



## *Final Analysis*

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*Legislative Service Commission*

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(As Passed by the General Assembly)

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**Sens. Carey, Harris, Spada**

**Effective date: June 30, 2006; certain sections and provisions effective March 30, 2006; certain other sections and provisions effective on other dates; contains item vetoes**

This analysis is arranged by state agency, beginning with the Adjutant General 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 includes a Local Government category, and concludes with 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.

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*\* This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Fiscal Note for Am. Sub. H.B. 530 for an analysis of such provisions.*

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### **ADJUTANT GENERAL**

- Exempts from the income tax National Guard death benefits and life insurance premium reimbursements received from the Adjutant General.
- Creates the Commemorative Ohio National Guard Service Medal for former members of the Ohio National Guard who have been honorably or medically discharged or released from service.
- Instructs the Adjutant General to design and distribute the medal and to collect a fee from those who apply for it.

**Income tax exemption for National Guard death benefits and life insurance premium reimbursements**

(R.C. 5747.01)

Under continuing law, the Adjutant General is required to reimburse every active duty member of the Ohio National Guard who chooses to purchase life insurance from the federal Servicemember's Group Life Insurance Program for the monthly premium paid for each month or part of a month by the member. Continuing law also requires the Adjutant General to pay a \$100,000 death benefit to the designated beneficiary or beneficiaries of any active duty member of the Ohio National Guard if the member died while performing active duty.<sup>1</sup>

The act permits a taxpayer that receives a life insurance premium reimbursement or death benefit from the Adjutant General to deduct the amount received in calculating the taxpayer's Ohio income tax liability. A taxpayer may deduct the amount only to the extent the amount is not otherwise deducted or excluded in calculating the taxpayer's Ohio or federal tax liability.

**Commemorative Ohio National Guard Service Medal**

(R.C. 5919.19)

The act creates the Commemorative Ohio National Guard Service Medal for former members of the Ohio National Guard who have been honorably or medically discharged or released from service. The act requires retired National Guard members who desire to do so to apply for the medal to the Adjutant General; they must include with their application (1) a copy of their DD-214 form or NGB-22 form (discharge papers) and (2) the fee the Adjutant General prescribes for the medal. The act relatedly instructs the Adjutant General to design and distribute the medal and to set the application fee at an amount necessary to cover the cost of producing the medal.

The act also creates the National Guard Service Medal Fund in the state treasury. The fees paid by applicants for the medal, as well as any General Assembly appropriations made for purposes of the medal program (e.g., the act's

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<sup>1</sup> For purposes of both the life insurance premium reimbursement and the death benefit, the term "active duty member" means a member of the Ohio National Guard on active duty pursuant to a presidential executive order, the federal Homeland Defense Activity Law, another congressional act, or a proclamation of the Governor. The term does not include a member performing full-time Ohio National Guard duty or performing special work active duty under federal law.

FY 2006 \$1,500 appropriation), must be credited to the Fund, and the Fund correspondingly must be used to pay the costs of producing the medal.

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## DEPARTMENT OF ADMINISTRATIVE SERVICES

- Exempts proficiency assessments in the Director of Administrative Services' records from public disclosure.
- Qualifies the right of a state employee who moves from a classified position to an unclassified position to return to the classified position.
- Prohibits exempt employees and/or other specified state employees from using vacation leave, sick leave, personal leave, or compensatory time until the leave or compensatory time appears on the employee's earning statement and the compensation described in the statement is available to the employee.
- Modifies other aspects of the use of sick leave provisions and the eligibility for holiday pay provisions, including rules for determining flexible-hours employees' holiday pay and part-time permanent employees holiday pay.
- Eliminates paid leave for attendance of court as a subpoenaed witness for a state employee subpoenaed as a result of secondary employment outside the service of the state.
- Requires that direct deposit be used to pay the compensation of all state employees paid by warrant of the Director of Budget and Management, except for employees who were hired before June 5, 2002, and who are subject to a collective bargaining agreement that does not require payment by direct deposit.
- Eliminates outdated E-1 and E-2 schedules of rates of salaries and wages to be paid to exempt employees for pay periods including July 1, 2002, and July 1, 2005, and creates new E-1 and E-2 schedules for their pay periods including July 1, 2006 (providing a 3% pay increase).
- Allows the Director of Administrative Services to establish a paper layoff process under which employees who are to be laid off or displaced may

be required, before the date of their paper layoff, to preselect their options for displacing other employees.

- Allows the Director of Administrative Services to establish a voluntary cost savings program for exempt employees.
- Makes changes in the laws governing health care benefits offered to state employees.
- Applies the uniformed services pay differential to permanent public employees employed by a state agency who are called into service by the Governor to aid civil authorities.
- Requires the Governor's Residence Advisory Commission to: (1) provide for the maintenance of plants that have been obtained by the state for the Governor's residence, (2) provide for the care and placement of plants on the grounds of the Governor's residence, and (3) preserve and seek to further establish those grounds as a representation of Ohio's natural ecosystems.
- Authorizes the Commission to accept any donation, gift, bequest, or devise as an endowment for the maintenance and care of the garden on the grounds of the Governor's residence.
- Adds the mayor of Bexley and the chief executive officer of the Franklin Park Conservatory Joint Recreation District as members of the Commission, and requires one of the five members appointed by the Governor under continuing law to have knowledge of landscape architecture, garden design, horticulture, and plants native to Ohio.
- Replaces the Director of Administrative Services (or the Director's designee) with the Director of the Office of Information Technology (or the Director's designee) as a member of the eTech Ohio Commission.
- Replaces the Director of Administrative Services (or the Director's designee) with the Director of the Office of Information Technology (or the Director's designee) as a member of the Ohio Business Gateway Steering Committee.
- Provides procedures for the release of public improvement construction funds placed in escrow by the Department of Administrative Services if



the contractor to be paid by the funds does not claim them within three years.

## **Revisions to the Civil Service Law**

### **Overview**

The act makes revisions to the laws governing paid leave, compensation, health care benefits, and layoffs with regard to exempt employees, specified state employees, or state employees in general.

### **Proficiency assessments**

(R.C. 124.09(B))

The Director of Administrative Services is required to keep records of the Director's proceedings and all examinations the Director conducts. Those records *generally* must be open for public inspection under reasonable regulations. Under former law, examinations and recommendations of former employers were the *only* records exempt from the "open for public inspection" general requirement; they continue as exceptions under the act. Still, under certain circumstances, the exceptions do not apply to the Governor or the Governor's designee in connection with an investigation.

The act also declares proficiency assessments in the Director's records as exempt from the "open for public inspection" general requirement.

### **Right of a state employee to return to a classified position after being appointed to an unclassified position**

(R.C. 124.11(D))

Generally continuing law authorizes an appointing authority whose employees are paid by warrant of the Director of Budget and Management (changed from "the Auditor of State" otherwise by the act) to appoint a person who holds a certified position in the classified service within the appointing authority's agency to a position in the unclassified service in that agency.<sup>2</sup> A

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<sup>2</sup> *The Civil Service Law (a) requires that employees in the classified service be hired and promoted through competitive and noncompetitive examinations, (b) grants them appeal rights when they are suspended, demoted, removed, reduced in pay or position, or laid off, and (c) limits their participation in partisan political activities. These provisions do*

person appointed to a position in the unclassified service in this manner retains the right to resume the position and status the person held in the classified service immediately before the person's appointment to the position in the unclassified service, regardless of the number of positions the person held in the unclassified service. These provisions of continuing law, and the provisions of the act described in the following paragraph, do not apply to employees in positions in the unclassified service of the Bureau of Workers' Compensation or the Departments of Mental Health, Rehabilitation and Correction, Mental Retardation and Developmental Disabilities, Youth Services, and Transportation who, under specific statutes applicable to the Bureau and those departments, have the right to resume positions in the classified service.

The act provides that an employee's right to resume a position in the classified service may *only be exercised when* an appointing authority demotes the employee to a pay range lower than the employee's current pay range or revokes the employee's appointment to the unclassified service. And, an employee *forfeits* the right to resume a position in the classified service when the employee is removed from the position in the unclassified service due to incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of the Civil Service Law or the rules of the Director of Administrative Services, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony. An employee also *forfeits* the right to resume a position in the classified service upon transfer to a different agency.

**Use of sick leave, vacation leave, personal leave, and compensatory time only if appears on an employee's earnings statement**

(R.C. 124.134, 124.18, 124.382, and 124.386)

Generally continuing law credits each full-time permanent and part-time permanent employee whose salary or wage is paid directly by warrant of the Director of Budget and Management (changed from "the Auditor of State" otherwise by the act) with *sick leave* of 3.1 hours for each completed 80 hours of service, excluding overtime hours worked. The act provides that this sick leave is not available for use until it appears on the employee's earning statement and the compensation described in the earning statement is available to the employee. (R.C. 124.382(B).)

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*not apply to employees in the unclassified service, who serve at the pleasure of their appointing authority.*



Generally continuing law grants specified *vacation leave* to (1) certain full-time permanent employees who are paid by warrant of the Director of Budget and Management (changed from "the Auditor of State" otherwise by the act), who are included in the job classification plan established by the Director of Administrative Services, and who are exempt from collective bargaining coverage, (2) full-time permanent employees of the General Assembly, the Supreme Court, or the Governor's office, (3) full-time permanent employees of the Auditor of State, Treasurer of State, Secretary of State, or Attorney General who are in the unclassified civil service and exempt from collective bargaining coverage, and (4) employees who hold positions for which the authority to determine compensation is given by law to a specific individual or entity other than the Director of Administrative Services. The act provides that this vacation leave is not available for use until it appears on the employee's earning statement and the compensation described in the earning statement is available to the employee. (R.C. 124.134(A).)

Generally continuing law grants *personal leave* of 32 hours each year to (1) certain employees who are paid by warrant of the Director of Budget and Management (changed from "the Auditor of State" otherwise by the act), who are included in the job classification plan established by the Director of Administrative Services, and who are exempt from collective bargaining coverage, (2) full-time permanent employees of the General Assembly, the Supreme Court, or the Governor's office, (3) full-time permanent employees of the Auditor of State, Treasurer of State, Secretary of State, or Attorney General who are in the unclassified civil service and exempt from collective bargaining coverage, and (4) employees who hold positions for which the authority to determine compensation is given by law to a specific individual or entity other than the Director of Administrative Services. The act provides that this personal leave is not available for use until it appears on the employee's earning statement and the compensation described in the earning statement is available to the employee. (R.C. 124.386(A).)

Continuing law authorizes employees paid in whole or in part by the state or by a state-supported college or university to elect to take *compensatory time* off in lieu of receiving overtime pay, on a time and one-half basis, at a time mutually convenient to the employee and the employee's administrative superior. The act provides that compensatory time is not available for use until it appears on the employee's earning statement and the compensation described in the earning statement is available to the employee. (R.C. 124.18(A).)

Current law provides that the use of *sick leave* must not be considered to be active pay status for the purposes of earning overtime pay or compensatory time by employees whose wages are paid by warrant of the Director of Budget and

Management (changed from "the Auditor of State" otherwise by the act). The act further provides that *the use of any leave in lieu of sick leave* must not be considered for these purposes. (R.C. 124.18(A).)

### **Holiday pay**

(R.C. 124.18)

Former law prohibited an employee paid by warrant of the Auditor of State who was scheduled to work on a holiday and who did not report to work due to an illness of the employee or of a member of the employee's immediate family from receiving holiday pay. The act instead provides that an employee paid by warrant of the Director of Budget and Management who is scheduled to work on a holiday and who does not report to work *the day before, the day of, or the day after a holiday* due to an illness of the employee or of a member of the employee's immediate family must not receive holiday pay, *unless the employee can provide documentation of extenuating circumstances that prohibited the employee from so reporting to work.* (R.C. 124.18(B)(1).)

Former law entitled an employee whose work schedule was other than Monday through Friday to holiday pay for holidays observed on the employee's day off regardless of the day of the week on which they were observed. The act entitles such an employee to *eight hours of* holiday pay for holidays observed on the employee's day off regardless of the day of the week on which they are observed. (R.C. 124.18(B)(3).)

Former law entitled a flexible-hours employee (an employee who may work more or less than eight hours on any given day as long as the employee works 40 hours in the same week) to holiday pay for the number of hours for which the employee would normally have been scheduled to work. The act instead provides that a flexible-hours employee, who is normally scheduled to work in excess of eight hours on a day on which a holiday falls, either must be required to work an alternate schedule for that week or must receive additional holiday pay for the hours the employee is normally scheduled to work. The alternate schedule may require a flexible-hours employee to work five shifts consisting of eight hours each during the week including the holiday. In such a case, the employee must receive eight hours of holiday pay for the day the holiday is observed. (R.C. 124.18(B)(4).)

Former law required part-time permanent employees to be paid holiday pay for that portion of any holiday for which they normally would have been scheduled to work. The act requires that part-time permanent employees receive holiday pay on a pro-rated basis, based upon the daily average of actual hours worked, excluding overtime hours worked, in the previous calendar quarter. The



figure must be calculated for the preceding calendar quarter on the first day of January, April, July, and October of each year. (R.C. 124.18(B)(5).)

The act also entitles a full-time permanent employee to *a minimum of eight hours of holiday pay for each holiday regardless of the employee's work shift and schedule, rather than just eight hours of holiday pay as required by former law* (R.C. 124.18(B)(4)).

**Other changes relating to sick leave and personal leave**

(R.C. 124.382 and 124.386)

Former law authorized a portion of any *sick leave credit* remaining as of the last day of the pay period preceding the *next succeeding base pay period* (the pay period that included December 1 of each year) to be converted into cash. The act eliminates the reference to "next succeeding base pay period" and instead authorizes a portion of any sick leave credit remaining as of the last day of the pay period preceding the first paycheck the employee receives in December to be converted into cash. (R.C. 124.382(A)(1) and (C).)

Former law credited a newly appointed full-time permanent employee or a nonfull-time employee who received a full-time permanent appointment with *personal leave of 32 hours, less 1.2 hours for each pay period that had elapsed following the base pay period* (see above), until the first day of the pay period during which the appointment was effective. Again, the act eliminates the reference to "base pay period" and instead credits a newly appointed full-time permanent employee or a nonfull-time employee who receives a full-time permanent appointment with personal leave of 32 hours, less 1.2 hours for each pay period that has elapsed following the first paycheck the employee receives in December, until the first day of the pay period during which the appointment was effective. (R.C. 124.386(C).)

**Paid leave for attendance as a witness**

(R.C. 124.135)

Former law entitled state employees to paid leave when subpoenaed to appear before any court, commission, board, or other legally constituted body authorized by law to compel the attendance of witnesses, if the employee was not a party to the action. The act continues to entitle a state employee to paid leave when subpoenaed to appear before any court, commission, board, or other legally constituted body authorized by law to compel the attendance of witnesses, but provides that a state employee is not entitled to paid leave if the employee is a party to the action or proceeding involved (similar to the former law) *or is*

*subpoenaed to testify as a result of secondary employment outside the service of the state.*

**Payment of state employees by direct deposit**

(R.C. 124.151)

Former law required the payment by direct deposit of the compensation of any employee whose employment commenced on or after June 5, 2002, and who was paid by warrant of the Auditor of State. The act instead requires that all employees paid by warrant of the Director of Budget and Management be paid by direct deposit *except for an employee who was appointed to the employee's current position before June 5, 2002, who is a public employee subject to the Public Employee Collective Bargaining Law, and whose applicable collective bargaining agreement does not require the employee to be paid by direct deposit.* (R.C. 124.151(B)(1) and (2).)

**Schedules of rates for certain public employees**

(R.C. 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 the employee.

**Managerial and professional employees.** Under generally continuing law, managerial and professional public employees who are permanent employees paid directly by warrant of the Director of Budget and Management (changed from "the Auditor of State" otherwise by the act), whose position is included in the state's job classification plan, and who are exempt from the Public Employee Collective Bargaining Law ("exempt employees") receive wages or salaries based upon the schedule of rates known as "Schedule E-2."<sup>3</sup> Under the E-2 schedule, there are a

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<sup>3</sup> Under R.C. 124.14(B), 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 (a) the Secretary of State, (b) the Auditor of State, (c) the Treasurer of State, or (d) the 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 an individual or entity other than the Department of Administrative Services; and

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. (R.C. 124.152(B) and (C).)

**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." Similar to the E-2 schedule, the E-1 schedule contains 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 schedule, pay ranges under the E-1 schedule 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. (R.C. 124.152(B) and (C).)

**Adjustment of schedules of rates.** Under former law, there were two different sets of E-1 and E-2 schedules: one set that essentially was applicable for pay periods between July 1, 2002, and June 30, 2005, and another set that essentially was applicable for pay periods on and after July 1, 2005. The act eliminates the two sets of E-1 and E-2 schedules mentioned above and enacts new E-1 and E-2 schedules. The new schedules will apply beginning on the first day of the pay period that includes July 1, 2006, and include a 3% increase in the salaries and wages. (R.C. 124.152(B).)<sup>4</sup>

### **Paper layoffs**

(R.C. 124.321(E) and 124.324)

Under continuing law, subject to certain limitations, a laid-off employee has the right to displace the employee with the fewest retention points in the classification from which the employee was laid off or in a lower or equivalent classification in a specified order. Laid-off employees are given a notice of layoff. If they wish to exercise their displacement rights, they *generally* must notify the appointing authority *within five days* after receiving the notice of layoff (this provision is affected by the act's provisions discussed below). If they choose to displace, the next group of employees goes through the same process until all affected employees are either displaced or laid off.

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*employees of the Bureau of Workers' Compensation whose compensation the Administrator of Workers' Compensation establishes.*

<sup>4</sup> *The act also provides a new Schedule E-1 for Step Seven Only that will apply beginning on the first day of the pay period that includes July 1, 2006 (R.C. 124.152(C)).*

The act allows the Director of Administrative Services to establish a paper layoff process under which employees who are to be laid off or displaced may be required, before the date of their paper layoff, to preselect their options for displacing other employees. If this process includes a different notification requirement than the above-mentioned "within five days after receiving the notice of layoff," then that five-day requirement does not apply to employees exercising their displacement rights under the paper layoff process.

**Voluntary cost savings program**

(R.C. 124.392)

The act allows the Director of Administrative Services to establish a voluntary cost savings program for exempt employees and specifies that, if the Director decides to establish such a program, the Director must adopt rules in accordance with the Administrative Procedure Act to provide for its administration.

**Changes to the laws governing health care benefits for state employees**

(R.C. 124.82, 124.822, 124.87, 124.92, and 3917.04)

**Background law.** Generally continuing law requires the Department of Administrative Services, in consultation with the Superintendent of Insurance and in accordance with the competitive selection procedures of the State Purchasing Law, to contract with an insurance company, or a health plan in combination with an insurance company, authorized to do business in Ohio, for the issuance of a policy or contract of health, medical, hospital, dental, or surgical benefits (or any combination of them) covering state employees paid directly by warrant of the Director of Budget and Management (changed from "the Auditor of State" otherwise by the act), including elected state officials. In addition, the Department, in consultation with the Superintendent of Insurance, may negotiate and contract with health insuring corporations holding a certificate of authority under Ohio law, in their approved service areas only, for the issuance of a contract or contracts of health care services covering state employees paid directly by warrant of the Director of Budget and Management (changed from "the Auditor of State" otherwise by the act), including elected state officials. (R.C. 124.82(A) and (B).)

**Limitation.** Former law provided that, except for health insuring corporations, *no more than one* insurance carrier or health plan could be contracted with to provide the same plan of benefits for the described state employees. The act instead *authorizes* the Department to enter into contracts with

*one or more insurance carriers or health plans to provide the same plan of benefits. (R.C. 124.82(B).)*

**Condition of entry into a health insuring corporation contract.** Former law mandated that, as a condition of entering into a contract with a health insuring corporation that desired to provide health care services to the state employees (including elected state officials) described above who resided in the corporation's approved service area, the Department required the corporation to enroll the lesser of at least 500 or at least 5% of those eligible employees. This requirement applied only to contracts entered into or renewed on or after July 16, 1991. The act repeals this requirement. (R.C. 124.822--outright repealed by Section 105.01 of the act.)

**Health insuring corporation expansion of service area.** Under former law, if the Superintendent of Insurance approved all or a portion of a service area expansion of a health insuring corporation into an additional county or counties, the Department had to authorize the corporation, upon its meeting the Department's established participation criteria, to participate in the next open enrollment for state employees who resided in the expanded service area if, before the expansion of the service area, fewer than two health insuring corporations were available to state employees in the county or counties into which the corporation expanded. The act eliminates this provision. (R.C. 124.92--outright repealed by Section 105.01 of the act.)

**State Employee Health Benefit Fund.** Continuing law establishes in the state treasury the State Employee Health Benefit Fund for the sole purpose of enabling the Department to provide state employees with the health care *insurance coverage* described above. Under former law, amounts from the Fund could be used to pay direct and indirect costs that were attributable to consultants *or a third-party administrator* and that were necessary to administer the Fund's operation. The act instead provides that amounts from the Fund may be used to pay direct and indirect costs that are attributable to consultants or *third-party administrators* and that are necessary to administer the Fund's operation. (R.C. 124.87(B).)

**Group insurance and voluntary supplemental benefit plans.** Former law authorized an employee *of the state* or of a political subdivision or district of the state to authorize in writing the deduction from the employee's salary or wages of the premium or portion of a premium the employee agreed to pay to an insurer authorized to do business in Ohio for life, endowment, health, accident, or health and accident insurance, annuities, or hospitalization insurance, or a salary savings plan, provided that, in the case of the types of insurance mentioned above, they were offered as *group insurance* and at least 10% of the employees of a political

subdivision or of any department, agency, bureau, district, commission, or board voluntarily elected to participate in that group insurance (R.C. 3917.04(A)).

The act continues these provisions as they apply to employees of political subdivisions or districts of the state, but provides that they no longer apply to employees paid by warrant of the Director of Budget and Management (R.C. 3917.04(A)).

The act also specifies that the Department of Administrative Services only may offer employees paid by warrant of the Director of Budget and Management *voluntary supplemental benefit plans* that are selected through a state-administered request for proposals process. If an employee authorizes the Director of Administrative Services, in writing, to deduct the premium or a portion of the premium agreed to be paid by the employee to a voluntary supplemental benefit plan provider from the employee's salary or wages, the Director may deduct this amount from the employee's salary or wages and pay it to the provider. Only those employees enrolled in a voluntary supplemental benefit plan on or before the act's effective date for these provisions may continue to participate in a plan that was not selected through a state-administered request for proposals process. (R.C. 3917.04(B)(1).)

Finally, under the act, the Director of Budget and Management may issue warrants covering salary or wage deductions that have been authorized by employees paid by warrant of the Director in favor of a voluntary supplemental benefit plan provider in the amount authorized by those employees (R.C. 3917.04(B)(2)).

### **Military pay differential**

(R.C. 5923.05)

Under continuing law, permanent public employees who are employed by a state agency and who are members of the Ohio organized militia or members of other reserve components of the United States Armed Forces (including the Ohio National Guard) are entitled to a leave of absence without loss of pay *for up to one month* each calendar year while serving in the uniformed services. In addition, under continuing law, permanent public employees who are employed by a state agency, who are entitled to the latter leave of absence, and who are called or ordered to the uniformed services *for longer than a month* pursuant to an executive order of the President of the United States, an act of Congress, or an order of the Governor to the Ohio National Guard to perform training or specified duty (R.C. 5919.29) are entitled to a leave of absence for the designated period and to be paid during each monthly period of that leave of absence the difference

between their permanent public employee gross monthly wage or salary and the sum of their military pay and allowances.

The act extends the pay differential provision for permanent public employees who are employed by state agencies to such employees who are ordered to duty for longer than a month by a proclamation of the Governor *to aid civil authorities* in executing Ohio laws, suppressing insurrection, repelling invasion, acting in a disaster situation, or promoting the health, safety, and welfare of Ohio citizens (R.C. 5923.21).

### **Governor's Residence Advisory Commission**

(R.C. 107.40)

Continuing law creates the Governor's Residence Advisory Commission. The Commission must provide for the preservation, restoration, acquisition, and conservation of all decorations, objects of art, chandeliers, china, silver, statues, paintings, furnishings, accouterments, and other aesthetic materials that have been acquired, donated, loaned, or otherwise obtained by the state for the Governor's residence. The act adds that the Commission must provide for the maintenance of plants that have been acquired, donated, loaned, or otherwise obtained by the state for the Governor's residence. In addition, the act requires that all of the aesthetic materials and plants that have been acquired, donated, loaned, or otherwise obtained by the state for the Governor's residence be approved by the Commission.

Law retained by the act requires the Commission to be responsible for the care, provision, repair, and placement of furnishings and other objects and accessories of the grounds and public areas of the first story of the Governor's residence. The act adds that the Commission is also responsible for the care and placement of plants on the grounds. In exercising that responsibility, the Commission must preserve and seek to further establish the grounds as a representation of Ohio's natural ecosystem.

Law unchanged by the act authorizes the Commission to accept any donation, gift, bequest, or devise in furtherance of its duties. The act expands that authority to allow the Commission to accept any donation, gift, bequest, or devise as an endowment for the maintenance and care of the garden on the grounds of the Governor's residence.

Continuing law states that nothing in the statute governing the Commission limits the ability of a person or other entity to purchase decorations, objects of art, chandeliers, china, silver, statues, paintings, accouterments, or other aesthetic materials for placement in the Governor's residence or donation to the

Commission. No such object, however, must be placed on the grounds or public areas of the first story of the Governor's residence without the consent of the Commission. The act expands those provisions by including plants in both of the following: (1) the list of objects that may be purchased for placement in the Governor's residence or donation to the Commission, and (2) the prohibition against placement of objects on the grounds or public areas of the first story of the residence without the consent of the Commission. In addition, the act specifies that the objects on the list, including plants, may be purchased for placement on the grounds of the Governor's residence.

Under law revised in part by the act, the Commission consists of nine members, four of whom represent specific agencies or organizations and five of whom are appointed by the Governor. The act increases the number of members to 11. The two new members are the mayor of the city of Bexley, who serves during the mayor's term of office, and the chief executive officer of the Franklin Park Conservatory Joint Recreation District, who serves during the term of employment as chief executive officer.

Continuing law specifies that the five members appointed by the Governor must have knowledge of Ohio history, architecture, decorative arts, or historic preservation. The act adds that one of those members must have knowledge of landscape architecture, garden design, horticulture, and plants native to Ohio. The member having this knowledge initially must be appointed upon the first vacancy on the Commission occurring on or after the act's effective date.

Under former law, five members of the Commission constituted a quorum, and the affirmative vote of five members was required for approval of any action of the Commission. Because the act increases the number of members from nine to eleven, it also increases the quorum and affirmative vote requirements from five to six members.

### **Membership of the eTech Ohio Commission**

(R.C. 3353.02)

The eTech Ohio Commission is an independent agency that assumed the duties of the former SchoolNet Commission and the former Educational Telecommunications Network Commission. It consists of 13 members, nine of whom are voting members. Six of the voting members are representatives of the public: four appointed by the Governor with the advice and consent of the Senate; one appointed by the Speaker of the House; and one appointed by the President of the Senate. The Superintendent of Public Instruction or a designee of the Superintendent, the Chancellor of the Ohio Board of Regents or a designee of the

Chancellor, and the Director of Administrative Services or a designee of the Director are all ex officio voting members.

The act replaces the Director of Administrative Services with the Director of the Office of Information Technology or the Director's designee.

**Membership of the Ohio Business Gateway Steering Committee**

(R.C. 5703.57)

The Ohio Business Gateway Steering Committee directs the development of the Ohio Business Gateway<sup>5</sup> and oversees its operations. The Committee consists of the following members:

(1) Not more than two representatives of the business community, not more than two representatives of municipal tax administrators, and not more than two tax practitioners, all appointed by the Governor with the advice and consent of the Senate;

(2) The Secretary of State or the Secretary of State's designee;

(3) The Treasurer of State or the Treasurer of State's designee;

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

(5) The Tax Commissioner or the Tax Commissioner's designee; and

(6) The Director of Administrative Services or the Director's designee.

The act replaces the Director of Administrative Services or the Director's designee with the Director of the Office of Information Technology or the Director's designee.

**Release of unclaimed public improvement construction funds held in escrow**

(Section 506.03)

Under continuing law, if a state or local government entity does not pay the money it owes a contractor under a public improvement contract on the day it is due, the money must be placed in escrow with one or more banks or building and loan associations in Ohio selected by mutual agreement between the contractor

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<sup>5</sup> As defined in R.C. 718.051 (not in act), the "Ohio Business Gateway" is an online computer network system that allows private businesses to electronically file business reply forms with state agencies.

and public entity. The mutual agreement must provide for the deposit of the money into an escrow account or investment of the money by the escrow agent. Continuing law being modified by the act also requires the agreement to provide for the release of the money to the appropriate party on receipt of notice from the entity and contractor or on receipt of an arbitration or Court of Claims order.

The act provides that if money deposited into such an escrow account by the Department of Administrative Services has not been released due to the failure of the contractor, within three years, to give notice requesting release, the escrow agent must release the money to the Director of Administrative Services if all of the following occur: (1) the Director notifies the contractor of the existence of the escrowed amount in writing, sent by certified mail to the last known addresses of the contractor and the contractor's statutory agent, if such agent exists, (2) if a mechanics lien has been filed against the contractor for labor performed or materials supplied in connection with the project, the Director notifies the lien claimant of the existence of the escrowed amount in writing, sent by certified mail to the lien claimant's last known address and to the last known address of the lien claimant's statutory agent, if such agent exists, and (3) the contractor or statutory agent and, if applicable, the lien claimant or statutory agent fail to respond to the notice within 60 days after the notice is sent. The Director is required to deposit the released money into the State Architect's Fund. The released money must be considered an additional fee related to the administration of the contract for which the escrow deposit was made.

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## DEPARTMENT OF AGING

- Requires a criminal records check of persons under final consideration for employment with the Office of the State Long-Term Care Ombudsperson Program in a position that involves providing ombudsperson services to residents of long-term care facilities and recipients of community-based long-term care services.
- Expands the requirement that persons under final consideration for employment with a PASSPORT agency in a position that involves providing direct care to an older adult undergo a criminal records check to persons under final consideration with any community-based long-term care agency in a position that involves providing direct care to an individual of any age.
- Expressly adds transportation services as a service that is considered a community-based long-term care service for purposes of state law



governing ombudsperson services and certification of community-based long-term care agencies.

**Criminal records checks for ombudspersons**

(R.C. 173.27, 109.57, 109.572, and 173.14)

The Department of Aging is required to establish and operate a long-term care ombudsperson program, which is known as the Office of the State Long-Term Care Ombudsperson Program. The Office consists of the State Long-Term Care Ombudsperson, the Ombudsperson's staff, and regional long-term care ombudsperson programs. Among the Office's duties are to receive, investigate, and attempt to resolve complaints regarding the health, safety, welfare, or civil rights of residents of long-term care facilities, such as nursing homes, or recipients of community-based long-term care services.<sup>6</sup>

The act requires the State Long-Term Care Ombudsperson or the Ombudsperson's designee to request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check with respect to each job applicant who is under final consideration for employment with the Office, including a regional program, in a full-time, part-time, or temporary position that involves providing ombudsperson services to residents of long-term care facilities or recipients of community-based long-term care services. The Director of Aging is to request the criminal records check if the applicant is under final consideration for employment as the State Long-Term Care Ombudsperson. The applicant must be informed when he or she initially applies for the job that a criminal records check is required and that the applicant must provide a set of fingerprint impressions if the applicant comes under final consideration for the job. A criminal records check is not required for a person who provides ombudsperson services as a volunteer without receiving or expecting to receive any form of remuneration other than reimbursement for actual expenses.

If the job applicant does not present proof of having resided in Ohio for the five-year period immediately before the date the criminal records check is requested or provide evidence that within that period the Superintendent has requested information about the applicant from the Federal Bureau of Investigation (FBI) in a criminal records check, the criminal records check request must ask that the Superintendent obtain information from the FBI as part of the

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<sup>6</sup> See "*Definition of 'community-based long-term care services'*," below.

criminal records check. Even if the applicant presents such residence proof, the criminal records check request may ask for the additional FBI information.

The State Long-Term Care Ombudsperson, Ombudsperson's designee, or Director must provide the job applicant a copy of a form prescribed by the Superintendent to obtain the information necessary to conduct the criminal records check. The person must also be provided with a standard fingerprint impression sheet prescribed by the Superintendent. The Ombudsperson, designee, or Director is required to forward the completed form and impression sheet to the Superintendent. The applicant must be denied the job if he or she fails to complete the form or provide fingerprint impressions.

The Office of the State Long-Term Care Ombudsperson Program is required to pay BCII the fee prescribed by the Superintendent for conducting the criminal records check. However, the Office is permitted to require that the job applicant reimburse the Office for all or part of the fee if the Office notifies the applicant at the time of initial application of the amount that the applicant must pay to the Office.

The job applicant is not to be hired if the applicant has been convicted of or pleaded guilty to certain offenses unless the applicant meets personal character standards that the Director is required to include in rules. The following are the disqualifying offenses: aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, failing to provide for a functionally impaired person, aggravated menacing, patient abuse or neglect, kidnapping, abduction, extortion, coercion, rape, sexual battery, gross sexual imposition, sexual imposition, importuning, voyeurism, public indecency, felonious sexual penetration, prostitution, disseminating material harmful to juveniles, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, illegal use of a minor in nudity-oriented material or performance, aggravated robbery, robbery, aggravated burglary, burglary, breaking and entering, theft, unauthorized use of a vehicle, unauthorized use of property, passing bad checks, misuse of credit cards, forgery, Medicaid fraud, securing writings by deception, insurance fraud, receiving stolen property, domestic violence, illegal conveyance of certain items onto grounds of detention facility or mental health or mental retardation and developmental disabilities facility, carrying concealed weapons, having weapons while under disability, improperly discharging firearm at or into a habitation or school safety zone, corrupting another with drugs, drug trafficking, drug possession, permitting drug abuse, deception to obtain a dangerous drug, illegal processing of drug documents, adulteration of food, or an existing or former law of this state, any other state, or the United States that is substantially equivalent to any of those offenses.



The job applicant may be hired conditionally pending the results of the criminal records check if the check is requested not later than five business days after the applicant begins the conditional employment. The conditional employment must be terminated if the results, other than results of a request for information from the FBI, are not obtained within 60 days of the date the criminal records check is requested. The conditional employment must also be terminated if the results indicate that the applicant has been convicted of or pleaded guilty to any of the disqualifying offenses unless the applicant meets the personal character standards set in rules.<sup>7</sup> Such termination of the conditional employment is considered just cause for discharge for the purpose of denying unemployment compensation if the applicant made any attempt to deceive the Ombudsperson about his or her criminal record.

The report of the criminal records check is not a public record and may be made available only to the following:

- The job applicant or the applicant's representative.
- The State Long-Term Care Ombudsperson, Ombudsperson's designee, Director of Health, or a representative of those individuals.
- If the Ombudsperson designates the head or other employee of a regional long-term care ombudsperson program to make the criminal records check request, a representative of the Office of the State Long-Term Care Ombudsperson Program who is responsible for monitoring the regional program's compliance with the act's provisions regarding the criminal records check.
- A court, hearing officer, or other necessary individual involved in a case dealing with the applicant's denial of employment or the applicant's employment or unemployment benefits.

The act includes provisions regarding civil actions for damages brought as a result of an injury, death, or loss to person or property caused by an individual the Office of the State Long-Term Care Ombudsperson Program employs in a position for which a criminal records check is required. If an individual is so employed in good faith and reasonable reliance on the report of the criminal records check, the Office may not be found negligent solely because of its reliance on the report, even if the information in the report is determined later to have been incomplete or inaccurate. If the Office conditionally employed the individual in

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<sup>7</sup> *The act permits the Office of the State Long-Term Care Ombudsperson to continue to employ the job applicant if the applicant meets the personal character standards.*

good faith pending the results of the criminal records check, the Office may not be found negligent solely because it employed the individual before receiving the report of the criminal records check. If the Office in good faith employed the individual according to the personal character standards set in the Director's rules, the Office may not be found negligent solely because the individual prior to being employed had been convicted of or pleaded guilty to a disqualifying offense.

The Director of Aging is required to adopt rules to implement the act's provisions regarding the criminal records check. The rules must specify circumstances under which the long-term care ombudsperson program may employ a job applicant who has been convicted of or pleaded guilty to a disqualifying offense but meets personal character standards set by the director.

In addition to requiring a criminal records check for an individual under consideration for employment with the Office of the State Long-Term Care Ombudsperson Program in a full-time, part-time, or temporary position that involves providing ombudsperson services to residents of long-term care facilities or recipients of community-based long-term care services, the act permits the State Long-Term Care Ombudsperson, Ombudsperson's designee, or Director of Health to request that the Superintendent of BCII investigate and determine whether BCII has any information that pertains to an individual who has applied for employment in a position that does not involve providing ombudsperson services.

**Criminal records check for community-based long-term care agencies**

(R.C. 173.394, 109.57, 109.572, 173.39, and 173.391)

Continuing law requires that a job applicant under final consideration for employment with a PASSPORT agency (a public or private entity that provides home and community-based services to individuals through the Medicaid waiver program known as PASSPORT) in a position that involves providing direct care to such older adults undergo a criminal records check.<sup>8</sup> The chief administrator of the PASSPORT agency must request that the Superintendent of the Bureau of Criminal Identification and Investigation conduct the criminal records check unless the applicant has been referred by an employment service and the service or the applicant makes the request to the Superintendent. The PASSPORT agency may not hire the applicant for the position if the applicant has been convicted of or pleaded guilty to a disqualifying offense unless the applicant meets personal character standards set by rule adopted by the Director of Aging. The applicant

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<sup>8</sup> *A criminal records check is not required for an individual who provides direct care as a volunteer without receiving or expecting to receive any form of remuneration other than reimbursement for actual expenses.*

may be employed conditionally pending results of the criminal records check. The law governing these criminal records checks is very similar to the provisions of the act regarding criminal records checks for individuals under final consideration for employment with the Office of the State Long-Term Care Ombudsperson Program, including the list of disqualifying offenses.<sup>9</sup>

The act expands the criminal records check requirements to job applicants under final consideration for employment with any community-based long-term care agency, not just PASSPORT agencies, in a position that involves providing direct care. The act applies the requirement to positions that involve providing direct care to individuals of any age. "Community-based long-term care agency" is defined as an individual, private entity, or government entity, including a PASSPORT agency, that provides community-based long-term care services<sup>10</sup> under a program the Department of Aging administers.

The results of a criminal records check for a community-based long-term agency may be made available only to the following:

- The job applicant or applicant's representative.
- The chief administrator of the agency that requested the check or the agency's representative.
- The administrator of any other facility, agency, or program that provides direct care to individuals<sup>11</sup> and is owned or operated by the same entity that owns or operates the agency that requested the check.
- A court, hearing officer, or other necessary individual involved in a case dealing with the applicant's denial of employment or the applicant's employment or unemployment benefits.
- The employment service that referred the applicant to the agency.

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<sup>9</sup> *The provisions of the act regarding criminal records checks for the Office of the State Long-Term Care Ombudsperson Program do not provide for employment services to request the criminal records check.*

<sup>10</sup> See "**Definition of "community-based long-term care services"**," below.

<sup>11</sup> *Under prior law that applied the criminal records check requirement to PASSPORT agencies only, the results could be made available to the administrator of any other facility, agency, or program that provided direct care to individuals age 60 or older (rather than individuals of any age) and was owned or operated by the same entity that owned or operated the PASSPORT agency.*

- The Director of Aging or a person authorized by the Director to monitor a community-based long-term agency's compliance with the criminal records check requirement.

**Definition of "community-based long-term care services"**

(R.C. 173.14)

As discussed above, state law governing the Office of the State Long-Term Care Ombudsperson Program provides that one of the Office's duties is to receive, investigate, and attempt to resolve complaints regarding the health, safety, welfare, or civil rights of recipients of community-based long-term care services. State law also prohibits the Department of Aging from paying a person or government entity for providing community-based long-term care services under a program the Department administers unless the person or government entity is certified by the Department or provides the services under a contract with the Department that includes detailed conditions of participation and service standards.<sup>12</sup>

"Community-based long-term care services" are health and social services provided to persons in their own homes or in community care settings, including case management, home health care, homemaker services, chore services, respite care, adult day care, home-delivered meals, personal care, physical therapy, occupational therapy, speech therapy, and any other health and social services that allow persons to retain their independence in their own homes or in community care settings. The act expressly adds transportation services as a service that is a community-based long-term care service.

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**DEPARTMENT OF AGRICULTURE**

- Changes the composition of the Farmland Preservation Advisory Board by removing the representative of the Natural Resources Conservation Service in the United States Department of Agriculture and replacing that member with a person representing soil and water conservation interests.
- Requires the Department of Agriculture to refund money collected under the law governing the sale of vegetable and flower seeds to vegetable and flower seed labelers who sold seeds in packages of specified sizes from January 1, 2004, through December 31, 2005.

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<sup>12</sup> *The contract cannot be for Medicaid-funded services, other than services provided under the component of Medicaid known as the PACE Program.*

- Requires the Department to notify those seed labelers who may be eligible for a refund, and requires a seed labeler who may be eligible for a refund to provide information that the Department requests in order to determine if the seed labeler is eligible for a refund.
- Requires the Director of Agriculture to use money appropriated to the continuing Commercial Feed, Fertilizer, Seed, and Lime Inspection and Laboratory Fund to pay the refunds.

### **Farmland Preservation Advisory Board**

(R.C. 901.23; Section 709.03)

Continuing law establishes the Farmland Preservation Advisory Board, which consists of 12 voting members appointed by the Director of Agriculture. Each member serves a three-year term, and the terms are staggered so that only four members' terms expire in any given calendar year. Under former law, one of the members of the Board was required to be a representative of the Natural Resources Conservation Service in the United States Department of Agriculture. The act eliminates the member from the Natural Resources Conservation Service and replaces that member with a person representing soil and water conservation interests. The act then specifies that the person representing soil and water conservation interests must serve the remainder of the term that would have been served by the member from the Natural Resources Conservation Service.

### **Fee refunds for certain vegetable and flower seed labelers**

(Section 709.06)

Law unchanged by the act requires a person who holds a seed labeler permit to file with the Director of Agriculture a semiannual report on the amount of seed that the person sells in this state. The seed labeler must include with the report a fee that is based on the amount of seed that the person sold. Sub. S.B. 189 of the 126th General Assembly, which was enacted in early 2006, revises the requirements governing the calculation of the fee to be paid by vegetable and flower seed labeler permit holders. The act requires the Department of Agriculture to refund money collected from the fee as it existed prior to the law's amendment by Sub. S.B. 189 of the 126th General Assembly to either or both of the following:

(1) Vegetable seed labelers who sold vegetable seeds in hermetically sealed containers of eight ounces or less with a seed count of 1,000 seeds or more from January 1, 2004, through December 31, 2005; and

(2) Flower seed labelers who sold flower seeds in hermetically sealed containers of eight ounces or less containing more than 300 seeds from January 1, 2004, through December 31, 2005.

The act requires the Department to notify those seed labelers who may be eligible for such a refund. The Department may request, and a seed labeler who may be eligible for a refund must provide, any information that the Department requests in order to determine if the seed labeler is eligible for a refund. The Department has exclusive discretion in determining eligibility for refunds. The Director of Agriculture must use money appropriated to the continuing Commercial Feed, Fertilizer, Seed, and Lime Inspection and Laboratory Fund to pay the refunds authorized under the act.

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## **ATTORNEY GENERAL**

- Specifies when various classes of debts fall due for the purpose of when they have to be certified to the Attorney General for collection.
- Authorizes the Attorney General to sell through a competitive process to any person claims arising from debts that are not paid within a specified period of time, that are certified to the Attorney General for collection, and that have become "final overdue claims."
- Provides that if a final overdue claim is sold, conveyed, or transferred to a private entity, federal confidentiality laws applicable to information contained in the claim still apply during and after the sale, conveyance, or transfer.

### **Debts owed to the state**

#### **Certification of debts to the Attorney General for collection**

(R.C. 131.02)

Under continuing law, whenever any amount owed to the state is not paid within 45 days after payment is due, the public official responsible for



administering the law under which the debt arose must certify the debt to the Attorney General for collection. The act retains this provision, but specifies that the provision does not apply to worker's compensation claims and specifies when various classes of debts fall due for the purpose of when they must be certified to the Attorney General under the provision.

Under the act, the Attorney General and the officer, employee, or agent responsible for administering the law under which the amount is payable must agree on the time a payment is due, and the agreed upon times must be one of the following times:

(1) If a law of Ohio, including an administrative rule, prescribes the time a payment is required to be made or reported, when the payment is required by that law to be paid or reported;

(2) If the payment is for services rendered, when the rendering of the service is completed;

(3) If the payment is reimbursement for a loss, when the loss is incurred;

(4) In the case of a fine or penalty for which a law or administrative rule does not prescribe a time for payment, when the fine or penalty is first assessed;

(5) If the payment arises from a legal finding, judgment, or adjudication order, when the finding, judgment, or order is rendered or issued;

(6) If the payment arises from an overpayment of money by the state to another person, when the overpayment is discovered;

(7) The date on which the amount for which an employee or specified official of a corporation or business trust is personally liable for unpaid tax under the motor fuel tax, sales tax, or personal income tax law is determined;

(8) Upon proof of a claim being filed in a bankruptcy case;

(9) Any other appropriate time determined by the Attorney General and the officer, employee, or agent responsible for administering the law under which the amount is payable on the basis of statutory requirements or the business processes of the agency to which the debt is owed.

**Sale of final overdue claims to any person**

(R.C. 131.022)

The act authorizes the Attorney General, pursuant to a procedure it enacts, to sell to any person certain claims arising from debts that are certified to the Attorney General for collection pursuant to the provision described above in "**Certification of debts to the Attorney General for collection**." Under the act, the Attorney General, subject to the approval of the chief officer of the agency reporting the claim and of the Controlling Board, may sell such a claim to any person through a competitive process at any time after it has become a "final overdue claim." However, if federal funds comprise all or part of a claim, the Attorney General cannot sell it until the chief officer determines that the sale will not adversely impact the state due to any federal repayment requirements. The Attorney General may consolidate any number of final overdue claims for sale under the provisions.

Not less than 60 days before first offering a final overdue claim for sale, the Attorney General is required to provide written notice, by ordinary mail, to the person owing the claim (the debtor) at that person's last known mailing address. The notice must state the nature and amount of the claim and the manner in which the debtor may contact the Attorney General to arrange terms to pay the claim. The notice also must state that, if the debtor does not contact the Attorney General within 60 days after the date the notice is issued and arrange terms to pay the claim, then the claim will be offered for sale to a private party for collection by that party by any legal means, the debtor is deemed to be denied any right to seek and obtain a refund of any amount from which the claim arises if the applicable law otherwise allowed for such a refund; and, generally, the debtor is deemed to waive any right the debtor may have to confidentiality of information regarding the claim to the extent it is provided under any other Revised Code section. (If information contained in a claim that is sold, conveyed, or transferred to a private entity is confidential pursuant to federal law or a Revised Code section that implements a federal law governing confidentiality, the information remains subject to that law during and following the sale, conveyance, or transfer. Additionally, the private entity is bound by all state and federal confidentiality requirements regarding the information.)

Upon the sale of a final overdue claim under the provisions, the claim becomes the property of the purchaser, and may be sold or otherwise transferred to any other person or otherwise disposed of. The owner of the claim is entitled to all proceeds from the collection of the claim, except that the owner must reimburse the state for any costs it incurs assisting and facilitating the claim's collection after the sale. Those costs can include costs of time expended by state employees. Purchasers or transferees of a final overdue claim are subject to applicable laws



governing collection of debts of the kind represented by the claim. Upon the sale or transfer of a final overdue claim, no refund may be issued or paid to the debtor for any part of the amount from which the claim arose.

The act specifies that, notwithstanding any other Revised Code provision, the Attorney General, solely for the purpose of selling or transferring a final overdue claim under the provisions, may disclose information about the debtor that otherwise would be confidential under a Revised Code section, and the debtor has no right of action against such disclosure to the extent that such a right was available under that section.

The act specifies that the authority granted under the sale provisions are supplemental to the authority granted under the provision described above in "*Certification of debts to the Attorney General for collection.*" The act also provides that the sale or transfer of a final overdue claim, or of an uncollectible claim under current law, does not compromise any criminal, civil, or administrative action of the state against any person owing the claim.

The act specifies that, as used in the sale provisions:

(1) A "final overdue claim" is a claim that has been certified to the Attorney General under the provision described above in "*Certification of debts to the Attorney General for collection.*" that has been "final" for at least one year, and for which no arrangements have been made for the payment thereof or, if such arrangements have been made, the debtor has failed to comply with the terms of the arrangement for more than 30 days. "Final overdue claim" includes collection costs incurred with respect to the claim that is the basis of the final overdue claim and assessed by the Attorney General, interest accreting to the claim, and fees.

(2) "Final" means a claim has been finalized under the law providing for the imposition or determination of the amount due, and any time provided for appeal of the amount, legality, or validity of the claim has expired without an appeal having been filed in the manner provided by law. "Final" includes, but is not limited to, a final determination of the Tax Commissioner for which the time for appeal has expired without notice of appeal having been filed.

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## AUDITOR OF STATE

- Transfers to the Director of Budget and Management the functions of the Auditor of State related to the drawing of warrants for the payment or transfer of money from the state treasury.



**Payment function transferred to the Director of Budget and Management**

(R.C. 9.41, 113.09, 113.11, 113.12, 124.09, 124.11, 124.137, 124.138, 124.139, 124.14, 124.151, 124.152, 124.18, 124.181, 124.182, 124.321, 124.327, 124.382, 124.384, 124.387, 124.389, 124.391, 124.82, 124.821, 124.822, 124.823, 124.84, 125.21, 126.07, 126.21, 126.22, 126.35, 126.36, 126.37, 126.38, 131.01, 131.33, 141.08, 141.10, 145.70, 742.57, 1523.02, 2503.20, 3307.32, 3309.68, 3701.041, 5115.04, 5505.27, and 5747.11; Sections 515.03 and 812.09)

Money cannot be paid or transferred out of the state treasury except on the warrant of the Auditor of State. When such warrants are presented to the Treasurer of State, the Treasurer of State is required to pay them.

Under the act, the Director of Budget and Management is to replace the Auditor of State--effective December 1, 2006--in all matters relating to the drawing of warrants for the payment or transfer of money from the state treasury. The Auditor of State and the Director of Budget and Management are required to identify the employees of the Auditor's office assigned to this payment function who will be transferred to the Office of Budget and Management. That transfer is to occur on July 1, 2007, or as soon as possible after that date.

Additionally, the act expressly authorizes the Director of Budget and Management to enter into any contract necessary for and incidental to the performance of the Director's duties or the duties of the Office of Budget and Management.

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**DEPARTMENT OF COMMERCE**

- Raises from \$100 to \$250 the per-sale, statutory cap on a documentary service charge payable under certain retail installment contracts.
- Exempts from the Small Loans Law any entity who is licensed under Ohio insurance laws that makes advances or loans to other persons also licensed to sell insurance under those laws and authorized by the first entity to sell insurance.
- Exempts minors who are at least 16 years of age and who are employed by a seasonal amusement or recreational establishment from having to present a work permit in order to work at the establishment, modifies specific hour restrictions for employment of those minors, and exempts those establishments from having to obtain or provide proof of a minor's age.

**Retail installment contract charges**

(R.C. 1317.07)

Continuing retail installment sales 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 act raises to \$250 the \$100 cap on a documentary service charge. The cap most recently was increased from \$50 to \$100 in Am. Sub. H.B. 95 of the 125th General Assembly.

**Persons licensed under Ohio insurance laws exempt from Small Loans Law**

(R.C. 1321.02)

Continuing law requires any person to obtain a license from the Division of Financial Institutions before (1) engaging in the business of lending money, credit, or "choses in actions," such as a debt, claims for damages, or shares or stock, in amounts of \$5,000 or less, or (2) exact, contract for, or receive, directly or indirectly, on or in connection with any such loan, any interest and charges that in the aggregate are greater than the interest and charges that the lender would be permitted to charge for a loan of money if the lender were not a licensee.

Under continuing law, certain persons are exempt from this license requirement. The act adds an exemption for any entity who is licensed under Ohio insurance laws (R.C. Title 39) that makes advances or loans to any person who also is licensed to sell insurance under those laws and that is authorized in writing by that first entity to sell insurance.

**Work permits and proof of age for minors at seasonal amusement or recreational establishments**

(R.C. 4109.01, 4109.02, and 4109.06)

Under continuing law, unless otherwise exempted, no employer may employ a minor of compulsory school age unless the minor presents to the employer a proper age and schooling certificate, also known as a work permit. The act completely exempts minors who are at least 16 years of age and who are employed by a seasonal amusement or recreational establishment from presenting a work permit in order to work at the establishment. Under former law, a minor who was 16 or 17 years of age and who was to be employed not more than two months before the last day of the school term in the spring and not more than two months after the first day of the school term in the fall by a seasonal amusement or

recreational establishment, as defined under continuing law, did not have to present a work permit, on the condition that all of the following were satisfied:

(1) The superintendent of schools of the school district where the minor resides or the chief administrative officer of the nonpublic or community school the child attends did not require the minor to present a work permit;

(2) For the period prior to Memorial Day and after Labor Day while school was in session, the minor was to be employed only for hours that occurred between the end of the school day on Friday and 11 p.m. on Sunday;

(3) For the period from Memorial Day until the last day of the school term in the spring and from the first day of the school term in the fall until Labor Day, the minor was to be employed only for hours that occurred between the end of the school day and 9 p.m. on Monday through Thursday and only for hours that occurred between the end of the school day on Friday and 11 p.m. on Sunday.

The act also eliminates the hour restrictions described under (2) and (3) above. Thus, under the act, those minors are subject to the same general hour restrictions as other minors who are 16 or 17 years of age.

Additionally, the act specifies that the following prohibitions no longer apply to seasonal amusement and recreational establishments with respect to employing minors who are age 16 or 17: (1) employing a minor before thoroughly reviewing the minor's work permit, (2) failing to give notice to the superintendent of schools or chief administrative officer who issued the permit of the nonuse of the permit within five working days from such minor's withdrawal or dismissal from the employer's service, (3) continuing to employ a minor after the minor's permit is void, or (4) refusing to permit an enforcement official to observe the conditions under which minors are employed or to make reasonable inquiry of minors or persons supposed by such official to be under 18 in regard to matters pertaining to their age, employment, or schooling. Also, with respect to minors who are at least 16 years of age, the act specifically exempts seasonal amusement and recreational establishments from having to (1) produce satisfactory evidence that an employee who is apparently under 18 years of age and who does not have a work permit on file with the Director of Commerce is in fact 18 years of age or older, (2) obtain proof of a minor's age, and (3) obtain a signed statement from a minor's parent or guardian consenting to the proposed employment.

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## DEPARTMENT OF DEVELOPMENT

- Removes the Minority Development Financing Advisory Board's authority to assist the Director of Development in guaranteeing bonds for minority or EDGE businesses or to make recommendations or give advice to the Director regarding the bond guarantee program.
- Authorizes the Director, with Controlling Board approval, to approve applications for surety bond guarantees in an amount requested to support one fiscal year of each surety bond company's activity.
- Eliminates a financial gain prohibition imposed on members of the Third Frontier Commission and Third Frontier Advisory Board regarding research and development support awards.
- Authorizes the Director of Development to appoint as the Director's designee to serve on the Ohio Water Development Authority a person in the unclassified civil service rather than an assistant or deputy director as authorized under general provisions of continuing law.

### *Minority Development Financing Advisory Board and the Surety Bonding Program*

(R.C. 122.72, 122.73, 122.74, and 122.90)

Prior law required the Minority Development Financing Advisory Board must assist the Director of Development in carrying out various programs related to minority business development. One such program authorizes the Director of Development to guarantee bonds executed by sureties for minority or EDGE businesses (businesses whose owners can demonstrate economic or social disadvantage), who are principals in a contract with the state, a political subdivision, or instrumentality of the state. The act eliminates the Board's authority to assist the Director of Development with respect to the Director's responsibilities in guaranteeing bonds for minority or EDGE businesses.

The act further authorizes the Director, with Controlling Board approval, to approve one application per fiscal year from each surety bond company for bond guarantees in an amount to support one fiscal year of that company's activity. The act reaffirms that this new option does not prevent a company from also applying

for individual bond guarantees for individual contracts as is otherwise authorized in law.

**Elimination of a financial gain prohibition regarding research and development support awards**

(R.C. 184.20)

Under continuing law, one of the duties of the Third Frontier Commission is to award support to individuals, public agencies and institutions, private companies or organizations, research organizations, or consortiums of any of the foregoing for the purpose of supporting research and development projects (R & D). One of the duties of the Third Frontier Advisory Board is to provide the Commission advice on making those R & D support awards. With respect to the awards, prior law also provided that Commission and Board members were not permitted to receive any financial gain from an entity that was awarded R & D support if that gain was directly related to, or was the direct result of, the awarding of the support. The act eliminates that prohibition.

**Director of Development's designee on Ohio Water Development Authority**

(R.C. 121.05 (not in the act) and 6121.02)

Under continuing law, the Director of Development is required to serve as an ex officio member of the Ohio Water Development Authority. Continuing law also establishes a general provision stating that if a director of a department is required to serve on any board, committee, authority, or commission, the director may designate a deputy director or assistant director of the department to serve in the director's stead.<sup>13</sup> With respect to the Ohio Water Development Authority, the act establishes an exception to the general provision by authorizing the Director of Development to designate a person in the unclassified civil service to serve in the Director's place as a member of the Authority.

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**DEPARTMENT OF EDUCATION**

**School Employees Health Care Board**

- Extends deadlines regarding the work of the School Employees Health Care Board.

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<sup>13</sup> R.C. 121.05. However, individual sections of the Revised Code creating boards, committees, authorities, or commissions may deviate from that general provision.

### *School district debt limits*

- Excludes certain business property from the determination of a school district's net indebtedness compared to its tax valuation.
- Permits school districts to issue debt in excess of the statutory debt limits to cover "required locally funded initiatives" and site acquisition associated with a state-funded classroom facilities project.
- Specifies that unvoted securities issued to pay a school district's portion of a state-assisted classroom facilities project do not count toward the statutory limit on other unvoted school district debt.
- Changes the deadline for school districts to request consent from the state Superintendent of Public Instruction and Tax Commissioner to issue debt to 105 days (from 30 days) prior to the election, and requires the state Superintendent to notify a school district of the decisions within 30 days after receiving the request.
- If a school district's voters reject the issuance of debt, permits the district to re-submit the question at the next election without again seeking consent.

### *Educational Choice scholarships*

- Expands eligibility for Educational Choice scholarships to include students whose district school has been in a state of academic watch or academic emergency (instead of academic emergency only) for three consecutive years.
- Qualifies for an Educational Choice scholarship a student entering kindergarten or enrolled in a community school whose resident district has been in academic emergency for three consecutive years if the resident district does not automatically assign the student's grade level to any particular school building.
- Permits the Department of Education to have access to student data verification codes for administering the Educational Choice Scholarship Pilot Program, and requires the Department to assign the data verification code for an entering kindergartener awarded a scholarship if the resident district does not assign one by the Department's deadline.

- Specifies that the Department's documents relative to the Educational Choice Scholarship Pilot Program are generally public records, except for documents that contain both a student's data verification code and personally identifiable student data.
- Clarifies that the Department must restore to a scholarship student's resident district a portion of the amount previously deducted for a student who withdraws from the chartered nonpublic school and enrolls in a community school.
- Indicates that chartered nonpublic schools participating in the Educational Choice Scholarship program must comply with rules adopted by the State Board of Education for the program's administration.

**Twice-annual reporting of formula ADM**

- Delays until FY 2007 implementation of a second certification of formula ADM in each fiscal year.
- Changes the week for the second reporting of formula ADM to the first (instead of the third) full week of February.
- Specifies that, when twice-annual reporting of formula ADM begins in FY 2007, operating payments to school districts for the entire fiscal year continue to be based on one annualized formula ADM figure.
- Requires the Department of Education to propose to the General Assembly a penalty for school districts and community schools that intentionally report inaccurate attendance data.
- Prohibits a school district from requiring a student to attend school for a specified number of terms in order to receive a diploma, provided the student has completed the district's curriculum requirements.
- Prohibits including in a school district's formula ADM any student who has graduated from a nonpublic high school.

**School district tuition law changes**

- Specifies that tuition owed by one school district to another, in the case of a disabled child placed by a juvenile court and receiving special education, be calculated and paid in accordance with the state Special

Education Law, which generally requires the "district of residence" of the child's parent to bear the cost of educating the child.

- Establishes a mechanism for a juvenile court, upon recommendation from the Department of Education, to change the school district ordered to bear the cost of educating a child placed by the court.
- Sets conditions that must be satisfied for a school district educating a disabled child to seek payment of tuition and excess costs from the district of residence.
- Specifies that if a disabled child's custodial parent makes a unilateral placement of the child, the parent is responsible for payment of tuition.

#### **Federal school food programs**

- Expands the requirement for school districts to participate in federal breakfast and lunch programs to cover schools where at least one-fifth (instead of one-third, as under former law) of the students are eligible under federal guidelines for free breakfasts and lunches.
- Requires school districts to offer a federal food program for all state-mandated summer intervention programs.
- Requires community schools (except e-schools) to participate in federal breakfast and lunch programs if at least one-fifth of the students are eligible under federal guidelines for free breakfasts and lunches, and to offer a federal food program for state-mandated summer intervention programs.
- Allows school districts and community schools to opt out of the new food service requirements if they cannot afford to implement the programs and they provide notice of the decision.

#### **Community schools**

- Clarifies that the requirement that entities approved to sponsor community schools on or after June 30, 2005, have a record of financial responsibility and successful implementation of educational programs applies to private federally tax-exempt entities.

- Prohibits a community school from sponsoring another community school.
- Requires the contract between the sponsor and governing authority of a new community school to be signed by May 15 prior to the school year in which the school will open.
- Prohibits including in the enrollment of a community school any student who (1) is a high school graduate, (2) is not an Ohio resident, (3) was enrolled in the school during the previous school year when achievement tests were administered but did not take a required test and did not have a statutory exemption or waiver from the test, or (4) is over 21 years old and is not a qualifying veteran.
- Allows the Superintendent of Public Instruction to grant community school students waivers from the achievement tests only for good cause in accordance with State Board of Education rules.
- Specifies that if the Superintendent of Public Instruction grants a waiver from an achievement test to a student enrolled in an Internet- or computer-based community school (e-school) or a similar school district-operated school, the waiver does not exempt the student from a provision requiring the school to withdraw any student who fails to take all applicable achievement tests for two consecutive years, unless the student's parent pays tuition.
- Clarifies that a student for whom tuition is owed for failure to take achievement tests is not included in an e-school's enrollment count or a school district's ADM for state funding purposes.
- Delays until the 2007-2008 school year the mandate for certain community schools to administer fall and spring reading and math assessments and the sanctions for community schools failing to show expected gains on those assessments.
- Eliminates explicit authority for a member of a community school governing authority (1) to be an employee of the school or (2) to have an interest in a contract entered into by the governing authority.

### School district funding

- Clarifies that a school district's funding for the previous fiscal year, for purposes of calculating transitional aid payments, is determined based on the final reconciliation of data by the Department of Education.
- To facilitate "gap aid" phase-out payments, requires the Department of Education each year to send the Tax Commissioner a list of school districts receiving gap aid payments and requires the Tax Commissioner to certify to the Department, for each district on the list, the amount of new property taxes and new school district income taxes collected for current expenses.
- Specifies that school districts receiving payment for all-day kindergarten also may allocate other poverty-based assistance components, including academic intervention payments, for all-day kindergarten.

### Other education provisions

- Requires the school district, community school, or nonpublic high school in which the student is enrolled, instead of the state Superintendent of Public Instruction, to seek reimbursement of state payments if a high school student does not receive a passing grade in a college course under the Post-Secondary Enrollment Options Program.
- Stipulates that "pervasive developmental disorder--not otherwise specified" (PDD-NOS) is considered autism for purposes of the Autism Scholarship Program.
- Accelerates the effective date of the following provisions from July 1, 2006, to March 30, 2006: (1) authorization for the State Board of Education to require the use of student data verification codes to protect student confidentiality, (2) the requirement to include student data verification codes on achievement tests, and (3) the provision prohibiting entities hired to score the achievement tests from releasing test scores, except to students' school districts.
- Requires state institutions that serve special education students to use a student's data verification code when applying for tuition reimbursement from the student's resident school district.

- Requires the Department of Education to disaggregate the number of disabled preschool children served in the previous fiscal year by developmental deficiency when reporting that number to the General Assembly.
- Requires contracting entities to complete value-added analyses of student data commissioned by the Department of Education in accordance with timelines established by the Superintendent of Public Instruction.
- Eliminates the July 1, 2003, cut-off date for merging educational service centers to determine for themselves the size and method of election of the new service center's governing board.
- Removes obsolete references to education subsidies for which the General Assembly has not appropriated funds for several years.
- Removes references in two statutes to the Legislative Office of Education Oversight.

**School Employees Health Care Board**

(R.C. 9.901; Section 803.03)

Am. Sub. H.B. 66 of the 126th General Assembly (the main operating budget for the 2005-2007 biennium) created the School Employees Health Care Board to design medical insurance plans for all public school employees. Although the requirement for public school employees to begin using the Board's plans does not take effect until the General Assembly enacts future legislation ordering the plans' implementation, the Board still has several responsibilities in preparing for use of the plans. The act extends various deadlines regarding the Board's work as shown in the table below. It also explicitly states that the act's changes are not to be construed to be the further legislative action necessary to implement the Board's medical plans.

Responsibility	Prior deadline	New deadline
An independent consultant hired by the Board must make recommendations for legislation needed to establish and maintain medical plans for public school employees	December 31, 2005	December 31, 2006

<b>Responsibility</b>	<b>Prior deadline</b>	<b>New deadline</b>
The Governor, the Speaker of the House of Representatives, and the President of the Senate must make initial appointments to the Public Schools Health Care Advisory Committee, which advises the Board on its duties	July 31, 2005	July 31, 2007
The Board must submit a governance and operational plan to the Governor and General Assembly	January 15, 2006	January 31, 2007
The Department of Administrative Services must issue a report on the feasibility of designing medical plans for employees of public institutions of higher education	March 29, 2007	April 30, 2007

### **School district debt limits**

#### **Background**

All political subdivisions, including school districts, are subject to some debt limit that is based on a percentage of their property tax valuations. The percentage and the types of debt that are included in those limits vary among types of subdivisions. Generally, a school district may not incur debt in a net amount greater than 9% of its tax valuation. In addition, a school district usually may not submit to its voters the question of incurring debt in an amount that would make the district's net indebtedness exceed 4% of its tax valuation, unless both the state Superintendent of Public Instruction and the Tax Commissioner consent. However, continuing law permits school districts to issue debt exceeding both of these limits when undertaking state-assisted classroom facilities projects.

#### **Tax valuation**

(R.C. 133.01(PP))

For calculating the net indebtedness of all political subdivisions, "tax valuation" is defined by continuing law as the aggregate of the valuations of property in the jurisdiction that is subject to taxation according to its value. The act, however, also specifies that "tax valuation" for a school district does not include the valuation of tangible personal property used in business, telephone or telegraph property, interexchange telecommunications company property, or personal property used by a railroad company in its operations. The applicable taxes of all political subdivisions on these types of business property are being phased out over four years under continuing law.

**Net indebtedness above the limits**

(R.C. 133.06(I))

As noted above, a school district may incur net indebtedness in excess of the 9% limit, and may ask its voters to approve debt that will bring its indebtedness above 4% without state consent, when necessary to raise the school district's share of a state-assisted building project. Generally, the programs administered by the Ohio School Facilities Commission provide state assistance on a cost-sharing basis, where district priority for assistance and the state and district shares are determined by the district's relative wealth.

The act specifies that a school district may issue debt above the limits not only for the district's portion of its state-approved project, but also for the cost of any "required locally funded initiatives" and the cost of site acquisition associated with the project, neither of which are paid for with state funds. (The School Facilities Commission may require districts to pay the entire amount for certain items that do not meet the Commission's specifications but are closely associated with the state-assisted portion of the entire project. The Commission also refers to these so-called "required locally funded initiatives" as "project agreement locally funded initiatives," since a stipulation regarding their scope and cost to be paid entirely by the district is included in the project agreement between the Commission and district.)

**Unvoted debt for state-assisted classroom facilities projects**

(R.C. 133.06(G), 3313.372, and 3318.052)

Generally, a school district's unvoted net indebtedness (that is, debt that may be incurred without approval of the district's voters) is limited to not more than 1/10 of 1% of the district's tax valuation.<sup>14</sup> Nevertheless, continuing law also permits a district to incur unvoted debt of up to an additional 9/10 of 1% of its tax valuation for the installation of energy conservation measures approved by the School Facilities Commission. The district is required to use the certified savings in energy costs to pay off that debt.<sup>15</sup>

Another provision of continuing law permits a school district to use the proceeds of an existing property tax or school district income tax that properly can be used for school construction to leverage securities to pay all or part of the

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<sup>14</sup> R.C. 133.06(A).

<sup>15</sup> R.C. 133.06(G) and 3313.372.

district's share of a state-assisted construction project.<sup>16</sup> This is an alternative to the usual method of financing a district's share of its project by requesting a voter-approved bond issue and tax levy. Under that particular statute, there is no limit to the amount of unvoted debt that can be incurred for a school facilities project, and the unvoted debt does not count toward the overall 9% debt limit. However, prior law on unvoted debt for energy conservation measures stated that total net unvoted indebtedness issued under that section and "all other sections of the Revised Code" could not exceed 1% of the district's tax valuation.<sup>17</sup> Thus, under prior law, it appeared that a district's debt under the alternative school facilities finance method was limited to an amount of not more than the difference of the total amount of energy conservation and other unvoted debt incurred and 1% of the district's tax valuation.

The act specifies that unvoted debt issued to pay a district's share of its school facilities project under the alternative finance method does not count toward the 1% limit.<sup>18</sup> The act does not change application of that limit to other unvoted debt.

### **Consent procedure**

(R.C. 133.06(C))

If a school district proposed to issue debt that required the consent of the state Superintendent and the Tax Commissioner, under prior law, the district had to request their consent at least 30 days prior to the election at which the question was to be submitted. The state Superintendent and the Tax Commissioner, could waive that deadline or grant their consent after the election was held, if the district could show good cause for the waiver or retroactive consent.

The act requires a district to submit its request for consent at least 105 days prior to the election and eliminates the waiver and retroactive consent provisions. At the same time, the act requires the state Superintendent to notify a school district of both the Superintendent's and the Tax Commissioner's decision on consent within 30 days after receipt of the requests. Thus, a district will know before the 75-day deadline for filing the ballot question whether or not the consents are granted. If a district's voters reject the issuance of debt, the act permits the district to re-submit that question to the voters at the next election without again having to seek state consent. But it also specifies that if the school

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<sup>16</sup> R.C. 3318.052.

<sup>17</sup> R.C. 133.06(G) and 3313.372(C).

<sup>18</sup> R.C. 133.06(G), 3313.372(C), and 3318.052(E).

district seeks to submit the same question at any other subsequent election, the district must first submit a new request for consent.

### **Educational Choice scholarships**

#### **Background**

Beginning in the 2006-2007 school year, the Educational Choice Scholarship Pilot Program provides scholarships to pay tuition at chartered nonpublic schools for students assigned to public schools that have been declared to be in "academic emergency" for three consecutive school years. It does not apply to the Cleveland Municipal School District, where a scholarship pilot program has been operating since 1995. The act makes some changes regarding student eligibility and administration of the program.

Under prior and continuing law, a student is eligible for an Educational Choice scholarship, if the student meets one of the following conditions:

(1) The student is enrolled in the student's resident district, in a building that has been declared to be in a state of academic emergency for three consecutive school years;

(2) The student is eligible to enroll in kindergarten in the school year for which a scholarship is sought and would be assigned to an academic emergency school building described in (1) above; or

(3) The student is enrolled in a community school (public charter school) but otherwise would be assigned to an academic emergency school building described in (1) above.

A student who receives a scholarship may continue to receive scholarships through grade 12, even after the school is no longer in academic emergency, so long as the student's resident district stays the same, the student takes the state achievement tests, and the student is not absent from school for more than 20 days per year (not including illness or injury confirmed by a physician).

The General Assembly has authorized 14,000 scholarships for the 2006-2007 school year.

#### **Expansion to students of "academic watch" schools**

(R.C. 3310.03(A)(1)(a) and 3310.06)

The act expands the conditions in (1) to (3), above, to include students whose district schools have been in a state of *either* academic emergency *or*



*academic watch* for three consecutive years. It retains the limit of 14,000 scholarships for 2006-2007.

**Eligibility in open enrollment districts**

(R.C. 3310.03(A)(1)(d))

Some districts, under open enrollment policies, do not automatically assign certain grade levels of students to any particular building. Consequently, under prior law, it was not clear in those cases whether students entering kindergarten or attending community schools would be assigned to qualifying buildings. For that reason, it was not clear whether they were eligible for a scholarship.

The act specifies that a student can qualify for a scholarship if the student is eligible to enroll in kindergarten in the school year for which a scholarship is sought, or is enrolled in a community school, and the student's resident *district* both (1) has been in academic emergency for three consecutive years<sup>19</sup> and (2) does not assign students in kindergarten or the community school student's grade level to any particular building.

**Student data codes**

(R.C. 3301.0714(D)(2), 3310.11, and 3310.12)

The act permits the Department of Education to request the data verification codes of students applying for scholarships from (1) those students' resident school districts, (2) a community school in which a student is enrolled, or (3) the independent contractor hired by the Department to create and maintain the codes (for background, see "*Use of student data verification codes*," below). This authority, which is an exception to the general prohibition against the Department's having access to data verification codes when they could be matched with personally identifiable student data, is limited solely to administering the Educational Choice Scholarship Pilot Program. School districts and community schools must provide a student's data verification code to the Department or the student's parent, upon request, in a manner specified by the Department. If a student will be entering kindergarten and has not yet been assigned a data verification code, the resident school district must assign a code to the student

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<sup>19</sup> *The three-year window of time for a district to be in academic emergency is the same as it is for buildings. That is, the act's provisions apply if the district was declared to be in academic emergency in the most recent rating of school districts published prior to the school year for which a scholarship is sought and in the preceding two school years. For the 2006-2007 school year, for example, the relevant ratings are for the 2002-2003, 2003-2004, and 2004-2005 school years.*

prior to submission. If the district does not assign the code by a date specified by the Department, the Department must assign the code. Each year, the Department must provide school districts with the name and data verification code of each scholarship student living in the district who has been assigned a code by the Department.

The act also requires the Department to provide each scholarship student's data verification code to the chartered nonpublic school in which the student enrolls. Under continuing law, when a scholarship student takes the statewide achievement tests, which is a requirement for maintaining eligibility for the scholarship program, the chartered nonpublic school must administer the tests in the same manner as public schools, including placing the student's data verification code on each test (see 'Confidentiality of achievement test scores,' below).<sup>20</sup>

Neither the Department nor a chartered nonpublic school may release a student's data verification code to any person, unless such release is otherwise authorized by law. The act specifies that, except for materials that contain both a student's name or other personally identifiable data and the student's data verification code, documents relative to the scholarship program that are held by the Department are public records and may be released only in accordance with state and federal privacy laws.<sup>21</sup>

#### **Credit to resident district when student re-enrolls in community school**

(R.C. 3310.08)

To finance Educational Choice scholarships, continuing law includes scholarship students in school districts' base-cost calculations. This will credit the districts with state base-cost funding. The law then requires the Department of Education to deduct \$5,200 from a district's state funding account for each of the

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<sup>20</sup> See R.C. 3301.0711(A)(1) and (K), not in the act, and R.C. 3310.11(C).

<sup>21</sup> Specifically, with respect to federal law, the Department must comply with the Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. 1232g). FERPA forbids educational agencies, such as school districts and institutions of higher education, to release educational data relating to a student, without the written consent of the student or the student's parent, to anyone other than the student, parent, other educational agencies, and certain law enforcement agencies. This prohibition does not apply to student directory information such as name, address, date of birth, dates of attendance, and participation in recognized activities and sports. Ohio has its own statute that is similar to FERPA (R.C. 3319.321, not in the act).

district's students awarded a scholarship. This deduction is to fund scholarships under both the Educational Choice and the Cleveland pilot programs.

Continuing law requires restoration of a portion previously deducted from a district's account for a student who withdraws from the chartered nonpublic school (attended under the scholarship) and re-enrolls in the student's resident district during the course of a school year. The act clarifies that the Department also must restore to a scholarship student's resident district a proportion of the amount previously deducted for a student who withdraws from the chartered nonpublic school and enrolls in a community school. That restored amount, under continuing law, will be again deducted and paid to the community school for the balance of the school year.<sup>22</sup>

### **Chartered nonpublic school rule compliance**

(R.C. 3310.16)

The State Board of Education adopts rules in accordance with Chapter 119. of the Revised Code to administer the Educational Choice Scholarship Pilot Program. Continuing law states that the State Board and Department of Education cannot require chartered nonpublic schools participating in the program to comply with any rules or requirements that are not specified in the statutes pertaining to the program if they otherwise would not apply to chartered nonpublic schools. The act, on the other hand, also stipulates that chartered nonpublic schools must comply with the rules adopted by the State Board to administer the program.

### **Twice-annual reporting of formula ADM**

(R.C. 3317.01, 3317.02, and 3317.03)

### **Background**

"Formula ADM" (average daily membership) is the figure that represents for school funding purposes each school district's full-time-equivalent enrollment. Prior to fiscal year 2006, the law required each district to certify its formula ADM once annually, for the first full week of October. However, Am. Sub. H.B. 66 of the 126th General Assembly (the operating budget for the 2005-2007 biennium) required each school district, beginning in fiscal year 2006, to certify its formula ADM twice each fiscal year. The first count was to be the traditional October count and the second count was to be for the third full week of February. The October certification was to be used to calculate a district's state payments for the first half of the school year (July through December) and the average of the

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<sup>22</sup> R.C. 3314.08(B) to (D).

February and October certifications was to be used to calculate payments for the second half of the school year (January through June).

**Delay in implementation; change to first week in February**

The act delays implementation of the second annual formula ADM certification for one year, until fiscal year 2007. It also moves the second formula ADM count to the *first* full week in February, rather than the third full week as under prior law. Therefore, in fiscal year 2006, payments to school districts will continue to be calculated based solely on the October count. A corresponding provision that allows for adjustments in payments to districts that experience enrollment growth also will continue through fiscal year 2006. Under that provision, if a district's formula ADM for the first full week of February is at least 3% more than the formula ADM certified for October, the higher formula ADM must be used to calculate the remaining payments to the district.

**Annualized payments**

The act specifies that, when twice-annual reporting of formula ADM begins in fiscal year 2007, operating payments to school districts for the entire fiscal year will continue to be based on one annualized formula ADM figure. Instead of using the October count for payments in July through December and the average of the October and February counts for payments in January through June, the act requires the use of a single annualized formula ADM number that may be adjusted throughout the entire fiscal year. Under the act, a district's formula ADM for the fiscal year is the sum of half of the district's October count and half of the average of its October and February counts.

**Penalty for reporting inaccurate attendance data**

(Section 733.03)

Within nine months after the act's effective date, the Department of Education must develop a proposal for an appropriate penalty for school districts and community schools that intentionally report inaccurate data regarding formula ADM (see above) or community school ADM and other attendance figures. The proposal also must include legislative recommendations regarding existing penalties for reporting inaccurate data. Copies of the proposal must be submitted to the House and Senate Education Committees, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House. The Department must provide public testimony on the proposal before the education committees.

### **Early graduation**

(R.C. 3313.61)

Under prior law, a school district may require that a student attend high school for a specified number of terms prior to granting the student a diploma. The act prohibits a school district from requiring a student to remain in school for any specific number of semesters or other terms if the student completes the required curriculum. (Students still must complete the required Ohio Graduation Tests to receive their diplomas.)<sup>23</sup>

### **School district tuition law changes**

#### **Background**

Every child is entitled to attend school free of tuition in at least one school district in the state. Generally, any child may attend school free of charge in the school district in which the child's parent lives. A child is entitled to attend school in the district in which the *child* resides if:

- (1) The child is in the legal custody of a government agency or some person other than the child's parent;
- (2) The child resides in an institution, group home, foster home, or other licensed residential child care facility;
- (3) The child requires special education services that are provided by that district; or
- (4) The child's parent is institutionalized.

In these cases, however, another school district or other entity usually must pay tuition on behalf of the child to the school district that is educating the child.<sup>24</sup> The amount of tuition that must be paid is generally the per pupil amount of the taxes charged and payable in the district educating the child.<sup>25</sup>

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<sup>23</sup> A school district, however, may include in its formula ADM certified for February (when twice-annual reporting begins in fiscal year 2007) those students included in the October certification who have since received their high school diplomas (R.C. 3317.03(A) and (D)).

<sup>24</sup> R.C. 3313.64(B) and (C).

<sup>25</sup> This is designed to contribute the local per pupil tax revenue. In the case of a student who is not a resident of Ohio, tuition is calculated to account for both the local tax

Moreover, under both state and federal law, school districts must identify each enrolled disabled student and provide a "free appropriate public education" for that student.<sup>26</sup> The special education and related services for each disabled child are described in an "individualized education program" (or "IEP") that the district develops for the child in consultation with the child's parent. When a district that is obligated to provide services to a disabled student (the child's "school district of residence") cannot do so, it must arrange for those services to be provided by another district, school, or other entity. In that case, the entity providing the services may charge the district of residence the statutory tuition amount *and* any actual costs of educating the child in excess of the calculated tuition amount.<sup>27</sup>

**Tuition for a child placed by a juvenile court**

(R.C. 2151.357 and 3313.64(C))

When a juvenile court removes a child from the parent's custody and places that child in the custody of some other person or a government agency, the court is required to determine which school district is responsible for paying the cost of educating that child while in the custody of that person or agency. Under law retained in part by the act, the juvenile court must make this determination under R.C. 3313.64(C)(2), which generally designates the district in which the child's parent resided at the time the court makes that determination to pay tuition. This may or may not be the district in which the child resided.

**Change for special education students.** The act retains the requirement that the court's determination be made in accordance with R.C. 3313.64(C)(2) for nondisabled students. But for disabled students, it specifies that tuition be paid in accordance with R.C. 3313.64(C)(1), which in turn refers to the state Special Education Law (R.C. Chapter 3323.). This change essentially clarifies that the "district of residence" of the child's parent, which may not be the same as the district where the parent resided when the court made its determination, is responsible for tuition *and excess costs* for the child's special education and related services.

**Changes to the order.** Under former law, the district named in the court's order remained responsible for paying the cost of educating the child for as long as

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*revenue and the state's share of funding for that student. (See R.C. 3317.08, 3317.081 (neither section in the act), and 3317.082).*

<sup>26</sup> R.C. Chapter 3323. and 20 U.S.C. 1400, *et seq.*

<sup>27</sup> R.C. 3323.13 and 3323.14 (latter section not in the act).

the child was in the custody of the person or government agency also named in the order. The act, however, provides a mechanism for the juvenile court, upon recommendation from the Department of Education, to change the responsible school district when the residency of the child's parent changes. Under the act, if the Department receives, from the school district initially ordered to bear the cost of educating the child, satisfactory evidence that the place of residence of the child's parent has changed, the Department may notify the court of this change. The court may then modify its order to name a different school district to bear that cost.

In its notice to the court, the Department must recommend a district to assume that cost, which must be the district in which the child's parent currently resides or, if the parent's residence is not known, the district in which the parent's last known residence is located. If the Department cannot determine any Ohio district in which the parent currently resides or has resided, the school district designated in the initial court order must continue to bear the cost of educating the child. The act specifies that the court may consider the content of the Department's notice as conclusive evidence as to which school district should bear the cost of educating the child.

**Conditions for seeking payment for educating a disabled child**

(R.C. 3323.13)

The act prescribes conditions that must be satisfied by the school district educating a disabled child in order for it to seek payment of tuition and excess costs from the district of residence. Under the act, the district educating the child must do at least one of the following:

- (1) Invite the district of residence to send representatives to attend the meetings of the child's IEP team;
- (2) Receive from the district of residence a copy of the IEP or a "multi-factored evaluation"<sup>28</sup> developed for the child by the district of residence; or
- (3) Inform the district of residence in writing that the district is providing the education for the child.

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<sup>28</sup> *The act defines "multi-factored evaluation" as "an evaluation, conducted by a multi-disciplinary team, of more than one area of the child's functioning so that no single procedure shall be the sole criterion for determining an appropriate educational program placement for the child."*

### **Parent's responsibility in unilateral placement of a disabled child**

(R.C. 3323.143)

The parent of a disabled child may elect to enroll the child in a program other than the one provided by the district of residence. In that case, however, the parent is generally responsible for tuition and all other costs associated with educating the child. The act clarifies that in the case of this "unilateral placement," the parent is responsible for payment of tuition as long as the district of residence has offered a free appropriate public education to the child. The act specifically defines "unilateral placement" as withdrawing the child from a program or facility operated by or, under special arrangement for, the district of residence and, instead, enrolling the child in another program or facility. The act further specifies that unilateral placement does not apply to placing the child in a licensed residential care facility or in the program of another school district under that district's open enrollment policy.

### **Federal school food programs**

#### **School districts**

(R.C. 3313.813)

Under prior law, school districts had to participate in the federal school breakfast and lunch programs in each school where at least one-third of the students were eligible under federal guidelines for free breakfasts and lunches, respectively. The act makes two changes. First, it lowers the threshold to one-fifth of the students. Second, it requires districts to offer a federal food service program during summer intervention programs that school districts are required by law to provide. This second new requirement applies to all district schools, regardless of how many students are federally eligible for free or reduced-price meals, and appears to apply to (1) summer remediation provided to students who scored lower than "proficient" on the third grade reading achievement test and (2) summer intervention services provided to students who took practice versions of the Ohio Graduation Tests in ninth grade.<sup>29</sup> The requirement for federal summer food programs also applies to any future summer intervention programs mandated by law.

However, if a school district cannot, for financial reasons, comply with the new requirements, the district can choose not to comply with either or both if it communicates that fact publicly, in a manner its board of education determines appropriate, to residents of the district. If a district does not comply, it

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<sup>29</sup> See R.C. 3301.0711(D)(2) and 3313.608(B)(2), neither section in the act.

nevertheless must continue to offer federal breakfast and lunch programs in schools where at least one-third of the students are federally eligible for free meals.

### **Community schools**

(R.C. 3314.18)

Formerly, community schools could, but were not required to, participate in the federal school breakfast or lunch program. The act creates two requirements for all community schools, except Internet- or computer-based community schools ("e-schools"). First, it requires community schools to participate in the federal breakfast and lunch programs where at least one-fifth of the students are eligible under federal guidelines for free breakfasts and lunches, respectively. Second, it requires community schools to offer a federal food service program during summer intervention services that community schools are required by law to provide. This second requirement applies regardless of how many students are federally eligible for free or reduced-price meals.<sup>30</sup> Community schools must apply for available state and federal funding and comply with the State Board of Education's standards for food programs.

However, the act allows community schools to choose not to comply with the new requirements if the community school (1) determines that it cannot, for financial reasons, implement the services and (2) communicates this fact, in the manner its governing board determines appropriate, to parents of students enrolled in the school.

### **Changes to community school law**

#### **Background**

Community schools (often called "charter schools") are public schools that operate independently from any school district under a contract with a sponsoring entity. Community schools are funded with state funds that are deducted from the state aid accounts of the school districts in which the enrolled students are entitled to attend school. Community schools generally may not charge tuition.

A conversion community school, created by converting an existing school district school, may be located in and sponsored by any school district in the state.

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<sup>30</sup> *Community schools are required to provide, in the same manner as school districts, summer intervention services to students who scored below proficient on the third grade reading achievement test and students who took practice Ohio Graduation Tests in ninth grade. (See R.C. 3314.03(A)(11)(d).)*

On the other hand, a "start-up" community school may be located only in a "challenged school district." A challenged school district is any of the following: (1) a "Big-Eight" school district, (2) a school district in academic watch or academic emergency, or (3) a school district in the original community school pilot project area (Lucas County).<sup>31</sup>

The sponsor of a start-up community school, which generally must be approved by the Department of Education, may be any of the following:

- (1) The school district in which the school is located;
- (2) A school district located in the same county as the district in which the school is located has a major portion of its territory;
- (3) A joint vocational school district serving the same county as the district in which the school is located has a major portion of its territory;
- (4) An educational service center;
- (5) The board of trustees of a state university (or the board's designee) under certain specified conditions; or
- (6) A federally tax-exempt entity under certain specified conditions.<sup>32</sup>

#### **Qualifications of sponsors**

(R.C. 3314.02(C)(1)(f))

Continuing law requires the Department of Education to adopt rules containing criteria for the approval of community school sponsors.<sup>33</sup> These rules must require an entity seeking approval for sponsorship to provide evidence of its ability and willingness to provide proper oversight. In addition, an entity seeking approval for sponsorship on or after June 30, 2005, must have a record of financial responsibility and successful implementation of educational programs. The act clarifies that the latter requirement applies to all entities seeking approval to sponsor community schools on or after June 30, 2005, including private federally tax-exempt entities.

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<sup>31</sup> R.C. 3314.02(A)(3). *The "Big-Eight" districts are Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown.*

<sup>32</sup> R.C. 3314.015(B)(1), *not in the act*, and 3314.02(C)(1)(a) through (f).

<sup>33</sup> R.C. 3314.015(B)(1), *not in the act*. See *Ohio Administrative Code 3301-102-03*.

**Prohibition on community school sponsoring another community school**

(R.C. 3314.02(C)(1)(f))

The act specifies that a federally tax-exempt entity that sponsors community schools cannot be a community school itself. That is, a community school cannot sponsor another community school.

**Background.** Continuing law requires all community schools to be established as nonprofit corporations or public benefit corporations under state law.<sup>34</sup> Therefore, due to its corporate organization under state law, a community school has federal tax-exempt status or it may be eligible to apply for that status. Previously, it would have been possible for a federally tax-exempt community school that meets the sponsorship qualifications applicable to federally tax-exempt entities to seek approval to sponsor other community schools.

**Deadline for signing contract**

(R.C. 3314.02(D))

Continuing law requires the contract between a new community school and its sponsor to be adopted by a majority vote of the governing board of each party by March 15 prior to the school year in which the school will open. The act further requires the contract to be signed by both parties by May 15, and requires the school's governing authority to notify the Department of Education when the contract has been signed.

**Exclusion of certain students from community school enrollment count**

(R.C. 3314.08(P) and 3317.03(E))

**Background.** Each community school receives a payment from the state for each student enrolled in the school. In most cases, these payments are deducted from the state aid accounts of the school districts in which the community school's students are entitled to attend school and paid to the community school by the Department of Education. To ensure that school districts are credited for those students prior to the deduction, each district must include in its average daily membership (ADM) students who are entitled to attend school in the district but are instead enrolled in a community school.

Under continuing law, a school district's ADM does not include any student who (1) has graduated from a public high school, (2) is not an Ohio resident, (3)

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<sup>34</sup> R.C. 3314.03(A)(1).

was enrolled in the district during the previous school year when the achievement tests were administered but did not take one or more of the required tests and did not have a statutory exemption from the tests, or (4) is 22 years of age or older and is not a veteran who left high school prior to graduation to serve in the armed forces and enrolled in the district within four years after the end of war or an honorable discharge.<sup>35</sup> A student described in (3) may be included in a district's ADM if the Superintendent of Public Instruction grants the student a waiver from the requirement to take the missed achievement test. A waiver may be granted only for good cause in accordance with State Board of Education rules.<sup>36</sup>

**The act.** The act excludes these same categories of students from a community school's enrollment count. It also requires students who have graduated from a *nonpublic* high school to be excluded from both a community school's enrollment count and a school district's ADM. Therefore, under the act, a community school cannot receive state payments for students in any of these categories. Consequently, a school district will not have funds deducted from its state aid account for those students. Excluding the students from a community school's enrollment count avoids a scenario in which funding is deducted from a school district's state aid account and paid to a community school for students for whom the district was never eligible to receive state funding in the first place, resulting in a net loss of state funds to the district.

Finally, the act specifies that the Superintendent of Public Instruction may grant waivers from the achievement tests to community school students, thereby allowing the students to be included in a school's enrollment count, only for good cause in accordance with State Board of Education rules. This is the same statutory standard for granting waivers for students enrolled in school districts.

**Withdrawal of e-school students for failure to take achievement tests**

(R.C. 3313.6410, 3314.08(P), 3314.26, and 3317.03(E))

**Background.** Under continuing law, whenever a student enrolled in an Internet- or computer-based community school ("e-school") fails to participate in the spring administration of a grade-level achievement test for two consecutive school years, the school must withdraw that student from enrollment. School district-operated schools in which students work primarily on assignments in a nonclassroom-based setting using an Internet- or other computer-based

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<sup>35</sup> However, a veteran enrolled in courses paid for under federal law is not counted in the district's ADM.

<sup>36</sup> See Ohio Administrative Code 3301-13-04.

instructional method likewise are subject to this requirement. An e-school or similar type of district-operated school may not receive state funding for any student who has been withdrawn from such a school for not taking the achievement tests. A student who is subject to withdrawal may continue to enroll in an e-school or similar district-operated school, but the student's parent must pay tuition in an amount equal to the state funds the Department determines the school would otherwise receive for that student. A school is not required to withdraw any special education or limited English proficient student who did not take an achievement test because the student had a statutory exemption from that test.

**The act.** The act clarifies that a student for whom tuition is owed for failure to take all required achievement tests is not included in an e-school's enrollment count or a school district's ADM for state funding purposes. Furthermore, the act states that if the Superintendent of Public Instruction grants a student enrolled in an e-school or similar district-operated school a waiver from the requirement to take an achievement test, the waiver does not exempt the student from withdrawal from the school or exempt the school from losing state funding for that student (see discussion of waivers in "**Exclusion of certain students from community school enrollment count**" above). In other words, an e-school student who does not take required achievement tests for two consecutive years must be withdrawn or pay tuition, regardless of whether the student receives a waiver from those tests. As under former law, a school is not required to withdraw any student for failure to take a test from which the student is statutorily exempt.

### **Delay of additional assessments and sanctions**

(R.C. 3314.35 and 3314.36)

Continuing law requires certain community schools to administer fall and spring reading and math assessments to students (in addition to the state achievement tests) to measure their academic progress during the school year, and establishes sanctions in some cases for schools in which student progress is not sufficient. Previously scheduled to begin in the 2006-2007 school year, the act delays the additional assessments and sanctions until the 2007-2008 school year.

**Background.** Under continuing law, a community school must administer reading and math assessments to students in grades 1 to 12 each fall and spring if the school either:

- (1) Has a performance rating of continuous improvement, academic watch, or academic emergency;
- (2) Has not been in operation for at least two years; or

(3) Does not have a performance rating based on achievement test data because it either does not offer a grade level for which an achievement test is given or the Department of Education has determined that the number of students enrolled in grades that take achievement tests is too small to yield statistically reliable data about those students' test performance.

Continuing law also requires the State Board of Education to adopt rules establishing "reasonable" standards for expected gains in student achievement from the fall to the spring assessment periods and for expected gains in the graduation rate. Community schools that have been open at least two school years and are in academic watch or academic emergency, or that do not have a performance rating based on achievement test data, face sanctions if (1) the school offers a high school diploma but is not showing the expected gains in its graduation rate established by the State Board or (2) the percentage of the school's population showing the State Board's expected gains on the reading or math assessments is less than 55%. For the first two years, sanctions apply only to e-schools. After the third year of failure to make expected gains, both traditional ("brick and mortar") community schools and e-schools must close permanently.

### **Conflicts of interest**

(R.C. 3314.03(A)(11)(e))

Community schools generally must comply with Ohio's Ethics Law, which, among other things, requires public officials to disclose conflicts of interest and prohibits them from having an interest in a contract awarded by their public office.<sup>37</sup> Formerly, however, there were two exceptions to the Ethics Law for community schools. First, a member of a community school governing authority could be an employee of the school. Second, a governing authority member could have an interest in contracts entered into by the governing authority, except for contracts with for-profit firms for management of the school's operations. The act eliminates these two exceptions, but it retains the general requirement for community schools to comply with the Ethics Law. Therefore, it appears that, under the act, members of a community school's governing authority could not be employed by the school or, except in specified circumstances, have an interest in *any* contract awarded by the governing authority.<sup>38</sup>

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<sup>37</sup> See R.C. Chapter 102. and R.C. 2921.42, neither in the act.

<sup>38</sup> It is permissible for a public official to have an interest in a public contract if (1) the contract covers necessary services or supplies for the official's public office, (2) the services or supplies cannot be obtained elsewhere for the same or lower cost or are being furnished to the public office as part of an ongoing relationship that started prior to the

### **School district transitional aid**

(Sections 206.09.39 and 206.09.42 of Am. Sub. H.B. 66 of the 126th General Assembly)

The budget bill for the 2005-2007 biennium provides for a "transitional aid" payment in FY 2006 and FY 2007 to school districts that otherwise would receive less state funding than they did for the previous year. Accordingly, the Department of Education must pay a district additional state funds, as necessary, to eliminate any decrease in either fiscal year. The act clarifies that, in calculating transitional aid payments, the prior year's funding must be determined based on the final reconciliation of data by the Department of Education.

### **Tax information to calculate "gap aid" phase-out payments**

(R.C. 3317.021(A)(8) and 3317.0216)

Because of relatively low tax valuations, certain school districts are not able to achieve 23 effective mills to cover their assumed local share ("charge-off") of the base-cost funding calculated for the district. In other cases, districts' effective tax rates do not cover their assumed shares of special education, vocational education, and transportation funding. To help these districts, the state provides a subsidy, called the charge-off supplement (or "gap aid"), to make up the difference between the districts' tax rates and their assumed shares. However, a district that receives this subsidy faces losing it if the voters approve new property or income taxes. Recently, the law was changed to permit a district that passes a new property tax or new school district income tax dedicated to current expenses, effective in 2005 and thereafter, to receive a graduated phase-out of gap aid payments over three years, rather than lose the subsidy in the first year the tax is counted in the funding formula. Rather than losing its entire gap aid subsidy, the district receives over three years 75%, 50%, and 25%, respectively, of its last full gap aid payment.<sup>39</sup>

To enable the Department of Education to calculate these phase-out payments, the act requires the Tax Commissioner to certify to the Department by June 1 of each year for each school district currently receiving gap aid both (1) the

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*official's involvement with the office, (3) the treatment given to the public office is either preferential to or the same as the treatment given to other clients, and (4) the public office is aware of the official's interest in the contract and the official does not participate in any deliberations regarding the contract (R.C. 2921.42(C)).*

<sup>39</sup> R.C. 3317.0216, as amended by Am. Sub. H.B. 66 of the 126th General Assembly, effective June 30, 2005.

portion of property taxes charged and payable for current expenses that is attributable to each new levy approved and charged in the preceding tax year, and (2) the portion of school district income taxes collected for current expenses that is attributable to each new school district income tax first effective in the current or preceding tax year. To accommodate the Tax Commissioner's report, the act also requires the Department to provide a list by March 1 of school districts receiving gap aid payments.

### **Poverty-based assistance payments for all-day kindergarten**

(R.C. 3317.029)

To clarify continuing policy, the act specifies that any school district receiving a state payment for all-day kindergarten also may allocate other poverty-based assistance subsidies it receives, including academic intervention payments, to providing all-day kindergarten.

#### **Background**

Payments to school districts for all-day kindergarten represent one component of "poverty-based assistance." Most school districts are eligible to receive some amount for poverty-based assistance. The subsidy consists of seven separately calculated payments for all-day kindergarten, academic intervention, class-size reduction, services to limited English proficient students, professional development, dropout prevention, and community outreach. Each district also is guaranteed to receive as much total poverty-based assistance as it received in Disadvantaged Pupil Impact Aid in fiscal year 2005. Eligibility for and the amount of the separate payments generally are based on a district's "poverty index," which is the ratio of the district's percentage, compared to the statewide percentage, of students living in low-income families. Many of the payments must be used only for paying for certain services.

The all-day kindergarten payment may be made to (1) a district with a poverty index of 1.0 or greater or (2) a district with an index less than 1.0 if the district has a three-year average formula ADM of at least 17,500 students or if it had received an all-day kindergarten payment for the previous fiscal year. Any district that receives the payment, however, must use it to provide all-day service to the number of kindergarten students it certified as requesting that service (the district's "all-day kindergarten percentage"). In addition, continuing law requires a district to spend all of its poverty-based assistance payments (along with other district funds if necessary) first to provide all-day service to the students included in its all-day kindergarten percentage.

### **Post-Secondary Enrollment Options Program**

(R.C. 3365.02 and repealed and re-enacted R.C. 3365.11)

The Post-Secondary Enrollment Options Program (PSEO) allows high school students to enroll in nonsectarian college courses for both high school and college credit. Students in public high schools (school districts and community schools) and nonpublic high schools (chartered and nonchartered) are eligible for the program. Under Option A, the student is responsible for payments of all tuition but, under Option B, the state makes a payment to the institution of higher education on the student's behalf. State payments for public high school students are deducted from the state aid accounts of the students' resident school districts or their community schools. State payments for nonpublic high school students are paid out of a state set-aside, since nonpublic schools do not receive operations funding from the state.

Former law required the state Superintendent of Public Instruction to seek reimbursement from the student or student's parent of any state funds paid for a college course that the student failed. The act repeals this requirement and replaces it with a requirement that the superintendent of the student's resident school district or the chief administrator of the student's community school or nonpublic school seek that reimbursement. In the case of a school district or community school, the reimbursed funds would be deposited to a fund controlled by the district or community school. In the case of a nonpublic school, on the other hand, the reimbursed funds must be sent to the Superintendent of Public Instruction, who in turn must credit that amount to the state's General Revenue Fund. The act also specifically authorizes a school district board or community school governing authority to withhold high school grades and credits until the student or student's parent provides the reimbursement.

### **Autism Scholarship Program**

(Section 206.09.84 of Am. Sub. H.B. 66 of the 126th General Assembly)

The act stipulates that "pervasive developmental disorder--not otherwise specified" (also known as "PDD-NOS") is considered autism for purposes of eligibility for a scholarship under the Autism Scholarship Program. According to the Yale Developmental Disabilities Clinic, "Pervasive Developmental Disorder, Not Otherwise Specified (PDD-NOS)" is a 'subthreshold' condition in which some--but not all--features of autism or another explicitly identified Pervasive Developmental Disorder are identified. A child with PDD-NOS may have a "marked impairment of social interaction, communication, and/or stereotyped

behavior patterns or interest, but . . . full features for autism or another explicitly defined PDD are not met."<sup>40</sup>

### **Background**

The budget bill for the 2005-2007 biennium reauthorized this pilot program for FY 2006 and FY 2007. It pays scholarships of up to \$20,000 to the parents of autistic children for services at public and nonpublic special education programs in lieu of enrolling them in the programs of their resident school districts. The amount of each scholarship is deducted from the state aid account of the child's resident school district.

### **Use of student data verification codes**

#### **Background**

When a student initially enrolls in a school district or community school, the district or school must assign a unique data verification code to that student. The data verification code, commonly known as the Statewide Student Identifier (SSID), allows districts and community schools to confidentially report student-level data to the Department of Education through the Education Management Information System (EMIS). Generally, the Department is not permitted to have access to information that would enable a data verification code to be matched with personally identifiable student data.<sup>41</sup>

#### **Confidentiality of achievement test scores**

(Section 612.36.03 of Am. Sub. H.B. 66 of the 126th General Assembly; Section 827.03)

The act accelerates, to March 30, 2006, instead of July 1, 2006, the following provisions enacted in Am. Sub. H.B. 66 of the 126th General Assembly (the 2005-2007 biennial operating budget) to protect the confidentiality of student scores on the statewide achievement tests:

- (1) Authorizing the State Board of Education to require the use of data verification codes to protect student confidentiality;
- (2) Requiring that each achievement test include the data verification code of the student to whom it is administered;

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<sup>40</sup> See <http://info.med.yale.edu/chldstdy/autism/pddnos.html>.

<sup>41</sup> R.C. 3301.0714(D)(2).

(3) Specifying that the prohibition against the Department of Education releasing achievement test scores to any entity other than the students' school districts also applies to any company with which the Department contracts for the scoring of the tests.<sup>42</sup>

**Applying for tuition reimbursement for special education students**

(R.C. 3323.091)

Continuing law requires the Department of Mental Health, Department of Mental Retardation and Developmental Disabilities, Department of Youth Services, and Department of Rehabilitation and Correction to establish special education programs for disabled students served by institutions under their control. The superintendents of those institutions may apply to the Department of Education for special education and related services weighted funding (for school-age children) or unit funding (for preschool children). In addition, each institution is entitled to tuition deducted from the state aid account of each student's resident school district. To claim the tuition under current law, an institution's superintendent must annually submit to the Department of Education a statement that includes the disabled student's name and resident school district.

The act requires superintendents to use each special education student's data verification code, rather than the student's name, to identify the student for the purpose of receiving tuition reimbursements.

**Reporting of disabled preschool children to General Assembly**

(R.C. 3323.20)

Beginning July 1, 2006, the Department of Education must make annual electronic reports to the General Assembly on the number of disabled preschool children for whom the Department paid a provider for services during the previous fiscal year. Former law required this number to be disaggregated by the six categories of disabilities for which special education weighted funding is calculated.<sup>43</sup> However, under current State Board of Education rules, disabled

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<sup>42</sup> R.C. 3301.0711(A)(1) and (I), not in the act.

<sup>43</sup> These categories are (1) speech and language handicap, (2) specific learning disabled, developmentally handicapped, or other health handicapped-minor, (3) hearing handicapped, vision impaired, or severe behavior handicapped, (4) orthopedically handicapped or other health handicapped-major, (5) multihandicapped, and (6) autistic, having traumatic brain injuries, or both visually and hearing disabled (R.C. 3317.013, not in the act).

preschool children are identified as disabled based on documented deficits in one or more areas of development, such as cognitive ability or motor skills, instead of using the categories applicable to K through 12 students. Therefore, the act requires the Department to report the number of disabled preschool children disaggregated according to these developmental deficiencies.

**Timelines for completing value-added analyses**

(R.C. 3302.021)

Continuing law requires the Department of Education, by July 1, 2007, to incorporate a "value-added progress dimension" into the annual performance ratings issued for school district and buildings. Commonly referred to as the value-added effect, this measure uses achievement test data to assess the academic gains made by individual students over the course of a school year. In implementing the value-added progress dimension, the Department must use a system previously used by a nonprofit organization led by the Ohio business community and may presumably contract with the organization for that purpose.<sup>44</sup> The act specifies that any value-added data analysis conducted by an entity under contract with the Department must be completed in accordance with timelines established by the Superintendent of Public Instruction.

**Governing boards of merged ESCs**

(R.C. 3311.057)

Continuing law generally requires the governing board of an educational service center (ESC) to consist of five members who reside in the ESC's territory and are elected at large from that area.<sup>45</sup> However, if two or more ESCs merged after July 1, 1995, but before July 1, 2003, the merging ESCs had the option of determining the number of members on the new ESC's governing board (as long as the total membership was an odd number) and whether the members would be elected at large, by subdistrict, or some combination of both methods.

The act eliminates the July 1, 2003, cut-off date for the creation of these custom-designed governing boards. In other words, two or more existing ESCs that merge *after the effective date of this change* (June 30, 2006) may opt to design the governing board of the newly formed ESC. As under former law, to take advantage of the option, the boards of the merging ESCs must adopt identical

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<sup>44</sup> *The Ohio Business Roundtable's "Battelle for Kids" has developed a model value-added system that meets the statutory requirements.*

<sup>45</sup> *R.C. 3313.01, not in the act.*

resolutions describing how the new ESC board will be formed. The number of board members and their method of election cannot be changed at any time after the adoption of the resolutions. The act does not appear to permit an ESC that was formed by merger prior to June 30, 2006 to change the composition or method of election of its board.

**Removal of obsolete references to education subsidies**

(R.C. 3317.024; conforming changes in R.C. 3313.29, 3314.08, 3315.01, 3317.02, 3317.022, 3317.051, 3317.053, 3317.06, 3317.07, 3317.082, 3317.11, 3317.19, and 3319.17; Section 3 of Sub. H.B. 11 of the 126th General Assembly and Sections 206.09.21, 206.09.27, 206.09.36, 206.09.39, and 206.09.42 of Am. Sub. H.B. 66 of the 126th General Assembly)

The act strikes from law references to the following subsidies for school districts, for which the General Assembly has not appropriated funds in several years:

- (1) A per pupil subsidy for summer school remediation program (remediation subsidies have been financed differently over the past several years);
- (2) Supplemental teacher salary allowances for summer school, not appropriated since fiscal year 2000;
- (3) Driver's education courses, not appropriated since fiscal year 1999; and
- (4) MR/DD supportive home services for preschool children.

**Removal of LOEO references**

(R.C. 3317.029(L)(2); Section 206.09.66 of Am. Sub. H.B. 66 of the 126th General Assembly)

Am. Sub. H.B. 66 of the 126th General Assembly, the 2005-2007 biennial budget bill, eliminated the Legislative Office of Education Oversight (LOEO), effective December 31, 2005. This act removes references to LOEO from two statutes governing the Department of Education:

- (1) A codified provision requiring the Department to consult with LOEO before determining whether school districts are complying with the requirements of the state poverty-based assistance subsidy; and
- (2) An uncodified provision of H.B. 66 requiring the Department to send to LOEO a copy of any report it issues to the Office of Budget and Management and

the Legislative Service Commission concerning changes in distribution of state and federal funds to school districts.

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## STATE EMPLOYMENT RELATIONS BOARD

- Removes statutory provision that excludes public employees who must be licensed to practice law in this state to perform their duties from the definition of "public employee" under the Public Employees' Collective Bargaining Law ("PECB").
- Specifies that *all* categories of employees who are exempt from the definition of "public employee" under the PECB cannot be members of the Ohio Elections Commission.

### Attorneys governed by the Public Employees' Collective Bargaining Law

(R.C. 4117.01)

Under the Public Employees' Collective Bargaining Law (hereafter "PECB," R.C. Chapter 4117.), a public employee has the right to collectively bargain with the public employee's public employer. Continuing law defines "public employee" for the purpose of the PECB generally as any person who works for a public employer, whether by employment or appointment. The definition also lists specific exceptions, making those employees not "public employees" for purposes of the PECB. Statutory law formerly stated that employees who had to be licensed to practice law in this state to perform their duties as employees were exempt from the PECB's definition of "public employee." This exemption was held to violate the one-subject rule of the Ohio Constitution, Article II, Section 15(D) in *State ex rel. Ohio AFL-CIO, et al. v. Taft* (July 13, 2005), Franklin C.P. 04CVH02-1455, unreported. The act repeals this exemption from the law.

### Change in membership restrictions of the Ohio Elections Commission

(R.C. 3517.152)

Continuing law places restrictions on members of the Ohio Elections Commission. For example, a Commission member is not permitted to run for or hold a public office or work on a committee for a candidate or an issue. In addition, in what may be a technical update to R.C. 3517.152, under the act a



Commission member cannot be a person or employee who is excluded from the definition of a "public employee" under the PECB. Under former law, a Commission member could not be a person or employee who was included in the first 15 out of the existing 18 categories of exempt employees. Thus, under the act, employees in *all* categories of these exempted employees (i.e. *all* employees listed in division (C) of R.C. 4117.01, not just those listed in R.C. 4117.01(C)(1) through (15)) cannot be members of the Commission. Therefore, under the act, the added categories of employees (those listed in divisions (C)(16) and (C)(17) of R.C. 4117.01) who cannot be members of the Commission are: (1) employees in the "career professional service" under the Department of Transportation, and (2) participants in programs under the Ohio Works First Program, under specified conditions. The attorneys described above were listed in division (C)(18) of R.C. 4117.01, so the act's revision concerning which categories of public employees cannot be Commission members has no affect relative to those types of attorneys. Technically, they could have been members of the Commission under former law, and the act also allows them to be Commission members.

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## **ENVIRONMENTAL PROTECTION AGENCY**

- Clarifies that a solid waste transfer facility is required to collect fees on solid wastes taken to the facility prior to being transported for disposal at a solid waste disposal facility located in Ohio or outside of Ohio.
- Clarifies that a political subdivision must pay solid waste disposal fees to the owner or operator of a solid waste transfer or disposal facility and that the requirement that a customer or a political subdivision pay the fees is notwithstanding any applicable contract with the owner or operator of the facility or with the transporter of waste to the facility.
- Specifies that application fees and review fees for the issuance of section 401 water quality certifications by the Environmental Protection Agency do not apply to the United States Army Corps of Engineers.
- Extends, from June 30, 2006, to one year after the act's effective date, the exemption granted to coal mining and reclamation operations from the payment of section 401 water quality certification fees.

### **Collection of solid waste disposal fees**

(R.C. 3734.57)

Continuing law establishes fees on the disposal of solid wastes and requires the fees to be collected by a transfer facility if solid wastes are taken to a solid waste transfer facility located in this state prior to being transported to a solid waste disposal facility for disposal. The act clarifies that the disposal fees are levied on the transfer or disposal of solid wastes and that they must be collected by a solid waste transfer facility if solid wastes are taken to a transfer facility located in this state prior to being transported for disposal at a solid waste disposal facility located in Ohio or outside of Ohio. Thus, the act clarifies that even if solid wastes are transferred from a transfer facility to a solid waste disposal facility located outside of Ohio, the fees must be collected by the transfer facility.

### **Responsibility to pay solid waste disposal fees**

(R.C. 3734.57)

Continuing law states that solid waste disposal fees must be paid by the customer to the owner or operator of a solid waste transfer or disposal facility notwithstanding the existence of any provision in a contract that the customer may have with the owner or operator that would not require or allow such payment. The act clarifies that solid waste disposal fees must be paid by a customer or a political subdivision to the owner or operator of a solid waste transfer or disposal facility notwithstanding the existence of any provision in a contract that the customer or political subdivision may have with the owner or operator or with a transporter of waste to the facility that would not require or allow such payment.

### **Section 401 water quality certification fees**

(R.C. 3745.114)

Continuing law establishes application fees and review fees for section 401 water quality certifications. Such certifications are required to be obtained from the Environmental Protection Agency whenever a person intends to conduct dredging or filling operations in any of the waters of the state. The application fee for a certification is \$200, and the review fee is determined by the scope of the project that is the subject of the application and the classification of the body of water to be impacted (e.g., stream, lake, or wetland). The act specifies that the fees do not apply to projects conducted by the United States Army Corps of Engineers.

Additionally, under continuing law, coal mining and reclamation operations are exempt from section 401 water quality certification fees. However, under

prior law, that exemption was scheduled to end on June 30, 2006. The act extends this period of exemption until one year after the act's effective date.

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## DEPARTMENT OF HEALTH

- Permits the Department of Health to reimburse free clinics at a lower percentage (than the former 80%) of the amount the clinic spent on medical liability insurance premiums.
- Allows Choose Life license plate contributions to be distributed by the Director of Health to certain eligible organizations located in a county contiguous to the county where the funds otherwise would be allocated if no eligible organization within the county applies for funding.
- Requires physicians who perform abortions to complete and submit to the Department of Health an individual abortion report for each abortion performed.
- Requires hospitals to submit monthly and annual reports regarding the number of certain types of abortions performed.
- Requires the Department of Health to issue an annual report on abortions performed in Ohio.
- Requires the State Medical Board to inform physicians of the act's reporting requirement.
- Authorizes the Medical Board to take disciplinary actions against physicians who fail to comply with the reporting requirement established by the act.
- Would have required the rules governing sewage treatment systems that the Public Health Council must adopt to be adopted not sooner than July 1, 2007, rather than not later than May 6, 2006, as in continuing law (VETOED).
- Authorizes the Director of Health to make grants for women's health services programs.
- Requires the Department, for fiscal year 2007 only, to pay a pharmacy provider for a copayment assessed by a Bureau for Children with

Medical Handicaps (BCMH) participant's Medicare Part D plan on a drug that is approved by the Department, a "covered Part D drug" under federal law, and on the formulary of the participant's plan.

**Reimbursement to free clinics for medical liability insurance premiums**

(R.C. 2305.2341)

Former law required the Department of Health, under the Professional Liability Insurance Reimbursement Program, to reimburse free clinics for 80% of the premiums the clinic paid for medical liability insurance. The act requires the Department to reimburse free clinics for up to 80% of those medical liability insurance premiums. Continuing law defines "free clinic" to mean a nonprofit organization or component of a nonprofit organization that is exempt from federal income taxation and whose primary mission is to provide health care services for free or for a minimal administrative fee to individuals with limited resources.

**Choose Life Fund distribution**

(R.C. 3701.65)

Under continuing law, the Director of Health at least annually must distribute the money in the Choose Life Fund to any eligible private, nonprofit organization that applies for funding. The distribution generally is required to be based on the county in which the organization is located and in proportion to the number of "Choose Life" license plates issued during the preceding year for vehicles registered in that county. The act allows the Director to distribute Choose Life funds to eligible organizations located in a contiguous county if no eligible organization located within a county applies for the funding allocated to that county. An eligible organization may apply for funding in a contiguous county if it provides services for pregnant women residing in that contiguous county.

**Abortion reporting requirements**

(R.C. 3701.79)

The act establishes several reporting requirements for abortions performed in the state. Physicians performing abortions must prepare reports for each abortion performed and postabortion complication reports if necessary; hospitals must file monthly and annual reports regarding certain types of abortions performed; and the Department of Health must issue an annual report of abortion

data reported to the Department and make available the number of abortions performed by ZIP code of residence.

**Physician reporting requirements**

(R.C. 3701.79(C) to (F) and (H))

Under the act, for each abortion performed, the attending physician is required to complete an individual abortion report. The report is confidential and must not contain the name of the woman who received the abortion. The report must include the information including the name and address of the facility in which the abortion was performed, the date of the abortion and certain information regarding the woman on whom the abortion was performed, such as age, race, marital status, and number of children.

The physician who completed the abortion report must submit the report to the Department of Health not later than 15 days after the woman is discharged. The report must be made part of the woman's medical record at the facility.

The act also requires that the attending physician complete the appropriate vital records report or certificate following an abortion performed after the 20th week of gestation.

The act requires a physician to report on a form prescribed by the Department each time the physician treats a postabortion complication. The report must be signed by the physician and must be treated as confidential.

**Hospital reporting requirements**

(R.C. 3701.79(G))

Under the act, each hospital must file monthly and annual reports<sup>46</sup> listing the total number of women who have undergone an abortion past the 12th week of pregnancy and received postabortion care.<sup>47</sup>

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<sup>46</sup> *The monthly report must be filed not later than 30 days after the conclusion of the applicable reporting period. The annual report must be filed following the conclusion of the state's fiscal year (June 30).*

<sup>47</sup> *Under the act, "postabortion care" means care given after the uterus has been evacuated by abortion.*

**Department of Health reporting requirements**

(R.C. 3701.79(B) and (I))

Under the act, the Department of Health must collect and collate the abortion data reported by physicians and hospitals. The act requires the Department, not later than October 1 of each year, to issue a report of the abortion data reported to the Department for the previous calendar year. The report must include the following, at a minimum:

- (1) The total number of induced abortions;
- (2) The number of abortions performed on Ohio and out-of-state residents;
- (3) The number of abortions performed, sorted by each of the following:
  - (a) The age of the woman on whom the abortion was performed;<sup>48</sup>
  - (b) The race and Hispanic ethnicity of the woman on whom the abortion was performed;
  - (c) The education level of the woman on whom the abortion was performed;<sup>49</sup>
  - (d) The marital status of the woman on whom the abortion was performed;
  - (e) The number of living children of the woman on whom the abortion was performed;<sup>50</sup>

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<sup>48</sup> *The age of the woman must be reported using the following categories: under 15 years of age, 15 to 19 years of age, 20 to 24 years of age, 25 to 29 years of age, 30 to 34 years of age, 35 to 39 years of age, 40 to 44 years of age, or 45 years of age or older (R.C. 3701.79(I)(1)(c)(i)).*

<sup>49</sup> *The education level of the woman must be reported using the following categories: less than 9th grade, 9th through 12th grade, or one or more years of college (R.C. 3701.79(I)(1)(c)(iii)).*

<sup>50</sup> *The number of living children of the woman on whom the abortion was performed must be reported using the following categories: none, one, or two or more (R.C. 3701.79(I)(1)(c)(v)).*

(f) The number of weeks of gestation of the woman at the time the abortion was performed;<sup>51</sup>

(g) The county in which the abortion was performed;

(h) The type of abortion procedure performed;

(i) The number of abortions previously performed on the woman on whom the abortion was performed;

(j) The type of facility in which the abortion was performed;

(k) For Ohio residents, the county of residence of the woman on whom the abortion was performed.

(4) The number and type of the abortion complications reported to the Department either on the abortion report or the postabortion complication report.

The Department must make the report available on request. The Department must also make available, on request, the number of abortions performed by ZIP code of residence.

### **Rulemaking**

(R.C. 3701.341)

Under law modified by the act, the Department is authorized to adopt rules relating to abortions, including rules regarding abortion reporting forms. The act repeals the Department's authority to adopt rules regarding reporting forms.

### **Medical Board to notify physicians of reporting requirement**

(R.C. 4731.281)

Under law retained by the act, the Medical Board is required to mail to each person who holds a certificate of registration issued by the Board an application for registration renewal in accordance with a schedule established in statute. The act requires each mailing to inform an applicant for registration renewal of the reporting requirement established by the act (*see "Physician reporting requirements"* above). The information may be included on the application or on an accompanying page, at the discretion of the Board.

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<sup>51</sup> *The number of weeks of gestation of the woman at the time the abortion was performed must be reported using the following categories: less than 9 weeks, 9 to 12 weeks, 13 to 19 weeks, or 20 weeks or more (R.C. 3701.79(I)(1)(c)(vi)).*

### **Enforcement**

(R.C. 3701.79(J) and 4731.22)

The act authorizes the Department of Health to apply to the court of common pleas for a temporary or permanent injunction restraining a violation or threatened violation of the act's reporting requirements. Also, the act authorizes the Medical Board to take disciplinary action against any physician who violates the reporting requirements (*see* "**Physician reporting requirements**" above).

### **Sewage treatment system rules**

(R.C. 3718.02; Section 737.03)

Continuing law requires the Public Health Council to adopt rules governing sewage treatment systems not later than May 6, 2006. The Governor vetoed a provision that would have required those rules to be adopted not sooner than July 1, 2007, rather than not later than May 6, 2006.

### **Women's Health Services grants**

(R.C. 3701.046)

The act codifies a provision of the most recent general operations budget bill, Am. Sub. H.B. 66, that authorizes the Director of Health to make grants for women's health services programs with certain restrictions. For example, grant money may not be used to provide abortion services and grants may be made only to programs that are physically and financially separate from abortion-providing and abortion-promoting activities. The act provides that women's health services include and are limited to the following: pelvic examinations and laboratory testing; breast examinations and patient education on breast cancer; screening for cervical cancer; screening and treatment for sexually transmitted diseases and HIV screening; voluntary choice of contraception, including abstinence and natural family planning; patient education and pre-pregnancy counseling on the dangers of smoking, alcohol, and drug use during pregnancy; education on sexual coercion and violence in relationships; and prenatal care or referral for prenatal care. The act provides that the health care services are to be provided in a clinical medical setting and requires the Director to issue a single request for proposals for all women's health services grants.

## **Bureau for children with medical handicaps--Medicare Part D copayments**

(Section 606.18.09)

### **Background--BCMh**

The Program for Medically Handicapped Children and the Program for Adults with Cystic Fibrosis are state-administered programs operated by the Department of Health. The Programs are collectively known as the "Bureau for Children with Medical Handicaps" (BCMh). They provide medical assistance for qualifying handicapped children and for certain adults with cystic fibrosis. BCMh receives funding for the services it provides from the federal Maternal and Child Health Block Grant, the state's general revenue fund, county tax funds, third party reimbursements, and donations.<sup>52</sup>

### **Background--Medicare Part D**

Medicare Part D is a prescription drug benefit for every Medicare beneficiary regardless of income, health status, or prescription drug usage.<sup>53</sup> The benefit is not part of the traditional Medicare program; rather, it is offered through private insurance plans.<sup>54</sup>

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003,<sup>55</sup> which enacted the Medicare Part D drug benefit established a standard benefit that Part D plans can offer. The standard benefit is defined in terms of the benefit structure and not in terms of the drugs that must be covered. In 2006, this standard benefit requires a beneficiary to pay a \$250 deductible. The beneficiary then pays 25% of the cost of the covered Part D prescription drug up to an initial coverage limit of \$2,250. Once the initial coverage limit is reached, the beneficiary is subject to another deductible commonly referred to as the "doughnut hole" in which the beneficiary must pay the full cost of the medicine. When total out-of-pocket expenses on formulary drugs for the year, including the deductible and initial co-insurance, reach \$3,600, the beneficiary pays a copayment of \$2 for

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<sup>52</sup> Ohio Department of Health. "Children with Medical Handicaps," (visited March 21, 2006) <<http://www.odh.ohio.gov/odhprograms/cmh/cwmh/bcmh1.aspx>>.

<sup>53</sup> However, beneficiaries who are incarcerated are ineligible to participate in Part D. 42 C.F.R. §§ 423.4 and 423.30(a).

<sup>54</sup> Center for Medicare Advocacy, Inc. "Medicare Part D," (visited March 17, 2006) <[http://www.medicareadvocacy.org/FAQ\\_PartD.htm](http://www.medicareadvocacy.org/FAQ_PartD.htm)>.

<sup>55</sup> Pub. L. No. 108-173, 117 Stat. 2066.

generic or preferred drugs and \$5 for other drugs, or 5% coinsurance, whichever is greater.<sup>56</sup>

Medicare Part D plans are not required to offer the standard benefit. Alternative coverage, however, must be "actuarially equivalent" to the standard benefit. In an actuarially equivalent plan, the cost sharing varies through the use of mechanisms such as tiered copayments. For example, a beneficiary's share of the cost may be less for a generic or preferred brand name drug than for a non-preferred brand name drug.<sup>57</sup>

In addition, Medicare Part D plans are not required to pay for all covered Part D drugs. They may establish their own formularies as long as the formularies and benefit structure are not found by the Centers for Medicare & Medicaid Services (CMS) to discourage enrollment by Medicare beneficiaries. Plans can change the drugs on their formularies during the course of year if they give 60 days notice to affected parties.<sup>58</sup>

While enrollment in a Medicare Part D plan is optional for the majority of Medicare beneficiaries, enrollment in a Part D plan is mandatory for low-income Medicare beneficiaries who are dually eligible for Medicaid ("dual eligibles") because as of January 1, 2006, dual eligibles must receive most prescription drugs through Medicare Part D rather than Medicaid.<sup>59</sup> According to CMS, dual eligibles could choose a Medicare Part D plan beginning in the Fall of 2005. If a dual eligible did not choose a plan by January 1, 2006, Medicare automatically enrolled the dual eligible in a plan.<sup>60</sup> Unlike other Medicare beneficiaries who have the ability to change Part D plans only once a year, dual eligibles can change plans once a month if they find that a plan does not meet their needs.<sup>61</sup>

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<sup>56</sup> *Center for Medicare Advocacy, Inc., infra.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *According to Margaret Scott, Pharmacologist, Office of Ohio Health Plans, Ohio Department of Job and Family Services, the limited number of drugs in Ohio Administrative Code § 5101:3-9-12 will continue to be covered by Medicaid since they are not covered by Medicare Part D. Telephone Interview with Ms. Scott (Jan. 9, 2005).*

<sup>60</sup> *Centers for Medicare & Medicaid Services. "Prescription Drug Coverage: Common Situations," (visited March 20, 2006) <<http://www.medicare.gov/pdp-common-situations.asp#medicaid>>.*

<sup>61</sup> *Kaiser Family Foundation. "Dual Eligibles and Medicare Part D: An Implementation Update," (visited March 20, 2006) <<http://www.kff.org/medicaid/7454.cfm>>.*

Because all dual eligibles qualify for Medicare Part D subsidies that are available for low-income Medicare beneficiaries, they do not have to pay premiums or deductibles for their prescription drug coverage.<sup>62</sup> Most dual eligibles, like other Medicare Part D beneficiaries are still, nonetheless, responsible for copayments charged by their Part D plans.<sup>63</sup>

**Payment for Medicare Part D copayments--fiscal year 2007 only**

Some of the adults with cystic fibrosis who participate in BCMH are Medicare Part D beneficiaries. They are typically eligible for Medicare because they have qualified for Social Security Disability Income (SSDI) for at least 24 months or they have worked long enough in a federal, state, or local government job and meet the requirements of the SSDI Program.<sup>64</sup> They may also be dual eligibles if they also qualify for Medicaid. Because they are Medicare Part D beneficiaries, they are responsible for paying copayments assessed by their Part D plans.

The act requires the Department of Health, for fiscal year 2007 only, to pay a pharmacy provider for a copayment charged by a BCMH participant's Medicare Part D plan. The act defines "pharmacy provider" as a pharmacist licensed by the State Pharmacy Board to engage in the practice of pharmacy or a pharmacy that has entered into a BCMH provider agreement with the Department of Health.<sup>65</sup>

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<sup>62</sup> *Id.*

<sup>63</sup> *Dual eligibles who are institutionalized are not required to pay copayments. Center for Medicare Advocacy, Inc., infra.*

<sup>64</sup> *Social Security Administration. "Answer to Question: What are the Requirements to Receive Medicare Benefits?" (visited March 21, 2006) <[http://ssa-custhelp.ssa.gov/cgi-bin/ssa.cfg/php/enduser/std\\_adp.php?p\\_faqid=400&p\\_created=965172659&p\\_sid=\\_2HJ\\*w3i&p\\_lva=&p\\_sp=cF9zcmNoPTEmcF9zb3J0X2J5PSZwX2dyaWRzb3J0PSZwX3Jvd19jbnQ9MzkmcF9wcm9kc0mcF9jYXRzPSZwX3B2PSZwX2N2PTEuMTAzJnBfcGFnZT0x&p\\_li=&p\\_topview=1](http://ssa-custhelp.ssa.gov/cgi-bin/ssa.cfg/php/enduser/std_adp.php?p_faqid=400&p_created=965172659&p_sid=_2HJ*w3i&p_lva=&p_sp=cF9zcmNoPTEmcF9zb3J0X2J5PSZwX2dyaWRzb3J0PSZwX3Jvd19jbnQ9MzkmcF9wcm9kc0mcF9jYXRzPSZwX3B2PSZwX2N2PTEuMTAzJnBfcGFnZT0x&p_li=&p_topview=1)>. For an adult to qualify for Social Security Disability Income (SSDI), the Social Security Administration must determine that the adult cannot engage in any "substantial gainful activity" because of a physical or mental impairment that is expected to result in death or continue for at least 12 months. Kaiser Family Foundation. "Navigating Medicare and Medicaid, 2005: A Resource Guide for People with Disabilities, Their Families, and Their Advocates," (visited March 21, 2006) <<http://www.kff.org/medicare/7240.cfm>>.*

<sup>65</sup> A "pharmacy" is defined consistent with the law governing the practice of pharmacy (R.C. Chapter 4729.), which provides that a "pharmacy" is any area, room, rooms, place of business, department, or portion of any of the foregoing where the practice of pharmacy is conducted (R.C. 4729.01(A)).

"Copayment" is defined as a dollar amount charged for, or a percentage of the total price of, an approved drug<sup>66</sup> prescribed for a BCMH participant that meets all of the following criteria: (1) is assessed by the participant's plan either at the time the prescription for the drug is presented or the drug is dispensed, (2) is not otherwise covered by the participant's plan or any other third party benefits, including any benefits provided by a government entity, and (3) is not a premium or deductible.

The act permits the Public Health Council to adopt rules as necessary to implement these requirements. The act specifies that the rules may be initially adopted as emergency rules.

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## HOUSE OF REPRESENTATIVES/SENATE

- Authorizes the clerks of the Senate and House of Representatives to print the daily journals or "publish" them in an electronic format.
- Eliminates the requirement that legislative journals be printed in pamphlet form daily during each session of the General Assembly.

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<sup>66</sup> *The act defines an "approved drug" as a drug approved by the Department of Health for the Program for Medically Handicapped Children or Program for Adults with Cystic Fibrosis that is a covered Part D drug on the formulary of a BCMH participant's plan. The term, "covered Part D drug" is defined in the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, 117 Stat. 2066, and in short, is any drug available only by prescription, approved by the U.S. Food and Drug Administration (FDA), used and sold in the U.S., and used for medically accepted indication. More specifically, "Part D drug" includes prescription drugs, biological products, insulin, vaccines, and certain medical supplies associated with the injection of insulin. Certain drugs or classes of drugs cannot be Part D drugs because they are excluded by law. These include (1) drugs when used for anorexia, weight loss, or weight gain, (2) drugs when used to promote fertility, (3) drugs when used for cosmetic purposes or hair growth, (4) drugs when used for the symptomatic relief of coughs and colds, (5) prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations, (6) nonprescription drugs, (7) services being purchased exclusively from the manufacturer as a condition of sale, (8) barbiturates, and (9) benzodiazepines. In addition, a covered Part D drug is not a drug, as it is prescribed and dispensed or administered to an individual, that is available under Parts A (hospital services) or B (physician services) of Medicare. Centers for Medicare & Medicaid Services. Frequently Asked Questions (ID No. 3976) (visited March 17, 2006) <[http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std\\_alp.php?p\\_sid=C2XBD13i&p\\_lva=&p\\_li=&p\\_accessibility=0&p\\_page=1&p\\_cv=&p\\_pv=&p\\_prods=0&p\\_cats=&p\\_hidden\\_prods=&prod\\_lv11=0&p\\_search\\_text=3976&p\\_new\\_search=1&p\\_search\\_type=answers.search\\_nl](http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_alp.php?p_sid=C2XBD13i&p_lva=&p_li=&p_accessibility=0&p_page=1&p_cv=&p_pv=&p_prods=0&p_cats=&p_hidden_prods=&prod_lv11=0&p_search_text=3976&p_new_search=1&p_search_type=answers.search_nl)>.*

## *Printing or publishing of daily legislative journals*

(R.C. 101.543)

### *Background law*

Under continuing law, the clerks of the Senate and House of Representatives are custodians of the documents in their possession and are responsible for the *printing* of a document when its printing becomes necessary in the course of the proceedings or operations of the clerk's respective house (R.C. 101.52--not in the act). The daily and final journals are among the legislative documents for which the clerks have that responsibility (R.C. 101.51(B)--not in the act).

Article II, Section 9 of the Ohio Constitution requires each house to "keep a correct journal of its proceedings, which shall be *published*." By statute, the clerks have specified discretion in choosing the "method of *printing*" of the journals or other documents, whether "to paper or to electronic memory," provided that they must not select a method unless it reasonably appears under the circumstances that it will enable them to successfully and efficiently discharge the responsibility for printing the document or class of documents (R.C. 101.51(C) and 101.52--not in the act).

Continuing statutory law requires each clerk to keep a *daily journal* of the proceedings of their respective house, which must be read and corrected in the clerk's presence. After the reading, correction, and approval of the daily journal, it must be attested by the clerk and recorded. The recorded daily journals must be deposited with the Ohio Historical Society and are the "true journals." The original daily journals, as kept, corrected, approved, and attested, must be used by the clerk to print the journals. (R.C. 101.54--not in the act.)

Former law, modified by the act (see below), required the *daily journals* to be *printed* daily during each session of the General Assembly *in pamphlet form* without covers. And, under former law, the composition used in printing the daily journals had to be retained for use in printing the *final journals*; "composition" includes, for example, paper, typeface, binding, and other matters relating to the makeup of a document. (R.C. 101.51(A)--not in the act; R.C. 101.543.)

Finally, under continuing law, after adjournment sine die, the final journals and their appendices must be printed and bound in one or more volumes (R.C. 101.543).

### Changes made by the act

The act confers upon the clerks the option of either printing or "publishing" the daily journals of their respective house. For purposes of the act, "publish" means to produce an *electronic record* that is accessible to the public. The act corresponding eliminates the requirements for the journals' daily printing in pamphlet form and for the Senate Journal to precede the House of Representatives Journal in the pamphlet. The act does not appear to require the original daily journal, as kept, corrected, approved, and attested under R.C. 101.54 (not in the act) to be used to publish the daily journals in electronic format, although this requirement seems to be retained for printed daily journals. Finally, the composition (see definition above) of published daily journals must be retained for use in printing the final journals. (R.C. 101.543.)

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## DEPARTMENT OF INSURANCE

- Prohibits health care providers and third-party payers, including Medicaid-participating health insuring corporations, from entering into contractual arrangements under which time periods shorter than those provided for in federal Medicaid regulations are applicable to payment claims for health care services.
- Eliminates the requirement that any person or entity soliciting insurance business obtain a certificate of compliance from the Superintendent of Insurance before advertising.
- Specifies how insurance company tax overpayments are to be refunded, how long the state has to assess for unpaid insurance company taxes, how interest on underpaid or overpaid insurance company taxes is to be computed, and the order in which insurance company tax credits are to be claimed.

### Prompt payment of claims for health care services

(R.C. 3908.383)

In general, continuing law requires third-party payers to pay or deny a claim for payment for services rendered by a health care provider not later than 30

days after receipt of the claim.<sup>67</sup> If supporting documentation is needed to process the claim, the claim must be paid or denied within 45 days. A third-party payer and provider may enter into a contractual agreement in which payment is to be made within shorter time periods.

The act prohibits a provider and third-party payer, including a third-party payer that provides coverage under the Medicaid program, from entering into a contractual agreement under which time periods longer than those provided for in federal Medicaid regulations are applicable to the third-party payer in paying a claim for any amount due for health care services rendered by the provider. The prohibition applies regardless of whether the third-party payer is exempt from Ohio's prompt pay laws because the third-party payer is providing coverage under the Medicaid program (*see* **DEPARTMENT OF JOB AND FAMILY SERVICES: "Prompt payment by Medicaid-participating health insuring corporations"**).

### **Certificate of compliance**

(R.C. 3905.43)

The act eliminates the requirement that, before a person, firm, association, partnership, company, or corporation may publish or distribute or receive and print for publication or distribution any advertisement soliciting insurance business, that person or entity must obtain a certificate of compliance from the Superintendent of Insurance.

### **Insurance company tax--continuing law**

Continuing law imposes annual taxes on insurance companies writing policies covering risks in Ohio. Generally, the taxes are charged on the basis of companies' adjusted gross premiums for policies covering risks in Ohio. Taxes apply to "domestic" insurance companies (those formed or organized under Ohio law) and to "foreign" insurance companies (those formed under the laws of some other jurisdiction). The tax rate is 1.4% of adjusted gross premiums (excluding premiums of health insuring corporations); on health insuring corporations, the rate is 1% of adjusted gross premiums. The minimum annual tax is \$250. All revenue from the taxes is credited to the General Revenue Fund.

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<sup>67</sup> For purposes of the laws governing prompt payment of claims for health care services, a "third-party payer" includes any insurance company, health insuring corporation, labor organization, employer, or other entity contractually obligated to pay charges for covered health care services. A "provider" is any hospital, nursing home, physician, podiatrist, dentist, pharmacist, chiropractor, or other health care provider entitled to reimbursement by a third-party payer. (R.C. 3901.38, not in the act.)

A tax also is levied at the rate of 0.75% of adjusted gross premiums on fire insurance policies written by domestic and foreign insurance companies. Revenue from the tax is credited to the State Fire Marshal's Fund. (R.C. 3737.71.)

### **Refunds**

(R.C. 5725.222(A), 5729.05, and 5729.102(A); Sections 757.15 and 757.18)

The act prescribes specific procedures for refunding overpaid insurance company taxes (including the fire insurance tax). The refund provisions are modeled on similar refund provisions governing other major state taxes such as the corporation franchise tax. Refunds are available for tax that an insurance company overpaid, paid illegally or erroneously, or paid under an assessment that was illegal, erroneous, or excessive. To obtain a refund, an insurance company must file an application with the Superintendent of Insurance on a form prescribed for that purpose by the Superintendent. The application must be filed within three years after the tax was paid, but this period may be extended by mutual agreement.

Prior law required refunds of overpaid insurance company taxes, but did not provide procedures for a company to claim a refund and did not impose a time limit within which companies must initiate a refund claim.

The act's refund provisions take effect immediately. They apply to refunds of taxes paid before, on, or after the immediate effective date. But if a refund application were to fall due under the act's three-year filing deadline before 30 days after the immediate effective date, the application may be filed within 30 days after the immediate effective date.

### **Assessments for deficiencies**

(R.C. 5725.222(B) and 5729.102(B); Sections 757.15 and 757.18)

The act prescribes procedures and a time limit for issuing assessments for allegedly unpaid or underpaid insurance company taxes (including the fire insurance tax). Generally, an assessment is a formal notice to a taxpayer of an alleged tax deficiency; its issuance marks the beginning of the time within which certain procedural rights or actions must be exercised. The act expressly authorizes the Superintendent of Insurance to issue an assessment for unpaid or underpaid taxes "based on any information in the Superintendent's possession." The assessment must be issued within three years after the final deadline for filing the tax report or return or for paying the tax, or when the report or return was actually filed, whichever is later. However, the three-year time limit does not apply if the insurance company failed to file a report or return or if the tax

deficiency results from fraud or a felonious act. The insurance company and the Superintendent may extend the three-year time limit by mutual written agreement.

Under prior law, insurance companies could have been billed for tax deficiencies, which, if left unpaid, were required to be certified to the Attorney General for collection. But, there was no formal assessment procedure such as that prescribed by the act and no corresponding time limit on initiating formal tax deficiency notice and collection procedures.

The act's assessment provisions take effect immediately. They apply to taxes due or paid before, on, or after the immediate effective date. But if the act's three-year limit on issuing an assessment were to expire before 30 days after the act's immediate effective date, the deadline for issuing the assessment is extended to the 30th day after the immediate effective date.

### **Interest**

(R.C. 5725.221 and 5729.101)

The act prescribes how interest is to be computed on underpaid foreign insurance company taxes (including the tax on gross premiums of fire insurance policies) and on refunds of those taxes when they are overpaid. The act's interest provisions are similar to those applicable to domestic insurance company taxes under ongoing law. When a tax return is not filed on time, interest accrues on the unpaid tax on a monthly basis beginning with the first month that begins after the tax due date through the month that ends before the date the tax is paid. When an amended or final assessment is certified, and a deficiency of tax is found to be due, interest accrues on the deficiency from the first day of the month following the date the previous assessment was payable through the month that ends before the date the amended or final assessment is certified. When an amended or final assessment is certified, and an overpayment is found to be refundable to the company, interest accrues on the refund from the first day of the month following the date the previous assessment was certified through the month that ends before the date the amended or final assessment is certified.

In all cases, interest accrues on a monthly basis at 1/12 the statutory interest rate charged for most kinds of late tax payments--i.e., at 3% above the average yield on outstanding marketable United States Government securities having a remaining maturity of three years or less. The interest rate for every month in 2006 is 0.5% per month based on the per annum rate of 6%.

The act also expressly provides for interest charges on late payments of the tax on adjusted gross premiums of fire insurance policies written by domestic

insurance companies. Prior law did not specify that interest accrues on late payments of the tax on fire insurance premiums.

Under prior law, no interest was specifically provided for delinquent foreign insurance company taxes until they were certified for collection to the Attorney General. And no interest was specifically provided for refunded tax overpayments.

The act's interest provisions take effect immediately.

**Credit ordering**

(R.C. 5725.98 and 5729.28)

The act prescribes a specific order in which the six credits available against the several insurance company taxes must be claimed. The order is intended to ensure the maximum amount of total credit for companies claiming more than one of the credits by making the credits with the more generous carry-forward or refund potential deducted after the less generous credits are deducted. The order is as follows, from first to last:

(1) The nonrefundable credit for "small" insurance companies or commonly owned insurance company groups having less than \$75 million in nationwide premiums.

(2) The nonrefundable credit for employee training costs.

(3) The nonrefundable credit for losses on venture capital loans.

(4) The tax offset for assessments against member insurers for the Ohio Life and Health Insurance Guaranty Association.

(5) The refundable job creation tax credit.

(6) The refundable credit for losses on venture capital loans.

The credit ordering provision takes effect immediately.

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**DEPARTMENT OF JOB AND FAMILY SERVICES**

- Updates state law governing Medicaid ineligibility for disposition of assets for less than fair market value in accordance with changes to federal law made by the Deficit Reduction Act of 2005.



- Updates state law governing the maximum amount that an individual's home may be worth for the individual to qualify for Medicaid in accordance with federal law enacted as part of the Deficit Reduction Act of 2005.
- Provides that the determination of whether real property is to be considered an aged, blind, or disabled individual's homestead or principal place of residence is for the purpose of determining whether the individual is eligible for nursing facility services, intermediate care facility for the mentally retarded services, or other Medicaid-funded long-term care services rather than for Medicaid in general.
- Creates the Medicaid Revenue and Collections Fund into which the non-federal share of Medicaid-related revenues, collections, and recoveries that are not credited to another fund are to be credited.
- Renames the Hospital Care Assurance Match Fund (to which federal matching funds that are received under the Hospital Care Assurance Program are credited) the Health Care – Federal Fund and requires that the federal share of Medicaid-related revenues, collections, and recoveries (including drug rebates) that are not credited to another fund also be credited to the fund.
- Expressly requires that the non-federal share of all supplemental rebates paid by drug manufacturers under the Supplemental Drug Rebate Program be credited to the Prescription Drug Rebates Fund.
- Allows a hospital to take action to collect Medicaid copayments by providing, at the time services are rendered, notice that a copayment may be owed, and exempts the hospital from the prohibition against waiving Medicaid copayments if the hospital provides the notice and chooses not to take further action for collection.
- Eliminates the restriction that limits the Department of Job and Family Services to recovering a Medicaid overpayment to the five-year period immediately following the end of the state fiscal year in which the overpayment is made, but provides that the Department may make such a recovery only if it notifies the provider of the overpayment during that five-year period.

- Requires persons and government entities that receive or make annual Medicaid payments of at least \$5 million to provide their employees, contractors, and agents with information about federal and state laws on prevention and detection of fraud, waste, and abuse.
- Requires a Medicaid-participating health care provider that renders emergency services to a Medicaid managed care participant on or after January 1, 2007, without being under contract with the participant's Medicaid managed care organization, to accept, as payment in full, not more than the amounts (less any payments for medical education costs) that could have been collected if the Medicaid recipient were not enrolled in a managed care organization.
- Clarifies that federal requirements for making prompt Medicaid payments are not applicable to Medicaid-participating health insuring corporations if Ohio's prompt payment requirements are implemented instead.
- Requires the Director of Job and Family Services to establish a qualified state long-term care insurance partnership program not later than September 1, 2007.
- Requires the Director of Job and Family Services to adopt rules providing for a reduction of an adjustment or recovery under the Medicaid estate recovery program for estates of participants in the long-term care insurance program.
- Provides that a nursing facility's costs for habilitation supervisors, qualified mental health professionals, and program directors are to be part of the facility's ancillary and support costs rather than direct care costs.
- Provides that a nursing facility is to be excluded when the Department of Job and Family Services identifies which nursing facility in a peer group is at the 25th percentile of the nursing facilities' cost per case-mix unit if the nursing facility's cost per case-mix unit is more than one standard deviation from the mean cost per case-mix unit for all nursing facilities in the peer group.

- Eliminates the requirement that the Department of Job and Family Services place nursing facilities in quality tier groups for the purpose of paying the facilities a quality incentive payment.
- Requires that the mean quality incentive payment for fiscal year 2007 be \$3 per Medicaid day and that the Department adjust the mean payment for subsequent fiscal years by the same adjustment factors the Department uses to adjust other parts of nursing facilities' reimbursement rate.
- Limits the awarding of quality points for resident or family satisfaction to fiscal years immediately following calendar years for which a survey of resident or family satisfaction has been conducted.
- Removes franchise permit fees and quality incentive payments from the components of a nursing facility's Medicaid reimbursement rate that are to be adjusted as directed by the General Assembly through the enactment of law governing Medicaid payments to nursing facilities.
- Eliminates the requirement that the Department of Job and Family Services adjust a nursing facility's Medicaid reimbursement rate to account for reasonable additional costs the nursing facility must incur to comply with (1) requirements of federal or state statutes, rules, or policies or (2) orders issued by state or local fire authorities.
- Corrects a provision of the fiscal year 2006 Medicaid reimbursement formula for new nursing facility beds by replacing a reference to fiscal year 2007 with a reference to fiscal year 2006.
- Requires that the Department of Job and Family Services, as part of the process of determining a nursing facility's reimbursement rate for fiscal year 2007, calculate the rate under the new reimbursement formula, increase the amount so calculated by 2%, and then increase that amount by another 2%.
- Requires that the Director of Job and Family Services make payments to qualifying nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR) for quarterly periods starting no sooner than January 1, 2006.

- Provides that facilities that qualify for the payments are (1) certain nursing facilities and ICFs/MR that are new as of fiscal year 2006 or 2007, (2) certain nursing facilities and ICFs/MR that complete capital projects, (3) certain nursing facilities that complete an activity for which a certificate of need is not needed, and (4) certain nursing facilities and ICFs/MR that complete a renovation.
- Creates formulas to be used to determine the amount of the payments.
- Terminates all nursing facilities and ICFs/MR's eligibility for the payments at the earlier of July 1, 2007, or the date the total amount of the payments equals \$10 million.
- Permits an intermediate care facility for the mentally retarded (ICF/MR) to convert in whole or in part, rather than just in whole, to providing home and community-based services under the ICF/MR Conversion Pilot Program.
- Requires that an ICF/MR that converts in part to place the beds that convert in a distinct part of the facility that houses the ICF/MR.
- Exempts an ICF/MR's beds that convert from a requirement that they be included in the ICF/MR's Medicaid provider agreement with the other parts of the facility that meet standards for certification of compliance with federal and state law and rules for participation in the Medicaid program.
- Permits the operator of an ICF/MR to remove a bed converted to providing home and community-based services under the ICF/MR Conversion Pilot Program (and a bed that is designated for respite care under a Medicaid waiver program administered by the Department of Mental Retardation and Developmental Disabilities) from a Medicaid provider agreement without having to withdraw the rest of the ICF/MR from the Medicaid program.
- Requires that an ICF/MR that participates in the ICF/MR Conversion Pilot Program to be licensed as a residential facility or certified to provide supported living, consistent with the law governing the licensure of residential facilities.

- Reduces the licensed capacity of an ICF/MR by each resident who enrolls in the ICF/MR Conversion Pilot Program.
- Reduces the certified capacity of an ICF/MR by each bed that converts to providing home and community-based services under the ICF/MR Conversion Pilot Program.
- Requires the Director of Job and Family Services to amend an ICF/MR's Medicaid provider agreement to reflect the ICF/MR's reduced certified capacity or, if the ICF/MR's certified capacity is reduced to zero, terminate the ICF/MR's Medicaid provider agreement.
- Prohibits an ICF/MR from reconverting beds back to providing ICF/MR services after the ICF/MR Conversion Pilot Program terminates if the facility does not meet licensure requirements.
- Requires that the Director of Job and Family Services adjust an ICF/MR's franchise permit fee if the ICF/MR's certified capacity is reduced under the ICF/MR Conversion Pilot Program.
- Permits the Director of Job and Family Services to adjust an ICF/MR's franchise permit fee if the facility's certified capacity is increased after the ICF/MR Conversion Pilot Program terminates.
- Requires that the Director of Mental Retardation and Developmental Disabilities increase the cap on the number of licensed residential facility beds if necessary to enable the operator of a residential facility to be licensed as required by the ICF/MR Conversion Pilot Program or to reconvert to providing ICF/MR services after the program terminates.
- Adds to the Medicaid Care Management Working Group one additional member to represent providers of Medicaid services not required by federal law (optional services).

## *Disposition of assets for less than fair market value*

(R.C. 5111.011, 5111.0116, and 5111.151)

### *Background*

Federal law generally requires that states temporarily deny an institutionalized individual eligibility for certain Medicaid-covered services if the individual or individual's spouse disposes of assets for less than fair market value on or after a date called the look-back date. The following are considered to be institutionalized individuals: (1) nursing facility residents, (2) inpatients of medical institutions with respect to which payment is based on a level of care provided in a nursing facility, and (3) individuals who would be eligible for Medicaid under the state's Medicaid plan if they were in a medical institution, would require, if not for home and community-based services, the level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded the cost of which is reimbursable under the state's Medicaid plan, and will receive home and community-based services pursuant to a federal Medicaid waiver. The services for which eligibility is denied are nursing facility services, equivalent services provided by other institutions, and home and community-based services furnished under a federal Medicaid waiver.

Prior to the enactment of the Deficit Reduction Act of 2005, federal Medicaid law provided that the look-back date was the date that was 60 or 36 months, depending on the type of assets at issue, before the first date as of which an individual was both an institutionalized individual and a Medicaid applicant. In other words, to avoid ineligibility for the specified services based on a disposition of assets for less than fair market value, the disposition had to occur 60 or 36 months before the date the individual was both an institutionalized individual and a Medicaid applicant. The look-back date was 60 months for assets consisting of payments from a trust and 36 months for all other assets. The Deficit Reduction Act provides that the number of months used in determining the look-back date is 60 months for all assets, not just assets consisting of payments from a trust. The change is applied prospectively only, meaning that dispositions that occurred before the Deficit Reduction Act continue to be governed by the previous law.

Also prior to the Deficit Reduction Act, the temporary ineligibility due to a disposition of assets for less than fair market value began on the first day of the first month during or after which the assets were transferred and that did not occur in another period of ineligibility due to the look-back penalty. The Deficit Reduction Act amended this too. The temporary ineligibility for a disposition of assets that occurs on or after the enactment of the Deficit Reduction Act begins on the later of the following that does not occur during another period of ineligibility due to the look-back penalty: the first day of the month during or after which the



disposition of assets occurs or the date on which the institutionalized individual is eligible for Medicaid and would be receiving the specified services if not the look-back penalty.

The Deficit Reduction Act did not change the amount of time ineligibility for the specified services continues. The number of months of ineligibility is determined by dividing the total, cumulative uncompensated value of all assets disposed of on or after the look-back date by the average monthly cost to a private patient of nursing facility services in the state (or, at the state's option, in the community in which the individual is institutionalized) at the time of application.

Certain dispositions of assets do not cause a look-back penalty. For example, title to a home may be transferred to the following: a spouse; a child who is under age 21, blind, or disabled; a sibling who has an equity interest in the home and who resided in the home for at least one year immediately before the date the individual becomes an institutionalized individual; and a son or daughter who resided in the home for at least two years immediately before the date the individual becomes an institutionalized individual if the son or daughter enabled the individual to remain at home by caring for the individual. Also, no penalty is to be applied if the state determines that denial of eligibility would cause an undue hardship. The Deficit Reduction Act requires that states provide for a hardship waiver process under which an undue hardship exists when application of the penalty would deprive an individual of (1) medical care without which the individual's health or life would be endangered or (2) food, clothing, shelter, or other necessities of life.

### **The act**

The act repeals current state law governing the look-back period, including state law governing the look-back period as it applies to assets that are part of a trust. In its place, the act enacts a new law that provides that an institutionalized individual is ineligible for Medicaid-funded nursing facility services, nursing facility equivalent services, and home and community-based services if the individual or individual's spouse disposes of assets<sup>68</sup> for less than fair market value on or after the look-back date. "Look-back date" is defined as the date that is a

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<sup>68</sup> *Consistent with federal law governing the look-back penalty, the act defines "assets" as including all of an individual's income and resources and those of the individual's spouse, including any income or resources that the individual or spouse is entitled to but does not receive because of action by the individual or spouse or a person or government entity, including a court or administrative agency, with legal authority to act in place of or on behalf of the individual or spouse or acting at the direction of or on the request of the individual or spouse.*

certain number of months immediately before either of the following: the date an individual becomes an institutionalized individual if the individual is eligible for Medicaid on that date or the date an individual applies for Medicaid while being an institutionalized individual. The Director of Job and Family Services is required to adopt rules specifying the number of months to be used for the purpose of the look-back penalty. The Director is also to adopt rules establishing a process to be used to determine the date an institutionalized individual's ineligibility is to begin under the look-back penalty and the number of months the ineligibility is to continue. Additionally, the Director is to adopt rules establishing exceptions to the look-back penalty.

The act retains a provision of current law that permits the Director, for the purpose of securing compliance with the look-back provision, to require an individual, as a condition of initial or continued eligibility for Medicaid, to provide documentation of the individual's assets up to five years before the date the individual becomes an institutionalized individual if the individual is eligible for Medicaid on that date or the date the individual applies for Medicaid while an institutionalized individual. Documentation may include tax returns, records from financial institutions, and real property records.

**Medicaid ineligibility due to substantial home equity**

(R.C. 5111.011 and 5111.0118)

The Deficit Reduction Act of 2005 requires that states, beginning January 1, 2006, deny an individual's eligibility for Medicaid-covered nursing facility services and other long-term care services if the individual's equity interest in the individual's home exceeds \$500,000 (or at a state's option, \$750,000). This amount is to be increased annually beginning in 2011 based on the percentage increase in the consumer price index for all urban consumers, rounded to the nearest \$1,000. However, an individual is not to be denied eligibility on this basis if either of the following lawfully reside in the home: (1) a spouse or (2) a child who is under age 21, blind, or disabled. The United States Secretary of Health and Human Services is required to establish a process for waiving ineligibility in cases of demonstrated hardship. Also, an individual may use a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.

The act repeals law that disqualified an aged, blind, or disabled individual for Medicaid if the value of the individual's real property used as a homestead or principal place of residence exceeded the maximum allowed for the Supplemental Security Income program. In its place, the act implements the new federal mandate from the Deficit Reduction Act. The initial maximum equity interest is set at \$500,000. The Director of Job and Family Services is required to comply

with the United States Secretary of Health and Human Services' process for waiving the ineligibility in cases of demonstrated hardship.

**When real property ceases to be considered principal place of residence**

(R.C. 5111.011 and 5111.0117)

State law permits the Department of Job and Family Services to consider real property to not be the homestead or principal place of residence of an aged, blind, or disabled applicant for or recipient of Medicaid if the applicant or recipient resides in a nursing facility, intermediate care facility for the mentally retarded (ICF/MR), or other medical institution for 13 months or longer. This does not apply when any of the following reside in the real property: a spouse; a son or daughter who is under age 21, blind, disabled, or financially dependent on the applicant or recipient for housing; or a sibling who has a verified equity and ownership interest in the real property and resided in the real property for at least one year immediately before the date the applicant or recipient was admitted to the nursing facility, ICF/MR, or other medical institution.

Under prior law, the consideration was made for the purpose of determining eligibility for the Medicaid program. The act provides that the purpose of making the consideration is to determine whether the individual is eligible for nursing facility services, ICF/MR services, or other Medicaid-funded long-term care services rather than for Medicaid in general. The Director is to adopt rules defining the term "other Medicaid-funded long-term care services."

**Medicaid funds**

(R.C. 5111.941, 5111.081, 5111.082, 5111.083, 5111.084, 5111.942, 5111.943, 5112.08, and 5112.18; Sections 606.17, 606.18, and 815.09)

The act creates the Medicaid Revenue and Collections Fund in the state treasury and requires, except as otherwise provided by statute or as authorized by the Controlling Board, that the non-federal share of all Medicaid-related revenues, collections, and recoveries be credited to the fund. The Department of Job and Family Services is required to use money credited to the fund to pay for Medicaid services and contracts.

The act renames the Hospital Care Assurance Match Fund the Health Care – Federal Fund. Under prior law, only federal matching funds received as a result of the Department distributing funds from the Hospital Care Assurance Program (HCAP) Fund (to which payments hospitals make to the Department under the Hospital Care Assurance Program are credited) to hospitals had to be

credited to the Hospital Care Assurance Match Fund.<sup>69</sup> The act provides for such payments to continue to be credited to the renamed fund and requires that all of the following also be credited to the fund:

(1) The federal share of all rebates paid by drug manufacturers to the Department in accordance with federal Medicaid law governing drug rebates;

(2) The federal share of all supplemental rebates paid by drug manufacturers to the Department in accordance with state Medicaid law governing supplemental drug rebates.

(3) Except as otherwise provided by statute or as authorized by the Controlling Board, the federal share of all other Medicaid-related revenues, collections, and recoveries.

Under prior law, money in the Hospital Care Assurance Match Fund had to be used solely for distributing funds to hospitals under HCAP. The act provides that the portion of the fund (as renamed the Health Care – Federal Fund) that consists of federal matching funds received as a result of the Department distributing funds from the HCAP Fund to hospitals is to continue to be used solely for distributing funds to hospitals under HCAP. But, the Department is required to use all other money credited to the Health Care – Federal Fund to pay for other Medicaid services and contracts.

The Prescription Drug Rebates Fund is a fund in the state treasury that predates the act. Prior law required that all rebates paid by drug manufacturers to the Department in accordance with federal Medicaid law governing drug rebates be credited to the fund. Under the act, only the non-federal share of such rebates are to be credited to the fund. The act requires that the non-federal share of all supplemental rebates paid by drug manufacturers to the Department in accordance with state Medicaid law governing supplemental drug rebates also be credited to the fund. As discussed above, the federal share of the rebates and supplemental rebates are to be credited to the Health Care – Federal Fund.

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<sup>69</sup> *Under HCAP, hospitals are annually assessed an amount based on their total facility costs and government hospitals make annual intergovernmental transfers to the Department of Job and Family Services. The Department 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.*

### **Collection of Medicaid copayments by hospitals**

(R.C. 5111.0112)

Continuing law requires the Medicaid program to the extent permitted by federal law, to include copayments for dental services, vision services, nonemergency emergency department services, and prescription drugs. A Medicaid-participating health care provider is prohibited from waiving a Medicaid recipient's obligation to pay a copayment.

In the case of a provider that is a hospital, the act permits the hospital to take action to collect a copayment by providing, at the time services are rendered to a Medicaid recipient, notice that a copayment may be owed. Under the act, the prohibition against waiving copayments does not apply if the hospital provides the notice and chooses not to take any further action to collect the copayment.

### **Recovery of Medicaid overpayments**

(R.C. 5111.061)

The Department of Job and Family Services may recover a Medicaid payment or portion of a payment made to a provider to which the provider is not entitled. Under prior law, the recovery could occur at any time during the five-year period immediately following the end of the state fiscal year in which the overpayment was made. The act eliminates that restriction and instead provides that the Department may make the recovery only if it notifies the provider of the overpayment during that five-year period.

### **Fraud, waste, and abuse prevention and detection**

(R.C. 5111.101)

The act requires that each individual, private entity, and government entity that receives or makes Medicaid payments in a calendar year that total \$5 million or more to provide each of its employees, contractors, and agents detailed, written information about the role of all of the following in preventing and detecting fraud, waste, and abuse in federal health care programs:<sup>70</sup>

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<sup>70</sup> *The following are federal health care programs: Medicaid, the Children's Health Insurance Program, health assistance provided under Title XX of the Social Security Act, Maternal and Child Health Services Block Grant, and any plan or program that provides health benefits, whether directly, through insurance, or otherwise, that is funded directly, in whole or in part, by the United States government, other than the health insurance program provided to federal employees.*

- (1) Federal false claims law;
- (2) Federal administrative remedies for false claims and statements;
- (3) Ohio laws pertaining to state employees reporting violations of state or federal law or misuse of public resources, Medicaid fraud, Medicaid eligibility fraud, falsification, and other Ohio laws pertaining to civil or criminal penalties for false claims and statements;
- (4) Whistleblower protections under the federal and Ohio laws.

The individuals and entities must include with this information detailed information about their policies and procedures for preventing and detecting fraud, waste, and abuse. They are also required to include in their employee handbooks the information about the laws, whistleblower protections, and their policies and procedures for preventing and detecting fraud, waste, and abuse.

The act provides that the individuals and entities must comply with these requirements as a condition of receiving the Medicaid payments. The act does not condition an individual or entity's authority to make the payments on the individual or entity complying with the requirements.

**Emergency services by non-contracting providers in Medicaid managed care**

(R.C. 5111.162 and 5111.163)

Under continuing law, when a Medicaid recipient enrolled in a Medicaid managed care organization is referred by the organization to a Medicaid-participating hospital that is not under contract with the organization, the hospital must provide services to the Medicaid recipient and accept from the organization, as payment in full, the amount derived by using the fee-for-service reimbursement rate that otherwise applies under the Medicaid program. Certain hospitals that contracted with Medicaid-participating health insuring corporations before January 1, 2006, are not subject to these requirements if they remain under contract.

In accordance with a provision of the federal Deficit Reduction Act of 2005, the act separates "emergency services" from the continuing law dealing with non-contracting hospitals and applies a similar reimbursement system to all providers of emergency services. "Emergency services," as defined in federal law, are covered inpatient and outpatient services that are furnished by a qualified provider and are needed to evaluate or stabilize an emergency medical condition.

Specifically, the act provides that when a Medicaid recipient is enrolled in a managed care organization and receives emergency services on or after January 1,

2007, from a Medicaid-participating provider that is not under contract with the organization, the provider must accept from the organization, as payment in full, not more than the amounts that the provider could collect if the Medicaid recipient were not enrolled in a managed care organization. The act provides for the payment to be reduced by any payments for indirect costs of medical education and direct costs of graduate medical education.

**Prompt payment by Medicaid-participating health insuring corporations**

(R.C. 3901.3814, 5101.93, and 5111.178)

Continuing law requires health insurers and other third-party payers to make prompt payments to health care providers. In general, the state time limits for making prompt payments do not apply to the Medicaid program, which is governed by prompt payment requirements specified in federal regulations. In the case of Medicaid-participating health insuring corporations, however, the state prompt payment requirements are to be applied if a federal waiver of federal requirements is granted or the Director of Job and Family Services determines that the state requirements can be implemented without a waiver.

The act clarifies that if the state prompt payment requirements can be implemented with respect to Medicaid-participating health insuring corporations, either with or without a waiver, the state prompt payment requirements apply, instead of the prompt payment requirements specified in federal regulations.<sup>71</sup> The clarification must be included in the notice that the Department of Insurance is required to give to Medicaid-participating health insuring corporations when a determination is made that the state prompt payment requirements will apply instead of the federal requirements.

**Qualified state long-term care insurance partnership program**

(R.C. 5111.18, 5111.18 (new), and 5111.01)

H.B. 152 of the 120th General Assembly required ODJFS to establish the Ohio Long-Term Care Insurance program, unless the establishment of the program would violate federal law. Under the program, if an individual acquired long-term care insurance, certain resources would not be counted when determining whether an individual was eligible for Medicaid. Also, the resources would not be subject

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<sup>71</sup> Another provision of the act prohibits a third-party payer and health care provider from entering into a contractual agreement under which time periods longer than those provided for in federal Medicaid regulations are applicable to the payment of claims (R.C. 3901.383). (See **DEPARTMENT OF INSURANCE: "Prompt payment of claims for health care services."**)

to recovery as part of the Medicaid estate recovery program. The program was never implemented because of federal law that subjected a Medicaid recipient to estate recovery if the recipient received benefits under a long-term care insurance policy in connection with which resources were disregarded. Only states that had federal approval for such disregards by May 14, 1993, could exempt such recipients from estate recovery.

Congress, as part of the Deficit Reduction Act of 2005, amended federal Medicaid law to authorize states to establish qualified long-term care insurance partnership programs, defined as an approved state Medicaid plan amendment that provides for the disregard of resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy if certain requirements are met. The requirements include that the policy must (1) be a qualified long-term care insurance policy as defined in the Internal Revenue Code, (2) have been issued no earlier than the effective date of the state Medicaid plan amendment, (3) meet model regulations and requirements of a model act promulgated by the National Association of Insurance Commissioners, and (4) provide compound annual inflation protection if it is sold to an individual under age 61 or some level of inflation protection if it is sold to an individual at least age 61 but under age 76.

The act requires the Director of Job and Family Services to establish a qualified long-term care insurance partnership program consistent with the federal definition of that term. The program must be established not later than September 1, 2007. The estate of an individual who participates in the program may be subject to a reduced adjustment or recovery under the Medicaid estate recovery program. The Director is to adopt rules providing for the reduction and rules to implement the qualified long-term care insurance partnership program. The rules are to be adopted in accordance with the Administrative Procedure Act (Revised Code Chapter 119.).

### **Nursing facilities' direct care and ancillary and support costs**

(R.C. 5111.20 and 5111.231)

A nursing facility's costs are placed into different categories (also known as cost or price centers) for the purpose of calculating the facility's Medicaid reimbursement rate. Each cost category has its own reimbursement formula.

One of the categories is called direct care costs. Direct care costs include such costs as the costs of nurses, medical directors, and quality assurance.

Under prior law, direct care costs also included costs for qualified mental retardation professionals, program directors, and habilitation staff. The act moves

the costs for qualified mental retardation professionals, program directors, and habilitation supervisors to a different cost category: ancillary and support costs. Habilitation staff other than supervisors remain in the direct care cost category.

As part of the formula for the direct care cost category, the Department of Job and Family Services is required to determine, at least once every ten years, a cost per case-mix unit for each peer group of nursing facilities.<sup>72</sup> In determining a peer group's cost per case-mix unit, the Department is required, among other things, to identify which nursing facility in the peer group is at the 25th percentile of the cost per case-mix units determined for each of the nursing facilities in the peer group. Prior law required that the Department exclude, when identifying which nursing facility was at the 25th percentile, nursing facilities whose direct care costs were more than one standard deviation from the mean desk-reviewed, actual, allowable, per diem direct care cost for all nursing facilities in the nursing facility's peer group. The act requires instead that the Department exclude the nursing facilities whose cost per case-mix unit is more than one standard deviation from the mean cost per case-mix unit for all nursing facilities in the nursing facility's peer group.

#### **Nursing facilities' quality incentive payments**

(R.C. 5111.244 and 5111.222)

The Department of Job and Family Services is required to pay nursing facilities an annual quality incentive payment beginning in fiscal year 2007.<sup>73</sup> The amount of a payment a nursing facility is to receive is based on the number of points the nursing facility earns for certain accountability measures. The payment is part of the nursing facility's total Medicaid reimbursement rate.

The act repeals a requirement that the Department annually establish four quality tier groups. Each group was to consist of one quarter of all nursing facilities participating in the Medicaid program. The first group had to consist of the quarter of nursing facilities individually awarded the most number of points for the accountability measures. The second group had to consist of the quarter awarded the second most number of points. The third and fourth groups had to consist of the two quarters awarded the third and least number of points respectively. Nursing facilities placed in the fourth group were to receive no payment.

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<sup>72</sup> *Nursing facilities are placed into different peer groups as part of the process of determining their reimbursement rate for direct care costs.*

<sup>73</sup> *The act requires that the quality incentive payment be paid to the provider of the nursing facility rather than the nursing facility.*

Prior law required that the mean quality incentive payment, weighted by Medicaid days,<sup>74</sup> be 2% of the average Medicaid reimbursement rate for all nursing facilities calculated under the statutory reimbursement system, excluding the part of the rate comprised of the quality incentive payment. Nursing facilities placed in the fourth quality tier group were required to be included when determining the mean payment, even though they were not to be paid a quality incentive payment. The act requires instead that the mean quality incentive payment for fiscal year 2007, weighted by Medicaid days, be \$3 per Medicaid day and that the Department adjust the mean payment for subsequent fiscal years by the same adjustment factors the Department uses to adjust certain other components of nursing facilities' Medicaid reimbursement rate.<sup>75</sup>

Among the accountability measures for which a nursing facility may be awarded points are that a nursing facility's resident satisfaction is above the statewide average and that a nursing facility's family satisfaction is above the statewide average. Under the act, points are to be awarded for meeting those accountability measures only for a fiscal year immediately following a calendar year for which a survey of resident or family satisfaction has been conducted under state law governing the Ohio Long-Term Care Consumer Guide.

#### **Adjustment of nursing facilities' Medicaid rates**

(R.C. 5111.222)

Generally, a nursing facility's Medicaid reimbursement rate is made up of different components. Beginning fiscal year 2007, the components are direct care costs, ancillary and support costs, capital costs, tax costs, nursing home franchise permit fees, and a quality incentive payment. Each component has its own calculation.

Prior law required that the Department of Job and Family Services adjust the payments otherwise determined for each of the components under their individual calculations. The adjustments were to be made as directed by the General Assembly through the enactment of law governing Medicaid payments to providers of nursing facilities. Under the act, only the following components of nursing facilities' Medicaid reimbursement rate are to be so adjusted: direct care

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<sup>74</sup> A "Medicaid day" is a day during which a Medicaid recipient eligible for nursing facility services occupies a nursing facility bed that is included in the nursing facility's Medicaid certified capacity. A therapeutic or hospital leave day for which payment is made is considered a Medicaid day proportionate to the percentage of the nursing facility's per resident per day rate for that day.

<sup>75</sup> See "**Adjustment of nursing facilities' Medicaid rates**" below.

costs, ancillary and support costs, tax costs, and capital costs. As discussed above under the heading "*Nursing facilities' quality incentive payments*," however, the mean quality incentive payment paid to nursing facilities is to be adjusted, beginning in fiscal year 2008, in the same manner.

***Adjustments to nursing facilities' rate due to governmental requirements***

(R.C. 5111.27)

The act eliminates a requirement that the Department of Job and Family Services adjust nursing facilities' Medicaid reimbursement rate to account for reasonable additional costs that must be incurred to comply with requirements of federal or state statutes, rules, or policies enacted or amended after January 1, 1992, or with orders issued by state or local fire authorities.<sup>76</sup>

***Fiscal year 2006 Medicaid payments for new nursing facility beds***

(Sections 606.17 and 606.18)

Under the fiscal year 2006 Medicaid reimbursement formula for nursing facility services, the rate for new beds added to a nursing facility is to be the same as the rate for beds that are in the nursing facility on the day before the new beds are added. The act fixes an error in this law by replacing a reference to fiscal year 2007 with a reference to fiscal year 2006.

***Fiscal year 2007 Medicaid reimbursement formula for nursing facilities***

(Sections 606.17 and 606.18)

The budget bill for the 126th General Assembly, Am. Sub. H.B. 66, includes a new Medicaid reimbursement formula for nursing facility services. The Department of Job and Family Services is to begin using the new formula in fiscal year 2007. However, if a nursing facility's fiscal year 2007 rate determined under the new formula is more than 2% higher or lower than its fiscal year 2006 rate, the nursing facility's rate is to be adjusted so that its adjusted fiscal year 2007 rate is not more than 102% or less than 98% of its fiscal year 2006 rate.

The act provides that a nursing facility's rate for fiscal year 2007 is to be determined by calculating the rate under the new reimbursement formula, increasing that amount by 2%, and then increasing that amount by another 2%. If

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<sup>76</sup> *The act maintains the requirement that the Department of Job and Family Services make such adjustments to the Medicaid reimbursement rate of intermediate care facilities for the mentally retarded.*

that results with a rate that is 2% more or less than the nursing facility's fiscal year 2006 rate, the rate is to be increased or decreased so that the adjusted fiscal year 2007 rate is not more than 102% or less than 98% of its fiscal year 2006 rate.

**Nursing facilities and ICFs/MR's uncompensated capital costs**

(Sections 606.17, 606.18, 606.18.03, and 606.18.06)

A nursing facility's Medicaid reimbursement rate for fiscal year 2006 is frozen at its fiscal year 2005 rate. The act eliminates the Department of Job and Family Services' authority to adjust a nursing facility's fiscal year 2006 rate to reflect a change in the nursing facility's capital costs due to (1) a change of provider agreement that went into effect before July 1, 2005, and for which a rate adjustment was not implemented before June 30, 2005, (2) a reviewable activity for which a certificate of need (CON) application was filed with the Director of Health before July 1, 2005, costs were incurred before June 30, 2005, and a rate adjustment was not implemented before June 30, 2005, and (3) an activity that the Director of Health, before July 1, 2005, ruled was not a reviewable activity requiring a CON and for which costs were incurred before June 30, 2005, and a rate adjustment was not implemented before June 30, 2005. The Department had not made such adjustments.

In the place of that authority, the act establishes a requirement that the Director of Job and Family Services make payments to qualifying nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR) for quarterly periods starting no sooner than January 1, 2006, and ending no later than July 1, 2007. No facility is to receive the payment before it qualifies for the payment and the payments are to end before July 1, 2007, if, before that date, \$10 million is spent making the payments. In other words, all facilities are to cease being eligible for the payments on the earlier of July 1, 2007, or the date that the total amount of the payments equals \$10 million. The Director of Job and Family Services must monitor, on a quarterly basis, the payments to ensure that no more than a total of \$10 million is spent. The payments for the last quarter that payments are made may be reduced proportionately as necessary to avoid spending more than \$10 million.

**Nursing facilities that are new in fiscal year 2006 or 2007**

The first group of facilities that qualify for payments, are nursing facilities to which both of the following apply:

(1) The nursing facility, during fiscal year 2006 or 2007, obtained Medicaid certification as a nursing facility from the Director of Health and began participating in the Medicaid program.



(2) An application for a CON for the nursing facility was filed with the Director of Health before June 15, 2005.

The per diem payments to be made to a nursing facility in the first group of eligible facilities are to equal the difference between the capital costs portion of the nursing facility's Medicaid reimbursement per diem rate for fiscal year 2006 or 2007, depending on when the payments are made, and the lesser of the following:

(1) 88.65% of the nursing facility's cost of ownership<sup>77</sup> as reported on a three-month projected capital cost report divided by the greater of the number of inpatient days<sup>78</sup> the nursing facility is expected to have during the period covered by the projected capital cost report or the number of inpatient days the nursing facility would have had during that period if its occupancy rate was 80%.

(2) The maximum capital per diem rate in effect for fiscal year 2005 for nursing facilities.

**ICFs/MR that are new in fiscal year 2006 or 2007**

The second group of facilities that qualify for payments are ICFs/MR to which both of the following apply:

(1) The ICF/MR, during fiscal year 2006 or 2007, obtained Medicaid certification as an ICF/MR from the Director of Health and began participating in the Medicaid program.

(2) At least one of the following occurred before June 30, 2005: any materials or equipment for the ICF/MR were delivered; preparations for the physical site of the ICF/MR, including, if applicable, excavation, began; or actual work on the ICF/MR began.

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<sup>77</sup> *The act provides that the term "cost of ownership" has the same meaning as in former law governing Medicaid payments to nursing facilities and ICFs/MR. Under that law, "cost of ownership" was defined as the actual expense incurred for (1) depreciation and interest on any capital assets that cost \$500 or more per item, including buildings, building improvements that are not approved as nonextensive renovations, equipment, extensive renovations, and transportation equipment, (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, building, and equipment.*

<sup>78</sup> *"Inpatient days" are all days during which a resident, regardless of payment source, occupies a bed in a nursing facility that is included in the nursing facility's certified bed capacity. Therapeutic or hospital leave days for which a Medicaid payment is made are considered inpatient days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days.*

The per diem payments to be made to an ICF/MR in the second group of eligible facilities are to equal the difference between the capital cost portion of the ICF/MR's Medicaid reimbursement per diem rate for fiscal years 2006 and 2007<sup>79</sup> and the lesser of the following:

(1) The ICF/MR's cost of ownership as reported on a three-month projected capital cost report divided by the greater of the number of inpatient days the ICF/MR is expected to have during the period covered by the projected capital cost report or the number of inpatient days the ICF/MR would have during that period if the ICF/MR's occupancy rate was 80%.

(2) The maximum capital per diem rate in effect for fiscal year 2005 for ICFs/MR.

**Nursing facilities that complete a capital project**

The third eligible group consists of nursing facilities to which all of the following apply:

(1) The nursing facility does not qualify under the first group.

(2) The nursing facility, before June 30, 2007, completes a capital project for which a CON was filed with the Director of Health before June 15, 2005, and for which at least one of the following occurred before July 1, 2005, or, if the capital project is undertaken to comply with rules adopted by the Public Health Council regarding resident room size or occupancy, before June 30, 2007: any materials or equipment for the capital project were delivered; preparations for the physical site of the capital project, including, if applicable, excavation, began; or actual work on the capital project began.

(3) The costs of the capital project are not fully reflected in the capital costs portion of the nursing facility's Medicaid reimbursement rate on June 30, 2005.

(4) The nursing facility files a three-month projected capital cost report with the Director of Job and Family Services not later than 60 days after the later of the effective date of this part of the act or the date the capital project is completed.

The per diem payments to be paid to a nursing facility in the third eligible group are to equal the difference between the capital costs portion of the nursing

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<sup>79</sup> ICFs/MR's Medicaid reimbursement rates for fiscal years 2006 and 2007 are frozen at their fiscal year 2005 rate.

facility's Medicaid reimbursement per diem rate for fiscal year 2006 or 2007, depending on when the payments are made, and the lesser of the following:

(1) 88.65% of the nursing facility's cost of ownership as reported on a three-month projected capital cost report divided by the greater of the number of inpatient days the nursing facility is expected to have during the period covered by the projected capital cost report or the number of inpatient days the nursing facility would have during that period if the nursing facility's occupancy rate was 95%.

(2) The maximum capital per diem rate in effect for fiscal year 2005 for nursing facilities.

**ICFs/MR that complete a capital project**

The fourth eligible group consists of ICFs/MR to which all of the following apply:

(1) The ICF/MR does not qualify under the second group;

(2) The ICF/MR, before June 30, 2007, completes a capital project for which at least one of the following occurred before July 1, 2005: any materials or equipment for the capital project were delivered; preparations for the physical site of the capital project, including, if applicable, excavation, began; or actual work on the capital project began.

(3) The costs of the capital project are not fully reflected in the capital costs portion of the ICF/MR's Medicaid reimbursement rate on June 30, 2005.

(4) The ICF/MR files a three-month projected capital cost report with the Director of Job and Family Services not later than 60 days after the later of the effective date of this part of the act or the date the capital project is completed.

The per diem payments to be made to an ICF/MR in the fourth group are to equal the difference between the capital costs portion of the ICF/MR's Medicaid reimbursement per diem rate for fiscal year 2006 or 2007 and the lesser of the following:

(1) The ICF/MR's cost of ownership as reported on a three-month projected capital cost report divided by the greater of the number of inpatient days the ICF/MR is expected to have during the period covered by the projected capital cost report or the number of inpatient days the ICF/MR would have during that period if its occupancy rate was 95%.

(2) The maximum capital per diem rate in effect for fiscal year 2005 for ICFs/MR.

**Nursing facilities that complete an activity**

The fifth eligible group consists of nursing facilities that, before June 30, 2007, complete an activity to which all of the following apply:

(1) A request was filed with the Director of Health before July 1, 2005, for a determination of whether the activity is a reviewable activity and the Director determined that the activity is not a reviewable activity and, therefore, does not need a CON.

(2) At least one of the following occurred before July 1, 2005, or, if the nursing facility undertakes the activity to comply with rules adopted by the Public Health Council regarding resident room size or occupancy, before June 30, 2007: any materials or equipment for the activity were delivered; preparations for the physical site of the activity, including, if applicable, excavation, began; or actual work on the activity began.

(3) The costs of the activity are not fully reflected in the capital costs portion of the nursing facility's Medicaid reimbursement rate on June 30, 2005.

(4) The nursing facility files a three-month projected capital cost report with the Director of Job and Family Services not later than 60 days after the later of the effective date of this part of the act or the date the activity is completed.

The per diem payments to be made to a nursing facility in the fifth group are to equal the difference between the capital costs portion of the nursing facility's Medicaid reimbursement per diem rate for fiscal year 2006 or 2007, depending on when the payments are made, and the lesser of the following:

(1) 88.65% of the nursing facility's cost of ownership as reported on a three-month projected capital cost report divided by the greater of the number of inpatient days the nursing facility is expected to have during the period covered by the projected capital cost report or the number of inpatient days the nursing facility would have during that period if its occupancy rate was 95%.

(2) The maximum capital per diem rate in effect for fiscal year 2005 for nursing facilities.

**Nursing facility or ICF/MR that completes a renovation**

The sixth and last eligible group consists of nursing facilities and ICFs/MR that, before June 30, 2007, complete a renovation<sup>80</sup> to which all of the following apply:

(1) The Director of Job and Family Services approved the renovation before July 1, 2005.

(2) At least one of the following occurred before July 1, 2005, or, if the facility undertakes the renovation to comply with rules adopted by the Public Health Council regarding resident room size or occupancy, before June 30, 2007: any materials or equipment for the renovation were delivered; preparations for the physical site of the renovation, including, if applicable, excavation, began; or actual work on the renovation began.

(3) The costs of the renovation are not fully reflected in the capital costs portion of the facility's Medicaid reimbursement rate on June 30, 2005.

(4) The facility files a three-month projected capital cost report with the Director of Job and Family Services not later than 60 days after the later of the effective date of this part of the act or the date the renovation is completed.

The per diem payments to be made to a nursing facility in the sixth group are to equal 85% of the nursing facility's capital costs for the renovation as reported on a three-month projected capital cost report divided by the greater of the number of inpatient days the nursing facility is expected to have during the period covered by the projected capital cost report or the number of inpatient days the nursing facility would have during that period if its occupancy rate was 95%.

The per diem payments to be made to an ICF/MR in the sixth group are to equal the ICF/MR's capital costs for the renovation as reported on a three-month projected capital cost report divided by the greater of the number of inpatient days

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<sup>80</sup> *The act provides that the term "renovation" has the same meaning as in former state law governing Medicaid payments to nursing facilities and ICFs/MR. Under that law, "renovation" was defined as the betterment, improvement, or restoration of a nursing facility or ICF/MR beyond its current functional capacity through a structural change that costs at least \$500 per bed. A renovation may include betterment, improvement, restoration, or replacement of assets that are affixed to the building and have a useful life of at least five years. A renovation may include costs that otherwise would be considered maintenance and repair expenses if they are an integral part of the structural change that makes up the renovation project. "Renovation" does not mean construction of additional space for beds that will be added to a facility's licensed or certified capacity.*

the ICF/MR is expected to have during the period covered by the projected capital cost report or the number of inpatient days the ICF/MR would have during that period if its occupancy rate was 95%.

**When payments are to begin**

The act provides that no nursing facility or ICF/MR is to qualify for the payments before the following:

(1) In the case of a nursing facility or ICF/MR in the first or second group (concerning new facilities), the later of January 1, 2006, or the date the nursing facility or ICF/MR begins to participate in the Medicaid program.

(2) In the case of a nursing facility or ICF/MR in the third, fourth, fifth, or sixth group (concerning facilities that complete a capital project, activity, or renovation), the later of January 1, 2006, or the date the capital project, activity, or renovation is placed into service.

**Quarterly payments**

The per diem payments are to be made for quarterly periods to qualifying nursing facilities and ICFs/MR. Any per diem payments to be made for a quarter ending before July 2006 is to be made not later than September 30, 2006. Any per diem payments to be made for a quarter beginning after June 2006 is to be made not later than three months after the last day of the quarter for which the payments are made. No payment is to be made for a quarter that a facility does not have a valid Medicaid provider agreement. The payments are to be in addition to a facility's fiscal year 2006 or 2007 Medicaid payments calculated under other state law.

A quarterly per diem determined for a nursing facility or ICF/MR under the act is to be multiplied by the number of Medicaid days<sup>81</sup> the facility has for the quarter the payment is made.

**Payments to continue after a change of operator**

A change of operator is not to cause the payments to a nursing facility or ICF/MR to cease. Continuing law provides that a change of operator occurs when

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<sup>81</sup> "Medicaid days" are all days during which a resident who is a Medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the nursing facility's certified capacity. Therapeutic or hospital leave days for which a Medicaid 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.

an entering operator becomes the operator of a nursing facility or ICF/MR in the place of the exiting operator. Actions that constitute a change of operator include 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 exiting operator's lease;

(4) If the exiting operator is a partnership, dissolution of the partnership;

(5) If the exiting operator is a partnership, a change in composition of the partnership unless the change does not cause the partnership's dissolution under state law or the partners agree that the change does not constitute a change in operator;

(6) If the operator is a corporation, dissolution of the corporation, a merger of the corporation into another corporation that is the survivor of the merger, or a consolidation of one or more other corporations to form a new corporation.

### **No appeals**

The determinations that the Director of Job and Family Services makes under this part of the act are not subject to appeal under the Administrative Procedure Act (R.C. Chapter 119.).

### **Rules**

The act authorizes the Director of Job and Family Services to adopt rules as necessary to implement this part of the act. If adopted, the rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The act provides that the Director's failure to adopt the rules does not affect the requirement that the per diem payments be made.

## **ICF/MR Conversion Pilot Program**

(R.C. 5111.88, 5111.31, 5111.882, 5111.889, 5111.8811, 5111.8812, 5111.8813, 5111.8814, 5111.8815, 5111.8816, 5111.8817, 5112.31, 5112.311, and 5123.196)

### **Background**

The budget bill for the 126th General Assembly (Am. Sub. H.B. 66) requires that the Director of Job and Family Services apply for a federal Medicaid waiver under which intermediate care facilities for the mentally retarded (ICFs/MR) may volunteer to convert from providing ICF/MR services to providing home and community-based services. The waiver program is to be called the ICF/MR Conversion Pilot Program.

### **Authority to convert in part**

The act eliminates a requirement that the Department of Job and Family Services or Department of Mental Retardation and Developmental Disabilities, whichever administers the ICF/MR Conversion Pilot Program, ensure that the ICFs/MR that convert from providing ICF/MR services to providing home and community-based services under the program cease to provide any ICF/MR services for the duration of the program. Under the act, ICFs/MR that volunteer to participate in the program may convert in whole or in part. The operator of an ICF/MR that converts only in part is required to place the beds that convert in a distinct part of the facility that houses the ICF/MR.

### **ICF/MR beds excluded from Medicaid provider agreement**

Generally, every Medicaid provider agreement with the provider of a nursing facility or ICF/MR is required to include any part of the facility that meets standards for certification of compliance with federal and state laws and rules for participation in the Medicaid program. This requirement does not apply, however, to beds added during the period beginning July 1, 1987, and ending July 1, 1993, to a licensed nursing home or beds in an ICF/MR that are designated for respite care under a Medicaid waiver program administered by the Department of Mental Retardation and Developmental Disabilities. The act adds another exception to this requirement; beds that convert to providing home and community-based services under the ICF/MR Conversion Pilot Program.

If a provider chooses to include an otherwise exempt bed in a Medicaid provider agreement, the bed may not be removed from the provider agreement unless the provider withdraws the facility in which the bed is located from the Medicaid program. The act creates exceptions to this. The operator of an ICF/MR may remove a bed converted to providing home and community-based services

under the ICF/MR Conversion Pilot Program and a bed that is designated for respite care under a Medicaid waiver program administered by the Department of Mental Retardation and Developmental Disabilities from a Medicaid provider agreement without having to withdraw the rest of the facility from the Medicaid program. The requirement that the facility be withdrawn continues for an operator who removes a nursing home bed that was added during the period beginning July 1, 1987, and ending July 1, 1993.

**Requirement that an ICF/MR be licensed or certified**

The act requires that an ICF/MR that converts in whole either be licensed as a residential facility by the Director of Mental Retardation and Developmental Disabilities or certified to provide supported living services. If an ICF/MR converts in part, the distinct part of the facility that houses the beds that convert must also be licensed as a residential facility or certified to provide supported living services. The ICF/MR or distinct part of the facility is to be licensed as a residential facility rather than certified to provide supported living services if it meets the definition of "residential facility" in continuing law governing the licensure of residential facilities. "Residential facility" is defined as a home or facility in which an individual with mental retardation or a developmental disability resides, unless any of the following apply: the home is the home of a relative or legal guardian of the individual, the home or facility is a certified respite care home, the home or facility is a county or district home, or the only individuals with mental retardation or a developmental disability who reside in the home or facility are in an independent living arrangement or are receiving supported living services.<sup>82</sup> Because of state law that restricts the number of individuals with mental retardation or a developmental disability who may live together while receiving supported living services,<sup>83</sup> an ICF/MR that converts in whole or in part will meet the definition of "residential facility," and therefore have to be licensed as a residential facility rather than certified to provide supported living services, if more than four individuals with mental retardation or a developmental disability not related by blood or marriage reside in the ICF/MR or distinct part unless all of the other individuals with mental retardation or a developmental disability are in an independent living arrangement.

**Reduction in bed capacity and change to Medicaid provider agreement**

The operator of an ICF/MR is required to notify the appropriate licensing authority if a resident of the facility enrolls in the ICF/MR Conversion Pilot

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<sup>82</sup> R.C. 5123.19.

<sup>83</sup> R.C. 5126.01(S).

Program.<sup>84</sup> The notice must be given not later than 30 days after the resident enrolls. The requirement that the notice be provided applies regardless of whether the resident resides in a distinct part of a facility that also houses the ICF/MR. The licensing authority is required to reduce the ICF/MR's licensed capacity by the number of residents who enroll. The Director of Job and Family Services must be informed of each reduction in licensed capacity.

The act also requires that the operator of an ICF/MR that converts in whole or in part to notify the Director of Job and Family Services of the number of beds converted. The notice is due not later than 30 days after the conversion. The Director of Job and Family Services must notify the Director of Health of the operator's notice. The Director of Health is required to reduce the ICF/MR's Medicaid-certified capacity by the number of beds converted.<sup>85</sup> The Director of Health is to notify the Director of Job and Family Services whenever the Director of Health so reduces an ICF/MR's certified capacity.

On receipt of notice from the Director of Health of a reduction in an ICF/MR's certified capacity, the Director of Job and Family Services is required to amend the ICF/MR's Medicaid provider agreement to reflect the facility's reduced certified capacity or, if the ICF/MR's certified capacity is reduced to zero, terminate the ICF/MR's Medicaid provider agreement.

#### **Reconversion at end of program**

Continuing law permits an ICF/MR that converts beds under the ICF/MR Conversion Pilot Program to reconvert to providing ICF/MR services after the program terminates unless the General Assembly enacts law to implement the program statewide. To be able to reconvert, however, the ICF/MR must meet the requirements for certification as an ICF/MR. The act also conditions reconversion on an ICF/MR meeting the requirements for licensure as a residential facility, or if the facility meets a grandfathering provision, a nursing home.

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<sup>84</sup> *Continuing law requires that an ICF/MR be licensed as a residential facility by the Director of Mental Retardation and Developmental Disabilities unless the facility meets a grandfathering provision of law that authorizes the facility to be licensed as a nursing home. The Director of Health and certain political subdivisions are authorized to license nursing homes.*

<sup>85</sup> *To be eligible for Medicaid payments for providing ICF/MR services, a facility must obtain certification as an ICF/MR from the Director of Health.*

### **ICF/MR franchise permit fee**

ICFs/MR are required to pay an annual franchise permit fee. For fiscal years 2006 and 2007, the amount of the franchise permit fee is \$9.63 per Medicaid-certified bed (as of the first day of May of the calendar year in which the fee is assessed) and per number of days of the fiscal year. The act requires that the Director of Job and Family Services adjust the amount of an ICF/MR's franchise permit fee if its certified capacity is reduced under the ICF/MR Conversion Pilot Program. The Director is permitted to adjust an ICF/MR's franchise permit fee if its certified capacity is increased after the end of the program.

### **Increase in cap on number of licensed residential facility beds**

The Director of Mental Retardation and Developmental Disabilities is generally prohibited from issuing a residential facility license if issuance will result in there being more beds in all residential facilities than is permitted by a cap on such beds that exists in continuing law.

The cap was originally 10,838 beds, but the Director of Mental Retardation and Developmental Disabilities is generally required to reduce the cap by (1) the number of beds that cease to be a residential facility bed on or after July 1, 2003, because a residential facility license is revoked, terminated, or not renewed for any reason or is surrendered and (2) the number of such beds for which a licensee voluntarily converts for use for supported living services on or after July 1, 2003. The Director has been authorized to not reduce the cap by a bed that ceases to be a residential facility bed if the Director determines that the bed is needed to provide services to an individual with mental retardation or a developmental disability who resided in the residential facility in which the bed was located. The act removes the Director's authority not to reduce the cap under such circumstances if the bed ceases to be a residential facility bed because it is converted to providing home and community-based services under the ICF/MR Conversion Pilot Program.

The act requires the Director to increase the cap if necessary to enable the operator of an ICF/MR to obtain a residential facility license as required to participate in the ICF/MR Conversion Pilot Program or to reconvert to providing ICF/MR services after the program terminates.

### **No interruption in Medicaid-covered services**

Prior law required that the Department of Job and Family Services or the Department of Mental Retardation and Developmental Disabilities, whichever agency administered the ICF/MR Conversion Pilot Program, to ensure that no

individual receiving ICF/MR services on September 29, 2005,<sup>86</sup> suffered an interruption in Medicaid-covered services that the individual was eligible to receive. The act requires that the department administering the program ensure there is no such interruption for any individual receiving ICF/MR services without regard to the date the individual received the services.

### **Medicaid Care Management Working Group**

(R.C. 5111.161)

H.B. 66 of this General Assembly created the Medicaid Care Management Working Group to examine and make recommendations regarding Medicaid managed care. The act adds one additional member to the working group. The new member is to be appointed by the President of the Senate and selected from nominations from the Ohio Optometric Association, Ohio Dental Association, and Ohio Podiatric Medical Association. The additional member is to represent Medicaid service providers who provide services not required by federal law (optional services).

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## **LIQUOR CONTROL COMMISSION**

- Redefines for the Alcoholic Beverages Franchise Law and the Liquor Code the term "sales area or territory."
- Creates the F-7 liquor permit that allows the sale of beer and intoxicating liquor by the individual drink for a period not to exceed eight consecutive days at a golf event sanctioned by a recognized national golf organization.
- Authorizes the holders of a D-5j liquor permit to sell intoxicating liquor on Sunday, whether or not such sales have been approved in a local option election on Sunday sales at the permit premises or in the area in which the permit premises is located, but only if the premises is located in a community entertainment district approved by a municipal corporation between October 1 and October 15, 2005.
- Exempts an application for the issuance of a D liquor permit for the Ohio Judicial Center from population quota restrictions.

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<sup>86</sup> *September 29, 2005, is the effective date of the law governing the ICF/MR Conversion Pilot Program.*

- Eliminates the requirement of providing a surety bond of \$1,000 when obtaining or retaining a D-4 liquor permit to sell beer or intoxicating liquor to the members of a club for consumption on club premises.
- Reduces the number of members that a nonprofit organization owning or operating a fine arts museum must have in order to qualify for the issuance of a D-5h liquor permit.

**Definition of a "sales area or territory" for the Alcoholic Beverages Franchise Law and the Liquor Code**

(R.C. 1333.82(G) and 4301.01(B)(22))

Under former law, the Alcoholic Beverages Franchise Law and the Liquor Code generally defined a "sales area or territory" as an exclusive geographic area or territory that is assigned to a particular A (manufacturer) or B (distributor or wholesaler) permit holder and that either (1) has one or more political subdivisions as its boundaries or (2) consists of an area of land with readily identifiable geographic boundaries. The *exception* to those definitions under former law was that a "sales area or territory" does not include any *particular retail location* in an exclusive geographic area or territory *that is assigned* to another A or B permit holder.

The act retains the aforementioned general definition of a "sales area or territory" for the Alcoholic Beverages Franchise Law and the Liquor Code, but modifies the associated exception. Under the act, a "sales area or territory" does not include a particular retail location in an exclusive geographic area or territory that *had been assigned* to another A or B permit holder *before April 9, 2001*. That date was the effective date of Sub. S.B. 262 of the 123rd General Assembly, the act that enacted the definitions and their former exception.

The provisions of the Alcoholic Beverages Franchise Law and Liquor Code in which the defined term "sales area or territory" continue to be used and *operate* are as follows:

(1) R.C. 1333.84(B) (not in the act): Notwithstanding the terms of any franchise, a manufacturer or distributor engaged in the sale and distribution of alcoholic beverages, or a manufacturer's subsidiary, is prohibited from awarding an additional franchise for the sale of the same brand within the same *sales area or territory*. Further, a franchise does not prohibit a retail permit holder having permits at more than one location from buying from one or more B-2 or B-5

permit holders, even if all permit premises are not located in the same franchise area or territory.

(2) R.C. 1333.85 (not in the act): A manufacturer or distributor of alcoholic beverages generally cannot substantially change a *sales area or territory* without the prior consent of the other party for other than just cause and without at least 60 days' written notice to the other party setting forth the reasons for the substantial change. Certain listed exceptions to the prohibition (events) would allow a substantial change of a sales area or territory without having to give the other party the described notice and would constitute just cause for substantially changing a sales area or territory without the prior consent of the other party. Certain other listed events do not constitute just cause for substantially changing a sales area or territory without the prior consent of the other party.

(3) R.C. 4301.241 (not in the act): Each manufacturer and supplier of beer must assign to each of the manufacturer's or supplier's B-1 distributors a *sales area or territory* within which each B-1 permit holder will be the distributor of the brand or brands of the manufacturer or supplier. However, if the manufacturer or supplier manufactures or supplies more than one brand of beer, the manufacturer or supplier may assign *sales areas or territories* to additional B-1 distributors for the distribution and sale of the additional brand or brands, as long as not more than one distributor distributes the same brand or brands within the same sales area or territory. A B-1 distributor is prohibited from distributing a specific brand of beer in any area or territory other than the area or territory assigned to the distributor.

### **Creation of the F-7 liquor permit**

(R.C. 4303.207)

#### **Eligible entities**

The act authorizes an F-7 permit to be issued to a "nonprofit organization" (see below) to sell beer, wine, mixed beverages, and spirituous liquor by the individual drink at a "qualified golf event" (see below) being held on premises located in a political subdivision or part of a political subdivision where the sale of beer, wine, mixed beverages, and spirituous liquor is otherwise permitted by law on that day. The Superintendent of Liquor Control must be satisfied that the organization is, in fact, a nonprofit organization and that the event for which the F-7 permit is sought to be issued is, in fact, a qualified golf event; for these purposes, the Superintendent may accept as proof a sworn statement by the president or other chief executive officer of the applicant organization. The nonprofit organization is responsible for any conduct that violates the laws pertaining to the sale of beer, wine, mixed beverages, or spirituous liquor.

### **Definitions**

The act defines the following terms for purposes of determining eligibility for an F-7 permit:

- "Nonprofit organization" means any unincorporated association or nonprofit corporation that is not formed for the pecuniary gain or profit of, and whose net earnings or any part of whose net earnings is not distributable to, its members, trustees, directors, officers, or other private persons.
- "Qualified golf event" means a golf tournament or other golf competition event that is hosted by the nonprofit organization to which an F-7 permit is issued, that is sanctioned by a recognized national golf organization (see below), that includes the sale of food for consumption on the premises for which the F-7 permit is issued, and that makes contributions to charity from the proceeds of the event that equal in the aggregate at least \$200,000.
- "Recognized national golf organization" means the United States Golf Association; the Professional Golf Association of America (PGA); the PGA Tour, including the Champions Tour and the Nationwide Tour; the LPGA Tour; or the successors of any of the previously listed organizations.

### **Premises for an F-7 permit**

The premises for which an F-7 permit is issued must meet all of the following requirements: (1) be owned or leased by the nonprofit organization to which the permit is issued, (2) be limited to areas in which the qualified golf event is conducted and to other areas contiguous to those areas in which the qualified golf event is conducted, which areas are specifically designated for food and beverage consumption and hospitality for the qualified golf event, (3) be clearly defined, and (4) be sufficiently restricted to allow proper supervision of use of the permit by state and local law enforcement personnel.

### **Other aspects of the F-7 permit**

The Division of Liquor Control must prepare and make available an F-7 permit application form and may require applicants for the permit to provide information that, in addition to the required information described above, is necessary for administering the permit provisions. The Division cannot issue more than two F-7 permits per calendar year to the same nonprofit organization.

An F-7 permit is effective for a period not to exceed eight consecutive days. The fee for the permit is \$450.

**Issuance of Sunday sales liquor permit without local option election approval to D-5j liquor permit premises located in certain community entertainment districts**

(R.C. 4303.182)

Law unchanged by the act prohibits the sale of intoxicating liquor after 2:30 a.m. on Sunday unless the liquor is sold under the authority of a permit that authorizes Sunday sale (R.C. 4301.22--not in the act). The D-6 permit authorizes the Sunday sale of intoxicating liquor and generally is issued only to the holder of an existing liquor permit for sales at the permit holder's premises if Sunday liquor sales have been approved in a local option election on sales at that premises or in the area where the premises is located.

Continuing law, however, does authorize the issuance of a D-6 permit under certain conditions to an existing permit holder for the permit holder's premises even though Sunday liquor sales have not been approved in a local option election on sales at that premises or in the area where the premises is located.<sup>87</sup> The act additionally requires a D-6 permit to be issued to the holder of any D-5j permit for a premises that is located in a community entertainment district approved by the legislative authority of a municipal corporation between October 1 and October 15, 2005, to allow sales under the D-6 permit between the hours of 10 a.m. and midnight on Sunday, whether or not those sales have been approved in a local option election on sales at that premises or in the area where the premises is located.

Continuing law defines a "community entertainment district" as a bounded area that includes or will include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments within close proximity to certain specified types of establishments. A "community entertainment district" must be approved by the legislative authority of a municipal corporation or a board of township trustees. (R.C. 4301.80--not in the act.)

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<sup>87</sup> *Liquor permit premises located at certain publicly owned airports, certain hotels and motels, certain sports facilities, the Ohio Historical Society area, the State Fairgrounds, certain outdoor performing arts centers, certain publicly owned golf courses, certain ski areas, and national professional sports museums may be issued a D-6 permit without approval in a Sunday sales local option election.*

## **Population quota restrictions for the issuance of D liquor permits**

(R.C. 4303.29)

### **Background**

Continuing law generally limits the number of each type of D liquor permit (various beer and intoxicating liquor *retail sales*) that may be issued to any *one* person, firm, or corporation in a county based upon the population of that county. Likewise, continuing law generally limits the *total number* of D-1 permits (beer sales for on-premises or off-premises consumption), D-2 permits (wine and mixed beverages sales for on-premises or off-premises consumption), D-3 permits (spirituous liquor sales for on-premises consumption), D-4 permits (beer and intoxicating liquor on-premises consumption--private clubs), and D-5 permits (beer and intoxicating liquor on-premises or off-premises consumption--restaurants and night clubs) that may be issued in each municipal corporation and in the unincorporated area of each township, based upon the population of that municipal corporation or unincorporated area of the township.

But, continuing law also provides that these population quota restrictions as well as any population quota restrictions contained in any rule of the Liquor Control Commission do not restrict the issuance of a D permit to authorized applicants for such a permit for certain municipally owned airports; a municipal corporation, township, or county soldiers' memorial; a municipal corporation-, township-, county-, metropolitan park district-, or state-owned golf course; the State Fairgrounds; Capitol Square; or certain zoological parks. Thus, an application for a D permit for any of these locations is *exempt* from those population quota restrictions.

### **Changes made by the act**

The act expands the list of exempt applicants by providing that the statutory population quota restrictions as well as any population quota restrictions contained in any rule of the Liquor Control Commission do not restrict the issuance of a D permit to applicants for all of part of the "Ohio Judicial Center," which is defined as the site of the Ohio Supreme Court and its grounds. Similar to the exemption provisions applicable to the State Fairgrounds and Capitol Square, the location of a D permit issued to the Ohio Judicial Center cannot be transferred.

### **Bond requirement for a D-4 permit**

(R.C. 4303.17)

A D-4 liquor permit may be issued to a club that has been in existence for three years or more and that is operated in the interest of the membership of a



reputable organization that is maintained by a dues paying membership. The D-4 permit authorizes the sale of beer or intoxicating liquor to members of the club only, in glass or in container, for consumption on the premises where sold. In order to be granted or to retain a D-4 permit, the elected officers of the organization controlling the club must file a statement with the Division of Liquor Control certifying that the club meets the criteria mentioned above and setting forth the initiation fee and yearly dues of the "dues paying membership."

Under former law, that statement had to be signed under oath and had to be accompanied by a *bond* that satisfied all of the following: it was in the sum of \$1,000, it was a surety bond, and it had to be declared forfeited in the full amount of the penal sum for any false statement in the applicant's statement. The act continues to require that the applicant's statement be signed under oath but eliminates the requirement that any type of bond accompany an application for a D-4 permit.

### **Issuance of D-5h permit for fine arts museums**

(R.C. 4303.181)

Under former law, in order for a nonprofit organization that owned or operated a fine arts museum to qualify for issuance of a D-5h liquor permit (retail sale of beer or intoxicating liquor until 1 a.m. by individual glass or in containers for consumption on the premises where sold), the organization had to have no less than 5,000 bona fide members possessing full membership privileges. The act reduces this number of bona fide members to 1,500. (R.C. 4303.181(H)(1)(a).)

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## **LOCAL GOVERNMENT**

- Specifies that, despite the local government fund "freeze," distributions of county undivided local government funds to county governments remain subject to reduction if municipal populations pass threshold amounts.
- Replaces the requirement that a county family and children first council's service coordination mechanism ensure that a family service coordination plan meeting be conducted for every multi-need child placed out-of-home with a requirement that the mechanism ensure such a meeting for each child who receives service coordination under the mechanism and for whom an emergency out-of-home placement has been made or for whom a nonemergency out-of-home placement is being considered.



- Authorizes boards of county commissioners to maintain and operate facilities to encourage the study of and to promote the sciences and natural history and to contract with or contribute to certain nonprofit corporations to develop, maintain, and operate such a facility.
- Authorizes boards of county commissioners, with voter approval, to levy a property tax for maintenance and operation of a facility that promotes the sciences and natural history.
- Permits the board of county commissioners in a county with a community mental health board separate from the alcohol and drug addiction services board to establish a board of alcohol, drug addiction, and mental health services (ADAMH board) in accordance with the following procedures: (1) adoption of a resolution of intent by January 1, 2007, (2) preparation of a report by the existing boards, and (3) adoption of a final resolution establishing the ADAMH board by July 1, 2007.
- Authorizes local governments, rather than combating Dutch elm disease and elm blight as in former law, to combat pests, as defined in the Nursery Stock and Plant Pests Law, in an area that is quarantined for those pests by the Director of Agriculture or by the United States Department of Agriculture.
- Includes costs of combating pests in a quarantined area as an emergency purpose for which local governments may issue general obligation securities, and requires the last maturity of securities issued on and after the act's effective date to be not later than December 31 of the tenth year following the year in which the securities are first issued.
- Requires local governments that issue general obligation securities for that purpose to notify the Director of Agriculture and coordinate and comply with the protocols and directives established by the Director with respect to a quarantined area or the pest for which a quarantined area is established.
- Modifies the pay period for the Columbiana County Municipal Court Clerk and for the deputy clerks, special deputy clerks, bailiffs (except in the Hamilton County Municipal Court), and other specified employees of any municipal court so that the compensation is paid in either biweekly or semimonthly installments, as determined by the payroll administrator.

- Allows the board of trustees of a district detention facility to adopt bylaws for the operation, maintenance, and management of the facility, notwithstanding any provision of the Revised Code to the contrary and specifies that those bylaws do not supercede any provision of the Revised Code.
- Changes the times by which additional fees on certified copies of birth records, certifications of birth, death records, and filings for divorce decrees and decrees of dissolution are to be forwarded to the Treasurer of State for deposit into the Children's Trust Fund and Family Violence Prevention Fund.
- Authorizes the president of a board of township trustees to administer the oath of office to a person or persons representing the township on a board of library trustees for a municipal library district created in certain municipal corporations, even if the geographical limits of the library district do not fall within the geographical limits of the township.
- Authorizes counties to use general fund money to support the operations of a countywide emergency management agency, including a countywide public safety communication system.
- Permits counties to appropriate general fund money directly to political subdivisions participating in a countywide emergency management agreement, to enable the political subdivisions to purchase communication devices, radios, and other equipment necessary for the operation and use of the countywide public safety communication system.
- Establishes that the fines from vehicle weight limit violations on specified county or township roads and bridges are paid to the county treasury to be used for highway purposes, while other vehicle weight limit violation fines are subject to general fine distribution rules.

### **Intra-county distributions of local government funds**

(Sections 606.17, 606.18, and 815.03)

Portions of state tax receipts go into several local government funds: the Local Government Fund, the Library and Local Government Support Fund, and



the Local Government Revenue Assistance Fund. The amounts in these funds are distributed among the 88 undivided local government funds. The money in the undivided funds is then allocated to the county government and to other local governments.

H.B. 66 of the 126th General Assembly generally "froze" the amount of revenue to be credited to the local government funds and, by extension, the county undivided funds. H.B. 66 also prohibited local governments within each county from re-allocating their respective shares of the undivided fund.

This prohibition against intra-county reallocation might be construed to conflict with other laws that require a different distribution of funds among local governments when municipal populations pass certain thresholds. These other laws provide that the portion of the undivided local government fund allocated to the county government cannot exceed 50% of the undivided fund if the municipal population constitutes 41% or more of the total county population and cannot exceed 30% if the municipal population constitutes 81% or more of the total county population. (See R.C. 5747.51(H); R.C. 5747.53(E); R.C. 5747.62(H); R.C. 5747.63(E).)

The act clarifies that the other laws limiting allocations to the county government still apply if municipal populations surpass the codified thresholds.

**Family services coordination plan meeting**

(R.C. 121.37)

Each county is required to develop a county service coordination mechanism to serve as the guiding document for coordination of the county's family services. A county's service coordination mechanism must be developed and approved with the participation of the county entities representing child welfare; mental retardation and developmental disabilities; alcohol, drug, addiction, and mental health services; health; juvenile judges; education; the county family and children first council; and the county early intervention collaborative.

The act eliminates a requirement that each county service coordination mechanism include a procedure for ensuring that a family service coordination plan meeting is conducted before a multi-need child is placed out-of-home in a nonemergency and within ten days of a multi-need child's emergency out-of-home placement. The act requires instead that the mechanism include a procedure for ensuring that a family service coordination plan meeting is conducted for a child only if the child receives service coordination under the mechanism and an emergency out-of-home placement has been made or a nonemergency out-of-

home placement is being considered. As under prior law, the meeting must be conducted before a nonemergency out-of-home placement or within ten days of an emergency out-of-home placement.

**County funding of science and natural history museums**

(R.C. 307.761 and 5705.19)

Under continuing law, a board of county commissioners may contract with or contribute to any nonprofit corporation that encourages the study and promotion of the sciences and natural history. The act authorizes a board of county commissioners to directly maintain and operate a facility to encourage the study and promotion of the sciences and natural history. It also authorizes a county to contract with or contribute to a nonprofit corporation to develop, maintain, and operate such a facility, as long as the nonprofit corporation is organized, in whole or in part, for the purpose of encouraging the study of and to promote the sciences and natural history.

The act authorizes a county to levy a property tax, subject to voter approval, to provide funding for the maintenance and operation of a facility that is organized, in whole or in part, for the promotion of the sciences and natural history.

**Combining separate boards for alcohol, drug addiction, and mental health services**

(R.C. 340.021)

In 1989, when boards of alcohol, drug addiction, and mental health services (ADAMH boards) were created for most of the state's service districts, counties that had a population of 250,000 or more were given the following options: (1) create an ADAMH board or (2) retain the existing community mental health board and create a separate alcohol and drug addiction services board. In 2003, Am. Sub. H.B. 95 of the 125th General Assembly, the biennial appropriations act, authorized the creation of ADAMH boards in those counties that opted to have separate boards in 1989. A resolution providing for the ADAMH board's creation had to be adopted by the board of county commissioners not later than January 1, 2004.

The act establishes another time-limited opportunity to create an ADAMH board for those counties that opted in 1989 to have separate boards. The following procedures apply:

(1) Not later than January 1, 2007, the board of county commissioners must adopt a resolution expressing its intent to establish an ADAMH board.



(2) After adopting the resolution of intent, the board of county commissioners must instruct the county's community mental health board and alcohol and drug addiction services board to prepare a report on the feasibility, process, and proposed plan to establish an ADAMH board. The board of county commissioners must specify the date by which the report must be submitted to the board for its review.

(3) After reviewing the report, the board of county commissioners may adopt a final resolution establishing an ADAMH board. The resolution must be adopted not later than July 1, 2007.

### **Transfer provisions**

(Section 703.03)

If an ADAMH board is created, the act specifies that ". . . the ADAMH board shall possess all the rights, privileges, immunities, powers, franchises, and authority of the county's community mental health board and alcohol and drug addiction services board, and all property of every description, and every interest therein, and all obligations of or belonging to or due to the community mental health board and alcohol and drug addiction services board shall thereafter be taken and deemed to be transferred to and vested into the ADAMH board without further act or deed."

### **Pest control**

(R.C. 133.12, 927.39, 927.40, 927.41, and 927.42)

Under law retained in part by the act, the legislative authorities of counties, townships, and municipal corporations may do all of the following to combat Dutch elm disease and elm blight: (1) purchase or rent spraying equipment, purchase supplies, and contract for the hire of necessary employees to combat those diseases, (2) authorize agents to enter on lands within the political subdivisions to inspect for the existence of those diseases, and (3) after obtaining permission from land owners, authorize agents to enter on those lands to spray and treat trees on the lands that have one of those diseases.

The act expands the above provisions by authorizing the legislative authorities of counties, townships, and municipal corporations to take such actions in order to combat any pests for which a quarantined area is established. The act defines "pest," by reference to the Nursery Stock and Plant Pests Law, to mean any insect, mite, nematode, bacteria, fungus, virus, parasitic plant, or any other organism or stage of any such organism that causes, or is capable of causing, injury, disease, or damage to any plant, plant part, or plant product. It also defines

"quarantined area" as an area that is quarantined by the Director of Agriculture under the Nursery Stock and Plant Pests Law or by the United States Department of Agriculture.

The act makes several other changes in those provisions. First, it authorizes local legislative authorities to purchase or rent any equipment, not just spraying equipment. Next, it authorizes the agents of local legislative authorities to enter on lands to combat a pest for which a quarantined area is established, not just to spray and treat trees. Third, under former law, dead or dying trees infested with carrier beetles of Dutch elm disease could be removed or completely destroyed by burning at the landowner's cost. Under the act, plants that are dead or dying from a pest may be removed or completely destroyed at the landowner's cost.

The act also changes in part the law governing the issuance of general security obligations by local governments to meet certain emergencies. Under continuing law, if the Tax Commissioner determines that funds are not otherwise available for the purpose, the taxing authority of a political subdivision having general property taxing power may issue general obligation securities in case of any of the following:

- (1) An epidemic or threatened epidemic, or during an unusual prevalence of a dangerous communicable disease, to defray expenses that the applicable board of health considers necessary to prevent the spread of the epidemic or disease;
- (2) The destruction of an essential permanent improvement by fire, flood, or extraordinary catastrophe, to provide temporary necessary facilities in place of that permanent improvement; or
- (3) A special election called after the adoption of the annual appropriation measure, to pay the costs of that election payable by the political subdivision.

The act adds that such a local taxing authority also may issue general obligation securities in case of the outbreak or infestation, within a quarantined area, of the pest for which the quarantined area was established, to defray expenses that the political subdivision considers necessary to combat the pest, including removal or complete destruction of plants that are dead or dying from the pest.

Under law generally unchanged by the act, one-half of the principal amount of the securities issued must mature on the first day of June next following the next February tax settlement at which, in accordance with the statutory tax budget procedure, a property tax to pay the debt charges on the securities can be included in the budget, and the other one-half of the principal amount must mature on the next following first day of December. The act retains this provision, but applies it

only to securities issued prior to the act's effective date. It then specifies that the last maturity of securities issued on and after the act's effective date must be not later than December 31 of the tenth year following the year in which the securities are first issued. As under continuing law, the act requires a property tax to be levied to pay debt charges on any of those securities.

The act further specifies that if the board of county commissioners, the board of township trustees, or the legislative authority of a municipal corporation issues general security obligations for the combating, within a quarantined area, of the pest for which the quarantined area was established, that board of county commissioners, board of township trustees, or legislative authority, whichever is applicable, must do both of the following:

- (1) Notify the Director of Agriculture of that fact; and
- (2) Coordinate and comply with the protocols and directives established by the Director with respect to the quarantined area or the pest for which a quarantined area is established.

#### **Compensation of municipal court employees**

(R.C. 1901.31, 1901.311, 1901.32, and 1901.33)

#### **Columbiana County Clerk of Courts**

Under continuing law, in the Columbiana County Municipal Court, the Clerk of Courts of Columbiana County is the clerk of the municipal court and receives compensation for performing those duties payable from the county treasury in semimonthly installments. The act provides that the clerk receive that compensation in *either biweekly installments or semimonthly installments, as determined by the payroll administrator.*

#### **Deputy clerks, special deputy clerks, and bailiffs**

Under prior law, deputy clerks, special deputy clerks, and bailiffs (except for bailiffs of the Hamilton County Municipal Court) of a municipal court received compensation payable in semimonthly installments. The act provides that deputy clerks, special deputy clerks, and bailiffs (except for bailiffs of the Hamilton County Municipal Court) of a municipal court receive compensation payable in *either biweekly installments or semimonthly installments, as determined by the payroll administrator.*

### **Other employees of a municipal court**

Under continuing law, the judge or judges of a municipal court may appoint one or more interpreters, one or more mental health professionals, one or more probation officers, an assignment commissioner, deputy assignment commissioners, and other court aides on a full-time, part-time, hourly, or other basis. Each appointee receives the compensation out of the city treasury that the legislative authority prescribes, except that in a county-operated municipal court they receive the compensation out of the treasury of the county in which the court is located that the board of county commissioners prescribes. The act specifies that each appointee receive the compensation out of the city treasury in either biweekly installments or semimonthly installments, as determined by the payroll administrator, except that in a county-operated municipal court they receive the compensation out of the treasury of the county.

### **Juvenile district detention facility**

(R.C. 2152.44)

Continuing law requires the board of county commissioners, upon the recommendation of the judge, to provide, by purchase, lease, construction, or otherwise, a detention facility that is within a convenient distance of the juvenile court. Upon the joint recommendation of the juvenile judges of two or more neighboring counties, the boards of county commissioners of the counties must form themselves into a joint board and proceed to organize a district for the establishment and support of a detention facility for the use of the juvenile courts of those counties. (R.C. 2152.41--not in the act.) As soon as is practical after the organization of the joint board of county commissioners, the joint board must appoint a board of not less than five trustees. Once a district is established, the trustees must operate, maintain, and manage the facility. (R.C. 2152.44.) The act provides that, on and after the effective date of the act and notwithstanding any provision of the Revised Code to the contrary, the trustees may adopt bylaws regarding the daily operation, maintenance, and management of the facility. It also specifies that no bylaws adopted pursuant to this provision may supercede any provision of the Revised Code. (R.C. 2152.44(E).)

### **Forwarding fees to the Children's Trust and Family Violence Prevention Funds**

(R.C. 3109.14 and 3705.242)

Law unchanged by the act, establishes additional fees to be charged for copies of vital records. An additional \$4.50 fee must be charged for each certified copy of a birth record, certification of birth, or death record. Of this fee, \$3 must be forwarded to the State Treasurer for deposit in the Children's Trust Fund and



the remainder forwarded for deposit in the Family Violence Prevention Fund. A local commissioner of health or local registrar of vital statistics is permitted to retain up to 3% of the \$4.50 fee to be used for costs directly related to the collection and forwarding of the fee.

An additional \$16.50 fee must be charged on the filing for a divorce decree or decree of dissolution. Of this fee, \$11 must be forwarded to the State Treasurer for deposit into the Children's Trust Fund and \$5.50 forwarded for deposit into the Family Violence Prevention Fund. A county clerk of courts, though, may retain up to 3% of the fee to be used for costs directly related to the collection and forwarding of the fee.

The act changes the times by which the fees must be forwarded. Under prior law, all of the additional fees, other than the percentage retained by the local officials, had to be forwarded to the State Treasurer not later than the tenth day of the immediately following month. Under the act, the additional fees on certified copies of birth records, certifications of birth, and death records, other than the percentage retained by the local officials, must be forwarded not later than 30 days following the end of each quarter. The additional fees for filings for divorce decrees and decrees of dissolution, other than the percentage retained by the court clerks, must be forwarded not later than 20 days following the end of each month.

**Authority of president of board of township trustees to administer oath of office to certain library board members**

(R.C. 3375.121)

**Creation of certain municipal library districts**

Continuing law permits the legislative authority of either of the following categories of municipal corporations to create, by resolution, a municipal library district not later than June 20, 1978:

(1) A municipal corporation that is not located in a county library district, that has a population of not less than 25,000, and that does not have located within it a main library of a township, municipal, school district, association, or county free public library.

(2) A municipal corporation that has a population of less than 25,000 and that has not less than \$100,000 available from a bequest for the establishment of a municipal library.

Any municipal library district created by either category of municipal corporation by the specified deadline must have a six-member board of library trustees. Those members must be appointed by the municipal corporation's mayor.



### **Oaths of office: in general**

The statute authorizing the municipal library districts mentioned above does not specify who may or must administer the oath of office to the members of the board of library trustees. However, other general provisions of continuing law (R.C. 3.24--not in the act) authorize every holder of an elected office under the Ohio Constitution or the laws of Ohio to administer oaths of office to persons who are elected or appointed to offices under the Constitution or those laws and whose offices are *within the geographical limits of the elected office holder's constituency*. Continuing law, however, confers a more expanded oath authority upon certain individuals, by permitting a General Assembly member to administer oaths of office to persons elected or appointed to *any office* under the Constitution or laws of Ohio, a judge of a court established by the Ohio Constitution (Ohio Supreme Court, courts of appeals, and courts of common pleas) to administer oaths to *any person*, and a notary public commissioned in Ohio to administer an oath to any person.

### **Changes made by the act**

Under the act, notwithstanding any contrary provision of the general provisions of continuing law governing the administration of oaths of office in Ohio, the president of a board of township trustees may administer the oath of office to a person or persons representing the township on the board of library trustees of any municipal library district described above, even if the geographical limits of the library district *do not fall within the geographical limits of the township*.

### **Counties may use general fund money to support emergency management agencies**

(R.C. 5502.261)

A county and the political subdivisions within the county may agree to establish a countywide emergency management agency. These agencies operate using federal, state, and local grants, appropriations made by the political subdivisions, and private offers of assistance.

The act adds to these sources of funds by permitting counties also to use their general fund money to support any of the agency's operations. These funds also may be used to develop, acquire, operate, and maintain a countywide public safety communication system and to purchase communication devices, radios, and other equipment necessary for the system's operation and use. And the funds may be appropriated directly to political subdivisions participating in the countywide emergency management agreement, to enable those political subdivisions to

purchase communication devices, radios, and other equipment necessary for operation and use of the countywide public safety communication system.

**Vehicle weight violation fine money**

(R.C. 5577.99)

Fines for violations of vehicle weight limits established in the Revised Code generally depend on the amount by which the overweight vehicle exceeds the established weight limits. Prior law specified that the fines for such violations were not subject to the general distribution rules, but were required to be paid into the appropriate county treasury and credited to any fund for the maintenance and repair of roads, highways, bridges, or culverts.

Continuing law authorizes counties to reduce the vehicle weight limits for county and township roads and bridges (other than state highways and bridges on state highways). The act establishes that only the fines for violations of these county weight limits must be paid into the county treasury and credited to such a fund. Fines for violations of other vehicle weight limit laws in the Revised Code are subject to the general fine distribution rules applicable in Ohio's courts. In general, fines collected for violations of the Revised Code must be paid into the treasury of the county in which the trial court is located and fines collected for violations of municipal ordinances must be paid into the treasury of the city or village whose ordinance is violated; fines collected from persons apprehended or arrested by the State Highway Patrol are exceptions to the general distribution and subject to special crediting provisions, with a portion credited to the General Revenue Fund (after sufficient revenue is credited to the Security, Investigations, and Policing Fund to support specific activities of the Patrol) and the remainder distributed based on the court that imposes the fine.

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**MANUFACTURED HOMES COMMISSION**

- Changes the deadline by which the standards the Manufactured Homes Commission establishes to govern the installation of manufactured housing must be made consistent with the model standards the Secretary of the United States Department of Housing and Urban Development adopts or amends.

**Standards governing the installation of manufactured housing**

(R.C. 4781.04)

Continuing law requires the Manufactured Homes Commission to adopt rules establishing uniform standards governing the installation of manufactured homes. The standards are "to be consistent with, and not less stringent than" the model standards the Secretary of the United States Department of Housing and Urban Development (HUD) adopted. The act modifies the time at which the Commission's standards must be made consistent with HUD model standards by specifying that not later than 180 days after the HUD Secretary adopts model standards or amends those standards, the Commission must amend its standards as necessary to be consistent with the HUD standards. The change potentially enables the Commission to adopt and implement standards prior to the time HUD adopts its standards, requiring the Commission's standards to be amended as necessary for consistency with the HUD model standards once the HUD standards are adopted.

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**DEPARTMENT OF MENTAL HEALTH**

- Authorizes the Department of Mental Health to permit free clinics to purchase goods and services through the consolidated purchasing program the Department administers under current law.

**Free clinics--participation in consolidated purchasing program**

(R.C. 5119.16)

Under law unchanged by the act, the Department of Mental Health is designated to provide certain goods and services for specified state departments and other state, county, or municipal agencies requesting the goods and services when the Department of Mental Health determines that it is in the public interest, and considers it advisable, to provide these goods and services. In addition, continuing law generally unchanged by the act permits the Department of Mental Health to provide goods and services to federal agencies and to public and private nonprofit agencies that are funded in whole or in part by the State if the nonprofit agencies are designated for participation in this consolidated purchasing program by the various directors of the state departments described above. Among the goods and services that the Department of Mental Health can provide are "procurement, storage, repackaging, distribution, and dispensing of drugs, the provision of professional pharmacy consultation, and drug information services." The cost of administration of the consolidated purchasing program is determined

by the Department of Mental Health and paid by the agencies receiving goods and services to the Department for deposit in the state treasury to the credit of the Mental Health Fund.

In December 2005, pursuant to Section 209.06.15 of Am. Sub. H.B. 66 of the 126th General Assembly, several state departments and the Association of Ohio Health Commissioners prepared a report as a result of the Ohio Consolidated Prescription Drug Study (Study Report). The Study Report proposed that the law governing the consolidated purchasing program be amended "to include schools and free clinics in the authorized customer base for Ohio's existing drug purchasing program."<sup>88</sup>

The act authorizes the Department of Mental Health to permit free clinics<sup>89</sup> to purchase certain goods and services to the extent the purchases fall within the exemption to the Robinson-Patman Act (a federal antitrust law that prohibits persons engaged in commerce from discriminating in prices between purchasers of goods of like grade, quality, and quantity) applicable to non-profit institutions. This exemption, referred to as the "Non-profit Institutions Act," exempts from the Robinson-Patman Act's prohibition sales of supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and non-profit charitable institutions.<sup>90</sup> The act also provides that free clinics receiving goods and services under the consolidated purchasing program pay the Department for the cost of administration of the program and that the money be deposited in the same manner prescribed for government agencies and nonprofit organizations funded in whole or in part by the state that participate in the program.

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<sup>88</sup> *Ohio Department of Mental Health et al. Ohio Consolidated Prescription Drug Purchasing Study (Dec. 2005), at 16.*

<sup>89</sup> *The act defines a "free clinic" consistent with the definition in the law governing the medical liability insurance reimbursement program (R.C. 2305.2341). In summary, this definition provides that a "free clinic" is a nonprofit organization or component of a nonprofit organization that is exempt from federal income taxation and whose primary mission is to provide health care services for free or for a minimal administrative fee to individuals with limited resources.*

<sup>90</sup> *The Robinson-Patman Act is codified in 15 U.S.C. 13 et seq. The Non-profit Institutions Act is codified in 15 U.S.C. 13c.*

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## **DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

- Expressly states that the Director of Mental Retardation and Developmental Disabilities must obtain the approval of the Controlling Board or Director of Budget and Management before assisting a county board of mental retardation and developmental disabilities or private, nonprofit agency with a construction project.
- Establishes a process by which a county board or private, nonprofit agency may sell a facility for which the county board or agency received state funds before the terms of the agreement authorizing the state funds expires and acquire a replacement facility.
- Eliminates the requirement that each county have a county MR/DD Medicaid Reserve Fund.

### **State assistance with MR/DD construction projects**

(R.C. 5123.36, 5123.37, 5123.371, 5123.372, 5123.373, 5123.374, and 5123.375)

### **Need for Controlling Board or OBM approval**

The Director of Mental Retardation and Developmental Disabilities (MR/DD) is permitted to provide state participation in MR/DD construction programs to the extent funds are available. County MR/DD boards and private, nonprofit agencies incorporated to provide MR/DD services may apply for this state participation. The act uses "project" rather than "program" when referring to the MR/DD construction and authorizes the Director, instead of approving state participation in such projects, to enter into an agreement with a county board or nonprofit agency to assist the county board or agency with the project.

Continuing law requires that an agency that is appropriated money for a capital project obtain approval before releasing money for the project. Generally, the Controlling Board's approval is needed. However, the Director of Budget and Management may approve a project in place of the Controlling Board if the project is not for real estate and either the Director has identified the project as being a specific project or the project concerns the release of unencumbered capital balances to repair, remove, or prevent a public exigency the Director of Administrative Services declares to exist.

The act expressly prohibits the Director of MR/DD from assisting an MR/DD construction project unless the Controlling Board or Director of Budget and Management approves the project pursuant to the continuing law discussed above.

**Approval to sell existing facility and acquire replacement facility**

The act authorizes a county board or private, nonprofit agency that receives state funds to acquire a facility pursuant to an agreement entered into with the Director of MR/DD regarding MR/DD construction projects to apply to the Director for approval to sell the facility before the terms of the agreement expire. The purpose of the agreement is for the county board or agency to acquire a replacement facility to be used to provide MR/DD services to individuals the county board or agency serves. The application is to be made on a form the Director must prescribe and the county board or agency must include in the application the specific purpose for which the replacement facility is to be used. The Director is permitted to refuse to approve the application if the Director determines that (1) the application is incomplete or indicates that the county board or agency is unable to purchase a replacement facility, (2) the replacement facility would not be used to continue to provide MR/DD services that the Director determines are appropriate for the individuals the county board or agency serves, (3) the county board or agency has failed to comply with a provision of state law governing the Department of MR/DD or county boards or a rule adopted by the Director, or (4) approving the application would be inconsistent with the Department's plans and priorities.

If the Director approves an application, the county board or agency is required, after selling the facility for which the county board or agency received approval to sell, to pay to the Director the portion of the proceeds that equals the amount that the Director determines the county board or agency owes the Department for the state funds used to acquire the facility. The amount owed to the Department is to include the Department's security interest in the facility.

After approving the application, the Director is to establish a deadline by which the county board or agency must notify the Director that the county board or agency is ready to acquire a replacement facility to be used for the purpose stated in the application. The Director is permitted to extend the deadline as many times as the Director determines necessary. If, on or before the deadline or the last of any extended deadlines, the county board or agency notifies the Director that the county board or agency is ready to acquire the replacement facility, the Director must enter into an agreement with the county board or agency that provides for the Director to pay to the county board or agency a percentage of the cost of acquiring the replacement facility. The agreement must specify the amount that the Director is to pay. The amount may be the amount of the security interest

that the Department had in the previous facility or a different amount. The agreement may provide for the Department to hold a security interest in the replacement facility.

The Director is permitted to rescind the application's approval if the county board or agency fails, on or before the deadline or the last of any extended deadlines, to notify the Director that the county board or agency is ready to acquire the replacement facility. The Director may also rescind the application if the county board or agency at any time notifies the Director that the county board or agency no longer intends to acquire a replacement facility. If the Director rescinds the application, the Director must use any funds the county board or agency paid to the Director after selling the facility to assist MR/DD construction projects pursuant to law discussed above.

The act creates the MR/DD Community Capital Replacement Facilities Fund in the state treasury. The Director is required to credit to the Fund all amounts paid to the Director by county boards or agencies after they sell a facility. The Director is required to use the money in the Fund to make payments to county boards and agencies for replacement facilities as discussed above. The portion of the Fund that is made up of money paid by a county board or agency that later notifies the Director that it no longer intends to acquire a replacement facility is to be used to assist MR/DD construction projects.

### **County MR/DD Medicaid Reserve Fund**

(R.C. 5705.091 and 5123.0413)

The act repeals a requirement that each county board of mental retardation and developmental disabilities (county MR/DD board) ask its board of county commissioners to establish a county MR/DD Medicaid Reserve Fund. Deposits to the fund had to consist of the portion of federal revenue funds a county MR/DD board earned for providing Medicaid case management and home and community-based services that was needed for the county MR/DD board to pay for extraordinary costs, including extraordinary costs for services to individuals with MR/DD, and ensure the availability of adequate funds in the event a county property tax levy for MR/DD services failed.<sup>91</sup> A county MR/DD board was to use money in the fund for those purposes in accordance with rules the Department of MR/DD was required to adopt.

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<sup>91</sup> *Prior law did not provide guidance to the meaning of "extraordinary costs" beyond stating that it included extraordinary costs for services to individuals with MR/DD.*

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## PUBLIC DEFENDER COMMISSION

- Provides when the court is required to assess, and when the court is prohibited from assessing, an application fee for appointed counsel for an indigent defendant.
- Requires the county auditor to remit 20% of the application fees collected in the previous month to the State Public Defender not later than the last day of each month.
- Requires each clerk of court to provide the State Public Defender with a report related to application fees for appointed counsel and public defenders on or before the 20th day of each month beginning in February of the year 2007.
- Requires that the clerk provide such a report for the calendar year 2006 to the State Public Defender on or before February 20, 2007.
- Removes the requirement that the Legal Aid Fund contain investment income.
- Requires the Ohio Legal Assistance Foundation to allocate and distribute moneys in the Legal Aid Fund monthly instead of twice each year.
- Requires that the Legal Assistance Foundation Fund contain all moneys distributed to the Ohio Legal Assistance Foundation.

### *Application fee for indigent defendants*

(R.C. 120.36)

Under continuing law, if a person who is a defendant in a criminal case or a party in a case in juvenile court requests or is provided a state public defender, a county or joint county public defender, or any other counsel appointed by the court, the court in which the criminal case is initially filed or the juvenile court must assess, unless the application fee is waived or reduced, a non-refundable application fee of \$25. The court must direct the person to pay the application fee to the clerk of court. The person must pay the application fee at the time the person files an affidavit of indigency or a financial disclosure form with the court or within seven days of that date. The act modifies these provisions so that they

specify that the person pay the application fee to the clerk of court and that the payment must be made at the time the person files an affidavit of indigency or a financial disclosure form with the court (continuing law) or with a state public defender, a county or joint county public defender, or any other counsel appointed by the court (all added by the act). The act specifies that these application fee provisions are subject to the provisions it enacts that are described in the second and third succeeding paragraphs.

Prior law provided that, if a case involving a felony that was initially filed in a municipal court or a county court was bound over to the court of common pleas and the defendant in the case failed to pay the application fee in the municipal court or county court, the court of common pleas was required to assess the application fee at the initial appearance of the defendant in the court of common pleas. If a case involving an alleged delinquent child was transferred to the court of common pleas for prosecution of the involved child as an adult and if the involved child failed to pay the fee in the juvenile court, the court of common pleas was required to assess the application fee at the initial appearance of the child in the court of common pleas. The act removes these provisions.

The act defines "criminal case" for purposes of the application fee provisions. Under the act, a criminal case includes any case involving a violation of any provision of the Revised Code or of an ordinance of a municipal corporation for which the potential penalty includes loss of liberty and includes any contempt proceeding in which a court may impose a term of imprisonment. The act also provides that, in a juvenile court proceeding, the court is permitted to assess an application fee against a child if the court appoints a guardian ad litem for the child or the court appoints an attorney to represent the child at the request of a guardian ad litem. The act also prohibits the court from assessing an application fee for a postconviction proceeding or when a defendant files an appeal.

The act enacts a new application fee provision that specifies that, except when the court assesses an application fee as described below, the court must assess an application fee when a person is charged with a violation of a community control sanction or a violation of a post-release control sanction. If a charge of violating a community control sanction or post-release control sanction described in the preceding sentence results in a person also being charged with violating any provision of the Revised Code or an ordinance of a municipal corporation, the court must only assess an application fee for the case that results from the additional charge. The act provides that, if a case is transferred from one court to another court and the person failed to pay the application fee to the court that initially assessed the application fee, the court that initially assessed the fee

must remove the assessment, and the court to which the case was transferred must assess the application fee.

Continuing law requires the court to assess an application fee one time per case, and prior law specifies that an appeal is not considered a separate case for the purpose of assessing the application fee. The act specifies that, for the purposes of assessing the application fee, a case means one complete proceeding or trial held in one court for a person on an indictment, information, complaint, petition, citation, writ, motion, or other document initiating a case that arises out of a single incident or a series of related incidents, or when one individual is charged with two or more offenses that the court handles simultaneously. Related to this, the act repeals the prior provision that specified that an appeal is not considered a separate case. Continuing law permits the court to waive or reduce the fee upon a finding that the person lacks financial resources that are sufficient to pay the fee or that payment of the fee would result in an undue hardship. The act specifies that the court may waive or reduce the fee *for a specific person in a specific case* upon such a finding.

Under continuing law, the clerk of the court that assesses application fees must forward all of the fees collected to the county treasurer and the county auditor is required to remit 20% of the fees collected to the State Public Defender each month. The act specifies that the county auditor must remit 20% of the fees collected in the previous month not later than the last day of each month.

Prior law required the clerk of court to provide to the State Public Defender and the State Auditor, on or before March 1 of each year beginning in 2007, a report including all of the following: (1) the number of persons in the previous calendar year who requested or were provided a state public defender, county or joint county public defender, or other counsel appointed by the court, (2) the number of persons in the previous calendar year for whom the court waived the application fee, (3) the dollar value of the assessed application fees in the previous calendar year, (4) the amount of assessed application fees collected in the previous calendar year, and (5) the balance of unpaid assessed application fees at the open and close of the previous calendar year.

The act removes the requirement that the clerk provide this report to the State Auditor and requires the clerk to provide this report to the State Public Defender on or before the 20th day of each month beginning in February of the year 2007. The act requires that the information provided in the report be from the previous month rather than the previous calendar year. The act also requires each clerk of court to provide on or before February 20, 2007, such a report for the calendar year 2006 to the State Public Defender.

Continuing law, for the purposes of these application fee provisions, defines "clerk of court" as the clerk of the court of common pleas of the county, the clerk of the juvenile court of the county, the clerk of the municipal court in the county, the clerk of a county-operated municipal court, or the clerk of a county court in the county, whichever is applicable. The act includes the clerk of the domestic relations division of the court of common pleas of the county and the clerk of the probate court of the county within the definition of "clerk of court."

### **Legal Aid Fund**

(R.C. 120.52)

Continuing law provides that the Legal Aid Fund is for the charitable public purpose of providing financial legal assistance to legal aid societies that provide civil legal services to indigents. The Fund is required by continuing and prior law to contain all funds credited to it by the Treasurer of the State from certain fees charged by municipal courts, county courts, and courts of common pleas, interest earned on funds deposited in an interest-bearing trust account of an attorney, law firm, title insurance agent, or title insurance company (an IOLTA or IOTA), and income from investment credited to it by the Treasurer. The act removes the requirement that the Fund contain the income from investment credited to it by the Treasurer.

Continuing law allows the Treasurer to invest moneys contained in the Legal Aid Fund in any manner authorized by the Revised Code for the investment of state moneys. Under prior law, no such investment could interfere with any apportionment, allocation, or payment of moneys in January or July of each calendar year under R.C. 120.53 (see "**Ohio Legal Assistance Foundation**," below), and all income earned as a result of any such investment had to be credited to the Fund. The act removes the reference to January or July of each calendar year and removes the requirement that all income earned as a result of the investment be credited to the Fund.

### **Ohio Legal Assistance Foundation Fund**

(R.C. 120.521)

Continuing law provides that the Legal Assistance Foundation Fund is under the custody and control of the Ohio Legal Assistance Foundation. The Fund must contain all gifts, bequests, donations, and contributions accepted by the Ohio Legal Assistance Foundation. The act requires that the Fund also contain all moneys distributed to the Ohio Legal Assistance Foundation pursuant to R.C. 120.53, as discussed below in "**Ohio Legal Assistance Foundation**."

## Ohio Legal Assistance Foundation

(R.C. 120.53)

Continuing law allows a legal aid society that operates within the state to apply to the Ohio Legal Assistance Foundation for financial assistance from the Legal Aid Fund to be used for the funding of the society during the calendar year following the calendar year in which the application is made. The Ohio Legal Assistance Foundation is required by continuing law to determine whether each applicant is eligible for financial assistance and by prior law to allocate moneys contained in the Legal Aid Fund twice each year for distribution to applicants that filed their application in the previous calendar year and were determined to be eligible. The act requires the Foundation to allocate the moneys in the Legal Aid Fund *monthly*, rather than twice each year. Under prior law, all moneys contained in the Fund on January 1 of a calendar year had to be allocated, after deduction of the costs of administering the provisions governing legal aid society funding and the programs regarding IOLTA and IOTA accounts, and the moneys had to be distributed accordingly on January 31 of that calendar year. The act provides that all moneys contained in the Fund on the first day of each month, rather than on January 1 of a calendar year, must be allocated after deduction of the specified costs. The act also removes the January 31 distribution provision and replaces it with the distribution provision described below. Prior law also provides that all moneys contained in the Fund on July 1 of that calendar year had to be allocated, after deduction of the costs of administering those sections that are authorized by R.C. 120.52, and had to be distributed accordingly on July 31 of that calendar year. The act removes this provision in its entirety. The act provides that the moneys allocated each month must be distributed accordingly not later than the last day of the month following the month the moneys were received.

Continuing law requires that, in making the allocations, the moneys in the Fund that were generated from fees charged by a municipal court, county court, or court of common pleas, the moneys generated from IOLTA and IOTA accounts, and, under prior law, all income generated from the investment of such moneys had to be apportioned in a specific manner. The act removes the requirement that the income generated from the investment of those moneys be so apportioned.

Prior law also required that moneys allocated to eligible applicants be paid twice annually, on January 31 and July 31 of the calendar year following the calendar year in which the application is filed. The act modifies this provision by requiring that the moneys be paid monthly beginning the calendar year following the calendar year in which the application is filed.



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## DEPARTMENT OF PUBLIC SAFETY

- Replaces the Highway Patrol Federal Contraband, Forfeiture, and Other Fund, with two new funds, the Highway Patrol Justice Contraband Fund and the Highway Patrol Treasury Contraband Fund, and specifies that the interest or other earnings of the respective new funds be credited to those funds.
- Authorizes a motor vehicle renting dealer to charge each renter a separate fee to recover the annual registration, license plate, and title fees imposed on the vehicles in the dealer's fleet.

### *Proceeds from the criminal forfeiture of property to the State Highway Patrol under federal law*

(R.C. 2923.46, 2925.44, and 2933.43)

When the State Highway Patrol seizes property under federal criminal forfeiture laws, it must deposit, use, and account for the proceeds from a sale or other disposition of the forfeited property in accordance with applicable federal law. Prior law created the Highway Patrol Federal Contraband, Forfeiture, and Other Fund to receive the proceeds of property forfeited to the Highway Patrol pursuant to federal law and directed that the investment earnings of the fund be credited to it. The act replaces the Highway Patrol Federal Contraband, Forfeiture, and Other Fund, with two new funds. Under the act, if the Highway Patrol receives forfeited property from the United States Department of Justice, the proceeds are deposited in the Highway Patrol Justice Contraband Fund, and if the Patrol receives forfeited property from the United States Department of the Treasury, the proceeds are deposited in the Highway Patrol Treasury Contraband Fund. The interest or other earnings of the new funds are to be credited to those respective funds.

### *Motor vehicle renting dealers itemization of registration and title fees*

(R.C. 4503.105)

The act authorizes a motor vehicle renting dealer (defined by reference to continuing law) to estimate annual per vehicle licensing costs and charge each vehicle renter a separate vehicle license fee specifically to recover the dealer's costs related to the annual vehicle registration, license plate, and title fees imposed

upon vehicles in the dealer's fleet. Any dealer who separately charges a vehicle license fee must do the following:

(1) Make a good faith estimate of the average per day per vehicle portion of the dealer's total annual registration, license plate, and title fees paid in this state for its rental fleet during the calendar year;

(2) Separately itemize and charge the vehicle license fee in the rental agreement between the dealer and a renter, and specifically describe the vehicle license fee in the rental agreement as the estimated average per day per vehicle portion of the dealer's total annual registration, license plate, and title fees.

Additionally, when a dealer itemizes the license fees, any advertisement made in this state that describes rental rates for vehicles available for rent in this state must include a statement that the renter is required to pay a vehicle license fee and also must disclose the maximum daily charge for the vehicle license fee.

Any dealer who separately charges a vehicle license fee is prohibited from charging, collecting, or retaining any amount in excess of the actual average per day per vehicle portion of the dealer's total annual registration, license plate, and title fees paid in this state for its rental fleet during a calendar year. If a dealer recovers the dealer's actual costs related to the annual vehicle registration, license plate, and title fees, the dealer must cease to itemize and charge such costs in any rental agreement during that calendar year.

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## STATE RACING COMMISSION

- Requires, from July 1, 2006, to June 30, 2007, the entire  $\frac{1}{2}$  of 1% of all moneys wagered on wagering pools other than win, place, and show which is retained by horse-racing permit holders to be paid as a tax to the Tax Commissioner and deposited into the State Racing Commission Operating Fund.

### *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)

Continuing law requires horse-racing permit holders to retain an additional  $\frac{1}{2}$  of 1% of all moneys wagered each racing day 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% is retained by the permit holder, who must use  $\frac{1}{2}$  of it for purse money.

Former law enacted by Am. Sub. H.B. 95 and Am. Sub. S.B. 189 of the 125th General Assembly carved an exception to these provisions by requiring, from July 1, 2003 through June 30, 2005, that the *entire*  $\frac{1}{2}$  of 1% of all moneys wagered each racing day on wagering pools other than win, place, and show which was retained by horse-racing permit holders be paid as a tax to the Tax Commissioner, who in turn had to pay the amount into the State Racing Commission Operating Fund.

Although this alternative distribution procedure remains in the Revised Code, its operation is no longer authorized, and, thus, it is former law. The act reestablishes this expired alternative distribution procedure for the period beginning July 1, 2006, and ending June 30, 2007 (FY 2007).

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## BOARD OF REGENTS

- Specifically permits the board of trustees of a community college district, state community college district, or technical college district to make the same types of investments as the board of trustees of a state university.
- Removes the requirement that at least five members of the Board of Trustees of Shawnee State University be residents of the former Shawnee State Community College district.

### Investment authority of two-year colleges

(R.C. 3354.10, 3357.10, and 3358.06)

Under former law, community college districts, state community college districts, technical college districts, and university branch districts could invest revenues of the district. This authority presumably derives from their status as political subdivisions. However, former law specifically permitted districts other than technical college districts to invest in bonds of the United States, Ohio, or any Ohio political subdivision; other bonds or securities backed by the full faith and credit of the U.S. government; or bonds of the federal Home Owners' Loan Corporation. Investment in such bonds or securities could not be made at a price in excess of their current market value or sold for less than that value.



The act retains these guidelines for the investments of university branch districts, but eliminates them for community colleges, state community colleges, and technical colleges. Instead, it explicitly permits the board of trustees of a community college district, state community college district, or technical college district to invest income of the district in the same types of investments as the board of trustees of a state university. Specifically, investments may be made, as a reserve, in securities of the U.S. government or of its agencies or instrumentalities, the Treasurer of State's pooled investment program, obligations of Ohio or any Ohio political subdivision, certificates of deposit of any national bank located in Ohio, written repurchase agreements with any eligible Ohio financial institution that is a member of the Federal Reserve System or Federal Home Loan Bank, money market funds, or bankers acceptances maturing in 270 days or less which are eligible for purchase by the Federal Reserve System.

**Shawnee State University board membership**

(R.C. 3362.01)

The act eliminates the former requirement that at least five of the voting trustees of Shawnee State University be residents of the territory that constituted the Shawnee State Community College district on July 2, 1986.

The Board of Trustees of Shawnee State University consists of nine voting members appointed by the Governor, with the advice and consent of the Senate. The Board also has two nonvoting student members appointed by the Governor, with the advice and consent of the Senate, from a group of five candidates compiled through a procedure adopted by the student government and the board of trustees. The term of office for voting members is nine years and, for nonvoting members, two years.

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**STATE SCHOOL FOR THE BLIND/SCHOOL FOR THE DEAF**

- Repeals recently enacted law that establishes custodial funds of the Treasurer of State to hold money received from parents for personal use of students attending the Ohio School for the Blind or the Ohio School for the Deaf, and instead authorizes the superintendents of the schools to maintain and manage the money.

### **Pupil money management**

(R.C. 3325.12 (repeal and reenact) and 3325.17 (repeal))

Am. Sub. H.B. 66 of the 126th General Assembly, the 2005-2007 biennial budget bill, created student account funds for both the State School for the Blind and the State School for the Deaf in the custody of the Treasurer of State. This act repeals those sections and instead authorizes the superintendents of the respective schools to maintain, manage, and disburse, through one or more personal deposit funds, money deposited by parents, relatives, guardians, and friends for the special benefit of any pupil. Each superintendent must keep itemized book accounts of receipt and disposition of the money, which must always be open to the inspection of the state Superintendent of Public Instruction. In addition, each superintendent must adopt rules governing the deposit, transfer, withdrawal, or investment of the money and the investment earnings.

If a pupil ceases to be enrolled while personal money remains with the respective superintendent, and no demands have been made for the money, the superintendent must hold the money in a personal deposit fund for at least one year. During that year, the superintendent must make "every effort" to locate the pupil or the pupil's parent or guardian. If at the end of the year, no demand has been made for the money, the superintendent must transfer the money as follows:

(1) If the Superintendent of the State School for the Blind holds the money, to the State School for the Blind Student Activity and Work-Study Fund in the state treasury.

(2) If the Superintendent of the State School for the Deaf holds the money, to the State School for the Deaf Educational Program Expenses Fund in the state treasury.

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## **SCHOOL FACILITIES COMMISSION**

- Expands eligibility for the Exceptional Needs School Facilities Assistance Program to school districts ranked in the fifty-first to seventy-fifth percentiles based on their adjusted valuation per pupil.



### **Eligibility for Exceptional Needs School Facilities Assistance Program**

(R.C. 3318.37; conforming change to Section 209.90.06 of Am. Sub. H.B. 66 of the 126th General Assembly)

#### **Background**

The Ohio School Facilities Commission administers several programs that provide state assistance to school districts and community schools in the acquisition of classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. In addition to CFAP, other school facilities programs address the particular needs of certain types of districts. One of these programs, the Exceptional Needs School Facilities Assistance Program, provides low-wealth school districts and school districts with territory greater than 300 square miles with funding in advance of their district-wide CFAP projects to construct single buildings in order to address acute health and safety issues.

#### **The act**

The act expands eligibility for the Exceptional Needs Program by including as low-wealth districts those districts ranked in the fifty-first to seventy-fifth percentiles of adjusted property valuations per pupil. All "large land area" districts remain eligible for the program, regardless of their percentile ranking.

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### **SECRETARY OF STATE**

- Specifies that financing statements for the purposes of Uniform Commercial Code filings are not required to include social security or employee identification numbers and requires the office of the Secretary of State to redact social security and employee identification numbers from filings posted on its web site.

#### **Secretary of State's use of social security and employer identification numbers in UCC filings**

(R.C. 1309.102, 1309.520, and 1309.521)

Under continuing law, the Secured Transaction provisions of the Uniform Commercial Code, in many cases, a lender must file a financing statement with the



Secretary of State's office. This statement serves: (1) to protect ("perfect" the lender's security interest in collateral goods or fixtures acquired by the debtor), and (2) to have such interest indexed for public notice. Law largely unchanged by the act also prescribes a uniform written form for financing statements that includes a request for a tax identification number that can be either a person's social security or employer identification number. Also continuing under current law, the office of the Secretary of State posts filings of financing statements on the office's Internet web site.

The act requires that financing statements filed with the Secretary of State not be required to include social security or employer identification numbers and revises the uniform form accordingly. The act also requires the Secretary of State's office to redact social security and employee identification numbers from filings posted on its web site.

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## DEPARTMENT OF TAXATION

- Clarifies that deductions in computing the commercial activity tax base are deductible only if otherwise included in the tax base.
- Excludes from the commercial activity tax base any taxes the taxpayer must collect on behalf of a government directly from a purchaser, not just sales and use tax collections.
- Excludes from the commercial activity tax base any payments between companies to reimburse one of the companies for payment of the tax.
- Excludes from the commercial activity tax base a percentage of the receipts derived from the sale of tangible personal property that is delivered to a "qualified distribution center," and replaces an existing exclusion for amounts received from the sale of property that is delivered into or shipped from a foreign trade zone.
- Expands the range of non-U.S. companies that must be either included in or excluded from a consolidated taxpayer group so that the inclusion/exclusion requirement applies to all non-U.S. entities, not just non-U.S. corporations.
- Provides more time for taxpayer groups to elect consolidated treatment and eliminates the prior approval requirement for these elections.



- Specifies that a person has "bright-line presence" for purposes of determining whether a taxpayer has "substantial nexus" with Ohio under the commercial activity tax if that person has, at any time during the calendar year, at least 25% of its total "gross receipts" within Ohio, rather than 25% of its total "sales," as specified under prior law.
- Extends eligibility for the half-year minimum commercial activity tax (\$75) for late-year registrants to all persons registering any time after May 1 of any year.
- Makes the minimum commercial activity tax threshold and annual reporting thresholds the same--\$1 million or less in annual taxable gross receipts.
- Modifies some of the registration requirements for the commercial activity tax.
- Temporarily permits refunds of commercial activity tax registration fees if the fee payer is not subject to the tax.
- Authorizes the Tax Commissioner to issue a final determination pertinent to errors in a corporation's computation of deferred franchise tax items for which it intends to claim a commercial activity tax credit.
- Requires that all commercial activity taxes, penalties, and interest be paid within 45 days after winding-up a business, rather than within 15 days, as required under prior law.
- Permits certain trusts created before 1972 to "elect" whether it, and any pass-through businesses it owns or controls 5% of, will be subject to the commercial activity tax (CAT); if the election is made, the trust is exempted from the income tax; if the election is not made, the trust and its 5% -owned pass-through businesses are exempted from the CAT.
- Modifies stated eligibility criteria affecting the extent to which some trusts' investment income is taxable under the income tax.
- Prescribes a new method for allocating a nonresident trust's gain or loss from selling an investment in certain closely held businesses.
- Authorizes school districts to levy a voter-approved property tax designed to compensate for reductions in state funding caused by

appreciation in real estate values as translated through an increased charge-off, subject to a 4% per annum limit on revenue growth from the levy.

- Clarifies that certain state-owned property is exempt from taxation even if the property is leased to or operated by a private party, so long as the property is used for certain enumerated purposes.
- Provides property tax replacement reimbursement for property tax levies approved at an election before September 2005 even if the levy does not first apply until 2007 or thereafter.
- Prescribes an alternative basis for computing business personal property tax replacement payments for taxing units with 50% declines in personal property values and located in a county where a uranium enrichment plant is or was sited.
- Adjusts the timing of property tax replacement payments.
- Expressly excludes from a subdivision's debt limit any securities issued in anticipation of business property tax replacement payments.
- Expressly requires property tax rates to be set so as to account for the reductions in taxable value caused by the phase-out of business tangible personal property taxation.
- Expressly requires property tax replacement payments for fixed-sum levies to be deducted in computing the revenue to be raised by such levies.
- Clarifies that certain telecommunications property sold and leased back to a telecommunications company is taxable throughout the tax phase-out period for such property.
- Continues the current computation method for electricity and natural gas property tax replacement payments to school districts from 2007 through 2017 or until the growth in a district's state aid exceeds the inflation-adjusted tax loss.
- Changes the public utility personal property tax replacement payment phase-down schedule for new school districts created by the transfer of territory.



- Makes the corporation franchise tax credit that is allowable to a telephone company for the provision of telephone relay service for the communicatively impaired a refundable credit beginning tax year 2006, provides that an affiliate of the company can claim the credit if the affiliate is providing the service, and terminates the credit after tax year 2008.
- Clarifies a provision prohibiting taxpayers from claiming the resident income tax credit on the basis of taxes paid to another state but that are not included in Ohio taxable income because the taxes were deducted in computing federal adjusted gross income.
- Specifies that the existing income tax credit available to individuals having Ohio adjusted gross incomes of \$10,000 or less may be claimed on any return not filed by an estate or trust that indicates Ohio adjusted gross income of \$10,000 or less.
- Prohibits school districts from simultaneously levying a school district income tax under both of the alternative bases authorized under continuing law.
- Authorizes school districts to exempt from school district income taxation military pay and allowances received by taxpayers stationed outside Ohio.
- Incorporates into Ohio tax law recent changes to the Internal Revenue Code and other federal laws.
- Permits taxpayers subject to the corporation franchise tax and personal income tax, and electric companies and telephone companies subject to a municipal income tax, for a taxable year ending in 2005 to irrevocably elect to apply federal law in effect for that taxable year rather than the federal law that would be in effect under the act's incorporation of recent federal law changes.
- Authorizes licensed cigarette manufacturers who are not certified by the Attorney General to sell cigarettes to licensed wholesalers for sale outside Ohio, and requires these manufacturers to provide the Tax Commissioner with documentation evidencing that the cigarettes are legal for sale in another state.

- Authorizes counties having populations of at least 1.2 million to levy a cigarette tax, with voter approval, of up to 30¢ per pack in support of a countywide regional arts and cultural district.
- Extends the sales tax exemption for a "thing transferred" that is used in a manufacturing operation to specific tangible personal property used in laundry and dry cleaning services and to floor mats and mop heads.
- Eliminates the requirement that resolutions levying or increasing a county sales and use tax for county general fund purposes be adopted at least 120 days before the tax or tax increase goes into effect.
- Authorizes a board of county commissioners to enter into an agreement before December 1, 2006, to return to a person that constructs an "impact facility" up to 75% of the county piggyback sales and use taxes collected on retail sales made at the facility by that person.
- Returns the taxes in the form of payments made quarterly, on application by the person that constructed the impact facility, for up to ten years or until the person's qualifying investment in the facility has been realized through the payments, whichever occurs first.
- Changes the conditions under which municipalities, townships, and counties having populations exceeding 25,000 may create incentive district TIFs.
- Modifies the notice that is required to be sent to political subdivisions that will be affected by a proposed incentive district TIF by requiring inclusion of additional information describing the effects of the TIF.
- Specifies that incentive district TIF compensation agreements may not exceed the property taxes foregone due to the exemption and provides that if a county or township objects to an exemption percentage exceeding 75%, compensation of not more than 50% of the taxes foregone would be payable to the county or township.
- Eliminates the authority of an affected municipality to object to, and to enter into a compensation agreement with, a county creating an incentive district TIF.

- Specifies that the special levies currently exempt from incentive district TIFs are exempted only if they are (1) new levies or (2) renewal levies with an increase or replacement levies to the extent they exceed the effective tax rate of the levy renewed or replaced; requires TIF service payments attributable to such special levies to be paid to the taxing authorities levying the levies; and specifies additional levies for which compensation payments must be made.
- Eliminates the requirement that these special levies be passed by the voters after an ordinance or resolution creating an incentive district is adopted.
- Specifies that a TIF exemption can commence no sooner than the tax year that begins after the year in which the ordinance or resolution creating the TIF takes effect.
- Specifies that the prohibition against using TIF funds for police and fire equipment applies only to incentive district TIFs created on or after the act's immediate effective date.
- Provides that a municipal corporation, township, or county may distribute moneys in its tax increment equivalent fund to fulfill compensation agreements, to pay over service payments, and to fulfill other agreements to provide compensation with respect to property within an incentive district for which the municipal corporation, township, or county applied for exemption from taxation on behalf of the property owners.
- Authorizes distribution of money from the tax increment equivalent funds in this manner, regardless of the date a resolution or ordinance creating the fund was adopted, even if it was adopted prior to the effective date of the authorization.
- Declares that all tax increment financing changes take immediate effect.
- Corrects the computation of the component of the base-cost school funding formula accounting for side payments received by school districts for TIF and other discretionary property tax exemptions.
- Authorizes a person who has constructed a dwelling in a community reinvestment area to apply for a tax exemption at any time after the year in which the dwelling first becomes taxable and specifies that the

exemption sought by the owner then applies only for the years remaining in the exemption period.

- Requires that a taxpayer claiming a job creation tax credit, job retention tax credit, or a credit for payments made on a Department of Development research and development loan submit with the taxpayer's return or report a certificate from the Director of Development verifying the taxpayer's eligibility to claim the credit.
- Exempts from taxation land originally leased from the state, a state agency, or a political subdivision in 1998 for use by a professional athletic team if the school district in which the property is located consents to the exemption.
- Authorizes the prior owner of municipally owned hospital property that has had a tax exemption application dismissed for tax years 2001 through 2004 to file an application with the Tax Commissioner for abatement or remission of taxes for those years.
- Abates past-due property taxes on certain church property and thereby allows the property to be restored to tax-exempt status.

### **Commercial activity tax base**

(R.C. 5751.01; Section 818.03)

The tax base or measure for the commercial activity tax is "taxable gross receipts." Generally, taxable gross receipts are a company's gross receipts that are attributed to the company's Ohio business activity as prescribed under the "situs" or attribution rules. Taxable gross receipts are derived from a company's gross receipts, which is defined broadly to include all amounts realized that contribute to the production of gross income. However, there are 27 separate categories of receipts that are excluded from the gross receipts base from which taxable gross receipts is derived. There are also deductions from the taxable gross receipts base for cash discounts, returns and allowances, bad debts, and sales of accounts receivable.

### **Clarification of deductibility**

(R.C. 5751.01(F)(4))

Regarding the current deductions for cash discounts, returns and allowances, bad debts, and sales of accounts receivable, the act expressly states that those amounts may be deducted only to the extent the underlying receipts are included as a gross receipt in the current tax period or were included in a prior tax period's tax report. This precludes a taxpayer from deducting an amount that the taxpayer has not included in the taxpayer's reported tax base. It parallels similar provisions in the income tax and corporation franchise tax laws that permit deductions from the tax base only to the extent the deductible amount is otherwise included in the reported tax base.

### **Tax collections**

(R.C. 5751.01(F)(2)(p))

One of the categories of receipts currently excluded from the gross receipts tax base is sales and use tax collections by persons selling goods or services, so that a company required to collect sales or use tax from customers does not have to pay tax on the basis of those tax collections. The act extends the scope of this exclusion by also excluding any taxes collected by a company that the company is required by law to collect directly from a purchaser and to remit to a local, state, or federal tax authority.

### **Exclusion for reimbursed tax payments**

(R.C. 5751.01(F)(2)(m))

Another existing category of excluded receipts is tax refunds and other recoveries of tax benefits. For example, a company does not have to report or pay commercial activity tax on the basis of a tax refund it receives. The act extends the scope of this exclusion to include any reimbursement received by one company from a second company for commercial activity tax paid by the second company. The extended exclusion applies to companies that are part of the same combined taxpayer group or consolidated taxpayer group, and to companies that are not part of the same group if the reimbursement is "required to be made for economic parity among multiple owners" and only one owner of the company is required to pay the tax because that owner is subject to combined or consolidated reporting requirements.

**Receipts from deliveries to a "qualified distribution center"**

(R.C. 5751.01(F)(2)(z))

**Existing foreign trade zone exemption.** "Gross receipts" also excludes amounts received from the sale of tangible personal property that is delivered into or shipped from a "qualified foreign trade zone area" that includes a "qualified intermodal facility." A "qualified foreign trade zone area" is a warehouse or other place of delivery or shipment that is located within one mile of the nearest boundary of an international airport and that also is located, in whole or in part, within a foreign trade zone. A "qualified intermodal facility" is a transshipment station capable of receiving and shipping freight through rail transportation, highway transportation, and air transportation.

**New exemption for "qualifying distribution center receipts".** Effective January 1, 2007, the act replaces the existing exemption for amounts derived from shipments into or out of a qualified foreign trade zone area with an exemption for receipts of a supplier from certain property that is delivered to a distribution center located in Ohio. To qualify for exemption the property must be delivered to a distribution center that consists of a warehouse or other similar facility operated by a person that is not part of a combined taxpayer group and the property must be shipped to the distribution center solely for further shipping by the center to another location inside or outside Ohio. (All warehouses or other similar facilities that are operated by persons in the same taxpayer group and that are located within one mile of each other are considered to be one qualified distribution center.) The property may be stored or repackaged into smaller or larger bundles, but may not be subjected to further manufacturing or processing.

Only a percentage of receipts from such property is exempted from taxation. The percentage exempted equals the percentage of property shipped by the distribution center to locations outside Ohio during a 12-month period.

**Certification of "qualified distribution centers".** The act creates a procedure by which the Tax Commissioner certifies distribution centers the delivery of property to which qualifies for exemption. The act requires that operators of distribution centers submit annual applications for a "qualifying certificate" from the Commissioner. The application must be filed no later than September 1 of the year preceding the year for which the certificate is issued or 45 days after the distribution center is opened, whichever is later. (The application for the 2007 certificate year must be filed on or before September 1, 2006.)

A \$100,000 application fee must accompany each application. The fee is refunded to an applicant if an application for a certificate is denied and that denial

is ultimately affirmed on appeal. The fee may be assessed in the same manner as the commercial activity tax is assessed.

Eligibility for a certificate is conditioned upon certain criteria being met by the distribution center during a "qualifying period," which is the period of July 1 of the second year preceding the year for which the certificate is issued to June 30 of the year immediately preceding the year for which the certificate is issued. Every applicant must substantiate to the Commissioner's satisfaction that, during the qualifying period, all persons operating the center had more than 50% of the cost of the property shipped from the center situated to a location outside Ohio, using existing commercial activity tax situsing rules. An applicant must also substantiate that the distribution center had cumulative costs from its suppliers equal to or exceeding \$500 million for the qualifying period. (For purposes of calculating the cumulative costs from suppliers, the term "supplier" excludes any person that is part of a consolidated elected taxpayer group operating the qualified distribution center.) The Tax Commissioner is authorized to require that an applicant obtain a certification from a certified public accountant that the calculations of the 50% situsing requirement and the \$500 million threshold have been made in accordance with generally accepted accounting principles. Finally, every application must certify the percentage of property shipped to locations inside Ohio during the qualifying period (referred to in the act as the "Ohio delivery percentage").

The Tax Commissioner must issue or deny the issuance of a certificate within 60 days after receiving an application. An applicant may appeal a denial in the same manner as appeals are taken from other final determinations made by the Commissioner. An operator of a distribution center may be granted a certificate pending an appeal; however, if the Commissioner's denial of certification is affirmed on appeal, the operator is liable for tax, penalty, and interest that would otherwise be payable by suppliers. (An operator that is a consolidated elected taxpayer is not liable for receipts from transactions between its members, which are exempt from taxation under continuing law.)

Upon issuing a certificate, the Commissioner must certify the Ohio delivery percentage applicable to the distribution center. The operator of the center may appeal the certified percentage in the same manner as an appeal would be taken from a denial of certification.

Within 30 days after any appeals are exhausted, the operator of a center must notify all suppliers to the center that they are required to file, within 60 days, amended reports for tax reporting periods affected by the certification. Additional tax liability or overpayments are subject to interest but are not subject to penalties so long as amended reports are timely filed. Suppliers are required to include in their reports of taxable gross receipts, receipts from the total sales of property

delivered to the distribution center for the reporting period multiplied by the Ohio delivery percentage certified for that distribution center.

**Newly opened distribution centers.** If a distribution center is new and was not open for the entire qualifying period, the operator of the center may request that the Tax Commissioner grant a qualifying certificate on the condition that, if it is later determined that more than 50% of the property shipped from the center during the year for which the certificate is issued is shipped to locations within Ohio or that the operator of the center had less than \$40 million in average monthly costs from its suppliers during that year, the operator will be liable for any tax, interest, or penalty that would otherwise be payable by the center's suppliers. For purposes of calculating the cumulative costs from suppliers, the term "supplier" excludes any person that is part of a consolidated elected taxpayer group operating the qualified distribution center.

In the case of distribution centers not open for the entire qualifying period, operators must provide a good faith estimate of an Ohio delivery percentage that suppliers can use in reporting taxable gross receipts for the remainder of the qualifying period. An operator must disclose to its suppliers that the percentage it is providing is an estimate that is subject to recalculation. On or before the due date of the next certificate application, the operator must determine the actual Ohio delivery percentage for the qualifying period and proceed to notify its suppliers of the recalculation. Within 60 days after receiving notification from the operator, a supplier must file amended reports for the affected tax reporting periods. Any additional tax liability or overpayment is subject to interest but is not subject to any penalty so long as amended reports are timely filed.

**Posting of security.** The act authorizes the Tax Commissioner to require operators of distribution centers to post adequate security while certificate appeals are pending.

**Publication of certificates and good faith reliance by suppliers.** Certificates issued by the Tax Commissioner are open to public inspection. The Commissioner must publish certificates in a timely manner. A supplier that relies on a certificate in good faith is not subject to tax on any qualifying distribution center receipts. Further, a person receiving a certificate is liable for any tax, interest, and penalty that would be owed by a supplier if, after the certificate's issuance, it is determined that the statutory requirements for certification were not met.

**Crediting of application fees.** The act specifies that the first \$100,000 of application fees collected each calendar year must be credited to the existing Commercial Activity Tax Administrative Fund. The remainder of the fees is to be credited to the General Revenue Fund and used to replace revenue foregone by



local governments as a result of the phasing out of the tax on tangible personal property in accordance with percentages and procedures established in continuing law.

### **Commercial activity taxpayer consolidations**

#### **Foreign entities**

(R.C. 5751.011(A)(1))

A group of commonly owned or controlled persons (including the common owner) is permitted to elect to file and pay the commercial activity tax on a consolidated basis in exchange for each group member netting out receipts arising from transactions with other group members. For purposes of the election, common ownership or control means at least an 80% direct or indirect interest, or a 50% direct or indirect interest, as chosen by the group, but each group may apply only one of the percentage-ownership tests. Foreign corporations may be included in a group if they satisfy the group's chosen ownership test, but the group must include either all such foreign corporations or none. There is no statutory definition of "foreign corporation" for the purposes of the consolidation election, but an administrative rule defines the term to have the same meaning as under federal income tax law--i.e., a corporation that is not "created or organized in the United States or under the law of the United States or of any [s]tate." (Ohio Adm. Code 5703-29-01, referring to 26 U.S.C. 7701.)

The act expands the range of foreign entities that may be included within a consolidated group by permitting these groups to include all entities--not just corporations--that are "foreign" in the sense that they are not incorporated or formed under federal law or any state's law. The act does not change the requirement that all entities satisfying the 50% or 80% ownership test must be either included in or excluded from the group, as chosen by the group.

#### **Initial election**

(R.C. 5751.011(A)(1))

The election to create a consolidated taxpayer group must be made when the initial tax registration is filed. Registrations must be filed within 30 days after a group's taxable gross receipts exceed the taxable threshold of \$150,000 in any year (or by November 15, 2005, for groups that exceeded the threshold in the last six months of 2005).

The act delays the election filing date by requiring that it be filed before the due date of the tax return for the tax period in which the election is to take effect. Under continuing law, returns are due either on a calendar year basis by February



9 following the year covered by the return (for taxpayers with \$1 million or less in taxable gross receipts) or on a quarterly basis by May 10, August 9, November 9, and February 9 (for all other taxpayers).

**Prior approval**

(R.C. 5751.011(A)(2) and (3) and (D))

Taxpayers seeking to be treated as a consolidated group are required to apply to the Tax Commissioner for approval of that treatment. The application must be approved so long as the group and its members satisfy the statutory requirements for consolidated treatment.

The act eliminates the pre-approval requirement and provides for the consolidation election to be made and to take effect without prior approval by the Tax Commissioner--and rather upon notice to the Commissioner of the election. The validity of the election is subject to review and audit by the Tax Commissioner.

The Tax Commissioner prescribes the manner in which notice of the election is to be provided.

**Commercial activity tax "bright-line presence" test**

(R.C. 5751.01)

If a consolidation election is in effect for a group, the group must report and pay tax on the basis of every member's taxable gross receipts, including members that do not have "substantial nexus" with Ohio. One of the criteria that give a person "substantial nexus" with Ohio is that person having what is called "bright-line presence" in Ohio. One of the conditions that give a person "bright-line presence" is that person having within Ohio, at any time during the calendar year, at least 25% of the person's total property, total payroll, or total sales. The act changes "total sales" to "total gross receipts."

**Minimum CAT tax for late registrants**

(R.C. 5751.051)

The minimum commercial activity tax is \$150. The minimum tax is payable by all companies having more than \$150,000 but not more than \$1 million in annual taxable gross receipts. Companies with more than \$1 million in taxable gross receipts owe the minimum tax plus a percentage of the taxable gross receipts in excess of \$1 million (the percentage is phased in, and is scheduled to reach 0.26% in April 2009). If a company's taxable gross receipts reach the \$150,000

threshold for the first time since the tax took effect in July 2005, the company must register for the tax and pay the minimum tax. If the registration is made within 30 days after the threshold is exceeded, as required by law, and any time after May 1 but before December 1, the minimum tax due is reduced to \$75.

The act applies the \$75 reduced minimum tax to such registrations made after May 1 but by the end of the year, thus including registrations filed during December. The registration still must be filed within the required 30-day period.

### **Commercial activity tax reporting periods**

(R.C. 5751.05)

Persons subject to the commercial activity tax may pay and report the tax on a calendar year basis if the person anticipates that taxable gross receipts will be *less than* \$1 million over the year. Once taxable gross receipts reach \$1 million, the taxpayer must pay and report the tax on a quarterly basis. But, for purposes of determining whether a person owes only the minimum tax of \$150, a person must have taxable gross receipts of *\$1 million or less*, making it possible for a taxpayer having exactly \$1 million in taxable gross receipts to owe only the minimum tax, but be required to pay and report quarterly.

The act makes the minimum tax threshold and the payment and reporting threshold the same, so that a person having *\$1 million or less* in annual taxable gross receipts owes only the minimum tax and is not required to report and pay the tax on a quarterly basis. The provision takes effect immediately.

### **Commercial activity tax registration requirements**

(R.C. 5751.04)

All persons having annual taxable gross receipts of more than \$150,000 must register with the Tax Commissioner to ensure the proper reporting and payment of the commercial activity tax. The registration form must include certain information about the taxpayer.

The act eliminates the requirement that some registration information be filed, including: the location of a foreign corporation's principal place of business in Ohio (which is required under another part of the registration form); the date the taxpayer's annual accounting period begins (unless the Tax Commissioner specifically requests that the date be provided); and the names of all the owners and officers of the taxpayer if the taxpayer is not a corporation or sole proprietor (unless the Tax Commissioner specifically requests that the names be provided).

The provision takes effect immediately.



### **Commercial activity tax registration fee refunds**

(Section 757.24)

A one-time registration fee is imposed when a person first becomes subject to the commercial activity tax. (R.C. 5751.04.) Generally, a person becomes subject to the tax when the person's annual taxable gross receipts exceed \$150,000. The fee is \$20, or \$15 if a person registers electronically. The fee is applied to the person's first tax payment. A refund of the fee is not authorized under any circumstances. (Section 557.09 of H.B. 66 of the 126 General Assembly.)

The act temporarily authorizes a refund of the registration fee if a person paid the fee before December 1, 2006, but later determines the person is not subject to the tax. The refund is available only if the person cancels its tax registration before May 10, 2006. The refund must be applied for in the same manner as a refund of the tax. The act specifies that such a person is not subject to the tax during the first six-month tax period (July 1 through December 31, 2005) or for calendar year 2006.

### **Credit for unused franchise tax deductions**

(R.C. 5751.53(D))

Corporations subject to the commercial activity tax are permitted to claim a tax credit offsetting some of the immediate financial statement effects of losing the ability to deduct net operating losses (NOLs) and some other deferred tax items in computing their corporation franchise tax, which is being phased out for most corporations. Taxpayers intending to claim the credit must file a report with the Tax Commissioner by June 30, 2006, setting forth information regarding the NOLs and related information on the basis of which the credit will be claimed. The Tax Commissioner has four years to audit the information to determine its accuracy and to make any necessary adjustments. The Tax Commissioner also may issue an assessment for any error in the state's favor.

The act adds that, in the case of such an error, the Tax Commissioner may also issue a final determination, as well as an assessment, to address the error. A final determination is the final administrative determination of a tax liability, and is appealable to the Board of Tax Appeals or to a court.

The provision takes effect immediately.

**Commercial activity taxes due within 45 days after winding-up business**

(R.C. 5751.10)

Taxpayers quitting or selling their businesses to another person, or disposing in any manner other than in the regular course of business of 75% or more of their business assets, must pay commercial activity taxes, including any penalties and interest on those taxes, within 15 days afterward. The act extends the time period for paying commercial activity taxes, penalties, and interest after winding-up to 45 days.

**Income tax exemption election for certain trusts and their business holdings**

(R.C. 5747.01(FF) and 5751.01(E)(11))

The act authorizes a trust created before 1972, and satisfying certain other specific criteria (explained below), to "elect" whether it, and any pass-through businesses it controls or owns more than 5% of, will be subject to the commercial activity tax.<sup>92</sup> If the election is made, the trust is exempted from the income tax. If the election is not made, the trust and its 5%-owned pass-through businesses are exempted from the commercial activity tax (CAT).

All trusts and all pass-through business entities are subject to the CAT as a matter of law, as are all other legal entities, if they have taxable gross receipts over \$150,000 and are not otherwise excluded from the CAT under one of nine exclusions; no discretionary election is available to exempt an entity from the tax. Many trusts also are subject to the income tax on certain forms of trust income. So the election in effect allows certain trusts to choose between exempting the trust from the income tax, or exempting the trust and its 5%-owned pass-through businesses from the CAT. If the trust makes the election, and any of the trust's 5%-owned pass-through businesses is currently excluded from the CAT under one of the nine CAT exclusions (e.g., the business is a financial institution or an insurance company), the trust is not subject to the income tax, and its 5%-owned businesses are not excluded from the CAT.

The election is available only to a trust that was created by an instrument executed before 1972, that became irrevocable upon its creation, and the grantor of which was domiciled in Ohio when the trust was created. If such a trust chooses to make the election, the trustee must notify the Tax Commissioner by April 15, 2006. The election is revocable at any time by the trustee of the trust. The

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<sup>92</sup> *A trust's 5% control or ownership share of the pass-through business entities may be direct, indirect, or constructive.*

election relates back to taxes levied on and after January 1, 2006, meaning refunds may have to be issued for taxes accruing and paid after that date.

The exemption election provision takes effect immediately.

**Apportioning trust investment income**

(R.C. 5747.012)

A trust's investment income from an investment pass-through company owned at least in part by the trust or its related entities is apportioned partly to Ohio and partly outside Ohio on the basis of the trust's relative property, payroll, and sales in Ohio and the relative presence of underlying physical assets producing the income, or is allocated to Ohio entirely (for resident trusts) or to the extent the income arises from use of the underlying assets in Ohio (for nonresident trusts). In the apportionment computation, sales are weighted three times greater than property and payroll. Whether the investment income is apportioned or allocated depends on whether the investment company satisfies four sets of criteria, one of which is that entities related to the trust must own more than 60% of the investment company from which the investment income flows. (Ownership may be direct, or indirect through equity ownership of other pass-through entities.) If an investment company satisfies all four sets of criteria, qualifying investment income from the company are apportioned instead of allocated in the computation of the trust's taxable income.

The act modifies the 60% ownership criterion by expressly specifying that the trust itself may own, or may be among the related entities that together own, more than 60% of the investment company, in order to qualify for apportionment of the investment income instead of allocation. Ownership may be direct, or indirect through equity ownership of other pass-through entities.

The provision takes effect immediately.

**Apportioning trust investment income from closely held businesses**

(R.C. 5747.01(BB)(4))

The act prescribes a new method for allocating a nonresident trust's gain or loss from selling or otherwise disposing of a debt or equity investment in certain closely held businesses.<sup>93</sup> The gain or loss is to be apportioned on the basis of the average of the three-factor apportionment fractions (property, payroll, and sales) in

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<sup>93</sup> *The provision also applies to the part of a trust that is considered to be nonresident if the trust has both resident and nonresident parts.*

the three years preceding the trust's disposition of the investment (as do individuals and estates selling such an investment), instead of being allocated according to the prior allocation rules. The prior allocation rules required a nonresident trust's gains and losses from disposing of property to be allocated on the basis of the location of the property or the extent to which the property was utilized in Ohio, depending on the kind of property. (For the purposes of the provision, a closely held business is a pass-through entity, an entity owned by five or fewer legal persons, or an entity the majority of which is owned by one legal person; such entities are "section 5747.212 entities.")

The provision takes effect immediately.

**School district property tax to offset funding formula charge-off increases**

(R.C. 319.301, 3317.01, 3317.015, and 5705.211)

The act authorizes school districts, with voter approval, to levy a property tax designed to raise an amount of revenue in the first year approximately equal to reductions in basic state funding caused by appreciation in real estate values as reflected in the charge-off computation. The charge-off is a deduction from the district's state basic per-pupil funding equal to 2.3% of the district's "recognized valuation." Recognized valuation is a measure of a school district's taxable property value (including both real property and tangible personal property). The measure incorporates appreciation in real property values in one-third increments over the three-year property reassessment cycle. As recognized valuation increases or decreases in response to changes in property values, the charge-off increases or decreases accordingly, which in turn causes a district's basic per-pupil funding to decrease or increase by a factor of 2.3% of the change in recognized valuation.

The rate of the new levy is to be adjusted each year so that the levy raises an amount equal to 2.3% of the appreciation in real property values insofar as that appreciation is reflected in the charge-off each year through recognized valuation (i.e., one-third of the appreciation from the latest revaluation, disregarding property value increases arising from new construction). Thus, if appreciation in real property valuation is more or less continuous through time, then the levy will raise increasingly more revenue as the appreciation accumulates. However, the tax rate will be limited to prevent the taxes charged by the levy against real property from increasing by more than 4% per year (again disregarding revenue increases from new construction). A school board may set the growth limit below 4% per year when the board adopts the tax levy resolution or at any time afterwards.

The act exempts the levy from the "H.B. 920" tax reduction factor limitation on the grounds of an existing H.B. 920 exemption for taxes levied "at whatever rate is required to produce a specified amount of tax money."<sup>94</sup> In effect, then, the act allows revenue from the new levy to grow by up to 4% per year just from appreciation in real property values.

The levy may be imposed only with voter approval. The ballot language, which is otherwise standard, informs voters of the maximum percentage that their taxes might increase each year. The purpose of the levy is to pay current expenses. It may be imposed for five or more years, as specified by the school board, or may be imposed permanently. A school board may impose only one such levy at any one time. To enable the school board to estimate the appropriate tax rate each year, the act requires the Superintendent of Public Instruction to certify to each school board the amount by which its charge-off increased because of real property appreciation, and the school board must certify the amount to the county auditor so the county auditor is able to compute the tax rate.

**Property tax exemption for state-owned property leased to a private party**

(R.C. 5709.08; Section 757.09.03)

Real or personal property that belongs to the state or to the United States government and that is used exclusively for a public purpose is exempt from taxation. The act specifies that real and personal property owned by the state and leased or otherwise operated by a private party is exempt from taxation if the property is used for one of the following purposes:

- (1) As public service facilities (e.g., inns, lodges, cabins, camping sites) in state park lands;
- (2) As concessions or other special projects on state-owned or leased lands or waters;
- (3) As marine recreational facilities or refuge harbors for the harboring, mooring, docking, launching, or storing of light vessels; or

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<sup>94</sup> *The existing exemption from the H.B. 920 tax reduction factor is prescribed by the constitutional provision authorizing and regulating the H.B. 920 reduction. Ohio Constitution, Article XII, Section 2a(B)(1). It is not clear that the tax levy authorized by the act is levied "at whatever rate is required to produce a specified amount of tax money," and therefore within the scope of the constitutional exemption. The amount raised by the levy in any year is not fixed, and cannot be precisely computed according to any fixed formula, because the amount raised in a future year depends on appreciation in real estate values in the interim years.*

(4) As lands acquired by the state for forest purposes.

The exemption applies to all exemption applications that are pending before the Tax Commissioner on the exemption's effective date, or that are filed on or after that date.

**Eligibility for levy reimbursement for delayed-effect levies**

(R.C. 5751.20(A)(14))

The act expands the class of property tax levies that are to be reimbursed for the phase-out of taxation of business and telecommunications tangible personal property enacted by H.B. 66 of the 126th General Assembly. Reimbursement is provided for all levies that were in effect for tax year 2004, or that applied to tax year 2005, or that were approved at an election before September 1, 2005, and first levied in tax year 2006. Regarding levies approved at an election before September 1, 2005, the act eliminates the condition that it first apply in 2006; thus, levies approved at an election before September 1, 2005, qualify for reimbursement even if they do not apply until 2007 or later.

The provision takes effect immediately.

**Alternative reimbursement basis**

(R.C. 5751.20)

Reimbursement for phased out business personal property taxes is computed on the basis of the value of business personal property for tax year 2004 as determined to be final by the Tax Commissioner on August 31, 2005. The act prescribes an alternative basis for computing some taxing units' reimbursement.

Under the act, a school district's or other taxing unit's taxable values listed for tax year 2000 may be substituted for the 2004 values if the 2000 values are greater than the 2004 values, and if the school district or taxing unit is located in a county in which both of the following apply: (1) the taxable value of business personal property fell by more than 50% in any one-year period between 2000 and 2004 and (2) a facility for enriching or commercializing uranium or uranium products exists or formerly existed. This would result in a greater reimbursement payment than if the 2004 values were used as the basis. The substituted 2000 values must be allocated among machinery and equipment, furniture and fixtures, and inventory property in the proportions that those classes of property are represented in the 2004 values. No substitution is made for telecommunications property.

The provision takes effect immediately.



### **Timing of property tax replacement payments**

(R.C. 5751.21(D)(1) and 5751.22(C))

The act changes the timing of the scheduled reimbursement for revenue losses caused by the phase-out of business and telecommunications tangible personal property enacted by H.B. 66 of the 126th General Assembly. With respect to school districts' payments, the thrice-annual payments to reimburse fixed-sum tax levies will be made by May 31, August 31, and October 31 each year instead of by May 31, August 31, and November 30 each year. With respect to other taxing units' payments for fixed-sum tax levies, the May payment will be 1/7 of the annual reimbursement instead of 1/3 of the annual payment, and the August and October payments will each be 3/7 of the annual reimbursement instead of 1/3 each.

The provisions take effect immediately.

### **Subdivision debt limits: exclude bonds anticipating property tax replacement payments**

(R.C. 133.04(B)(10))

The act excludes from the computation of a subdivision's direct debt limits any securities issued in an amount equal to property tax replacement payments payable to the subdivision as a result of the scheduled phase-out of taxation of tangible personal property used in business and telecommunications. Under law enacted by H.B. 66 of the 126th General Assembly, the taxation of this property by subdivisions is phased out over several years, and subdivisions are reimbursed over about ten years for some of the future revenue losses foregone because of the tax phase-out.

Subdivision debt limits restrict the voted and unvoted debt that may be issued by a subdivision. Various classes of debt are excluded from (i.e., do not count toward) the debt limits, primarily because they are payable from a source other than taxation directly by the subdivision.

### **Setting fixed-sum property tax rates**

(R.C. 133.18, 5705.03, 5705.195, and 5705.34)

The property tax rate necessary to raise a certain amount of revenue must be estimated or fixed on the basis of the current taxable property valuation--for example, for taxes levied to pay debt charges on general obligation bonds (R.C. 133.18), for school district "emergency" levies (R.C. 5705.195), and for other levies designed to raise a certain sum of money (R.C. 5705.03).

The act specifies that when these tax rates are estimated or set, the valuation on which the rate is based must take into account the reduction in the taxable value of business and telecommunications tangible personal property throughout the phase-out of taxation of this property under H.B. 66 of the 126th General Assembly. The Tax Commissioner may issue rules, orders, or instructions directing how the reduced valuation is to be applied.

The act also specifies that county auditors, when setting the rate of a fixed-sum levy each year based on the contemporary property valuation, must discount the revenue intended to be raised by the amount of the property tax replacement payment paid to a subdivision for the phase-out of taxation of business and telecommunications tangible personal property.

**Telecommunications sale and leaseback property**

(R.C. 5711.01 and 5727.06(A)(3)(d))

Tangible personal property that was once owned by a public utility or interexchange telecommunications company ("IXC"), but that has since been sold to a business that then leases the property back to the utility or IXC, is to be listed for taxation by the utility or IXC in the manner provided for public utility property under R.C. Chapter 5727. instead of by the business, as the business' personal property, under R.C. Chapter 5711. However, under H.B. 66 of the 126th General Assembly, business personal property and telecommunications property (including telephone, telegraph, and IXC) must be listed for taxation by the owner under Chapter 5711., instead of by the lessee, beginning in 2007, when the four-year phase-out of taxation of telecommunications property begins.

The act specifies that this property is to be considered taxable property under Chapter 5711. during the tax phase-out period to ensure that it is properly taxed during the phase-out.

The act also corrects erroneous references to IXC, telephone, and telegraph company property in a provision that requires property, when leased to a public utility by a nonutility, to be assessed and taxed as public utility property beginning in 2009, even when the lease is not a sale and leaseback arrangement. This lessor provision was not intended to apply to IXC, telephone, and telegraph company property when the provision was enacted by H.B. 66 of the 126th General Assembly.

The act's changes take effect immediately.

## **Public utility replacement payments to school districts**

### **Computation**

(R.C. 5727.85(C)(2))

When the assessment rates for the tangible personal property of electric utilities and natural gas utilities were reduced in 1999 and 2000, reimbursement was provided for the property tax losses experienced by school districts and other taxing units. In the case of school districts, the losses from fixed-rate tax levies were offset by greater state formula aid payments that resulted from the fact that the base cost formula translates every \$1,000 in reduced property values into a \$23 increase in state aid (other factors remaining equal). After accounting for the increased aid offset, the balance of the loss, if any, is paid directly to the school district. This is scheduled to continue through 2006. Then, in 2007, a school district begins receiving the difference between the growth in post-fiscal year 2002 state aid and the property tax loss adjusted for consumer price inflation; this payment computation is scheduled to continue until 2016, or until the growth in post-2002 state aid exceeds the inflation-adjusted property tax loss, whichever occurs earlier.

The act changes the reimbursement computation for 2007 and thereafter by continuing to compute payments in the same manner as they have been computed since 2002: that is, payments equal the tax loss from fixed-rate levies minus the offset for increased state formula aid resulting from the loss of property tax value. The payments will continue through August 2017 (one year longer than currently scheduled) or until the growth in post-2002 state aid exceeds the inflation-adjusted property tax loss, whichever occurs earlier.

The property tax replacement payments affected by the act are made from revenue from the electricity distribution excise tax ("kilowatt-hour" tax) and the natural gas distribution excise tax ("MCF" tax).

The provision takes effect immediately.

### **Transferred school district territory**

(R.C. 5727.85(J)(3))

Special-case replacement payment computations are provided for when the territory of a school district is merged or transferred during the course of the replacement payment schedule. When territory is transferred before 2005 from one school district to another and the resulting territory is considered to be a new school district, the newly created district receives 100% of its fixed-rate levy loss through 2006. From 2007 through 2016, the new district receives one of two



amounts each year, whichever is less: (1) the difference between the district's growth in post-fiscal year 2002 state aid and the inflation-adjusted property tax loss, and (2) a phased-down percentage of the district's fixed-rate levy loss, with the percentages being phased-down as it is for nonschool taxing units under R.C. 5727.86. (The first of these amounts is scheduled to change under the act; see "Computation," above for explanation.)

The act extends the 100% reimbursement for two additional years, until 2008, and substitutes a new amount for the second of those amounts. The substituted amount applies beginning in 2009 instead of 2007 and phases down the percentages from 2009 and thereafter at a slightly greater pace than the current phase-down percentages. The proposed and current phase-down percentages are as follows:

Year	Phase-down percentage	
	Act	Prior Law
2009	75%	80%
2010	70%	80%
2011	70%	80%
2012	60%	66.7%
2013	50%	53.4%
2014	40%	40.1%
2015	24%	26.8%
2016	11.5%	13.5%
2017 and thereafter	0%	0%

The provision takes effect immediately.

**Telephone relay service tax credit**

(R.C. 4905.79, 5733.01, 5733.56, and 5733.98; Section 757.21)

A telephone company that provides a telephone service program to aid the communicatively impaired can claim a nonrefundable credit against the corporation franchise tax for the costs of the service. The act provides that the credit can be claimed only through tax year 2008, and makes it refundable for tax

years 2006, 2007, and 2008.<sup>95</sup> The act also provides that no costs incurred after December 31, 2007, can be considered for purposes of computing the credit. And it authorizes the Public Utilities Commission to allow a telephone company affiliate to claim the credit if the affiliate is the entity providing the service.

The act specifies that no cost incurred with respect to the credit that is allowable for a tax year can be considered for purposes of computing the credit for any other tax year. In addition, it provides that a taxpayer is not authorized to claim a credit for any costs for which the taxpayer is receiving reimbursement under any other provision of the Revised Code.

### **Resident credit computation**

(R.C. 5747.05(B)(4))

A credit is allowed against the personal income tax for income taxes paid by an Ohio resident to another state or the District of Columbia. The credit is equal to the lesser of: (1) the amount of income tax otherwise due to Ohio on the portion of Ohio adjusted gross income (which is the tax base from which Ohio income tax liability is calculated) that is subject to taxation by another state or the District of Columbia, or (2) the amount of income tax liability to another state or the District of Columbia on the portion of Ohio adjusted gross income that is subject to taxation by another state or the District of Columbia.

The credit is denied to any taxpayer "to the extent" the taxpayer has directly or indirectly deducted, or was required to directly or indirectly deduct, the amount of income taxes owed to another state or the District of Columbia in computing federal adjusted gross income.

The act rephrases the law to deny the resident credit from being claimed on the basis of any tax paid or accrued to another state or the District of Columbia if the taxpayer deducted, or was required to deduct, that tax directly or indirectly in computing the taxpayer's federal adjusted gross income.

### **Low-income tax credit**

(R.C. 5747.056)

Individuals having Ohio adjusted gross incomes (less exemptions) of \$10,000 or less are entitled to claim a credit against their income tax liabilities.

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<sup>95</sup> *If a credit is "refundable," the amount by which it exceeds the company's tax due is paid to the company by the state.*

The amount of the credit is \$107 for taxable years beginning in 2005 and progressively declines for taxable years beginning thereafter.

The act specifies that the low-income tax credit is available to any taxpayer, other than an estate or trust, that files a single, joint, or separate return that indicates Ohio adjusted gross income (less exemptions) of \$10,000 or less.

**Alternative school district income tax bases**

(R.C. 5748.02)

School districts are authorized to levy income taxes. School districts levying an income tax may choose to levy the tax upon one of two alternative bases: (1) the earned income of individuals (e.g., wages, salaries, tips, and earnings from self-employment) or (2) the entire Ohio adjusted gross income of individuals and estates, which includes both earned and unearned income (e.g., investment income and retirement benefits).

The act clarifies that school districts must choose to levy a school district income tax upon one or the other of the alternative bases described above. The act prohibits a school district that is currently levying the tax upon one base to submit to its electors a proposal to levy an additional school district income tax upon the other base.

**School district income taxes: exemption of military pay authorized**

(R.C. 5748.01 and 5748.011)

The act authorizes the board of education of a school district that levies a school district income tax to adopt a resolution authorizing taxpayers to deduct, in computing their school district income taxes, certain military pay and allowances received by them during the taxable year. Specifically, a board of education may, by resolution, authorize a taxpayer to deduct military pay and allowances received during the taxable year for service in the United States Army, Air Force, Navy, Marine Corps, or Coast Guard, reserve components of those military branches, or the National Guard, so long as the pay and allowances were received by the taxpayer while stationed outside Ohio. A copy of the resolution authorizing the deduction must be provided to the Tax Commissioner upon its adoption. The resolution must specify the first taxable year in which the deduction may be taken. But the deduction cannot apply with respect to any taxable year that commences sooner than 75 days after the date on which the Commissioner receives the resolution.

A taxpayer may claim a deduction authorized by the act only to the extent the taxpayer's military pay and allowances are not otherwise deducted in

computing the taxpayer's school district income taxes. In other words, a taxpayer may not deduct the same military pay and allowances more than once in computing the taxpayer's school district income taxes.

**R.C. 5701.11 incorporates recent changes to the Internal Revenue Code**

(R.C. 5701.11 and 5745.01)

When a Revised Code section refers to a federal law, the federal law that applies is the one that exists on the date the bill enacting the reference was concurred in. If the federal law is subsequently amended, and the General Assembly wants that amendment to apply, it must pass an act incorporating the amendment. (Ohio Constitution, Art. II, Sec. 1; *State v. Gill* (1992), 63 Ohio St.3d 53.)

The act expressly incorporates all changes that have been made to the Internal Revenue Code (IRC) and other federal laws as of H.B. 530's immediate effective date. It does not, however, incorporate changes to the IRC or other federal laws where the Revised Code references the IRC or other federal law as of a specific date. For example, if a Revised Code section referenced "section 243 of the Internal Revenue Code *as section 243 existed on January 1, 2002*," the Revised Code section would not be affected by the act's incorporation of recent federal law changes. The hypothetical Revised Code section would continue to incorporate section 243 of the IRC as it existed on January 1, 2002.

The laws governing municipal taxation of electric and telephone company income reference the IRC as it existed on December 31, 2001. The act eliminates all these references to a specific date. Accordingly, under the act, all changes that have been made to the IRC as of the act's relevant effective date will be incorporated into the laws governing municipal taxation of electric and telephone company income insofar as those laws reference the Internal Revenue Code.

The act allows taxpayers subject to the corporation franchise or personal income tax and electric and telephone companies subject to a municipal income tax for a taxable year ending in 2005 to irrevocably elect to incorporate the IRC and other federal laws that were in effect for that taxable year, as opposed to laws that would otherwise be incorporated under the act (*i.e.*, the IRC and federal laws as they exist on the act's immediate effective date). If a taxpayer files a report or return for the taxable year ending in 2005 that incorporates federal law applicable to that taxable year, without adjustments to reverse the effects of any differences between those provisions and those that would otherwise be incorporated under the act, that taxpayer is deemed to have made an irrevocable election to incorporate the federal law in effect for that taxable year rather than that which

would be in effect under the act. Taxpayers also may make the election for taxable years ending in 2006 but before the act's immediate effective date.

**Uncertified cigarette manufacturers authorized to sell cigarettes to wholesalers for sale outside Ohio**

(R.C. 5743.15 and 5743.18)

Cigarette manufacturers who want to engage in the trafficking of cigarettes in Ohio are required to obtain a license to do so from the Tax Commissioner each year. The issuing of a license to a manufacturer does not excuse the manufacturer from filing the annual certification that is required to be filed by tobacco product manufacturers (R.C. 1346.05). A manufacturer's annual certification certifies that the manufacturer is in full compliance with the Master Settlement Agreement entered into between the state and leading manufacturers of tobacco products in settlement of litigation pertaining to the negative health effects of tobacco product use. The Attorney General is required to maintain a directory on the Attorney General's web site listing manufacturers who have provided current and accurate certifications. Any license issued to a manufacturer that is not listed on the Attorney General's directory or that is removed from the directory ceases to be valid and must be revoked by the Tax Commissioner.

The act removes the license revocation policy with respect to manufacturers not listed on, or removed from, the directory. The act provides, instead, that a licensed manufacturer who is not listed on the directory may not sell cigarettes in Ohio to any party other than a licensed cigarette wholesaler for the purpose of selling the cigarettes outside Ohio. The act requires a manufacturer to provide documentation to the Tax Commissioner evidencing that the cigarettes are legal for sale in another state.

**County cigarette tax for arts**

(R.C. 1333.11, 3381.15, 3381.17, 5743.021, 5743.025, 5743.03, 5743.04, 5743.05, 5743.08, 5743.081, 5743.12, 5743.13, 5743.321, 5743.33, 5743.34, and 5743.35)

A county, or any combination of counties, cities, and townships, may create a regional arts and cultural district. These districts are authorized to levy property taxes with voter approval to pay their operating expenses, to support arts or cultural organizations, and to create or maintain artistic or cultural facilities.

The act authorizes a county having a population of at least 1.2 million as of the 2000 federal census to levy a cigarette tax of up to 30¢ per package of 20 cigarettes for the purpose of providing funding to a regional arts and cultural district located in the county. A cigarette tax proposed pursuant to the act is



subject to voter approval. The act establishes procedures, similar to those applying to other tax levies, for proposing the tax and placing it upon the ballot.

**Sales tax exemption for property used in manufacturing extended to specific property used in laundry and dry cleaning services**

(R.C. 5739.011(A)(1) and (B)(12))

Tangible personal property (defined as a "thing transferred") that a purchaser buys and uses primarily in a manufacturing operation to produce property for sale is exempted from the sales tax. The act adds the following to the list of property that is a "thing transferred," and that is thus exempt from the sales tax: Machinery and equipment, detergents, supplies, solvents, and any other tangible personal property located at a manufacturing facility that are used to remove soil, dirt, or other contaminants from, or otherwise to prepare in a suitable condition for use, towels, linens, articles of clothing, floor mats, mop heads, or other similar items, that are supplied to a consumer as part of "laundry and dry cleaning services," only when the towels, linens, articles of clothing, floor mats, mop heads, or other similar items belong to the provider of the services. Law not affected by the act defines "laundry and dry cleaning services" as removing soil or dirt from towels, linens, articles of clothing, or other fabric items that belong to others and supplying towels, linens, articles of clothing, or other fabric items; these services do not include the provision of self-service facilities for use by consumers to remove soil or dirt from towels, linens, articles of clothing, or other fabric items.

**Effective date of county sales and use tax levies for general fund purposes**

(R.C. 5739.026)

Counties are authorized to adopt a resolution to levy a sales and use tax of one-fourth or one-half of one per cent or to increase an existing tax of one-fourth of one per cent to one-half of one per cent. The levy proposed in the resolution may be for any number of purposes, including the provision of additional revenue for the county's general fund. In the case of a resolution to levy or increase a tax for general fund purposes, unless the resolution is adopted as an emergency measure or is submitted to the county's electors for their approval, the resolution levying or increasing the tax must be adopted at least 120 days before the date on which the tax or tax increase is to go into effect. The act removes this requirement.



**County return of piggyback sales and uses taxes to a person that constructs an "impact facility"**

(R.C. 333.01 and 333.02)

The act authorizes a board of county commissioners to enter into an agreement before December 1, 2006, with a person that proposes to construct an "impact facility" in the county, to return to that person up to 75% of the county sales and use taxes collected on retail sales made by that person at the facility. The sales and use taxes that are returned are only those "piggyback" taxes that are levied by a county for the purpose of providing additional general revenues for the county or supporting criminal and administrative justice services in the county, or both, *not* sales and use taxes levied by the state or by transit authorities, or levied by the county for other specific purposes, such as for convention facilities or to operate 9-1-1 systems.

The taxes are returned in the form of payments made to the person that constructs the impact facility, for up to ten years, or until the person's "qualifying investment" in the impact facility has been realized through the payments, whichever occurs first. (A person's "qualifying investment" in an impact facility means the person's investment in land, buildings, infrastructure, and equipment for creating an impact facility.)

An "impact facility" is a permanent structure, including all interior or exterior square footage used for educational or exhibition activities, that meets all of the following criteria:

- (1) It is used for the sale of tangible personal property or services;
- (2) At least 10% of the facility's total square footage is dedicated to educational or exhibition activities;
- (3) At least \$50 million are invested in land, buildings, infrastructure, and equipment for the facility at the site of the facility over a period of not more than two years;
- (4) An annualized average of at least 150 new "full-time equivalent positions" will be created and maintained at the facility; and
- (5) More than 50% of the visitors to the facility are reasonably anticipated to live at least 100 miles from the facility.

The number of "full-time equivalent positions" is determined by dividing the total number of hours worked at the impact facility in a work week by 40 hours per week.

### **Conditions for entering into a payment agreement**

(R.C. 333.03)

A person seeking to enter into an agreement with a board of county commissioners to obtain payments under the act must provide to the board (1) a certification by the person's chief financial officer, or the equivalent if that position does not exist, that the five criteria listed above for an impact facility will be met and (2) an application on a form or in a format acceptable to the board that describes the proposed impact facility, including the projected level of investment in and new jobs to be created at the facility, the rationale used for determining that more than 50% of the facility's visitors live at least 100 miles from the facility, the types of activities to be conducted at the facility, the projected levels of sales to occur at the facility, a calculation of the facility's square footage that will be dedicated to educational or exhibition activities, and any other information the board of county commissioners reasonably requests about the expected operations of the facility.

The board of county commissioners is required to request the Director of Development to certify that the proposed facility meets the five criteria listed above for an impact facility. The board also may, but need not, make findings of fact that a proposed impact facility meets those criteria before or after requesting the certification. If the Director certifies a proposed facility as an impact facility, and if the board makes such findings, the findings and certification are conclusive and not subject to reopening at any time.

### **Requirements for a payment agreement**

(R.C. 333.04 and 333.05(B))

After review of the financial officer's certification and the application, and after receipt of the Director of Development's certification that a facility meets the five impact facility criteria listed above, a board of county commissioners, before December 1, 2006, may enter into an agreement to provide payments to the person that constructs the facility, provided that the board has determined that the proposed impact facility is economically sound, construction of the facility has not begun prior to the day the agreement is entered into, the impact facility will benefit the county by increasing employment opportunities and strengthening the local and regional economy, and receiving payments from the board is a major factor in the person's decision to go forward with construction of the impact facility.

A payment agreement must include all of the following:



(1) A description of the impact facility that is the subject of the agreement, including the existing investment level, if any, the proposed amount of investments, the scheduled starting and completion dates for the facility, and the number and type of full-time equivalent positions to be created at the facility;

(2) The percentage of the county sales and use tax collected at the impact facility that will be used to make payments to the person entering into the agreement;

(3) The term of the payments and the first calendar quarter in which the person may apply for a payment;

(4) A requirement that the amount of payments made to the person during the term established in the agreement cannot exceed the person's qualifying investment, and that all payments cease when that amount is reached;

(5) A requirement that the person maintain operations at the impact facility for at least the term established in the agreement;

(6) A requirement that the person annually certify to the board of county commissioners, on or before a date established by the board in the agreement, the level of investment in, the number of employees and type of full-time equivalent positions at, and the amount of county sales and use tax collected and paid to the Tax Commissioner or Treasurer of State from sales made at, the facility;

(7) A provision stating that the creation of the proposed impact facility does not involve the relocation of more than ten full-time equivalent positions and \$2 million in taxable assets to the impact facility from another facility owned by the person, or a related member of the person, that is located in another Ohio political subdivision, other than the political subdivision in which the impact facility is or will be located;

(8) A provision stating that the person will not relocate more than ten full-time equivalent positions and \$2 million in taxable assets to the impact facility from another facility in another Ohio political subdivision during the term of the payments without the written approval of the Director of Development; and

(9) A detailed explanation of how the person determined that more than 50% of the visitors to the facility live at least 100 miles from the facility.

The transfer of a full-time equivalent position or taxable asset from another Ohio political subdivision to the political subdivision in which the impact facility is or will be located will be considered a relocation, unless the person refills the full-time equivalent position, or replaces the taxable asset with an asset of equal or greater taxable value, within six months after the transfer. The person may not

receive a payment for any year in which more than ten relocations occurred without the written consent of the board of county commissioners.

The act requires the board of county commissioners to submit to the Department of Development and the Tax Commissioner a copy of each agreement entered into and any modifications to an agreement within 30 days after finalization or modification of the agreement.

**Failure to comply with the agreement**

(R.C. 333.05(A))

If a person fails to meet or comply with any provision of an agreement, the board of county commissioners may amend the agreement to reduce the percentage or term, or both, of the payments the person is entitled to receive under the agreement. The reduction commences in the calendar quarter immediately following the calendar quarter in which the board amends the agreement.

**Applying for payments**

(R.C. 333.06, 5703.21, 5739.211, and 5741.031)

A person who has entered into an agreement with a board of county commissioners must apply for payments with the county auditor on a form prescribed by the Tax Commissioner, within 60 days after the end of each calendar quarter during which the agreement is in effect. The Commissioner must provide to the county auditor, upon request, the applicant's sales or use tax return information or any sales or use tax audit information, including information regarding state refunds of sales or use taxes, that the county auditor needs to determine the amount of the payment that should be made to the applicant. The act revises existing tax information confidentiality law to permit the Tax Commissioner or the Commissioner's agents to divulge this information.

On receipt of an application for payment and review of the applicant's agreement with the board of county commissioners, the county auditor determines the amount of the payment the applicant will receive.

If the amount of the payment is not less than that claimed on the application, the county auditor certifies the amount to the county treasurer, who makes payment to the applicant from the county's share of the county sales and use tax revenues that are returned or distributed to the county under sales and use tax allocation law. Upon the request of the board of county commissioners or the Tax Commissioner, the county auditor must notify the board or Commissioner, or both, of the amount certified and of the date the payment will be made.

If the amount of the payment is less than that claimed on the application, the county auditor notifies the applicant and provides to the applicant the reasons why the payment is less than that claimed. If the applicant disagrees with the amount of the payment, the applicant may appeal to the Tax Commissioner (see "*Appealing the amount of a payment*," below). To assist in reviewing the amount under appeal, the county auditor is required to provide the Commissioner any information the Commissioner requests.

The payments come out of the county general fund and do not include interest. The amount of a payment is subject to adjustment by the county auditor, based on any refunds of the county sales and use tax that were made to the person arising from retail sales at the impact facility, including for calendar quarters in which those sales were made that ended before the calendar quarter for which the person is requesting a payment.

#### *Appealing the amount of a payment*

(R.C. 333.07)

An applicant who intends to appeal to the Tax Commissioner, because the applicant was notified that the amount of a payment to be paid to the applicant is less than that claimed on the payment application, has 60 days from the date the county auditor mails the notice, as shown by the United States Postal Service postmark, to file with the Commissioner a notice of objection and to request a hearing. The notice of objection must state the reasons why the applicant objects to the payment amount.

If an applicant who appeals to the Tax Commissioner does not file a notice of objection within the 60-day time limit, the Commissioner will take no further action, and the county auditor's determination of the amount to be paid to the applicant is final.

If the applicant files a notice of objection and requests a hearing within the 60-day time limit, the Tax Commissioner must assign a time and place for the hearing and notify the applicant of the time and place. (The Commissioner may continue the hearing from time to time as necessary.) After the hearing, the Commissioner may make adjustments to the payment as the Commissioner finds proper, and must issue a final determination thereon.

If the applicant files a notice of objection within the 60-day time limit and does not request a hearing, but provides additional information within that time, the Tax Commissioner must review the information, may make adjustments to the payment as the Commissioner finds proper, and must issue a final determination thereon.



The act requires the Tax Commissioner to serve a copy of the final determination on the applicant that filed the appeal and on the county auditor, by personal service or by certified mail. The applicant may appeal the final determination to the Board of Tax Appeals.

If applicable, the county auditor must certify to the county treasurer any payment due to a person pursuant to the Tax Commissioner's final determination, adjusted for any changes that were made to the amount of the payment as the result of the appeal.

### **Tax increment financing**

#### **Overview of tax increment financing**

Tax increment financing (TIF) is a mechanism available to municipalities, townships, and counties to finance public infrastructure improvements and, in certain circumstances, residential rehabilitation. A TIF works by granting a real property tax exemption with respect to the incremental increase in assessed valuation of certain designated parcels resulting from improvements to those parcels. Owners of the property make payments in lieu of taxes equal to the amount of taxes that would otherwise have been paid with respect to the exempted improvements. As a result, a TIF creates a flow of revenue back to the political subdivision that granted the tax exemption in the amount of taxes that otherwise would have been paid on the improvements.

A TIF may be comprised of specific parcels (a "project TIF") or may be what is called an "incentive district" (otherwise known as an "areawide TIF"). An incentive district TIF is an aggregation of individual parcels in an area of not more than 300 acres that exhibits one or more characteristics of economic distress.

#### **Creation of incentive district TIFs by political subdivisions having populations exceeding 25,000**

(R.C. 5709.40(C)(1), 5709.73(C)(1), and 5709.78(B)(1))

A political subdivision having a population exceeding 25,000 may not create an incentive district TIF if, as a result of creating the TIF, more than 25% of the taxable value of the subdivision's real property would be subject to exemption as a result of being located within an incentive district TIF. The 25% limitation does not apply with respect to an incentive district created by an ordinance adopted before January 1, 2006, unless the subdivision creates an additional incentive district TIF after that date.

The act changes the conditions under which subdivisions having populations exceeding 25,000 may create incentive district TIFs. Under the act,



these subdivisions cannot create an incentive district TIF if the sum of (1) and (2) below exceeds 25% of the taxable value of real property in the subdivision for the tax year preceding the tax year in which the ordinance or resolution creating the TIF is adopted:

(1) The taxable value of real property in the proposed incentive district TIF for that preceding tax year; and

(2) The taxable value of all real property in the subdivision that would have been taxable in the preceding tax year were it not for the fact that the property was in an existing incentive district TIF and therefore exempt from taxation.

**Notice to affected subdivisions**

(R.C. 5709.40(E)(1), 5709.73(E)(1), and 5709.78(D)(1))

A municipality or township creating an incentive district TIF is required to provide notice to the board of county commissioners of the county in which the TIF is located if the proposed TIF would exempt more than 75% of the taxable value of new improvements from taxation, would be for a term longer than ten years, or both. Counties creating this kind of TIF must provide the same notice to municipalities and townships affected by the TIF's creation. The notice states only the subdivision's intent to create the TIF and includes a copy of the ordinance or resolution creating the TIF.

The act specifies that the notice also must identify the parcels for which improvements will be exempted from taxation, provide an estimate of the true value of the improvements, specify the period of time for which the improvements will be exempted, specify the percentage of the improvements that is to be exempted, and indicate the date on which the subdivision intends to adopt the ordinance or resolution creating the TIF.

The act eliminates the requirement that counties creating an incentive district TIF notify municipalities affected by the TIF's creation. Under the act, municipalities are no longer authorized to object to county incentive district TIFs or to enter into compensation agreements with the county creating the TIFs. Accordingly, notice to affected municipalities is no longer necessary (see "**Compensation agreements between political subdivisions**," below).

### **Compensation agreements between political subdivisions**

(R.C. 5709.40(E)(2), 5709.73(E)(2), and 5709.78(D)(2))

A county, township, or municipality affected by an incentive district TIF may object to the percentage of the improvement to be exempted to the extent the percentage exceeds 75%, the term of the exemption to the extent the term exceeds ten years, or both. An objecting subdivision may negotiate an agreement with the subdivision creating the incentive district TIF to provide compensation to the objecting subdivision equal in value to not more than 50% of the taxes that would have been payable to the objecting subdivision on the portion of the improvement in excess of 75%. Compensation begins in the eleventh year of exemption.

The act specifies that if a county or township objects to an exemption, a mutually acceptable agreement may be negotiated. In no case may the compensation exceed the property taxes foregone due to the exemption. If no agreement is reached, the ordinance or resolution creating the incentive district TIF must provide compensation in the 11th and subsequent years of the exemption period equal to 50% of its foregone taxes or, if the objection is to the exemption percentage in excess of 75%, compensation equal to not more than 50% of the property taxes foregone.

The act removes the authority of municipalities to object to, and to negotiate compensation agreements with, counties creating incentive district TIFs. Townships may continue to object to, and to negotiate compensation agreements with, counties creating incentive district TIFs.

### **Payments required for certain special levies**

(R.C. 5709.40(F), 5709.42(C), 5709.73(F), 5709.74(C), 5709.78(E), and 5709.79(D))

Incentive district TIFs created on or after January 1, 2006, do not affect special levies approved after January 1, 2006, and after the date the ordinance or resolution creating the district is adopted, for community mental retardation and developmental disabilities programs and services; senior citizens services or facilities; county hospitals; alcohol, drug addiction, and mental health services; libraries; and children services. Revenues derived from improvements that are otherwise exempt from taxation under the TIF continue to be used for the purposes for which they are levied. So, property in a TIF that is otherwise exempt from taxation, is subject to these levies.

The act specifies that, rather than otherwise tax-exempt property being subject to the levies described above, service payments must be paid to the taxing



authorities levying the special tax levies in amounts equal to the amounts the taxing authorities would have received from the levies. These payments are required with respect to an incentive district TIF created on or after January 1, 2006, but only to the extent the foregone revenue is attributable to a new levy, or to any amount by which the effective tax rate of either a renewal levy with an increase, or a replacement levy, exceeds the effective tax rate of the levy renewed or replaced, and the levy is approved by the electors at an election held on or after January 1, 2006.

The act eliminates the requirement that the special property tax levy be passed after the ordinance or resolution is adopted.

The act also adds additional levies for which service payments must be distributed in this manner. In addition to the special levies described above, payments must be distributed with respect to the following levies:

- (1) A levy for zoological park services and facilities;
- (2) A levy for the support of township park districts;
- (3) A joint recreation district's levy for parks and recreational purposes;
- (4) A levy for park district purposes;

(5) A voter-approved excess levy to supplement levies on the current tax duplicate if the levy is for the purpose of making appropriations for public assistance; human or social services; public relief; public welfare; public health and hospitalization; or support of general hospitals; and

- (6) A levy for a general health district program.

The act also modifies the description of the alcohol, drug addiction, and mental health levies, which are currently shielded from TIF tax exemptions, to reflect that revenue from such a levy may be used for facilities as well as for services.

#### **Effective date of exemptions**

(R.C. 5709.40(G), 5709.73(G), and 5709.78(F))

A TIF exemption begins with the tax year specified in the ordinance or resolution creating the TIF. The act specifies that an exemption commences in the tax year designated in the ordinance or resolution only if the designated tax year begins after the ordinance's or resolution's effective date. The act adds, further, that if an ordinance or resolution specifies a year commencing before the effective



date of the ordinance or resolution or specifies no year whatsoever, the exemption commences with the tax year in which an exempted improvement first appears on the tax list and duplicate of real and public utility property and that begins after the ordinance's or resolution's effective date.

**Use of TIF funds for police and fire equipment**

(R.C. 5709.40, 5709.73, and 5709.78)

Police and fire equipment are not public infrastructure improvements for which payments in lieu of taxes may be expended. The prohibition against using TIF funds for police and fire equipment applies both to TIFs comprised of individual parcels and to incentive district TIFs, regardless of the date on which they are created. The act limits the prohibition against using payments in lieu of taxes for police and fire equipment to incentive district TIFs created on or after the act's immediate effective date.

**Distribution of moneys in tax increment equivalent funds**

(R.C. 5709.40, 5709.43, 5709.75, 5709.78, and 5709.80)

A municipal corporation is permitted to distribute money in its Municipal Public Improvement Tax Increment Equivalent Fund or Urban Redevelopment Tax Increment Equivalent Fund to school districts in which property exempted under the TIF law is located. The act authorizes a municipal corporation to also distribute money in either of those funds to the following:

(1) A board of county commissioners, in the amount that is owed the board pursuant to any compensation agreement that the municipal corporation negotiated with the board with respect to property tax exemptions for improvements within an incentive district located in the county (R.C. 5709.40(E)).

(2) A county, when the law requires that a portion of the service payments in lieu of taxes be distributed to the county treasury to the credit of the county general fund, or the municipal corporation otherwise agrees to provide payments to the county, in cases where the municipal corporation applied for an exemption from taxation for real property located within an incentive district (R.C. 5709.913).

The act also permits a township or a county to distribute money in this manner. In the case of a township, the money may be distributed from an account in its Township Public Improvement Tax Increment Equivalent Fund for the same reasons listed in (1) and (2), above, but the compensation agreement in (1) would be between a township and a county (R.C. 5709.73(E)), and the service payments in (2) would be distributed by the township, or the township would be the entity



providing other payments to the county (R.C. 5709.913). For a county, the money may be distributed from an account in its Redevelopment Tax Equivalent Fund to a board of township trustees or legislative authority of a municipal corporation under a compensation agreement (R.C. 5709.78(D)), and the service payments would be distributed by the county to the general fund of the township, or the county would agree to make payments to the township (R.C. 5709.914).<sup>96</sup>

The act provides that a municipal corporation, township, or county may distribute money from these tax increment equivalent funds or accounts within them as described above, regardless of the date a resolution or an ordinance was adopted that prompted the establishment of the account or tax increment equivalent fund, even if the resolution or ordinance was adopted prior to the effective date of this new provision.

**Technical revisions**

(R.C. 5709.40, 5709.73, and 5709.78)

The act restructures parts of the TIF law for municipal corporations, townships, and counties, to correct citations and to clarify which provisions apply to project TIFs or incentive districts.

**Tax increment financing changes immediately effective**

(Section 818.03)

The act declares all its tax increment financing changes to be exempt from the referendum, with the consequence that all these changes take immediate effect when the act becomes law.

**School funding formula adjustment for TIF incentive district side payments**

(R.C. 3317.021; Section 757.03)

H.B. 66 of the 126th General Assembly modified the school funding base-cost formula to partially account for payments that are received by school districts when local governments grant discretionary property tax exemptions.<sup>97</sup> Generally,

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<sup>96</sup> Under the act, a county may no longer enter into a compensation agreement with the legislative authority of a municipal corporation. See "**Compensation agreements between political subdivisions**," above.

<sup>97</sup> The discretionary tax exemptions at issue are enterprise zone, community reinvestment area, urban renewal, community urban redevelopment, brownfield sites, local railroad operation incentives, and tax increment financing incentive districts. Other tax

these side payments may be negotiated as part of the tax exemption granting process, particularly when the school board's approval of the exemption is required. (In the case of most discretionary tax exemptions, school board approval is required if the exemption continues for more than ten years or if more than 75% of new property value is to be exempted.)

Before H.B. 66, no side payments arising from TIF incentive district<sup>98</sup> or any other discretionary tax exemption arrangements were recognized in the funding formula. Thus, a school board and a local government could negotiate an arrangement whereby the local government exempts new property value and arranges for the property owner to make payments in lieu of taxes ("PILOTs") to the local government, and the local government pays some portion of the PILOT to the school district. (Alternatively, the property owner might agree to make payments directly to the school district.) Because the new property value is exempted, it is not reflected in the formula charge-off, making the school district's base-cost funding greater than if the property were taxable. Therefore, because of the nonrecognition of side payments, a school district's formula funding would not reflect any increase in the district's revenue base even though the district receives revenue, in the form of the side payments, that is directly attributable to the exempted property.

The act rewrites the computation of the funding formula charge-off to bring more accurately into effect H.B. 66's intention of more fully reflecting the revenue base from which side payments arise. Whereas H.B. 66 did not consistently use the same units to compute similar quantities, the act converts all quantities into the units used in the base-cost formula--i.e., exempted property value. Thus, side payments are converted into the underlying exempted property value from which the side payments arise. The underlying exempted property value is divided into two classes: "school district compensation value" and "other compensation value." School district compensation value is property value exempted from taxation under a TIF incentive district arrangement "to the extent that the exempted value results in" PILOTs being charged and made payable to a school district. "Other compensation value" is a proxy for property value exempted under a TIF incentive district arrangement for which compensation is paid to the affected

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*increment financing arrangements not involving incentive districts were not included in H.B. 66's adjustment.*

<sup>98</sup> *TIF incentive districts are also known as "area-wide" TIFs because, unlike the original TIF arrangements, incentive districts are defined as an area up to 300 acres within which all property value increases are exempted. Under the original TIF law, exemptions are granted on an individual parcel-by-parcel or "project-specific" basis (even though more than one parcel may be the subject of a single TIF measure).*

school district where the compensation does not directly result from the exempted value. "Other compensation value" converts this compensation into exempted property value by dividing the amount of the compensation by the applicable effective tax rate for Class II real property.

The act preserves H.B. 66's seven special-case exceptions that prevent PILOTs arising from certain specified TIF incentive district arrangements from being incorporated into the funding formula charge-off. (The special-case exceptions are described in detail in the final analysis of H.B. 66, pages 144-145.)

The act requires the Director of Development to report to the Department of Education and the Tax Commissioner the information necessary to compute "school district compensation value," "other compensation value," and other non-TIF incentive district compensation value used in the formula side payment adjustments. The report must be made by April 1 each year beginning in 2007. School district treasurers must report to the Director of Development the various kinds of side payments to allow the Director to make the certification; the reports are due by March 1 each year beginning in 2007. The State Board of Education can suspend or revoke the license of a treasurer who willfully reports erroneous, inaccurate, or incomplete data about the side payments.

The act delays the Tax Commissioner's 2006 report to the Department of Education concerning school district compensation value and other compensation value from June 1 to August 1.

The provision takes effect immediately.

**Community reinvestment areas: filing of late exemption applications authorized**

(R.C. 3735.67)

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 designated by a municipal or county resolution as an area in which housing facilities or structures of historical significance are located and in which new housing construction and repair of existing facilities or structures needs to be fostered. Newly constructed dwellings in a CRA may be exempted for any period of time specified in the resolution creating the CRA, not exceeding 15 years.

To obtain an exemption, the owner of property in a CRA must file an application with the housing officer for the CRA in which the property is located. ("Housing officers" are officers or agencies of the municipality or county in which the CRA is located, who have been designated as such by the legislative authority

of the municipality or county, which administers the exemptions.) The exemption first applies in the year the construction, repair, or remodeling would first be taxable but for the exemption.

The act allows an owner of a dwelling constructed in a CRA to file an exemption application at any time after the year in which the dwelling first becomes subject to taxation. The act requires that such an application be processed in accordance with the procedures for processing CRA exemption applications and requires that the application be granted if the construction otherwise qualifies for a CRA exemption. If approved, the exemption first applies in the year the application is filed. The exemption then continues only for those years remaining in the exemption period and may not be claimed for any year preceding the year in which the application is filed.

So, for example, if the CRA exemption period designated in a resolution is 15 years and an owner of a newly constructed dwelling applies for an exemption in the fifth year after the year in which the dwelling first became subject to taxation, the dwelling would be exempted from taxation for 11 years. In this hypothetical situation, the owner would be required to forego the first four years the property would have been exempted had a timely application been filed.

***Taxpayers required to submit certifications verifying entitlement to tax credits***

(R.C. 122.17, 122.171, 5733.352, and 5747.331)

Taxpayers who have entered into a job creation or job retention tax credit agreement with Ohio's Tax Credit Authority are entitled to claim a credit against the domestic and foreign insurance company taxes, the corporation franchise tax, the personal income tax, or the commercial activity tax. Each year, the Director of Development issues certificates to taxpayers verifying their compliance with the terms of their respective agreements and specifying the amount of credit available to them. A taxpayer must submit a copy of the certificate to the Tax Commissioner or, if the taxpayer is an insurance company, to the Superintendent of Insurance.

Taxpayers also are entitled to claim a credit against the corporation franchise or personal income tax for payments made by them on research and development loans issued by the Department of Development. Each year, the Director of Development issues certificates to taxpayers indicating the amount of their loan payments for the year and verifying their eligibility to claim the credit. A taxpayer is not permitted to claim the credit unless the taxpayer obtains a certificate from the Director; however, there is no requirement that a taxpayer submit the certificate or a copy of the certificate to the Tax Commissioner.

The act requires taxpayers claiming a credit for research and development loan payments to submit a copy of their certificates with the report or return upon which they are claiming the credit. In addition, the act clarifies that copies of certificates for the job creation, job retention, or research and development loan credit must be submitted with the report or return upon which the credit is being claimed. However, failure to submit a copy with the return or report does not invalidate a claim for a credit if the taxpayer submits a copy to the Commissioner or Superintendent, whichever the case may be, within 60 days after the Commissioner or Superintendent requests one.

**Tax exemption for certain property owned by the state and leased for use by a professional athletic team**

(R.C. 5709.081; Section 757.12)

The act creates a tax exemption for land originally leased from the state, a state agency, or a political subdivision of the state in 1998 for use by a major league professional athletic team or a class A to class AAA minor league affiliate of a major league baseball team for a significant portion of its home schedule. The exemption applies only if the school district in which the property is located expressly consents to exempting the property from taxation.

The act specifies that the exemption is remedial in nature and retroactively applies the exemption (1) to any application for exemption pending before the Tax Commissioner, the Board of Tax Appeals, any Court of Appeals, or the Supreme Court on the specification's effective date and (2) to the property that is the subject of the application.

**Tax amnesty for certain "qualified property"**

(Section 757.09)

Effective immediately upon its becoming law, the act creates a temporary tax amnesty for certain "qualified property." The "qualified property" that qualifies for the amnesty is real property and tangible personal property that is currently owned by a municipality that acquired the property from a tax-exempt charitable organization that operated the property as a hospital and that had previously filed an application for a tax exemption for the property for tax years 2001 through 2004 that was dismissed after the property was transferred to the municipality. To qualify for the amnesty, property must have been eligible for

exemption for those years as property used for a charitable or public purpose. The amnesty expires on the last day of the sixth month following its effective date.<sup>99</sup>

The act allows the prior owner of qualified property to file an application with the Tax Commissioner requesting that the property be placed on the county's list of tax exempt property and that unpaid taxes, penalties, and interest with respect to the property be remitted or abated. The application must be filed within 60 days after the act's immediate effective date.

Upon receiving an application, the Commissioner must determine whether the property described in the application qualifies as "qualified property" and whether the applicant meets all other qualifications for exemption. If the property qualifies and the applicant meets the other qualifications for exemption, the Commissioner must issue an order directing that the property be placed on the county's list of tax exempt property for tax years 2001 through 2004 and that all unpaid taxes, penalties, and interest for those years be remitted or abated.

The act authorizes the Commissioner to apply the amnesty provisions to any qualified property that is the subject of an exemption application pending before the Commissioner on the amnesty's effective date without requiring that the prior owner of the property file an additional exemption application. However, the prior owner must, prior to the amnesty's expiration, file a notice with the Commissioner requesting that the property be considered for an exemption pursuant to the act's amnesty provisions.

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<sup>99</sup> *The tax amnesty created in the act is probably intended to mitigate the effects of the Ohio Supreme Court's decision in Cleveland Clinic Foundation v. Wilkins, 103 Ohio St.3d 382 (2004). At issue in Cleveland Clinic was an application for a real property tax exemption filed by the Cleveland Clinic Foundation. The county treasurer's certificate attached to the application showed that taxes, assessments, penalties, and interest were not paid on the property. The Supreme Court held that because existing law specified that the Tax Commissioner "shall not consider an application for exemption of property" unless the certificate executed by the county treasurer certifies that all taxes, assessments, interest, and penalties charged against the property have been paid in full, or that the applicant has entered into a written undertaking with the treasurer to pay any delinquencies charged against the property, the Commissioner could not consider the exemption application because the certificate showed that taxes, assessments, penalties, and interest were not paid on the property.*

### **Tax abatement for church property**

(Section 757.06)

Property owners must file applications for tax exemption by the last day of the tax year. If an application is not filed, the property is subject to taxation, and the property may be denied future exemption if taxes are not paid.

The act permits past-due property taxes (and penalties and interest) on certain church property to be abated and permits the property to be restored to the tax-exempt list if a previous owner failed to file for tax exemption. The abatement applies to taxes, penalties, and interest charged against real and tangible personal property for the 2003 tax year. To be eligible for abatement, the property must currently be owned by a church, the current owner must have purchased the property from another church, the property must have been exempted from taxation as church property before the previous owner acquired the property, and the property must have been eligible for exemption as church property for tax year 2003. To obtain the exemption, the previous owner must apply to the Tax Commissioner within 60 days after the effective date of the exemption. The Tax Commissioner is authorized to apply the provision to any eligible property that is the subject of a pending exemption application.

The provision goes into effect immediately, and expires six months after its effective date.

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## **DEPARTMENT OF TRANSPORTATION**

- Provides that moneys used to repay State Infrastructure Bank (SIB) loans shall not be considered moneys raised by state taxation regardless of their source.
- Restricts the use of local distributions of certain portions of Ohio's motor vehicle fuel taxes from being used to repay SIB loans made to municipal corporations, counties, and townships to fund highway, road, or street projects begun prior to March 31, 2003.



### **Repayment of State Infrastructure Bank (SIB) loans**

(R.C. 5531.10 and 5735.27)

Continuing law provides formulas for the distribution to local governments of revenue from the annual state license tax levied on the operation of motor vehicles on public roads and highways and the motor fuel excise tax. Continuing law also generally prohibits pledging or obligating money raised from state taxation for the payment of bond service charges on the bonds sold through the SIB to raise funding for financial assistance for state infrastructure projects or to directly fund such projects.<sup>100</sup> But, prior law provided an exception to the prohibition. Under the exception, municipal corporations and counties could pledge and obligate the license and fuel tax money that they received to the payment of amounts payable by those municipal corporations and counties to the SIB, and the bond proceedings for obligations could provide that such payments constituted pledged receipts. The municipal corporations and counties were also permitted to pledge and obligate any tax increment financing (TIF) service payments they received in lieu of taxes for the same purposes. However, such tax and TIF money could be so obligated, pledged, and paid only with respect to obligations issued exclusively for public transportation projects.

The act repeals the provisions permitting the pledging and obligation of the license and fuel tax money and the TIF service payments with respect to public transportation project obligations. Instead, the act provides that moneys received as repayment of loans made by the SIB are not to be considered moneys raised by taxation by the state of Ohio regardless of the source of the moneys. Additionally, the act specifically permits townships receiving distributions from the Gasoline Excise Tax Fund in the state treasury to use that money to pay debt service on SIB obligations.

### **Money that cannot be used to repay SIB loans**

(R.C. 5531.101)

Continuing law levies a number of taxes on motor vehicle fuels that total 26¢ per gallon of fuel. Am. Sub. H.B. 87 of the 125th General Assembly increased one of those taxes by 6¢ per gallon and expanded the purposes for which it could be used to include local government highway purposes. The act provides that municipal corporations, counties, and townships that receive distributions of the new tax revenues that result from the 6¢ tax increase may not use those

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<sup>100</sup> "State infrastructure project," means any public transportation project undertaken by the state, including all components of such a project.

revenues to repay SIB loans if they were made for highway, road, or street projects begun prior to the effective date of H.B. 87 (March 31, 2003). The Tax Commissioner must identify for those entities the amount of the distributions that cannot be used for the SIB loan repayments.

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## **BUREAU OF WORKERS' COMPENSATION**

- Requires the Administrator of Workers' Compensation to advise an investment manager of the results of a criminal records check regarding specified employees of a business entity rather than forwarding the results of the check to the manager.

### **Criminal records checks on persons investing assets of Bureau of Workers' Compensation funds**

(R.C. 4123.444)

Continuing law prohibits the Administrator of Workers' Compensation from entering into a contract with an investment manager for the investment of assets of the Bureau of Workers' Compensation (BWC) funds if any employee of that investment manager who will be investing assets of BWC funds has been convicted of or pleaded guilty to a financial or investment crime, as defined under continuing law. Similarly, continuing law prohibits an investment manager who has entered into a contract with the BWC for the investment of assets of BWC funds from contracting with a business entity for the investment of those assets if any employee of that business entity who will be investing assets of BWC funds has been convicted of or pleaded guilty to a financial or investment crime (R.C. 4123.445, not in the act). The Administrator must have the Superintendent of the Bureau of Criminal Investigation and Identification conduct criminal records checks on the employees of an investment manager and business entity that will be investing assets of BWC funds. Upon receipt of the results of a criminal records check conducted on a business entity's employees, under the act the Administrator must advise the investment manager whether the results were favorable or unfavorable rather than forward a copy of those results to the investment manager as required under former law.

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## DEPARTMENT OF YOUTH SERVICES

- Eliminates a requirement that at least one member of the five-member Department of Youth Services' Release Authority Bureau hold a juris doctor degree from an accredited college or university.

### Qualifications for appointment to DYS Release Authority Bureau

(R.C. 5139.50)

Under continuing law, the Director of the Department of Youth Services appoints the five members of the Department's Release Authority Bureau. In appointing the five members, the Director must ensure that the members satisfy specified criteria. The act eliminated the criterion that required that at least one of the five members hold a juris doctor degree from an accredited college or university.

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## MISCELLANEOUS

- Renames as "assistance dog" a guide dog that assists a blind person, a hearing dog that assists a hearing impaired or deaf person, a service dog that assists a mobility impaired person, or a dog that serves as a seizure assistance, seizure response, or seizure alert dog for a person with a seizure disorder.
- Expands the definition of "mobility impaired person" to also include a person with a neurological or psychological disability that limits the person's functional ability to ambulate, climb, descend, sit, rise, or perform any related function, and includes a person with a seizure disorder as a mobility impaired person for purposes of the statutes related to assistance dogs.
- Entitles the trainer of an assistance dog who is accompanied by an assistance dog to any of the advantages, facilities, and privileges of public places, and, if a person denies the trainer any of those advantages, facilities, and privileges or charges a fee for the dog, provides through the operation of continuing law that the person is guilty of a fourth degree misdemeanor.



- Provides for the co-location of Department of Agriculture, Department of Health, and Ohio Environmental Protection Agency labs and related office and storage facilities at Agriculture's Reynoldsburg campus.
- Creates the Ohio Transportation Task Force to examine and evaluate the state's ability to provide for the safe and efficient movement of freight within this state during the next 20 years.
- Repeals an uncodified provision of H.B. 66 of this General Assembly specifying the General Assembly's intent to consolidate certain regulatory boards and commissions.
- Authorizes the conveyance of specified state-owned real estate in Wayne County to Wayne County Community Improvement Corporation.
- Repeals Section 5 of Am. Sub. S.B. 234 of the 125th General Assembly that previously authorized the conveyance of the same state-owned real estate to the Board of County Commissioners of Wayne County.

### *Assistance dogs*

(R.C. 955.011, 955.16, 955.43, 2913.01, 2913.02, and 2921.321)

Law retained in part by the act provides that when an application is made for registration of a dog that is in training to become or serves as a guide or leader for a blind person or as a listener for a deaf person, that is in training to provide or provides support or assistance for a mobility impaired person, or that is in training to become or serves as a seizure assistance, seizure response, or seizure alert dog for a person with a seizure disorder, and the owner can show proof by certificate or other means that the dog is in training or has been trained for that purpose by a nonprofit special agency engaged in such work, the owner of the dog is exempt from any fee for the registration. The registration for the dog is permanent and not subject to annual renewal so long as the dog is in training or serves. Certificates and tags stamped "Ohio Service Dog-Permanent Registration," with registration number, are issued upon registration of the dog.

The Criminal Code establishes penalties for the theft, assault, or harassment of a dog that is in training to become or serves as a guide or leader for a blind person or as a listener for a deaf person, that is in training to provide or provides support or assistance for a mobility impaired person, or that is in training to become or serves as a seizure assistance, seizure response, or seizure alert dog for

a person with a seizure disorder. Under prior law, those provisions referred to such a dog as a service dog.

The act replaces references to a service dog or to a dog that is in training to become or serves as a guide or leader for a blind person or as a listener for a deaf person, that is in training to provide or provides support or assistance for a mobility impaired person, or that is in training to become or serves as a seizure assistance, seizure response, or seizure alert dog for a person with a seizure disorder with the term "assistance dog." Under the act, "assistance dog" means the following types of dogs that have been trained by a nonprofit special agency:

(1) "Guide dog," defined as a dog that has been trained or is in training to assist a blind person;

(2) "Hearing dog," defined as a dog that has been trained or is in training to assist a deaf or hearing impaired person; and

(3) "Service dog," defined as a dog that has been trained or is in training to assist a mobility impaired person.

The act also expands the definition of "mobility impaired person" in two ways. Under continuing law, "mobility impaired person" means any person, regardless of age, who is subject to a physiological defect or deficiency regardless of its cause, nature, or extent that renders the person unable to move about without the aid of crutches, a wheelchair, or any other form of support, or that limits the person's functional ability to ambulate, climb, descend, sit, rise, or perform any related function. The act additionally provides that "mobility impaired person" includes a person with a neurological or psychological disability that limits the person's functional ability to ambulate, climb, descend, sit, rise, or perform any related function. The act also includes a person with a seizure disorder within the definition of "mobility impaired person," thereby incorporating the former explicit reference to a seizure assistance, seizure response, or seizure alert dog for a person with a seizure disorder into the meaning of "assistance dog."

With respect to that terminology change, the act specifies that a tag issued to an assistance dog that has been stamped "Ohio Service Dog-Permanent Registration" remains valid if it was issued prior to the effective date of the act. A tag issued after the effective date of the act must be stamped "Ohio Assistance Dog-Permanent Registration."

Additionally, law revised in part by the act requires that a blind, deaf, or mobility impaired person accompanied by a dog that serves as or is in training to become a guide, leader, listener, or support dog for the person be entitled, subject to certain restrictions, to the full and equal accommodations, advantages, facilities,

and privileges of all public conveyances, hotels, lodging places, all places of public accommodation, amusement, or resort, all institutions of education, and other places to which the general public is invited. The person must prove by certificate or otherwise that the dog has been or is being trained for that purpose by a nonprofit special agency engaged in such work. A person who deprives a blind, deaf, or mobility impaired person accompanied by an assistance dog of any of those advantages, facilities, and privileges or who charges the blind, deaf, or mobility impaired person a fee for the dog is guilty of a fourth degree misdemeanor.

The act replaces the references to the various types of dogs with a general reference to an assistance dog and specifically includes a hearing impaired person as a person to whom the rights discussed above apply. Those changes are consistent with the use of assistance dog as a replacement term for guide dog, hearing dog, service dog, and listening dog as discussed above. The act additionally provides that if the trainer of an assistance dog is accompanied by an assistance dog, the trainer is entitled to any of the advantages, facilities, and privileges described above. If a person denies the trainer any of those advantages, facilities, and privileges or charges a fee for the dog, that person is also guilty of a fourth degree misdemeanor through the operation of continuing law.

#### **Co-location of state agency labs**

(Section 515.06)

The Department of Health (DOH) and the Ohio Environmental Protection Agency (OEPA) laboratories are located on the Ohio State University campus. The act requires that the Department of Administrative Services (DAS), the Department of Agriculture (DOA), DOH, and OEPA enter into a memorandum of understanding regarding co-locating DOA, DOH, and OEPA labs and related office and storage facilities on DOA's Reynoldsburg campus. The memo must include the agreed upon obligations and responsibilities of the agencies; those would include the act's specification that DOA is responsible for the facilities' maintenance and care. The cost of that care is to be proportionately allocated among DOA, DOH, and OEPA. Under the act, the memo or any later revision cannot take effect until the Director of Budget and Management approves it. If required, OBM and DAS must assist in addressing issues regarding the memo's implementation.

## **The Ohio Transportation Task Force**

(Section 755.03)

### **Task Force composition**

The act creates the Ohio Transportation Task Force consisting of the following 24 members:

(1) Three members of the House of Representatives, all of whom are appointed by the Speaker of the House of Representatives, with no more than two such members being from the same political party as that of the Speaker;

(2) Three members of the Senate, all of whom are appointed by the President of the Senate, with no more than two such members being from the same political party as that of the President;

(3) The Director of Development or the Director's designee;

(4) The Director of Public Safety or the Director's designee;

(5) The Director of Transportation or the Director's designee;

(6) The Superintendent of the State Highway Patrol or the Superintendent's designee;

(7) Nine members appointed jointly by the Speaker of the House of Representatives and the President of the Senate, with each such member being selected from a list of three individuals with the Ohio Aggregates Association, the Ohio Coal Association, the Ohio Farm Bureau, the Ohio Trucking Association, the County Engineers Association of Ohio, the Ohio Municipal League, the Ohio Township Association, the Ohio Association of Regional Councils, and the Ohio Manufacturers' Association, each submitting such a list to the Speaker and the President for their consideration;

(8) Three additional members appointed jointly by the Speaker of the House of Representatives and the President of the Senate, with one member representing the industry that transports freight by air, one member representing the industry that transports freight by water, and one member representing the industry that transports freight by rail; and

(9) One person appointed by the Speaker of the House of Representatives and one person appointed by the President of the Senate, both of whom must represent the general public.



All initial appointments to the Task Force must be made no later than 60 days after the effective date of the section of the act that creates the Task Force. Vacancies are filled in the same manner provided for original appointments.

The Speaker of the House of Representatives and the President of the Senate each must appoint a cochairperson of the Task Force from among the appointees who are members of their respective chambers of the General Assembly. The Task Force may elect from among its members any other officers it considers advisable. The cochairpersons are required to call the first meeting of the Task Force no later than 30 days after the last member has been appointed.

The Legislative Service Commission must provide any staff or services the Task Force may require.

### **Duty of the Task Force**

The act requires the Task Force to examine and evaluate the state's ability to provide for the safe and efficient movement of freight within this state during the next 20 years including all of the following:

- (1) The state's policies on transportation infrastructure development, funding, and investment;
- (2) The benefits of public investment in transportation infrastructure;
- (3) The statutes and rules that impact the transportation of freight, including the weight provisions and permit requirements of existing law. The Task Force must make recommendations to enhance the state's ability to provide for the safe and efficient movement of freight within this state during that future time period.

In addition, the Task Force also may consider or evaluate existing statewide freight studies and data, Ohio Department of Transportation policies on safety and congestion, multimodal projects, national freight perspectives, transportation initiatives of other states in these areas, and potential revenue options. The Task Force may evaluate these items to determine how they may affect the state's ability to provide for the safe and efficient movement of freight within this state during the next two decades.

### **Task Force report**

The act provides that not later than December 15, 2007, the Task Force must issue a report containing its findings and recommendations. The Task Force is required to send a copy of the report to the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the



President of the Senate, the Minority Leader of the Senate, and the Governor. Upon issuance of the report, the Task Force ceases to exist.

**Regulatory board and commission consolidation**

(Section 315.03 of H.B. 66 of the 126th General Assembly)

House Bill 66 of this General Assembly included an uncodified section that: (1) expresses the intent of the General Assembly to consolidate certain regulatory boards and commissions into the Departments of Health, Commerce, and Public Safety and (2) requires the directors of these departments, the executive directors of the affected boards, and the Directors of Administrative Services and Budget and Management to appoint a transition team to address the details of, and submit recommendations regarding, the consolidations. The act repeals this section.

**Conveyance of real estate in Wayne County and repeal of prior conveyance authority**

(Sections 690.09 and 753.03)

**New conveyance authority**

The act authorizes the Governor to execute a deed in the name of the state conveying to Wayne County Community Improvement Corporation, and its successors and assigns, all of the state's right, title, and interest in specified real estate in Wayne County that has been determined as no longer being required for state purposes. Consideration for the conveyance is a purchase price equal to the appraised value of the real estate plus the cost of the appraisal.

The act specifies the procedures for the preparation, execution, and recording of the deed to the real estate upon the payment of that purchase price. The net proceeds of the sale of the real estate must be deposited in the state treasury to the credit of the Residential Facilities Support Fund 152 within the Department of Mental Retardation and Developmental Disabilities.

This conveyance authority expires two years after Section 753.03's effective date.

**Repeal of prior conveyance authority**

Section 5 of Am. Sub. S.B. 234 of the 125th General Assembly authorized the conveyance of the same real estate to the Board of County Commissioners of Wayne County. That conveyance did not occur. The act repeals that conveyance

authority and thereby avoids a conflict with the act's authorization to convey the real estate to Wayne County Community Improvement Corporation.

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## NOTE ON EFFECTIVE DATES

(Sections 812.03 to 821.09)

Section 1d of Article II of the Ohio Constitution states that "laws providing for tax levies [and] appropriations for the *current* expenses of the state government and state institutions \*\*\* shall go into immediate effect," and "shall not be subject to the referendum" (emphasis added).<sup>101</sup> R.C. 1.471 implements this provision with respect 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 act includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a codified or uncodified section in the act 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 act also includes many exceptions to the default provision which provide that specified codified and uncodified provisions are not subject to the referendum and go into immediate effect. For example, many of the act's provisions that provide for or are essential to the implementation of a tax levy go into immediate effect.

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## HISTORY

ACTION	DATE
Introduced	03-14-06
Reported, H. Finance & Appropriations	03-21-06
Passed House (92-1)	03-22-06
Reported, S. Finance & Financial Institutions	03-28-06

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<sup>101</sup> *Expenses for capital projects are not considered current expenses of the state.*

Passed Senate (30-3)  
House concurred in Senate amendments (93-2)

03-28-06  
03-29-06

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