% of the other person's common stock with voting rights or other equity with voting rights. Under the bill, if the transaction occurred between members of a controlled group, then the taxpayer bears the burden of establishing by a preponderance of the evidence that the transaction was not a sham transaction. For taxpayers who are not members of a

controlled group, the Tax Commissioner bears the burden of establishing by a preponderance of the evidence that the transaction was a sham.

If the Tax Commissioner disregards a sham transaction, the applicable statute of limitations for assessing the tax, interest, and penalties is extended. The length of the extension is equal to the length of the applicable statute of limitations.

The bill authorizes the Tax Commissioner to adopt rules necessary to apply the doctrine of sham transaction and other similar doctrines. Among the rules the Commissioner is authorized to adopt are rules establishing criteria for identifying sham transactions.

### **Tax reduction for new manufacturing machinery and equipment**

(R.C. 5711.18)

The bill reduces the property taxes to be charged against manufacturing machinery and equipment placed in service in Ohio after 2003. The tax reduction is effected by reducing the "true value" of the property. Currently, the true value of the property is computed as a percentage of its cost. The percentage declines as the property ages, with the rate of decline depending on the estimated useful life of the property; most manufacturing machinery and equipment has an estimated useful life of 15 to 17 years. Currently, the percentage for such property is 94.3% in the first year it is taxable, gradually declining to 16.3% in the sixteenth year and remaining at that percentage for as long as the property remains in service.

Under the bill, the true value of new manufacturing machinery and equipment is computed by applying the lowest percentage immediately. Thus, the property is valued at its end-of-life percentage throughout its life. But the reduction is phased in gradually over ten years. Property placed in service earlier in the ten-year period receives less of a tax reduction than property placed in service at the end and after the initial ten-year period. For property placed in service in the latter half of 2004, the percentage reduction is only 10% of the difference between the first-year value (94.3% of cost for most affected property) and the lowest, end-of-life value (16.3% of cost). For property placed in service in 2005, the reduction is 20% of the difference between the first-year value and the end-of-life value, and so on until 2013, when property placed in service is valued at the lowest end-of-life value from its first year in service until its last year in service.

***Example.*** ABC Co. places manufacturing machinery in service in 2004, at a cost of \$10,000. The property

is classified as "Class 5," meaning it has an estimated useful life of about 15 to 17 years.

Under current law, the property would have a true value of \$9,430 in its first year ( $94.3\% \times \$10,000$ ), \$8,810 in its second year ( $88.1\% \times \$10,000$ ), and so on at gradually reduced percentages until the sixteenth year and thereafter, when it would be valued at \$1,630 ( $16.3\% \times \$10,000$ ).

Under the bill, the property's true value in the first year would be \$1,630 plus 90% of the difference between its current first year value (\$9,430) and \$1,630, which equals \$8,650. In the second year of its life, its true value would be \$1,630 plus 90% of the difference between the second year true value (\$8,810) and \$1,630, which equals \$8,092. In the sixteenth year and thereafter, its true value would be \$1,630, as under current law.

If the property were placed in service in 2008, for example, the same computation applies, except the 90% phase-in percentage would be 50%. Thus, the true value would be \$5,530 in the first year [ $\$1,630 + 50\% \times (\$9,430 - \$1,630)$ ], \$5,220 in the second year [ $\$1,630 + 50\% \times (\$8,810 - \$1,630)$ ], and \$1,630 in the sixteenth year and thereafter.

If the property were placed in service in 2013 or later, property would have a true value of \$1,630 in its first year and each year thereafter. The cumulative reduction in true value over the life of the property would be \$54,880. At the current 25% assessment rate, this represents a cumulative reduction in taxable value of \$13,720. At a constant local millage rate of 75 mills (near the current statewide average), this represents a cumulative tax savings of \$1,029.

To qualify for the bill's value reduction, manufacturing machinery and equipment must be placed in service in Ohio for the first time on or after July 1, 2004, and must not have been used in business in Ohio before that date. Also, it must satisfy the characteristics of manufacturing property exempted from the sales tax (see R.C. 5739.011).



**Tax replacement payments for taxing districts having a nuclear power plant**

(R.C. 5727.84; Section 145.03II)

Electric companies and rural electric companies pay taxes on their tangible personal property. To determine the personal property taxes an electric company or rural electric company must pay, the Tax Commissioner must first identify the taxable property and its true value. Taxable property is assessed each year by the Commissioner at a percentage of true value established by statute. Beginning in 2001, the percentages used to determine the assessed value of electric company and rural electric company property were reduced from their existing rates to 25% for most types of tangible personal property.

As a result of the reduction in assessment rates, taxing districts (i.e., municipal corporations or townships in which the aggregate rate of taxation is uniform) lost property tax revenue. Under continuing law, this lost revenue is offset through payments to taxing districts from the Local Government Property Tax Replacement Fund and the School District Property Tax Replacement Fund, which are comprised of a percentage of the revenues received from the kilowatt-hour tax. The amount of tax replacement payments to which a taxing district is entitled is calculated, in part, on the basis of that taxing district's "electric company tax value loss." Under current law, electric company tax value loss is calculated by adding the amounts described in (1) and (2) below.

(1)(a) The value of electric company and rural electric company tangible personal property as assessed by the Tax Commissioner for tax year 1998 on a preliminary assessment, or an amended preliminary assessment issued before March 1, 1999, and as apportioned to the taxing district for tax year 1998; **minus**

(b) The value of electric company and rural electric company tangible personal property as assessed by the Tax Commissioner for tax year 1998 had the property been apportioned to the taxing district for tax year 2001 and assessed at the rates in effect for tax year 2001 (the year in which the tax rates were reduced).

(2)(a) The three-year average for tax years 1996, 1997, and 1998 of the assessed value from nuclear fuel materials and assemblies assessed against a person under the general taxpayer personal property tax law from the leasing of the materials and assemblies to an electric company for those respective years, as reflected in the preliminary assessments; **minus**

(b) The three-year average assessed value of that same property for tax years 1996, 1997, and 1998, as reflected in the preliminary assessments, using an assessment rate of 25%.

Under the bill, in calculating the electric company tax value loss of a taxing district with a nuclear power plant within its territory, an additional amount may be added to the amounts described in (1) and (2) above. To calculate the additional amount, one begins by subtracting the value of electric company tangible personal property as assessed for tax year 2001 on a preliminary assessment or amended preliminary assessment issued before March 1, 2002, and as apportioned to the taxing district for tax year 2001 from the value of such property as assessed for tax year 2000 on a preliminary assessment or amended preliminary assessment issued before March 1, 2001, and as apportioned to the taxing district for tax year 2000. The excess, if any, of this amount over the amount obtained by doing the calculation described in (1) above is added in the calculation of electric company taxable value loss. Thus, under the bill, taxing districts with nuclear power plants are eligible for tax replacement payments that compensate the taxing district for losses incurred due to a reduction in the assessed value of electric company tangible personal property between tax years 2000 and 2001, which losses are not covered under existing law.

The bill provides that, as soon as is practicable after the bill's immediate effective date, the Tax Commissioner is required to redetermine electric company tax value loss and to perform other computations required to make tax replacement payments under continuing law. The computations are to be made in accordance with the bill's new provisions on electric company tax value loss described above. The Commissioner is to make these computations notwithstanding the fact that current law prescribes deadlines requiring that they have already been made. The bill further requires that other state officials responsible for administering tax replacement payments use the Commissioner's redeterminations in computing tax replacement payments to be made during state fiscal year 2004 and subsequent fiscal years.

### **Pollution control and other special-purpose tax-exempt facilities**

(R.C. 123.01, 3745.11, 5709.20 to 5709.27, 6111.06, and various repealed sections; Sections 146.06, 146.06B, and 146.13)

Under current law, property tax exemptions and other tax benefits are available for facilities used to control or reduce industrial pollutants, convert energy from one form to another, reduce industrial noise, or recover waste heat. The other tax benefits are exemptions from sales and use taxation of any property incorporated into such a facility, and exclusion of such property from the taxable Ohio franchise tax base. Eligibility for exemptions and tax benefits is evidenced by an "exemption certificate."

### **Changes in general administration**

(R.C. 5709.20, 5709.211, 5709.22, and 5709.24)

The bill consolidates the various laws governing special-purpose tax-exempt facilities into a single body of law (collectively, the facilities are to be known as "exempt facilities"). The procedures for application, approval, and appeals are made uniform for all of the various kinds of facilities. The Tax Commissioner will administer the application and approval process for all facilities, but the Tax Commissioner will provide copies of applications to the Director of Environmental Protection and the Director of Development to obtain their opinions and recommendations with respect to the kinds of facilities each director oversees under current law. Currently, the Director of Environmental Protection administers the procedures for water pollution control facilities and cooperates with the Tax Commissioner in the procedures for certain other kinds of pollution control facilities. The Director of Development currently oversees the procedures for energy conversion and thermal efficiency facilities. Either director may request additional information from an applicant and is permitted to conduct inspections. Applicants are entitled to inspect copies of the opinion issued by either director with respect to the applicant's property. But an opinion by either director does not constitute a final action that may be appealed.

### **Eliminate exclusion from franchise tax base**

(R.C. 5709.25)

Currently, real and tangible personal property comprising a pollution control facility is exempted from property taxation and is not considered an asset of a corporation for purposes of computing the corporation franchise tax.

The bill eliminates this exclusion from the Ohio corporation franchise tax base.

### **Application fee**

(R.C. 5709.212 and 5709.25(E))

The bill imposes an application fee equal to ½% of the exempt facility's cost, but not more than \$2,000. Currently, no fee is imposed, except for industrial water pollution control applications, for which a \$500 fee is imposed. The fee must be paid when the application is filed, and is nonrefundable under any circumstance. The Tax Commissioner may allow an applicant to file a single application for multiple facilities as long as all of the facilities are in the same county. If an exemption certificate has been issued for a facility, a new application must be filed for additional property added to the facility if the cost of

the additional property added in any calendar year (minus the cost of any retired property) is more than \$500,000, but the application fee is only \$500. If the cost is below that threshold, a new application need not be filed.

One-half of the fee is to be credited to the Exempt Facility Administrative Fund for use by the Department of Taxation to defray the costs of administering the exempt facility law. The fund to which the other one-half is credited depends on the kind of facility that is the subject of the application. If it is the kind that requires the opinion and recommendation of the Director of Environmental Protection (other than an industrial water pollution control facility), the other half is credited to the Clean Air Fund for use by the Director in carrying out the Director's responsibilities with respect to issuing opinions and recommendations to the Tax Commissioner and inspecting facilities. If the fee is paid in connection with an application for an industrial water control pollution facility, the other half of the fee is credited to the Surface Water Protection Fund for use by the Director in carrying out the Director's responsibilities with respect to industrial water pollution control facilities. If the fee is paid in connection with an energy conversion or thermal efficiency facility, the other half of the fee is credited to the Exempt Facility Inspection Fund for use by the Director of Development in performing the Director's duties with respect to energy conversion and thermal efficiency facilities.

**Partial exemption**

(R.C. 5709.21)

To be exempted under current law, property must not be used solely for the benefit of the business or solely for the benefit or protection of employees. Under the bill, property may not be exempted in whole, as an "exempt facility," if it is used primarily for one or both of those purposes. If property does not qualify as an exempt facility, but is necessary for the operation of exempt property, part of the property's cost may be eligible for exemption. If the property is used in support of the exempt facility for discrete periods of time, the exempt cost is proportional to the time it is so used. Otherwise, the applicant must prove the part of the facility's cost that is exempt. Regardless of how the exempt portion is determined, the bill appears to exempt any property necessary for the operation of the exempt facility, but also used for other business operations, if the portion of the property's cost used for exempt purposes is at least 85% of the total cost. In no case is any cost exempted if the cost is related to an expansion of a site that is not related to operating the exempt facility.



### **Revaluation**

(R.C. 5709.25)

The bill prescribes a reduction in the exempt value of property if its book value is reduced for any reason, including its sale or its being affected by bankruptcy proceedings, as compared to the book value when the exemption certificate was issued. The percentage of the facility's cost that is exempted is reduced to the percentage that the exempt facility's "historical" cost is of the historical cost of all real and tangible personal property at the site of the exempt facility (as long as that percentage does not result in an exempt cost greater than the original exempt cost).

### **Effective date of exemption**

(R.C. 5709.25)

Under current law, property comprising an exempt facility is taxable until an exemption certificate is issued, but the exemption, if ultimately granted, relates back to when the application was filed. (This can cause local taxing authorities to have to issue refunds from their treasuries, sometimes for several years' worth of taxes.)

The bill authorizes the Tax Commissioner to permit exemptions to take effect when an application is filed, and also provides procedures for collecting the taxes due by assessment if the application eventually is denied in whole or in part. The assessment must be made within 180 days after the Commissioner issues the notice of denial unless a longer statute of limitations applies under another applicable law. Assessments must be issued in accordance with the law governing the applicable tax. If an assessment is issued in connection with an application that was denied in part only, then the only appealable matter is the denied part of the application. If a decision has not been rendered within two years, an applicant has the right to request a decision from the Tax Commissioner.

### **Appeals**

(R.C. 5709.22 and 5709.25)

An applicant or a county auditor may appeal an exemption application decision to the Tax Commissioner within 60 days after the Tax Commissioner issues written notice of the decision to them. The Commissioner must hold a hearing on the appeal, and the Director of Environmental Protection or Director of Development must participate if either the Tax Commissioner, the applicant, or the county auditor requests their participation. A decision on an application is a final determination that is appealable to the Board of Tax Appeals as are other

final determinations of the Tax Commissioner, but an appeal to the BTA is not available unless an administrative appeal is made first through the Tax Commissioner.

### **Revocation**

(R.C. 5709.22)

The Tax Commissioner may revoke or modify an exempt facility certificate for one of four causes, one of which is added by the bill. Currently, an exemption certificate may be revoked or modified if it was obtained by fraud or misrepresentation, if the applicant did not follow through with the facility, or the facility is no longer used for an exempt purpose. A fourth cause is added: that the exemption was made erroneously. This fourth cause encompasses not only clerical mistakes, but also if the Tax Commissioner agrees with the Director of Environmental Protection or Director of Development that an exemption certificate should not have been issued, or if the Tax Commissioner determines that an exemption certificate was issued improperly as a result of a final decision of the BTA (or a higher judicial authority) "that is adverse to the original exempt status of the facility." Revocation and modification decisions may be appealed to the BTA, and if the decision ultimately is overturned, a refund of any tax paid must be issued within 180 days.

### **Transitional provisions**

(R.C. 5709.201)

Exemption certificates that are valid on the bill's effective date continue in effect after that date according to the terms of current law. Also, if a certificate was issued before July 1, 2003, the Tax Commissioner cannot revoke it after the bill's effective date on the grounds that the Tax Commissioner agrees with the Director of Environmental Protection or Director of Development that the certificate was issued in error. Any pending applications must be transferred to the Tax Commissioner, and they will be governed by the new law, except the new application fee does not apply.

### **Notice to local taxing authorities**

(R.C. 5709.23)

The bill retains provisions enacted in late 2002 providing for notification to local taxing authorities of pollution control facility exemption applications, which, when approved, often result in these authorities having to refund taxes collected from the facility while the application was pending, because the tax exemption relates back to when the exemption certificate was filed (Am. Sub. S.B. 180 of the

124th General Assembly). However, since the bill authorizes the Tax Commissioner to allow the tax exemption to take effect before a certificate is issued, the frequency and amounts of refunds may be diminished to the extent the Tax Commissioner uses that authority.

**Abating late penalties**

(R.C. 323.13, 4503.06, 5711.33, and 5715.39; Section 146.07)

Under ongoing law, penalties and interest are charged for late property tax payments. Property owners may seek to have penalties remitted (i.e., forgiven or abated) if they can show that one of four conditions caused or contributed to the late payment:

- (1) An error or omission on the part of the county auditor or county treasurer.
- (2) Failure to receive a tax bill on time (as long as the property owner attempted to obtain the bill with 30 days of the payment due date).
- (3) Death, disability, or illness of the property owner (as long as the tax was paid within 60 days after the due date).
- (4) The tax payment was mailed before the due date.

The bill adds a fifth, general condition: That there was good cause for the late payment, and it was not because of willful neglect.

Currently, the Tax Commissioner makes the initial decision on remission of penalties with respect to real property taxes and manufactured or mobile home taxes; the Commissioner's decision is appealable to the Board of Tax Appeals (BTA). County auditors and county treasurers make the initial decision with respect to tangible personal property tax penalties, with the decision appealable to the Tax Commissioner, and then to the BTA.

The bill makes real property and manufactured or mobile home tax penalty remission procedures similar to those for remission of tangible personal property tax penalties: county auditors and county treasurers will make the initial remission decisions, which will be appealable to the Tax Commissioner, and then to the BTA.

The bill also specifies a 60-day deadline for filing appeals with the Tax Commissioner, for both tangible personal property tax penalties and real property and manufactured or mobile home tax penalties. The deadline is measured from

the day the county auditor mails notice of the initial decision to the property owner.

### **Preneed funeral trusts**

(R.C. 5747.02(E))

Currently, many trusts that are considered to "reside" in Ohio are subject to a temporary tax on all or part of their income. The tax is scheduled to expire after 2004. Some trusts are exempted from the tax, such as charitable remainder trusts, qualified settlement trusts, federally tax-exempt trusts, and qualified funeral trusts.

The bill exempts "preneed funeral trusts" from the income tax. Preneed funeral trusts are used to prearrange payment for funeral-related goods and services. They are governed by Ohio law, generally to guard against fraud and to ensure that the trust funds are available when needed. (See R.C. 1111.19.)

Some preneed funeral trusts are already exempted from the trust income tax. So-called "qualified funeral trusts" are preneed funeral trusts satisfying certain criteria in federal income tax law, including that the trust must be used only to pay for funeral services and related property, that it must arise from a preneed funeral contract with a provider of funeral services and property, and that the only beneficiaries of the trust are those for whom the funeral services are to be provided (i.e., the decedent). Qualified funeral trusts are not treated as grantor trusts, meaning that the trust's income is not treated as the trust owner's personal income; instead, the trust is liable for the tax. 26 U.S.C. 685. In order to be considered a qualified funeral trust under federal law, the owner of the trust must elect that status. Thus, the bill exempts preneed funeral trusts that are not already exempted as qualified funeral trusts.

### **Allocation of lottery proceeds under the corporate franchise tax**

(R.C. 5733.051 and 5747.20 (not in the bill))

Current law specifies how income associated with lotteries is to be allocated to Ohio for purposes of the corporate franchise tax by simply referring to a provision in the personal income tax law. The bill eliminates the incorporation-by-reference and instead spells it out expressly in the corporate franchise tax law. In addition, the bill clarifies, by expressing a negative implication of the spelled-out allocation rules, that lottery prize awards and related gain with respect to lotteries sponsored outside Ohio are allocable outside Ohio.

**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.

**Forfeiture fund for Department of Taxation enforcement actions**

(R.C. 2925.44 and 2933.43; Section 146.06)

The bill establishes a fund to receive the proceeds from property or money seized in the course of enforcement actions by the Department of Taxation's enforcement division. Credited to the fund would be interest or other earnings arising from the investment of money or of proceeds from selling property seized by the Department and forfeited under federal law allowing state and local law enforcement agencies to retain some of the proceeds of such forfeitures. The fund generally would be subject to the same laws governing seizures made by the Department of Public Safety, the Highway Patrol, and local law enforcement agencies, among others. The Department must adopt an internal control policy for use of money in the fund, and it may use money in the fund only to pay for the costs of the enforcement division's tax law enforcement activities. The Tax Commissioner must report each year to the Attorney General on the use of money in the fund.

**Delegation of the Tax Commissioner's investigation powers**

(R.C. 109.71, 2935.01, and 5703.58; Section 146.06)

Under current law, the Tax Commissioner, by journal entry, may delegate the Commissioner's investigation powers to employees of the Department of Taxation who have been certified by the Ohio Peace Officer Training Commission and are engaged in the enforcement of the motor fuel, sales and use, cigarette, or

income tax laws. When that journal entry is completed, the employee to whom it pertains, while engaged within the scope of the employee's duties in enforcing the laws that the Commissioner is responsible for administering, has the power of a police officer to carry concealed weapons, make arrests, and obtain warrants for violations of those laws. No employee of the Department is permitted to divulge any information required as a result of an investigation, except as may be required by the Commissioner or a court.

The Commissioner cannot delegate any investigation powers to an employee who has been convicted of or has pleaded guilty to a felony. The Commissioner, at any time, may suspend or revoke the delegation of investigation powers by journal entry, and, by following specific procedures, must suspend or revoke the delegation under certain circumstances, such as if an employee pleads guilty to a felony. The prohibition against delegating powers if the employee has been convicted of a felony, and the revocation or suspension of a delegation, does not apply to an offense that was committed prior to January 1, 1997.

Current law requires that the Department cooperate with the Attorney General, local law enforcement officials, and appropriate agencies of the federal government and other states in the investigation and prosecution of violations of all laws relating to taxes and fees administered by the Commissioner.

The bill repeals the existing provisions in the motor fuel, sales and use, cigarette, and income tax laws, and enacts a general delegation of investigation powers provision. The bill provides that for the purposes of enforcing **all** laws relating to taxes and fees that the Tax Commissioner is responsible for administering, the Commissioner, by journal entry, may delegate investigation powers to an employee of the Department who has been certified by the Executive Director of the Ohio Peace Officer Training Commission. The bill retains in the general provision all of the current procedures and requirements for delegating investigation powers and suspending or revoking the delegation, but does not keep the prohibition against divulging information that was part of the provisions repealed by the bill. The general delegation provision also retains the cooperation with law enforcement requirement.

The bill provides that the general delegation provision does not limit the Tax Commissioner's ability to have other employees of the Department of Taxation conduct investigations as authorized by continuing laws regarding agents, tax auditor agents, and tax auditor agent managers, and the inspection of books by the Commissioner's employees.

**Department of Taxation Enforcement Fund--for property or cash forfeited under the Corrupt Activity Forfeiture Law, Felony Drug Abuse Offense Forfeiture Law, or Contraband Forfeiture Law or under federal law**

Existing law provides a series of mechanisms pursuant to which certain types of property or money that is derived from, used in, or related to the commission of a specified type of criminal offense (e.g., engaging in a pattern of corrupt activity, a felony drug abuse offense, etc.), or a criminal offense in general, is forfeited to the state. Among the forfeiture mechanisms are the Corrupt Activity Forfeiture Law (R.C. 2923.31 to 2923.36), the Felony Drug Abuse Offense Forfeiture Law (R.C. 2925.41 to 2925.45), the Contraband Forfeiture Law (R.C. 2902.01(A)(13), 2933.42, and 2933.43), the Medicaid Offense Forfeiture Law (R.C. 2933.71 to 2933.77--not in the bill), and the Criminal Gang Activity Forfeiture Law (R.C. 2923.41 to 2923.47--not in the bill). Each of the mechanisms sets forth procedures that govern the actual forfeiture of property or cash under the mechanism, and each also specifies what is to be done with property or cash that is forfeited under it. The bill modifies the forfeited property and money disposition mechanism under the Corrupt Activity Forfeiture Law, Felony Drug Abuse Offense Forfeiture Law, and Contraband Forfeiture Law.

**Corrupt Activity Forfeiture Law**

**Existing law.** Existing law provides that 10% of the proceeds of all property ordered forfeited by a juvenile court pursuant to the Corrupt Activity Forfeiture Law must be applied to one or more certified alcohol and drug addiction treatment programs specified by the court and that the remaining 90% of those proceeds, all proceeds of property ordered forfeited by a court other than a juvenile court pursuant to that Law, and fines and civil penalties imposed pursuant to that Law must be deposited into the state treasury to the credit of the Corrupt Activity Investigation and Prosecution Fund (R.C. 2923.35(D)(1)). The moneys credited to the Fund must be disposed of in the following order (R.C. 2923.35(D)(2) and (3)):

- (1) First, to a civil plaintiff in an action brought under the Corrupt Activity Law;
- (2) Second, to the payment of the fees and costs of the forfeiture and sale;
- (3) Except as otherwise provided in this paragraph, the remainder is paid to the law enforcement trust fund of the prosecuting attorney (unless he or she declines) and the law enforcement trust fund of the county sheriff of a municipal corporation of a township, or of a park district if the investigation was substantially conducted by the sheriff, the municipal police department, township police department or constable, or the park district police force or law enforcement



department. The Law provides for the establishment of the law enforcement trust funds. If the State Highway Patrol, the State Board of Pharmacy, or a state law enforcement agency, other than the Patrol or the Board, substantially conducted the investigation, the remainder must be transferred for deposit into the State Highway Patrol Contraband, Forfeiture, and Other Fund, the Board of Pharmacy Drug Law Enforcement Fund, or the Peace Officer Training Commission Fund, respectively. The moneys paid to or deposited into any of the funds must be allocated, used, and expended only in accordance with the Contraband Forfeiture Law described below, a written internal control policy adopted under provisions of that Law, and, if applicable, specified provisions under the State Board of Pharmacy Law.

(4) If more than one law enforcement agency substantially conducted the investigation, the court ordering the forfeiture must equitably divide the remaining proceeds, fines, and penalties among the law enforcement agencies that substantially conducted the investigation.

**Operation of the bill.** The bill expands the provisions of the Corrupt Activity Law that govern the distribution of proceeds, fines, and penalties credited to the Corrupt Activity Investigation and Prosecution Fund relative to a forfeiture under that Law, for cases in which the Department of Taxation substantially conducted the investigation. It expands the existing provisions that provide for the distribution of "the remainder" of the proceeds, fines, and penalties to the prosecuting attorney and the specified local and state law enforcement agencies that "substantially conducted the investigation" to also provide for distribution in cases in which the Department of Taxation substantially conducted the investigation. Under the bill, if the Department of Taxation substantially conducted the investigation, the remaining proceeds, fines, and penalties must be transferred to the Department for deposit into the Department of Taxation Enforcement Fund created by the bill in the Contraband Forfeiture Law, as described below. The moneys deposited into the Fund must be allocated, used, and expended only in accordance with provisions of the Contraband Forfeiture Law described below, and only in accordance with the Department's written internal control policy adopted under provisions of that Law. The existing provisions regarding equitable division of the remaining proceeds, fines, and penalties when more than one law enforcement agency substantially conducted the investigation apply regarding the bill's expansion. (R.C. 2923.35(D)(2) and (3).)

### **Felony Drug Abuse Offense Forfeiture Law**

**Existing law--forfeiture under federal law.** Existing law provides several options to law enforcement agencies that seize property under the Felony Drug Abuse Offense Forfeiture Law, prior to its disposition under that Law. Among the options is to seek forfeiture of the property under federal law. If the agency seeks

forfeiture pursuant to federal law, the agency must deposit, use, and account for proceeds from a sale of the property upon its forfeiture, proceeds from another disposition of the property upon its forfeiture, or forfeited moneys it receives, in accordance with the applicable federal law and otherwise must comply with that law. If the State Highway Patrol or the investigative unit of the Department of Public Safety seized the property and seeks its forfeiture pursuant to federal law, the appropriate governmental officials must deposit into the State Highway Patrol Contraband, Forfeiture, and Other Fund or the Department of Public Safety Investigative Unit Contraband, Forfeiture, and Other Fund, as appropriate, all interest or other earnings derived from the investment of such proceeds or the forfeited moneys, to be used and accounted for in accordance with the applicable federal law. The provisions of the Felony Drug Abuse Offense Forfeiture Law described below in "*Existing law--disposition of property forfeited under state law*" do not apply to proceeds, moneys, interest, and earnings described in this paragraph relative to federal forfeitures involving the State Highway Patrol. (R.C. 2925.44(A).)

*Operation of the bill--forfeiture under federal law.* The bill expands the provisions of the Felony Drug Abuse Offense Forfeiture Law that pertain to forfeitures under federal law, for cases in which the Department of Taxation's Enforcement Division seized the property in question. The bill enacts a separate provision to provide for distribution of proceeds from forfeitures under federal law in cases in which the Department of Taxation seized the property and obtained the forfeiture. Under the bill, if the Department of Taxation's Enforcement Division seized the property and if the Tax Commissioner seeks its forfeiture pursuant to federal law, the appropriate governmental officials must deposit into the Department of Taxation Enforcement Fund, created by the bill in the Contraband Forfeiture Law, as described below, all interest or other earnings derived from the investment of the proceeds from a sale of the property upon its forfeiture, the proceeds from another disposition of the property upon its forfeiture, or the forfeited moneys, and the Department must use and account for that interest or other earnings in accordance with the applicable federal law. The provisions of the Felony Drug Abuse Offense Forfeiture Law described below in "*Existing law--disposition of property forfeited under state law*" do not apply to proceeds, moneys, interest, and earnings described in this paragraph. (R.C. 2925.44(A)(4).)

*Existing law--disposition of property forfeited under state law.* Existing law specifies the manner of disposition of property forfeited under the Felony Drug Abuse Offense Forfeiture Law. It prescribes distinct manners of disposition of certain types of property (e.g., vehicles, drug paraphernalia, firearms, computers, obscene materials, alcohol, etc.) and specifies that all other types of property must be sold in a specified manner (R.C. 2925.44(B)). The proceeds of

the sale, and forfeited moneys, must be applied in the following order (R.C. 2925.44(B)(8)):

(1) First, to the payment of the costs incurred in connection with the seizure, storage, and maintenance of, and provision of security for, the property, the forfeiture proceeding or civil action, and the sale;

(2) Second, to the payment of the value of any legal right, title, or interest in the property possessed by a person who established the validity of and preserved that legal right, title, or interest.

(3) Third, the remaining proceeds or moneys, as follows: (a) if the forfeiture was ordered in a juvenile court, 10% to one or more certified alcohol and drug addiction treatment programs the court specifies in the forfeiture order, and (b) if the forfeiture was ordered in a juvenile court, 90%, and if the forfeiture was ordered in a court other than a juvenile court, 100% to appropriate funds in accordance with the proceeds disposition mechanism of the Contraband Forfeiture Law, as described below, to be used only for the purposes authorized by that Law.

**Operation of the bill--disposition of property forfeited under state law.**

The bill does not change the existing provisions of the Felony Drug Abuse Offense Forfeiture Law that govern the manner of disposition of property forfeited under that Law (R.C. 2925.44(B)(8)). However, because those provisions specify that certain proceeds of a sale of the forfeited property are to be applied to appropriate funds *in accordance with proceeds disposition mechanism of the Contraband Forfeiture Law*, as described below, and because the proceeds disposition mechanism of that Law is changed by the bill as described below, the bill's changes to that mechanism affect the disposition of property forfeited under the Felony Drug Abuse Offense Forfeiture Law.

**Contraband Forfeiture Law**

**Existing law--forfeiture under federal law.** The existing Contraband Forfeiture Law addresses the disposition by a law enforcement agency of the proceeds of forfeited contraband it receives under federal law. It specifies that a law enforcement agency that receives pursuant to federal law proceeds from a sale of forfeited contraband, proceeds from another disposition of forfeited contraband, or forfeited contraband moneys, must deposit, use, and account for the proceeds or moneys in accordance with, and otherwise comply with, the applicable federal law. If the State Highway Patrol or the investigative unit of the Department of Public Safety receives pursuant to federal law any such proceeds or forfeited contraband moneys, the appropriate governmental officials must deposit into the State Highway Patrol Contraband, Forfeiture, and Other Fund or the Department of Public Safety Investigative Unit Contraband, Forfeiture, and Other Fund, as

appropriate, all interest or other earnings derived from the investment of the proceeds or the forfeited moneys, to be used and accounted for in accordance with the applicable federal law. The provisions of the Contraband Forfeiture Law described below in "Existing law--disposition of property forfeited under state law" do not apply to proceeds, moneys, interest, and earnings described in this paragraph relative to federal forfeitures involving the State Highway Patrol. (R.C. 2933.43(D)(4).)

Operation of the bill--forfeiture under federal law. The bill expands the provisions of the Contraband Forfeiture Law that address forfeitures under federal law, for cases in which the Department of Taxation's Enforcement Division seized the property in question. The bill enacts a separate provision to provide for distribution of proceeds from forfeitures under federal law in cases in which the Department of Taxation is involved. Under the bill, if the Department of Taxation's Enforcement Division receives pursuant to federal law any such proceeds or forfeited contraband moneys, the appropriate governmental officials must deposit into the Department of Taxation Enforcement Fund, created by the bill as described below, all interest or other earnings derived from the investment of the proceeds or the forfeited moneys. The Department must use and account for that interest or other earnings in accordance with the applicable federal law. The provisions of the Contraband Forfeiture Law described below in "Existing law--disposition of property forfeited under state law" do not apply to proceeds, moneys, interest, and earnings described in this paragraph. (R.C. 2933.43(D)(4)).

Existing law--disposition of property forfeited under state law. Existing law specifies the manner of disposition of property forfeited under the Contraband Forfeiture Law. Generally, forfeited contraband must be disposed of in accordance with provisions of the existing Abandoned and Unclaimed Property Law, contained in R.C. 2933.41 (not in the bill), that identify distinct manners of disposition for specified types of property, or may be used in accordance with that Law. In the case of contraband not described in, and not disposed of pursuant to, those provisions, the contraband must be sold as described below or, in the case of forfeited moneys, disposed of as described below. The proceeds of a sale and forfeited moneys must be applied in the following order:

(1) First, to the payment of the costs incurred in connection with the seizure, storage, and maintenance of, and provision of security for, the contraband, forfeiture proceeding, and sale;

(2) Second, to the payment of the balance due on any preserved security interest;

(3) Third, the remaining proceeds or forfeited moneys, as follows: (a) if the forfeiture was ordered in a juvenile court, 10 % to one or more certified



alcohol and drug addiction treatment programs, (b) if the forfeiture was ordered in a juvenile court, 90%, and if the forfeiture was ordered in a court other than a juvenile court, 100% to the appropriate law enforcement trust fund of the prosecuting attorney, the county sheriff, a municipal police department, a township police department or constable, a park district police force or law enforcement department, the State Highway Patrol, the Department of Public Safety Investigative Unit, the Board of Pharmacy, or the State Treasurer based upon which entity made the seizure.

The proceeds or forfeited moneys distributed to any local government's law enforcement trust fund may be allocated from the fund by the appropriate legislative authority only to the municipal police department, the township police or constable, or park district police force or law enforcement department. Additionally, no proceeds or forfeited moneys may be allocated to or used by any of the authorized local or state agencies or officials unless the agency or official has adopted a written internal control policy that complies with criteria contained in the Law and that addresses the use of moneys received from the particular fund.

Regarding the use of the funds, the Board of Pharmacy Drug Law Enforcement Fund may be expended only in accordance with the Board's written internal control policy and only in accordance with a specified provision of the Pharmacy Law, except that it also may be expended to pay the costs of emergency action taken relative to the operation of an illegal methamphetamine laboratory if the property or money involved was that of a person responsible for operating the laboratory. Proceeds and forfeited moneys deposited into the Peace Officer Training Commission Fund may be used by the commission only to pay the costs of peace officer training. The other funds may be expended only in accordance with the recipient's written internal control policy, and, generally, only to pay the costs of protracted or complex investigations or prosecutions, to provide reasonable technical training or expertise, to provide matching funds to obtain federal grants to aid law enforcement, in the support of DARE programs or other programs designed to educate adults or children with respect to the dangers associated with the use of drugs of abuse, to pay the costs of emergency action taken relative to the operation of an illegal methamphetamine laboratory if the property or money involved was that of a person responsible for operating the laboratory, or for other law enforcement purposes that the Superintendent of the State Highway Patrol, Department of Public Safety, prosecuting attorney, county sheriff, legislative authority, board of township trustees, or board of park commissioners determines to be appropriate. The funds may not be used to meet the operating costs of the State Highway Patrol, the investigative unit of the Department of Public Safety, of the State Board of Pharmacy, any political subdivision, or any office of a prosecuting attorney or county sheriff that are unrelated to law enforcement.



Any official or agency that receives proceeds or forfeited moneys must file an annual report, verifying that the proceeds and moneys were expended only for authorized purposes, with a specified official. For local officials and agencies, the report must be filed with a specified official of their governing subdivision, and for state officials and agencies, with the Attorney General (the AG).

If the court determines that more than one law enforcement agency was substantially involved in the seizure of contraband forfeited under the Contraband Forfeiture Law, the court ordering the forfeiture must equitably divide the proceeds or forfeited moneys, after calculating any distribution to the law enforcement trust fund of the prosecuting attorney, among any county sheriff whose office was substantially involved, any legislative authority of a municipal corporation whose police department was substantially involved, any board of township trustees whose law enforcement agency was substantially involved, any board of park commissioners of a park district whose police force or law enforcement department was substantially involved, the State Board of Pharmacy if it was substantially involved, the investigative unit of the Department of Public Safety if it was substantially involved, and the State Highway Patrol if it was substantially involved. The proceeds or forfeited moneys must be deposited in the respective appropriate funds. If a state law enforcement agency, other than the State Highway Patrol, the investigative unit of the Department of Public Safety, or the State Board of Pharmacy, was substantially involved in the seizure, the agency's equitable share of the proceeds and moneys must be paid to the State Treasurer for deposit into the Peace Officer Training Commission Fund.

All written internal control policies adopted under the Law, and all financial records of the receipts of the proceeds and forfeited moneys, the general types of expenditures made out of the proceeds and moneys, the specific amount of each general type of expenditure by an agency or official, and the amounts, portions, and programs for which they are used are public records under the existing Public Records Law. Each agency or official that uses proceeds or forfeited moneys in any calendar year must prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency or official and must send a copy of the report, by a specified date, to the AG. Not later than April 15 in the calendar year in which the reports are received, the AG must send to the President of the Senate and the Speaker of the House of Representatives a written notification regarding the cumulative reports so received. (R.C. 2933.43(D).)

**Operation of the bill--disposition of property forfeited under state law.**

The bill expands the provisions of the Contraband Forfeiture Law that govern the distribution of proceeds of the sale of forfeited contraband and of forfeited contraband moneys under that Law for cases in which the Department of Taxation

substantially conducted the investigation. The bill provides for distribution of proceeds of contraband sales and for forfeited contraband moneys when the Department of Taxation is involved. Under the bill, if the Department of Taxation made the seizure, the "remaining proceeds or forfeited moneys" are to be applied to the Department of Taxation Enforcement Fund that it creates.

No proceeds or forfeited moneys may be allocated to or used by the Department of Taxation unless it has adopted a written internal control policy that complies with criteria contained in the Law and that addresses the use of moneys received from the Department of Taxation Enforcement Fund. The Fund may be expended only in accordance with the Department's written internal control policy and, generally, only to pay the costs of protracted or complex investigations or prosecutions, to provide reasonable technical training or expertise, to provide matching funds to obtain federal grants to aid law enforcement, in the support of DARE programs or other programs designed to educate adults or children with respect to the dangers associated with the use of drugs of abuse, to pay the costs of emergency action taken relative to the operation of an illegal methamphetamine laboratory if the property or money involved was that of a person responsible for the operation of the laboratory, or for other law enforcement purposes that the Department determines to be appropriate. The Fund may not be used to meet the operating costs of the Department that are unrelated to law enforcement. The existing provisions regarding equitable division of the proceeds or forfeited moneys when more than one law enforcement agency was substantially involved in the seizure of contraband that is forfeited apply regarding the bill's expansion, and specifically include a reference to distribution to the Enforcement Unit of the Department of Taxation in circumstances in which the Unit was substantially involved in the seizure.

The Administrator of the Enforcement Division of the Department of Taxation must file a report with the AG, no later than January 31 of each calendar year, verifying that proceeds and forfeited moneys paid into the Department of Taxation Enforcement Fund as described in the preceding paragraph during the prior calendar year were used by the Department during the prior calendar year only for the purposes authorized as described in the preceding paragraph and specifying the amounts expended for each authorized purpose.

The Department of Taxation's written internal control policy adopted under the bill, and all financial records of the receipts of the proceeds and forfeited moneys, the general types of expenditures made out of the proceeds and moneys, the specific amount of each general type of expenditure by the Department, and the amounts, portions, and programs for which they are used, are public records under the existing Public Records Law. The Department must prepare a report covering each fiscal year in which it uses any proceeds or forfeited moneys in the



Department of Taxation Enforcement Fund that cumulates all of the information contained in all of the public financial records kept by the Department and must send a copy of the report, no later than August 1 of the fiscal year following the fiscal year covered by the report, to the AG. These reports are within the scope of the existing provision, unchanged by the bill, that requires the AG to send the President of the Senate and the Speaker of the House of Representatives written notification regarding the cumulative reports received. (R.C. 2933.43(D).)

As noted above in "*Felony Drug Abuse Offense Forfeiture Law*," the portion of the Contraband Forfeiture Law proceeds distribution mechanism that is discussed in this part of the analysis is incorporated by reference in the Felony Drug Abuse Offense Forfeiture Law, so the changes described in this part of the analysis also affect the Felony Drug Abuse Offense Forfeiture Law. Similarly, the Criminal Gang Activity Forfeiture Law also incorporates by reference the portion of the Contraband Forfeiture Law proceeds distribution mechanism that is discussed in this part of the analysis, so the changes described in this part of the analysis also affect the Criminal Gang Activity Forfeiture Law (R.C. 2923.46(B)(7)(c)--not in the bill).

---

## DEPARTMENT OF TRANSPORTATION

- Changes the Auditor of State's procedure for auditing force account projects.
- Changes the penalty for counties, townships, and municipal corporations that violate their force account limits a third or subsequent time.

### *Audits of force accounts and penalties for violations*

(R.C. 117.16)

#### *Existing law*

In Am. Sub. H.B. 87 of the 125th General Assembly (the "Transportation Budget Bill"), the Auditor of State was required to audit force account costs of counties, townships, municipal corporations, and the Ohio Department of Transportation. To accomplish this, the Auditor of State must create a Force Account Project Assessment Form that public offices must use to estimate or report the cost of force account projects they undertake. When an audit of any of those public offices is conducted, the Auditor of State must examine a sampling of

the forms and related records of any force account project undertaken by that office since an audit was last conducted--the examination being to determine if the office has violated the force account cost limits established for it in the Transportation Budget Bill. If the Auditor of State finds a violation, the Auditor of State must conduct a full audit of each of those force account projects. (R.C. 117.16(A).)

In the case of counties, townships, and municipal corporations, if the Auditor of State determines force account costs were greater than the statutorily prescribed limits for the political subdivision, the limits generally must be lowered for the political subdivision to a specified amount for a period of one year. However, if the Auditor of State finds a second or subsequent violation in an audit, the force account limits for the political subdivision must be lowered to the specified amount for a two-year period. And, if a third or subsequent violation is found in an audit, the political subdivision also must make penalty payments to the Auditor of State in the amount of 20% of the total cost of the force account project in which the violation occurred. (R.C. 117.16(C).)

#### **Changes made by the bill**

The bill changes this procedure by requiring the Auditor of State to instead examine *all* the forms and records of a *sampling* of force account projects conducted since the last audit of the public office involved, to determine compliance with applicable force account limits. The requirement that the Auditor of State conduct an audit of *each* force account project so conducted, if a violation is found upon that examination, is eliminated by the bill. (R.C. 117.16(A)(3).) It also changes the penalty for counties, townships, and municipal corporations that are found in an audit to have violated their force account limits a third or subsequent time, as follows (R.C. 117.16(C)(3)):

(1) If the Auditor of State finds such a violation, the Auditor of State must calculate the penalty (the same amount as under current law) and certify it to the Tax Commissioner.

(2) Upon receiving this certification, the Tax Commissioner must withhold the penalty from any funds under his or her control that are due or payable to the violating political subdivision.

(3) If the Tax Commissioner cannot withhold any or enough funds to cover the penalty, the Tax Commissioner must certify the amount remaining unpaid to the appropriate county auditor to be withheld from any amounts he or she may control that are due or payable to the violating political subdivision and that can be lawfully withheld, and to pay the withheld amount to the Tax Commissioner.

(4) The Tax Commissioner must deposit all penalty moneys withheld as described in (2) and (3) above into the Highway Operating Fund, and redistribute those moneys to local governments that have not violated their force account limits. These redistributions must occur at least once every six months.

---

### **OHIO VETERANS HOME AGENCY**

- Exempts reimbursements paid to the U.S. Department of Veterans Affairs for pharmaceutical and patient supply purchases made on behalf of the Ohio Veterans' Home Agency from the requirement that state agency purchases be made through competitive selection or with Controlling Board approval.

#### ***Ohio Veterans' Home Agency pharmaceutical and supply purchases***

(R.C. 127.16)

Current law generally prohibits a state agency from making purchases from a particular supplier of \$50,000 or more unless the purchase is made by competitive selection or with Controlling Board approval. The bill exempts reimbursements paid to the U.S. Department of Veterans Affairs for pharmaceutical and patient supply purchases made on behalf of the Ohio Veterans' Home Agency from this requirement.

---

### **BUREAU OF WORKERS' COMPENSATION**

- Permits the legislative body of a county, taxing district, district activity, or specified public institutions 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; requires a legislative body to give 60 days advance notice of a change in calculation method to affected local official; 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 payments**

(R.C. 4123.41)

For purposes of making workers' compensation payments, the bill permits the legislative body of a county, taxing district, district activity, or specified public 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. Before it may do so, however, the bill requires the legislative body, within 60 days before changing the method used for calculating its proportionate share of payment, to notify, consult with, and give information supporting the change to any elected official affected by the change.

Additionally, the bill specifies that a transfer from any fund of a county, taxing district, district activity, or specified public 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 DHS to place any child committed to DHS 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 DHS 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 DHS.

- 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.
- Revises the formula by which the appropriation made to DYS for the care and custody of felony delinquents (the RECLAIM formula) must be expended.
- Eliminates DYS's duty to prepare a specified annual statistical report and the duty to submit a specified report to the Joint Legislative Committee on Juvenile Corrections Overcrowding.
- Revises the definition of "public safety beds."
- Repeals DYS's duty to train or provide for training of probation and youth correction workers.
- Renames DYS's "foster care facilities" to be "placement facilities."
- Permits DYS to grant financial assistance for the provision of care and services for children in a placement facility if the facility has been certified, licensed, or approved by a national agency with certification, licensure, or approval authority, including, but not limited to, the American Correctional Association.

**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.

**RECLAIM formula**

(R.C. 2152.19, 5139.01, 5139.33, 5139.34, 5139.41, 5139.42, 5139.43, 5139.44, and 5139.45)

**Operation of the bill--RECLAIM formula**

The bill replaces the method by which the appropriation made to DYS for care and custody of felony delinquents must be expended (the RECLAIM formula). Under the bill, it must be expended in accordance with the following procedure that DYS must use for each year of a biennium. The procedure must be consistent with the other provisions described in this portion of the analysis and must be developed in accordance with the following guidelines:

(1) The line item appropriation for the care and custody of felony delinquents must provide funding for operational costs for the following: (a) institutions and the diagnosis, care, or treatment of felony delinquents at facilities pursuant to certain contracts, (b) certain community corrections facilities constructed, reconstructed, improved, or financed for the purpose of providing alternative placement and services for felony delinquents who have been diverted from care and custody in institutions, (c) county juvenile courts that administer programs and services for prevention, early intervention, diversion, treatment, and rehabilitation services and programs that are provided for alleged or adjudicated unruly or delinquent children or for children who are at risk of becoming unruly or delinquent children, and (d) administrative expenses DYS incurs in connection with the felony delinquent care and custody programs.

(2) From the appropriated line item for the care and custody of felony delinquents, DYS, with the advice of the RECLAIM Advisory Committee (see "**RECLAIM advisory committee**," below) must allocate annual operational funds for county juvenile programs, institutional care and custody, community corrections facilities care and custody, and administrative expenses incurred by DYS associated with felony delinquent care and custody programs. DYS, with the advice of the RECLAIM Advisory Committee, must adjust these allocations, when modifications to this line item are made by legislative or executive action.

(3) DYS must divide county juvenile program allocations among county juvenile courts that administer programs and services for prevention, early intervention, diversion, treatment, and rehabilitation that are provided for alleged

or adjudicated unruly or delinquent children or for children who are at risk of becoming unruly or delinquent children. DYS must base funding on the county's previous year's ratio of DYS's institutional and community correctional facilities commitments to that county's four-year average of felony adjudications, divided by statewide ratios of commitments to felony adjudications, as specified in the following formula:

(a) DYS must give to each county a proportional allocation of commitment credits. DYS determines the proportional allocation of commitment credits as follows. DYS must determine for each county and for the state a four-year average of felony adjudications. DYS then must determine for each county and for the state the number of charged bed days, for both DYS and community correctional facilities, from the previous year. DYS then must divide the statewide total number of charged bed days by the statewide total number of felony adjudications, which quotient must then be multiplied by a factor determined by DYS.<sup>223</sup> Finally, DYS must calculate the county's allocation of credits by multiplying the number of adjudications for each court by the result determined pursuant to the preceding sentence.

(b) DYS must subtract from the allocation determined pursuant to paragraph (3)(a) a credit for every chargeable bed day a youth stays in a DYS institution and two-thirds of credit for every chargeable bed day a youth stays in a community correctional facility. At the end of the year, DYS must divide the amount of remaining credits of that county's allocation by the total number of remaining credits to all counties, to determine the county's percentage, which then must be applied to the total county allocation to determine the county's payment for the fiscal year.

(c) DYS must pay counties three times during the fiscal year to allow for credit reporting and audit adjustments, and modifications to the appropriated line item for the care and custody of felony delinquents. DYS must pay 50% of the payment by July 15 of each fiscal year, 25% by January 15 of that fiscal year, and 25% by June 15 of that fiscal year.

(4) In fiscal year 2004, the payment of county juvenile programs must be based on the following procedure. DYS must divide the funding earned by each court in fiscal year 2003 by the aggregate funding of all courts, resulting in a percentage. DYS must apply the percentage to the total county juvenile program allocation for fiscal year 2004 to determine each court's total payment. DYS must make payments in accordance with the schedule established in paragraph (3)(c).

---

<sup>223</sup> *It is unclear how this factor is determined.*

The bill also provides that a juvenile court is not precluded by its allocation amount for the care and custody of felony delinquents from committing a felony delinquent to DYS for care and custody in an institution or a community corrections facility when the juvenile court determines that the commitment is appropriate.

**Operation of the bill--RECLAIM advisory committee.** The bill creates the RECLAIM Advisory Committee that will be composed of the following ten members: (1) two members will be juvenile court judges appointed by the Ohio Association of Juvenile and Family Court Judges, (2) one member will be the Director of DYS or the Director's designee, (3) one member will be the Director of Budget and Management or the Director's designee, (4) one member will be the Director of the Legislative Service Commission or the Director's designee, (5) one member will be a member of a Senate committee dealing with finance or criminal justice issues appointed by the President of the Senate, (6) one member will be a member of a committee of the House of Representatives dealing with finance or criminal justice issues appointed by the Speaker of the House of Representatives, (7) one member will be a member of a board of county commissioners appointed by the County Commissioners Association of Ohio, and (8) two members will be juvenile court administrators appointed by the Ohio Association of Juvenile and Family Court Judges. The members of the Committee must be appointed or designated within 30 days after the effective date of the section, and the Director of DYS must be notified of the names of the members.

Members described in clauses (1), (7), and (8) of the preceding paragraph serve for terms of two years and hold office from the date of the member's appointment until the end of the term for which the member was appointed. Members described in clauses (2), (3), and (4) serve as long as they hold that office. Members described in clauses (5) and (6) serve for the duration of the session of the General Assembly during which they were appointed, provided they continue to hold that office. The members described in clauses (1), (5), (6), (7), and (8) may be reappointed. Vacancies are to be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed holds office as a member for the remainder of that term. A member continues in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of 60 days has elapsed, whichever occurs first.

Membership on the Committee does not constitute the holding of an incompatible public office or employment in violation of any statutory or common law prohibition pertaining to the simultaneous holding of more than one public office or employment. Members of the Committee are not disqualified from

holding by reason of that membership and do not forfeit because of that membership their public office or employment that qualifies them for membership on the Committee notwithstanding any contrary disqualification or forfeiture requirement under existing Revised Code sections.

The Director of DYS will serve as an interim chair of the Committee until the first meeting of the Committee. Upon receipt of the names of the members of the Committee, the Director must schedule the initial meeting of the Committee, which must take place at an appropriate location in Columbus and occur not later than 60 days after the effective date of this section. The Director must notify the Committee members of the time, date, and place of the meeting. At the initial meeting, the Committee must organize itself by selecting from among its members a chair, vice-chair, and secretary. The Committee must meet at least once each quarter of the calendar year but may meet more frequently at the call of the chair.

In addition to its functions with respect to the RECLAIM program described above under "Operation of the bill--RECLAIM formula," the Committee periodically must do all of the following:

(1) Evaluate the operation of the RECLAIM program by DYS, evaluate the implementation of the RECLAIM program by the counties, and evaluate the efficiency of the RECLAIM formula. In conducting these evaluations, the Committee must consider the public policy that RECLAIM funds are to be expended to provide the most appropriate programs and services for felony delinquents and other youthful offenders.

(2) Advise DYS, the Office of Budget and Management, and the General Assembly on the following changes that the Committee believes should be made: (a) changes to sections of the Revised Code that pertain to the RECLAIM program, specifically the RECLAIM formula and (b) changes in the funding level for the RECLAIM program, specifically the amounts distributed under the formula for county allocations, community correctional facilities, and juvenile correctional facility budgets.

**Operation of the bill--DYS felony care and custody program**

The bill repeals the provisions described below under "DYS felony care and custody program," replacing these provisions with the new provisions described above. The repeal of these provisions also results in a related change to the use of moneys in the county felony delinquent care and custody fund. An existing provision permits a county to use the moneys disbursed to it by DYS for felony delinquent care and custody also for prevention, early intervention, diversion, treatment, and rehabilitation programs that are provided for alleged or adjudicated unruly children, delinquent children, or juvenile traffic offenders or

for children who are at risk of becoming unruly children, delinquent children, or juvenile traffic offenders *if the county did not exceed in any month its monthly allocation in connection with felony delinquents*. The bill repeals this limitation.

**Operation of the bill--contingency program**

The bill repeals the contingency program related to the RECLAIM formula that is contained in R.C. 5139.45.

**Existing law--RECLAIM formula**

**General guidelines.** Under existing law, on and after January 1, 1995, the appropriation made to DYS for care and custody of felony delinquents must be expended in accordance with a formula that DYS develops for each year of a biennium. The formula must be consistent with the provisions described in this portion of the analysis and be developed in accordance with the following guidelines:

(1) DYS must set aside at least 3% but not more than 5% of the appropriation for purposes of funding the contingency program described below under "**Existing law--contingency program.**"

(2) After setting aside the amount for the contingency program, DYS must set aside 25% of the remainder of the appropriation and use that amount for the purpose described in the following paragraph and to pay certain of the operational costs associated with, and to provide cash flow for, the following: (a) institutions, (b) the diagnosis, care, or treatment of felony delinquents at institutions, facilities, or centers pursuant to certain contracts, (c) community corrections facilities constructed, reconstructed, improved, or financed as described in R.C. 5139.36 for the purpose of providing alternative placement and services for felony delinquents who have been diverted from care and custody in institutions. DYS may use a portion of the 25% for administrative expenses incurred by DYS in connection with the felony delinquent care and custody program and the contingency program.

(3) After setting aside the amounts described in paragraphs (1) and (2), DYS must set aside the amount of the appropriation that is equal to 25% of the amount that is calculated by multiplying the per diem cost for the care and custody of felony delinquents, by the number of bed days that DYS projects for occupancy in community corrections facilities. DYS must use this amount of the appropriation to pay the percentage of the per diem cost for the care and custody of felony delinquents who are in the care and custody of certain community corrections facilities for which DYS is responsible.

(4) After setting aside the amounts described in paragraphs (1) to (3), DYS must set aside the amount of the appropriation that is necessary to pay 75% of the per diem cost of public safety beds and must use that amount for the purpose of paying that per diem cost.

(5) After setting aside the amounts described in paragraphs (1) to (4), DYS must use the remainder of the appropriation in connection with the felony delinquent care and custody program described below in "Existing law--Felony delinquent care and custody program--DYS allocation to counties," except that, for fiscal year 2002 and fiscal year 2003 and only for those two fiscal years, the total number of beds available to all counties via public safety beds and county allocations may not be less than the total beds used by all the counties during fiscal year 2000 funded by care and custody chargebacks (line item 401) and as public safety beds.

(6) If DYS's appropriation for a fiscal year is subsequently revised by law or its expenditures ordered to be reduced by executive order under R.C. 126.05, DYS may adjust the amounts described in paragraphs (1) to (5) in a manner consistent with the revision or reduction.

Data used in developing the formula. In developing the formula, DYS must use the data included by each juvenile court in a statutorily required annual report, other data included in any related monthly reports that DYS may require juvenile courts to file, and other data derived from a related monitoring program, to project or calculate the following for each year of a biennium:

(1) The total number of children who will be adjudicated delinquent children by the juvenile courts for acts that if committed by an adult would be a felony;

(2) The number of public safety beds;

(3) The state target youth;

(4) The per diem cost for the care and custody of felony delinquents. This per diem cost is calculated for each year of a biennium as follows: (a) by multiplying the state target youth by the projected length of stay of state target youth in the care and custody of DYS, (b) by subtracting from the appropriation made to DYS for care and custody of felony delinquents for each fiscal year of the biennium the amount of the appropriation that must be set aside for purposes of funding the contingency program, and then dividing the remainder of the appropriation that was so calculated by the product derived under clause (a), and (c) by dividing the quotient derived under clause (b) by the number of days in the fiscal year.



(5) For each county of the state, that county's average percentage of the total number of children who during the past four fiscal years were adjudicated delinquent children by the juvenile courts for acts that, if committed by an adult, would be a felony;

(6) The number of children who satisfy all of the following: (a) they are at least 12 years of age but less than 18 years of age, (b) they were adjudicated delinquent children for having committed acts that if committed by an adult would be a felony, (c) they were committed to DYS by the juvenile court of a county that has had 0.1% or less of the statewide adjudications for felony delinquents as averaged for the past four fiscal years, and (d) they are in the care and custody of an institution or a community corrections facility.

**Existing law--DYS felony care and custody program**

**Overview.** Existing law, modified by the bill to reflect the change in the RECLAIM formula, requires DYS to operate a felony delinquent care and custody program that must be operated in accordance with the RECLAIM formula described above, subject to the conditions specified below.

**Determination of monthly allocation.** As described above under paragraph (5) of the existing law portion of "**Existing law--RECLAIM formula--General guidelines,**" above, annually DYS must allocate to each county a portion of the appropriation made to DYS for care and custody of felony delinquents. The portion to be allocated to each county is determined by multiplying the county's percentage determined above under paragraph (5) of "**Existing law--RECLAIM formula--Data used in developing the formula,**" above, by that portion of the appropriation. Then, DYS generally must divide the portion to be allocated to each county by 12.

**Reduction of monthly allocation.** Generally, DYS must reduce the monthly allocation for each fiscal year to each county by both of the following: (1) 75% of the amount determined by multiplying the per diem cost for the care and custody of felony delinquents by the number of felony delinquents who have been adjudicated delinquent children and, generally, who are in the care and custody of an institution pursuant to a commitment, recommitment, or revocation of a release by the juvenile court of that county;<sup>224</sup> and (2) 50% of the amount determined by multiplying the per diem cost for the care and custody of felony

---

<sup>224</sup> *Public safety beds may not be included in the number of felony delinquents who have been adjudicated delinquent children by a juvenile court in making this reduction; DYS must bear the care and custody costs associated with public safety beds (R.C. 5139.43(B)(2)).*



delinquents by the number of felony delinquents who have been adjudicated delinquent children and, generally, who are in the care and custody of a community corrections facility pursuant to a placement by DYS with the consent of the juvenile court of that county.<sup>225</sup>

**Payment of allocation.** Generally, on or before the 15th day of the following month, DYS must disburse to the juvenile court of each county the remainder of the monthly allocation of that county. Special provisions are made for the monthly allocations surrounding the end of a fiscal year. Notwithstanding the general disbursement requirements, if a juvenile court fails to comply with a statutory fiscal monitoring program unaffected by the bill, and DYS is not able to reconcile fiscal accounting as a consequence of that failure, DYS is not required to make any disbursement to the juvenile court until it complies.

**Existing law--contingency program**

Under existing law, DYS must determine for each year of a biennium the amount to be set aside under the RECLAIM formula for purposes of a contingency program. The primary purpose of the contingency program is to ensure that a juvenile court is not precluded from committing a felony delinquent to DYS for care and custody in an institution or a community corrections facility when the juvenile court determines that the commitment is appropriate, the county has exhausted its current and future monthly allocations for the current fiscal year as determined under the RECLAIM formula. Other purposes of the contingency program are to ensure that institutions and community corrections facilities are fiscally solvent and to permit DYS to cover the amount of certain excesses and insufficiencies related to the ends of fiscal years.

Generally, DYS is permitted to submit to the Director of Budget and Management a written petition that requests a grant from the contingency program for the purpose of supporting the operating needs of, remedy any cash flow problems of, and otherwise ensure the fiscal solvency of its institutions or to augment the funds of community corrections facilities to ensure that they are fiscally solvent. DYS may submit the petition as soon as it becomes aware of an existing or expectant fiscal problem, and the Director of Budget and Management

---

<sup>225</sup> *If a county exhausts its current and future monthly allocations for the current fiscal year, DYS bears the remainder of the amounts for the care and custody of felony delinquents who are in the care and custody of an institution pursuant to a commitment, recommitment, or revocation of a release or in the care and custody of a community corrections facility by debiting the amount of the appropriation for care and custody of felony delinquents that was set aside for the contingency program (R.C. 5139.43(B)(2)). (See "Contingency program," below.)*

must review each petition submitted. If DYS demonstrates the purpose described above, the Director of Budget and Management must award the grant to the extent sufficient moneys exist at the time in the contingency program for the awarding of a grant based on the petition.

But, without the necessity of submitting a petition and without the necessity for obtaining the prior approval of or a grant from the Director of Budget and Management, DYS may debit the amount of the appropriation for care and custody of felony delinquents that was set aside for the contingency program under specified circumstances.

### **DYS reports to Governor and the legislature**

(R.C. 5139.04 and 5139.43)

#### **Existing law**

Existing law requires a juvenile court, by August 31 of each year, to file with DYS a report that contains all of the statistical and other information for each month of the prior state fiscal year that will permit DYS to prepare the report described below to the Joint Legislative Committee on Juvenile Corrections Overcrowding and the annual report to the Governor and to the General Assembly.

Existing law also requires DYS to receive these reports and prepare an annual report of state juvenile court statistics and information based on those reports. DYS must make available a copy of the annual report to the Governor and members of the General Assembly upon request.

Finally, on or prior to December 1 of each year, DYS must submit to the Joint Legislative Committee on Juvenile Corrections Overcrowding a report during the immediately preceding state fiscal year that pertains to the RECLAIM program and that includes, but is not limited to, the following:

- (1) A description of the programs, care, and services that were financed under the RECLAIM program in each county;
- (2) The number of felony delinquents, other delinquent children, unruly children, and juvenile traffic offenders served by the programs, care, and services in each county;
- (3) The total number of children adjudicated in each juvenile court as felony delinquents;

(4) The total number of felony delinquents who were committed by the juvenile court of each county to DYS and who were in the care and custody of an institution or a community corrections facility;

(5) A breakdown of the felony delinquents described in the preceding paragraph on the basis of the types and degrees of felonies committed, the ages of the felony delinquents at the time they committed the felonies, and the sex and race of the felony delinquents.

### **Operation of the bill**

The bill repeals DYS's duty to prepare its annual statistical report and its duty to submit a report to the Joint Legislative Committee on Juvenile Corrections Overcrowding.

### **Definition of "public safety beds"**

(R.C. 5139.01)

### **Existing law**

Under existing law, as used in the Department of Youth Services Law, "public safety beds" includes all of the following:

(1) Felony delinquents who, while committed to DYS and in the care and custody of an institution or a community corrections facility, are adjudicated delinquent children for having committed in that institution or community corrections facility an act that if committed by an adult would be a felony.

(2) Children who are: (a) at least 12 years of age but less than 18 years of age, (b) adjudicated delinquent children for having committed acts that if committed by an adult would be a felony, (c) are committed to DYS by the juvenile court of a county that has had 0.1% or less of the statewide adjudications for felony delinquents as averaged for the past four fiscal years, and (d) are in the care and custody of an institution or a community corrections facility.

(3) Felony delinquents who, while committed to DYS and in the care and custody of an institution, commit in that institution an act that if committed by an adult would be a felony, who are serving disciplinary time for having committed that act, and who have been institutionalized or institutionalized in a secure facility for the minimum period of time specified in the Juvenile Delinquency Law.

### Operation of the bill

The bill expands these portions of the definition of "public safety beds" in the following ways:

(1) The bill expands the portion of the definition contained in paragraph (1) of "Existing law" to include felony delinquents who, while so committed, are adjudicated delinquent children for having committed in that institution or community corrections facility an act that if committed by an adult would be a misdemeanor.

(2) The bill broadens the scope of the portion of the definition contained in paragraph (2) of "Existing law" to include children of that nature who are at least ten years of age but less than 18 years of age.

(3) The bill expands the portion of the definition contained in paragraph (3) of "Existing law" to include any felony delinquent of that nature who is serving disciplinary time for any reason disciplinary time may be imposed.

### Miscellaneous

(R.C. 5139.04, 5139.34, and 5139.43)

The bill also makes several other changes in the Department of Youth Services Law.

(1) The bill repeals DYS's duty to train or provide for training of probation and youth correction workers.

(2) The bill renames DYS's "foster care facilities" to be "placement facilities."

(3) Under existing law, DYS is prohibited from granting financial assistance for the provision of care and services for children in a *foster care* facility unless the facility has been certified, licensed, or approved by a state agency with certification, licensure, or approval authority. Under the bill, DYS is prohibited from granting financial assistance for the provision of care and services for children in a *placement* facility unless the facility has been certified, licensed, or approved by a state *or national* agency with certification, licensure, or approval authority, including, but not limited to, the *American Correctional Association*.

(4) Under existing law, if an audit determines that a county has used moneys on the county's felony delinquent care and custody fund for unauthorized expenses, the county must repay the amount of the unauthorized expenditures to

the state's general revenue fund. The bill specifies that this repayment must come from the county's general fund.

**Technical changes**

(R.C. 5139.34)

The bill also makes changes of a technical nature.

---

**LOCAL GOVERNMENT**

- Provides that for a metropolitan housing authority in a county with specified population criteria, the board of county commissioners makes two appointments instead of one and the chief executive officer of the most populous city makes one appointment instead of two.
- Requires the appointment of two additional members, one of whom resides in assisted housing, to metropolitan housing authorities in districts that have no members who reside in assisted housing and that have 300 or more assisted units.
- Establishes qualifications, appointment procedures, terms of office, conditions for replacement, and conditions of reappointment for the additional members the bill requires be appointed to metropolitan housing authorities.
- Permits a regional transit authority to adopt certain bylaws and rules and establishes a penalty for a violation.
- Changes the penalty for certain actions that constitute the offense of misconduct involving a public transportation system from a fourth degree misdemeanor to a minor misdemeanor on a first offense and a fourth degree misdemeanor on subsequent offenses.
- Permits official signs to be erected that restrict the use of a particular traffic lane only to buses during certain hours or during all hours.
- Allows the board of directors of a county agricultural society or independent agricultural society to authorize an officer or employee of the society to use a credit card held by the board to pay for expenses related to the purposes of the society.

- Authorizes a county agricultural society to enter into agreements to obtain loans and credit in an amount up to 25% of its annual revenues.
- Authorizes a county agricultural society or an independent agricultural society to purchase or lease, for a term of not less than 20 years, real estate on which to hold fairs and to erect buildings on it and otherwise improve it.
- 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.
- Authorizes counties with populations of 600,000 or more to create "local funding options" for construction of convention centers and related facilities.
- Eliminates the ability for a limited home rule township to convert from a three-member board of township trustees to a five-member board.
- Prohibits a board of county commissioners from constructing a water supply facility that is within the boundaries of a regional water and sewer district and that is within 1,000 feet of a water resource project that is owned or operated by the district if the project is financed in whole or in part by specified public obligations unless the facility is for the sole purpose of increasing water pressure in water transmission lines owned

or operated by the board and will not be used to sell or otherwise provide water to customers to which the district supplies or may supply water from an existing water resource project or unless the district gives consent to the construction by adopting a resolution.

- 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.
- Specifies that the additional members of a veterans service commission appointed in certain counties must be honorably discharged or honorably separated veterans.
- Requires those additional members to file a Form DD214 with the Governor's Office of Veteran's Affairs within 60 days after appointment.
- Increases from 400,000 to 500,000 the county population necessary for adding members to county veterans service commissions submitting budget requests that exceed specified amounts.
- Prohibits a regional water and sewer district from constructing a water resource project within 1,000 feet of a water supply facility that is owned or operated by a municipal corporation or a board of county commissioners if the facility is financed in whole or in part by specified public obligations unless the project is for the sole purpose of increasing water pressure in water transmission lines owned or operated by the district and will not be used to sell or otherwise provide water to customers to which the municipal corporation or county supplies or may supply water from an existing water supply facility or unless the municipal corporation or the county gives consent to the construction by adopting an ordinance or a resolution.
- Increases from \$15,000 to \$25,000 the maximum value of a contract that may be entered into by a regional water and sewer district without initiating competitive bidding.

### **Metropolitan housing authorities**

(R.C. 3735.27; Section 145.03CC)

Under current Ohio law, all metropolitan housing authorities must have five members who are residents of the district in which they serve. Members are appointed by local officials as specified in the Revised Code. Membership requirements and methods of appointment differ for districts with a population of at least one million persons and districts with populations of less than one million persons.

### **Change in appointment method in specified counties**

The bill changes the method of appointing members of metropolitan housing authorities located in counties that had, as of the 2000 federal census, a population of at least 400,000 persons and no city with a population greater than 30% of the total population of the county. Under the bill, in affected districts, a board of county commissioners appoints two members (instead of one as under current law) and the chief executive officer of the most populous city appoints one member (instead of two as under current law). The probate court and the court of common pleas continue to appoint one member each, as under current law. The bill specifies the terms of office and procedures for transition in appointments.

### **Resident members**

Current Ohio law requires that in districts with a population of at least one million persons (based on 1990 census), at least one member of the housing authority be a resident of a dwelling unit owned or managed by the housing authority. There is no similar requirement for districts with less than a million persons. A recent federal law (effective October, 1999) requires that to participate in federal programs, at least one member of the governing body of a housing authority be a direct recipient of assistance from that housing authority (except for agencies with less than 300 housing units, which generally are exempt from this requirement).

The bill requires that an additional two members be appointed in any metropolitan housing district that has 300 or more assisted units and that does not have at least one member who resides in an assisted unit. Under the bill, an "assisted unit" is a unit that is owned or operated by the housing authority or a unit in which the occupants receive tenant-based housing assistance through the federal section 8 housing program. The bill directs the chief executive officer of the most populous city in the district to appoint one of the additional members, who must

reside in assisted housing, and the board of county commissioners to appoint the other additional member, who need not reside in assisted housing.

The bill specifies the appointment procedures, terms of office, and procedures for filling vacancies. A resident member who no longer qualifies as a resident is deemed unable to serve and a new resident member must be appointed for the remainder of that member's term.

### **Powers of a regional transit authority**

(R.C. 306.35 and 306.99)

Regional transit authorities have a number of enumerated powers, among them the power to adopt bylaws for the administration of its affairs and operation of "transit facilities." The bill permits a regional transit authority also to adopt bylaws and rules for the following purposes:

- (1) To prohibit selling, giving away, or using any beer or intoxicating liquor on transit vehicles or transit property;
- (2) For the preservation of good order on transit vehicles or property;
- (3) To provide for the protection and preservation of all property and life on transit vehicles or property;
- (4) To regulate and enforce the collection of fares.

Before such a bylaw or rule takes effect, the regional transit authority is required to provide for a notice of its adoption to be published once a week for two consecutive weeks in a newspaper of general circulation within its territorial boundaries.

The bill prohibits any person from violating any such bylaw or rule. A first offense results in a fine of up to \$100 and each subsequent offense results in a fine of not more than \$500. Fines levied and collected must be paid into the treasury of the regional transit authority, which may use the money for any purpose not inconsistent with the state provisions governing regional transit authorities.

### **Offense of misconduct involving a public transportation system**

(R.C. 2917.41)

Among other prohibitions, current law prohibits any person from doing any of the following while in any facility or on any vehicle of a public transportation system:

- (1) Playing sound equipment without the proper use of a private earphone;
- (2) Smoking, eating, or drinking in any area where the activity is clearly marked as being prohibited;
- (3) Expectorating upon a person, facility, or vehicle.

A violation of any of these prohibitions is a fourth degree misdemeanor, which is punishable by a jail term of not more than 30 days, a fine of not more than \$250, or both.

Under the bill, a violation of any of these prohibitions is a minor misdemeanor on a first offense (punishable by a fine of not more than \$100; no jail time). If a person previously has been convicted of or pleaded guilty to any violation of a state offense involving a public transportation system or a substantially similar municipal ordinance, a violation of any of these prohibitions is a fourth degree misdemeanor.

#### **Restricting the use of a street or highway lane to buses only**

(R.C. 4511.33, present and future versions)

Current law provides that official signs may be erected directing specified traffic to use a designated lane or designating lanes that are to be used by traffic moving in a particular direction, and vehicle drivers must obey these directions. The bill permits official signs to be erected that restrict the use of a particular lane to only buses during certain hours or during all hours.

#### **Agricultural societies**

##### **Use of credit cards**

(R.C. 1711.131)

Current law creates county agricultural societies and independent agricultural societies, the main purpose of which is to hold fairs. The bill authorizes the board of directors of a county agricultural society or an independent agricultural society to authorize by resolution an officer or employee of the agricultural society to use a credit card held by the board to pay for expenses related to the purposes of the society. If a board elects to authorize such a use of a credit card held by the board, the board first must adopt a policy specifying the purposes for which the credit card may be used.

Under the bill, an officer or employee of an agricultural society who makes unauthorized use of a credit card held by the society's board of directors is

personally liable for the unauthorized use. The prosecuting attorney of the appropriate county must recover the amount of any unauthorized expenses incurred by the officer or employee through the misuse of the credit card in a civil action in any court of competent jurisdiction. The bill specifies that these provisions do not limit any other liability of the officer or employee for the unauthorized use of a credit card held by the board of directors. Further, the bill specifies that an officer or employee of an agricultural society who misuses a credit card held by the society's board of directors is guilty of the criminal offense of misuse of credit cards.

Under the bill, an officer or employee who is authorized to use a credit card held by the board of directors of an agricultural society and who suspects the loss, theft, or possibility of unauthorized use of the credit card immediately must notify the board in writing of the suspected loss, theft, or possible unauthorized use. The officer or employee may be held personally liable for not more than \$50 in unauthorized debt incurred before the board receives the notification.

**Agreements to obtain loans and credit**

(R.C. 1711.13)

The bill authorizes a county agricultural society to enter into agreements to obtain loans and credit for expenses related to the purposes of the society, provided that the agreements are in writing and are first approved by the society's board of directors. The total net indebtedness incurred by a county agricultural society pursuant to this provision cannot exceed an amount equal to 25% of the society's annual revenues.

**Purchase or lease of real estate**

(R.C. 1711.15 and 1711.17)

The bill authorizes a county agricultural society or an independent agricultural society to purchase or lease, for a term of not less than 20 years, real estate on which to hold fairs and to erect suitable buildings on it and otherwise improve it.

**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.

**Counties authorized to create "local funding options" for construction of convention centers**

(Section 145.03QQ)

The bill authorizes counties with populations of 600,000 or more to create "local funding options" for construction of convention centers and related facilities. The bill does not define the term "local funding options."

**Board of township trustees of limited home rule townships**

(R.C. 504.03, 504.04, and 504.21 (outright repealed))

Currently, in a township that has adopted a limited home rule township form of government (available only to townships with a population of at least 5,000 inhabitants), the township, with the approval of the electors, may convert its three-member board of township trustees to a five-member board. The bill removes this choice, thus requiring limited home rule townships to have a three-member board unless the township converted to a five-member board before the bill's effective date.

**Water supply projects of boards of county commissioners**

(R.C. 6103.02)

Current law allows a board of county commissioners, for the purpose of preserving and promoting the public health and welfare, to acquire, construct, maintain, and operate any public water supply facilities within its county for one



or more sewer districts and to provide for their protection and prevent their pollution and unnecessary waste. "Public water supply facilities" means, without "limiting the generality" of that term, water wells and well fields, springs, lakes, rivers, streams, or other sources of water supply, intakes, pumping stations and equipment, treatment, filtration, or purification plants, force and distribution lines or mains, cisterns, reservoirs, storage facilities, necessary equipment for fire protection, other related structures, equipment, and furnishings, and real estate and interests in real estate, necessary or useful in the proper development of a water supply for domestic or other purposes and its proper distribution (R.C. 6103.01, not in the bill). The bill limits a board's authority by prohibiting the construction of a public water supply facility that is within the boundaries of a regional water and sewer district and that is within 1,000 feet of a water resource project that is owned or operated by the district if the project is financed in whole or in part by obligations issued under the Uniform Public Securities Law, the Regional Water and Sewer Districts Law, or the Water Development Authority Law or by obligations issued by the state unless the facility is for the sole purpose of increasing water pressure in water transmission lines owned or operated by the board and will not be used to sell or otherwise provide water to customers to which the district supplies or may supply water from an existing water resource project or unless the district gives consent to the construction by adopting a resolution.

**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:

<b>Fee purpose</b>	<b>Existing fee</b>	<b>Proposed fee</b>
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 replevin (division (A)(4)).	\$20.00	\$40.00
For the service and return of a warrant to arrest, for each person named in the writ (division (A)(5)).	\$5.00	\$10.00



<b>Fee purpose</b>	<b>Existing fee</b>	<b>Proposed fee</b>
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
For the service and return for furnishing copies for advertisements (division (A)(15)).	\$.50 for each 100 words	\$1.00 for each 100 words

Fee purpose	Existing fee	Proposed fee
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 (B)(3)(c)).	\$.50	\$1.00
Jail fees for calling jury (division (B)(3)(d)).	\$1.00	\$3.00

Fee purpose	Existing fee	Proposed fee
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<sup>226</sup> is

---

<sup>226</sup> "Moving violation" means any violation of any statute or ordinance, other than the Mandatory Seatbelt Law or a substantially equivalent municipal ordinance, that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles. "Moving violation" does not include the violation of any statute or ordinance that regulates pedestrians or the parking of vehicles. (R.C. 2949.091(D)(1) by reference to R.C. 2743.70(D)(1).)

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,<sup>227</sup> 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 dismiss the charges against the accused. If the accused chooses not to enter the

---

<sup>227</sup> "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)).

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 addiction 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.

**Additional veterans service commission appointments**

(R.C. 5901.021)

**Overview**

Current law creates a five-person veterans service commission in each county. The members of the commission must be honorably discharged or honorably separated veterans, be residents of the county, and be appointed to five-year terms by a judge of the court of common pleas.

Appointments to the commission must be made from lists of recommended persons, in the following manner: one person must be a representative recommended by the American Legion; one person must be a representative recommended by the Veterans of Foreign Wars; one person must be a representative recommended by the Disabled American Veterans; one person must be a representative recommended by the AMVETS; and one person must be a representative recommended by the Korean War Veterans Association, the

Military Order of the Purple Heart of the U.S.A., or the Vietnam Veterans of America. (R.C. 5901.02, not in the bill.)

**Additional memberships in certain counties**

**Existing law.** Existing law allows the board of county commissioners, by resolution, to create up to six *additional* memberships on the veterans service commission if: (1) the county has a population, according to the most recent decennial census, of more than 400,000 and (2) the veterans service commission submits a budget request to the board of county commissioners for the ensuing fiscal year that exceeds either .025% of the assessed value of property in the county, or the amount appropriated to the commission from the county general fund in the current fiscal year by more than 10% of that appropriation.

The board is required to prescribe the number of years the additional memberships will exist, not to exceed five years. Once the board creates such memberships, it may not create additional memberships if the total number of the additional memberships would exceed six. The board must appoint residents of the county to each of the additional memberships for terms prescribed by and commencing on a date fixed by the board.

If the board appoints additional members, it may permit the commission to submit an original or revised budget request for the ensuing fiscal year later than the last Monday in May.

The board may remove, for cause, any member appointed under the provision of law amended by the bill; must provide for whether the additional members may be reappointed upon the expiration of their terms; and must fill any vacancy in such a membership for the unexpired term in the manner provided for the original appointment.

**Changes made by the bill.** Under the bill, the additional members appointed to serve on a veterans service commission are required to be honorably discharged or honorably separated veterans. Each person appointed to an additional membership must file, within 60 days after the date of the appointment, the person's form DD214 with the Governor's Office of Veteran's Affairs. (R.C. 5901.021(B)(1).)

The bill also increases from 400,000 to 500,000 the county population necessary for the appointment of additional members (R.C. 5901.021(A)).



**Water resource projects of regional water and sewer districts**

(R.C. 6119.06)

Current law allows a regional water and sewer district to acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to or from, or contract for operation by or for, a political subdivision or person, water resource projects within or without the district. "Water resource project" means any waste water facility or water management facility acquired, constructed, or operated by or leased to a regional water and sewer district or to be acquired, constructed, or operated by or leased to a regional water and sewer district under the Regional Water and Sewer Districts Law or acquired or constructed or to be acquired or constructed by a political subdivision with a portion of the cost of it being paid from a loan or grant from the district under that Law (R.C. 6119.011, not in the bill). The bill limits a district's authority by prohibiting the construction of a water resource project within 1,000 feet of a water supply facility that is owned or operated by a municipal corporation or a board of county commissioners pursuant to the County Water Supply Systems Law if the facility is financed in whole or in part by obligations issued under the Uniform Public Securities Law, the County Water Supply Systems Law, or the Water Development Authority Law or by obligations issued by the state unless the project is for the sole purpose of increasing water pressure in water transmission lines owned or operated by the district and will not be used to sell or otherwise provide water to customers to which the municipal corporation or county supplies or may supply water from an existing water supply facility or unless the municipal corporation or the county, whichever is applicable, gives consent to the construction by adopting an ordinance or a resolution.

**Regional water and sewer district contracts**

(R.C. 6119.10)

The bill increases from \$15,000 to \$25,000 the maximum value of a contract that may be entered into by a regional water and sewer district without initiating competitive bidding.

---

**MISCELLANEOUS**

- Modifies the definitions of educational organization, veteran's organization, fraternal organization, and expenses for use in the Gambling Law, including the Charitable Bingo Law, defines game flare and historic railroad educational organization for use in that Law, and

includes historic railroad educational organization within the definition of "charitable organization" for those Laws.

- Eliminates the prohibition against establishing, promoting, operating, or knowingly engaging in conduct that facilitates any pool that is not conducted for profit.
- Modifies the basis of the license fee for the conduct of instant bingo by an organization that previously has been licensed to conduct bingo by basing it on the gross profits received by the charitable organization during a specified prior one-year period.
- Prohibits a charitable organization from providing a bingo game operator any compensation for conducting instant bingo other than at a bingo session.
- Allows an employee of a veteran's organization or fraternal organization to sell instant bingo tickets or cards to invited guests of the veteran's organization or fraternal organization if no portion of the employee's compensation is paid by bingo receipts.
- Permits a veteran's organization described in subsection 501(c)(4) of the Internal Revenue Code to conduct instant bingo, a tax exempt charitable organization described in subsection 501(c)(4) of the Internal Revenue Code or a veteran's or fraternal organization described in subsection 501(c)(8), (10), or (19) of the Internal Revenue Code to conduct a raffle, and a charitable organization licensed to conduct bingo to conduct a raffle that is not for profit if the organization does not receive any of the proceeds and the organization conducts the raffle at the same location and on the same days of the week and times as provided in the organization's license to conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session.
- Prohibits a statewide charitable organization that is exempt from federal income tax under subsection 501(a) and is described in subsection 501(c)(3) of the Internal Revenue Code and that has local or regional offices from conducting more than 36 raffles in each county during a calendar year.
- Modifies the records that a charitable organization must maintain with respect to the gross receipts and expenses of each game of instant bingo.

- Modifies the procedure for paying the organizational expenses of a veteran's organization or a fraternal organization for the conduct of instant bingo.
- Modifies the types of organizations for which a veteran's or fraternal organization may raise money from the sale of instant bingo other than at a bingo session and with which it must enter into a written contract in order to conduct instant bingo.
- Modifies the provisions dealing with the rules or orders of the Division of Liquor Control or the Liquor Control Commission prohibiting a charitable organization that holds a D-4 permit from selling or serving beer or intoxicating liquor in a portion of its premises used for the conduct of a charitable bingo game.
- Provides that a charitable organization other than a veteran's or fraternal organization must distribute 100% of the net profits from the sale of instant bingo to certain specified charitable organizations.
- Prohibits a charitable organization from selling or providing any instant bingo ticket or card for a price different from the price printed on the instant bingo game flare.
- Provides that a charitable instant bingo organization is not required to enter into a written contract with the owner or lessor of the bingo location for the conduct of instant bingo other than at a bingo session if the owner or lessor does not assist in the conduct of the instant bingo and other conditions are met.
- Allows a volunteer firefighter's organization that is exempt from federal income taxation and is described in subsection 501(c)(3) of the Internal Revenue Code to conduct instant bingo other than at a bingo session at a location where the primary source of retail income from all commercial activity at that location is the sale of instant bingo tickets if the instant bingo is conducted at the location where the organization conducts firefighter training, the organization has conducted instant bingo continuously for at least five years prior to the effective date of the bill, and, during each of those five years, the organization had gross receipts of at least \$1.5 million.

- Eliminates outdated E-1 and E-2 schedules of rates for salaries and wages paid to certain public employees exempt from the Collective Bargaining Law, and creates new E-1 and E-2 schedules for their pay periods beginning July 1, 2005.
- Creates a moratorium on step advancements for certain public employees exempt from the Collective Bargaining Law and certain state board and commission employees from June 29, 2003, through June 25, 2005.
- Creates a moratorium on the receipt of credit for service with the state government or any political subdivision for purposes of longevity pay adjustments for certain public employees exempt from the Collective Bargaining Law and certain state board and commission employees for the period from July 1, 2003, through June 30, 2005.
- Creates a one-time 2% pay supplement to be paid in the first paycheck in December 2004 to certain permanent public employees exempt from the Collective Bargaining Law.
- Provides that if the United States Congress repeals the federal mandate requiring the withholding of a percentage of a state's federal-aid highway money if that state has not enacted a drunk driving law that provides for a blood alcohol concentration threshold of 0.08 of 1% in its *per se* DUI provision, or if a federal court with jurisdiction over Ohio declares the mandate to be invalid, the prohibited blood alcohol concentrations specified in Ohio's DUI laws revert to the previous thresholds of 0.10 of 1% or the equivalent.
- Revises Commercial Driver's License Law regarding certain criminal violations, background checks, employer requirements, and the driving record for a holder of a restricted license for farm-related service industries.
- Requires a person to stop and not proceed across a railroad crossing if there is insufficient undercarriage clearance to safely negotiate the crossing.
- Revises the requirement for certain vehicles to stop before crossing a railroad grade crossing.



- 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.
- Prohibits government entities from contracting for goods, services, or construction with persons against whom an unresolved finding for recovery has been issued.
- Requires the Attorney General, by December 1, 2003, to report to the Auditor of State the status of collection for all findings for recovery issued by the Auditor of State for calendar years 2001, 2002, and 2003, and requires a monthly update of this information thereafter.
- Requires the Auditor of State to establish a publicly accessible database of persons by January 1, 2004, against whom an unresolved finding for recovery has been issued, and, beginning January 15, 2004 and monthly thereafter, to update that database to reflect resolved findings for recovery reported earlier that month by the Attorney General.
- Raises from \$50 to \$100 the per-sale, statutory cap on a documentary service charge payable under certain retail installment contracts.
- Requires that contracts for the provision of publicly-funded home care to adults dependent on the care by reason of age or disability include terms under which the provider of services must have in place a system of monitoring whether its employees are providing the services at the proper place and time.
- Requires that the monitoring system provisions be included in contracts entered into by the Departments of Mental Retardation and Developmental Disabilities, Aging, Job and Family Services, and Health and the public and private entities that receive funding from or through the Departments.

- 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.
- Authorizes awards of reparations to otherwise eligible minor dependents of certain deceased crime victims notwithstanding the victims' history of criminal conduct
- 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.
- Creates the Legislative Audit Commission Study Committee to study how other states provide for a legislative auditing function.
- Recreates the Muskingum River Advisory Council that expired on December 31, 2002.
- Increases from \$15,000 to \$25,000 the competitive bidding threshold for certain contracts awarded by various political subdivisions.
- Increases from \$10,000 to \$25,000 the competitive bidding threshold that applies to the award of certain contracts by fire and ambulance districts and boards of township trustees.
- Eliminates the Governmental Television/Telecommunications Operating Fund when the fund balance reaches zero.
- Clarifies that the Secretary of State, not the Governor, is responsible for all duties concerning the certification of police.

- Prohibits a person retired under the Public Employees Retirement System from being employed by a public employer (other than in an elective office) or providing service as an independent contractor to a public employer unless the public employer (1) makes public the fact that the person is or will be retired when the employment or service begins and is seeking the employment or to provide the service and (2) holds a public meeting on the issue of the person being employed or providing the service.

### **Gambling and Charitable Bingo Laws**

Existing law as it appears in the bill is existing law, as enacted or amended by Am. Sub. H.B. 512 of the 124th General Assembly.

#### **Prohibition against schemes of chance**

(R.C. 2915.08(A)(1)(b))

Existing law prohibits any person from establishing, promoting, operating, or knowingly engaging in conduct that facilitates any game of chance conducted for profit or any scheme of chance. The bill modifies this prohibition by excepting a pool from the prohibitions with respect to a scheme of chance and specifically prohibiting a person from establishing, promoting, operating, or knowingly engaging in conduct that facilitates any pool conducted for profit. (R.C. 2915.02(A)(2).)

#### **Bingo license fees**

Under existing law, the license fee to conduct instant bingo at a bingo session or instant bingo other than at a bingo session for a charitable organization that previously has been licensed to conduct bingo is based upon the total of all money or assets received by a person or the charitable organization from the operation of instant bingo at a bingo session or instant bingo other than at a bingo session during the one-year period ending on October 31 of the year preceding the year for which the license is sought. Under the bill, the license fee to conduct instant bingo at a bingo session or instant bingo other than at a bingo session for such an organization is based upon the *gross profits* received by the charitable organization from the operation of instant bingo at a bingo session or instant bingo other than at a bingo session during the previously described year.

### **Compensation of bingo game operators**

(R.C. 2915.09(D))

Existing law prohibits a charitable organization from providing to a bingo game operator, and prohibits a bingo game operator from receiving or accepting, any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, regardless of the source, for conducting bingo or providing other work or labor at the site of bingo. This prohibition does not prohibit an employee of a fraternal or veteran's organization from selling instant bingo tickets or cards to the organization's members, as long as no portion of the employee's compensation is paid from any bingo receipts.

The bill continues the above provision and also prohibits a charitable organization from providing to a bingo game operator any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, regardless of the source, for conducting instant bingo other than at a bingo session at the site of instant bingo other than at a bingo session. The bill also provides that this prohibition does not prohibit an employee of a fraternal organization or veteran's organization from selling instant bingo tickets or cards to the organizations' *invited guests* so long as no portion of the employee's compensation is paid from any receipts of bingo.

### **Conducting instant bingo**

(R.C. 2915.01(YY) and 2915.091(A)(2), (6), and (12))

Existing law provides that a charitable organization is prohibited from conducting instant bingo unless either of the following apply:

(a) The organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a), is described in subsection 501(c)(3) of the Internal Revenue Code, is a charitable organization as defined in the Gambling Law, is in good standing in the state pursuant to R.C. 2915.08, and is in compliance with the Charitable Organization Law.

(b) The organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is exempt from federal income taxation under subsection 501(a), is described in subsection 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code, and conducts instant bingo under R.C. 2915.13.

The bill includes a veteran's organization described in subsection 501(c)(4) of the Internal Revenue Code in (b) above, so a veteran's organization that is described in subsection 501(c)(4) of the Internal Revenue Code may conduct instant bingo if it has received a determination letter from the Internal Revenue Service.

Existing law also prohibits a charitable organization that conducts instant bingo from selling or providing any instant bingo ticket or card for a price different from the price printed on it by the manufacturer. The bill modifies this prohibition by providing that a charitable organization is prohibited from selling or providing any instant bingo ticket or card for a price different from the price printed on it by the manufacturer *on either the instant bingo ticket or card or on the game flare*. The bill defines "game flare" as the board or placard that accompanies each deal of instant bingo tickets and that has printed on or affixed to it the following information for the game: (1) the name of the game, (2) the manufacturer's name or distinctive logo, (3) the form number, (4) the ticket count, (5) the prize structure, including the number of winning instant bingo tickets by denomination and the respective winning symbol or number combinations for the winning instant bingo tickets, (6) the cost per play, and (7) the serial number of the game.

Under existing law, a charitable organization is prohibited from allowing instant bingo tickets or cards to be sold to bingo game operators who are performing work or labor at a premises at which the organization sells instant bingo tickets or cards or to be sold to employees of a D permit holder who are working at a premises at which instant bingo tickets or cards are sold on behalf of the organization as described in R.C. 4301.03(B). The bill removes from the above provision the phrase "who are performing work or labor" at a premises at which the organization sells instant bingo tickets or cards and removes the reference to the organization as described in R.C. 4301.03(B).

### **Raffles**

(R.C. 2915.092)

Under existing law, a charitable organization may not conduct a raffle unless that organization is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and is described in subsection 501(c)(3) of the Internal Revenue Code. The bill also permits a charitable organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(4) of the Internal Revenue Code to conduct a raffle. The bill also permits a veteran's organization or a fraternal organization that is exempt from federal income taxation under

subsection 501(a) and is described in subsection 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code to conduct a raffle.

The bill provides that a charitable organization that is licensed to conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session may conduct a raffle that is not for profit, provided that the organization does not receive any proceeds from the raffle and provided that the organization conducts the raffle at the same location and on the same days of the week and times as provided in the organization's license to conduct bingo, instant bingo at a bingo session, or instant bingo other than at a bingo session. The bill prohibits a statewide charitable organization that is exempt from federal income taxation under subsection 501(a) and is described in subsection 501(c)(3) of the Internal Revenue Code and that has local or regional offices from conducting more than 36 raffles in each county during a calendar year. A charitable organization that conducts a raffle in violation of the prior authorization or a statewide charitable organization that has local or regional offices and that conducts more than 36 raffles in any county during a calendar year is guilty of illegal conduct of a raffle, a misdemeanor of the first degree or, if the offender has previously been convicted of a violation of R.C. 2915.092, a felony of the fifth degree.

**Regulation of a "charitable instant bingo organization"**

(R.C. 2915.093(C), (D), or (G))

Existing law requires a charitable instant bingo organization that conducts instant bingo other than at a bingo session to enter into a written contract with the owner or lessor of the location at which the instant bingo is conducted to allow the owner or lessor to assist in the conduct of the instant bingo. The bill provides that a charitable instant bingo organization that conducts instant bingo other than at a bingo session is not required to enter into a written contract with the owner or lessor of the location at which the instant bingo is conducted provided that the owner or lessor is not assisting in the conduct of the instant bingo other than at a bingo session and provided that the conduct of the instant bingo other than at a bingo session at that location is not more than five days per calendar year and not more than ten hours per day.

Existing law also prohibits a charitable instant bingo organization from conducting instant bingo other than at a bingo session at a location where the primary source of retail income from all commercial activity at that location is the sale of instant bingo tickets. The bill exempts from this prohibition a volunteer firefighter's organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, that conducts instant bingo other than at a bingo session on the premises where the organization conducts firefighter training, that has conducted instant

bingo continuously for at least five years prior to the effective date of this provision and that, during each of those five years, had gross receipts of at least \$1,500,000.

**Maintenance of records**

(R.C. 2915.01(S)(1) and 2915.10(A))

Under continuing law, a charitable organization that conducts a bingo session or a game of chance is required to maintain for at least three years an itemized list of the gross receipts of each bingo session, each game of instant bingo by serial number, each raffle, each punch board game, and each game of chance. The bill continues this requirement but modifies the provision by requiring that the charitable organization maintain an itemized list of the gross profits of each game of instant bingo by serial number (instead of the gross receipts of each game of instant bingo by serial number).

Continuing law also requires a charitable organization to maintain for at least three years an itemized list of all expenses, other than prizes, that are incurred in conducting bingo or instant bingo, the name of each person to whom the expenses are paid, and a receipt for all of the expenses. The bill limits this requirement to the conduct of bingo as defined in R.C. 2915.01(S)(1).

**Distribution of the net profits from the proceeds of the sale of instant bingo**

(R.C. 2915.101)

Existing law provides requirements for how a charitable organization must distribute the net profit from the proceeds of the sale of instant bingo. A charitable organization other than a veteran's organization or a fraternal organization that conducts instant bingo must distribute the net profit from instant bingo as follows: (a) a minimum of 70% of the net profit to an organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and (b) 30% of the net profit may be deducted and retained by the organization for its expenses in conducting the instant bingo game. If a charitable organization does not retain the full percentage specified in (b) for the purposes specified, the balance of the net profit not retained for that purpose must be distributed to an organization described in (a). The bill specifies that the above limits apply only to instant bingo "other than at a bingo session," clarifies that the distribution requirements apply to the net profit "from the proceeds of the sale of instant bingo," and provides that a charitable organization other than a veteran's



organization or a fraternal organization must distribute 100% of the net profit from the proceeds of the sale of instant bingo to an organization that is described in (a) above.

Existing law also provides that a veteran's organization or a fraternal organization is not required to itemize the organization's expenses. The bill maintains this provision but also requires a veteran's organization or a fraternal organization to pay the expenses that are directly for the conduct of instant bingo by check from the checking account devoted exclusively to the bingo session or game and permits such an organization to deduct and retain the remainder of the 35% of the net profit from the proceeds of the sale of instant bingo that is for the organization's expenses in conducting the instant bingo game and to transfer that remainder into the organization's general account.

**Veteran's or fraternal organization conduct of instant bingo**

(R.C. 2915.13)

Existing law provides that a veteran's organization or a fraternal organization authorized to conduct a bingo session pursuant to the Gaming Law may conduct instant bingo other than at a bingo session if all of the following apply: (1) the veteran's organization or fraternal organization limits the sale of instant bingo to ten consecutive hours per day for up to six days per week, (2) the veteran's organization or fraternal organization limits the sale of instant bingo to its own premises and to its own members and invited guests, and (3) the veteran's organization or fraternal organization is raising money for a charitable organization and executes a written contract with the charitable organization. The bill modifies (3) above by requiring that the veteran's organization or fraternal organization raise money for an organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or a state organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code that is in good standing in this state and executes the required contract with that organization.

Existing law also provides that if a veteran's organization or fraternal organization authorized to conduct instant bingo is raising money for another charitable organization, the veteran's organization or fraternal organization must execute a written contract with that charitable organization in order to conduct the instant bingo. The bill modifies this provision in a manner consistent with the change described in the prior paragraph.

### **Liquor law changes**

(R.C. 4301.03 and 4303.17)

Existing law provides that no rule or order of the Division of Liquor Control or the Liquor Control Commission may prohibit a charitable organization that holds a D-4 permit from selling or serving beer or intoxicating liquor under its permit in a portion of its premises merely because that portion of its premises is used at other times for the conduct of a charitable bingo game. The bill clarifies that this provision applies to the conduct of a bingo game as described in R.C. 2915.01(S) (includes bingo, instant bingo, punch boards, and raffles).

Existing law also provides that a charitable organization must not sell or serve beer or intoxicating liquor or permit beer or intoxicating liquor to be consumed or seen in the same location in its premises where a charitable bingo game is being conducted while the game is being conducted. The bill limits this provision to the conduct of a bingo game as described in R.C. 2915.01(S)(1) (does not include instant bingo, punch boards, and raffles).

### **Prizes**

(R.C. 2915.09)

Existing law prohibits a charitable organization that conducts a bingo game as described in R.C. 2915.01(S)(1) from paying out more than \$3,500 in prizes during any bingo session that is conducted by the charitable organization. The bill provides that "prizes" does not include awards from the conduct of instant bingo.

### **Definitions**

(R.C. 2915.01(J), (K), (M), (LL), (ZZ), and (H))

**Educational organization.** Existing law defines an educational organization as any organization within Ohio that is not organized for profit, the exclusive purpose of which is to educate and develop the capabilities of individuals through instruction, and that operates or contributes to the support of a school, academy, college, or university. The bill modifies this definition by replacing "exclusive" with "primary" and specifies that the purpose of the organization is to educate and develop the capabilities of individuals through instruction *by means of operating or contributing to* the support of a school, academy, college, or university (replaces a requirement that it operate or contribute to such support).

**Veteran's organization.** The bill modifies the definition of veteran's organization by including within the definition the state headquarters of a national

veteran's association, providing that the state headquarters (and also an individual post or auxiliary unit) must have been in continuous existence in this state for at least two years, removing the requirement that an individual post or auxiliary unit of a national veteran's organization be incorporated as a nonprofit corporation for at least two years, and requiring that the state headquarters must have received a letter from the national veteran's association indicating that the state headquarters is in good standing with the national veteran's association.

**Fraternal organization.** The bill includes within the definition of "fraternal organization" any not-for-profit state headquarters that is a branch, lodge, or chapter of a national or state organization, that exists exclusively for the common business or sodality of its members, and that has been in continuous existence in Ohio for a period of five years.

**Expenses.** The bill includes within the definition of "expenses" the reasonable amount of gross profit actually expended for expenses for maintaining and operating a charitable organization's facilities, including, but not limited to, a post home, club house, lounge, tavern, or canteen and any grounds attached to the post home, club house, lounge, tavern, or canteen.

**Historic railroad educational organization.** The bill defines "historic railroad educational organization," for the purposes of the Gambling Law, as an organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, that owns in fee simple the tracks and the right of way of a historic railroad that the organization restores or maintains and on which the organization provides excursions as part of a program to promote tourism and educate visitors regarding the role of railroad transportation in Ohio history, and that received as donations from a charitable organization that holds a license to conduct bingo under the Gambling Law an amount equal to at least 50% of that licensed charitable organization's net proceeds from the conduct of bingo during each of the five years preceding June 30, 2003. "Historic railroad" means all or a portion of the tracks and right of way of a railroad that was owned or operated by a for-profit common carrier in this state at any time prior to January 1, 1950.

**Charitable organization.** The bill includes within the definition of "charitable organization" that applies to the Gambling Law any tax exempt "historic railroad educational organization." As under existing law, such an organization is tax exempt if it is, and has received from the IRS a determination letter that is currently in effect stating that the organization is, exempt from federal taxation under subsection 501(a) and described in subsection 501(c)(3), (4), (8), (10), or (19) of the Internal Revenue Code.

### Miscellaneous

Existing law requires a charitable organization that conducts bingo to use all of the gross receipts from bingo for paying prizes and for other specific listed expenses. It does not specifically refer to using any part of the gross receipts for charitable purposes. Existing law also specifically requires such an organization to use all of the net profit from bingo, other than instant bingo, for a charitable purpose listed in its bingo license application and described in R.C. 2915.01(Z) or to distribute all of the net profit derived from instant bingo as stated in its bingo license application and in accordance with R.C. 2915.101.

The bill specifically states that the requirements for the use of the gross receipts from bingo are subject to the requirements for the use of the net profit from bingo and instant bingo thereby clarifying that the net profit can be used for the statutorily listed charitable purposes. It also replaces "net profit derived from instant bingo" with "net profits from the proceeds of the sale of instant bingo," which is the defined term used in the statutory provisions that regulate the use of the proceeds of instant bingo.

### Schedules of rates for certain public employees

(R.C. 124.15 and 124.152)

#### Overview

Continuing law provides that certain public employees are paid a wage or salary that is determined using one of four "schedules of rates" set forth in R.C. 124.15 and 124.152. Depending upon the type of employee, there is a specific schedule of rates that applies to and establishes the compensation for an employee.

Managerial and professional employees. Under continuing law, managerial and professional public employees who are permanent employees paid directly by warrant of the Auditor of State, whose position is included in the state's job classification plan, and who are exempt from the Collective Bargaining Law ("exempt employees") receive wages or salaries based upon the schedule of rates known as "Schedule E-2."<sup>228</sup> Additionally, managerial or professional employees

---

<sup>228</sup> Under R.C. 124.14(B) (not in the bill), exempt employees, for purposes of R.C. 124.15 and R.C. 124.152, do not include any of the following: elected officials; legislative employees; employees of the Legislative Service Commission; employees in the Governor's office; employees who are in the unclassified civil service and exempt from collective bargaining coverage in the office of the (a) Secretary of State, (b) Auditor of State, (c) Treasurer of State, or (d) Attorney General; employees of the Supreme Court; employees of a county children services board that establishes its own compensation rates; any position for which the authority to determine compensation is given by law to

of state boards and commissions receive salaries based upon the schedule of rates known as "Schedule C." Under both the E-2 and C schedules, there are a certain number of different "pay ranges" to which an employee paid under that schedule is assigned. Then, for each pay range, there is a specific minimum and maximum hourly wage or annual salary that the employee may receive.

**Nonmanagerial and nonprofessional employees.** Exempt employees who are not managerial or professional employees paid under Schedule E-2 receive wages or salaries based upon the schedule of rates known as "Schedule E1." Additionally, employees of state boards and commissions who are not managerial or professional employees paid under Schedule C receive wages or salaries based upon the schedule of rates known as "Schedule B." Similar to the E-2 and C schedules, the E-1 and B schedules contain a certain number of different pay ranges to which an employee under that schedule is assigned. However, rather than having a minimum and maximum hourly wage and annual salary for each pay range as under the E-2 and C schedules, pay ranges under the E-1 and B schedules contain a number of "step values," one to which an employee is assigned, with each step providing for a specifically set hourly wage or annual salary.

#### **Adjustment of schedules of rates**

Under current law, there are three different sets of E-1 and E-2 schedules: one set that was applicable for pay periods between July 1, 2000, and June 30, 2001, another set that was applicable for pay periods between July 1, 2001, and June 30, 2002, and still another set that is *currently applicable* for pay periods on and after July 1, 2002. The bill eliminates the two outdated sets of E-1 and E-2 schedules mentioned above, retains the currently applicable set of E-1 and E-2 schedules for pay periods on and after July 1, 2002, and enacts a new set of E-1 and E-2 schedules that will apply to pay periods beginning July 1, 2005. This new set includes a 4% increase in the salaries and wages under the schedules. (R.C. 124.152(A) and (B).)

#### **Step advancement moratorium**

**Background.** As previously noted, each nonmanagerial or nonprofessional exempt employee paid under Schedule E-1 and each nonmanagerial or nonprofessional state board or commission employee paid under Schedule B is assigned to a specific pay range and step value within that pay range. Under generally continuing law, during the course of employment, each of these types of

---

*an individual or entity other than the Department of Administrative Services; and employees of the Bureau of Workers' Compensation whose compensation the Administrator of Workers' Compensation establishes.*

employees is eligible for advancement to succeeding steps in his or her pay range. These step advancements can occur in two ways. First, after a newly hired or promoted employee completes the employee's probationary period, the employee will receive an automatic step advancement to the next higher step. Second, every 12 months, employees generally become eligible to advance to the next higher step. (R.C. 124.15(G).)

**Operation of the bill.** The bill declares a moratorium on the second type of step advancements (i.e., annual advancements) from June 29, 2003, through June 25, 2005; the advancements will resume thereafter. During the moratorium, employees who are hired or promoted and successfully serve a probationary period continue to automatically advance to the next step in the employee's pay range. But, such an employee is subject to the moratorium thereafter. (R.C. 124.15(G)(2)(a).)

The moratorium *does not apply*, however, to the employees of the Secretary of State, the Auditor of State, the Treasurer of State, the Attorney General, the Supreme Court, or state boards and commissions who are paid under either the E-1 or B schedules, if the Secretary of State, the Auditor of State, the Treasurer of State, the Attorney General, the Supreme Court, or state board or commission decides to exempt its employees from the moratorium and notifies the Director of the Department of Administrative Services (DAS) in writing of this decision on or before July 1, 2003 (R.C. 124.15(G)(2)(b)).

Under the bill, upon the resumption of the annual step advancements, retroactive advancements cannot be granted to an employee for the period the moratorium was in effect. And, the moratorium does not affect an employee's performance evaluation schedule. (R.C. 124.15(G)(2)(a).)

### **Longevity pay adjustment moratorium**

(R.C. 124.181(E)(1) and (3))

### **Background**

Under continuing law, nonmanagerial or nonprofessional exempt employees paid under Schedule E-1 and nonmanagerial or nonprofessional state board or commission employees paid under Schedule B receive longevity pay adjustments. A first pay adjustment of 2.5% of the employee's classification salary base is received after the employee completes five years of total service with the state government or any of its political subdivisions. Thereafter, each employee receives an annual pay adjustment of 1.5% of the employee's classification salary base until a maximum of 10% of the employee's classification salary base is reached.



### **Operation of the bill**

The bill declares a moratorium on employees' receipt of credit for service for purposes of longevity pay adjustments for the period from July 1, 2003, through June 30, 2005. The moratorium does not apply, however, to the employees of the Secretary of State, the Auditor of State, the Treasurer of State, the Attorney General, the Supreme Court, and state boards and commissions who are paid under either the E-1 or B schedules if the Secretary of State, the Auditor of State, the Treasurer of State, the Attorney General, the Supreme Court, or state board or commission decides to exempt its employees from the moratorium and notifies the Director of DAS in writing of this decision. (R.C. 124.181(E)(3).)

If an employee who is exempt from the moratorium and receives longevity adjustment credit for a period of service during the moratorium, takes a position with another entity of state government or a political subdivision of the state, either during or after the moratorium, and if that entity's employees either are or were subject to the moratorium, the employee will continue to retain the credit that was earned. But, if the moratorium is in effect when the employee takes the new position, the employee will stop receiving *additional* longevity adjustment credit so long as the employee is in that position, until the moratorium expires. (R.C. 124.181(E)(3).)

### **Two per cent pay supplement**

(R.C. 124.183 and 124.181(B) and (C) and 3121.01(D))

### **In general**

The bill creates a one-time 2% pay supplement that will be paid in the first paycheck in December 2004 to each permanent employee who (1) is an exempt employee, (2) was appointed on or before March 6, 2003, and (3) is on the active payroll as of November 14, 2004.<sup>229</sup> The pay supplement for nonmanagerial and nonprofessional exempt employees paid under Schedule E-1 will be based on the annualization of the top step in the pay range that the employee is in as of November 14, 2004. The pay supplement for managerial and professional exempt employees paid under Schedule E2 will be based on the annualization of the maximum hourly rate of the pay range that the employee is in on November 14, 2004. Finally, the pay supplement for any other exempt employee not paid under

---

<sup>229</sup> R.C. 124.183(A) defines "active payroll" as meaning when an employee is actively working; on military, workers' compensation, occupational injury, or disability leave; or on an approved leave of absence.



either the E-1 or E-2 schedules will be based on the annualization of the base rate of the employee's pay on November 14, 2004. (R.C. 124.183(B), (C), and (E).)

### **Qualifications**

Employees of the General Assembly, legislative agencies, and the Supreme Court are not eligible for the 2% pay supplement. Additionally, employees of the Secretary of State, the Auditor of State, the Treasurer of State, the Attorney General, and state boards and commissions are not eligible for the pay supplement unless the Secretary of State, Auditor of State, Treasurer of State, Attorney General, board, or commission decides its employees should be eligible and notifies the Director of DAS in writing of this decision on or before July 1, 2004. (R.C. 124.183(G).)

### **Proration**

A part-time employee who is eligible to receive the 2% pay supplement will have the employee's supplement pro-rated based on the number of hours worked in the 26 pay periods before November 14, 2004. An employee who is eligible to receive the supplement and who was on a voluntary leave of absence will have the employee's supplement pro-rated based on the number of hours worked in the 26 pay periods before November 14, 2004. (R.C. 124.183(D).)

### **Retirement system caveat**

The 2% pay supplement is not subject to withholding for deposit into any state retirement system and is not to be used for calculation purposes in determining an employee's retirement benefits (R.C. 124.183(F)).

### **Child support law caveat**

Unless the 2% pay supplement is \$150 or more, it is not to be considered "income" for purposes of the Collection and Disbursement of Child Support Law (R.C. Chapter 3121.).

### **0.08 blood alcohol concentration reverter**

The bill provides that if the United States Congress repeals the federal mandate requiring the Secretary of Transportation, beginning in fiscal year 2004, to withhold a percentage of a state's federal-aid highway money if that state has not enacted and is not enforcing a law that provides that any person with a blood alcohol concentration of 0.08 of 1% or more while operating a motor vehicle in the state is deemed to have committed a *per se* driving while intoxicated offense, or if a federal court with jurisdiction over Ohio declares the mandate to be unconstitutional or otherwise invalid, the prohibited alcohol concentrations

specified in Ohio's boating, driving, and implied consent DUI laws revert to their previous levels, to wit:

(1) The prohibited alcohol concentration in a person's whole blood will be 0.10 of 1% by weight of alcohol per unit volume.

(2) The prohibited alcohol concentration in a person's breath will be 0.10 of one gram by weight of alcohol per 210 liters of breath.

(3) The prohibited alcohol concentration in a person's blood serum or plasma will be 0.12 of 1% by weight per unit of volume.

(4) The prohibited alcohol concentration in a person's urine will be 0.14 of one gram by weight of alcohol per 100 milliliters of urine.

### **Commercial driver's licenses (CDL)**

(R.C. 4506.14 (and future version), 4506.15 (and future version), 4506.16 (and future version), 4506.20 (and future version), and 4506.24)

In compliance with federal law, current law requires a commercial driver's license (CDL) to drive a commercial motor vehicle (generally, large trucks, buses, and vehicles transporting hazardous material). A CDL holder may be required to have an endorsement, or authorization to operate a specific type of commercial motor vehicle. Commercial driver's license holders are subject to criminal prohibitions that apply only to the operation of a commercial motor vehicle; CDL holders also are subject to being administratively disqualified from operating a commercial motor vehicle, and may have their vehicles placed out of service for certain violations.

The bill makes all of the following changes to the CDL law: (1) specifically prohibits a person from using a commercial motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance and makes violation of the prohibition a first degree misdemeanor (under current law this is one element used to determine a period of CDL disqualification), (2) requires a person renewing a CDL who wishes to retain an endorsement to transport hazardous material to submit to any background check required by federal law, (3) prohibits a person from driving a commercial motor vehicle in violation of state, federal, and local railroad grade crossing laws and makes violation of the prohibition a first degree misdemeanor, (4) establishes that a CDL holder who violates railroad grade crossing laws is subject to disqualification for 60 days for a first offense, 120 days for a second offense within three years, and one year for a subsequent offense within three years (in addition to the criminal penalty), (5) prohibits the employer of a CDL holder from

knowingly allowing the person to operate a commercial motor vehicle in violation of the alcohol and other prohibitions that apply to CDL holders and establishes a fine of up to \$10,000 for the violation, and (6) in regard to a restricted CDL for farm-related service industries, changes the time period during which an applicant for such a license must have a good driving record from one year to two years. In general, these changes ensure continued compliance with federal CDL requirements.

### **Railroad crossing traffic laws**

(R.C. 4511.62 (and future version) and 4511.63 (and future version))

Generally, current law requires a person to stop before entering a railroad grade crossing if a device or flagperson is signaling the approach of a train, if a train is giving an audible signal, or if there is insufficient space to accommodate the vehicle on the other side of the crossing. The bill requires a person also to stop and not proceed across a railroad crossing if there is insufficient undercarriage clearance to safely negotiate the crossing and classifies a violation of this prohibition as a fourth degree misdemeanor.

The bill also revises the current requirement for certain vehicles to stop before crossing a railroad grade crossing, regardless of whether signals or devices indicate an approaching train. Under the bill, the following vehicles must stop before crossing a railroad crossing: (1) any bus designed to carry 16 or more passengers, (2) any vehicle used to transport pupils to school or a school function if the vehicle is owned or operated by a public or nonpublic school or is operated under contract with a school, and (3) any vehicle placarded for hazardous material. Violation of this generally is a minor misdemeanor, but the penalty may be escalated based on the person's prior moving violations.

### **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.

**Prohibiting government entities from contracting with persons against whom an unresolved finding for recovery has been issued**

(R.C. 9.24)

On and after January 1, 2004, the bill prohibits state agencies and political subdivisions from awarding a contract for goods, services, or construction, paid for in whole or in part with state funds, to a person against whom an unresolved finding for recovery has been issued by the Auditor of State.

Under the bill, a finding for recovery is unresolved unless one of the following criteria applies:

(1) The money identified in the finding for recovery is certified as paid in full by the state agency or political subdivision to whom it was owed;

(2) The debtor has entered into a repayment plan that is approved by the Attorney General and the state agency or political subdivision to whom the money identified in the finding for recovery is owed. A repayment plan may include a provision permitting a state agency or political subdivision to withhold payment to a debtor for goods, services, or construction provided to or for the state agency or political subdivision pursuant to a contract that is entered into with the debtor after the date the unresolved finding for recovery was issued;

(3) The Attorney General waives a repayment plan described in (2) above for good cause;

(4) The debtor and state agency or political subdivision to whom the money identified in the finding for recovery is owed have agreed to a payment plan established through an enforceable settlement agreement;

(5) The state agency or political subdivision desiring to enter into a contract with a debtor certifies, and the Attorney General concurs, that all of the following are true:

- Essential services the state agency or political subdivision is seeking to obtain from the debtor cannot be provided by any other person besides the debtor;
- Awarding a contract to the debtor for those essential services is in the best interest of the state;
- Good faith efforts have been made to collect the money identified in the finding for recovery.

The bill requires the Attorney General to submit an initial report to the Auditor, by December 1, 2003, indicating the status of collection for all findings for recovery issued by the Auditor for calendar years 2001, 2002, and 2003. Beginning on January 1, 2004, the Attorney General must submit to the Auditor, on the first day of the month, a list of all findings for recovery that have been resolved during the month preceding the submission of the list and a description of the means of resolution.

Under the bill, the Auditor of State must establish a publicly accessible database by January 1, 2004, of persons against whom an unresolved finding for recovery has been issued in calendar years 2001, 2002, and 2003, including the amount identified in the finding. The bill requires the Auditor to maintain this database and, beginning January 15, 2004, to update the database by the fifteenth day of each month to reflect resolved findings for recovery that are reported to the Auditor by the Attorney General on the first day of that same month, as described above.

State agencies and political subdivisions, before awarding contracts using state funds, must verify that the person to whom the contract is to be awarded does not appear on the Auditor's database.

"Finding for recovery" is defined by the bill as a determination issued by the Auditor that public property has been converted or misappropriated or that public money has been: illegally expended, collected but not accounted for, or due but not collected.

#### **Retail installment contract charges**

(R.C. 1317.07)

Existing retail installment law permits a retail installment contract to include agreements for payment of delinquent charges, taxes, and filing, recording, or release fees, as well as payment of a capped "documentary service charge customarily and presently being paid on May 9, 1949, in a particular business and area." The bill raises to \$100 the current \$50 cap on a documentary service charge. The cap most recently was increased from \$30 to the current \$50, in Am. Sub. H.B. 283 of the 123rd General Assembly.

#### **Monitoring of home care services provided to dependent adults**

(R.C. 121.36)

Under the bill, certain contracts for the provision of publicly-funded home care services to elderly or disabled adults must include terms requiring the service provider to have a system in place that effectively monitors whether the provider's

employees are present at the location where the services are to be provided and at the time they are to be provided. The monitoring system provisions must be included in contracts beginning one year after the bill's 90-day delayed effective date.

The bill specifies that the monitoring system requirement applies when services are provided to "home care dependent adults." Under the bill, a service recipient is considered a home care dependent adult if the individual resides in a private home or other noninstitutional and unlicensed living arrangement, without the presence of a parent or guardian, but has health and safety needs that require the provision of regularly scheduled home care services to remain in the home or other living arrangement because one of the following is the case: (1) the individual is at least age 21 but less than 60 and has a disability or (2) the individual is age 60 or older, regardless of whether the individual has a disability. The bill does not otherwise specify the meaning of "home care services."

The Departments of Mental Retardation and Developmental Disabilities, Aging, Job and Family Services, and Health must each implement the monitoring system requirement with respect to all contracts the Department enters into for the provision of home care services to home care dependent adults that are paid for in whole or in part with federal, state, or local funds. Each Department must also require all public and private entities that receive money from or through the Department to implement the requirement when entering into such contracts, including such entities as county boards of mental retardation and developmental disabilities, area agencies on aging, county departments of job and family services, and boards of health.

To be considered an effective monitoring system, the bill specifies that the system established by a provider must include at least the following components:

(1) A mechanism for verifying whether the provider's employees are providing home care services at the location where the services are to be provided and at the time they are to be provided;

(2) A protocol to be followed in scheduling a substitute employee when the mechanism identifies that an employee has failed to provide services at the proper location and time, including standards for determining the length of time that may elapse without jeopardizing the health and safety of the home care dependent adult;

(3) Procedures for maintaining records of the information obtained through the monitoring mechanism;



(4) Procedures for compiling notarized annual reports of the information obtained, including statistics on the rate at which home care services were provided at the proper location and time;

(5) Procedures for conducting random checks of the accuracy of the monitoring system. Random, for this purpose, is considered not less than 5% nor more than 15% of the home care visits the provider's employees make to different clients within a particular work shift.

In implementing the monitoring system requirement, the Departments must exempt providers who are self-employed with no other employees or are otherwise considered by the Departments not to be agency providers. The bill requires the Departments to conduct a study on how the exempted providers may be made subject to the requirement. Not later than two years after the bill's 90-day delayed effective date, the Departments must prepare a report of their findings and recommendations and submit it to the President of the Senate and the Speaker of the House of Representatives.

The bill requires each Department to adopt rules as necessary to implement its provisions regarding home care monitoring systems. The rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

### **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.

#### **Crime Victims Reparations Awards**

(R.C. 2743.60)

Under existing law, an award of reparations may not be made to a claimant if the victim engaged in certain criminally injurious conduct. The bill makes an exception by allowing an award to a minor dependent of a deceased victim for the dependent's economic loss if (1) the minor dependent is not ineligible for an award due to his or her own criminal history, and (2) the victim was not killed while engaging in violent felonious conduct that contributed to the criminally injurious conduct that gave rise to the claim.

#### **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.<sup>230</sup> This requirement was to expire October 16, 2003.

---

<sup>230</sup> A closed panel plan is one in which services are covered only if provided by a facility or provider that has a contract with the health insuring corporation.

The 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,<sup>231</sup> for the purpose of 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

---

<sup>231</sup> "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 Developmental Disabilities, the Department of Mental Health, or any other agency or department of state government (R.C. 107.32(A)(1)).

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 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.<sup>232</sup> 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.

### **Legislative Audit Commission Study Committee**

(Section 145.03KK)

The bill creates the Legislative Audit Commission Study Committee consisting of the four members mentioned below. The committee must study how other states provide for a legislative auditing function within their respective legislative branches of government and must make recommendations (1) on how Ohio should address the legislative auditing function and (2) on the funding levels necessary to accomplish the objectives recommended. The committee must publish its findings and recommendations in a report to the Governor, the Speaker and the Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate, not later than December 31, 2003. Upon submission of the report, the committee must cease to exist.

Two members of the committee 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. The other two members of the committee 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. All vacancies in the membership of the committee must be filled in the same manner prescribed for original appointments. The members of the committee must serve without compensation, but must be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

---

<sup>232</sup> "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)).



The bill specifies that the committee members must select a chairperson from among themselves. The Legislative Service Commission must provide necessary support to the committee.

**Muskingum River Advisory Council**

(R.C. 1501.25)

The Muskingum River Advisory Council existed until December 31, 2002. Membership consisted of four members of the General Assembly--two from the House of Representatives and two from the Senate, four persons interested in the development of recreational and commercial uses of the river appointed by the Governor, two representatives of the Department of Natural Resources, one representative of the Department of Development, one representative of the Environmental Protection Agency, one representative of the Department of Transportation, one representative of the Ohio Historical Society, 12 persons appointed by county commissioners and mayors from the four counties through which the river flows, and one representative of the Muskingum Watershed Conservancy District. The Council was required to prepare an annual report on the conditions of the river area, the Council's activities, any recommendations for actions by the General Assembly or any state agency, and estimates of the cost of the recommendations. The Council also was authorized to conduct various activities and provide various services concerning the river and river area (see below). The Department of Natural Resources (DNR) was required to provide staff assistance to the Council as needed.

The bill recreates the Muskingum River Advisory Council. The requirements governing membership and the Council's authority and responsibilities are the same as in prior law. Thus, the Council is required to prepare an annual report and is authorized to provide all of the following: coordination among local governments, state agencies, and federal agencies that are involved in river-related activities; aid to civic groups and individuals who want to make improvements to the river; information and planning aid to state and local agencies responsible for historic, commercial, and recreational development of the area; and updated information to the United States Army Corps of Engineers, DNR, and the Muskingum Conservancy District concerning potential hazards to flood control or navigation, erosion problems, debris accumulation, and deterioration of locks or dams. DNR must continue to provide staff assistance.

Under the bill, the Council is not exempt from existing law that requires boards and commissions to sunset four years after their creation. Thus, the Council will sunset at that time.



**Increase from \$15,000 to \$25,000 in the competitive bidding threshold for certain political subdivision contracts**

(R.C. 511.12, 515.01, 515.07, 731.14, 731.141, 735.05, 737.03, 3375.41, and 5549.21)

The bill raises from \$15,000 to \$25,000 the competitive bidding threshold that applies to the award of various contracts by village legislative authorities and administrators (R.C. 731.14 and 731.141) and city directors of public service and public safety (R.C. 735.05 and 737.03); of contracts for the construction and repair of library buildings by boards of library trustees (R.C. 3375.41); and of contracts for the construction of memorial buildings or monuments, for the procurement of artificial lighting for roads, public places, or buildings under its supervision or control, and for the purchase or lease of machinery and tools for the maintenance and repair of township roads, by a board of township trustees (R.C. 511.12, 515.01, 515.07, and 5549.21).

**Increase from \$10,000 to \$25,000 in the competitive bidding threshold for certain political subdivisions**

(R.C. 505.376 and 521.05)

The bill increases from \$10,000 to \$25,000 the competitive bidding threshold that applies to the award of contracts by fire and ambulance districts for any expenditure other than for employee compensation (R.C. 505.376) and by boards of township trustees for a maintenance or repair improvement of private sewage collection tiles located within a township road right-of-way (R.C. 521.05).

**Governmental Television/Telecommunications Operating Fund**

(R.C. 3353.11)

The Governmental Television/Telecommunications Operating Fund consists of revenue generated from productions undertaken by the Ohio Government Telecommunications (OGT) studio. This money is required to be used to operate the studio and repair broken equipment. The bill eliminates the Fund when its balance reaches zero.

**Certification of special police**

**Current law**

Under R.C. 1541.10, the Governor is responsible for issuing, upon the recommendation of the Chief of the Divisions of Parks and Recreation, to each park officer a commission indicating authority to make arrests. Each officer who

is so commissioned has the authority to make arrests on lands and waters owned, controlled, maintained, or administered by the Department of Natural Resources and on highways adjacent to those lands and waters for violations of laws and rules governing those lands and waters. If that authority is exercised on lands or waters administered by another division of the Department, it may be done so only pursuant to an agreement with the chief of that division or to a request for assistance by an enforcement officer of that division in an emergency.

Under current law, the Governor, upon the application of any bank, building and loan association, association of banks or building and loan associations in this state; any company owning or using a railroad in this state; 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; or any hospital that is operated by a public hospital agency or a nonprofit hospital agency and that employs and maintains its own proprietary police department or security department, may also appoint and commission any persons that the bank, building and loan association, or association of banks or building and loan associations designates, or as many of those persons as the Governor considers proper, to act as police officers for and on the premises listed above, when directly in the discharge of their duties. (R.C. 4973.17.)

#### **Operation of the bill**

Under the bill, the authority to appoint and commission persons to act as police officers in the above mentioned circumstances is transferred from the Governor to the Secretary of State (R.C. 1541.10 and 4973.17).

#### **Public notice and meeting for reemployed PERS retirants**

(R.C. 145.38 and 145.381)

Current law provides that a person who retires under the Public Employees Retirement System (PERS) may be employed in a position covered by PERS. However, if the PERS retirant has received a PERS retirement allowance for less than two months when the employment begins, the retirant forfeits his or her retirement allowance for any month the retirant is employed before the expiration of the two month period. If a PERS retirant enters into a contract to provide services as an independent contractor to the employer by which the retirant was employed at the time of retirement or, less than two months after the retirement allowance begins, begins providing services as an independent contractor with another public employer, the retirant forfeits the pension portion of the retirement allowance (the portion funded by employer contributions) for the period beginning the first day of the month following the month in which the services begin and ending on the first day of the month following the month in which the services

end. The annuity portion of the retirement allowance (the portion funded by employee contributions) is suspended on the day the services begin and accumulate to the retirant's credit to be paid in a single payment after the services end.<sup>233</sup>

The bill establishes new conditions on a PERS retirant obtaining employment in a position covered by PERS or providing services as an independent contractor to a public employer. The public employer must do both of the following in accordance with rules the PERS board is to adopt:

(1) Give public notice, not less than 60 days before the employment or service is to begin, of the fact that the retirant is or will be retired and is seeking employment with the employer or to provide service as an independent contractor to the employer and that a public meeting will be held to discuss the retirant's employment. The notice must include the time, date, and location at which the meeting will take place.

(2) Hold a public meeting, between 15 and 30 days before the employment or services is to begin and after providing the required public notice, on the issue of the retirant being employed by, or providing services as an independent contractor to, the employer.

---

## NOTE ON EFFECTIVE DATES

(Sections 146.01 to 146.29)

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

---

<sup>233</sup> *There are separate penalties for state and local elected officials who retire under PERS and are elected or appointed to the same office for the remainder of the term or the term immediately following the term during which the retirement occurred. The penalty is forfeiture of the pension portion of the retirement allowance and suspension of the annuity portion until the first day of the first month following termination of the elected or appointed office. The suspended annuity is paid in a single payment after termination of the penalty period. However, the penalty is not applied if the retirant (1) was not retired at the time of election for the current term and, not less than 90 days before the election for the term, filed a written declaration of intent to retire before the end of the term with the county board of elections, (2) had been retired for not less than 90 days at the time of the election for the retirant's current term, or (3) notified the entity appointing the retirant to the office, at the time of appointment, that the retirant was already retired or intended to retire before the end of the term.*

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
Reported, S. Finance & Financial Institutions	---	---

H0095-RS-125.doc/jc:kl