



H.B. 66*

126th General Assembly
(As Introduced)

Rep. Calvert

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

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DEPARTMENT OF ADMINISTRATIVE SERVICES

- Requires the Director of Administrative Services to establish guidelines rather than agency procurement goals for state universities and the Ohio School Facilities Commission for awarding contracts to EDGE business enterprises, thus allowing them to establish their own procurement goals.
- Allows the Director to use an equivalent code classification instead of standard industrial code when establishing procurement goals and to establish a system comparable to a point system to evaluate bid proposals for EDGE business enterprises.
- Exempts EDGE applicants' financial information and trade secrets from the Public Records Law.
- Eliminates the duty of the Director under the Civil Service Law to perform various functions with regard to officers and employees of counties and general health districts.
- Provides to counties and general health districts, with respect to their officers and employees, the same powers, duties, and functions as the Civil Service Law confers upon the Department of Administrative Services and its Director concerning officers and employees in the service of the state.
- Defines for appointing authorities when "a reorganization for the efficient operation of an appointing authority" or "reasons for economy" exist that may result in a lack of continued need for a position, thus allowing for the abolishment of that position and the lay off of the employee.

- Establishes the Office of Information Technology in the Department to advise the Governor regarding the superintendence and implementation of statewide information technology policy and to lead, oversee, and direct state agency activities regarding the development and use of information technology.
- Changes the definitions of "state agency" and "law enforcement officer" as used in the Fleet Management Law to include or exclude various individuals or entities from those terms.
- Authorizes proceeds from the disposition of motor vehicles under the Fleet Management Law to be deposited, in the discretion of the Director, to the credit of either the Fleet Management Fund or the Investment Recovery Fund, rather than just into the Fleet Management Fund.
- Requires state agencies to submit data and other information to the Department about motor vehicles that otherwise are not subject to the Fleet Management Law.

Encouraging Diversity, Growth, and Equity (EDGE) Program

Procurement guidelines and goals for contracting with EDGE business enterprises

(R.C. 123.152)

Under current law, state agencies are encouraged to contract with "EDGE business enterprises," which are businesses certified by the Director of Administrative Services as participants in the Encouraging Diversity, Growth, and Equity Program. The Director must establish agency procurement goals for state agencies, including state universities¹ and the Ohio School Facilities Commission, to contract with EDGE business enterprises generally for services, goods, and public improvements. The bill requires the Director to establish guidelines only,

¹ For purposes of this provision, "state university" is defined as a public institution of higher education that is a body politic and corporate and includes the University of Akron, Bowling Green State University, Central State University, the University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, The Ohio State University, Shawnee State University, the University of Toledo, Wright State University, and Youngstown State University.

rather than procurement goals, for state universities and the Ohio School Facilities Commission to allow the universities and Commission to establish their own agency procurement goals.

Standard industrial code

(R.C. 123.152(B))

Currently, the Director is required to establish agency procurement goals based on the availability of eligible program participants by region or geographic area and by standard industrial code. The bill allows the Director to use equivalent code classification as an alternative to using standard industrial code.

Point system to evaluate bid proposals for EDGE participants

(R.C. 123.152(B))

Under current law, the Director is required to establish a point system to evaluate bid proposals to encourage EDGE business enterprises to participate in the procurement of professional design and information technology services. The bill allows the Director to establish a comparable system as an alternative to a point system.

Exemption from Public Records Law for EDGE applicants

(R.C. 123.152(C))

The bill exempts from the Public Records Law business and personal financial information and trade secrets submitted by EDGE applicants to the Director unless the Director presents the financial information or trade secrets at a public hearing or public proceeding concerning the applicant's eligibility to participate in the EDGE program.

Civil Service Law changes

Administration of the Law by the Director of Administrative Services

(R.C. 124.01, 124.02, 124.04(A) to (H) and (L), 124.07, 124.09, 124.11, 124.133, 124.14(A)(1) and (5), (F), (G), (H), (I), and (J), 124.15, 124.20, 124.23, 124.231, 124.241, 124.25, 124.26, 124.27, 124.29, 124.30, 124.31, 124.311, 124.32, 124.321, 124.322, 124.323, 124.324, 124.325, 124.33, and 124.34)

Overview. Among the various responsibilities of the Director of Administrative Services is the performance of certain duties under Chapter 124. of the Revised Code--the Civil Service Law. Specifically, the Law requires the

Director to carry out a variety of civil service-related functions with regard to officers and employees of the state as well as the counties, certain state-supported colleges and universities, and general health districts. The bill, through the changes discussed below, *reduces* the Director's involvement in the administration of the Law with respect to the counties and general health districts.²

Limitation of the Director's duties. The bill amends several provisions of the Civil Service Law to specify that a variety of civil service-related functions that the Director currently must perform with regard to officers and employees generally need only be carried out in the future for officers and employees *with the government of the state--i.e.*, generally eliminating the duty to perform these functions for officers and employees of the counties and general health districts. Relatedly, the bill eliminates the Director's responsibility or authority to perform certain civil service-related duties and functions *specifically* for counties and general health districts, and repeals (1) provisions under which the Department of Administrative Services' and the Director's powers, functions, or duties under the Civil Service Law *with respect to county officers or employees* could become vested in a county personnel department and (2) a provision under which the Director could delegate powers, functions, or duties under the Law to "any political subdivision" with its legislative authority's concurrence.³

Corresponding to the bill's previously discussed provisions are its provisions that grant the counties and general health districts, with respect to their own officers and employees, the same powers, duties, and functions as the Civil Service Law confers upon the Department and the Director concerning officers and employees with the government of the state. With respect to the counties and general health districts--that, under the bill, *must assume responsibility* for civil service matters involving their officers and employees, the latter powers, duties, and functions are conferred on the board of county commissioners or board of health, which, in turn, can delegate the powers, duties, and functions to designated "officers."

² *Continuing law confers the powers, duties, and functions of the Department of Administrative Services and the Director under the Civil Service Law on the boards of trustees of state-supported colleges and universities with respect to those institutions' officers and employees--subject to divestiture and reassumption by the Department and Director under specified circumstances. This law in R.C. 124.14(F) is not substantively changed by the bill. However, the bill may impact state-supported colleges and universities in certain respects due to its "definitional" and associated "limitation" of the Director's duties provisions.*

³ *The bill does not affect the Director's ability to enter into agreements with state-supported colleges and universities for in-service training of personnel (R.C. 124.04(J)).*

Definitions. To achieve the previously discussed changes in the Civil Service Law, the bill utilizes "service of the state" and "civil service of the state" as *interchangeable* terms throughout the Law. These terms are defined to include all offices and positions of trust or employment with the government of the state. They do not include offices and positions of trust or employment with the counties, state-supported colleges and universities, cities, city health districts, city school districts, general health districts, and civil service townships of the state.⁴ (R.C. 124.01(K).)

Layoff due to abolishment of a position by an appointing authority

(R.C. 124.321(D))

Under the Civil Service Law, one of the reasons for which an appointing authority may lay off an employee is as a result of the abolishment of the employee's position due to the lack of continued need of that position--the abolishment is a permanent deletion of the position from the appointing authority's organization or structure. This "lack of continued need" may be (1) as the result of a reorganization for the efficient operation of the appointing authority, (2) for reasons of economy, or (3) for lack of work.

The bill essentially defines for appointing authorities the first two bases--a "reorganization for the efficient operation of an appointing authority" and "reasons of economy"--that may result in a lack of continued need for a position, thus allowing for the abolishment of that position and the lay off of the employee. Specifically, the bill provides that a "reorganization for the efficient operation of an appointing authority" is to be based on the appointing authority's decision to restructure delivery of services, change organizational emphasis or organizational goals, or maintain productivity or effective services with diminished resources. It also specifies that "reasons of economy" generally must be based on the appointing authority's estimated amount of savings with respect to salary, benefits, and other matters associated with the abolishment of a position or positions. However, when any aspect of an appointing authority's appropriation authority has been reduced by an executive or legislative action, "reasons of economy" may be based on savings with respect to salary and benefits only, as long as the

⁴ *Continuing law grants municipal civil service commissions independent authority to enforce the Civil Service Law for cities, city health districts, and city school districts under a commission's jurisdiction (R.C. 124.40(A)--not in the bill). Likewise, continuing law grants a civil service township the same independent authority for the township (R.C. 124.40(B)--not in the bill). See the previous footnote relative to state-supported colleges and universities.*

abolishment of the position or positions occurs within one year of the reduction of the appropriation authority.

Office of Information Technology

(R.C. 125.18)

The bill establishes the Office of Information Technology in the Department of Administrative Services. The Office is to be under the supervision of a Chief Information Officer (CIO) who must serve as the director of the Office. The CIO must be appointed by the Governor and is subject to removal at the pleasure of the Governor.

The CIO is required to advise the Governor regarding the superintendence and implementation of statewide information technology policy. The CIO also shall lead, oversee, and direct state agency activities related to information technology and use.⁵ In that regard, the CIO must do all of the following:

- Coordinate and superintend statewide efforts to promote common use and development of technology by multiple state agencies. The Office relatedly must establish policies and standards that govern and direct state agency participation in statewide programs and initiatives.
- Establish policies and standards for the acquisition and use of information technology by state agencies, including, but not limited to, hardware, software, technology services, and security, with which state agencies must comply.
- Establish criteria and review processes to identify state agency information technology projects that require alignment or oversight. As appropriate, the Office must provide the Governor and the Director of Budget and Management with notice and advice regarding the appropriate allocation of resources for those projects. The CIO may require state agencies to provide, and may prescribe the form and manner by which they must provide, information to fulfill the CIO's alignment and oversight role.

⁵ For the purpose of these provisions, "state agency" means every organized body, office, or agency established by the laws of the state for the exercise of any function of state government, other than any state-supported institution of higher education, the General Assembly or any legislative agency, or the courts or any judicial agency (division (F)).

The Office is permitted to make contracts for, operate, and superintend technology services for state agencies. It also may establish cooperative agreements with federal and local government agencies and state agencies that are not under the authority of the Governor for the provision of technology services and the development of technology projects.

Changes to the Fleet Management Law

(R.C. 125.831 and 125.832)

Overview of current law

Current law requires the Director of Administrative Services to establish and operate a fleet management program for purposes including, but not limited to, cost-effective acquisition, maintenance, management, analysis, and disposal of all motor vehicles owned or leased by the state. Current law also grants the Department of Administrative Services exclusive authority over the acquisition and management of all motor vehicles used by state agencies. A "motor vehicle" for purposes of the Fleet Management Law generally is defined as any automobile, car minivan, passenger van, sport utility vehicle, or pickup truck with a gross vehicle weight under 12,000 pounds.

Changes in definitions

Current law excludes from the definition of "motor vehicle" for purposes of the Fleet Management Law any vehicle as described above that is used by a law enforcement officer and law enforcement agency, and relatedly defines "law enforcement officer" as an officer, agent, or employee of a state agency upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority. The bill modifies the definition of "law enforcement officer" by specifying that it *does not include* an officer, agent, or employee as described above if the officer's, agent's, or employee's duty and authority is *location specific*. Thus, a vehicle used by such an officer, agent, or employee is no longer excluded from the definition of a "motor vehicle" covered by the Fleet Management Law because it is not a vehicle used by a "law enforcement officer" and law enforcement agency.

The current Fleet Management Law defines "state agency" to mean every organized body, office, or agency established by the laws of Ohio for the exercise of any function of state government, other than (1) a state-supported institution of higher education, (2) the offices of the Governor, Lieutenant Governor, Auditor of State, Treasurer of State, Secretary of State, or Attorney General, (3) the General Assembly or any legislative agency, or (4) the courts or any judicial agency. The

bill modifies this definition to mean every organized body, office, *board, authority, commission*, or agency established by the laws of Ohio for the exercise of any *governmental or quasi-governmental* function of state government *regardless of the funding source for that entity*, other than current law's four categories of exempt entities and, as added by the bill, any state retirement system or retirement program established by or referenced in the Revised Code. Thus, this definitional change at the same time adds to, and removes from, the state agencies subject to the Fleet Management Law.

Disposition of proceeds derived from sale of motor vehicles

Current law requires that the proceeds derived from the disposition of any motor vehicles under the Fleet Management Law be paid (1) to the fund that originally provided moneys for the purchase or lease of the motor vehicles or (2) if the motor vehicles were originally purchased with moneys derived from the General Revenue Fund (GRF), to the credit of the Fleet Management Fund created under current law. The bill instead requires that if the motor vehicles were originally purchased with money derived from the GRF, the proceeds be deposited, *in the discretion of the Director*, to the credit of *either* the Fleet Management Fund or the *Investment Recovery Fund* created by current law. The Investment Recovery Fund receives proceeds from the transfer, sale, or lease of excess and surplus supplies no longer needed by state agencies (R.C. 125.14(A)--not in the bill).

Additional motor vehicles included in the fleet reporting system

Current law requires the Director to establish and maintain a fleet reporting system and correspondingly to require state agencies (see definition above) to submit to the Department information relative to state motor vehicles, to be used in operating the fleet management program. The bill requires state agencies to submit information not only with respect to state "motor vehicles" currently covered by the Fleet Management Law (see definition above) but also relative to state motor vehicles *excluded from* the definition of those currently covered "motor vehicles," namely (1) motor vehicles used by law enforcement officers and law enforcement agencies and (2) motor vehicles that are equipped with specialized equipment that is not normally found in a vehicle and that is used to carry out a state agency's specific and specialized duties and responsibilities.

DEPARTMENT OF AGING

- Requires the Department of Aging to assess a penalty equal to a long-term care facility's total annual bed fee for failure to pay a bed fee on or before a deadline established by the Department in rules.
- Permits the Department to assess a penalty, not to exceed \$500 for each violation, against a long-term care provider, other entity, or employee of a provider or entity that denies a representative of the state long-term care ombudsperson access to a long-term care facility or community-based long-term care site.
- Provides that a provider of community-based long-term care services under a program administered by the Department cannot receive payment unless the provider obtains certification or meets the terms of a contract that includes conditions of participation and service standards the provider must meet.
- Requires the Department to develop a long-term care consultation program under which residents and potential residents of nursing facilities are provided with information about options available to meet long-term care needs and about factors to consider in making long-term care decisions.
- Eliminates provisions authorizing the Department of Job and Family Services (ODJFS) to administer a similar program for potential residents of nursing facilities who are not Medicaid applicants or recipients.
- Modifies the procedures ODJFS must follow when conducting assessments of Medicaid applicants or recipients who apply for admission to or reside in a nursing facility to determine whether they need the level of care provided by a nursing facility.
- Permits ODJFS' level of care assessments to be performed concurrently with consultations performed under the long-term care consultation program to be developed by the Department of Aging.
- Authorizes the Department to conduct an annual survey of nursing homes and residential care facilities and establishes a fine for failure to complete the survey.

- Requires the Department to publish the Ohio Long-Term Care Consumer Guide, which may be developed as a continuation or modification of the guide currently published by the Department pursuant to its general rule-making authority.
- Requires the Guide to include information on both nursing homes and residential care facilities, including information obtained from customer satisfaction surveys conducted or provided for by the Department.
- Permits the Department to charge fees for the customer satisfaction surveys in an amount not exceeding \$400 annually for nursing homes and \$300 annually for residential care facilities.
- Requires the Department to carry out the day-to-day administration of the Medicaid program component known as the Program for All-Inclusive Care for the Elderly (PACE).
- Repeals the uncodified law under which the transfer of PACE administrative duties from ODJFS to the Department of Aging originally occurred.

Penalty for late payment of annual long-term care facility bed fee

(R.C. 173.026)

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

The bill requires the Department of Aging to assess a penalty on long-term care facilities that fail to pay the bed fee not later than 90 days after the deadline established by the Department in rules. The penalty is an amount equal to a facility's total annual bed fee.

Penalty for denial of ombudsperson access to long-term care facilities or community-based long-term care sites

(R.C. 173.99; R.C. 173.19 (not in the bill))

Under current law, the Office of the State Long-Term Care Ombudsperson Program, through the State Long-Term Care Ombudsperson and the Regional Long-Term Care Ombudsperson Programs, must receive, investigate, and attempt to resolve complaints made by long-term care facility residents, recipients, sponsors, providers of long-term care, or any person acting on behalf of a resident or recipient relating to health, safety, civil rights, or residents' rights issues. Each complaint is assigned to a representative of the Office who is responsible for investigating and working with the parties to resolve the complaint.

To carry out these responsibilities, a representative has the right to access long-term care facilities and community-based long-term care sites unescorted as reasonably necessary to investigate a complaint. The bill permits the Department of Aging to assess a penalty, not to exceed \$500 for each violation, against a long-term care provider, other entity, or person employed by the provider or entity that denies a representative of the Program access to a long-term care facility or community-based long-term care site.

Certification for provision of community-based long-term care services

(R.C. 173.39 to 173.393)

The bill requires the Department of Aging to certify providers of community-based long-term care services⁶ under programs the Department administers and, subject to exceptions, the Department prohibits from paying a person or government entity for providing community-based long-term care services under such a program unless the provider is certified to provide the services.

The Department is required to adopt rules in accordance with Ohio's Administrative Procedure Act (R.C. Chapter 119.) establishing certification requirements. The rules must include procedures for both of the following:

⁶ Current law defines "community-based long-term care services" as health and social services provided to individuals in their homes or communities that include case management, home health care, homemaker and chore services, respite care, adult day care, home-delivered meals, personal care, and physical, occupation, or speech therapy (R.C. 173.14, not in the bill).

(1) Ensuring that PASSPORT agencies comply with criminal background check requirements under the law governing the PASSPORT program;

(2) Evaluating the services provided to ensure they are provided in a quality manner advantageous to the individual receiving services.

Evaluation considerations

The bill requires that the Department consider the following during the evaluation of a provider:

(1) Provider's experience and financial responsibility;

(2) Provider's ability to comply with standards of the community-based long-term care services program;

(3) Provider's ability to meet the needs of individuals served;

(4) Any other factor the Director considers relevant.

The bill provides that records of an evaluation are public records and must be made available on the request of any person.

Disciplinary action and enforcement

Under the bill, the Department is authorized to take disciplinary action against a provider. The Department must adopt rules, in accordance with Ohio's Administrative Procedure Act, setting standards for determining which type of disciplinary action to take. The bill requires the rules to specify the reasons for taking disciplinary action, including disciplinary actions based on good cause, and for misfeasance, malfeasance, nonfeasance, confirmed abuse or neglect, financial irresponsibility, or other conduct of the provider the Director determines is injurious to the health or safety of individuals being served.

The Department is authorized to take the following types of disciplinary actions:

(1) Issue a written warning;

(2) Require submission of a plan of correction;

(3) Suspend referrals;

(4) Remove clients;

(5) Impose a fiscal sanction, such as a civil monetary penalty or an order that unearned funds be repaid;

(6) Revoke the certificate;

(7) Impose another sanction.

The bill requires the Department to hold hearings when there is a dispute between the Department or its designee and a provider concerning actions the Department or its designee takes or does not take regarding certification or disciplinary proceedings.

Exceptions

(R.C. 173.392)

Under the bill, certain providers of community-based long-term care services are not required to seek certification by the Department. If all of the following requirements are met, the Department may pay the provider even though the provider is not certified:

(1) The provider has a contract with the Department to provide services;

(2) The contract includes detailed conditions of participation in the program and service standards that the provider is required to satisfy;

(3) The provider complies with the contract.

The bill directs the Department to adopt rules governing contracts between the Department and providers and payment for services provided under such contracts.

Long-term care consultation program

Background

Current law provides for several different types of assessments of persons applying or intending to apply for admission to a nursing facility.⁷ The Department of Job and Family Services (ODJFS), or an agency designated by ODJFS, is authorized to assess any person who is not an applicant for or recipient

⁷ "Nursing facility" means a facility, or a distinct part of a facility, that is certified under the Medicaid program as a nursing facility and is not an intermediate care facility for the mentally retarded (R.C. 173.42(A)(3) (renumbered from R.C. 5101.75(A)(3), by reference to R.C. 5111.20(M)).

of Medicaid who applies or intends to apply to a nursing facility to determine whether the person is in need of nursing facility services and whether an alternative source of long-term care is more appropriate for the person in meeting the person's physical, mental, and psychosocial needs than admission to the facility to which the person has applied (R.C. 5101.75 and 5101.751). In addition, ODJFS may require an applicant for or recipient of Medicaid who applies or intends to apply for admission to a nursing facility to undergo an assessment to determine whether the person needs the level of care provided by a nursing facility (R.C. 5101.754, 5111.204, and 5111.205).

Overview

In general, the bill transfers, from ODJFS to the Department of Aging, the authority to perform assessments of non-Medicaid recipients, modifies the nature of those assessments by including a "long-term care consultation," and expands the population that must be given the assessments (R.C. 173.42 and 173.43 and repeal of R.C. 5101.751 and 5101.753). It also revises the law governing assessments of Medicaid recipients by ODJFS (R.C. 5111.204 and repeal of R.C. 5101.754 and 5111.205).

Duty to perform assessments

(R.C. 173.42(B) and 5101.75(B))

Under existing law, ODJFS may assess a person applying or intending to apply for admission to a nursing facility who is not an applicant for or recipient of Medicaid to determine whether the person is in need of nursing facility services and whether an alternative source of long-term care is more appropriate for the person in meeting the person's physical, mental, and psychosocial needs than admission to the facility to which the person has applied. Each assessment must be performed by ODJFS or an agency designated by ODJFS.

Under the bill, the Department of Aging is required to develop a long-term care consultation program whereby individuals or their representatives are provided with information through professional consultations about options available to meet long-term care needs and about factors to consider in making long-term care decisions. The Department may enter into a contract with an area agency on aging or other entity under which the long-term care consultation program for a particular area is administered by the area agency on aging or other entity pursuant to the contract; otherwise, the program is to be administered by the Department.

Information to be provided; assessment of individual's functional capabilities

Existing law (R.C. 5101.75 (B), (F), and (G)). Under existing law, each assessment must be based on information provided by the person or the person's representative. It must consider the person's physical, mental, and psychosocial needs and the availability and effectiveness of informal support and care. ODJFS or the designated agency must determine these needs by using, to the maximum extent appropriate, information from a ODJFS created resident assessment instrument. ODJFS or the designated agency must use certain criteria and procedures established in ODJFS rules.

ODJFS or the designated agency must make a recommendation on the basis of the assessment. Not later than the time the assessment is required to be performed, ODJFS or the designated agency must give the person assessed, or the person's representative, written notice of the recommendation, which must explain the basis for the recommendation. If ODJFS or the designated agency determines pursuant to an assessment that an alternative source of long-term care is more appropriate for the person than admission to the facility to which the person has applied, it must include in the notice possible sources of financial assistance for the alternative source of long-term care. Under existing law, even though an alternative source of long-term care is available or the person is determined pursuant to an assessment not to need nursing facility services, a person is not required to seek an alternative source of long-term care and may be admitted to or continue to reside in a nursing facility. Existing law permits the person assessed or the person's representative to file a complaint with ODJFS about the assessment process.

The bill (R.C. 173.42(D), (E), and (I)). Under the bill, the information provided through a long-term care consultation must be appropriate to the individual's needs and situation. The information must address the following:

- (1) The availability of any long-term care options open to the individual;
- (2) Sources and methods of both public and private payment for long-term care services;
- (3) Factors to consider when choosing among the available programs, services, and benefits;
- (4) Opportunities and methods for maximizing independence and self-reliance, including support services provided by the individual's family, friends, and community.

An individual's long-term care consultation may include an assessment of the individual's functional capabilities. It also may incorporate portions of determinations required to be made by the Department of Mental Health or the Department of Mental Retardation and Developmental Disabilities⁸ and may be performed concurrently with the assessment required to be made by ODJFS (see "Level-of-care assessments to receive Medicaid nursing facility services," below).

At the conclusion of a consultation, the Department of Aging or the program administrator under contract with the Department must provide the individual or the individual's representative with a written summary of options and resources available to meet the individual's needs. And, similar to existing law, even though the summary may specify that a source of long-term care other than care in a nursing facility is appropriate and available, the individual is not required to seek an alternative source and may be admitted to or continue to reside in a nursing facility.

Individuals to be provided consultations; exemptions

Existing law (R.C. 5101.75(B) and (C)). Existing law *permits* ODJFS to assess a person applying or intending to apply for admission to a nursing facility who is not an applicant for or recipient of Medicaid.

A person is not required to be assessed if any of the following apply:

- (1) Circumstances specified by ODJFS rules exist.
- (2) The person is to receive care in a nursing facility under a contract for continuing care.
- (3) The person has a contractual right to admission to a nursing facility operated as part of a system of continuing care in conjunction with one or more facilities that provide a less intensive level of services.
- (4) The person is to receive continual care in a tax-exempt home for the aged.

⁸ *The Department of Mental Health is required to determine--in accordance with federal law--whether a mentally ill individual seeking admission to a nursing facility requires the level of services provided by a nursing facility and, if the individual requires that level of services, whether the individual requires specialized services for mental illness (R.C. 5111.202 and 5119.061). The Department of Mental Retardation and Developmental Disabilities must make a similar determination with respect to a mentally retarded individual seeking admission to a nursing facility (R.C. 5123.021).*

(5) The person is to receive care in the nursing facility for not more than 14 days in order to provide temporary relief to the person's primary caregiver and the nursing facility notifies ODJFS of the person's admittance not later than 24 hours after admitting the person.

(6) The person is to be transferred from another nursing facility, unless the nursing facility from which or to which the person is to be transferred determines that the person's medical condition has changed substantially since the person's admission to the nursing facility from which the person is to be transferred or a review is required by a third-party payment source.

(7) The person is to be readmitted to a nursing facility following a period of hospitalization, unless the hospital or nursing facility determines that the person's medical condition has changed substantially since the person's admission to the hospital, or a review is required by a third-party payment source.

(8) ODJFS or the designated agency fails to complete an assessment within the time required or determines after a partial assessment that the person should be exempt from the assessment.

The bill (R.C. 173.42(F) and (H)). Similar to existing law, under the bill a long-term care consultation *may* be performed for nursing facility residents who have not applied and have not indicated an intention to apply for Medicaid. The purpose of these consultations is to determine continued need for nursing facility services, to provide information on alternative services, and to make referrals to alternative services.

But, the bill *requires* long-term care consultations to be performed for individuals who apply or indicate an intention to apply for admission to a nursing facility, regardless of the source of payment to be used for such care, and residents of nursing facilities who apply or indicate an intention to apply for Medicaid. The bill exempts certain individuals from the long-term care consultation requirement. The exemptions largely parallel the exemptions in existing law, but differ in the following ways:

(1) The bill additionally exempts an individual from the requirement if the individual or the individual's representative chooses to forego participation in the consultation pursuant to criteria specified in rules adopted under the bill.

(2) The bill eliminates the exemption regarding a person placed in the nursing facility in order to provide temporary relief to the person's primary caregiver.⁹

(3) The bill additionally exempts an individual who is seeking admission to a facility that is not a nursing facility with a provider agreement under the Medicaid Law.

(4) The bill removes the qualifiers from the exemption described in paragraph (6), above; thus the bill always exempts an individual who is to be transferred from another nursing facility.

(5) The bill removes the qualifiers from the exemption described in paragraph (7), above; thus the bill always exempts an individual who is to be readmitted to a nursing facility following a period of hospitalization.

(6) The bill eliminates the exemption based on the failure of a timely assessment.

Time frame for completion of consultations

Existing law (R.C. 5101.75(D) and (E)). Under existing law, ODJFS or the designated agency must perform a complete assessment, or, in certain circumstances, a partial assessment, as follows:

(1) In the case of a hospitalized person applying or intending to apply to a nursing facility, not later than two working days after the person or the person's representative is notified that a bed is available in a nursing facility;

(2) In the case of an emergency as determined in accordance with ODJFS rules, not later than one working day after the person or the person's representative is notified that a bed is available in a nursing facility;

(3) In all other cases, not later than five calendar days after the person or the person's representative who submits the application is notified that a bed is available in a nursing facility.

If ODJFS or the designated agency conducts a partial assessment, it generally must complete the rest of the assessment not later than 180 days after the date the person is admitted to the nursing facility.

⁹ In a conforming change, the bill eliminates the possible imposition of a fine for failing to notify ODJFS about the admission within the required time limits (R.C. 5101.75(J)(1), renumber R.C. 173.42(L)).

The bill (R.C. 173.42(G)). Under the bill, when a long-term care consultation is required to be performed under the bill, it must be performed as follows:

(1) If the individual for whom the consultation is being performed has applied for Medicaid and the consultation is being performed concurrently with the assessment required to be made by ODJFS (see "**Level-of-care assessments to receive Medicaid nursing facility services**," below), the consultation must be completed in accordance with the applicable time frames specified in the Medicaid law for providing a level of care determination based on the assessment.

(2) In all other cases, the consultation must be performed not later than five calendar days after the Department of Aging, or the program administrator under contract with the Department, receives notice that (a) the individual has applied or has indicated an intention to apply for admission to a nursing facility or (b) if the individual is a resident of a nursing facility, the individual has applied or has indicated an intention to apply for Medicaid.

An individual or the individual's representative may request that a long-term care consultation be performed on a date that is later than that required under (1) or (2), above. Also, if a consultation cannot be completed within the required time frames, the Department or the program administrator may (a) exempt the individual from the consultation pursuant to rules adopted under the bill, (b) in the case of an applicant for admission to a nursing facility, perform the consultation after the individual is admitted to the facility, or (c) in the case of a resident of a nursing facility, perform the consultation as soon as practicable.

Who may perform assessments

(R.C. 173.42(C), 173.43, 5101.75(B), and 5101.752 and 5101.751 (repealed))

Existing law authorizes ODJFS to designate another agency to perform assessments. In addition, assessments may be performed only by persons certified by ODJFS; ODJFS is required to certify licensed registered nurses and licensed social workers and independent social workers who meet certification requirements established by ODJFS to perform assessments. And ODJFS is required to adopt rules governing the certification process and requirements that must specify the education, experience, or training in *geriatric* long-term care a person must have to qualify for certification.

Under the bill, the long-term care consultations are to be performed by individuals certified by the Department of Aging. The Director of Aging is required to adopt rules in accordance with the Administrative Procedure Act (R.C.

Chapter 119.) governing the certification process and requirements. The rules must specify the education, experience, or training in long-term care a person is to have to qualify for certification. The bill repeals the authority of ODJFS to designate another agency to perform the assessments, and the Department of Aging is given no analogous designation authority.

Authority to fine nursing facilities

(R.C. 173.42(J) and (L) and 5111.62.)

The bill, in a manner similar to existing law, prohibits any nursing facility for which an operator has a provider agreement under the Medicaid law from admitting or retaining any individual as a resident, unless the nursing facility has received evidence that a long-term care consultation has been completed for the individual or that the individual is exempt from the long-term care consultation requirement. The bill transfers from the Director of Job and Family Services to the Director of Aging the authority to fine a nursing facility an amount determined by rule if the facility violates this prohibition. All fines collected are to be deposited into the state treasury to the credit of the existing Residents Protection Fund.

Rulemaking

(R.C. 173.42(K))

Under existing law, the Director of Job and Family Services is required to adopt rules in accordance with the Administrative Procedure Act to implement and administer the assessment provisions.

The bill creates analogous authority for the Director of Aging. Under the bill, the Director is authorized to adopt any rules the Director considers necessary for the implementation and administration of the above provisions. The rules must be adopted in accordance with the Administrative Procedure Act and may specify all of the following:

- (1) Procedures for performing long-term care consultations;
- (2) Information to be provided through long-term care consultations regarding long-term care services that are available;
- (3) Criteria for identifying nursing facility residents who would benefit from long-term care consultations;
- (4) Criteria under which an individual or the individual's representative may choose to forego participation in a long-term care consultation;

(5) Criteria for exempting individuals from the long-term care consultation requirement.

Plan for providing home and community-based services

(R.C. 5101.573 (repealed))

The bill repeals a provision under which ODJFS or the designated agency may develop a plan for provision of home and community-based services to a person if the recommendation resulting from the assessment is that home and community-based services are appropriate for the person.

Level-of-care assessments to receive Medicaid nursing facility services

Individuals to be assessed

(R.C. 5111.204(B))

Existing law authorizes the Department of Job and Family Services (ODJFS) to require an applicant for or recipient of Medicaid who applies or intends to apply for admission to a nursing facility to undergo an assessment to determine whether the applicant or recipient needs the level of care provided by a nursing facility.

The bill expands this provision to also apply to an applicant for or recipient of Medicaid who resides in a nursing facility. In addition, the bill specifies that the assessment may be performed concurrently with a long-term care consultation performed by the Department of Aging.

Who may perform assessments

(R.C. 5101.754 and 5111.204(B))

On receipt of the appropriate federal waiver or on determining that a federal waiver is not necessary, existing law permits ODJFS to designate another agency to conduct assessments. ODJFS rules govern how the assessments must be conducted and how the designated agency must report the assessments.

The bill instead permits ODJFS to enter into contracts in the form of interagency agreements with one or more other state agencies to perform the assessments. The interagency agreements must be in accordance with Medicaid law provisions governing interagency agreements to administer one or more components of the Medicaid program. The interagency agreements must specify the responsibilities of each agency in the performance of the assessments.

Partial assessments

The bill removes the authority of ODJFS or the designated agency to conduct a partial assessment of the person in certain circumstances (existing R.C. 5101.204(C), (D), (E), and (H)).

Time frame

(R.C. 5111.204 (C) and (D))

Existing law. Under existing law, ODJFS or the designated agency, whichever performs the assessment, must perform a complete assessment, or, if certain circumstances exist, a partial assessment, as follows:

(1) In the case of a person applying or intending to apply for admission to a nursing facility while hospitalized, not later than one of the following: (a) one working day after the person or the person's representative submits an application for admission to the nursing facility or notifies ODJFS of the person's intention to apply, or (b) a later date requested by the person or the person's representative.

(2) In the case of an emergency, not later than one calendar day after the person or the person's representative submits the application or notifies ODJFS of the person's intention to apply for admission.

(3) In all other cases, not later than one of the following: (a) five calendar days after the person or the person's representative submits the application or notifies ODJFS of the person's intention to apply, or (b) a later date requested by the person or the person's representative.

If ODJFS or the designated agency conducts a partial assessment, it must complete the rest of the assessment not later than 180 days after the date the person is admitted to the nursing facility unless ODJFS or the designated agency determines the person should be exempt from the assessment.

The bill. The bill revises several timeframes and adds an additional category. Under the bill, ODJFS or the contracting agency must provide a level of care determination as follows:

(1) In the case of a person applying or intending to apply for admission to a nursing facility while hospitalized, not later than (a) one working day after the person or the person's representative submits the application or notifies ODJFS of the person's intention to apply and submits all information required for providing the level of care determination or (b) a later date requested by the person or the person's representative.

(2) In the case of a person applying or intending to apply for admission to a nursing facility who is not hospitalized, not later than (a) five calendar days after the person submits an application for Medicaid or notifies ODJFS of the person's intention to apply and submits all information required for providing the level of care determination or (b) a later date requested by the person or the person's representative (existing law).

(3) In the case of a person who resides in a nursing facility, not later than (a) five calendar days after the person or the person's representative submits an application for medical assistance and submits all information required for providing the level of care determination, or (b) a later date requested by the person or the person's representative (all added by the bill).

(4) In the case of an emergency, within the number of days specified by ODJFS rules (modified by the bill).

Appeals

(R.C. 5111.204(D))

The bill retains the current law provision that permits a person assessed or the person's representative to appeal the conclusions reached by ODJFS or the agency on the basis of the assessment, but rephrases the provision to refer to requesting "a state hearing to dispute the conclusions" rather than referring to an "appeal." But, the bill additionally requires that the state be represented in any requested state hearing by ODJFS or the contracting agency, whichever performed the assessment.

Rulemaking

(R.C. 5111.204(F))

The bill makes the following revisions to the provision authorizing the Director of Job and Family Services to adopt rules to implement and administer the assessment provision:

(1) It eliminates the partial assessments.

(2) It requires that the rules set forth circumstances that constitute an "emergency" and the number of days within which a level of care determination must be provided in the case of an emergency.

(3) It eliminates specific criteria that must be included in rules establishing criteria and procedures to be used in determining whether admission to a nursing

facility or continued stay in a nursing facility is appropriate for the person being assessed.

(4) It makes conforming changes to reflect the other changes in the bill.

Plan for providing home and community-based services

(R.C. 5111.205 (repealed))

The bill repeals a provision under which ODJFS or the designated agency, whichever performed the assessment, may develop a plan for provision of home and community-based services to that person if the recommendation resulting from the assessment is that home and community-based services are appropriate for the person assessed.

Nursing home and residential care facility survey

(R.C. 173.44 and 173.99)

The bill authorizes the Department of Aging to conduct an annual survey of nursing homes and residential care facilities.¹⁰ The survey is to include questions about capacity, occupancy, and private pay charges related to the facilities. Under the bill, the Department may work with an outside entity to conduct the survey and analyze the results. The results and analysis of the survey are to be made available to the General Assembly, other state agencies, nursing home and residential care facility providers, and the public.

A nursing home or residential care facility that recklessly fails to complete the survey is subject to a \$100 fine.

Long-Term Care Consumer Guide

Background

(Former R.C. 173.45 to 173.59 and R.C. 173.02; O.A.C. Chapter 173-45)

Am. Sub. H.B. 95 of the 125th General Assembly, the biennial operating budget for fiscal years 2004 and 2005, repealed provisions that required the Department of Aging to publish the Ohio Long-Term Care Consumer Guide, a guide to Ohio nursing homes. Under prior law, the Guide was required to be

¹⁰ *Nursing homes and residential care facilities are licensed by the Ohio Department of Health for persons who need residential care due to age or infirmity. The difference is the level of care provided, with nursing homes providing skilled nursing care on a regular basis.*

available on the Internet and updated periodically. Every two years, the Department was required to publish an Executive Summary of the Guide, which had to be available in electronic and printed media. In addition, prior law specified that, to the extent possible, annual customer satisfaction surveys had to be conducted for use in the Guide. The Department was permitted to charge the nursing home a fee of up to \$400 for each annual survey. The Guide has continued to be published pursuant to Department rules, but the statutory provisions were eliminated.

The bill

(R.C. 173.45 to 173.49)

The bill enacts new statutory provisions governing publication of an Ohio Long-Term Care Consumer Guide, conduct of customer satisfaction surveys, and the fee relating to the surveys.

Authorization to publish and content of Guide. The bill requires the Department of Aging to develop and publish a guide to long-term care facilities for use by individuals considering long-term care facility admission and their families, friends, and advisors.¹¹ This Ohio Long-Term Care Consumer Guide

¹¹ "Long-term care facility" means any of the following (R.C. 173.45(A)): (1) a nursing home, (2) a residential care facility, or (3) a county home or district home that has never been licensed as a residential care facility under the residential care facility law.

"Nursing home" means a home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services but not skilled nursing care. A nursing home is licensed to provide personal care services and skilled nursing care. (R.C. 173.45(B), by reference to R.C. 3721.01(A)(6).)

"Residential care facility" means a home that provides either of the following (R.C. 173.45(B), by reference to R.C. 3721.01(A)(7)): (1) accommodations for 17 or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, or (2) accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, certain types of skilled nursing care.

"County home" and "district home" mean a county home or district home operated under Revised Code Chapter 5155. (R.C. 173.45(B), by reference to R.C. 3721.01(A)(9)). According to the Ohio County Commissioners Handbook, a county home is a facility owned and operated by a board of county commissioners to provide services in much the same manner as a privately owned residential care facility or nursing home. County

may be published in printed form or in electronic form for distribution over the Internet. The Guide may be developed as a continuation or modification of the rule-authorized Guide currently published by the Department.

The Guide must include information on each long-term care facility in Ohio. For each facility, the Guide must include the following information, as applicable to the facility:

- (1) Information regarding the facility's compliance with Ohio statutes and rules and federal statutes and regulations;
- (2) Information generated by the United States Department of Health and Human Services Centers for Medicare and Medicaid Services from the quality measures developed as part of its nursing home quality initiative;
- (3) Results of customer satisfaction surveys;
- (4) Any other information the Department specifies by rule.

Customer satisfaction surveys. For purposes of publishing the Guide, the Department must conduct or provide for the conduct of an annual customer satisfaction survey of each long-term care facility. The results of the surveys may include information obtained from long-term care facility residents, their families, or both.

Each long-term care facility is required to cooperate in the conduct of its annual customer satisfaction survey. The Director of Aging may ask the Attorney General to apply to the court of common pleas of the county in which a long-term care facility is located for a temporary or permanent injunction restraining the facility from failing to cooperate in the conduct of its customer satisfaction survey.

Fees and the Long-Term Care Consumer Guide Fund. The Department may charge fees for the conduct of annual customer satisfaction surveys. The Department may contract with any person or government entity to collect the fees on its behalf. The fees may not exceed the following amounts:

homes are derivatives of the county "poor houses" or "poor farms" that were originally authorized under Ohio law in the early 1800s. (Ohio County Commissioners Association of Ohio, Chapter 48 of the "Ohio County Commissioners Handbook," available at <http://www.ccao.org/Handbook/hdbkchap048.pdf>, last visited, February 10, 2005.) A district home is a county home that is operated by two or more counties (R.C. 5155.34).

(1) \$400 for the customer satisfaction survey of a long-term care facility that is a nursing home or county home or district home operated in the same manner as a nursing home;

(2) \$300 for the customer satisfaction survey pertaining to a long-term care facility that is a residential care facility or county home or district home not licensed as a residential care facility but operated in the same manner as a residential care facility.

Fees paid by a long-term care facility that is a "nursing facility" must be reimbursed through the Medicaid Program operated under R.C. Chapter 5111.¹²

The bill creates in the state treasury the Long-Term Care Consumer Guide Fund. Money collected from the fees charged for the conduct of customer satisfaction surveys must be deposited in the state treasury and credited to the Fund. The Department must use money in the Fund for costs associated with publishing the Guide, including costs incurred in conducting or providing for the conduct of customer satisfaction surveys.

Rules. The bill authorizes the Department to adopt rules under the Administrative Procedure Act to implement and administer the preceding provisions relating to the annual surveys and the publication of the Long-Term Care Consumer Guide.

Transfer of PACE administrative duties

(R.C. 173.50; Section 490.03)

The Program of All-Inclusive Care for the Elderly (PACE) is a Medicaid component based on a managed care model through which certain sites provide frail, older adults with all of their needed health care and ancillary services in acute, subacute, institutional, and community settings. Enrollment is voluntary, and once enrolled, PACE becomes the sole source of all Medicare and Medicaid covered services and other items or medical, social, or rehabilitation services the PACE interdisciplinary team determines an enrollee needs. If a participant requires placement in a nursing home, PACE is responsible and accountable for

¹² "Nursing facility" means a facility, or a distinct part of a facility, that is certified as a nursing facility under the Medicaid Program and is not an intermediate care facility for the mentally retarded. (R.C. 173.45(C), by reference to R.C. 5111.20(M).)

the care and services provided and must regularly evaluate the participant's condition.¹³

To be eligible for PACE, a person must:

- Live in the service area of a PACE site;
- Qualify for Medicaid coverage under the institutional financial eligibility standards;
- Need an intermediate or skilled level of care;
- Be age 55 or older;
- Be willing to receive all care from PACE providers;
- Be able to remain safely in a community setting at the time of initial enrollment.¹⁴

Currently, Ohio has two PACE sites: TriHealth SeniorLink located in Cincinnati and Concordia Care in Cleveland Heights.¹⁵

Am. Sub. H.B. 95 of the 125th General Assembly (Section 59.19) authorized the Director of JFS to submit an amendment to the state Medicaid Plan asking the United States Secretary of Health and Human Services for permission to transfer the day-to-day administration of PACE to the Department of Aging. This act also provided that if the Secretary approved the amendment, the Directors of JFS and the Department of Aging could enter into an interagency agreement to transfer responsibility and appropriation authority for administrative expenses for PACE.

As of February 15, 2005, the plan amendment was still under review by the Secretary. If the amendment is approved, an effective date of December 10, 2004,

¹³ *Press Release from the Centers for Medicare and Medicaid Services, "CMS Approves Concordia Care in Cleveland Heights, Ohio for Health Care Program for Frail Elderly," published Oct. 29, 2004, available at <<http://www.cms.hhs.gov/media/press/release.asp?Counter=646>> (visited Feb. 14, 2005).*

¹⁴ *ODJFS, Office of Ohio Health Plans Medicaid Fact Sheet 1.5. "PACE," published Aug. 2003, available at <<http://jfs.ohio.gov/ohp/bcps/factsheets/pace.pdf>>.*

¹⁵ *Id. TriHealth SeniorLink serves Hamilton County and parts of Warren, Butler, and Clermont counties. Concordia Care serves Cuyahoga County.*

will apply.¹⁶ In anticipation of approval, the bill requires the Department of Aging, pursuant to an interagency agreement, to carry out the day-to-day administration of PACE. The Department of Aging must carry out the administrative duties in accordance with the interagency agreement and all applicable federal laws, including the Social Security Amendments of 1965.¹⁷ The bill repeals Section 59.19 of Am. Sub. H.B. 95 of the 125th General Assembly because the Director of JFS has submitted the amendment request to the Secretary and therefore, this provision is no longer needed.

DEPARTMENT OF AGRICULTURE

- Extends the sunset of the Family Farm Loan Program from October 15, 2005, to October 15, 2007.
- Combines the Animal Industry Laboratory Fund with the Laboratory Services Fund, names the combined fund the Animal and Consumer Analytical Laboratory Service Fund, and retains existing fund provisions concerning sources and uses of money.
- Creates the Laboratory and Administrative Support Fund consisting of moneys received by the Department of Agriculture from auditorium rentals and other miscellaneous sources, and authorizes the Department to use moneys in the Fund to pay costs associated with any of the Department's programs.
- Changes the annual schedule for fertilizer-related licensure and registration from July 1 of one year through June 30 of the subsequent year to December 1 of one year through November 30 of the subsequent year.
- Changes the fertilizer tonnage report from a semiannual report to an annual report, and requires it to be submitted by November 30 each year.
- Increases the fertilizer inspection fee from 12¢ per ton to 25¢ per ton and from 13¢ per metric ton to 28¢ per metric ton, as applicable.

¹⁶ Telephone interview with Matt Hobbs, Legislative Liaison, JFS (Feb. 15, 2005).

¹⁷ 79 Stat. 286 (1965), 42 U.S.C. 1396u-4.

- Makes discretionary rather than mandatory the distribution of annual statements of fertilizer sales and the publishing of an annual report of an analysis of fertilizers inspected by the Director of Agriculture.
- Merges the Commercial Feed, Fertilizer, and Lime Inspection and Laboratory Fund and the Seed Fund to create the Commercial Feed, Fertilizer, Seed, and Lime Inspection and Laboratory Fund.
- Beginning on January 1, 2007, establishes in statute a pesticide registration and inspection fee of \$150 per product and a penalty fee of \$75 for late registration or distribution of an unregistered pesticide rather than allowing the Director to establish the amount of the fees by rule as in current law.
- Increases the semiannual commercial feed inspection fee from 10¢ per ton to 25¢ per ton, and increases the minimum payment from \$10 to \$25.
- Makes annual publishing of information concerning commercial feed by the Director discretionary rather than mandatory.
- Changes the fee for the inspection of agricultural products and their conveyances under the Plant Pests Law from \$65 to an amount equal to the hourly rate of pay in the highest step in the pay range, including fringe benefits, of a plant pest control specialist multiplied by the number of hours worked by such a specialist in conducting an inspection.
- Changes the name of the Scale Certification Fund to the Metrology and Scale Certification Fund.
- Increases the annual bakery registration fee from \$30 to \$60 for a production capacity of 1,000 pounds per hour or less and from \$30 to \$60 for each 1,000 pounds of bakery product per hour capacity, or part of it, in excess of 1,000 pounds of bakery product per hour, and increases the annual home bakery registration fee from \$10 to \$20.
- Increases the cannery license fee and license renewal fee from \$100 to \$200.
- Increases the soft drink manufacturing or bottling license fee from \$100 to \$200, increases the out-of-state soft drink manufacturing or bottling registration fee from \$100 to \$200, and increases the license fee from \$50

- to \$100 for the sale, use, or possession with intent to sell of any soda water syrup or extract or soft drink syrup to be used in making, drawing, or dispensing soda water or other soft drinks.
- Increases the fee for an annual license to operate a cold-storage warehouse from \$100 to \$200.
 - Increases the fee for an annual license to operate a frozen food manufacturing facility, slaughterhouse, locker room, locker, chill room, sharp freezing room and facilities, or sharp freezing cabinet from \$25 to \$50.
 - Authorizes the Director to issue a certificate of health and freesale to a food processing establishment, manufacturer of over-the-counter drugs, or manufacturer of cosmetics upon request for purposes of certifying that products have been produced and warehoused under sanitary conditions as determined through inspection, establishes a \$20 fee for the issuance of such a certificate, and requires the Director to deposit any such fees that are collected to the credit of the existing Food Safety Fund.
 - Prohibits a person from operating a large capacity scale or a large meter unless the operator holds a valid permit issued by the Director for the scale or meter.
 - Establishes civil and criminal penalties for violation of the permit requirement; permit application and issuance procedures; and a permit fee and an annual renewal fee of \$250.
 - Creates the Weights and Measures Permit Fund consisting of permit and permit renewal fees, and authorizes the Director to use money in the Fund to pay costs associated with weights and measures programs.
 - Extends through June 30, 2007, the extra 2¢ earmark of wine tax revenue credited to the Ohio Grape Industries Fund.

Family Farm Loan Program

(R.C. 122.011; Sections 403.11 and 403.12)

Under existing law, the Family Farm Loan Program is scheduled to expire on October 15, 2005. The bill extends the expiration date to October 15, 2007, and changes all statutory dates with regard to that Program accordingly.

Animal and Consumer Analytical Laboratory Service Fund

(R.C. 901.43)

Current law creates the Animal Industry Laboratory Fund in the state treasury and requires the deposit into the Fund of all moneys collected by the Director of Agriculture that are from fees generated by a laboratory service performed by the Department of Agriculture and related to the diseases of animals together with all moneys so collected that are from fees generated for the inspection and accreditation of laboratories and laboratory services related to the diseases of animals. The Director must use moneys in the Fund to pay the expenses necessary to operate the animal industry laboratory, including the purchase of supplies and equipment.

Current law also creates the Laboratory Services Fund in the state treasury and requires the deposit into the Fund of all moneys collected by the Director that are from fees generated by a laboratory service performed by the consumer analytical laboratory together with all moneys so collected that are from fees generated for the inspection and accreditation of laboratories and laboratory services not related to weights and measures or the diseases of animals. Moneys in the Fund may be used to pay the expenses necessary to operate the consumer analytical laboratory, including the purchase of supplies and equipment.

The bill combines the Animal Industry Laboratory Fund with the Laboratory Services Fund and names the combined fund the Animal and Consumer Analytical Laboratory Service Fund. Under the bill, moneys currently deposited into the two separate funds instead are required to be deposited into the combined fund. The Director may use moneys in the combined fund for the same purposes currently designated for moneys in the two separate funds.

Creation of Laboratory and Administrative Support Fund

(R.C. 901.44)

The bill creates the Laboratory and Administrative Support Fund in the state treasury. The Department of Agriculture must deposit the following moneys received by the Department to the credit of the Fund: payment for the rental of the

Department's auditoriums by outside parties and reimbursement for related utility expenses, laboratory fees that are not designated for deposit into another fund, and other miscellaneous moneys that are not designated for deposit into another fund. The Department may use moneys in the Fund to pay costs associated with any program of the Department as the Director of Agriculture sees fit.

Fertilizer license, registration, and tonnage report schedule

(R.C. 905.32, 905.33, 905.331, and 905.36; Section 203.24.03)

Current law requires each person who manufactures or distributes any type of fertilizer in Ohio to obtain an annual fertilizer manufacturing or distribution license from the Department of Agriculture. Further, a person who engages in the businesses of blending custom mixed fertilizer for use on lawns, golf courses, recreation areas, or other real property that is not used for agricultural production must obtain a nonagricultural production custom mixed fertilizer blender license from the Director of Agriculture. The licenses are valid from July 1 of a given year through June 30 of the subsequent year. A renewal application for a license must be submitted no earlier than June 1 and no later than June 30 of each year. A person who submits a renewal application for a license after June 30 must include with the application a late filing fee of \$10.

The bill amends the annual schedule for obtaining fertilizer manufacturing and distribution licenses and nonagricultural production custom mixed fertilizer blender licenses. Under the bill, all licenses are valid for one year beginning on December 1 of a calendar year through November 30 of the following calendar year. A renewal application must be submitted no later than November 30 each year. A person who submits a renewal application for a license after November 30 must include with the application a late filing fee of \$10. With regard to licenses for which applications for the license period beginning July 1, 2005, have been submitted under current law, a license must be issued for a period beginning on July 1, 2005, and ending on November 30, 2005, and expires on November 30, 2005.

Current law also prohibits any person from distributing a specialty fertilizer in Ohio until it is registered by the manufacturer or distributor with the Department. All registrations expire on June 30 of each year. The bill instead provides that all registrations are valid for one year beginning on December 1 of a calendar year through November 30 of the following calendar year. With regard to registrations of a specialty fertilizer for which applications for the registration period beginning July 1, 2005, have been submitted under current law, a registration must be issued for the period beginning on July 1, 2005, and ending on November 30, 2005, and expires on November 30, 2005.

Current law requires every licensee or registrant to file a semiannual statement that includes the number of net tons or metric tons of fertilizer distributed to nonlicensees or nonregistrants in Ohio by grade, packaged, bulk, dry, or liquid. The statements are due within 30 days after June 30, and within 30 days after December 31 of each calendar year. The bill instead requires a tonnage report to be submitted to the Director annually instead of semiannually. Under the bill, the tonnage report must be filed on or before November 30 of each calendar year and must include data from the period beginning on November 1 of the year preceding the year in which the report is due through October 31 of the year in which the report is due. A person who is required to submit a tonnage report within 30 days of June 30, 2005, under current law must submit the report by that date. However, the person must submit a new annual tonnage report by November 30, 2005.

Fertilizer inspection fee

(R.C. 905.36)

Under current law, a licensee or registrant under the Fertilizer Law must pay to the Director for all fertilizers distributed in Ohio an inspection fee at the rate of 12¢ per ton or 13¢ per metric ton. The bill increases the fee to 25¢ per ton and 28¢ per metric ton. The fee must be paid at the time the annual tonnage report is submitted (see above). Currently, if a tonnage report is not filed or payment of inspection fees is not made within ten days after the due date, a penalty of \$50 or 10% of the amount due, whichever is greater, must be assessed. Under the bill, the penalty must be assessed if the report is not filed or payment is not made on or before November 30 of the applicable calendar year.

Annual fertilizer sales statement

(R.C. 905.37)

Under current law, the Director of Agriculture must distribute annual statements of fertilizer sales by grades of materials and mixed fertilizer by counties in a manner prescribed by the Director. Further, the Director must publish at least annually a report of the analysis of fertilizers inspected. The bill makes the distribution of the annual statements and the publishing of the annual report discretionary rather than mandatory.

Merger of funds

(R.C. 905.38, 905.381, 905.50, 905.66, 907.16, and 923.46)

Current law creates the Commercial Feed, Fertilizer, and Lime Inspection and Laboratory Fund, which is used by the Director to administer and enforce the

Fertilizer Law and the Livestock Feeds Law. Current law also creates the Seed Fund, which is used by the Director to administer and enforce the Agricultural Seed Law. The bill merges these funds to create the Commercial Feed, Fertilizer, Seed, and Lime Inspection and Laboratory Fund and requires it to be used to administer and enforce all of the above Laws.

Pesticide registration and inspection fee

(R.C. 921.02 and 921.16; Section 203.24.03)

Under current law, no person may distribute a pesticide within Ohio unless the pesticide is registered with the Director. Each applicant for a registration is required to pay a registration and inspection fee established by rule for each product name and brand registered for the company whose name appears on the label. If an applicant files a renewal of a registration after the deadline established by rule or if a person distributes an unregistered pesticide in Ohio, the applicant or person must pay a penalty fee established by rule for each product name and brand registered for the applicant. The aggregate amount of the fees initially established by rule must be designed to cover, but not exceed, the costs incurred by the Department of Agriculture in administering the Pesticides Law and cannot be increased without the approval of the General Assembly.

The bill replaces the registration and inspection fee established by rule with a statutory fee of \$150 and changes the penalty for late registration or distribution of an unregistered pesticide from an amount established by rule to a statutory fee of \$75. The changes are effective on January 1, 2007. Until that date, the fees established by rule remain in effect. The bill also eliminates the provisions that specify that the fees that are established by rule must be designed to cover, but not exceed, the costs incurred by the Department in administering the Pesticides Law and that the fees cannot be increased without the approval of the General Assembly.¹⁸

Commercial feed inspection fee

(R.C. 923.44)

Under current law, the first distributor of a commercial feed must pay the Director of Agriculture a semiannual inspection fee at the rate of 10¢ per ton, with a minimum payment of \$10, on all commercial feeds distributed by him in this state. The bill changes the fee to 25¢ per ton and establishes the minimum payment at \$25.

¹⁸ *Because the fees are established in statute under the bill, any fee increase in the future would require a change in the law by the General Assembly.*

Commercial feed report

(R.C. 923.45)

Under current law, the Director is required to publish at least annually information concerning the sale of commercial feed and a comparison of the analyses of official samples of commercial feeds distributed in Ohio with the guaranteed analyses on the label. The bill makes annual publishing of the information discretionary rather than mandatory.

Plant pests program fee

(R.C. 927.69)

Current law establishes a fee of \$65 for the inspection of agricultural products and their conveyances under the Plant Pests Law. The bill changes the fee to an amount equal to the hourly rate of pay in the highest step in the pay range, including fringe benefits, of a plant pest control specialist multiplied by the number of hours worked by such a specialist in conducting an inspection.

Metrology and Scale Certification Fund

(R.C. 1327.511)

The bill changes the name of the Scale Certification Fund to the Metrology and Scale Certification Fund.

Bakery registration fee

(R.C. 911.02)

Current law requires each person, firm, partnership, or corporation that owns or operates a bakery to register each bakery that it owns or operates with the Director of Agriculture. The owner or operator of each bakery must pay an annual registration fee of \$30 for a production capacity of 1,000 pounds of bakery product per hour or less and an annual fee of \$30 for each 1,000 pounds of bakery product per hour capacity, or part of it, in excess of 1,000 pounds of bakery product per hour. The bill increases the annual fees from \$30 to \$60.

Similarly, existing law requires any person who owns or operates a home bakery with only one oven, in a stove of ordinary home kitchen design and located in a home, used for the baking of baked goods to be sold, to pay an annual home bakery registration fee of \$10 regardless of the capacity of the home bakery oven. The bill increases the annual fee from \$10 to \$20.

Cannery license fee

(R.C. 913.02)

Current law prohibits a person, firm, or corporation from engaging in the business of operating a cannery without obtaining a license for the operation of each cannery from the Director of Agriculture. In order to obtain a license, an application must be made on a form prescribed by the Director and must be accompanied by a fee of \$100. Similarly, the fee for an annual license renewal is \$100. The bill increases the cannery license fee and license renewal fee from \$100 to \$200.

Soft drink manufacturing or bottling and sale of syrup or extract fees

(R.C. 913.23)

Current law prohibits a person from manufacturing or bottling for sale within Ohio any soft drink in closed containers unless the person has a license issued by the Director of Agriculture. Upon receipt of an application for a license, the Director must examine the products and the place of manufacture where the business is to be conducted to determine whether the products and place comply with the statutes governing soft drink bottling. Upon finding there is compliance, and upon payment of a license fee of \$100, the Director must issue a license authorizing the applicant to manufacture or bottle for sale such soft drinks. The bill increases the annual license fee from \$100 to \$200.

Similarly, existing law states that no soft drink that is manufactured or bottled out of the state can be sold or offered for sale within this state unless the soft drink and the plant in which the soft drink is bottled are found by the Director to comply with the statutes governing soft drink bottling and are registered by the Director. The bill also requires that the plant in which such a soft drink is manufactured comply with those statutes. Current law establishes an annual \$100 registration fee for out-of-state soft drink manufacturers or bottlers. The bill increases the annual fee from \$100 to \$200.

However, current law provides that registration of out-of-state soft drink manufacturers or syrup and extract manufacturers is not required if a reciprocal agreement is in effect whereby a soft drink manufacturer or syrup and extract manufacturer located in this state is not subject to a license or registration fee by another state or a political subdivision of it. The bill retains the exemption and adds that the exemption also applies to out-of-state bottlers.

Existing law prohibits a person, other than a manufacturer holding a valid soft drink plant license, from selling, offering for sale, using, or possessing with

the intent to sell any soda water syrup or extract or soft drink syrup, to be used in making, drawing, or dispensing soda water or other soft drinks, without registering annually with the Director of Agriculture and paying a license fee of \$50. The bill increases the annual license fee from \$50 to \$100. In addition, the bill extends the exemption from registration and payment of the fee to a bottler holding a valid soft drink plant license.

Cold-storage warehouse operation license fee

(R.C. 915.02)

Existing law requires an applicant for an annual license to operate a cold-storage warehouse to pay a \$100 fee to the Director of Agriculture before the Director issues the license.¹⁹ The bill increases the fee to \$200.

Food locker establishment operation license fee

(R.C. 915.16)

Current law requires an applicant who wishes to operate an establishment in Ohio to obtain an annual license from the Department of Agriculture and to pay a fee of \$25 for the license.²⁰ The bill increases the fee to \$50.

Certificates of health and freesale

(R.C. 915.24 and 3715.04)

The bill authorizes the Director of Agriculture, upon the request of a food processing establishment, manufacturer of over-the-counter drugs, or manufacturer of cosmetics, to issue a certificate of health and freesale after determining that conditions at the establishment or place of business of the manufacturer, as applicable, have been found to be sanitary through an inspection conducted pursuant to the Pure Food and Drug Law. For each certificate issued, the Director must charge the establishment or manufacturer a fee of \$20. The bill requires the Director to deposit all such fees that are collected to the credit of the

¹⁹ Under law unchanged by the bill, "cold-storage warehouse" means a place artificially cooled by the employment of refrigerating machinery or ice or other means, in which articles of food are stored for 30 days or more at a temperature of 40° F, or lower (R.C. 915.01, not in the bill).

²⁰ Law unchanged by the bill defines "establishment" as any business location or building of which any of the following facilities or operations are a part: a frozen food manufacturing facility, slaughterhouse, locker room, locker, chill room, sharp freezing room and facilities, or sharp freezing cabinet (R.C. 915.14, not in the bill).

existing Food Safety Fund and adds the fees to the list of moneys that comprise that Fund.

The bill defines "certificate of health and freesale" as a document issued by the Director that certifies to states and countries receiving products that the products have been produced and warehoused in Ohio under sanitary conditions at a food processing establishment or at a place of business of a manufacturer of over-the-counter drugs or cosmetics, as applicable, that has been inspected by the Department of Agriculture. Other names of documents that are synonymous with "certificate of health and freesale" include, but are not limited to, "sanitary certificate of health and freesale," "certificate of origin," "certificate of freesale," "certificate of health and origin," "certificate of freesale, sanitary and purity," and "certificate of freesale, health and origin."

The bill defines "food processing establishment," by reference to existing law, as a premises or part of a premises where food is processed, packaged, manufactured, or otherwise held or handled for distribution to another location or for sale at wholesale. "Food processing establishment" includes the activities of a bakery, confectionery, cannery, bottler, warehouse, or distributor, and the activities of an entity that receives or salvages distressed food for sale or use as food. "Food processing establishment" does not include a cottage food production operation; a processor of maple syrup who boils sap when a minimum of 75% of the sap used to produce the syrup is collected directly from trees by that processor; a processor of sorghum who processes sorghum juice when a minimum of 75% of the sorghum juice used to produce the sorghum is extracted directly from sorghum plants by that processor; or a beekeeper who jars honey when a minimum of 75% of the honey is from that beekeeper's own hives.

Permits for large capacity scales and large meters

(R.C. 1327.62, 1327.70, 1327.71, and 1327.99)

The bill prohibits a person from operating a large capacity scale or a large meter in Ohio on and after September 1, 2005, unless the operator holds a valid permit issued by the Director of Agriculture or his designee for the scale or meter. The bill defines "large capacity scale" to include vehicle and axle-load scales used by law enforcement personnel in the enforcement of load limits on highways; commercial railway, vehicle, and livestock scales; and any other scales designated in rules adopted under the bill. Under the bill, "large meter" includes commercially used rack meters, vehicle tank meters, and liquefied petroleum gas truck mounted meters together with any other meters designated in rules adopted under the bill. The bill specifies that descriptions of the types of scales and meters that are listed in the definitions are included in National Institute of Standards and Technology Handbook 44 or its supplements and revisions, as referred to in

current law. In addition, the bill authorizes the Director to adopt rules in accordance with the Administrative Procedure Act that designate additional types of scales and meters to be included in the definitions of "large capacity scale" and "large meter," respectively, or that provide a more detailed explanation of terms initially included in those definitions by statute.

The bill specifies that whenever the Director or his designee has cause to believe that a person has violated or is violating the prohibition against operating a large capacity scale or large meter without a permit, the Director or his designee may conduct a hearing in accordance with the Administrative Procedure Act to determine whether a violation has occurred. If the Director or his designee determines that the person has violated or is violating the prohibition, the Director or his designee may assess a civil penalty against the person. Under the bill, the person is liable for a civil penalty of not more than \$500 for a first violation, for a second violation the person is liable for a civil penalty of not more than \$2,500, and for each subsequent violation that occurs within five years after the second violation, the person is liable for a civil penalty of not more than \$10,000. Any person assessed a civil penalty must pay the amount prescribed to the Department of Agriculture. All moneys so collected must be deposited in the General Revenue Fund.

In addition to the civil penalty, the bill establishes a criminal penalty for violation of the prohibition against operating a large capacity scale or large meter without a permit. Whoever violates the prohibition is guilty of a misdemeanor of the second degree on a first offense, and on each subsequent offense within seven years after the first offense, the person is guilty of a misdemeanor of the first degree.

Under the bill, a person who wishes to operate a large capacity scale or a large meter in Ohio must file a permit application with the Director on a form that the Director prescribes and provides. The applicant must include on the application any information solicited by the form and include with it a fee of \$250. Upon receipt of a completed permit application and payment of the required permit fee, the Director or his designee must issue to the applicant a permit to operate the large capacity scale or large meter that is the subject of the application. A permit expires on June 30 following its issuance and may be renewed annually on or before July 1 upon payment of a \$250 renewal fee.

The bill creates the Weights and Measures Permit Fund in the state treasury. Money from large capacity scale and large meter permit and permit renewal fees must be credited to the Fund. The Director may use money in the Fund to pay costs associated with the programs administered by the Department of Agriculture involving weights and measures.



Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43)

Current law imposes a tax on the distribution of wine, vermouth, and sparkling and carbonated wine and champagne at rates ranging from 30¢ per gallon to \$1.48 per gallon. From the taxes paid, a portion is credited to the Ohio Grape Industries Fund for the encouragement of the state's grape industry, and the remainder is credited to the General Revenue Fund. The amount credited to the Ohio Grape Industries Fund is scheduled to decrease from 3¢ to 1¢ per gallon on July 1, 2005. The bill extends the extra 2¢ earmarking through June 30, 2007.

OHIO CULTURAL FACILITIES COMMISSION

- Increases to 12 the total membership of, to nine the voting membership of, and to five voting members the quorum requirement for action by, the Ohio Cultural Facilities Commission.

Composition

(R.C. 3383.02)

The Ohio Cultural Facilities Commission engages in and provides for the development, performance, and presentation or making available of culture and professional sports and athletics to the public in Ohio, and the provision of training or education in culture. Under current law, the Commission consists of ten members, seven of whom are voting members and three of whom are nonvoting members. The voting members are appointed by the Governor, with the Senate's advice and consent, from different geographical regions of the state. Not more than four of the voting members can be affiliated with the same political party. The nonvoting members are the Ohio Arts Council's staff director, a Senate member appointed by the President of the Senate, and a House member appointed by the Speaker of the House of Representatives. Current law specifies that four voting members constitute a quorum for the conduct of Commission business and that the affirmative vote of four voting members is necessary for approval of any action taken by the Commission.

The bill increases the Commission's membership to 12 members, by adding two voting members to be appointed by the Governor with the Senate's advice and

consent. No more than five of the nine voting members appointed by the Governor to the Commission can be affiliated with the same political party.

The two additional voting members must be appointed within 60 days after the bill's effective date, one for a term ending December 31, 2007, and the other for a term ending December 31, 2008. Their successors will serve three-year terms, the same as the Commission's other voting members, commencing on January 1 and ending on December 31 in the appropriate years.

The bill also specifies that five voting members of the Commission constitute a quorum for the conduct of Commission business, and the affirmative vote of five voting members is necessary for approval of any action taken by the Commission.

OHIO ATHLETIC COMMISSION

- Allows the Executive Director of the Ohio Athletic Commission (OAC), when authorized by the OAC, to issue, deny, suspend, or revoke permits to hold prize fights and public boxing or wrestling matches or exhibitions; to require a permit applicant to deposit a specified security before a public boxing match or exhibition; and to allow a permit holder to substitute contestants and hold a match or exhibition at an alternative site under specified conditions.
- Prohibits the OAC's Executive Director from issuing a permit or license to conduct a match or exhibition in a municipal corporation or township that prohibits such matches or exhibitions.

Authority to issue, deny, suspend, or revoke boxing or wrestling match or exhibition permits

(R.C. 3773.34, 3773.38, 3773.39, and 3773.57)

Under current law, the Ohio Athletic Commission may issue, deny, suspend, or revoke permits to hold prize fights and public boxing or wrestling matches or exhibitions. When the Commission receives a permit application, the Commission must determine if the applicant holds a valid promoter's license, if the contestants in the match or exhibition are evenly and fairly matched, and whether the applicant is financially responsible and able to pay the contestants. If the

Commission determines the requirements are met, the Commission must issue a permit.

The Commission may require the applicant to deposit, before the match or exhibition, an amount estimated to be equal to the amount that the applicant will pay the contestants following the match or exhibition. If the applicant fails to make the deposit if it is required, the Commission may revoke the applicant's permit.

The bill allows the Commission's Executive Director to also perform all of the functions described above when authorized by the Commission to do so.

Currently, the Commission cannot issue a permit if the Commission determines that the municipal corporation or township where an applicant wants to hold a match or exhibition prohibits such matches or exhibitions. The bill applies this same prohibition to the Executive Director.

Alternative sites and substitute contestants for boxing or wrestling matches or exhibitions

(R.C. 3773.40)

Currently, the Commission may allow a permit holder to substitute contestants and to hold a match or exhibition for which a permit was already issued at an alternative site within the same municipal corporation or township under specified conditions. The bill allows the Commission's Executive Director, when authorized by the Commission, to also perform these functions.

OFFICE OF BUDGET AND MANAGEMENT

- Requires that the budgeting services provided by the Director of Budget and Management be supported by user charges.
- Changes the name of the State Accounting Fund to the "Accounting and Budgeting Fund," and requires that all user charges collected for accounting and budgeting services be deposited into that fund.
- Permits the Director to transfer, until June 30, 2007, interest earned in any Central Accounting System fund to the GRF.



User charges for OBM budgeting services

(R.C. 126.25)

Current law requires that the accounting services provided by the Director of Budget and Management be supported by user charges. The Director determines a rate that is sufficient to defray the expense of those services and deposits all money collected from user charges in the state treasury to the credit of the State Accounting Fund.

Under the bill, the budgeting services provided by the Director are also to be supported by user charges. Likewise, the Director is to determine a rate that is sufficient to defray the expense of the services. The bill changes the name of the State Accounting Fund to the "Accounting and Budgeting Fund," and requires that all user charges collected for accounting and budgeting services be deposited into that fund.

Authority to transfer interest to GRF

(Section 312.06)

Under current law, many sections of the Revised Code specify that interest earnings of particular funds are to be credited to those funds. The bill provides that, in spite of any such law, the Director of Budget and Management, through June 30, 2007, may transfer interest earned by any fund in the Central Accounting System to the GRF. This authority, however, does not apply to funds whose source of revenue is restricted or protected by the Ohio Constitution, federal tax law, or the federal "Cash Management Improvement Act of 1990."

DEPARTMENT OF COMMERCE

- Requires the Superintendent of Industrial Compliance to adopt rules for certifying and recertifying, rather than approving, plumbing inspectors and for the continuing education of plumbing inspectors.
- Allows the Superintendent of Industrial Compliance to (1) contract with a third party to conduct certification examinations of plumbing inspectors, (2) deny, suspend, or revoke certifications for inspectors, (3) examine inspectors under oath and examine their records, (4) enter into reciprocal certification agreements with other states and other agencies of this state, and (5) establish fees for the certification, recertification, and continuing education of inspectors.



- Repeals the prohibition preventing inspectors employed by the Department of Commerce from engaging in the plumbing business.
- Eliminates the Fire Marshal's Fireworks Training and Education Fund and requires the State Fire Marshal to use the State Fire Marshal's Fund instead for fireworks training and education.

Plumbing inspectors

Certifying and recertifying

(R.C. 3703.01 and 3703.10)

Under current law, the Superintendent of Industrial Compliance in the Department of Commerce is required to adopt rules prescribing minimum qualifications that the Director of Commerce uses in approving plumbing inspectors to do plumbing inspections for health districts. Rather than *approving* inspectors the bill, instead, requires the Superintendent to prescribe these minimum qualifications that the Superintendent, not the Director, uses for *certifying* and *recertifying* plumbing inspectors.

The bill allows the Superintendent to contract with one or more persons to conduct certification examinations of plumbing inspectors. The persons contracted with must prepare, administer, score, and maintain the confidentiality of the examination; maintain responsibility for all the expenses of conducting the examination; charge each applicant a fee for the examination, in an amount the Superintendent authorizes; and design the examination.

Under the bill, the Superintendent may deny, suspend, or revoke the certification of any inspector and examine an inspector under oath. The Superintendent also may examine the books and records of the inspector if the Superintendent finds the books and records relevant to denying, suspending, or revoking a certification or examining an inspector under oath.

The bill permits the Superintendent to adopt rules for the continuing education of inspectors.

Reciprocal registration, licensure, or certification

(R.C. 3703.01)

The bill permits the Superintendent to enter into reciprocal registration, licensure, or certification agreements with other states or other agencies of this state relative to inspectors if two requirements are met. First, the registration, licensure, or certification requirements of the other state or other agency must be substantially equal to the requirements adopted by the Superintendent. Second, the other state or other agency must extend similar reciprocity to inspectors certified by the Superintendent.

Fees

(R.C. 3703.07)

The bill allows the Superintendent to establish fees to pay the costs of fulfilling the duties of the Division under the Plumbing Law (R.C. Chapter 3703.). These fees can include, but are not limited to, fees for administering a continuing education program for inspectors and for certifying and recertifying inspectors. The fees must bear some reasonable relationship to the costs of administering and enforcing the Plumbing Law.

Engaging in the plumbing business

(R.C. 3703.04)

Under current law, plumbing inspectors employed by the Department are prohibited from engaging in or having an interest in the plumbing business or the sale of any plumbing supplies. The bill eliminates this prohibition.

Technical changes in the Plumbing Law

(R.C. 3703.01, 3703.03, 3703.04, 3703.05, 3703.06, 3703.07, 3703.08, 3703.10, and 3703.99)

Under current law, the Director and the Department possess the authority to act under the Plumbing Law. The bill gives this authority specifically to the Superintendent of Industrial Compliance and the Division of Industrial Compliance.

Fire Marshal's Fireworks Training and Education Fund

(R.C. 3743.57)

Under current law, licensed fireworks manufacturers and wholesalers must pay assessments determined by the State Fire Marshal into the Fire Marshal's Fireworks Training and Education Fund (used to pay for fireworks training and education). The bill eliminates the assessments and the fund, and because of that, the bill requires the Fire Marshal, instead, to use the State Fire Marshal's Fund for fireworks training and education.

OFFICE OF CONSUMERS' COUNSEL

- Changes the minimum annual assessment against a public utility for maintaining the Office of the Consumers' Counsel from \$50 to \$100.
- Beginning in 2006, revises the schedule by which the Consumers' Counsel collects the assessments from utilities.
- Eliminates the need to transfer funds from the GRF to the Consumers' Counsel Operating Fund so the Consumers' Counsel can operate during the beginning of each fiscal year.

Changes to assessments collected from public utilities for maintaining the Consumers' Counsel

(R.C. 4911.18)

For the purpose of maintaining the Office of the Consumers' Counsel, each public utility pays a yearly assessment. The amount is calculated by first computing an assessment in proportion to the intrastate gross earning or receipts of the utility for the preceding calendar year. The Consumers' Counsel may include in the initial computation, any amount underreported by a utility from a prior year. Excluded from the computation are earnings or receipts from sales to other public utilities. Under the bill, the Consumers' Counsel may also exclude from the computation any overreported amount from a prior year.

Under current law, a final computation of the assessment imposes a \$50 assessment on each utility whose assessment under the initial computation equaled \$50 or less. The bill changes the minimum yearly assessment against each utility

from \$50 to \$100. The utility payments are deposited in the State Treasury to the credit of the Consumers' Counsel Operating Fund.

Currently, the Consumers' Counsel must notify each utility of the sum assessed against it by October 1 of each year, after which payment is to be made to the Consumers' Counsel. The bill changes this schedule, to require that by May 15 of each year beginning in the 2006 calendar year, the Consumers' Counsel must notify each utility that had an assessment against it for the current fiscal year of more than \$1,000, that the utility must pay 50% of that amount to the Consumers' Counsel by June 20. This payment is an initial payment for the next fiscal year. The bill requires the Consumers' Counsel to make a final determination of the assessment against each utility by October 1 of each year, deducting any initial payment received, and to notify the utility of that amount. Each utility must pay the Consumers' Counsel the remaining assessment amount by November 1 of that year.

Under current law, at the beginning of each fiscal year, the Director of Budget and Management transfers an amount from the General Revenue Fund (GRF) to the Consumers' Counsel Operating Fund so the Consumers' Counsel can maintain operations during the first four months of the fiscal year. The amount transferred by the Director must be transferred back into the GRF from the Consumers' Counsel Operating Fund by December 31. Under the bill, beginning in calendar year 2006, these obligations no longer apply because under the bill's new assessment schedule the Consumers' Counsel Operating Fund will receive sufficient revenue from the initial assessment payment to operate at the beginning of each fiscal year.

OFFICE OF CRIMINAL JUSTICE SERVICES

- Abolishes the Office of Criminal Justice Services and transfers its personnel and functions to, and creates, the Division of Criminal Justice Services in the Department of Public Safety.

Abolition of the Office of Criminal Justice Services and creation of the Division of Criminal Justice Services

(R.C. 108.05, 109.91, 141.011, 181.251 (5502.63), 181.51 (5502.61), 181.52 (5502.62), 181.54 (5502.64), 181.55 (5502.65), 181.56 (5502.66), 2152.74, 2901.07, 2923.25, 3793.09, 4112.12, 5120.09, 5120.51, 5139.01, and 5502.01)

Existing law creates the Office of Criminal Justice Services with a director appointed by the Governor and employees appointed by the director. The Office serves as the state criminal justice services agency and performs criminal justice system planning in Ohio; collects, analyzes, and correlates information and data concerning the criminal justice system in Ohio, assists state and local governmental agencies and entities in dealing with criminal justice services planning and problems, administers federal and state programs and funds related to criminal justice, reports to the General Assembly, Attorney General, and Governor on ways to improve the criminal and juvenile justice systems, and performs other tasks related to criminal justice services. (R.C. 181.52.)

The bill abolishes the Office of Criminal Justice Services and creates a Division of Criminal Justice Services in the Department of Public Safety. Under the bill, the Director of Public Safety, with the concurrence of the Governor, appoints an executive director of the Division to serve at the pleasure of the Director. The executive director, subject to the control of the Director of Public Safety, appoints the Division's staff and enters into any agreements necessary to perform the Division's functions. The bill requires the Division to perform the same functions as the Office of Criminal Justice Services. (R.C. 5502.62.)

The bill makes appropriate changes in the Revised Code to reflect the abolition of the Office and creation of the Division, including the renumbering of sections. The bill provides for the transfer of the employees, assets, rules, business, and determinations of the Office to the Division. The bill repeals the authority of the Governor to appoint advisory committees to assist the Office of Criminal Justice Services. (R.C. 181.53.)

DEPARTMENT OF DEVELOPMENT

- Increases the state's contribution to loan guarantee reserve pools under the Capital Access Loan Program.
- Modifies eligibility for, the permissible purposes of, and the approval process for loans made under the Minority Business Development Loan Program, including the existing Bond Guarantee Program; increases the

size of the Minority Development Financing Advisory Board from nine to ten members; and modifies the Board's procedural requirements.

- Increases from 50% to 80% the amount of a loan that the Director of Development may guarantee in connection with the ban guarantees for the general Small Businesses Program and expands the purposes for which these loan guarantees may be made.

Increased state contributions under the Capital Access Loan Program

(R.C. 122.603)

The existing Capital Access Loan Program seeks to increase the amount of capital available to certain for-profit businesses located in Ohio by securing loans made from financial institutions to the businesses. Under the program, the state, a financial institution, and a business each make a contribution to a loan guarantee reserve pool at the financial institution. If a business defaults on a loan, the financial institution that made the loan can recover the delinquent loan amount from its reserve pool.

Under existing law, upon receiving a certification from a financial institution that it has made a loan under the program in a specified amount, the Director of Development disburses to the financial institution an amount equal to 10% of the principal amount of the loan for deposit into the financial institution's reserve pool. The bill increases the amount of the state's contribution with respect to the first three loans made by a participating financial institution. Under the bill, with respect to the first three loans made by a financial institution, the state contributes 50%, as opposed to 10%, of the principal amount of each loan.

Minority business development loan and bond guarantee programs

(R.C. 122.71, 122.72, 122.73, 122.74, 122.75, 122.751, 122.76, 122.78, 122.79, 122.82, and 122.83)

Generally, the existing Minority Business Development Loan Program involves the Minority Development Financing Advisory Board advising the Director of Development in determining assistance to minority businesses, including approval of loan applications. This law includes specifications about the composition of the Board and its duties; duties of the Director; and eligibility for, purposes of, and the approval process for loans made under the Program. Pursuant to recent authority, the Director also may guarantee bonds executed by sureties for minority businesses and certain enterprises (R.C. 122.90, not in bill).

The bill adds references to this Bond Guarantee Program as being part of the Minority Business Development Loan Program, including for purposes of administration by the Director. This also authorizes the Minority Development Financing Advisory Board to advise and make recommendations to the Director as to applications for assistance under the Bond Guarantee Program.

The bill modifies eligibility for, and expands the permissible purposes of, loans made under the Minority Business Development Loan Program by expressly adding African Americans and Latinos and replacing "Orientals" with Asians, and by removing a prohibition for loans used to procure or improve power driven vehicles, office equipment, raw materials, small tools, supplies, or inventories. In addition to other specifications for considering an application for a loan, the bill adds that an application will be considered if there is certification by the Minority Business Supplier Development Council that the applicant is a minority business.

The bill modifies the approval process for these loans to empower "regional economic development entities," rather than the Minority Development Financing Advisory Board, to submit recommendations and determinations to the Director. Specifically, if these entities submit a recommendation or determination to the Director, the Director is not required (as in existing law) to submit information to or to solicit recommendations from the Board. Regional economic development entities are defined in the bill to be entities having a contract with the Director to administer a loan under the Minority Business Development Loan Program in a particular area of Ohio.

The bill also increases the size of the Minority Development Financing Advisory Board from nine to ten members, with the Director or the Director's designee being added as a voting member of the Board. The bill reduces from five to four, the number of Board members necessary to constitute a quorum and from five to three, the number of affirmative votes necessary for any action to be taken by the Board.

Loan Guarantees for Small Businesses Program

(R.C. 122.77)

For purposes of the loan guarantees for the general Small Businesses Loan Program, the bill increases from 50% to 80% the amount of the loan that the Director of Development may guarantee. The bill also expands the purposes for which a loan guarantee may be made by eliminating a prohibition for guaranteeing loans used to procure or improve power driven vehicles, office equipment, raw materials, small tools, supplies, or inventories.

DEPARTMENT OF EDUCATION

Base-cost funding

- Prescribes a new method to determine annual inflationary measures for the per pupil base-cost amount (formula amount), which divides that amount into three areas (salaries and non-health care benefits, health care benefits, and other goods and services), each with a separate inflation rate.
- Prescribes that the formula amount is \$5,328 for fiscal year 2006 and \$5,489 for fiscal year 2007.
- Requires the payment of additional base funding supplements to school districts (not joint vocational school districts) for intervention services, professional development, and data-based decision making.
- Guarantees that each school district receive, in combined state and local funds, not less than the amount of base-cost funding the district received in fiscal year 2005.
- Eliminates the "cost-of-doing-business factor" in calculating a school district's base-cost funding, except in calculating the district's base-cost guarantee.
- Restores the practice of calculating a district's base-cost funding based on the *greater* of its current-year formula ADM or its three-year average formula ADM (instead of the current-year formula ADM as under current law).
- Establishes the School Funding Advisory Council to examine research for further defining a building-blocks methodology for school funding and to make recommendations to the Governor, Speaker of the House, and President of the Senate by September 30, 2006.
- Applies the bill's funding formula changes to county MR/DD boards, community schools, open enrollment, and the Post-Secondary Enrollment Options Program.

Guarantee/Transitional aid

- Provides that payments under the state basic aid guarantee for school districts with formula ADMs greater than 150 students be paid at 50% for fiscal year 2006 and that no guarantee payments be made in fiscal year 2007 and thereafter.
- Provides additional state transitional aid to prevent any city, exempted village, or local school district's fiscal year 2006 state "SF-3 funding plus charge-off supplement" to be less than it was in fiscal year 2005 or its fiscal year 2007 "SF-3 funding plus charge-off supplement" from decreasing more than 2% from fiscal year 2006.
- Provides additional state transitional aid to prevent any joint vocational school district's fiscal year 2006 or 2007 "joint vocational funding" from decreasing by more than 5% from the previous fiscal year.

Poverty-based assistance

- Renames the Disadvantaged Pupil Impact Aid subsidy as "Poverty-Based Assistance" and expands the subsidy to include additional payments for services to limited-English proficient students, teacher professional development, dropout prevention in the Big-Eight districts, and community outreach programs in the Urban-21 districts.

Parity aid

- Lengthens the phase-in period for State Parity Aid payments by establishing phase-in percentages of 80% for fiscal year 2006 and 85% for fiscal year 2007 (instead of 100% for both fiscal years 2006 and 2007 as under current law).
- Requires that Parity Aid be calculated using the greater of a district's formula ADM or three-year average formula ADM (instead of only formula ADM as under current law).

Transportation funding

- Specifies that, instead of using the established transportation formula, each school district's payment for regular student transportation in fiscal years 2006 and 2007 increase 2% from the previous fiscal year.

- Requires the Department of Education to recommend a new student transportation payment formula by July 1, 2006.

Special education funding

- Specifies that the weights for special education funding continue to be paid at 90% in fiscal years 2006 and 2007.
- Increases the catastrophic threshold amount for special education and related services to \$26,500 for categories one through five (from \$25,700 as under current law) and to \$31,800 for category six (from \$30,800 as under current law).
- Maintains for fiscal years 2006 and 2007 the \$30,000 personnel allowance for calculating the subsidy for speech-language pathology services.
- Specifies that the existing authorization for an additional subsidy for transporting disabled students refer to all students with disabilities (instead of only "developmentally handicapped" students as under current law).
- Requires the Department of Education, by May 30, 2006 and 2007, to report to the Office of Budget and Management the amount of state and local shares of special education and related services weighted funding calculated for each school district and the amount of federal special education funds passed through to each district.
- Permits a joint vocational school district to decline having the Department of Education transfer payments to it from the state accounts of city, exempted village, and local school districts or community schools for the excess cost of providing special education and related services.
- Requires the payment of weighted special education funding to state institutions for services to school-age children (instead of unit funding as under current law).
- Authorizes a school district, in the case of a disabled child placed in a residential "home" by court order, to charge the child's district of residence for the excess cost of providing special education and related services for that child.

- Authorizes the Department of Education to deduct and credit the excess cost calculated for any child receiving services from a school district other than the child's district of residence.

Other school funding provisions

- Specifies that the personnel allowance for the GRADS subsidy, for programs for pregnant and parenting students, remains at \$47,555 in fiscal years 2006 and 2007 (same as provided for fiscal years 2004 and 2005 under current law).
- Specifies that a recalculation of a school district's taxable valuation (due to refunded taxes or other changes in real property, public utility property, or tangible personal property valuation) affecting the district's amount of state aid apply to the district's "SF-3 payment."
- Requires that adjustments to a district's state aid relative to changes in its taxable value be paid on or before July 31 of the following fiscal year (instead of June 30 of the year in which the adjustment is made as under current law).
- Repeals the statute authorizing Equity Aid.

Ohio Choice Scholarship Program

- Establishes the Ohio Choice Scholarship Program, beginning in the 2006-2007 school year, to provide scholarships of up to \$3,500 to attend chartered nonpublic schools for elementary students enrolled in school district-operated schools in which two-thirds or more of the students failed reading and math achievement tests for three consecutive school years.

Pilot Project Scholarship Program

- Excludes students who are eligible to participate in the Pilot Project Scholarship Program (the Cleveland voucher program) from participation in the Ohio Choice Scholarship Program.
- Expands eligibility for scholarships under the Pilot Project Scholarship Program to eleventh and twelfth graders.

- Codifies a long-standing practice to allow new students to enter the Pilot Project Scholarship Program in any of grades K to 8.

Early childhood education programs

- Eliminates the Title IV-A Head Start and Head Start Plus programs.
- Establishes the Early Learning Initiative, paid for with TANF funds and jointly administered by the Department of Education and the Department of Job and Family Services, to provide early learning programs and day care to TANF-eligible children.
- Establishes a GRF-funded program to support comprehensive early childhood education (preschool) programs offered by school districts, educational service centers, and community-based entities to serve preschool children whose families earn up to 200% of the federal poverty guidelines.
- Prohibits specified early childhood education programs from receiving state funds in fiscal years 2006 and 2007 unless at least 50% of the program's teachers are working toward an associate degree and, beginning in fiscal year 2008, prohibits any such program from receiving state funds unless all of the program's teachers have an associate degree.

Reading grants

- Repeals authorization for the OhioReads community reading grants program.
- Eliminates the OhioReads Office within the Department of Education.
- Requires the Department of Education to award reading intervention grants to public schools to engage volunteers to work with struggling students, to improve reading outcomes in low-performing schools, and to close the achievement gap.
- Restricts participation in the Post-Secondary Enrollment Options Program after July 1, 2005, to Ohio residents.

Background to school funding formula changes

Base-cost and categorical funding

State operating funding for school districts is divided primarily into two types: base-cost funding and categorical funding. Base-cost funding is the prescribed minimum amount of money needed per pupil to pay the expenses that all school districts experience on a somewhat even basis. These expenses include compensation for teachers of curriculum courses, textbooks, janitorial and clerical services, administrative functions, and support services such as libraries and guidance counseling.

Categorical funding, on the other hand, is calculated for expenses that vary from district to district due to special circumstances, such as the demographics of the student population or the geography of the district. Some categorical funding, namely the current cost-of-doing-business factor and some adjustments to property value, is actually built into the base-cost formula. But most categorical funding is paid separately from the base cost including: additional weighted funding for special education and vocational education services, gifted education funding, disadvantaged pupil impact aid or "DPIA" (for districts with a significant proportion of low-income students), and transportation funding.

Equalization

State funds are used in the school funding formula to "equalize" school district revenues. Equalization means using state money to ensure that all districts, regardless of property wealth, have an equal amount of combined state and local revenues to spend for necessary services. In an equalized system, poor districts receive more state money than wealthy districts in order to guarantee the established minimum amount for all districts.

The school funding system essentially equalizes 23 mills of property tax for base-cost funding. It does this by providing sufficient state money to each school district to ensure that, if all districts in the state levied exactly 23 effective mills, they all would have the same per pupil amount of base-cost money to spend (currently adjusted in part to reflect the cost of doing business in the district's county).²¹

Base-cost formula

To determine a district's funding for base-cost expenses, current law prescribes the following formula:

²¹ *One mill produces \$1 of tax revenue for every \$1,000 of taxable property valuation.*

(Base-cost "formula amount" x cost-of-doing-business factor x the "formula ADM") minus (0.023 times "recognized valuation")

Where:

(a) The **"formula amount"** is the statutorily prescribed minimum amount for each student. The formula amount for fiscal year 2005 is \$5,169. Current law does not prescribe a formula amount for any year beyond fiscal year 2005.

(b) The **cost-of-doing-business factor** varies by county from 1.0000 (for the lowest-cost county) to 1.0750 (for the highest-cost county) as prescribed by statute based on a comparison of labor costs for each county. Currently, Gallia County is the lowest-cost county, and Hamilton County is the highest-cost county. The bill eliminates the cost-of-doing-business factor, except for calculating a district's base-cost guarantee.

(c) **"Formula ADM"** is the number of full-time-equivalent students reported as attending school in the district during the first full week of October.

(d) The district's **"recognized valuation"** is the value of taxable property in the district, adjusted to diminish the sudden effect of increases due to triennial appraisal updates.

(e) **"0.023"** represents **23 mills** of property taxation, which is the "charge off" presumed to be the district's contribution of the total base cost. In other words, an amount equal to 23 mills worth of the district's adjusted taxable value will be subtracted from the total amount of base cost calculated for the district.

State share percentage

As a result of the base-cost formula, a "state share percentage" can be computed. It is the percentage of the total base-cost amount supplied by the state after the charge-off is deducted. That state share percentage is subtracted from many, but not all, of the separately calculated categorical funding amounts to determine how much of those amounts is presumed to be the responsibility of the district. Current law, not changed by the bill, limits a district's share of the aggregate of its calculated special education, vocational education, and transportation funding to 3.3 mills beyond the 23-mill charge off. The state, then, pays the remainder of the district's calculated aggregate amount of funding for those three categories with a subsidy known as the "excess cost supplement."

Sample FY 2005 calculation

If Hypothetical Local School District were located in a county with a cost-of-doing-business factor of 1.025 (meaning its cost of doing business was assumed



to be 2.5% higher than in the lowest cost county), its formula ADM were 1,000 students, and it had an adjusted valuation of \$75 million, its fiscal year 2005 state base-cost funding amount would have been \$3,573,000, calculated as follows:

\$5,169 FY 2005 formula amount
x 1.025 District's cost-of-doing-business factor
\$5,298 District's adjusted formula amount
x 1,000 District's formula ADM
\$5,298,000 District's base-cost amount
- \$1,725,000 District's charge-off (assumed local share based on 23 mills charged against the district's \$75 million in adjusted property valuation)
\$3,573,000 District's state payment toward base-cost amount
67% District's state share percentage (per cent of total base cost paid by state)

How the base-cost "formula amount" was established

Since 1998, the General Assembly has utilized explicit methodologies for determining the base cost of an adequate education, from which is derived the formula amount. The current methodology relies on the premise that, all other things being equal, most school districts should be able to achieve satisfactory performance if they have available to them the average amount of funds spent by those districts that have met the standard for satisfactory performance.²² The standard for that performance adopted by the General Assembly in 2001 was meeting in fiscal year 1999 at least 20 of the 27 state academic performance standards. In essence, the General Assembly developed an "expenditure model" by examining the average per pupil expenditures of school districts deemed to be performing satisfactorily. From the initial group of these districts, it eliminated "outriders" (the top and bottom 5% in property wealth and personal income) and arrived at 127 districts to include in the model. The base cost derived from analyzing that group's fiscal year 1999 expenditures was \$4,814 per pupil for fiscal year 2002. That amount was increased by an inflation factor of 2.8% for fiscal year 2003 and, subsequently, 2.2% for fiscal years 2004 and 2005. The bill prescribes a method to determine future inflationary measures, to be applied to

²² *The fact that "all other things are not equal" is the rationale behind the "categorical" funding provided for school districts with greater needs for transportation funding, DPIA, special education services, and similar requirements that vary from district to district.*

fiscal years 2006 and 2007, that divides the formula amount into three areas, each with its own rate of inflation (see below).

Subsequent inflationary adjustments to the base-cost "formula amount"

(R.C. 3317.012(B)(1))

In 2003, the Governor established a "Blue Ribbon Task Force on Financing Student Success," made up of representatives from the education and business communities, government agencies, and the General Assembly. The Task Force met throughout 2003 and 2004 to develop recommendations for reforming school finance. One of its recommendations is to change the way the base-cost amount is adjusted for inflation. The Task Force recommended and the bill codifies that new method.

Using the fiscal year 2005 base-cost amount as the starting point, the bill specifies increases that presume a school district's per-pupil base cost is divided into three separate components each with a different rate of inflation: (1) salaries and non-health care benefits, (2) health care benefits, and (3) other goods and services needed by each district to support the education of all its students (including, but not limited to, building infrastructure and maintenance). The bill specifies that each area be inflated as follows:

Area of the Base-Cost Amount	Percentage of Base-Cost Amount	Inflationary Indicator²³	Inflation Rate FY 2006	Inflation Rate FY 2007
Salaries and non-health care benefits	71.2%	Employment Cost Index (all civilian workers, wages only)	2.5%	2.9%
Health care benefits	13.8%	Employment Cost Index (all civilian workers, benefits only)	7.2%	4.9%
Other goods and services	15.0%	Gross Domestic Product Deflator (all items)	2.0%	1.8%

²³ All of the inflationary measures specified in the bill are prepared by the Bureau of Labor Statistics of the U.S. Department of Labor.

FY 2006 and FY 2007 base-cost "formula amount"

(R.C. 3317.012(B)(2))

Using the inflationary measures described above, the bill specifies that the per-pupil base cost (or "formula amount") is \$5,328 for fiscal year 2006 and \$5,489 for fiscal year 2007.

Base funding supplements

(R.C. 3317.012(B)(3))

In addition to the base cost, the bill prescribes and phases in four new "base funding supplements" to be calculated for each school district, except joint vocational school districts.

(1) A base funding supplement for "academic intervention services" is calculated as 0.5% of the formula amount times the district's formula ADM times a phase-in multiple of 40% in fiscal year 2006 and 60% in fiscal year 2007. Presumably, the supplement is to help defray a district's costs for direct intervention services for students who are performing below grade level or at risk of failing state achievement tests.

(2) A base funding supplement for "professional development" is calculated as one-twentieth of the district's formula ADM times 4.4484% of the formula amount times a phase-in multiple of 40% in fiscal year 2006 and 60% in fiscal year 2007. Presumably, the supplement is to help defray a district's costs related to providing its teachers and administrators with general professional development opportunities.

(3) A base funding supplement for "data-based decision making" is calculated as 0.1087% of the formula amount times the district's formula ADM. It presumably is to help defray a district's cost in examining student performance data to determine the appropriate courses of action for students.²⁴

²⁴ R.C. 3302.021 currently requires the Department of Education to develop and implement a "value added progress dimension" to measure individual student performance over the entire course of a student's primary and secondary education. It is to be based on a model developed by a non-profit organization led by the Ohio business community. The Ohio Business Roundtable's "Battelle For Kids" has developed such a model program. Presumably, a district could use some or all of its supplement to pay for services from that or similar programs.

(4) Finally, a base funding supplement for "professional development regarding data-based decision making" is calculated as follows:

(20% of the district's "teacher factor" x 7.9082% of the formula amount)
+ (the district's "principal factor" x 7.9082% of the formula amount)

For "Urban-21" school districts, a district's "teacher factor" is formula ADM divided by 12.²⁵ For every other school district, the district's "teacher factor" is formula ADM divided by 17. Every district's "principal factor" is its teacher factor divided by 20.

Presumably, this supplement is to help districts defray the cost related to professional development for just its data-based decision-making activities.

Revised base-cost formula

(R.C. 3317.022)

The bill uses the new formula amounts and base funding supplements in setting forth the following revised formula for calculating a district's total base-cost funding:

The *greater* of (a) or (b) minus (0.023 times recognized valuation)

Where:

(a) = Cost-of-doing-business factor for fiscal year 2005 x the formula amount for fiscal year 2005 x formula ADM for fiscal year 2005;

(b) = (formula amount for the current fiscal year x the *greater* of the current formula ADM or the three-year average formula ADM) + the sum of all four of the base funding supplements.

Under this formula, a district's total base-cost amount (in both state and local shares) is guaranteed to be at least as much as calculated in fiscal year 2005.

The bill also restores the practice of calculating a district's base cost using the greater of its current formula ADM or its three-year average formula ADM.²⁶

²⁵ The "Urban-21" districts are: Akron, Canton, Cincinnati, Cleveland, Cleveland Heights, Columbus, Dayton, East Cleveland, Elyria, Euclid, Hamilton, Lima, Lorain, Mansfield, Middletown, Parma, South-Western, Springfield, Toledo, Warren, and Youngstown.

²⁶ Law prior to 2003 required the use the greater of a district's current formula ADM or its three-year average formula ADM in calculating base-cost funding. The formula was

The three-year average is calculated using the district's formula ADM for the current and previous two fiscal years. This approach tends to increase the amount of state funds for districts with declining enrollments.

Finally, the bill eliminates the use of the cost-of-doing-business factor, except for determining the district's fiscal-year-2005 base-cost guarantee.

Sample FY 2006 calculation

The following table shows the approximate projected state base-cost funding for Hypothetical Local School District, examined under "**Background to school funding formula changes**" above, using the new formula for fiscal year 2006 and assuming that its formula ADM and three-year average formula ADM are both 1,000.

\$5,328	FY 2006 formula amount
x <u>1,000</u>	District's formula ADM
\$5,328,000	District's base-cost amount subtotal
\$10,656	Base funding for academic intervention
\$4,740	Base funding for professional development
\$5,792	Base funding for data-based decision making
\$6,196	Base funding for professional development for data-based decision making
+ <u>\$27,384</u>	Total base funding supplements
\$5,355,384	Total FY 2006 Base-cost + base funding supplements
- <u>\$1,725,000</u>	District's charge off (23 mills charged against \$75 million in adjusted property valuation)
\$3,630,384	District's state payment toward base-cost and base funding supplements
68%	District's state share percentage

changed in that year to require using only the current formula ADM in calculating a district's base cost. See Am. Sub. H.B. 95 of the 125th General Assembly.

Revised base-cost formula for joint vocational school districts

(R.C. 3317.16)

Joint vocational school districts (JVSDs) are special taxing districts that provide career-technical instruction to high school students. They are formed by agreements among two or more school districts. The member districts send their students who wish to enroll in career-technical programs to the JVSD for those services. In addition, JVSDs may enter into contracts with nonmember districts and schools to provide services specified in the contracts.

Under current law, a JVSD's base-cost funding and some of its categorical funding are calculated in the same manner as other school districts, except that its "charge off" is only ½ mill (or 0.0005) times its recognized valuation. Under the bill, the revised base-cost formula for JVSDs is:

The *greater* of (a) or (b) minus (0.0005 x recognized valuation)

Where:

(a) = Cost-of-doing-business factor for fiscal year 2005 x the formula amount for fiscal year 2005 x formula ADM for fiscal year 2005;

(b) = formula amount for the current fiscal year x the *greater* of the current formula ADM or the three-year average formula ADM.

The bill does not provide for the payment of base funding supplements to JVSDs.

Further research into education costs and the School Funding Advisory Council

(R.C. 3317.012(C) and Section 206.09.96)

The bill states that the per pupil base-cost amounts prescribed for fiscal years 2006 and 2007 represent increases in the fiscal year 2005 amount, which was determined using an outputs-based approach. It also states that the new base funding supplements prescribed by the bill are the product of an inputs-based methodology and notes further that the Governor's Blue Ribbon Task Force on Financing Student Success intends that the per pupil base-cost amount will eventually be based on inputs, as evidence-based research in this area becomes available.²⁷

²⁷ R.C. 3317.012(C), last paragraph.

Accordingly, the bill also establishes the School Funding Advisory Council to examine research "to further refine a building-blocks methodology for school funding so that increasingly stronger correlations exist between resources and academic results." Research examined must include, but not be limited to, research underway at Battelle For Kids and the University of Washington's Center for Reinventing Public Education. The Council is also to examine "timeline issues" related to the recommendations of the Governor's Blue Ribbon Task Force.

The Council is to consist of up to 16 members as follows:

- (1) Up to six representatives of the business and education communities, appointed by the Governor;
- (2) One person employed by the Department of Education and three other persons employed by other executive branch agencies, appointed by the Governor;
- (3) Up to three members of the House of Representatives (at least one from the minority party), appointed by the Speaker of the House; and
- (4) Up to three members of the Senate (at least one from the minority party), appointed by the President of the Senate.

The Governor must appoint one of the representatives of the business community as the Council chairperson. All appointments must be made by December 31, 2005.

The Council must submit its recommendations to the Governor, Speaker of the House, and President of the Senate by September 30, 2006. Upon issuing its recommendations, the Council will cease to exist.

Transitional aid

(Sections 206.09.39 and 206.09.42)

To protect districts from substantial losses in state funding due to the bill's funding formula changes, the bill specifies that in fiscal year 2006, no school district's "SF-3 funding plus charge-off supplement" be less than it was for fiscal year 2005. It also specifies that in fiscal year 2007 no district's "SF-3 funding plus charge-off supplement" decrease by more than 2%. Accordingly, the Department of Education must pay a district additional state funds, as necessary, to eliminate any decrease in fiscal year 2006 and to reduce the decrease to 2% in fiscal year 2007.

A district's "SF-3 funding plus charge-off supplement" comprises most of the state subsidies paid to school districts, including base-cost, special education,

vocational education, transportation, DPIA (or poverty-based assistance under the bill's new provisions), gifted education units, GRADS subsidy for programs for parenting and pregnant students, adjustments for classroom teachers and educational service personnel, parity aid, state aid guarantee, reappraisal guarantee, and the charge-off supplement.

The bill also requires the Department when calculating the reappraisal guarantee for a district in fiscal years 2006, 2007, or 2008 to include any payments it made to the district under the temporary transitional aid subsidy in the previous fiscal year.²⁸

In addition, the bill guarantees that no JVSD will receive a decrease in its "joint vocational funding" in excess of 5% in each of fiscal years 2006 and 2007. The bill defines "joint vocational funding" as the district's aggregate state funding for base-cost funding, special education, vocational education, GRADS, and the JVSD state aid guarantee.

(Note, the bill phases out the state aid guarantee for school districts, including JVSDs (see "Phase-out of state aid guarantee" below).)

Phase-out of state aid guarantee

(R.C. 3317.0212 and 3317.16(H))

Current law guarantees that every school district with a formula ADM over 150 will receive a minimum amount of total state aid (base cost and categorical funding) based on its state funds for fiscal year 1998. The state funds guaranteed include the sum of base-cost funding, special education funding, vocational education funding, gifted education funding, DPIA funds, equity aid, state subsidies for teachers with high training and experience, and state "extended service" subsidies for teachers working in summer school. The Department of Education is required to pay a district the difference between the amount calculated under the current formulas and the amount the district received in fiscal year 1998. A similar guarantee applies to JVSDs.

²⁸ *The reappraisal guarantee prevents a school district from losing any state funds in the first fiscal year after the county auditor has reappraised or updated the valuation of taxable property. (County auditors formally reappraise property value every six years and, in the third year of the six-year period, perform a statistical update of the valuations.) The effect is to exempt districts for one year against any reduction in state funding that might be triggered by the increase in the valuation of taxable property. (R.C. 3317.04, not in the bill.)*

Under the bill, the amount calculated under the guarantee for a district (including JVSDs) in fiscal year 2006 is to be multiplied by 50%, and the bill provides that no payments be made in fiscal year 2007 or thereafter.

Application of funding formula changes to county MR/DD boards, community schools, open enrollment, and Post-Secondary Enrollment Options Program

(R.C. 3313.98, 3314.08, 3317.20, and 3365.01)

The bill applies its new base-cost formula to funding for county MR/DD boards, community schools (charter schools), interdistrict open enrollment, and the Post-Secondary Enrollment Options Program. In doing so, it provides that per pupil payments for participants under those provisions will be determined based on the *greater* of the formula amount for fiscal year 2005 (including the fiscal year 2005 cost-of-doing-business factor) or the current year formula amount plus a per pupil amount of the four new base funding supplements.

Poverty-based assistance

(R.C. 3317.029; conforming changes in R.C. 3314.03, 3314.08, 3314.13, 3317.0212, and 3317.0217)

The bill revises the Disadvantaged Pupil Impact Aid (DPIA) subsidy, which is paid to school districts with relatively high concentrations of families receiving public assistance, and renames the subsidy as "poverty-based assistance." The revisions consist of changes to the current components of the subsidy, plus a phase-in of four new components.

Poverty index

(R.C. 3317.029(A))

As with the DPIA subsidy, the amount of poverty-based assistance paid to a school district will depend on its percentage of children receiving public assistance, compared to the statewide percentage--a relative measure called the "poverty index" (formerly, the "DPIA index"). For example, a school district with a poverty index of 1.0 has the same proportion of children living in families receiving "family assistance" as the state as a whole. A district with a poverty index of 0.25 has a proportion of children receiving family assistance that is 25% of the statewide proportion. A district with a poverty index of 1.25 has a proportion of children receiving family assistance that is 125% of the statewide proportion.

The poverty index accounts for each district's five-year average proportion of children ages 5 to 17 whose families (1) have incomes not exceeding the federal poverty guidelines²⁹ and (2) participate in one of the following programs:

- (a) Ohio Works First;
- (b) Food Stamps;
- (c) Medicaid;
- (d) The Children's Health Insurance Program ("CHIP"); or
- (e) The state Disability Assistance program.

Using the five public assistance programs to calculate the poverty index represents a change from calculating the DPIA index, which was based only on Ohio Works First caseloads. (Prior law had scheduled the DPIA index to be based on caseloads for the five programs beginning in fiscal year 2004, but the 125th General Assembly postponed the switch when it opted to provide a 2% across-the-board increase in each district's DPIA subsidy in each of fiscal years 2004 and 2005.³⁰)

Guaranteed minimum payment

(R.C. 3317.029(B))

The bill guarantees that each school district annually will receive poverty-based assistance that is at least equal to its fiscal year 2005 DPIA payment. If the sum of the various components of the new subsidy does not equal the district's fiscal year 2005 DPIA payment, the district receives the amount of its fiscal year 2005 payment.

All-day kindergarten payment

(R.C. 3317.029(D))

The one component of the old DPIA subsidy that the bill does not revise is the payment for all-day kindergarten. Therefore, districts with a poverty index greater than or equal to 1.0, or a formula ADM exceeding 17,500 students, that offer all-day kindergarten continue to receive state funding for the additional half-day for their kindergarten students.

²⁹ The 2004 federal poverty guideline for a family of three was \$15,670.

³⁰ Section 41.10 of Am. Sub. H.B. 95 of the 125th General Assembly.

Safety, security, and remediation payment

(R.C. 3317.029(C))

As with DPIA, a component of poverty-based assistance pays districts for "measures related to safety and security and for remediation or similar programs." The bill (1) expands eligibility for this component by reducing the qualifying threshold from a DPIA index of 0.35 to a poverty index of 0.25 and (2) replaces the DPIA payment formula with a two-tiered formula that pays Tier 1 to all districts with a poverty index of 0.25 or higher and phases in an additional Tier 2 payment to districts with a poverty index of 1.25 or higher.

Tier 1 is a sliding scale that begins with 0.5% of the base-cost formula amount (\$26.64 in fiscal year 2006) per student for districts with a poverty index equal to 0.25 and ends with 2% of the base-cost formula amount (\$106.56 in fiscal year 2006) per student for districts with poverty indexes of 1.25 or higher. The per student amount is multiplied by the district's "poverty student count," which is the number of students ages 5 to 17 residing in the district whose families have income not exceeding the federal poverty guidelines and participate in one of the public assistance programs.

Tier 2 is an additional amount, also paid on a sliding scale, to districts with poverty indexes of 1.25 or higher. The payments range from 4% of the base-cost formula amount (\$213.12 in fiscal year 2006) per student for a district with a poverty index equal to 1.25, to 14% of the base-cost formula amount (\$745.92 in fiscal year 2006) per student for districts with a poverty index of 1.75 or higher. As with Tier 1, the per student amount is multiplied by the district's poverty student count. However, the bill phases in Tier 2 by directing that 40% of the calculation be paid in fiscal year 2006, and 60% in fiscal year 2007.

K to 3 class-size reduction payment

(R.C. 3317.029(E))

The third component of DPIA, the so-called "class-size reduction" payment, is intended to assist districts to increase the amount of instructional attention for students in grades K to 3. It is paid on a sliding scale, and is based on the amount of money it would take to hire additional teachers to reduce class sizes in those grades, although districts' strategies to increase instructional attention need not include hiring more teachers.

The bill raises the eligibility threshold for this component from a DPIA index of 0.60 to a poverty index of 1.0. It also revises the payment formula by (1) reducing the imputed teacher-pupil ratio from 23:1 to 20:1 for districts at the

bottom of the sliding scale and (2) reducing the threshold index at the top of the scale from a DPIA index of 2.5 to a poverty index of 1.5.

Average teacher salary. One of the variables of the class-size reduction payment formula is the statutorily designated statewide average teacher salary. This amount was last set at \$43,650 for fiscal year 2003. The bill sets it at \$56,465 for fiscal year 2006 and \$58,667 for fiscal year 2007.

Payment for services to limited-English proficient students

(R.C. 3317.029(F) and (J)(2))

The bill phases in a new poverty-based component to assist with services to students who are limited-English proficient. To qualify for this payment, both of the following must apply:

- (1) The district's poverty index must be 1.0 or higher; and
- (2) The proportion of the district's students who were limited-English proficient in the 2002-2003 school year must have been at least 2%, as reported by the Department of Education on the district's state report card.

The payment formula is a sliding scale that ranges from 12.851% of the base-cost formula amount (\$684.70 in fiscal year 2006) per limited-English proficient student for a district with a poverty index equal to 1.0, to 25.702% of the base-cost formula amount (\$1,369.40 in fiscal year 2006) per limited-English proficient student for districts with a poverty index of 2.0 or higher. The Governor's budget proposal indicates that this subsidy should be phased-in, with districts eligible for 40% of the formula calculation in fiscal year 2006 and 60% in fiscal year 2007. However, a drafting error appears to have omitted the direction to phase-in this subsidy.

Counting limited-English proficient students after fiscal year 2007. In fiscal years 2006 and 2007, the per student amount calculated by the formula is to be multiplied by the number of the district's limited-English proficient students in the 2002-2003 school year, as determined by the Department when it calculated the district's limited-English proficient percentage on the state report cards. The bill requires the Department, by July 1, 2006, to recommend to the General Assembly and the Director of Budget and Management a new method of identifying the number of limited-English proficient students for purposes of calculating payments after fiscal year 2007.

Use of the payment. Each school district must use its payment for services to limited-English proficient students, in one or more of the following ways:

(1) To hire teachers for limited-English proficient students or other personnel to provide intervention services for those students;

(2) To contract for intervention services for those students; or

(3) To provide other services to assist those students in passing the third grade reading achievement test, and to provide the statutorily mandated intervention services to those students who have not passed that test.

Professional development payment

(R.C. 3317.029(G) and (J)(3))

A second new component for poverty-based assistance that the bill phases in is a payment for professional development of teachers, payable to districts with poverty indexes greater than 1.0. The payment is a percentage of the base-cost formula amount, multiplied by a calculated number of teachers. For this purpose, the bill calculates each eligible district's number of teachers by dividing its formula ADM by 20. The per teacher amount is set on a sliding scale for districts with poverty indexes greater than 1.0 but less than 2.0. For districts with poverty indexes of 2.0 or higher, the per teacher payment is 4.4484% of the base-cost formula amount (\$237 in fiscal year 2006) per teacher. The bill phases in this component by directing that districts be paid for 40% of the formula calculation in fiscal year 2006 and 60% in fiscal year 2007.

Use of the payment. A district may, but is not required to, use its professional development payment for professional development of teachers or other licensed personnel providing educational services to students. But if it elects to use the payment for professional development, there are two restrictions:

(1) The professional development must be in one or more of the following areas: (a) data-based decision making, (b) standards-based curriculum models, or (c) job-embedded professional development activities that are research-based, as defined in federal law; and

(2) The professional development program must be on the Department of Education's list of eligible programs, unless the Department grants the district a waiver to implement an alternative program.

Dropout prevention payment

(R.C. 3317.029(H) and (J)(4))

The bill phases in another new poverty-based component for dropout prevention programs. Only the "Big-Eight" school districts (Akron, Canton,

Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown) are eligible. This component pays an amount for each student in the district's formula ADM. That amount is 0.5% of the base-cost formula amount (\$26.64 in fiscal year 2006), multiplied by the district's poverty index. Therefore, the higher a district's poverty index, the higher its per pupil payment. For example, if a district's poverty index is 1.5, the per pupil payment would be (0.5% x formula amount x 1.5), which equals 0.75% of the formula amount (\$39.96 in fiscal year 2006). If the district's poverty index is 2.5, the per pupil payment would be (0.5% x formula amount x 2.5), which equals 1.25% of the formula amount (\$66.60 in fiscal year 2006).

The bill phases in this component by directing that districts be paid for 40% of the formula calculation in fiscal year 2006 and 60% in fiscal year 2007.

Use of the payment. The Big-Eight districts must use their dropout prevention payment for one or both of the following purposes:

- (1) Preventing at-risk students from dropping out of school; or
- (2) Implementing any of the safety, security, or remediation activities permitted for the safety, security, and remediation payment.

If the district elects to use all or part of the payment for dropout prevention, it must implement a program on a list provided by the Department of Education, unless the Department grants the district a waiver to implement an alternative program.

Community outreach payment

(R.C. 3317.029(I), (J)(5), and (M)(2))

The last new component of poverty-based assistance that the bill phases in is a payment for community outreach services. Only the state's 21 urban districts are eligible for this payment. The formula pays one "community liaison personnel allowance" for every 1,000 students in the district's formula ADM. That personnel allowance is established at \$42,729 for fiscal year 2006 and \$44,396 for fiscal year 2007. The bill phases in this component by directing that districts be paid for 40% of the formula calculation in fiscal year 2006 and 60% in fiscal year 2007.

Use of the subsidy. Districts that receive a community outreach payment must use it for one or both of the following purposes:

- (1) To hire or contract for community liaison officers, attendance or truant officers, or safety and security personnel; or

(2) To implement any of the safety, security, or remediation activities permitted for the safety, security, and remediation payment.

Spending prescriptions

(R.C. 3317.029(J) and (M))

As with the DPIA program, the bill establishes guidelines for spending poverty-based assistance, with the strictest guidelines applying to districts with poverty indexes of 1.0 or higher (the districts that receive most of the subsidy).

Poverty indexes of 1.0 or higher. Districts with poverty indexes of 1.0 or higher must spend their poverty-based assistance first to provide all-day kindergarten to all of the kindergartners they certified when they requested an all-day kindergarten payment. They must then follow the spending guidelines established for the payments for services to limited-English proficient services, professional development, dropout prevention, and community outreach, described above.

The bill maintains the current law regarding these districts' use of the safety, security, and remediation payment, which mandates that the payment be used for (1) programs designed to ensure that schools are free of drugs and violence and have a disciplined environment conducive to learning or (2) remediation for students who have failed or are in danger of failing any of the state's achievement tests. Districts may also use all or part of their professional development, dropout prevention, and community outreach payments for those safety, security, and remediation purposes.

Finally, the bill maintains the current law requiring these districts to use whatever remains of their poverty-based assistance payment (mostly the class-size reduction payment) for increasing the amount of instructional attention to students in grades K to 3, either by reducing the ratio of students to instructional personnel (teachers, aides, or paraprofessionals) or by undertaking other initiatives that have the effect of increasing the length of the school day or school year.

Poverty indexes below 1.0. Most districts with poverty indexes below 1.0 are eligible only for the safety, security, and remediation payment. Current law itemizes a number of services and mandates that these districts spend at least 70% of their DPIA payments to provide one or more of them. The bill eliminates the 70% prescription, thereby requiring these districts to spend all of their poverty-based assistance payment on one or more of the itemized services.

A district with a poverty index below 1.0 qualifies for an all-day kindergarten payment if its formula ADM exceeds 17,500. For such a district, the

bill maintains the current law requiring that the district first spend what is necessary to provide all-day kindergarten, and then spend all (instead of 70%) of the remainder on one or more of the itemized services. Likewise, an Urban 21 district that has a poverty index below 1.0 must first use its community outreach payment as prescribed by the bill, and then must spend the remainder of its payment for the itemized services.

Report on spending prescriptions

(Section 206.09.42)

The bill requires the Department of Education to review the spending requirements for poverty-based assistance and submit a report recommending modifications, by July 1, 2006, to the Director of Budget and Management, the Speaker of the House, and the President of the Senate. The recommendations must include "decreasing degrees of flexibility of spending for districts not meeting adequate progress standards as defined by the Department." The Department must specifically review the requirements for increasing instructional attention to children in grades K to 3 with the class-size reduction payment. The Department must use reports submitted by school districts concerning intervention funding to inform its recommendations.³¹

Parity aid

(R.C. 3317.0217)

Background

In 2001, the General Assembly began phasing in a new subsidy known as "parity aid," to replace equity aid (and another, former subsidy known as "power equalization"). The subsidy pays additional state funds to school districts based on combined income and property wealth. For most eligible school districts, parity aid essentially pays state funds to make up the difference between what 9.5 mills would raise against the district's income-adjusted property wealth versus what 9.5 mills would raise in the district where the income-adjusted property wealth ranks as the 123rd highest (the 80th percentile).

³¹ Section 206.09.90 of the bill summarizes the state funding appropriated for student intervention services and requires each school district to report to the Department concerning its spending for intervention services. Each district's report is due by December 31, 2006, which is six months after the deadline for the Department's recommendations on poverty-based assistance spending.

The 9.5-mills represent the General Assembly's determination of the average number of "effective operating mills" (including school district income tax equivalent mills) that school districts in the 70th to 90th percentiles of property valuations levied in fiscal year 2001 *beyond* the millage needed to finance their calculated local shares of base-cost, special education, vocational education, and transportation funding. The amount of parity aid, therefore, varies based on how far below the 123rd district a district's income-adjusted valuation falls. The 123 districts having the highest income-adjusted valuations are not eligible for parity aid. Districts need not actually levy any of the 9.5 mills to receive a state parity aid payment.

The bill extends the phase-in

Current law provides that state parity aid payments for fiscal year 2005 be 76% of the amount calculated, and for fiscal years thereafter be 100% of the amount calculated. The bill provides, instead, that those payments for fiscal year 2006 be 80% of the amount calculated and for fiscal year 2007 be 85% of that amount.

The bill also provides that the Department of Education calculate a district's parity aid amount using the *greater* of the district's formula ADM or its three year average formula ADM, rather than simply the formula ADM as under current law.

Transportation subsidy

(Section 206.09.21)

Background

Each school district is eligible for a subsidy for transporting students to and from school.³² Like base cost, the amount calculated is shared between the district and the state. The amount of additional state funding paid for transportation is the *greater* of 60% or the district's state share percentage of the amount calculated by the formula.

³² *A city, exempted village, and local school district is required to provide transportation to and from school for each student in grades K through 8 who resides in the district and lives more than two miles from the school the student attends. The requirement applies also to community school and nonpublic school students unless the direct travel time measured by school bus is more than 30 minutes. District also may provide transportation to resident students in grades 9 through 12. (R.C. 3327.01, not in the bill.)*

The formula itself is based on the statistical method of multivariate regression analysis.³³ Under this formula, each district's payment for transportation of students on school buses is based on (1) the number of daily bus miles traveled per day per student in the previous fiscal year and (2) the percentage of its student body that it transported on school buses in the previous fiscal year (whether the buses were owned by the district board or a contractor).³⁴ The Department of Education updates the values for the formula and calculates the payments each year based on analysis of transportation data from the previous fiscal year. Current law requires the Department to apply a 2.8% inflation factor to the previous year's cost data. There is a separate "rough road subsidy" targeted at relatively sparsely populated districts where there are relatively high proportions of rough road surfaces.

Payments for fiscal years 2006 and 2007

Instead of calculating the transportation subsidy as otherwise required under current law, the bill specifies that each district's transportation subsidy in each of fiscal year 2006 and 2007 be 2% greater than it was in the previous fiscal year. Districts that did not receive a state subsidy for transportation in fiscal year 2005 are not eligible for transportation funding in either fiscal year 2006 or 2007.

Recommendations for formula changes

The bill requires the Department of Education, by July 1, 2006, to submit to the Director of Budget and Management, President of the Senate, and Speaker of the House recommendations for a new transportation funding formula.

³³ *Regression analysis is a statistical tool that can explain how much of the variance in one variable (in this case, transportation costs from district to district) can be explained by variance in other variables (here, number of bus miles per student per day and the percentage of students transported on buses).*

³⁴ *The statute presents the following model of the formula based on an analysis of FY 1998 transportation data: $51.79027 + (139.62626 \times \text{daily bus miles per student}) + (116.25573 \times \text{transported student percentage})$. The law directs that the formula be updated each year to reflect new data. (R.C. 3317.022(D)(2).)*

Special education weighted funding

(R.C. 3317.013)

Background

School districts are eligible to receive an additional amount per pupil for providing special education and related services to each student who is identified as a disabled student.³⁵ The amount of additional funding is calculated as a weight (or multiple) applied to the base-cost formula amount that represents an expression of additional costs attributable to the special circumstances of the students in each class. For example, a weight of 0.25 would indicate that an additional 25% of the formula amount is presumed necessary to provide additional services to a student in that category. Each school district is paid its "state share percentage" of the additional weighted amount calculated for special education and vocational education.

The following weights are prescribed by current law for special education and related services.³⁶

Disabilities	Weight
Speech and language only	0.2892
Specific learning disabled Developmentally handicapped Other health handicapped-minor	0.3691
Severe behavior handicapped Hearing handicapped Vision Impaired	1.7695
Orthopedically handicapped Other health handicapped-major	2.3646

³⁵ *School districts and community schools (charter schools) are required under state and federal law to identify each disabled student enrolled in school and provide appropriate services for that student. Services must be provided in accordance with the student's "individualized education program" or "IEP." (R.C. Chapter 3323. and 20 U.S.C. 1400 et seq.)*

³⁶ *Two categories of multiples also are prescribed for the provision of vocational education and associated services (see R.C. 3317.014, not in the bill).*

Disabilities	Weight
Multihandicapped	3.1129
Both visually and hearing disabled	4.7342
Autism	
Traumatic brain injury	

Continued phase-in of special education weights

Current law provides that the special education weights are to be paid at 88% in fiscal year 2004 and 90% in fiscal year 2005. It does not provide any phase-in percentages for subsequent fiscal years. The bill, on the other hand, specifies that the special education weights continue to be paid at 90% in both fiscal years 2006 and 2007.

Threshold catastrophic amount

(R.C. 3317.022(C)(3))

In addition to the prescribed weighted amount, school districts and community schools (charter schools) may receive a "catastrophic cost" subsidy for some special education students if the costs to serve the students exceed the prescribed "threshold catastrophic amount." A school district may receive the sum of one-half of the district's costs in excess of the threshold amount and (one-half of those costs times the district's state share percentage). A community school may receive 100% of the amount of its costs in excess of the threshold amount.³⁷

The bill increases the catastrophic threshold amount to \$26,500 for categories one through five (from \$25,700 as under current law) and to \$31,800 for category six (from \$30,800 as under current law).

Speech-language services subsidy

(R.C. 3317.022(C)(4) and 3317.16(D)(2))

A separate subsidy for speech-language pathology services pays school districts their state share percentage of one "personnel allowance" for every 2,000 students in their formula ADMs. The bill maintains the personnel allowance at \$30,000, which has been the amount of the allowance since fiscal year 2002.

³⁷ R.C. 3314.08(E), 3317.022(C)(3), and R.C. 3317.16(E).

Special education transportation subsidy

(R.C. 3317.024(J))

School districts and educational service centers are eligible for an additional subsidy for transporting disabled students who cannot be transported by a regular school bus. Current law refers only to "developmentally handicapped" students in authorizing this additional payment. The bill provides instead that it applies to all disabled students.

Special education funding report

(R.C. 3317.013)

The bill requires the Department to submit a report to Office of Budget and Management by May 30, 2006 and 2007 that specifies for each school district the amount of local, state, and federal pass-through funds allocated for special education and related services. The Department is currently required to submit such a report on May 30, 2004 and 2005.

Payment of special education excess costs to JVSDs

(R.C. 3317.16(G))

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

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

school and to pay that amount to the JVSD. The bill permits a JVSD to decline having the Department transfer payments for excess costs and, presumably, to rely instead on a direct payment from the district or community school.

Payment of excess costs for children in residential "homes"

(R.C. 3323.14; conforming changes in R.C. 3314.08(A)(10), 3317.023(N), and 3317.0212)

The bill authorizes a school district that is providing special education and related services to a child who has been placed by court order in a residential "home" (that is a home, institution, foster home, group home, or other residential facility that receives or cares for children) to charge excess costs to the child's district of residence (generally, where the child's parent resides).

It also authorizes the Department of Education to deduct and credit the excess costs calculated for a child receiving services from a district other than the child's resident district.

Weighted special education funding for state institutions

(R.C. 3317.03(G)(1), 3317.05, 3317.052, 3317.053, 3317.201, 3323.091, and 3323.16)

The Department of Mental Health, Department of Mental Retardation and Developmental Disabilities, Department of Rehabilitation and Correction, and Department of Youth Services are all required under current law, not changed by the bill, to provide special education programs for the disabled children in their custody. Each operates its own schools at the institutions under its control.

Currently, the institutions may apply for state unit funding to defray the cost of special education services. A "unit" is a group of students receiving the same education program. The Department approves the number of units statewide based on the amount of appropriations available. The value of a unit is generally the sum of the annual salary of the unit's classroom teacher based on the state's former minimum teacher salary schedule (the version in effect prior to 2001), an amount for fringe benefits equal to 15% of the salary allowance; a basic unit allowance, and a supplemental unit allowance.³⁸

³⁸ Under current law, not changed by the bill, unit funding is also used in making state payments to school districts, educational service centers, and county MR/DD boards for services for handicapped preschool children and to school districts and educational service centers for gifted education classes.

The bill requires, instead, the payment of per pupil weighted funding to these institutions for school-age special education students in their custody. Each institution is to receive for each identified pupil an amount equal to the base-cost formula amount times the multiple assigned to the category of that pupil's disability (including the phase-in percentage). However, the bill also specifies that an institution must receive in aggregate for all its non-preschool disabled children as much state funding as it did in fiscal year 2005 under unit funding.

The bill leaves unchanged provisions for unit funding for preschool children receiving special education services from institutions.

GRADS personnel allowance

(R.C. 3317.024(R))

School districts may receive an extra subsidy for operation of a "graduation, reality, and dual-role skill" (GRADS) program for pregnant and parenting students. The amount of the payments is the district's state share percentage times the "personnel allowance" times the full-time-equivalent number of teachers approved for the district by the Department of Education. The bill specifies that the GRADS personnel allowance for fiscal years 2006 and 2007 is \$47,555 (which is the same amount current law specifies for fiscal years 2004 and 2005).

Repeal of equity aid statute

(Repealed R.C. 3317.0213; conforming changes in R.C. 3314.08, 3317.0212, and 3317.081)

The bill repeals outright the Revised Code provision specifying the payment of equity aid.

Since fiscal year 1993, an "equity aid" subsidy has been paid to certain school districts with relatively low property wealth. Since fiscal year 1998, the state has been phasing out equity aid by reducing the number of districts receiving the subsidy and decreasing the number of extra mills equalized under it for each fiscal year. Currently, no more equity aid payments are authorized to be paid after fiscal year 2005.

Recalculating school district valuations

(R.C. 3317.026, 3317.027, and 3317.028)

A school district's tax valuation may be recalculated after its state funding for a fiscal year has been calculated and even paid. The recalculations might be triggered by refunds paid to certain taxpayers, adjustments made due to valuation

or assessment complaints filed by taxpayers, or creation of new tax exemptions. Each may reduce the actual revenue received by a district without a corresponding reduction in the value of the tax duplicate. There also may be fluctuations in tangible personal property valuation during a fiscal year that affect a district's revenue. In all these cases, current law provides for a recalculation of a district's state aid to account for reduced property valuation.

These adjustments are currently paid on or before June 30 of the year the adjustments are made, but the bill provides, instead, that they be paid on or before July 31 of the following fiscal year. The bill also specifies that the recalculation of state aid for a district applies to the district's entire "SF-3 payment," which the bill defines as comprising the aggregate of most state subsidies, less mandated adjustments and transfers.

One change that can prompt the recalculation of a district's state aid is an increase or decrease of 5% or more in the value of tangible personal property. The bill provides that, beginning in fiscal year 2007, only such changes in *public utility* tangible personal property can prompt a recalculation.

Ohio Choice Scholarship Program

(R.C. 3310.01, 3310.02, 3310.03, 3310.04, 3310.05, 3310.06, 3310.07, 3310.08, and 3310.09; Section 206.10.03)

The bill establishes the Ohio Choice Scholarship Program to provide scholarships for students to attend chartered nonpublic schools. This program applies to all school districts not included in the Pilot Project Scholarship Program, which currently operates only in the Cleveland Municipal School District. Under the bill, the first Ohio Choice Scholarships would be awarded to students for use in the 2006-2007 school year.³⁹

³⁹ *In 1999, the Ohio Supreme Court invalidated the original enactment of the Pilot Project Scholarship Program in Am. Sub. H.B. 117 of the 121st General Assembly, the main operating budget for the 1996-1997 biennium (Simmons-Harris v. Goff (1999), 86 Ohio St.3d 1). The Court held that enactment of a substantive program in a budget bill was a violation of the one-subject rule of the Ohio Constitution. Article II, Section 15(D) of the Ohio Constitution states that "[n]o bill shall contain more than one subject, which shall be clearly expressed in its title." In its ruling, the Court argued that the "considerable disunity in subject matter between the [Scholarship] Program and the vast majority of the [bill's] provisions" indicated that the Scholarship Program "was in essence little more than a rider attached to an appropriations bill" (pp. 15-16). The Pilot Project Scholarship Program subsequently was reenacted separately.*

Eligibility for scholarships

(R.C. 3310.01(A) and 3310.02)

To be eligible for an Ohio Choice Scholarship, a student must (1) be entering any of grades 1 to 8 and (2) have been enrolled for the equivalent of one full school year in a school district-operated school in which, for three consecutive school years, at least two-thirds of the students in grades 3 to 8, as applicable, failed reading and math proficiency or achievement tests.⁴⁰ Students enrolled in community ("charter") schools and students eligible to receive a Pilot Project Scholarship are not eligible for Ohio Choice Scholarships.

Once a student receives an initial scholarship, the student may continue to receive a scholarship for a limited period of time as long as the student takes all grade-level achievement tests and demonstrates progress. Students can no longer receive scholarships once they complete the highest grade offered by the public school in which they were enrolled prior to receiving a scholarship. In other words, if a student was attending a K-6 school when the student first received a scholarship, the student may receive additional scholarships until the student finishes sixth grade. At that time, the student must either return to a public school or pay full tuition to remain enrolled in a private school.

A scholarship student may continue to receive a scholarship even if the public school in which the student was enrolled prior to receiving the scholarship improves its reading and math test scores and its students are no longer eligible for scholarships. In that case, no *new* students could receive scholarships, but former

In 2002, the U.S. Supreme Court held that the Pilot Project Scholarship Program did not violate the Establishment Clause of the U.S. Constitution because it is a "neutral program of private choice, where state aid reaches religious schools solely as a result of the numerous independent decisions of private individuals" (Zelman v. Simmons-Harris (2002), 536 U.S. 639, 655). The Court concluded that since the Scholarship Program permitted parents to choose whether to use a scholarship at a public school or a private school, including a non-sectarian private school, there was no unconstitutional government endorsement of religion. The Ohio Choice Scholarship Program requires scholarships to be redeemed only at chartered nonpublic schools.

⁴⁰ *The bill directs the Superintendent of Public Instruction to use test data from the most recent three consecutive school years to determine if a school's students are eligible for scholarships (R.C. 3310.01(A)(3)). Continuing law requires school districts to administer state reading and math tests in each of grades 3 to 8 (R.C. 3301.0711(B), not in the bill). Currently, achievement tests are being phased in to replace the former proficiency tests. The proficiency tests will be administered for the last time to elementary students in March 2005. (R.C. 3301.0712, not in the bill.)*

students of the school who received scholarships in the previous school year may receive scholarships for as long as they qualify for them.

Scholarship amount

(R.C. 3310.03)

Each scholarship is worth the lesser of \$3,500 or the actual tuition charges of the chartered nonpublic school in which the scholarship student enrolls. Chartered nonpublic schools must accept the scholarship amount as full payment for the scholarship student's tuition. The bill explicitly prohibits a chartered nonpublic school from charging the parent of a scholarship student any tuition in excess of the scholarship amount.

Process for awarding scholarships

(R.C. 3310.04)

The Superintendent of Public Instruction must notify schools that their students are eligible for scholarships by July 1 of each year. Upon notification, those schools must provide information about the Ohio Choice Scholarship Program to the parents of students who meet the eligibility criteria for scholarships. This information must include the application deadline established by the Superintendent, the process for awarding scholarships, and the requirements for maintaining eligibility for future scholarships.

The Superintendent of Public Instruction must award as many scholarships as possible given the amount appropriated for the program. If there are insufficient funds to award scholarships to all applicants, the Superintendent must select applicants for scholarships by lottery. Students must be notified of their selection for a scholarship by August 1 and must begin using their scholarships the same school year.

The Superintendent must revoke a student's scholarship if (1) the student's parent does not submit an application to a chartered nonpublic school by the school's deadline for admissions applications from scholarship students, (2) the school does not notify the parent and the Superintendent of the student's acceptance for admission, or (3) the student fails to enroll in the school to which the student was accepted. The bill does not require a chartered nonpublic school to establish a different admissions deadline for scholarship students than it requires for non-scholarship students. It is possible that scholarship students may not be able to use their scholarships at some chartered nonpublic schools if those schools' admissions deadlines are prior to August 1.

Payment of scholarships

(R.C. 3310.05 and 3310.06)

The Department of Education must make periodic payments throughout the school year on behalf of each scholarship student until the full amount of the scholarship has been paid. For this purpose, by the fifteenth day of each month, the chief administrator of each chartered nonpublic school that enrolls scholarship students must report to the Department the number of scholarship students, including transfer students, attending the school as of the first day of that month. Scholarships are payable jointly to the parent of the scholarship student and the chartered nonpublic school in which the student is enrolled. The Department must prorate a student's scholarship amount if the student withdraws from a chartered nonpublic school before the end of the school year.

Administration of achievement tests by chartered nonpublic schools

(R.C. 3310.07)

Under current law, chartered nonpublic schools may administer any of the elementary level achievement tests, but they are not required to do so.⁴¹ The bill, however, requires chartered nonpublic schools to administer achievement tests to scholarship students because a student's continued eligibility for scholarships is contingent upon taking the tests. Chartered nonpublic schools retain the option in current law of giving achievement tests to non-scholarship students.

Transportation of scholarship students

(R.C. 3310.08)

The bill specifies that scholarship students are entitled to transportation to and from the chartered nonpublic schools they attend in the same manner as other students attending nonpublic schools.

Continuing law requires school districts to provide transportation to nonpublic school students in grades K to 8 who reside in the district and live more than two miles from the school they attend. Districts may also transport high school students to and from their nonpublic schools. A district, however, is not required to transport students of any age to and from a nonpublic school if the

⁴¹ R.C. 3301.0711(K), not in the bill. Chartered nonpublic schools must administer the Ohio Graduation Tests (OGT) because passage of those tests is a requirement for a diploma from a chartered nonpublic school (R.C. 3313.612, not in the bill).

direct travel time by school bus from the district school the student would otherwise attend to the nonpublic school is more than 30 minutes.⁴²

Effective date of program

(R.C. 3310.09; Sections 206.10.03 and 612.18)

As noted above, the Ohio Choice Scholarship Program would start in the 2006-2007 school year. By September 1, 2005, the Superintendent of Public Instruction must begin preparations to implement the program. The Superintendent must ensure that school districts, chartered nonpublic schools, students, and parents are informed about the program and how it may affect them. This information must be provided in sufficient time for affected parties to meet deadlines for participation in the program for the 2006-2007 school year. The State Board of Education must adopt rules in accordance with the Administrative Procedure Act to implement the program. Those rules must be in effect by July 1, 2006.

Eligibility for scholarships under the Pilot Project Scholarship Program

(R.C. 3313.975, 3313.976, 3313.977, and 3313.978)

The Pilot Project Scholarship Program (the Cleveland voucher program) provides scholarships to attend alternative schools, including private schools, and tutorial assistance grants to certain students who reside in any school district that is or has been under a federal court order requiring supervision and operational management of the district by the Superintendent of Public Instruction.

Current law limits eligibility for participation in the scholarship program to students in kindergarten through tenth grade. After tenth grade, students must either return to the public school to which they are assigned by the district superintendent, enroll in a community school, or pay full tuition at a private school.

The bill expands eligibility for scholarships to eleventh graders beginning in the 2005-2006 school year and to twelfth graders in the 2006-2007 school year. Students must have been awarded a scholarship previously to receive one in the

⁴² R.C. 3327.01, not in the bill. *These are the same requirements that apply to the transportation of students to and from public schools. Also, districts must provide transportation for all students who "are so crippled that they are unable to walk to and from the school . . . which they attend." When transportation by the district is impractical, the district may offer payment to a student's parent instead of providing the transportation.*

eleventh or twelfth grade.⁴³ The bill also codifies a long-standing practice to allow new students to enter the scholarship program in any of grades K to 8.⁴⁴

Early childhood education programs

Elimination of Title IV-A Head Start and Head Start Plus programs

(repealed R.C. 3301.31, 3301.33, 3301.34, 3301.35, 3301.36, 3301.37, and 3301.38; R.C. 121.37, 3301.311, 3301.32, 4511.75, 5104.01, and 5104.32)

Head Start programs provide instruction and health and social services to preschool children from low-income families. Local agencies, including school districts, may receive direct grants from the federal government to operate Head Start programs. In addition, the state Department of Education operates two Head Start programs, known as "Title IV-A Head Start" and "Title IV-A Head Start Plus," in accordance with an interagency agreement with the Department of Job and Family Services. These two programs are currently funded with federal TANF moneys allocated by the state.⁴⁵ Title IV-A Head Start provides traditional Head Start services during the school year. Title IV-A Head Start Plus offers year-round Head Start services along with child care.

The bill eliminates the requirement that the Department of Education administer Title IV-A Head Start and Title IV-A Head Start Plus programs. The elimination of the state-funded Head Start programs does not affect traditional Head Start programs funded by direct federal aid.

⁴³ R.C. 3313.975(C)(1). *Continuing law specifies that, in the event the scholarship program is terminated, students attending alternative schools are entitled to attend those schools through the highest grade served in the same manner as under the program, except that a parent can be charged tuition if no funds are appropriated for scholarships. While this entitlement exists only up to the tenth grade under current law, the bill extends it to the twelfth grade to correspond with the availability of the additional high school scholarships. (R.C. 3313.975(C)(2).) Also, under the bill, eleventh and twelfth grade students who were enrolled in a private school in the previous year must be given priority for admittance to the school in the following year (R.C. 3313.977(A)(2)).*

⁴⁴ R.C. 3313.975(C)(1).

⁴⁵ TANF is a block grant program authorized by Title IV-A of the Social Security Act, 42 U.S.C. 601, that provides "temporary assistance for needy families." The program provides federal funds to states to serve low-income families with children.

TANF-funded Early Learning Initiative

(Sections 206.09.54 and 206.67.12)

The bill establishes the Early Learning Initiative, paid for with federal TANF funds, to provide early learning programs and day care to TANF-eligible children. As defined by the bill, early learning programs provide early learning services that are allowable under Title IV-A of the Social Security Act but are not considered "assistance" under federal regulations.⁴⁶ The Initiative is administered by the Department of Education and the Department of Job and Family Services in accordance with an interagency agreement and rules adopted jointly by the two agencies.⁴⁷ The joint rules for the Early Learning Initiative must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

⁴⁶ *Title IV-A services cannot include "cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses)." Title IV-A services, however, may include:*

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

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

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

(4) Refundable earned income tax credits;

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

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

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

⁴⁷ *The Department of Job and Family Services is the single state agency to administer Title IV-A programs in Ohio. Other state agencies, however, may administer Title IV-A programs if they enter into an interagency agreement with the Department of Job and Family Services to administer the program under the Department's supervision. Each agency administering a Title IV-A program under the Department's supervision must*



The bill directs the Department of Education to define the early learning services that will be provided to TANF-eligible children through the Early Learning Initiative. In addition, the Department of Education must establish early learning program guidelines for school readiness to evaluate early learning programs. These guidelines must incorporate academic performance data for children served by early learning programs to assess the children's preparedness for kindergarten upon completion of the programs.

Finally, in consultation with the Department of Job and Family Services, the Department of Education must develop an application form and criteria for the selection of early learning agencies to provide early learning programs. Early learning agencies must be approved by the Department of Education to receive funding through the Initiative. Each early learning agency, or each provider with which the agency subcontracts for the operation of an early learning program, must be licensed by the Department of Education as a preschool or by the Department of Job and Family Services as a child day-care center.

When the Department of Education approves an early learning agency, the Department must determine the number of TANF-eligible children the agency will serve and report that number to the Office of Budget and Management and the Department of Job and Family Services. County departments of job and family services must determine which children meet the TANF eligibility criteria and, therefore, can enroll in an early learning program. The county departments also must establish co-payment requirements for families of enrolled children.

Prior to providing an early learning program, each early learning agency must enter into a contract with the Department of Education and the Department of Job and Family Services outlining the terms and conditions applicable to the provision of Title IV-A services.⁴⁸ This contract also must include:

- (1) The respective duties of the early learning agency, the Department of Education, and the Department of Job and Family Services;
- (2) Requirements regarding the use of and accountability for TANF funds;
- (3) A requirement that the early learning agency's costs for developing and administering an early learning program cannot exceed 15% of the total approved program costs;

comply with federal and state requirements regarding program eligibility, use of funds, allowable benefits and services, limitations on administrative costs, and audits. (R.C. 5101.80 and 5101.801.)

⁴⁸ *These contracts are not subject to competitive bidding.*

- (4) Reporting requirements;
- (5) The method of reimbursing the early learning agency for program costs;
- (6) Audit requirements;
- (7) Provisions for suspending, modifying, or terminating the contract.

The Department of Job and Family Services is responsible for reimbursing early learning agencies for costs associated with their early learning programs. In reimbursing early learning agencies, the Department must ensure that all funds paid to an agency are solely for Title IV-A services provided to TANF-eligible children. Reimbursement is based on the weekly attendance rate of each TANF-eligible child served.

If an early learning agency, or a provider with which the agency subcontracts, substantially fails to meet the Department of Education's early learning program guidelines for school readiness or otherwise exhibits below average performance, the early learning agency must implement a corrective action plan approved by the Department. If the agency does not implement a corrective action plan, the Department of Education may direct the Department of Job and Family Services to withhold funding from the agency or either department may suspend or terminate the agency's contract.

State-funded early childhood education programs

(Section 206.09.06)

The bill establishes a GRF-funded program administered by the Department of Education to support comprehensive early childhood education programs serving preschool-age children from families earning up to 200% of the federal poverty guidelines.⁴⁹ Program providers may include school districts, educational service centers (ESCs), or community-based entities experienced in educating children and licensed by the Department of Education as a preschool or by the Department of Job and Family Services as a child day-care center. Families who earn more than the federal poverty guidelines must be charged for the programs their children attend in accordance with a sliding fee scale developed by the program provider.

To receive state funding, an early childhood education program must:

⁴⁹ *A preschool-age child is one who is at least three years old but not yet eligible to start kindergarten.*

(1) Meet teacher qualification requirements applicable to early childhood education programs (see "*Teacher qualifications for early childhood education programs*" below);

(2) Align its curriculum to early learning program guidelines for school readiness developed by the Department of Education;

(3) Administer any diagnostic assessments adopted by the State Board of Education that are applicable to the program;⁵⁰

(4) Require all teachers annually to attend at least 20 hours of professional development regarding the implementation of content standards and assessments; and

(5) Document and report child progress in meeting the Department's early learning program guidelines for school readiness.

In distributing funds to providers of early childhood education programs, the Department of Education must give priority in each fiscal year to previous recipients of state funds for such programs. Funding must be distributed on a per-pupil basis, which the Department may adjust as necessary so that the per-pupil amount, when multiplied by the number of eligible children receiving services on December 1 (or the first business day after that date), equals the total amount appropriated for early childhood education programs.⁵¹ The Department may use up to 2% of the total appropriation for its administrative expenses.

The Department may examine a program provider's records to ensure accountability for fiscal and academic performance. If the Department finds that (1) the program's financial practices are not in accordance with standard

⁵⁰ *By July 1, 2008, the State Board must adopt diagnostic assessments for grades K to 2 in reading, writing, and math and for grades 3 to 8 in those subjects as well as science and social studies, except a diagnostic assessment is not required in any grade when an achievement test is given in the same subject area (R.C. 3301.079, not in the bill). Continuing law permits school districts to administer the kindergarten diagnostic assessment, known as the kindergarten readiness assessment, to a child prior to the child's enrollment in kindergarten on the condition that the results not be used to prohibit the child from starting school (R.C. 3301.0715(A)(3), not in the bill). It is possible, therefore, that a city, exempted village, or local school district may administer the kindergarten readiness assessment to a preschool-age child. However, it does not appear that the requirements regarding diagnostic assessments would ever apply to an early childhood education program provided by a joint vocational school district, ESC, or community-based entity.*

⁵¹ *The per-pupil amount also may be adjusted for inflation.*

accounting principles, (2) the provider's administrative costs exceed 15% of the total approved program costs, or (3) the program substantially fails to meet the early learning program guidelines for school readiness or exhibits below-average performance compared to the guidelines, the provider must implement a corrective action plan approved by the Department. This plan must be signed by the chief executive officer and the executive of the governing body of the provider. The plan must include a schedule for monitoring by the Department. Monitoring may involve monthly reports, inspections, a timeline for correction of deficiencies, or technical assistance provided by the Department or another source. If an early childhood education program does not improve, the Department may withdraw all or part of the funding for the program. The Department may select a new program provider through a competitive bidding process established by the Department.

If a program provider has its funding withdrawn or it voluntarily waives its right to funding, the provider must transfer property, equipment, and supplies obtained with state funds to other early childhood education program providers designated by the Department. It also must return any unused funds to the Department along with any reports requested by the Department. State funds made available when a program provider is no longer funded may be used by the Department to fund new early childhood education program providers or to award expansion grants to existing providers. In each case, interested providers must apply to the Department in accordance with the Department's competitive bidding process. Unspent funds may be allocated to program providers for program expansion or improvement or for special projects to promote quality and innovation.

The bill requires the Department of Education to compile an annual report regarding GRF-funded early childhood education programs and the Department's early learning program guidelines for school readiness. Copies of the report must be given to the Governor, the Speaker of the House, and the President of the Senate. The report also must be posted on the Department's website.

Teacher qualifications for early childhood education programs

(R.C. 3301.311)

Currently, all teachers employed by Title IV-A Head Start and Head Start Plus programs must be working toward an associate degree approved by the Department of Education in order to receive funding. This requirement is removed by the bill to coincide with its elimination of Title IV-A Head Start programs. However, the bill creates similar teacher qualifications for other early childhood education programs.

Under the bill, after July 1, 2005, a preschool program, school child program, or early learning program is prohibited from receiving any state funds unless at least 50% of the program's teachers are working toward an associate degree approved by the Department of Education. Beginning July 1, 2007, no such program may receive state funds unless all of its teachers have attained an approved associate degree.

A "preschool program" is either (1) a child day-care program for preschool children that is operated by a school district or a chartered nonpublic school or (2) a child day-care program for preschool children age three or older that is operated by a county board of mental retardation and developmental disabilities (MR/DD board). A "school child program" is a child day-care program for school children that is operated by a school district, chartered nonpublic school, or county MR/DD board. (R.C. 3301.52, not in the bill.) The Department of Education must define the "early learning programs" that are subject to the teacher qualifications outlined in the bill.

Reading improvement grants

Background

Sub. H.B. 1 of the 123rd General Assembly established the OhioReads initiative to provide classroom and community reading grants to improve students' reading skills. These grants were awarded by the OhioReads Council. An OhioReads Office within the Department of Education was created to be the fiscal agent for the grant program.

The enacting legislation also included a sunset provision abolishing the OhioReads Council effective July 1, 2004. By January 1, 2004, the Director of Budget and Management was required to recommend a governmental entity to assume the functions of the Council if the General Assembly did not continue the Council's existence. The General Assembly allowed the Council to expire on July 1, 2004. However, it did not designate a successor.

Elimination of OhioReads Office and community grant program

(repealed R.C. 3301.87; R.C. 109.57, 3301.85, 3301.86, 3301.87, and 3301.88)

The bill repeals the statute authorizing the OhioReads community reading grants program. This change acknowledges that the OhioReads Council ceased to exist on July 1, 2004, and grants are no longer being awarded under the program. Similarly, the bill eliminates the OhioReads Office within the Department of Education because its fiscal responsibilities are obsolete.

Reading improvement grants

(R.C. 109.57, 3301.86, and 3301.88)

The bill changes the name of the "OhioReads Classroom Reading Grants Program" to the "Classroom Reading Improvement Grants Program" and requires the Department of Education to administer the renamed program. Under the program, the Department must award reading intervention grants to public schools and classrooms operated by school districts, community schools, and educational service centers (ESCs). Grants must be used (1) to engage volunteers to assist students struggling with reading, (2) to improve reading outcomes in low-performing schools, and (3) to close the achievement gap between students of different subgroups such as race and socioeconomic status.

As under current law, grant recipients may request a criminal records check from the Bureau of Criminal Identification and Investigation (BCII) for any person, presumably a volunteer, who applies to provide directly to children any service funded by a grant.⁵² (Employees of a school district, community school, or ESC who provide services directly to children under a grant would have been required to undergo a criminal records check prior to employment.⁵³) Volunteers who have pled guilty to or been convicted of a felony, an offense of violence, a theft or drug abuse offense, or certain other specified offenses cannot provide services directly to children under a grant, unless they meet rehabilitation standards established by the State Board of Education.⁵⁴

Grant recipients that request criminal records checks of volunteers may apply to the Department of Education for reimbursement of the costs of those

⁵² *The request must be accompanied by the standard BCII form and the person's fingerprints or the person's name, social security number, and date of birth. Grant recipients are not permitted to request a criminal records check of any person who furnishes the recipient with a certified copy of a records check completed by BCII within the past year. (R.C. 3301.88(A) and (B).)*

⁵³ *See R.C. 3319.39, not in the bill.*

⁵⁴ *The other specified offenses include failing to provide for a functionally impaired person, patient abuse or neglect, child enticement, unlawful sexual conduct with a minor, sexual imposition, importuning, voyeurism, public indecency, procuring, prostitution, disseminating matter harmful to juveniles, unlawful abortion, child endangerment, contributing to the delinquency of a minor, illegal manufacture of drugs, placing harmful objects in food, and child stealing (R.C. 3301.88(C)). A grant recipient may conditionally allow a volunteer to provide services directly to children pending the results of a criminal records check (R.C. 3301.88(D)).*

checks. Reimbursements paid by the Department are not deducted from the grant amounts. The bill requires the State Board to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) prescribing procedures for grant recipients to use in applying for reimbursements (R.C. 3301.88(G)(1)).

Ohio residency for Post-Secondary Enrollment Options Program

(R.C. 3365.02 and Section 206.09.99)

The bill specifies that, after July 1, 2005, a high school student must be a resident of Ohio to participate in the Post-Secondary Enrollment Options Program.

Background

The Post-Secondary Enrollment Options Program (PSEO) allows high school students to enroll in nonsectarian college courses on a full- or part-time basis and to receive high school and college credit. Students in public high schools (school districts and community schools) and nonpublic high schools (chartered and nonchartered) are eligible to participate in the program. Most students participating in the program would be Ohio residents if they are entitled to attend school in an Ohio school district. Nevertheless, it is possible that a student enrolled in a *nonpublic* high school in the state may not be an Ohio resident but, under current law, might still be eligible to participate in PSEO. The bill would eliminate this possibility beginning July 1, 2005.

PSEO consists of two "options," which the student elects at the time of enrolling in the course. Under Option A, the student receives only college credit and is responsible for payment of all tuition and other costs charged by the college. Under Option B, the student receives both college credit and high school credit for successfully completing the course, and the state makes a payment to the institution of higher education on the student's behalf. State payments to institutions of higher education for students enrolled in public high schools are deducted from the state aid accounts of the students' school districts or community schools. State payments for students enrolled in nonpublic schools are paid out of a separate state set-aside, since those schools do not receive operations funding from the state.

**OHIO EDUCATIONAL TELECOMMUNICATIONS
NETWORK COMMISSION**

- Eliminates the Ohio Educational Telecommunications Network Commission effective July 1, 2005, and transfers its functions, assets,

liabilities, and employees to an agency designated by the Governor, based upon recommendations of any task force appointed by the Governor to consider issues of administrative reorganization.

Elimination of the Commission and transfer of functions to an agency designated by the Governor

(R.C. 3353.02, 3353.03, and 3353.04 (repealed); R.C. 3353.01, 3353.06, and 3353.07; Sections 315.09 and 315.11)

The Ohio Educational Telecommunications Network Commission is an independent state agency authorized to operate transmission facilities for an educational television, radio, or radio reading services network, develop programming, and provide financial and technical assistance to educational broadcasting programs throughout Ohio. The Commission is made up of the Superintendent of Public Instruction, the Chancellor of the Ohio Board of Regents, the Director of Administrative Services, and eight members appointed by the Governor.⁵⁵

Effective July 1, 2005, the bill eliminates the Ohio Educational Telecommunications Network Commission and transfers its duties and authorities, assets, liabilities, and employees to an agency designated by the Governor, based upon recommendations of any task force appointed by the Governor to consider issues of administrative reorganization.⁵⁶ The Commission's responsibilities will be overseen by the chief administrator of the designated agency following the transfer.

After the transfer, the agency designated by the Governor assumes all ongoing business of the former Commission and the Commission's rules remain in effect until amended or rescinded by the agency. Employees of the former Commission must be transferred to the agency in accordance with any applicable collective bargaining agreement or dismissed according to task force recommendations approved by the Governor. The Director of Budget and Management must replace the Commission in any legal proceedings pending at the time of the transfer. The Director also may move cash balances between funds and cancel or re-establish encumbrances as needed to complete the transfer.

⁵⁵ Repealed R.C. 3353.02, 3353.03, and 3353.04.

⁵⁶ Among the assets specifically cited by the bill to be transferred are vehicles and equipment assigned to Commission employees and records of the Commission.

STATE EMPLOYMENT RELATIONS BOARD

- Allows the State Employment Relations Board (SERB) to seek, solicit, apply for, and accept grants, gifts, and contributions for specified uses.
- Renames the Training and Publications Fund used by SERB the "Training, Publications, *and Grants* Fund."
- Expands the funding sources for the Training, Publications, and Grants Fund and specifies additional uses for money held in the Fund.

SERB Training, Publications, and Grants Fund

(R.C. 4117.24)

Current law requires the State Employment Relations Board (SERB) to deposit into the Training and Publications Fund all payments received by SERB for copies of documents, rulebooks, and other publications; fees received from seminar participants; and receipts from the sale of clearinghouse data. Current law also specifies the purposes for which these funds may be used.

The bill renames the Fund the Training, Publications, *and Grants* Fund. It also allows SERB to seek, solicit, apply for, accept, receive and enter into contracts concerning grants, gifts, and contributions. The bill requires that all of the money received through these sources be deposited into the Fund. Under the bill, these funds must be held for, used for, and applied to only the purposes for which those grants are made and for which those contracts are entered.

In addition to the moneys received from the sources listed in current law and the moneys received from grants, gifts, and contributions as described in the paragraph above, SERB also must deposit into the Fund moneys received from donations, awards, bequests, reimbursement for professional services and expenses related to those services, and from funds to support the development of labor relations services and programs. In addition to the purposes specified in current law, the bill requires the Fund to be used to defray the costs associated with grant projects, innovative labor-management cooperation programs, related research projects, the advancement in professionalism of public sector relations, and for the professional development of board employees.

ENVIRONMENTAL PROTECTION AGENCY

- Establishes a new, additional fee on the disposal of solid wastes of \$1.75 per ton, the proceeds of which must be credited to the Environmental Protection Fund created by the bill, and specifies that money in the Fund must be used by the Environmental Protection Agency to administer and enforce most of the programs under the Agency's jurisdiction and to fund other duties that state law requires the Agency to perform.
- Establishes a second new, additional fee on the disposal of solid wastes of \$1 per ton to provide funding for the Recycling and Litter Prevention Fund administered by the Division of Recycling and Litter Prevention in the Department of Natural Resources, and eliminates the crediting of receipts from the corporate franchise tax on litter stream products to the Fund.
- Extends through June 30, 2008, the existing fee on the disposal of solid wastes that is used to fund the solid and infectious waste and construction and demolition debris management programs, and expands the allowable uses of the proceeds of the fee by authorizing the Agency to use the proceeds to provide compliance assistance to small businesses.
- Amends the procedures for collecting and remitting state solid waste disposal fees.
- Eliminates certain state requirements governing the packaging and transportation of infectious wastes that must be included in rules adopted by the Director of Environmental Protection, and instead requires the Director to adopt rules establishing standards that are substantively equivalent to standards established in federal statutes, regulations, and orders.
- Amends the definition of "infectious wastes" by adding certain items to the list of "sharps," and amends the definition of "infectious agent" by adding proteinaceous particles, prions, plasmids, and other genetic elements.
- Specifies that money used by the Agency from the Hazardous Waste Clean-up Fund to pay the costs of clean-up activities and subsequently recovered in a civil action must be repaid to the Hazardous Waste Clean-

up Fund instead of paid into the Immediate Removal Fund as in current law.

- Extends the sunset of the fee on the sale of tires that is used to fund the Scrap Tire Management Program from June 30, 2006, to June 30, 2011.
- Reduces the amount of money that the Department of Taxation receives to pay the Department's costs in administering the fee on tires that is used to fund the Scrap Tire Management Program from 4% to 2% of the money collected from that fee.
- Revises the industrial classifications in the fee schedule based on process weight rates for permits to install under the Air Pollution Control Law.
- Extends all of the following for two years:
 - The sunset of the annual emissions fees for synthetic minor facilities;
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works under the Water Pollution Control Law;
 - The sunset of the annual discharge fees for holders of NPDES permits issued under the Water Pollution Control Law;
 - The sunset of license fees for public water system licenses issued under the Safe Drinking Water Law;
 - The establishment of a higher cap on the total fee due for plan approval for a public water supply system under the Safe Drinking Water Law and the decrease of that cap at the end of the two years;
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications and examinations for certification as operators of water supply systems or wastewater systems under the Safe Drinking Water Law or the Water Pollution Control Law, as

applicable, and eliminates a fee schedule for those purposes that has expired; and

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

- Establishes an application fee of \$200 for a section 401 water quality certification under the State Water Pollution Control Law, and requires the payment of review fees of \$500 per each acre of wetland to be impacted, \$10 per linear foot of each stream to be impacted, and \$3 per cubic yard of dredged or fill material to be moved with respect to a lake.
- Caps the total fees for a section 401 water quality certification at \$5,000 for counties, townships, and municipal corporations and \$25,000 for all other applicants, requires proceeds from the fees to be credited to the existing Surface Water Protection Fund, and exempts state agencies and projects authorized by general or nationwide permits issued by the U.S. Army Corps of Engineers from the fees.
- Requires the issuance, denial, renewal, suspension, and revocation of certifications of certified professionals under the Voluntary Action Program Law to be published on the Agency's web site and in the Agency's weekly review rather than in newspapers of general circulation as in current law.
- Allows the Director to suspend or revoke the certification of certified professionals for specified violations in accordance with rules adopted under the Voluntary Action Program Law rather than in accordance with the Environmental Protection Agency Law.

Solid waste disposal fees

Introduction

Currently, there are two state fees levied on the disposal of solid wastes. The first is a \$1 per-ton fee, of which one-half of the proceeds must be deposited in the state treasury to the credit of the Hazardous Waste Facility Management Fund and one-half of the proceeds must be deposited in the state treasury to the

credit of the Hazardous Waste Clean-up Fund. Both funds are administered by the Environmental Protection Agency (EPA). The second fee is another \$1 per-ton fee that is used to fund the EPA's solid and infectious waste and construction and demolition debris management programs. Solid waste disposal fees are collected by the owners and operators of solid waste disposal facilities as trustees for the state.

New solid waste disposal fees

(R.C. 1502.02, 3734.57, 3745.015, and 5733.122 (repealed))

The bill establishes two new solid waste disposal fees. First, the bill establishes a new fee of \$1.75 per ton. Money from this new fee is required to be deposited in the state treasury to the credit of the Environmental Protection Fund, which is created by the bill. Money in the Fund is to be used by the EPA to pay its costs associated with administering and enforcing, or otherwise conducting activities under, the Environmental Protection Agency Law, the Air Pollution Control Law, the Solid, Hazardous, and Infectious Waste Law, the Voluntary Action Program Law, the Low-Level Radioactive Waste Law, the Radiation Control Program Law, the Emergency Response and Planning Law, the Hazardous Substances Law, the Cessation of Regulated Operations Law, the Risk Management Program Law, the Water Pollution Control Law, the Safe Drinking Water Law, the Conservancy Districts Law, the County Water Supply Systems Law, the Watershed Districts Law, the Private Sewer Systems Law, the Ohio River Sanitation Compact Law, the Sanitary Districts Law, the Sewer Districts and County Sewers Law, the Regional Water and Sewer Districts Law, the Real Property Tax Law, and the Water Resources Council Law. Collection of the fee is to begin on October 1, 2005.

The second new solid waste disposal fee established by the bill is an additional \$1 per ton and takes effect on the bill's effective date. The proceeds of the fee are required to be deposited in the state treasury to the credit of the existing Recycling and Litter Prevention Fund, which is administered by the Division of Recycling and Litter Prevention in the Department of Natural Resources. The Division uses money in the Fund to operate its recycling and litter prevention program, which includes the awarding of grants.

Under current law, funding for the Recycling and Litter Prevention Fund comes from a corporate franchise tax on litter stream products. The bill retains that tax, but eliminates the crediting of receipts from the tax to the Fund.

Continuation of existing solid waste disposal fee and expansion of use

(R.C. 3734.57)

As discussed above, current law levies a \$1 per-ton fee on the disposal of solid wastes to fund the EPA's solid and infectious waste and construction and demolition debris management programs. The fee is scheduled to sunset on June 30, 2006. The bill continues the fee through June 30, 2008. Further, the bill expands the purposes for which money generated from the fee may be used by allowing the money to be used to provide compliance assistance to small businesses.

Procedures for collecting and remitting state solid waste disposal fees

(R.C. 3734.57)

Current law requires the owner or operator of a solid waste disposal facility to collect state solid waste disposal fees as a trustee for the state and to prepare and file with the Director of Environmental Protection monthly returns indicating the total tonnage of solid wastes received for disposal at the gate of the facility and the total amount of fees collected. Not later than 30 days after the last day of the month to which such a return applies, the owner or operator must mail to the Director the return for that month together with the fees collected during that month as indicated on the return.

The bill continues the requirement that owners and operators of solid waste facilities submit a return and retains the time frame within which the return must be submitted, but it specifies that the return must be filed each month and that the return must indicate the total tonnage of solid wastes received for disposal at the gate of the facility during that month and the total amount of fees required to be collected during that month. In addition, the bill specifies that the amount of fees required to be collected is equal to the total tonnage of solid wastes received for disposal at the gate of a facility multiplied by the fees levied. It requires the monthly returns to be filed on a form prescribed by the Director.

The bill also establishes a discount for the timely submission of a return and fees. Specifically, the bill provides that if the return is filed and the amount of fees due is paid in a timely manner as discussed above, the owner or operator may retain a discount of $\frac{3}{4}$ of 1% of the total amount of the fees that are required to be paid as indicated on the return.

Current law authorizes the owner or operator of a solid waste facility to request an extension of not more than 30 days for filing the return and remitting the fees. If the fees are not remitted within 30 days after the last day of the month

during which they were collected or are not remitted by the last day of an extension approved by the Director, the owner or operator must pay an additional 50% of the amount of the fees for each month that they are late. The bill clarifies that fees must be remitted within 30 days after the last day of the month to which the return applies, or by the last day of an extension, and provides that late submission of the return and the fees results in a loss of the $\frac{3}{4}$ of 1% timely payment discount (see above) and a charge of 10%, rather than 50%, of the amount of the fees for each month the fees are late. For purposes of calculating the late fee, the first month in which fees are late begins on the first day after the deadline has passed for timely submitting the return and fees, and one additional month is counted every 30 days thereafter.

Technical changes

(R.C. 3734.57)

The bill makes technical changes to the law related to state solid waste disposal fees and solid waste disposal fees levied by solid waste management districts. In particular, it consolidates repetitive language and eliminates provisions that are no longer applicable.

Infectious waste management

Adoption of federal standards

(R.C. 3734.02, 3734.021, 3734.022, and 3734.05)

Current law requires the Director of Environmental Protection to adopt rules governing generators and transporters of infectious wastes and owners and operators of treatment facilities and establishes specific requirements that must be included in the rules. With regard to the packaging and transportation of infectious wastes, the requirements include provisions governing packaging materials that must be used for infectious wastes, specific packaging requirements for sharps, detailed transportation requirements, and requirements pertaining to shipping papers.

The bill eliminates the specific requirements pertaining to packaging and transporting infectious wastes that must be included in the rules and instead requires that the rules adopted by the Director must establish standards that are substantively equivalent to federal standards governing infectious materials that are established in federal statutes and in regulations adopted and orders issued under those statutes by the United States Department of Transportation. Further, the bill amends a provision in current law that provides that a registered transporter is liable for the safe delivery of infectious wastes in the transporter's

care to instead provide that the liability applies unless it is prohibited under federal law.

Definitions

(R.C. 3734.01)

Under current law, the definition of "infectious wastes" includes sharp wastes and lists some of the items to be considered sharp wastes, e.g., hypodermic needles and syringes. The bill adds culture slides, broken culture dishes, broken rigid plastic, exposed ends of dental wires, and broken capillary tubes to the list of sharps in the definition of "infectious waste."

In addition, current law defines "infectious agent" to mean a type of microorganism, helminth, or virus that causes, or significantly contributes to the cause of, increased morbidity or mortality of human beings. The bill adds proteinaceous particles, prions, plasmids, and other genetic elements to the definition of "infectious agent."

Repayment of clean-up costs to Hazardous Waste Clean-up Fund

(R.C. 3734.28 and 3745.12)

Under current law, the Environmental Protection Agency (EPA) is authorized to expend money from the Hazardous Waste Clean-up Fund to pay the costs of clean-up activities under the state statutes governing hazardous waste. Current law authorizes the EPA to recover the money expended for such a clean-up in a civil action. However, any money recovered is required to be deposited in the Immediate Removal Fund, which is used for other environmental clean-ups. The bill instead requires that money expended from the Hazardous Waste Clean-up Fund and recovered in a civil action be returned to the Hazardous Waste Clean-up Fund.

Scrap Tire Management Program

Fee on tire sales

(R.C. 3734.901)

Current law establishes a 50¢ per tire fee on the sale of tires. The fee provides revenue to defray the cost of administering and enforcing the law governing the management of scrap tires, rules adopted under that law, and terms and conditions of orders, variances, and licenses issued under that law; to abate accumulations of scrap tires; to make grants to promote research regarding alternative methods of recycling scrap tires and loans to promote the recycling or

recovery of energy from scrap tires; and to defray the costs of administering the collection of the fee. Of the money generated from that collection, 96% must be deposited into the Scrap Tire Management Fund. The remaining 4% is generally used for administrative purposes and deposited in the Tire Fee Administrative Fund (see below). The fee is scheduled to sunset on June 30, 2006. The bill extends the sunset to June 30, 2011.

Funding for Department of Taxation's administration of fee on tire sales

(R.C. 3734.9010)

Under existing law, 4% of all amounts paid to the Treasurer of the State pursuant to the Scrap Tire Management Program must be certified directly to the credit of the Tire Fee Administrative Fund for appropriation to the Department of Taxation for use in paying the Department's costs in administering the fee on tires that is used to fund the Program. The bill reduces the amount of money that the Department receives from 4% to 2%.

Fees for air pollution control permits to install based on process weight rates

(R.C. 3745.11(F))

Current law requires a person to pay a fee for a permit to install under the Air Pollution Control Law for processes that are used in specified industries that are identified by applicable standard industrial classification codes. The specified industries include all of the following: bituminous coal and lignite mining; bituminous coal and lignite mining services; dimension stone; crushed and broken limestone; crushed and broken stone, not elsewhere classified; construction sand and gravel; industrial sand; cut stone and stone products; and minerals and earth, ground or otherwise treated. The bill revises the industrial classifications by eliminating seven classifications and adding nine classifications. The table below shows the current classifications eliminated by the bill and the classifications added by it:

Industrial classifications eliminated by the bill	Industrial classifications added by the bill
1211 Bituminous coal and lignite mining	Major group 10, metal mining
1213 Bituminous coal and lignite mining services	Major group 12, coal mining
1411 Dimension stone	Major group 14, mining and quarrying of nonmetallic minerals
1422 Crushed and broken limestone	
1427 Crushed and broken stone, not elsewhere classified	Industry group 204, grain mill products

Industrial classifications eliminated by the bill	Industrial classifications added by the bill
1442 Construction sand and gravel	2873 Nitrogen fertilizers
1446 Industrial sand	2874 Phosphatic fertilizers
	4221 Grain elevators (storage only)
	5159 Farm related raw materials
	5261 Retail nurseries and lawn and garden supply stores

The bill retains two classifications: 3281 Cut stone and stone products, and 3295 Minerals and earth, ground or otherwise treated.

Extension of various fee-related provisions

Synthetic minor facility emissions fees

(R.C. 3745.11(D))

Under current law, each person who owns or operates a synthetic minor facility must pay an annual fee based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead in accordance with a fee schedule. "Synthetic minor facility" means a facility for which one or more permits to install or permits to operate have been issued for the air contaminant sources at the facility that include terms and conditions that lower the facility's potential to emit air contaminants below the major source thresholds established in rules adopted under existing law. Current law requires the fee to be paid through June 30, 2006. The bill extends the fee through June 30, 2008.

Water pollution control fees and safe drinking water fees

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

Under current law, a person applying for a plan approval for a wastewater treatment works is required to pay a fee of \$100 plus 0.65 of 1% of the estimated project cost, up to a maximum of \$15,000, when submitting an application through June 30, 2006, and a fee of \$100 plus 0.2 of 1% of the estimated project cost, up to a maximum of \$5,000, on and after July 1, 2006. Under the bill, the first tier fee is extended through June 30, 2008, and the second tier applies to applications submitted on or after July 1, 2008.

Current law establishes two schedules for annual discharge fees to be paid by holders of national pollutant discharge elimination system (NPDES) permits

with an average daily discharge flow of 5,000 or more gallons per day. Under each of the schedules, one of which is for public dischargers and one of which is for industrial dischargers, the fees are based on the average daily discharge flow and increase as the flow increases. Under current law, the fees are due by January 30, 2004, and January 30, 2005. The act extends payment of the fees and the fee schedules to January 30, 2006, and January 30, 2007.

In addition to the fee schedules described above, current law imposes a \$7,500 surcharge to the annual discharge fee applicable to major industrial dischargers that is required to be paid by January 30, 2004, and January 30, 2005. The bill continues the surcharge and requires it to be paid annually by January 30, 2006, and January 30, 2007.

Under current law, one category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of \$180. The fee is due annually not later than January 30, 2004, and January 30, 2005. The bill continues the fee and requires it to be paid annually by January 30, 2006, and January 30, 2007.

The Safe Drinking Water Law prohibits anyone from operating or maintaining a public water system without an annual license from the Director of Environmental Protection. Applications for initial licenses or license renewals must be accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems established in current law. The fee for initial licenses and license renewals is required in statute through June 30, 2006, and has to be paid annually prior to January 31, 2006. The bill extends the initial license and license renewal fee through June 30, 2008, and requires the fee to be paid annually prior to January 31, 2008.

The Safe Drinking Water Law also requires anyone who intends to construct, install, or modify a public water supply system to obtain approval of the plans from the Director. Current law establishes a fee for such plan approval of \$150 plus 0.35 of 1% of the estimated project cost. The fee cannot exceed \$20,000 through June 30, 2006, and \$15,000 on and after July 1, 2006. The bill specifies that the \$20,000 limit applies to persons applying for plan approval through June 30, 2008, and the \$15,000 limit applies to persons applying for plan approval on and after July 1, 2008.

Current law establishes two schedules of fees that the Environmental Protection Agency charges for evaluating laboratories and laboratory personnel for compliance with accepted analytical techniques and procedures established under the Safe Drinking Water Law. A schedule with higher fees is applicable through June 30, 2006, and a schedule with lower fees is applicable on and after July 1,

2006. The bill continues the higher fee schedule through June 30, 2008, and applies the lower fee schedule to evaluations conducted on or after July 1, 2008. The bill continues through June 30, 2008, a provision stating that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the person must pay \$1,800 for each additional survey requested.

Certification of operators of water supply systems or wastewater systems

(R.C. 3745.11(O))

Current law establishes a \$25 application fee through November 30, 2003, to take the examination for certification as an operator of a water supply system under the Safe Drinking Water Law or a wastewater system under the Water Pollution Control Law. Upon approval from the Director that an applicant is eligible to take the examination, the applicant must pay a fee in accordance with a fee schedule that is in existence through November 30, 2003. Current law then establishes a \$45 application fee to take the examination for certification as an operator of a water supply system or a wastewater system beginning December 1, 2003, through November 30, 2006, and a \$25 application fee on and after December 1, 2006. Upon approval from the Director that an applicant is eligible to take the examination, the applicant must pay a fee in accordance with a statutory schedule. A higher schedule is established through November 30, 2006, and a lower schedule applies on and after December 1, 2006. The bill eliminates the expired application fee and fee schedule, extends the higher application fee discussed above through November 30, 2008, applies the lower application fee beginning December 1, 2008, extends the existing higher fee schedule through November 30, 2008, and applies the lower fee schedule beginning December 1, 2008.

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

(R.C. 3745.11(S))

Current law requires any person applying for a permit, other than an NPDES permit, a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law to pay a nonrefundable fee of \$100 at the time the application is submitted through June 30, 2006, and a nonrefundable fee of \$15 if the application is submitted on or after July 1, 2006. The bill extends the \$100 fee through June 30, 2008, and applies the \$15 fee on and after July 1, 2008.

Similarly, under existing law, a person applying for an NPDES permit through June 30, 2006, must pay a nonrefundable fee of \$200 at the time of

application. On and after July 1, 2006, the nonrefundable application fee is \$15. The bill extends the \$200 fee through June 30, 2008, and applies the \$15 fee on and after July 1, 2008.

Fees for section 401 water quality certifications

(R.C. 3745.114)

Under the federal Clean Water Act, anyone who wishes to discharge dredge or fill material into the waters of the United States must obtain a section 404 permit from the U.S. Army Corps of Engineers and a section 401 water quality certification from the state where the discharge is to take place. In Ohio, the section 401 water quality certification program is administered by the Ohio Environmental Protection Agency (EPA). Currently there is no authority in state law for the EPA to charge fees for the issuance of section 401 water quality certifications.

The bill establishes a schedule of fees applicable to section 401 water quality certifications by requiring a person applying for a certification to pay an application fee of \$200 at the time of application plus any of the following fees, as applicable:

- (1) If the water resource to be impacted is a wetland, a review fee of \$500 per acre of wetland to be impacted;
- (2) If the water resource to be impacted is a stream, a review fee of \$10 per linear foot of stream to be impacted; or
- (3) If the water resource to be impacted is a lake, a review fee of \$3 per cubic yard of dredged or fill material to be moved.

The total fee paid under the bill cannot exceed \$25,000 per application. However, if the applicant is an Ohio county, township, or municipal corporation, the total fee cannot exceed \$5,000 per application. All money collected from the fees must be deposited in the state treasury to the credit of the Surface Water Protection Fund created in current law for the purpose of funding the EPA's administration of surface water protection programs.

The bill specifies that the new fees do not apply to state agencies and projects that are authorized by the EPA's general certifications of nationwide permits or general permits issued by the U.S. Army Corps of Engineers.

Certification of certified professionals under Voluntary Action Program Law

(R.C. 3746.04 and 3746.071)

Current law requires the Director of Environmental Protection to adopt rules under the Voluntary Action Program Law that establish standards governing the conduct of certified professionals, criteria and procedures for the certification of professionals to issue no further action letters under that Law, and criteria for the suspension and revocation of those certifications. The issuance, denial, suspension, and revocation of those certifications are subject to the procedures established in the Environmental Protection Agency Law. Under that Law, such actions must be published in a newspaper of general circulation. The bill adds that certification renewals also must be published. However, the bill specifies that, in lieu of publishing an action regarding a certification in a newspaper of general circulation as required under the Environmental Protection Agency Law, an issuance, denial, renewal, suspension, or revocation must be published on the Environmental Protection Agency's web site and in the Agency's weekly review not later than 15 days after the date of the issuance, denial, renewal, suspension, or revocation of the certification and not later than 30 days before a hearing or public meeting concerning the action.

Current law allows the Director, in accordance with the Environmental Protection Agency Law, to suspend or revoke a certified professional's certification for a violation of or failure to comply with any or several requirements and obligations governing certified professionals established under the Voluntary Action Program Law. The bill instead allows the Director to suspend or revoke a certification in accordance with rules adopted under the Voluntary Action Program Law rather than in accordance with the Environmental Protection Agency Law.

DEPARTMENT OF HEALTH

- Repeals the requirement that the Director of Health make financial assistance available to county tuberculosis control programs.
- Eliminates the option that a county or district tuberculosis control unit be a county tuberculosis program receiving financial assistance from the Director.
- Repeals the requirement that the Director reimburse boards of county commissioners for the cost of detaining indigent persons with tuberculosis.

- Extends, until July 1, 2007, the scheduled termination of the moratorium on reviewing applications for certificates of need for long-term care beds.
- Requires specified health and safety standards and periods of operation to be met for a CON application to be reviewed under the moratorium's provisions requiring continued review of applications for the relocation of long-term care beds within the same county.
- Requires the Department of Health to administer the J-1 Visa Waiver Program to recruit foreign-born physicians educated in the United States to serve in underserved areas of the state.
- Requires the Department to charge a fee of \$3,571 for each J-1 Visa Program application it accepts.
- Increases the fees for birth records, death certificates, and divorce and dissolution of marriage decrees to provide funds for grants for family violence shelters.
- Authorizes the Public Health Council to adopt rules establishing an inspection fee for hospice care facilities not to exceed \$1,750.
- Increases the application and annual renewal licensing and inspection fee for nursing homes and residential care facilities.
- Authorizes the Department of Health to revoke or refuse to issue a license to operate a nursing home or residential care facility if the licensee or applicant demonstrates a long-standing pattern of violations of Ohio law governing nursing homes and residential care facilities that caused physical, emotional, mental, or psychosocial harm to one or more residents.
- Prohibits the transfer or assignment of the right to operate a nursing home during the adjudication of a license revocation.
- Increases the adult care facility inspection fee to \$20 per bed (from \$10) and requires that the fee be paid following each inspection and each issuance or renewal of a license.
- Increases radiology registration and inspection fees.

Funding for county tuberculosis control programs and detention costs

(R.C. 339.72, 339.88, and 3701.146; R.C. 339.77 (repealed))

County tuberculosis programs

Each board of county commissioners is required to provide for the county to be served by a tuberculosis control unit by designating a county tuberculosis control unit or by entering into an agreement with one or more boards of county commissioners of other counties under which the boards jointly designate a district tuberculosis control unit. The entity designated the county or district tuberculosis control unit may be (1) a communicable disease control program operated by a local board of health, (2) a tuberculosis clinic established by a board of county commissioners, or (3) a tuberculosis program operated by a county receiving funds the Director of Health makes available for programs the Director determines acceptable.

The bill repeals law that requires the Director to make financial assistance available for acceptable county tuberculosis programs and eliminates such programs from the entities that may be designated as a county or district tuberculosis control unit.

The law to be repealed regarding financial assistance for acceptable county tuberculosis programs requires the Director of Health to make annual payments to boards of county commissioners on a per-active-case basis. The annual payment to a county must equal the funds appropriated for this purpose divided by the number of the county's active cases, as determined by the Director, for which a course of treatment the Director determines is appropriate was completed the previous fiscal year.⁵⁷

Detention of persons with tuberculosis

A person with tuberculosis is subject to public health requirements, including a requirement that the person complete an entire treatment regimen that must include a course of antituberculosis medication. If the individual fails to take the medication, a county or district tuberculosis control unit must establish a procedure under which the person is required to be witnessed ingesting the medication by individuals the control unit designates. The control unit has the

⁵⁷ *To justify the payments, the Director or Director's authorized agent, on request, is to be allowed access to a patient's medical records to verify the accuracy of information submitted as part of the process of receiving the payments. The payments must be denied if access to the medical records is denied or the records are unavailable.*

authority to issue an order compelling a person to comply with the public health requirements and to seek an injunction if the order is violated. If the person fails to comply with the injunction, the control unit may request that a probate court issue an order granting the control unit the authority to detain the person in a hospital or other place for examination and treatment. A control unit also has authority to issue an emergency detention order when the unit has reasonable grounds to believe that a person who has, or is suspected of having, tuberculosis poses a substantial danger to the health of other persons.

Current law permits a board of county commissioners to apply to the Director of Health for reimbursement of expenses of detaining indigent persons with tuberculosis. The Director must reimburse a board for the cost of detaining such indigents. Total payment cannot exceed the amount of funds appropriated for the cost of detention. Amounts appropriated for detention unexpended by the end of a fiscal year must be disbursed to boards of county commissioners for tuberculosis programs.

The bill repeals the law that requires the Director to reimburse boards of county commissioners for the cost of detaining indigent persons with tuberculosis and the law permitting the boards to apply for reimbursement.

Certificate of Need moratorium on long-term care beds

(R.C. 3702.141, 3702.51, and 3702.68; Sections 403.23 and 403.24)

Current law prohibits building or expanding the capacity of a long-term care facility without a certificate of need (CON) issued by the Director of Health. The Director is prohibited from accepting an application for a CON to recategorize hospital beds as skilled nursing beds. The Director is also prohibited from accepting certain CON applications until July 1, 2005.

The bill continues, until July 1, 2007, a provision scheduled to expire July 1, 2005, prohibiting the Director from accepting for review a CON application for any of the following purposes:

(1) Approval of beds in a new health care facility or an increase in beds in an existing health care facility, if the beds are proposed to be licensed as nursing home beds;

(2) Approval of beds in a new county home or county nursing home, or an increase of beds in an existing county home or county nursing home, if the beds are proposed to be certified as skilled nursing facility beds under Medicare or nursing facility beds under Medicaid;

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

In the case of (1) and (2), above, the bill specifies that a facility is "existing" if it is licensed or has beds registered with the Department of Health as skilled nursing beds or long-term care beds and has provided services for at least 365 consecutive days within the 24-months immediately preceding the date a CON application is filed with the Director.

Continued review of CON applications during the moratorium

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

Under the bill's continuation of the moratorium, the Director continues to be required to accept for review a CON application for approval of beds in a new facility or an increase in beds in an existing facility, if the proposed increase in beds is attributable solely to a replacement or relocation of existing beds in the same county. However, in the case of relocation of existing beds, the bill specifies that the relocation must be from an existing facility. As described above, the bill specifies that a facility is considered to be existing if it is licensed or has beds registered with the Department of Health as skilled nursing beds or long-term care beds and has provided services for at least 365 consecutive days within the 24-months immediately preceding the date the CON application is filed.

The bill prohibits the Director from approving a CON application for addition of long-term care beds to an existing facility by relocation of beds or for the development of a new health care facility by relocation of beds unless all of the following conditions are met:

(1) The existing facility to which the beds are being relocated has no life safety code waivers, no state fire code violations, and no state building code violations;

(2) During the 60-month period preceding the filing of the application, no notice of proposed revocation of the facility's license was issued to the operator of the existing facility to which the beds are being relocated or to any health care facility owned or operated by the applicant or any principal participant in the applicant;

(3) Neither the existing facility to which the beds are being relocated nor any health care facility owned or operated by the applicant or any principal participant in the same corporation or other business has had a long-standing pattern of violations of the CON law or deficiencies that caused one or more residents physical, emotional, mental or psychosocial harm.

Religious order infirmary beds

The bill also continues the requirement that CON applications pertaining to beds in an infirmary operated exclusively by certain religious orders be reviewed. The bill specifies, however, that the applications to be reviewed are those for the conversion of infirmary beds to long-term care beds.

J-1 Visa Waiver Program

(R.C. 3702.83)

Federal law requires a foreign-born person who wishes to pursue graduate medical education or training in the United States to obtain a J-1 Exchange Visitor Visa, or J-1 Visa. The J-1 Visa authorizes the person to enter the United States and remain until he or she has completed the graduate medical education or training, but requires that the person return to his or her home country on completing the education or training and remain there for at least two years before returning to the United States. This requirement may be waived if the person agrees to serve as a physician for at least three years in an area of the country designated by the United States Secretary of Health and Human Services as a health professional shortage area.

Under the bill, the Department of Health must administer, in accordance with the Immigration and Nationality Act, the J-1 Visa Waiver Program to recruit, for the purpose of providing health care services in underserved areas of the state, foreign-born physicians seeking to obtain J-1 Visa waivers. The Department must accept and review applications for placement of those seeking waivers and, for each application accepted, charge a non-refundable fee of \$3,571. Fees must be deposited with the State Treasurer and credited to the state's general operations fund.

Fee increase for birth certificates, death certificates, and divorce and dissolution of marriage decrees

(R.C. 3705.24 and 3705.242)

The Public Health Council is authorized by current law to adopt rules prescribing the fees that may be charged for various services provided by the state office of vital statistics, including fees for copies of birth and death records and fees for divorce and dissolution of marriage filings. In addition to the fees established by the Public Health Council, other fees may be charged for copies of these records, including fees charged by the local registrar or clerk of court, fees to modernize and automate the vital records system, and fees charged to benefit the Children's Trust Fund (R.C. 3109.14, not in the bill).

The bill creates new fees for copies of vital records as follows:

- (1) \$1.50 for each certified copy of a birth certificate, certification of birth, or death certificate;
- (2) \$5.50 on the filing for a divorce or dissolution of marriage.

The Director of Health, the Director's designee, a local commissioner of health, or a local registrar of vital statistics may collect the fees. If the fee is collected locally, the local official may retain a portion of the fee to cover administrative costs.

The fees are to be used to fund the Family Violence Prevention Fund, which the bill creates. The bill authorizes the Director of Public Safety to use money in the Fund to provide grants to family violence shelters.

Hospice care facility inspection fee

(R.C. 3712.03; Ohio Administrative Code §3701-19-05)

Current law requires the Department of Health to inspect hospice care facilities as necessary to determine compliance with the hospice care law and rules adopted under it. An administrative rule requires the Department to inspect hospice care facilities at the following times:⁵⁸

- (1) Prior to issuing a license to operate a hospice care program;

⁵⁸ *The Department of Health is not required to conduct the pre-licensure inspection or unannounced inspection of hospice care programs that are accredited or certified by an entity whose standards equal or exceed those provided by Ohio's hospice care law (R.C. Chapter 3712.) (O.A.C. 3701-19-04 and 3701-19-05).*

(2) At least once every three years, unannounced;

(3) At any time the Director of Health considers an inspection necessary, including inspections in response to a complaint.

The bill authorizes the Public Health Council to adopt rules establishing an inspection fee not to exceed \$1,750.

Nursing home and residential care facility licensing fees

(R.C. 3721.02)

The Department of Health licenses and inspects nursing homes and residential care facilities.⁵⁹ The fee for an application and annual renewal licensing and inspection is \$105 for each 50 persons in the home or facility's licensed capacity. The bill increases the fee to \$170 for each 50 persons in the home or facility's licensed capacity.

Revocation of nursing home and residential care facility licenses

(R.C. 3721.03)

Under current law, the Director of Health may issue an order revoking a license to operate a nursing home or residential care facility if the person, county home, or district home operating the nursing home or residential care facility has done any of the following:

(1) Violated any provisions of the nursing home law or rules adopted by the Public Health Council;

(2) Violated any order issued by the Director;

(3) Is not, or any of its principals are not suitable, morally or financially, to operate the nursing home or residential care facility;

⁵⁹ *A nursing home is a home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services but not skilled nursing care. A residential care facility is a home that provides either (1) accommodations for 17 or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment or (2) accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, limited skilled nursing care. (R.C. 3721.01.)*

(4) Is not furnishing humane, kind, and adequate treatment and care.

The bill creates an additional ground for revocation. Under the bill, a nursing home or residential care facility that has had a long-standing pattern of violations of the nursing home law or rules adopted under it causing physical, emotional, mental, or psychosocial harm to one or more residents may have its license revoked by order of the Director.

Prohibition on transfer of right to operate

The bill provides that once the Director notifies a license holder that the license holder's license to operate a nursing home or residential care facility may be revoked, the license holder may not assign or transfer the right to operate to another person or entity. This prohibition remains in effect until administrative proceedings under Ohio's Administrative Procedure Act (R.C. Chapter 119.) are complete or until the Director notifies the person, county home, or district home that the prohibition has been lifted.

If a license is revoked, the former license holder is not permitted to assign or transfer or consent to assignment or transfer of the right to operate the home. Any attempted transfer or assignment to another person or entity is void.

Rejection of license application

(R.C. 3721.07)

Current law requires any person seeking to operate a nursing home or residential care facility to apply for a license to the Director of Health. The Director must issue licenses to qualified applicants. The Director may not issue licenses to the following individuals or entities:

(1) Applicants who have been convicted of a felony or a crime involving moral turpitude;

(2) Applicants who have violated any rules made by the Public Health Council or any orders issued by the Director.

The bill additionally prohibits the Director from issuing licenses to the following individuals or entities:

(1) Any applicant whose license to operate was revoked because of any act or omission that jeopardized a resident's health, welfare, or safety;

(2) Any applicant whose license to operate was revoked because the applicant has a long-standing pattern of violations of nursing home law or rules

that caused physical, emotional, mental, or psychosocial harm to one or more residents.

Adult care facility inspection fees

(R.C. 3722.04)

Under current law, the owner of an adult care facility⁶⁰ is required to pay an inspection fee of \$10 per bed to the Director of Health when the facility's license is issued and each time it is renewed. The owner is required to submit the fee not later than 30 days after the issuance or renewal of a license, other than a temporary license.

Under the bill, the owner is required to submit a fee of \$20 per bed not later than 30 days after each of the following:

- (1) Issuance or renewal of a license, other than a temporary license;
- (2) The unannounced inspection of a facility required under the adult care facility law;
- (3) Receipt of the report by the adult care facility of any investigation other than the two required under the adult care facility law if the facility was found to be in violation of that law.

Radiation control program fees for health care and radioactive waste facilities

(R.C. 3748.07 and 3748.13)

Continuing law requires the Director of Health to register and inspect sources of radiation. The bill increases registration and inspection fees by approximately 9% as shown in the following chart.

⁶⁰ "Adult care facility" means any residence, facility, institution, hotel, congregate housing project, or similar facility that provides accommodations and supervision to three to sixteen unrelated adults, at least three of whom are provided personal care services, but does not include facilities such as hospices and nursing homes that provide skilled nursing care (R.C. 3722.01, not in the bill).

Inspection or registration fee	Prior fee	New fee
Biennial registration	\$200	\$218
First dental x-ray tube	\$118	\$129
Each additional x-ray tube at a location	\$59	\$64
First medical x-ray tube	\$235	\$256
Each additional medical x-ray tube at a location	\$125	\$136
Each unit of ionizing radiation-generating equipment capable of operating at or above 250 kilovoltage peak	\$466	\$508
First nonionizing radiation-generating equipment of any kind	\$235	\$256
Each additional nonionizing radiation-generating equipment at a location	\$125	\$136
Assembler-maintainer inspection	\$291	\$317
Inspection for unlicensed or unregistered facility without pending license or registration	\$363	\$395
Review of shielding plans or the adequacy of shielding	\$583	\$635

HIGHER EDUCATIONAL FACILITY COMMISSION

- Makes an exception to the Open Meetings Law by allowing members of the Higher Educational Facility Commission (HEFC) to be counted towards a quorum and to vote at an HEFC meeting the member is attending by teleconference.

Members may attend meetings by teleconference

(R.C. 3377.03)

The Open Meetings ("Sunshine") Law requires meetings of public bodies, such as boards, commissions, and committees, to be open to the public.⁶¹ A "meeting" is any prearranged discussion of the public business of the public body by a majority of its members.⁶² The law requires a member of a public body to be present, in person, at a meeting open to the public to be considered present or to vote at the meeting, and for purposes of determining whether a quorum is present.⁶³

The bill makes an exception to the Open Meetings Law by allowing members of the Higher Educational Facility Commission (HEFC) who attend an HEFC meeting by interactive video teleconference or teleconference to be considered present for the purpose of a quorum and to cast votes, as long as public attendance is allowed at the meeting's location.

DEPARTMENT OF INSURANCE

- Requires additional revenues collected by the Superintendent of Insurance to be deposited in the Department of Insurance Operating Fund.
- Eliminates the exemption from the unauthorized foreign insurance tax for insurance companies that issue policies to "employer insureds."

Additional revenues for the Department of Insurance Operating Fund

(R.C. 3901.021)

The bill requires other revenues collected by the Superintendent of Insurance, such as registration fees for sponsored seminars or conferences and

⁶¹ See R.C. 121.22, not in the bill.

⁶² R.C. 121.22(B)(2).

⁶³ R.C. 121.22(C).

grants from private entities, to be paid into the Department of Insurance Operating Fund.

Exemption for "employer insureds" from the unauthorized foreign insurance tax

(R.C. 3901.17 and 3905.16)

Current law imposes a tax on out-of-state insurers and other persons engaged in the business of insurance that are not authorized to do business in Ohio, if the insurer, its affiliate, or agent takes any of a number of listed actions in Ohio, by mail or otherwise any of which are considered to be the conduct of an insurance business in Ohio and subject the party taking the action to Ohio jurisdiction to the extent permitted by the state and federal constitutions. This tax, however, has several exemptions one of which is for contracts of insurance issued to an "employer insured" defined as an insured with at least 25 full-time employees and annual aggregate insurance premiums of at least \$25,000, that procures insurance by the use of a full-time employee acting as an insurance manager or buyer or by the use of a continuously qualified insurance consultant.

The bill ends this exemption, and additionally, ends an exemption to a requirement that an Ohio insured that obtains insurance providing coverage in Ohio, from an unauthorized foreign insurer, annually return a statement, under oath, to the Superintendent of Insurance, providing specified information on the insurance coverage and on premiums and other consideration paid for the insurance in the preceding 12 months.

DEPARTMENT OF JOB AND FAMILY SERVICES

I. General

- Creates two new funds in the state treasury: the Support Services Federal Operating Fund and the Support Services State Operating Fund.
- Provides for money in the funds to be used to pay the Ohio Department of Job and Family Services costs for computer projects and the operating costs of the parts of ODJFS that provide general support services for ODJFS.
- Eliminates the provision of state law governing fiscal agreements between ODJFS and boards of county commissioners that concern consolidated funding allocations.



- Authorizes ODJFS to require a county to increase its share of public assistance expenditures by an amount equaling the amount of a reduction the county is responsible for in federal financial participation or in a federal grant or payment.
- Specifically authorizes the Director of ODJFS to redetermine eligibility for certain programs administered by ODJFS.
- Includes as programs for which the Director of ODJFS may accept applications, determine eligibility, redetermine eligibility, and perform related administrative activities the Food Stamp program and other programs the Director determines will achieve administrative cost saving and efficiency through ODJFS's performance of those functions.

II. Workforce Development

- Authorizes two additional actions that the Ohio Department of Job and Family Services may take to enforce compliance with workforce development agreements and modifies the process used to review compliance actions.

III. Child Care

- Eliminates a provision that limits copayments for publicly funded child day-care to 10% of the family's income and requires that fees be calculated as permitted by federal law.

IV. Child Support Enforcement

- When a lump sum of \$150 or more is due a child support obligor who is in arrears, authorizes issuance of an order requiring a portion of the lump sum be transmitted to the Office of Child Support that is sufficient to pay the arrearage in full, rather than the entire lump sum.
- Replaces a provision directing how the Office of Child Support must distribute the lump sum with a requirement that the Office distribute it in accordance with administrative rules.
- Permits the Office of Child Support to distribute child support amounts by means of electronic disbursement and requires a person receiving the child support to accept payment by electronic means.

- Creates in the state treasury a state special revenue fund, the Child Support Operating Fund, that will contain a portion of certain federal moneys related to child support enforcement and may be used by the Ohio Department of Job and Family Services for program and administrative purposes associated with the Department's program of child support enforcement.

V. Child Welfare and Adoption

- Eliminates the requirement that a court prepare and send to the Ohio Department of Job and Family Services a summary of each proceeding for the adoption of a minor and the requirement that the Department annually report on the assembled results compiled from these summaries.

VI. Title IV-A Temporary Assistance for Needy Families

- Permits the Ohio Department of Job and Family Services (ODJFS) to establish and administer the Employment Retention Incentive Program in fiscal year 2007 using funds available under the TANF block grant.
- Creates the Title IV-A Demonstration Program under which ODJFS may provide funding to government agencies and not-for-profit entities administering a project designed to meet one of the four purposes of the TANF block grant.
- Requires an agreement between ODJFS and an entity administering a project under the Title IV-A Demonstration Program or a state agency administering certain programs funded with TANF funds to provide for the performance outcomes expected for the project or program and an evaluation to determine the success in achieving the performance outcomes.
- Provides that an assistance group meets the first step in determining income eligibility for Ohio Works First if the assistance group's gross income does not exceed the higher of 50% of the federal poverty guidelines or the current gross income maximum.
- Authorizes ODJFS to provide (1) additional incentives to teens participating in the Learning, Earning, and Parenting (LEAP) Program who attend an educational program designed to lead to a high school diploma or its equivalent and (2) an award to an individual who has

successfully completed the LEAP Program and enrolls in post-secondary education.

VII. Medicaid

- Permits the Ohio Department of Job and Family Services (ODJFS) to conduct reviews of the Medicaid program.
- Requires the Director of Job and Family Services to seek federal approval to reduce to 90% of the federal poverty guidelines the family income the parent of a child under age 19 may have and remain eligible for Medicaid.
- Allows ODJFS to terminate or not renew a Medicaid provider agreement without an administrative hearing if the provider has not billed or otherwise submitted claims for payment for two or more years and has not left an active address with ODJFS.
- Permits ODJFS to recover overpayments made to Medicaid providers.
- Allows the overpayment recovery to occur at any time, including before or after a final fiscal audit or any other finding has been adjudicated and before or after the expiration date for issuing a final fiscal audit or finding.
- Requires that subsequent final fiscal audits or findings be reduced by the amount of any overpayments collected, as appropriate.
- Permits a state agency that administers a component of the Medicaid Program for ODJFS to commence actions to recover overpayments the state agency identifies.
- Requires the state agency to first seek voluntary repayment and permits the agency to negotiate a settlement, which must be approved by ODJFS before being implemented.
- Requires the state agency to hold an administrative hearing to collect the overpayment if voluntary repayment cannot be achieved.
- Provides that any final order resulting from a hearing held by the state agency must be issued by the Director of ODJFS.

- Permits ODJFS to issue a final administrative order under the Medicaid Program without holding an administrative hearing if notice of an opportunity for the hearing has been provided but the notified entity does not make a timely request for a hearing.
- Applies a substantially similar provision to state agencies seeking recovery of Medicaid overpayments identified in administering components of the Medicaid Program on ODJFS's behalf.
- Requires ODJFS to adopt rules establishing procedures for enforcing rules governing services included in the state Medicaid plan, including procedures for corrective action plans for, and imposing sanctions on, violators of the rules.
- Requires the Director of ODJFS to amend the state Medicaid plan to eliminate coverage of dental and vision care services for individuals age 21 or older for whom those services are not required by federal Medicaid law.
- Eliminates the requirement that ODJFS, every two years, initiate a survey of retail pharmacy operations for the purpose of helping ODJFS establish the Medicaid dispensing fee for pharmacists.
- Eliminates a requirement that any drug product used to treat mental illness, HIV, or AIDS be exempted from the Medicaid program's Supplemental Drug Rebate Program.
- Repeals state law governing the Medicaid reimbursement methodology and procedures for nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR).
- Provides for the fiscal year 2006 Medicaid reimbursement rate for nursing facilities with a 2003 Medicaid cost report to be based on that cost report and calculated, with certain modifications, in accordance with the method used to calculate nursing facilities' fiscal year 2005 Medicaid reimbursement rate.
- Freezes the fiscal year 2007 Medicaid reimbursement rate for nursing facilities at the fiscal year 2006 rate amount.

- Freezes the fiscal years 2006 and 2007 Medicaid reimbursement rate for ICFs/MR at the fiscal year 2005 rate amount.
- Revises the law governing the submission of nursing facility and ICF/MR resident assessment information.
- Provides that, if a Medicaid-certified bed is relocated from one nursing facility to another nursing facility owned by a different person or government entity, amortization of the cost of acquiring operating rights for the transferred bed is not an allowable cost under Medicaid beginning in fiscal year 2008.
- Repeals state law providing that a nursing facility's reasonable costs for rehabilitative, restorative, or maintenance therapy services rendered to residents by nurses or nurse aides, and the facility's overhead costs to support provision of therapy services, are allowable costs for determining Medicaid reimbursement rates.
- Provides that an ICF/MR's Medicaid provider agreement does not have to include beds that are designated for respite care under a Medicaid waiver program.
- Permits the operator of a nursing facility or ICF/MR to enter into provider agreements for more than one facility.
- Extends to fiscal years 2006 and 2007 the increase in the nursing home franchise permit fee to \$4.30 (from \$1) per bed per day.
- Provides that the portion of the nursing home franchise permit fee that is deposited into the Nursing Facility Stabilization Fund is to be used for the same purposes in fiscal years 2006 and 2007 as was such money in fiscal year 2005.
- Permits ODJFS to withhold a Medicaid payment or terminate a Medicaid provider agreement if a facility subject to the nursing home franchise permit fee fails to pay the fee when due.
- Eliminates the exemption from the nursing home franchise permit fee available to certain facilities because of a federal Medicaid waiver.
- Exempts a nursing home maintained and operated by the Ohio Veteran's Home Agency from the nursing home franchise permit fee.

- Provides that the amount of the ICF/MR franchise permit fee for fiscal years 2006 and 2007 is the same as in fiscal year 2005 (\$9.63 per bed per day).
- Permits ODJFS to withhold a Medicaid payment or terminate a Medicaid provider agreement if an ICF/MR fails to pay the franchise permit fee when due.
- Abolishes the Nursing Facility Reimbursement Study Council.
- Establishes requirements for nursing facilities and ICFs/MR that undergo a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation in the Medicaid program.
- Permits ODJFS to designate one or more counties as a mandatory managed care service area where Medicaid recipients designated by ODJFS are required to enroll in and obtain health care services through a managed care organization under contract with ODJFS.
- Requires a Medicaid-participating hospital to provide services to Medicaid recipients in an area designated as a mandatory managed care enrollment service area, even though the hospital does not have a contract with the organization in which the recipients are enrolled.
- Requires the managed care organization to reimburse the hospital according to a reimbursement rate that is the same as the rate ODJFS uses to reimburse the hospital for services provided to other Medicaid recipients.
- Limits the managed care organization's reimbursement rate to services that have been approved by the organization.
- Requires Medicaid managed care organizations, beginning January 1, 2006, to pay a quarterly franchise permit fee to ODJFS to be used to pay for Medicaid services, administrative costs, and managed care contracts.
- Provides for the fee to be 4.5% of the organization's quarterly managed care premiums, unless ODJFS adopts rules decreasing the percentage or increasing it to not more than 6%.
- Permits ODJFS to take disciplinary actions against an organization for failing to pay the fee or failing to cooperate in an audit.

- Prohibits ODJFS from making a Medicaid payment to a hospital for graduate medical education costs if the hospital refuses without good cause to contract with a managed care organization that provides, or arranges for the provision of, health care services to Medicaid recipients residing in the county, or a regional group of counties designated by ODJFS, in which the hospital is located.
- Establishes requirements for Medicaid-funded home and community-based waiver services that are an alternative to hospital, nursing facility, or intermediate care facility for the mentally retarded services.
- Requires that ODJFS and other state agencies and political subdivisions administering a home and community-based services waiver to maintain financial records documenting the costs of services provided under the waiver and make the records available to the United States Secretary of Health and Human Services and United States Comptroller General.
- Provides that ODJFS and other state agencies and political subdivisions are financially accountable for funds expended for services provided under a home and community-based services waiver.
- Requires state agencies and political subdivisions that contract with ODJFS to administer a home and community-based services waiver to provide ODJFS a written assurance that the agency or subdivision will not violate state law that establishes requirements for the waiver.
- Authorizes ODJFS to seek two or more Medicaid waivers under which home and community-based services are provided to individuals who need the level of care provided by a nursing facility or hospital.
- Requires ODJFS to administer such waivers.
- Permits ODJFS to transfer an individual enrolled in an existing ODJFS-administered Medicaid waiver to a new waiver.
- Permits ODJFS, after the first of any of the new Medicaid waivers begins to enroll eligible individuals, to seek federal approval to cease new enrollment in the Ohio Home Care Program.
- Requires ODJFS to seek federal approval to (1) establish a Medicaid waiver under which individuals receive home and community-based

services in lieu of the intermediate care facility for the mentally retarded (ICF/MR) service and (2) terminate the ICF/MR service on the date the Medicaid waiver begins to be implemented statewide.

- Permits ODJFS to assign the administration of the new Medicaid waiver to the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD).
- Requires ODJFS or ODMR/DD, whichever administers the new Medicaid waiver, to phase in implementation of the waiver.
- Permits ODJFS to seek a federal Medicaid waiver authorizing the Assisted Living Program under which supervision and personal care services are provided to individuals eligible for the program.
- Requires ODJFS, if the Assisted Living Medicaid waiver is granted, to contract with the Department of Aging to administer the program.
- Reduces the number of months a Medicaid recipient must have continuously resided in a nursing facility before applying to participate in the Ohio Access Success Project.
- Expands the Medicaid Estate Recovery Program to include any real and personal property and other assets in which an individual subject to recovery has any legal title or interest at the time of death, including assets conveyed to a survivor, heir, or assign of the individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.
- Revises state law governing Medicaid estate recovery and liens to make it consistent with federal law.
- Authorizes ODJFS to take certain actions as necessary to fulfill ODJFS' duties under the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

VIII. Hospital Care Assurance Program

- Delays the termination date of the Hospital Care Assurance Program (HCAP) from October 16, 2005 to October 16, 2007.

IX. Disability Medical Assistance

- Terminates the Disability Medical Assistance Program effective October 1, 2005.
- Specifies the Ohio Department of Job and Family Services' duties and procedures to deal with issues associated with termination of the Program.
- Provides that a county's share for expenditures for public assistance programs in calendar year 2007 is the same as the county's share for those expenditures in calendar year 2006.

X. Title XX Social Services

- Eliminates provisions requiring the Ohio Departments of Job and Family Services (ODJFS), Mental Health, and Mental Retardation and Developmental Disabilities each to commission an entity independent of itself to conduct a biennial audit of its expenditures of funds received through the federal Title XX Social Services Block Grant.
- Requires social services providers to pay the cost of audits required by the state departments responsible for distributing federal Title XX funds and the departments' respective local agencies.
- Eliminates provisions specifying that the cost of an audit must be reimbursed under a subsequent or amended Title XX contract.
- Modifies ODJFS's rule-making authority for the Title XX program by specifying that rules pertaining to applicants and recipients are to be adopted under procedures requiring public hearings and other rules are to be adopted as internal management rules.
- Authorizes the federally allowed percentage of funds received under the Temporary Assistance for Needy Families (TANF) Block Grant to be used by ODJFS for the provision of Title XX social services.
- Provides that the use of TANF funds for Title XX services is not subject to other laws governing Title XX social services, and eliminates similar provisions of law.

- Establishes auditing procedures and rule-making powers for the use of TANF funds for Title XX social services.

I. General

Support Services Federal Operating Fund

(R.C. 5101.07)

The bill creates the Support Services Federal Operating Fund. If appropriate for the Fund, as determined by the Director of Job and Family Services, moneys received from the federal government are to be deposited into the Fund. The bill requires that money in the Fund be used to pay the federal share of the Ohio Department of Job and Family Services' (ODJFS) costs for computer projects and operating costs of the parts of ODJFS that provide general support services for ODJFS work units.

Support Services State Operating Fund

(R.C. 5101.071)

The bill creates the Support Services State Operating Fund. The Fund is to consist of payments made to it from other appropriation items by intrastate transfer voucher. The bill requires that money in the Fund be used for the Ohio Department of Job and Family Services' (ODJFS) costs for computer projects and the operating costs of the parts of ODJFS that provide general support services for ODJFS work units.

Consolidated funding allocations

(R.C. 5101.21)

Current law permits the Ohio Department of Job and Family Services (ODJFS) to enter into one or more written fiscal agreements with boards of county commissioners under which financial assistance is awarded for duties of county family services agencies (county departments of job and family services, child support enforcement agencies, and public children services agencies) included in the agreements.

Current law requires that a fiscal agreement include a board of county commissioner's assurance that, if ODJFS establishes a consolidated funding allocation for two or more duties of a county family services agency included in the fiscal agreement, the board will require the agency to use funds available in the

consolidated funding allocation only for the purpose for which the funds is appropriated. ODJFS is permitted to adopt rules governing the establishment of consolidated funding allocations.

The bill eliminates the fiscal agreement provision that concerns consolidated funding allocations and ODJFS's authority to adopt rules governing the establishment of such allocations.

Disciplinary action in form of increase in county share of public assistance

(R.C. 5101.24)

Current law authorizes the Ohio Department of Job and Family Services (ODJFS) to take certain disciplinary actions against a board of county commissioners or county family services agency (county department of job and family services, child support enforcement agency, or public children services agency) if ODJFS determines any of the following are the case:

(1) A requirement of a fiscal agreement between ODJFS and board of county commissioners is not complied with;

(2) A county family services agency fails to develop, submit to ODJFS, or comply with a corrective action plan ODJFS requires that the agency develop because of the agency's failure to comply with a standard established for a duty of the agency;

(3) ODJFS disapproves the agency's corrective action plan;

(4) A requirement for a duty of a county family services agency is not complied with;

(5) The board of county commissioners or county family services agency is solely or partially responsible for an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty regarding the duty.

The disciplinary actions that ODJFS may take include requiring that the board of county commissioners or county family services agency share a sanction or penalty with ODJFS or pay the board or agency's share of a sanction or penalty to ODJFS or entity that imposed the sanction or penalty.

The bill establishes a new disciplinary action that ODJFS may impose on the board or agency: ODJFS may increase the county's share of public assistance expenditures by an amount equaling the amount of a reduction the board or agency is responsible for in federal financial participation or in a federal grant or payment.

Current law that governs counties' share for public assistance expenditures already provides for a county's share to be increased pursuant to a sanction ODJFS imposes on the board or agency.⁶⁴

Eligibility for certain programs administered by the Department of Job and Family Services

(R.C. 5101.47)

Under current law, the Director of Job and Family Services may accept applications, determine eligibility, and perform related administrative functions for Medicaid, the Children's Health Insurance Program parts I and II, publicly funded child day-care, and other programs the Director determines are supportive of children or families with at least one employed member. The bill also specifically authorizes the Director to re-determine eligibility. In addition, the bill permits the Director to perform these functions for additional programs: the Food Stamp program, and other programs the Director determines will achieve administrative cost saving and efficiency through the Department of Job and Family Services' performance of those functions. Finally, the bill alters the law related to supportive programs, providing that the Director may perform any of the functions described above with regard to programs that support children, *adults*, or families, and eliminates the requirement that the families have at least one employed member.

II. Workforce Development

Compliance with workforce development agreements

(R.C. 5101.241)

Local areas receive financial assistance from the Ohio Department of Job and Family Services (ODJFS) to undertake workforce development activities. Ongoing law permits ODJFS to take action against local officials to enforce compliance with workforce development agreements, including, but not limited to, initiating mandamus actions to compel compliance, imposing fines, and withholding funding. The bill also allows ODJFS either to issue a notice of intent to revoke approval of all or part of a local development plan and then to effect the revocation or to impose a reorganization plan. Under the bill, a reorganization plan may decertify the local board, select an alternate administrator, merge the area with one or more local areas, prohibit the use of eligible providers, or make other changes that the ODJFS Director deems to be necessary to secure compliance.

⁶⁴ R.C. 5101.16(C)(2).

Ongoing law also permits a party to request an administrative review of an action proposed to enforce the party's compliance with a workforce development agreement. Currently, depending upon the proposed action, the party may have 15 or 30 days to request an administrative review. If ODJFS receives a timely request, ODJFS is required to postpone taking its action for 15 or 30 days so that ODJFS and the party have an informal opportunity to resolve the dispute. If the informal opportunity fails to resolve the dispute, the Director appoints an administrative review panel to conduct a formal review. The bill eliminates the opportunity for an informal resolution. All requests for review must be filed within 15 days and proceed directly to the formal review process.

Currently, at the conclusion of its review, the administrative review panel submits a report and recommendations for action to the Director. The Director may modify or reject the recommendations, but must give the reasons therefor. The bill eliminates the requirement for the Director to state the reasons for a modification or rejection of the panel's recommendations. The Director's final action is binding and the bill provides the action is not subject to review; current law states only that the action is not subject to further "Departmental" review.

III. Child Care

Fees for publicly funded child day-care

(R.C. 5104.38)

Under current law, the Director of Job and Family Services is required to establish by rule a schedule of fees that caretaker parents are required to pay for publicly funded child day-care. These fees are based on family income and size, and must generally be uniform for all types of publicly funded child day-care. Existing law provides that the fee cannot exceed 10% of the parent's family income. The bill eliminates the requirement that the fee not be in excess of 10% of the parent's family income, and instead provides that the fees must be calculated as permitted by federal law.

IV. Child Support Enforcement

Lump sum payments sent to the Office of Child Support

(R.C. 3121.12)

Existing law

Under existing law, on receiving notice that a lump sum payment of \$150 or more is to be paid to an obligor (the person who is obliged to pay child support

under a child support order), the court or child support enforcement agency, as applicable, is required to do either of the following:

(1) If the obligor is in default under the support order or has any arrearages under the support order, issue an order requiring transmittal of the lump sum payment to the Office of Child Support in the Ohio Department of Job and Family Services;

(2) If the obligor is not in default under the support order and does not have any arrearages under the support order, issue an order directing the person who gave the notice to immediately pay the full amount of the lump sum to the obligor.

On receipt of the moneys, the Office of Child Support is required to pay the amount of the lump sum payment that is necessary to discharge all of the obligor's arrearages to the obligee and, within two business days after its receipt of the money, any amount that is remaining after the payment of the arrearages to the obligor.

But, federal law and regulations generally require that any amounts collected be treated first as payment on the required child support obligation for the month in which the amount was collected. If any amounts collected are in excess of that obligation, the excess amounts must be treated as payments on arrearages. (42 U.S.C. 657(a) and 45 C.F.R. 302.51(a)(1).) The Ohio Administrative Code similarly requires payment received to be applied to current obligations before being applied to arrearages (O.A.C. 5101:1-31-14).

The bill

The bill makes two changes to current law. First, if the court or child support enforcement agency determines that the obligor is in default under the support order or has any arrearages under the support order, the bill authorizes the court or agency to issue an order requiring the transmittal of the portion of the lump sum payment sufficient to pay the arrearage in full. Second, the bill replaces the provision requiring the Office of Child Support to apply the payment to the arrearage and then transmit any remaining moneys to the obligor with a provision that requires the Office to distribute whatever portion of the lump sum it receives in accordance with administrative rules.

Electronic disbursement of child support

(R.C. 3121.50)

The bill permits the Office of Child Support in the Ohio Department of Job and Family Services to distribute child support amounts by means of electronic

disbursement, rather than by check or warrant, unless otherwise prohibited from doing so by state or federal law. The bill also requires the person receiving the child support to accept payment by electronic means. The Director of Job and Family Services may adopt or amend rules under the Administrative Procedure Act (R.C. Chapter 119.) to assist in the implementation of this provision.

Child support operating fund

(R.C. 3125.191)

The bill creates in the state treasury the Child Support Operating Fund as a state special revenue fund. The Ohio Department of Job and Family Services (ODJFS) may deposit into the Fund a portion of the federal incentives related to the federal Child Support Enforcement laws contained in Title IV-D of the Social Security Act that ODJFS receives from the United States Department of Health and Human Services. ODJFS may use money in the Fund for program and administrative purposes associated with its State Child Support Enforcement Program.

V. Child Welfare and Adoption

Summary of minor adoption proceedings

(R.C. 2151.416 and 3107.10)

The bill repeals provisions that require courts to send monthly summaries regarding minor adoption proceedings to the Ohio Department of Job and Family Services (ODJFS) and require ODJFS to annually report on the assembled results compiled from these summaries.

Under existing law, at the conclusion of each adoption proceeding, the court must prepare a summary of the proceeding, and each month send copies of the preceding month's summaries to ODJFS. The summary is required to contain the following:

(1) A notation of the nature and approximate value or amount of anything paid in connection with the proceeding and indicating the category to which any payment relates;

(2) If the court has not issued a decree because the final accounting in the case has not been filed, a notation of that fact and a statement of the reason for refusing to issue the decree, related to the financial data summarized under clause (1);

(3) If the adoption was arranged by an attorney, a notation of that fact.

Existing law prohibits the summary from identifying any person by name, but it may contain additional narrative material that the court considers useful to an analysis of the summary.

Existing law also requires ODJFS to annually report to the public and to the General Assembly on the results of these summaries, including a compilation and analysis of data submitted in the summaries.

The bill repeals these provisions.

VI. Title IV-A Temporary Assistance for Needy Families

Title IV-A of the Social Security Act authorizes the Temporary Assistance for Needy Families (TANF) block grant. States may receive federal funds under the TANF block grant to operate programs designed to meet one or more of the following purposes:

(1) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies;

(4) Encourage the formation and maintenance of two-parent families.

Persons who receive assistance funded in part with federal TANF funds are subject to a number of federal requirements, including time limits and work requirements. Federal regulations define "assistance" as including cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs for such things as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. It includes such benefits even when they are provided in the form of payments to individual recipients and conditioned on participation in work experience, community service, or other work activities provided by federal TANF law. Unless specifically excluded, "assistance" also includes supportive services such as transportation and child care provided to unemployed families. All of the following are excluded from the definition of "assistance":

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

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

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

(4) Refundable earned income tax credits;

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

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

(7) Transportation benefits provided under a Job Access or Reverse Commute project to an individual who is not otherwise receiving assistance.⁶⁵

The Ohio Department of Job and Family Services (ODJFS) is required to prepare and submit to the United States Department of Health and Human Services a state plan to receive federal funds under the TANF block grant. The state plan must provide for the following TANF programs: (1) Ohio Works First (OWF), (2) Prevention, Retention, and Contingency (PRC), (3) other TANF programs established by the General Assembly or an executive order issued by the Governor that are administered or supervised by ODJFS, and (4) components of OWF, PRC, and other ODJFS administered or supervised TANF programs that the state plan identifies as components.

Participants of OWF receive TANF-funded assistance and are therefore subject to the federal TANF requirements such as time limits and work requirements. State law governing PRC permits programs to provide benefits and services that are excluded from the definition of assistance in the federal TANF regulations. State law requires that other TANF programs also provide benefits and services that are excluded from the federal definition of assistance unless the state law or executive order establishing the programs provides otherwise.

New TANF programs

The bill creates two new TANF programs: the Employment Retention Incentive Program and the Title IV-A Demonstration Program.

⁶⁵ 42 C.F.R. 260.31.

Employment Retention Incentive Program

(Section 206.67.09)

The bill permits the Ohio Department of Job and Family Services (ODJFS) to establish and administer the Employment Retention Incentive Program under which ODJFS provides cash payments to eligible assistance groups. The program may be created in fiscal year 2007.

If ODJFS establishes the program, the program's cash payments must be provided in a manner that enables them to be excluded from the definition of assistance in federal TANF regulations and instead be benefits that the federal regulations exclude from the definition of assistance. Each county department of job and family services is required to make eligibility determinations for the program and perform other administrative duties in accordance with rules that the bill requires ODJFS to adopt.

To be eligible for the program, an assistance group must meet all of the following requirements in accordance with rules ODJFS must adopt:

(1) The assistance group must apply to a county department of job and family services using an application that contains all of the information required by the rules;

(2) The assistance group must have ceased to participate in OWF;

(3) The assistance group must include a member who was employed during the last month the assistance group participated in OWF;

(4) That member of the assistance group must remain employed;

(5) The assistance group must meet all other eligibility requirements established in the rules.

In addition to the rules discussed above, the bill requires that ODJFS adopt rules establishing (1) the application process for the program, including the process to verify eligibility for the program, (2) the amounts that eligible assistance groups are to receive as cash payments under the program, and (3) the frequency and duration that eligible assistance groups are to receive cash payments under the program.

Title IV-A Demonstration Program

(R.C. 5101.802; ancillary R.C. sections: 3125.18, 5101.35, 5101.80, 5101.801, and 5153.16)

The bill creates the Title IV-A Demonstration Program to provide funding for innovative and promising prevention and intervention projects that meet one or more of the four purposes of the TANF block grant and are for individuals with specific and multiple barriers to achieving or maintaining self sufficiency and personal responsibility. ODJFS is permitted to provide funding for such projects to government entities and, to the extent permitted by federal law, private, not-for-profit entities with which ODJFS enters into agreements.

ODJFS is permitted to solicit proposals for entities seeking to enter into an agreement with ODJFS for the purpose of receiving funding under the Title IV-A Demonstration Program. ODJFS is to solicit the proposals in accordance with criteria ODJFS develops. ODJFS may enter into such agreements with entities that meet the proposal's criteria. In developing the criteria, soliciting the proposals, and entering into the agreements, ODJFS must comply with all applicable federal and state laws, the Title IV-A state plan, amendments to the state plan, and federal waivers the United States Secretary of Health and Human Services grants.

Current law specifies a number of provisions that must be included in an interagency agreement between ODJFS and a state agency concerning the state agency's administration of a TANF program or component. The bill requires that an agreement between ODJFS and a government or private, not-for-profit entity regarding a project under the Title IV-A Demonstration Program also include the provisions. For example, the agreement must include a complete description of the benefits and services that are to be provided and the methods of administration. The bill also requires that such agreements include provisions for determining the expected performance outcomes and an evaluation to determine the success in achieving the performance outcomes.

A government entity or private, not-for-profit entity that receives funding to administer a project under the Title IV-A Demonstration Program is subject to requirements current law establishes for county family services agencies⁶⁶ and state agencies that administer other TANF programs under the supervision of ODJFS. For example, the government and private, not-for-profit entities are

⁶⁶ *The following are county family services agencies: county departments of job and family services, child support enforcement agencies, and public children services agencies.*

prohibited from establishing a policy governing a project that is inconsistent with a policy the Director of ODJFS establishes. ODJFS must prescribe forms for applications, certificates, reports, records, and accounts of the entities and require reports and information from the entities as may be necessary or advisable regarding the program.

Current law provides that an authorized representative of ODJFS or a county family services agency or state agency administering a TANF program must have access to all records and information bearing thereon for the purposes of investigations. The bill provides that an authorized representative of a government entity or private, not-for-profit entity administering a project funded in whole or in part with funds provided under the Title IV-A Demonstration Program must have access to all records and information bearing on the project for the purpose of investigations.

Current law establishes a process for individuals to appeal a decision of a state or local government entity administering a public assistance program. Under this process, the individual may have a state hearing with ODJFS. That decision may be appealed to the Director of ODJFS or the Director's designee and ultimately to a court of common pleas. ODJFS is permitted to adopt rules establishing a different appeals process for certain TANF programs. The bill provides that the rules may establish a different appeals process for the Title IV-A Demonstration Program.

Ohio Works First

The bill revises state law governing the Ohio Works First program (OWF).

Gross income eligibility requirement

(R.C. 5107.10)

There are a number of eligibility requirements that an assistance group must meet to qualify to participate in OWF. One of the requirements is an income eligibility requirement. The income eligibility requirement has two steps. The bill modifies the first step.

Under current law, an assistance group's gross monthly income, less amounts disregarded, cannot exceed an amount specified in state law. For example, an assistance group with three members cannot have gross monthly income, less amounts disregarded, exceeding \$630. The bill eliminates the specific dollar amounts and provides instead that an assistance group's gross monthly income, less amounts disregarded, cannot exceed the higher of (1) 50% of the federal poverty guidelines or (2) the dollar amount currently specified in state

law.⁶⁷ The annual revisions that the United States Department of Health and Human Services makes to the federal poverty guidelines are to be applied starting on the first day of each July.

LEAP Program

(R.C. 5107.05, 5107.30, and 5107.301)

The Learning, Earning, and Parenting (LEAP) Program is a component of OWF under which participating teens⁶⁸ must attend an educational program that is designed to lead to the attainment of a high school diploma or its equivalent. The Ohio Department of Job and Family Services (ODJFS) is required to provide an incentive payment to teens who satisfy the LEAP Program's education requirements and reduce a teen's OWF cash assistance payment for failure or refusal, without good cause, to meet the requirements.

The bill authorizes ODJFS to provide, in addition to the incentive payment, other incentives to teens who satisfy the LEAP Program's education requirements. The bill requires that the Director of ODJFS adopt rules establishing the LEAP Program's incentives.

The Director is authorized by the bill to provide an award to individuals who successfully complete the LEAP Program's requirements and enroll in post-secondary education. If provided, the award is to be provided in accordance with rules the Director is authorized to adopt. The rules may specify the form that the award is to take and the requirements for receiving it.

VII. Medicaid

Medicaid is a health-care program for low-income children and families and for aged, blind, and disabled persons. The program is funded with federal, state, and county funds and was established by Congress in 1965 as Title XIX of the Social Security Act. Federal Medicaid law requires states participating in Medicaid to cover certain groups of persons and types of benefits and gives states options for covering other groups of persons and types of benefits.

⁶⁷ *This means, for example, that an assistance group with three members cannot have gross monthly income, less amounts disregarded, exceeding \$653. Under current law, the gross income maximum is \$630.*

⁶⁸ *"Teen" is defined as an OWF participant who is under age 18, or age 18 and in school, and a parent or pregnant.*

Reviews of the Medicaid program

(R.C. 5111.10 and 5111.85)

Under current law, the Ohio Department of Job and Family Services (ODJFS) may conduct reviews of Medicaid waivers. The reviews may include physical inspections of records and sites where services are provided and interviews of providers and recipients of the services. If ODJFS determines pursuant to a review that an individual or private or government entity has violated a rule governing a Medicaid waiver, ODJFS may establish a corrective action plan for the violator and impose fiscal, administrative, or both types of sanctions on the violator.

The bill broadens ODJFS's review authority to the entire Medicaid program. If a review exposes a violation of a rule governing Medicaid and the entity responsible for the violation is a board of county commissioners, county department of job and family services, public children services agency, or child support enforcement agency, any disciplinary action ODJFS takes must be done in accordance with current law governing disciplinary actions against such entities.⁶⁹

Medicaid eligibility reduction

(R.C. 5111.019; Section 206.66.39)

Current law provides that the parent of a child under age 19 is eligible for Medicaid if the parent (1) resides with the child, (2) has a family income of not more than 100% of the federal poverty guidelines, (3) is not otherwise eligible for Medicaid, and (4) satisfies all of the other relevant requirements established by rules of the Ohio Department of Job and Family Services (ODJFS). The bill restricts Medicaid eligibility by reducing the maximum income the parent may have and remain eligible for Medicaid; under the bill, the parent may have an income of not more than 90% of the federal poverty guidelines. The bill requires the Director of ODJFS to submit an amendment to the state Medicaid plan to the United States Secretary of Health and Human Services within 90 days of the bill's effective date. The change in eligibility requirements must be implemented by the effective date of federal approval, but not earlier than 90 days after the bill's effective date.

⁶⁹ *The types of disciplinary action that ODJFS may take against a board of county commissioners, county department of job and family services, public children services agency, or child support enforcement agency include requiring the entity to comply with a corrective action plan or to share with ODJFS a final disallowance of federal financial participation or sanction.*

Termination of unused Medicaid provider agreements

(R.C. 5111.06(D))

Under existing law, to terminate or not renew an existing provider agreement with a Medicaid provider, the Ohio Department of Job and Family Services (ODJFS) must issue an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). An adjudication is not required under certain circumstances, including when the provider has lost a required state license or has been terminated from participating in the Medicare Program.

The bill provides the ODJFS is not required to conduct an adjudication when a provider agreement is being terminated or not renewed because both of the following have occurred:

(1) The Medicaid provider has not billed or otherwise submitted a Medicaid claim to ODJFS for two years or longer;

(2) ODJFS has determined that the provider has moved from the address on record with ODJFS without leaving an active forwarding address with ODJFS.

The bill authorizes ODJFS to terminate or not renew the provider agreement by sending a notice explaining the proposed action to the address on record with ODJFS. The notice may be sent by regular mail.

Recovery of Medicaid overpayments

(R.C. 5111.06 and 5111.061)

Existing law requires ODJFS to take any action based on a final fiscal audit of a Medicaid provider by issuing an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act.

The bill authorizes ODJFS to recover, at any time, a Medicaid payment or portion of a payment made to a provider to which the provider is not entitled. Among the overpayments that may be recovered under the bill are the following:

(1) Payment for a service, or a day of service, not rendered;

(2) Payment for a day of service at a full per diem rate that should have been paid at a percentage of the full per diem rate;

(3) Payment of a service, or day of service, that was paid by, or partially paid by, a third-party payer and the payment or partial payment was not offset against the amount Medicaid paid to reduce or eliminate the Medicaid payment;

(4) Payment when a Medicaid recipient's responsibility for payment was understated and resulted in an overpayment to the provider.

The bill specifies that ODJFS is authorized to recover overpayments prior to or after any of the following:

--Adjudication of a final fiscal audit in accordance with the Administrative Procedure Act, or expiration of the time to issue the final fiscal audit;

--Adjudication of a finding under any other provision of the Medicaid statutes or the rules adopted under those statutes, or expiration of the time to issue a finding under those statutes or rules.

The bill specifies that the recovery of an overpayment does not preclude ODJFS from subsequently issuing a final fiscal audit in accordance with the Administrative Procedure Act or issuing a finding under any other provision of the Medicaid statutes or rules. The bill requires, however, that a subsequent final fiscal audit or finding be reduced by the amount of the prior recovery, as appropriate.

The bill also specifies that nothing in its Medicaid overpayment recovery provisions limits ODJFS's authority to recover overpayments under any other provision of Ohio's statutes.

Recovery of Medicaid overpayments by other state agencies

(R.C. 5111.06 and 5111.194)

Existing law authorizes ODJFS to contract with another state agency to have the agency administer a component of the Medicaid program. The contract must be in the form of an interagency agreement.

Under the bill, if a state agency under an interagency agreement with ODJFS identifies that a Medicaid overpayment has been made to a provider, the state agency may commence actions to recover the overpayment on behalf of ODJFS. In recovering an overpayment, the state agency is required to comply with the following procedures:

--**Seeking voluntary repayment.** The state agency must attempt to recover the overpayment by notifying the provider of the overpayment and requesting voluntary repayment. Not later than five business days after notifying

the provider, the state agency must notify ODJFS in writing of the overpayment. The state agency may negotiate a settlement of the overpayment and notify ODJFS of the settlement. A settlement negotiated by the state agency is not valid and cannot be implemented until ODJFS has given its written approval of the settlement.

--Holding administrative hearings. If the state agency is unable to obtain voluntary repayment, the agency must give the provider notice of an opportunity for a hearing in accordance with the Administrative Procedure Act. If the provider timely requests a hearing, the state agency must conduct the hearing to determine the legal and factual validity of the overpayment. On completion of the hearing, the state agency must submit its hearing officer's report and recommendation and the complete record of proceedings, including all transcripts, to the Director of ODJFS for final adjudication. The Director may issue a final adjudication order in accordance with the Administrative Procedure Act.

Attorney fees

Under the hearing process, the state agency must pay any attorney fees imposed under the Administrative Procedure Act. ODJFS is required to pay any attorney fees imposed under existing law when authorized parties prevail in an appeal of an agency's adjudication order.

Effect on other ODJFS actions

The bill specifies that its provisions on recovery of Medicaid overpayments by other state agencies do not preclude ODJFS from adjudicating a final fiscal audit under provisions of existing law, from recovering overpayments under the bill, or from taking any other actions authorized under Ohio's Medicaid statutes.

Final Medicaid orders when no hearing is requested

(R.C. 5111.062 and 5111.914(C))

The bill provides that ODJFS is not required to hold a hearing in accordance with the Administrative Procedure Act when ODJFS gives notice of the opportunity for a hearing but the provider or other entity subject to the notice does not request a hearing or timely request a hearing in accordance with the Act. The Director of ODJFS is authorized to proceed by issuing a final adjudication order in accordance with the Administrative Procedure Act.

The bill specifies that these provisions apply to any action taken by ODJFS under existing law, the bill's Medicaid overpayment recovery provisions, or any other provision of the Medicaid statutes requiring ODJFS to give notice of an opportunity for a hearing. The bill also applies substantially equivalent provisions

to state agencies that administer components of the Medicaid program for ODJFS and attempt to recover Medicaid overpayments through a hearing process.

Rules governing state Medicaid plan services

(primary R.C. 5111.02 (new); other R.C. sections: 317.08, 317.36, 340.03, 340.16, 5107.26, 5111.02 (renumbered 5111.021), 5111.021 (renumbered 5111.022), 5111.022 (renumbered 5111.023), 5111.023 (renumbered 5111.0114), 5111.025, and 5119.61)

Current Revised Code section 5111.02 authorizes the Ohio Department of Job and Family Services (ODJFS) to adopt rules establishing the amount, duration, and scope of medical services to be included in the Medicaid program. The rules must establish the conditions under which services are covered and reimbursed, the method of reimbursement applicable to each covered service, and the amount of reimbursement or, in lieu of such amounts, methods by which such amounts are to be determined for each covered service.

The bill provides that the rules that R.C. 5111.02 authorizes are for state Medicaid plan services. "State Medicaid plan service" is defined as a service covered by the Medicaid program pursuant to the state Medicaid plan, or an amendment to the plan, approved by the United States Secretary of Health and Human Services. "State Medicaid plan service" excludes services provided under the Medicaid program's care management system and services provided under a Medicaid waiver because they are not included in the state Medicaid plan or an amendment to the plan. Other sections of the Revised Code authorize rules concerning services under the care management system and Medicaid waivers.⁷⁰

The bill requires that the rules adopted under R.C. 5111.02 include procedures for their enforcement that provide due process protections. The procedures are to include procedures for corrective action plans for, and imposing financial and administrative sanctions on, individuals and private and government entities that violate the rules.

Elimination of certain Medicaid dental and vision services

(Section 206.66.45)

The Director of Job and Family Services is permitted to adopt rules establishing the amount, duration, and scope of medical services to be included in the Medicaid program. The Director has adopted rules providing for the Medicaid program to cover dental and vision care services.

⁷⁰ R.C. 5111.16 and 5111.85.

The bill requires that the Director submit a state Medicaid plan amendment to the United States Secretary of Health and Human Services to eliminate the Medicaid program's coverage of dental and vision care services for Medicaid recipients who are age 21 or older for whom dental and vision care services are not required by federal Medicaid law. The Director must amend and rescind rules as necessary to implement the elimination of these Medicaid services.

Retail pharmacy operations survey for Medicaid

(R.C. 5110.352 and 5111.071 (renumbered 5111.07); R.C. 5111.07 (repealed))

The Ohio Department of Job and Family Services (ODJFS) is required to establish, every two years, a dispensing fee for pharmacists who are Medicaid providers. Current law requires that the dispensing fee take into consideration a survey ODJFS must initiate every two years. The survey is a private survey of retail pharmacy operations in the state that must include operational data and direct prescription expenses, professional services and personnel costs, usual and customary overhead expenses, and profit data of the retail pharmacies surveyed. The survey must compute and report dispensing fees on a basis of the usual and customary charges by retail pharmacies to their customers for dispensing drugs.

The bill eliminates the requirement that ODJFS initiate the survey and that the dispensing fee take the survey into consideration.

Exemptions from Supplemental Drug Rebate Program

(R.C. 5111.082)

The Ohio Department of Job and Family Services (ODJFS) is permitted to establish a Supplemental Drug Rebate Program under which drug manufacturers may be required to provide ODJFS a supplemental rebate as a condition of having the drug manufacturer's drug products covered by the Medicaid program without prior approval. Current law requires ODJFS, if the Supplemental Drug Rebate Program is established, to exempt from the program all of a drug manufacturer's drug products that have been approved by the United States Food and Drug Administration for the treatment of (1) mental illness, including schizophrenia, major depressive disorder, and bipolar disorder and (2) HIV or AIDS.

The bill eliminates the requirement that a drug product used to treat mental illness, HIV, or AIDS be exempt from the Supplemental Drug Rebate Program.

Medicaid reimbursement of long-term care services

Background

Current law requires the Ohio Department of Job and Family Services (ODJFS) to pay the reasonable costs of services that a nursing facility or intermediate care facility for the mentally retarded (ICF/MR) with a Medicaid provider agreement provides to Medicaid recipients.⁷¹ The amount ODJFS pays a nursing facility or ICF/MR is determined by formulas established in the Revised Code. Nursing facility and ICF/MR services are divided into four different categories, referred to in state law as cost centers. Each cost center has its own Medicaid reimbursement formula. The four cost centers are capital, direct care, other protected, and indirect care costs.

Capital costs are the costs of ownership and nonextensive renovation. Cost of ownership covers the actual expense incurred for (1) depreciation and interest on capital assets that cost \$500 or more per item, (2) amortization and interest on land improvements and leasehold improvements, (3) amortization of financing costs, and (4) with certain exceptions, lease and rent of land, buildings, and equipment. Costs of nonextensive renovation covers the actual expense incurred for depreciation or amortization and interest on renovations that are not extensive.

Direct care costs include costs for (1) certain staff, including nurses, nurse aides, medical directors, and respiratory therapists, (2) purchased nursing services, (3) quality assurance, (4) training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or costs for self-insurance claims, (5) consulting and management fees related to direct care, and (6) allocated direct care home office costs. In the case of an ICF/MR, direct care costs also include the facility's costs for physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech therapists, and audiologists.

Other protected costs are costs for medical supplies; real estate, franchise, and property taxes; natural gas, fuel oil, water, electricity, sewage, and refuse and hazardous medical waste collection; allocated other protected home office costs; and any additional costs included in ODJFS rules.

Indirect care costs are all reasonable costs other than direct care costs, other protected costs, or capital costs. This includes costs of habilitation supplies,

⁷¹ A cost is reasonable if it is an actual cost that is appropriate and helpful to develop and maintain the operation of patient care facilities and activities and does not exceed what a prudent buyer pays for a given item or services. Reasonable costs may vary from provider-to-provider and from time-to-time for the same provider.

pharmacy consultants, medical and habilitation records, program supplies, incontinence supplies, food, dietary supplies and personnel, housekeeping, security, administration, liability and property insurance, travel, dues, license fees, subscriptions, legal services, accounting services, minor equipment, maintenance and repairs, help-wanted advertising, and informational advertising.

Reimbursement formula removed from the Revised Code

(R.C. 5111.02, 5111.20, 5111.21, 5111.22, 5111.221 (repealed), 5111.23 (repealed), 5111.231 (renumbered 5111.24), 5111.235 (repealed), 5111.24 (repealed), 5111.241 (repealed), 5111.25 (renumbered 5111.27), 5111.251 (repealed), 5111.255 (repealed), 5111.257 (repealed), 5111.26 (renumbered 5111.23), 5111.261 (repealed), 5111.262 (repealed), 5111.263 (renumbered 5111.25), 5111.264 (repealed), 5111.27 (repealed), 5111.28, 5111.29 (renumbered 5111.30), 5111.291 (repealed), 5111.31 (new), 5111.33 (renumbered 5111.26); ancillary sections: 173.20, 173.21, 3722.16, and 5111.99)

The bill eliminates the requirement that ODJFS pay the reasonable costs of services a nursing facility or ICF/MR with a Medicaid provider agreement provides to Medicaid recipients. The bill removes from the Revised Code the formulas for making Medicaid payments to nursing facilities and ICFs/MR.

The bill removes from the Revised Code certain procedures to be followed in determining nursing facility and ICF/MR Medicaid reimbursement rates, including procedures for desk reviews and audits of cost reports, time frames for making calculations, and reconsideration of rates. The bill provides that procedures established in the Revised Code regarding the following apply only to Medicaid-covered services that a nursing facility or ICF/MR provides during fiscal year 2005 or earlier: (1) recalculating rates to reflect amended cost reports, audits, and exception reviews of resident assessment information, (2) requiring payment of interest and refunds found due because of a recalculated rate, and (3) imposing penalties for failure to provide documentation requested during an audit or notice of sale or voluntary termination of participation in the Medicaid program. In the place of statutory procedures, the bill requires ODJFS to adopt rules regarding amending cost reports, administrative reviews of costs reports, final fiscal audits, exception reviews of resident assessment data, refunds of overpayments, imposition of penalties, interest charges, and making rate adjustments. The rules are to be adopted as part of the rules governing the Medicaid program's state plan services.

Fiscal year 2006 reimbursement system for nursing facilities

(Section 206.66.27)

The bill establishes formulas to be used to determine nursing facilities' Medicaid reimbursement rate for services provided during fiscal year 2006. The system varies depending on whether a nursing facility has a valid Medicaid provider agreement on June 30, 2005, and filed a complete and adequate Medicaid cost report covering calendar year 2003.⁷²

Facilities with 2003 cost report and June 30, 2005, provider agreement.

If a nursing facility has a valid Medicaid provider agreement on June 30, 2005, and filed a complete and adequate 2003 cost report, the facility is to be paid a rate calculated using the method used to calculate the facility's rate for services provided on July 1, 2004, with the following modifications:

(1) The facility's 2003 cost report, rather than its 2004 cost report, is to be used.

(2) The maximum cost per case-mix unit for the facility's peer group is to be set at an amount equal to 98% of the maximum cost per case-mix unit that was set for the facility's peer group for direct care costs for services provided on July 1, 2004.

(3) The facility's quarterly case-mix score that is based on the data the facility submitted to ODJFS for the quarter ending March 31, 2004, is to be used for the average case-mix score that is used in the calculation of the facility's direct care costs.

(4) An inflation rate of 6.28% is to be used for the inflation rate used in the calculation of the facility's direct care costs.

(5) The annual average case-mix score that was used to calculate the facility's rate for direct care costs for services provided on July 1, 2004, is to be used.

(6) An inflation rate of .79% is to be used for the inflation rate used in the calculation of the facility's other protected costs.

(7) An inflation rate of .91% is to be used for the inflation rate used in the calculation of the facility's indirect care costs.

⁷² *With certain exceptions, the 2003 cost report was due by March 30, 2004.*

(8) The pre-inflation adjusted maximum rate for indirect care costs for the facility's peer group is to be set at an amount equal to 98% of the pre-inflation adjusted maximum rate for indirect care costs that was set for the facility's peer group for services provided on July 1, 2004.

(9) An inflation rate of .07% is to be used for the inflation rate used in the calculation of the maximum rate for indirect care costs for the facility's peer group.

(10) An inflation rate of 1.79% is to be used for the inflation rate used in certain calculations made in determining the facility's capital costs.

After those modifications are made, further adjustments are to be made to determine the facility's reimbursement rate. First, the facility's rate as determined with the above modifications is to be reduced by 6.62%; then the facility's rate per case-mix unit is to be determined by dividing that reduced rate by the facility's annual average case-mix score that was calculated for the facility's direct care costs and used in calculating the facility's rate for services provided on July 1, 2004. Next the rate per case-mix unit for each of the nursing facilities in the facility's direct care peer group is to be arrayed from low to high.⁷³ The facility's estimated Medicaid costs is then determined by multiplying its modified rate, as reduced by 6.62%, by the number of its Medicaid days⁷⁴ for calendar year 2003 as reported to ODJFS on May 31, 2004, in the Medicaid Management Information System. Next, the total of the estimated Medicaid costs for all of the nursing facility's direct care peer group is determined.⁷⁵ The nursing facilities included in the array made above are to be divided into three sub-peer groups. The first sub-peer group is to consist of those nursing facilities with the lowest rate per case-mix unit whose combined estimated Medicaid costs equals, as close as possible, one-third of the total estimated Medicaid costs determined for all of the nursing facilities in the peer group. The second sub-peer group is to consist of those nursing facilities with the middle rate per case-mix unit whose combined

⁷³ A nursing facility in the facility's direct care peer group is excluded from the array if the nursing facility does not have a valid Medicaid provider agreement on June 30, 2005, and a 2003 cost report.

⁷⁴ "Medicaid days" is defined as 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 facility's Medicaid-certified capacity. Therapeutic or hospital leave days for which payment is made are considered Medicaid days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days.

⁷⁵ A nursing facility in the facility's direct care peer group is excluded from the calculation of the total estimated Medicaid costs if the nursing facility does not have a valid Medicaid provider agreement on June 30, 2005, and a 2003 cost report.

estimated Medicaid costs equals, as close as possible, one-third of the total estimated Medicaid costs. The third sub-peer group is to consist of those nursing facilities with the highest rate per case-mix unit whose combined estimated Medicaid costs equals, as close as possible, one-third of the total estimated Medicaid costs.

The facility's final rate depends on which sub-peer group the facility is placed in. If it is placed in the first sub-peer group, its rate is its modified rate, as reduced by 6.62%, increased by 2%. If it is placed in the second sub-peer group, its reduced modified rate is reduced further by 4%. If it is placed in the third sub-peer group, its reduced modified rate is reduced further by 6%.

Facilities with June 30, 2005, provider agreement but no 2003 cost report.

If a nursing facility has a valid Medicaid provider agreement on June 30, 2005, and is not required to file a cost report covering calendar year 2003, the facility's rate is to be 97% of the rate it was paid for nursing facility services provided on June 30, 2005.

Facilities that undergo a change of operator. The bill provides that if a nursing facility undergoes a change of operator on July 1, 2005, the facility is to be paid, for nursing facility services provided during fiscal year 2006, the rate that would have been paid to the exiting operator of the facility for such services provided on July 1, 2005.⁷⁶ If a nursing facility undergoes a change of operator during the period beginning July 2, 2005, and ending June 30, 2006, the facility is to be paid, for nursing facility services the facility provides during the period beginning on the effective date of the change of operator and ending June 30, 2006, the rate paid to the exiting operator provided on the day immediately before the effective date of the change of operator.

Facilities that begin participation in Medicaid. If, during fiscal year 2006, a nursing facility obtains certification as a nursing facility from the Director of Health and begins participation in the Medicaid program, the facility is to be paid, for nursing facility services provided during the period beginning on the date the facility begins to participate in Medicaid and ending June 30, 2006, a rate that is the median of all rates paid to nursing facilities on July 1, 2005.

Rate for beds added to a nursing facility. The bill provides that if, during fiscal year 2006, one or more Medicaid-certified beds are added to a nursing facility with a valid Medicaid provider agreement for that fiscal year, the facility is to be paid a rate for the new beds that is the same as the facility's rate for the

⁷⁶ See "**Change of operator, closure, and voluntary termination and withdrawal**" below.

Medicaid-certified beds that are in the facility on the day before the new beds are added.

No adjustments. A nursing facility's rate for fiscal year 2006 is not subject to any adjustments for any reason except for an adjustment made pursuant to an audit of the facility's cost report covering calendar year 2003.

Fiscal year 2007 reimbursement system for nursing facilities

(Section 206.66.30)

The bill provides that a nursing facility that has a valid Medicaid provider agreement on June 30, 2005, and a valid Medicaid provider agreement for fiscal year 2007 is to be paid, for nursing facility services provided during fiscal year 2007, the rate the facility is paid for such services on June 30, 2006. The provisions applicable to fiscal year 2006 regarding a change of operator, initial participation in Medicaid, addition of new beds, and rate adjustments are also applicable to fiscal year 2007.

Fiscal years 2006 and 2007 reimbursement system for ICFs/MR

(Section 206.66.33)

The bill provides that an ICF/MR that has a valid Medicaid provider agreement on June 30, 2005, and a valid Medicaid provider agreement for fiscal years 2006 and 2007 is to be paid, for ICF/MR services provided during those fiscal years, the rate the ICF/MR is paid on June 30, 2005. The provisions applicable to nursing facilities for fiscal years 2006 and 2007 regarding a change of operator, initial participation in Medicaid, addition of new beds, and rate adjustments are also applicable to ICFs/MR for fiscal years 2006 and 2007.

Submission of assessment information

(R.C. 5111.231 (renumbered 5111.24); ancillary sections: 173.42 and 5111.204)

Under current law, ODJFS is required to determine case-mix scores for each resident of a nursing facility or ICF/MR using, in part, a resident assessment instrument.⁷⁷ The bill removes from the Revised Code the requirement that ODJFS determine case-mix scores but retains a requirement that nursing facilities and ICFs/MR submit complete assessment data for each resident not later than 15

⁷⁷ *The case-mix scores are used in determining a nursing facility's or ICF/MR's Medicaid reimbursement rate for direct care costs.*

days after the end of each calendar quarter. Current law requires nursing facilities to submit the data to ODJFS. The bill requires nursing facilities to submit the data to the Department of Health and, if required by ODJFS rules, ODJFS. ICFs/MR continue to be required to submit the data to ODJFS.

Whereas current law permits the Director of ODJFS to adopt rules governing the submission of resident assessment data, the bill requires that the rules governing state Medicaid plan services address the resident assessment data issue. The bill eliminates a provision that permits rules establishing procedures for facilities to correct assessment information to prohibit nursing facilities and ICFs/MR from submitting corrections, for the purpose of calculating its annual average case-mix score, after a certain amount of time.⁷⁸

Amortization cost not an allowable cost

(R.C. 5111.251 (new))

The bill provides that if one or more Medicaid-certified beds are relocated from a nursing facility to another nursing facility owned by a different individual or private or government entity after July 1, 2005, amortization of the cost of acquiring operating rights for the transferred beds is not an allowable cost for the purpose of determining the facility's Medicaid reimbursement rate for nursing facility services provided during fiscal year 2008 or thereafter.

Therapy costs

(R.C. 5111.263 (renumbered 5111.25))

Current law provides that a nursing facility's reasonable costs for rehabilitative, restorative, or maintenance therapy services rendered to residents by nurses or nurse aides, and the facility's overhead costs to support provision of therapy services, are allowable costs for determining Medicaid reimbursement rates. The bill eliminates this provision.

⁷⁸ For ICFs/MR, the time is two calendar quarters after the end of the quarter to which the information pertains or, if the information pertains to the quarter ending the 31st day of December, after the 31st day of the following March. For nursing facilities, the time is the earlier of the time applicable to ICFs/MR or the deadline established by federal regulations.

Medicaid provider agreements

(R.C. 5111.20, 5111.21, 5111.22, 5111.221 (new enactment), 5111.30 (renumbered 5111.224), 5111.31 (renumbered 5111.222), 5111.32 (renumbered 5111.223), and 5111.99)

One condition for a nursing facility or ICF/MR to obtain Medicaid payments for providing services to Medicaid recipients is for the facility to enter into a Medicaid provider agreement with ODJFS. The bill provides that the provider agreement is between an operator of a nursing facility or ICF/MR and ODJFS. "Operator" is defined by the bill as a person or governmental entity responsible for the daily operating and management decisions for a nursing facility or ICF/MR. The bill defines "provider" as an operator with a provider agreement.

A provider agreement is required by current law to contain a provision under which ODJFS agrees to make payments to the nursing facility or ICF/MR for patients eligible for services under the Medicaid program as provided in accordance with the reimbursement formula included in current law. The bill requires instead that the provider agreement include a provision under which ODJFS agrees to make payments to a provider for Medicaid-covered services the nursing facility or ICF/MR provides to a resident who is a Medicaid recipient eligible for such services.

Current law provides that one of the agreements a nursing facility or ICF/MR must make under a Medicaid provider agreement is to keep records relating to a cost reporting period for the greater of seven years after the cost report is filed or, if ODJFS issues an audit report in accordance with state law governing audits of cost reports, six years after all appeal rights relating to the audit report are exhausted. The bill requires instead that a Medicaid provider agreement require a nursing facility or ICF/MR provider to agree to keep records relating to a cost reporting period for the greater of seven years after the cost report is filed or, if ODJFS issues a final fiscal audit report under state law governing final fiscal audits under the Medicaid program, six years after all appeal rights relating to the audit report are exhausted.

With a certain exception, a provider agreement is required to include any part of a nursing facility or ICF/MR that meets Medicaid certification standards. Current law provides that a provider agreement is not required, unless otherwise required by federal law, to include licensed nursing home beds that a nursing facility adds during the period beginning July 1, 1987, and ending July 1, 1993. The bill establishes an exception for beds in an ICF/MR that are designated for respite care under a Medicaid waiver program. This exception too is limited to the extent permitted by federal law.

The bill provides that an operator of a nursing facility or ICF/MR may enter into Medicaid provider agreements for more than one nursing facility or ICF/MR.

Refunds, interest, and penalties

(R.C. 5111.28 and 5111.29 (new))

ODJFS is authorized to deduct the following from the next available payment ODJFS makes to a provider of a nursing facility or ICF/MR: overpayments that the provider must refund to ODJFS, interest on the overpayments, penalties imposed for failure to furnish invoices or other documentation that ODJFS requests during an audit, and penalties imposed for failure to provide notice of sale or voluntary termination of a participation in Medicaid.⁷⁹ The bill adds to this refunds, interest, and penalties imposed by rules the bill provides for.⁸⁰ The bill also provides that, if the nursing facility or ICF/MR is undergoing a change of operator, facility closure, or voluntary termination or withdrawal of participation in Medicaid, the withholding is to be part of the withholding done as part of the change of operator, closure, or voluntary termination or withdrawal.⁸¹

Current law requires that ODJFS transmit refunds and penalties to the Treasurer of State for deposit in the General Revenue Fund. The bill requires that the interest also be so transmitted.

Nursing home franchise permit fee

(R.C. 3721.50, 3721.51, 3721.511 (repealed), 3721.52, 3721.541, 3721.56, 3721.561, 3721.58, and 5111.231 (new))

Nursing homes and hospitals with skilled nursing facility, long-term care, or nursing home beds are required to pay an annual franchise permit fee. For fiscal years 2003 through 2005, the fee is \$4.30 multiplied by the product of (1) the number of the nursing home's beds or hospital's skilled nursing facility, long-term care, or nursing home beds and (2) the number of days in the fiscal year for which the fee is imposed.

⁷⁹ *The bill makes these refunds, interest, and penalties applicable only to services provided before fiscal year 2006.*

⁸⁰ *See "Medicaid reimbursement of long-term care services" above.*

⁸¹ *See "Change of operator, closure, and voluntary termination and withdrawal" above.*

Reduction in fee delayed. Current law provides that the fee is to be reduced to \$1 per bed per day starting in fiscal year 2006. The bill extends the current \$4.30 fee through fiscal years 2006 and 2007.

Uses of money collected from the franchise permit fee. The first \$1 collected from the franchise permit fee, or 23.26% of the fee for the fiscal years that it is \$4.30, is required to be deposited into the Home and Community-Based Services for the Aged Fund. Money in that fund must be used to pay for the Medicaid program, including the PASSPORT waiver component, and the Residential State Supplement Program.

The remaining amount of the fee is required to be deposited into the Nursing Facility Stabilization Fund. Uncodified law currently governs how money in that fund is to be used. ODJFS is required to use that money to (1) make Medicaid payments to nursing facilities, (2) make payments to each nursing facility for each Medicaid day in fiscal year 2005 in an amount equal to 76.74% of the franchise permit fee that the facility pays for fiscal year 2005 divided by the facility's inpatient days for calendar year 2003,⁸² and (3) make payments to each nursing facility for fiscal year 2005 in an amount equal to \$2.25 per Medicaid day for the purpose of enhancing quality of care.

The bill codifies (places in the Revised Code) the law governing the use of the money in the Nursing Facility Stabilization Fund and provides for that money to be used in fiscal years 2006 and 2007 in the same manner it is to be used in fiscal year 2005.

The bill also codifies law that requires a nursing facility, when filing its Medicaid cost report with ODJFS, to report as a nonreimbursable expense the cost of the portion of the franchise permit fee that is deposited into the Nursing Facility Stabilization Fund.

Sanctions for failure to pay franchise permit fee. Current law authorizes ODJFS to penalize a nursing home or hospital that fails to pay the full amount of the franchise permit fee when due. The penalty is a 5% assessment on the amount overdue.

⁸² "Medicaid days" is defined as 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 facility's Medicaid-certified capacity. Therapeutic or hospital leave days for which payment is made are considered Medicaid days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days. The definition of "inpatient days" is similar to the definition of "Medicaid days" except that it applies to all of a nursing facility's residents, regardless of whether they are a Medicaid recipient or private-pay patient.

The bill provides that, in addition to assessing the penalty, ODJFS may do either of the following:

(1) Withhold an amount equal to the amount overdue and penalty assessed from a Medicaid payment due the nursing facility or hospital until the nursing facility or hospital pays the fee and penalty.

(2) Terminate the nursing facility or hospital's Medicaid provider agreement.

The bill provides that ODJFS may make the withholding without providing notice to the nursing facility or hospital and without conducting an adjudication under the Administrative Procedure Act (R.C. Chapter 119.).⁸³

Exemptions from the franchise permit fee. Certain nursing homes are exempt from the nursing home franchise permit fee. Nursing homes operated by a county and nursing homes that are certified as an ICF/MR rather than a nursing facility are exempt.⁸⁴ ODJFS was required to seek a federal Medicaid waiver to exempt (1) the Widow's Home of Dayton, Ohio, Masonic Home of Springfield, and Holy Family Home of Parma and (2) any nursing home that is exempt from state income taxation as a home for the aged, exempt from federal income taxation under section 501 of the Internal Revenue Code, provide services for the life of each resident without regard to the resident's ability to continue to pay, and does not have a Medicaid provider agreement.⁸⁵

The bill eliminates the exemptions available because of the federal Medicaid waiver. It provides, however, a new exemption for a nursing home maintained and operated by the Ohio Veteran's Home Agency.

⁸³ *The provision of the bill authorizing ODJFS to withhold a Medicaid payment without notice or an adjudication raises the question of whether it may violate the 14th Amendment to the United States Constitution which prohibits states from depriving a person of life, liberty, or property without due process of law.*

⁸⁴ *ICFs/MR are subject to a different franchise permit fee. See "**TCF/MR franchise permit fee**" below.*

⁸⁵ *ODJFS is permitted to limit the number of nursing homes that qualify for an exemption on the basis of meeting those requirements. The limitation may be imposed to ensure that the franchise permit fee satisfies a federal requirement that the fee be generally redistributive.*

ICF/MR franchise permit fee

(R.C. 5112.30, 5112.31, and 5112.341)

Current law imposes a franchise permit fee on each ICF/MR for the purpose of generating revenue for home and community-based services for individuals with mental retardation or a developmental disability. In fiscal year 2005, the amount of the fee is \$9.63 multiplied by the product of (1) the number of Medicaid-certified beds on the first day of May of the calendar year in which the fee is determined by (2) the number of days in the fiscal year beginning on the first day of July of the same calendar year.

Delay of adjustment for inflation. Ordinarily, ODJFS is required to adjust the fee for each fiscal year in accordance with a composite inflation factor established in rules. The bill provides that the fee is to remain at \$9.63 per bed per day for fiscal years 2006 and 2007 and adjusted in accordance with the composite inflation factor for subsequent fiscal years.

Sanctions for failure to pay franchise permit fee. Current law authorizes ODJFS to penalize an ICF/MR that fails to pay the full amount of the franchise permit fee when due. The penalty is a 5% assessment on the amount overdue.

The bill provides that, in addition to assessing the penalty, ODJFS may do either of the following:

- (1) Withhold an amount equal to the amount overdue and penalty assessed from a Medicaid payment due the ICF/MR until the ICF/MR pays the fee and penalty.
- (2) Terminate the ICF/MR's Medicaid provider agreement.

The bill provides that ODJFS may make the withholding without providing notice to the ICF/MR and without conducting an adjudication under the Administrative Procedure Act (R.C. Chapter 119.).⁸⁶

⁸⁶ *The provision of the bill authorizing ODJFS to withhold a Medicaid payment without notice or an adjudication may raise the question of whether it violates the 14th Amendment to the United States Constitution which prohibits states from depriving a person of life, liberty, or property without due process of law.*

Nursing Facility Reimbursement Study Council abolished

(R.C. 5111.34 (repealed); Sections 403.05 and 403.06)

Current law establishes the Nursing Facility Reimbursement Study Council to review, on an ongoing-basis, the system for reimbursing nursing facilities under Medicaid. The council's membership includes state legislators, state agency directors, and representatives of Medicaid recipients and nursing home organizations.

The bill abolishes the council.

Change of operator, closure, and voluntary termination and withdrawal

Current law requires the owner of a nursing facility or ICF/MR operating under a Medicaid provider agreement to provide written notice to the Ohio Department of Job and Family Services (ODJFS) at least 45 days before entering into a contract of sale for the facility or voluntarily terminating participation in Medicaid. The bill eliminates this requirement and establishes new requirements for a nursing facility or ICF/MR that undergoes a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation.

Change of operator

(R.C. 5111.65)

A change of operator occurs when an entering operator becomes the operator of a nursing facility or ICF/MR in the place of the exiting operator.⁸⁷ 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;

⁸⁷ The bill defines "entering operator" as the individual or private or governmental entity that will become the operator of a nursing facility or ICF/MR when a change of operator occurs. "Exiting operator" is defined as (1) an operator that will cease to be the operator of a nursing facility or ICF/MR on the effective date of a change of operator, (2) an operator that will cease to be the operator of a nursing facility or ICF/MR on the effective date of a facility closure, (3) an operator of an ICF/MR that is undergoing or has undergone a voluntary termination, or (4) an operator of a nursing facility that is undergoing or has undergone a voluntary withdrawal of participation. The "operator" is the individual or private or governmental entity responsible for the daily operating and management decisions for a nursing facility or ICF/MR.

(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.

The following, alone, do not constitute a change of operator:

(1) A contract for an entity to manage a nursing facility or ICF/MR as the operator's agent, subject to the operator's approval of daily operating and management decisions;

(2) A change of ownership, lease, or termination of a lease of real or personal property associated with a nursing facility or ICF/MR if an entering operator does not become the operator in place of an exiting operator;

(3) If the operator is a corporation, a change of one or more members of the corporation's governing body or transfer of ownership of one or more shares of the corporation's stocks, if the same corporation continues to be the operator.

Facility closure

(R.C. 5111.65)

The bill defines "facility closure" as discontinuance of the use of the building, or part of the building, that houses the facility as a nursing facility or ICF/MR that results in the relocation of all of the facility's residents. A facility closure occurs regardless of any of the following:

(1) The operator completely or partially replacing the facility by constructing a new facility or transferring the facility's license to another facility;

(2) The facility's residents relocating to another of the operator's facilities;

(3) Any action the Department of Health takes regarding the facility's certification under federal Medicaid law that may result in the transfer of part of the facility's survey findings to another of the operator's facilities;

(4) Any action the Department of Health takes regarding the facility's license as a nursing home;

(5) Any action the Department of Mental Retardation and Developmental Disabilities takes regarding the facility's license as a residential facility.

The bill provides that a facility closure does not occur if all of the nursing facility or ICF/MR's residents are relocated due to an emergency evacuation and one or more of the residents return to a Medicaid-certified bed in the nursing facility or ICF/MR not later than 30 days after the evacuation occurs.

Voluntary termination and withdrawal of participation

(R.C. 5111.65)

The bill provides that a voluntary termination is an operator's voluntary election to terminate the participation of an ICF/MR in the Medicaid program but to continue to provide service of the type provided by a residential facility for individuals with mental retardation or a developmental disability. "Voluntary withdrawal of participation" is defined as an operator's voluntary election to terminate the participation of a nursing facility in the Medicaid program but to continue to provide service of the type provided by nursing homes.

Notice of facility closure or voluntary termination or withdrawal

(R.C. 3721.19, 5111.65, and 5111.66)

The bill requires an exiting operator or owner⁸⁸ of a nursing facility or ICF/MR participating in the Medicaid program to provide ODJFS written notice

⁸⁸ *The bill defines "owner" as an individual or private or governmental entity that has at least 5% ownership or interest, either directly, indirectly, or in any combination, in any of the following regarding a nursing facility or ICF/MR: (1) the land on which the facility is located, (2) the structure in which the facility is located, (3) any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure on or in which the facility is located, or (4) any lease or sublease of the land or structure on or in which the facility is located. "Owner" does not mean a holder of a debenture or bond related to the nursing facility or ICF/MR and purchased at public issue or a regulated lender that has made a loan related to the facility unless the holder or lender operates the facility directly or through a subsidiary.*

of a facility closure, voluntary termination, or voluntary withdrawal of participation. The notice is due not less than 90 days before the effective date of the closure or voluntary termination or withdrawal. The effective date of a facility closure is the last day that the last of the nursing facility or ICF/MR residents resides in the facility. The effective date of a voluntary termination is the day the ICF/MR ceases to accept Medicaid patients. The effective date of a voluntary withdrawal of participation is the day the nursing facility ceases to accept new Medicaid patients other than the individuals who reside in the nursing facility on the day before the effective date of the voluntary withdrawal.

The notice to ODJFS must include all of the following:

- (1) The name of the exiting operator and, if any, the exiting operator's authorized agent;
- (2) The name of the nursing facility or ICF/MR that is the subject of the written notice;
- (3) The exiting operator's Medicaid provider agreement number for the nursing facility or ICF/MR that is the subject of the written notice;
- (4) The effective date of the closure or voluntary termination or withdrawal;
- (5) The signature of the exiting operator's or owner's representative.

Notice of change of operator

(R.C. 5111.65 and 5111.67)

An exiting operator or owner and entering operator are required to provide ODJFS written notice of a change of operator if the nursing facility or ICF/MR participates in the Medicaid program and the entering operator seeks to continue the facility's participation. The written notice must be provided to ODJFS not later than 45 days before the effective date of the change of operator if the change does not entail the relocation of residents. The written notice is due not later than 90 days before the effective date of the change of operator if the change entails the relocation of residents. The effective date of a change of operator is the day the entering operator becomes the operator. The notice must include all of the following:

- (1) The name of the exiting operator and, if any, the exiting operator's authorized agent;

(2) The name of the nursing facility or ICF/MR that is the subject of the change of operator;

(3) The exiting operator's Medicaid provider agreement number for the facility that is the subject of the change of operator;

(4) The name of the entering operator;

(5) The effective date of the change of operator;

(6) The manner in which the entering operator becomes the facility's operator, including through sale, lease, merger, or other action;

(7) If the manner in which the entering operator becomes the facility's operator involves more than one step, a description of each step;

(8) Written authorization from the exiting operator or owner and entering operator for ODJFS to process a Medicaid provider agreement for the entering operator;

(9) The signature of the exiting operator's or owner's representative.

The entering operator is required to include a completed application for a Medicaid provider agreement with the notice. Also, the entering operator must attach all the proposed or executed leases, management agreements, merger agreements and supporting documents, and sales contracts and supporting documents relating to the facility's change of operator.

Determination of potential Medicaid debt

(R.C. 5111.68)

On notification of a facility closure, voluntary termination, voluntary withdrawal of participation, or change of operator, ODJFS is required by the bill to determine the amount of any overpayments made under Medicaid to the exiting operator, including overpayments the exiting operator disputes, and other actual and potential debts the exiting operator owes or may owe to ODJFS and the United States Centers for Medicare and Medicaid Services (CMS). In making the determination, ODJFS is required to include all of the following that ODJFS determines is applicable:

(1) Refunds for excess depreciation due to ODJFS under current law and any other amount ODJFS properly finds to be due after a final fiscal audit;

(2) Interest owed to ODJFS and CMS;

(3) Final civil monetary and other penalties for which all right of appeal has been exhausted;

(4) Third-party liabilities;

(5) Money owed ODJFS and CMS from any outstanding final fiscal audit, including a final fiscal audit for the last fiscal year or portion thereof in which the exiting operator participated in Medicaid.

If ODJFS is unable to make the determination before the effective date of the entering operator's provider agreement or the effective date of the closure or voluntary termination or withdrawal, ODJFS is required to make a reasonable estimate of the overpayments and other debts for the period.⁸⁹ ODJFS must make the estimate using information available to ODJFS, including prior determinations of overpayments and other debts.

Withholdings

(R.C. 5111.25 (renumbered 5111.27), 5111.251 (repealed), and 5111.681)

Under current law, ODJFS is required to provide for a bank, trust company, or savings and loan association to hold in escrow the amount of the last two monthly Medicaid payments to a nursing facility or ICF/MR before a sale or termination of participation in Medicaid or, if the owner fails, within the required time, to notify ODJFS before entering into a contract of sale for the nursing facility or ICF/MR, the amount of the first two monthly payments made to the facility after ODJFS learns of the contract. However, if the amount the owner will be required to refund to ODJFS is likely to be less than the amount of the two monthly payments otherwise put into escrow, ODJFS must do either of the following:

(1) Withhold the amount of the owner's last monthly payment or, if the owner fails, within the required time, to notify ODJFS before entering into a contract of sale for the nursing facility or ICF/MR, the amount of the first monthly payment made after ODJFS learns of the contract;

(2) If the owner owns other facilities that participate in Medicaid, obtain a promissory note in an amount sufficient to cover the amount likely to be refunded.

The bill requires, with a certain exception, that ODJFS, instead, withhold the greater of the following from payment due an exiting operator under Medicaid:

⁸⁹ See "**Provider agreement with entering operator**" below.

(1) The total amount of any Medicaid overpayments to the exiting operator, including overpayments the exiting operator disputes, and other actual and potential debts, including any unpaid penalties, the exiting operator owes or may owe to ODJFS and CMS under Medicaid;

(2) An amount equal to the average amount of monthly payments to the exiting operator under Medicaid for the 12-month period immediately preceding the month that includes the last day the exiting operator's provider agreement is in effect or, in the case of a voluntary withdrawal of participation, the effective date of the voluntary withdrawal.

The bill permits ODJFS to choose to not make the withholding if an entering operator (1) enters into a nontransferable, unconditional, written agreement with ODJFS to pay ODJFS any debt the exiting operator owes ODJFS under Medicaid and (2) provides ODJFS a list of the entering operator's assets and liabilities that assists ODJFS in determining whether to make the withholding.

Final cost report

(R.C. 5111.29 (renumbered 5111.30), 5111.682, 5111.683, and 5111.684)

The bill requires an exiting operator to file with ODJFS a cost report unless ODJFS waives this requirement.⁹⁰ The cost report is due not later than 90 days after the last day the exiting operator's Medicaid provider agreement is in effect or, if the exiting operator voluntarily withdraws from Medicaid participation, the effective date of the voluntary withdrawal. The cost report must cover the period that begins with the day after the last day covered by the operator's most recent previous cost report required under current law and ends on the last day the operator's provider agreement is in effect or the effective date of the voluntary withdrawal.⁹¹ The cost report must include, as applicable, the sale price of the nursing facility or ICF/MR, a final depreciation schedule that shows which assets are transferred to the buyer and which assets are not, and any other information ODJFS requires.

⁹⁰ *The bill gives ODJFS sole discretion over whether to waive the cost report requirement for an exiting operator.*

⁹¹ *Current law requires nursing facilities and ICFs/MR to file with ODJFS an annual cost report covering the previous calendar year or the portion of the previous calendar year during which the facility participated in Medicaid. The bill eliminates provisions of the law governing the cost report that concern Medicaid reimbursement rates for nursing facilities and ICFs/MR.*

All payments under Medicaid for the period the cost report covers are deemed overpayments until the date ODJFS receives the properly completed cost report if the exiting operator fails to file the cost report within the required time. ODJFS is permitted to impose on the exiting operator a penalty of \$100 for each calendar day the properly completed cost report is late. The penalty is subject to an adjudication conducted in accordance with the Administrative Procedure Act.

The bill prohibits ODJFS from providing an exiting operator final payment under Medicaid until ODJFS receives all properly completed cost reports required by current law and the bill.

Determination of actual Medicaid debt

(R.C. 5111.29 (renumbered 5111.30) and 5111.685)

ODJFS is required to determine the actual amount of debt an exiting operator owes ODJFS under Medicaid by completing all final fiscal audits not already completed and performing all other appropriate actions ODJFS determines to be necessary. ODJFS must issue a report on the actual amount of debt not later than 180 days after the date the exiting operator files the properly completed cost report required by the bill with ODJFS, or, if ODJFS waives the cost report requirement, 180 days after the date ODJFS waives the cost report. The report must include ODJFS's findings and the amount of debt ODJFS determines the exiting operator owes ODJFS and CMS under Medicaid.⁹²

Release of withholdings

(R.C. 5111.686 and 5111.687)

The bill establishes time frames for ODJFS to release the amount withheld from an exiting operator. ODJFS must release the withholdings 181 days after the date the exiting operator files a properly completed cost report required by the bill unless ODJFS issues a report on the exiting operator's actual Medicaid debt not

⁹² *Only the parts of the report concerning the following are subject to an adjudication conducted in accordance with the Administrative Procedure Act: (1) any adverse finding that ODJFS makes as the result of a final fiscal audit, (2) adverse findings that result from an exception review of resident assessment data submitted after the effective date of a facility's rate that is based on the assessment data, (3) overpayments deemed to exist due to a late cost report, (4) penalties for failure to file the cost report required by the bill; failure to provide written notice of sale or voluntary termination of participation in Medicaid pursuant to law in effect before the effective date of this part of the bill; or failure to furnish documentation requested during an audit within 60 days of the request, and (5) penalties imposed by rules.*

later than 180 days after the date the cost report is filed. If the cost report is waived, the release must be made 181 days after the date ODJFS issues the waiver unless ODJFS issues the report on actual Medicaid debt not later than 180 days after the date ODJFS waives the cost report. If ODJFS issues the report on actual Medicaid debt not later than 180 days after the cost report is filed or 180 days after the date the cost report is waived, the release must be made not later than 60 days after the exiting operator agrees to a final fiscal audit resulting from the report. The amount released is to be reduced by any amount the exiting operator owes ODJFS and CMS under Medicaid.

ODJFS is permitted, at its sole discretion, to release a withholding if an exiting operator submits to ODJFS written notice of a postponement of a change of operator, facility closure, or voluntary termination or withdrawal and the transactions leading to that action are postponed for at least 30 days but less than 90 days after the date originally proposed. ODJFS is required to release a withholding if the exiting operator submits to ODJFS written notice of a cancellation or postponement of a change of operator, facility closure, or voluntary termination or withdrawal and transactions leading to that action are canceled or postponed for more than 90 days after the date originally proposed.⁹³

Provider agreement with entering operator

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

ODJFS is permitted by the bill to enter into a Medicaid provider agreement with an entering operator becoming the operator of a nursing facility or ICF/MR pursuant to a change of operator if the entering operator (1) provides ODJFS a properly completed written notice of the change of operator, (2) furnishes to ODJFS copies of all the fully executed leases, management agreements, merger agreements and supporting documents, and sales contracts and supporting documents relating to the change of operator, and (3) is eligible for Medicaid payments.⁹⁴

The exiting operator is to be considered the operator of the nursing facility or ICF/MR for purposes of Medicaid, including Medicaid payments, until the

⁹³ *After ODJFS receives a written notice regarding cancellation or postponement of a change of operator, facility closure, or voluntary termination or withdrawal, new written notice of a change of operator, closure, or voluntary termination or withdrawal is required if that action is commenced at a future time.*

⁹⁴ *To be eligible for Medicaid payments, a nursing facility or ICF/MR operator must apply for and maintain a valid license to operate, if so required by law, and comply with all applicable state and federal laws.*

effective date of the entering operator's provider agreement. The entering operator's provider agreement is to go into effect at 12:01 a.m. on the effective date of the change of operator if ODJFS receives the properly completed written notice of the change of operator within the required time and the entering operator furnishes to ODJFS the required materials not later than ten days after the effective date of the change of operator. The provider agreement is to go into effect at 12:01 a.m. on a date ODJFS determines if either or both of those times frames are not met. If ODJFS is to determine the date the provider agreement is to go into effect, ODJFS must make the determination as follows:

(1) The effective date must give ODJFS sufficient time to process the change of operator, assure no duplicate payments are made, make a required withholding, and withhold the final payment to the exiting operator until 180 days after the exiting operator submits to ODJFS a properly completed cost report or ODJFS waives the requirement to submit the cost report.⁹⁵

(2) The effective date must not be earlier than the later of the effective date of the change of operator or the date that the exiting operator or owner and entering operator comply with the requirement to submit a notice of the change of operator.

(3) The effective date must not be later than a certain number of days after the later of the dates under (2) above. The number of days is 45 if the change of operator does not entail the relocation of residents. The number of days is 90 if the change entails the relocation of residents.

The provider agreement must satisfy all of the following requirements:

(1) Comply with all applicable federal laws;

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

(3) Include all the terms and conditions of the exiting operator's provider agreement, including, but not limited to, any plan of correction and compliance with health and safety standards, ownership and financial interest disclosure requirements of federal regulations, civil rights requirements of federal regulations, additional requirements ODJFS imposes, and any sanctions relating to remedies for violation of the provider agreement.

If the entering operator does not agree to a provider agreement that includes all the terms and conditions of the exiting operator's provider agreement, the

⁹⁵ See "**Withholdings**" and "**Final cost report**" above.

entering operator and ODJFS may enter into a provider agreement under current law rather than under the bill. The nursing facility or ICF/MR must obtain certification from the Department of Health and the effective date of the provider agreement cannot precede the date of certification, the effective date of the change of operator, or the date the properly completed written notice of the change of operator is submitted to ODJFS.

Rate adjustment following change of operator

(R.C. 5111.676)

The bill gives the Director of ODJFS permission to adopt rules governing adjustments to the Medicaid reimbursement rate for a nursing facility or ICF/MR that undergoes a change of operator. If adopted, the rules must be adopted in accordance with the Administrative Procedure Act. No rate adjustment resulting from a change of operator may be effective before the effective date of the entering operator's Medicaid provider agreement.

Compliance with federal law on voluntary withdrawal

(R.C. 5111.661)

An operator is required by the bill to comply with federal law regarding restrictions on transfers or discharges of nursing facility residents if the operator's nursing facility undergoes a voluntary withdrawal of participation. That federal law provides that a voluntary withdrawal is not an acceptable basis for the transfer or discharge of residents residing in the facility on the day before the effective date of the voluntary withdrawal and the facility's Medicaid provider agreement is to continue in effect for such residents.⁹⁶ Additionally, the federal law requires that the facility provide notice to each individual who begins to reside in the facility after the voluntary withdrawal that the facility does not participate in Medicaid with respect to that resident and the facility may transfer or discharge the resident from the facility when the resident is unable to pay the charges of the facility.

⁹⁶ *Because the Medicaid provider agreement continues in effect for the residents in the facility before the voluntary withdrawal goes into effect, the facility continues to be subject to federal Medicaid laws regarding those residents as long as they continue to reside in the home. (42 U.S.C.A. 1396r(c)(2)(F).)*

Licensure determinations do not affect ODJFS's determinations

(R.C. 5111.677)

The bill provides that the Department of Health's or Department of Mental Retardation and Developmental Disabilities' determination that a change of operator has or has not occurred for purposes of licensure as a nursing home or residential facility does not affect ODJFS's determination of whether or when a change of operator occurs or the effective date of an entering operator's Medicaid provider agreement.

Rules

(R.C. 5111.6810)

The Director of ODJFS is permitted to adopt rules to implement the bill's provisions regarding changes of operator, facility closures, and voluntary terminations and withdrawals of participation. The rules must comply with federal law regarding restrictions on transfers or discharges of nursing facility residents in the case of a voluntary withdrawal. The rules may prescribe a Medicaid reimbursement methodology and other procedures that are applicable after the effective date of a voluntary withdrawal that differ from the reimbursement methodology and other procedures that would otherwise apply.

Mandatory managed care service areas

(R.C. 5111.16)

Current law requires the Ohio Department of Job and Family Services (ODJFS) to establish a care management system as part of the Medicaid program. ODJFS is required to implement the system in some or all counties and must designate the Medicaid recipients who are required or permitted to participate.

In implementing the system and designating participants, the bill permits ODJFS to designate one or more counties as a mandatory managed care enrollment service area where Medicaid recipients designated by ODJFS are required to enroll in and obtain health care services through a managed care organization under contract with ODJFS.

Hospital reimbursement rate

(R.C. 5111.176)

With regard to hospital services provided to Medicaid recipients in a mandatory managed care enrollment service area, the bill requires a managed care

organization under contract with the Ohio Department of Job and Family Services (ODJFS) to reimburse a hospital for providing hospital services to the recipients, even though the hospital has not entered into a contract with the organization. In turn, the bill requires a noncontracting hospital to provide hospital services to the Medicaid recipients and to accept the managed care organization's reimbursement as payment in full.

The bill requires the reimbursement rate used by a managed care organization for noncontracting hospitals to be the same as the rate used by ODJFS to reimburse the hospital for providing services to Medicaid recipients who are not enrolled in a managed care organization. The bill provides that the reimbursement rate applies only to services authorized by the managed care organization. The bill also specifies that the reimbursement rate does not restrict the organization from entering into a contract with a hospital for a different reimbursement rate.

The bill permits the Director of ODJFS to adopt rules to implement the provisions regarding reimbursement of noncontracting hospitals. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

Medicaid managed care organizations franchise permit fee

(R.C. 5111.17 (not in the bill) and 5111.177)

Under Ohio's Medicaid law, the Ohio Department of Job and Family Services (ODJFS) can contract with managed care organizations to provide certain services for qualified Medicaid recipients.⁹⁷ The bill establishes a fee to be charged to the organizations and procedures for enforcing the fee and specifies how the fee is to be used.

Franchise permit fee

The bill authorizes ODJFS to charge Medicaid managed care organizations⁹⁸ a quarterly franchise permit fee. The fee is equal to 4.5% of the

⁹⁷ *ODJFS operates a care management system as part of its Medicaid program. The care management system designates certain Medicaid recipients to participate in the system, and may require that those recipients obtain certain services from designated providers or managed care organizations with whom ODJFS contracts. R.C. 5111.16 and 5111.17 (not in the bill).*

⁹⁸ *The bill defines "Medicaid managed care organization" as either a health insuring corporation that holds a certificate of authority under Ohio law or an entity determined*

managed care premiums the organization receives in the applicable calendar quarter excluding the amount of any managed care premiums returned or refunded to enrollees, members, or premium payors. ODJFS is authorized to adopt rules decreasing the fee, or increasing the fee to no more than 6% of managed care premiums received. The bill also provides that if it is necessary to reduce or eliminate collection of the fee to comply with federal law, ODJFS may reduce or eliminate collection of the fee.

The Director of ODJFS is authorized by the bill to adopt rules in accordance with Ohio's Administrative Procedure Act (R.C. Chapter 119.) to implement and administer the fee program.

Audits

Under the bill, ODJFS may audit the records of any Medicaid managed care organization to determine whether the organization is in compliance with the fee requirements. An audit pertaining to a particular calendar quarter may be conducted at any time during the five years following the date the fee was due.

Penalties

The bill provides that any organization that fails to pay the franchise permit fee is subject to any of the following penalties:

- (1) A monetary penalty in the amount of \$500 for each day any part of the fee remains unpaid, not to exceed an amount equal to 5% of the total fee due for the calendar quarter;
- (2) Withholdings from future managed care premiums;
- (3) Termination of the organization's Medicaid provider agreement.

None of these penalties replaces the requirement that the organization pay the franchise permit fee due.

Enforcement procedures

The bill authorizes ODJFS to withhold future managed care premiums from any Medicaid managed care organization that fails to pay the franchise permit fee until the fee is paid. ODJFS may withhold an amount equal to the past due

by the United States Secretary of Health and Human Services to be a Medicaid managed care organization as defined in federal Medicaid law.

franchise fee and does not need to provide notice to the organization of the withheld premiums.

Under the bill, ODJFS may commence actions to terminate the Medicaid provider agreement between ODJFS and the organization for the following reasons:

- (1) Failure to pay the franchise permit fee;
- (2) Failure to pay a penalty imposed for failing to pay the fee;
- (3) Failure to cooperate with an audit.

Adjudication procedures

The bill provides two procedures for adjudicating disputes between ODJFS and a Medicaid managed care organization. First, an organization may request a hearing in accordance with the Administrative Procedure Act if the dispute arises from either of the following:

(1) ODJFS has determined that the organization owes an additional franchise permit fee or penalty as the result of an audit;

(2) ODJFS is proposing to terminate the organization's Medicaid provider agreement and the law regarding Medicaid provider agreements requires a hearing.⁹⁹

For disputes that do not require a hearing, the organization may ask ODJFS to reconsider any dispute related to the franchise permit fee. Once ODJFS reconsiders its decision, that decision is not subject to appeal. When conducting a reconsideration, ODJFS must, at a minimum, do the following:

(1) Specify the time frame within which an organization must act in order to exercise its opportunity for reconsideration;

(2) Permit the organization to present written arguments or other materials to support the organization's position.

⁹⁹ Generally, ODJFS must provide a hearing when it proposes to terminate a Medicaid provider agreement. Under certain circumstances, a hearing is not required. These circumstances include when the provider has been found guilty or pled guilty to acts of criminal activity related to provision of Medicaid services or failure to maintain a license required to provide Medicaid services. (R.C. 5111.06.)

Managed care assessment fund

Under the bill, the money collected from the franchise permit fee is to be credited to the Managed Care Assessment Fund. The bill requires ODJFS to use the money to pay for Medicaid services, administrative costs, and contracts with Medicaid managed care organizations.

Medicaid payments for graduate medical education costs

(R.C. 5111.19 and 5111.191)

Current law allows the Ohio Department of Job and Family Services (ODJFS), through the Medicaid program, to reimburse providers who serve Medicaid recipients for the costs associated with graduate medical education. The amount of reimbursement is established by ODJFS in rules. A provider may be reimbursed for treatment of all Medicaid recipients, including recipients enrolled with a managed care organization under contract with ODJFS. The managed care organization can pay the provider, in which case ODJFS will include in its payment to the organization an amount sufficient to cover the costs of reimbursement. Alternatively, ODJFS can directly reimburse the provider for the costs of education. If ODJFS reimburses the provider, the provider cannot seek payment from the organization and the organization is not required to pay the provider for education costs.

The bill allows ODJFS to withhold reimbursement to a hospital for graduate medical education costs associated with the delivery of services to any Medicaid recipient if the hospital refuses, without good cause, to contract with a managed care organization that contracts with ODJFS for health care services within the county or group of counties designated by ODJFS. ODJFS must specify, in rule, what constitutes good cause.

Approval of Medicaid plan

(Section 206.66.51)

The bill requires ODJFS to submit to the U.S. Secretary of Health and Human Services an amendment to the state Medicaid plan to implement the provision of law that would allow ODJFS to withhold Medicaid payments to hospitals for failure to contract with managed care organizations. On the Secretary's approval of the plan, ODJFS must implement the provision.

General requirements for home and community-based services waivers

(R.C. 5111.851, 5111.852, 5111.853, 5111.854, and 5111.855)

The bill establishes general requirements for Medicaid waivers that provide home and community-based services as an alternative to hospital, nursing facility, or intermediate care facility for the mentally retarded (ICF/MR) services. The requirements are as follows:

(1) Only an individual who qualifies for a waiver is to receive the waiver's services.

(2) A level of care determination¹⁰⁰ must be made as part of the process of determining whether an individual qualifies for a waiver and must be made each year after the initial determination if, during such a subsequent year, the state agency or political subdivision administering the waiver determines there is a reasonable indication that the individual's needs have changed.

(3) A written plan of care or individual service plan based on an individual assessment of the services that an individual needs to avoid needing hospital, nursing facility, or ICF/MR services must be created for each individual determined eligible for a waiver.

(4) Each individual determined eligible for a waiver must receive that waiver's services in accordance with the individual's level of care determination and written plan of care or individual service plan.

(5) No individual is to receive services under a waiver while the individual is a hospital inpatient or resident of a skilled nursing facility, nursing facility, or ICF/MR.

(6) No individual is to receive prevocational, educational, or supported employment services under a waiver if the individual is eligible for such services that are funded with federal funds provided under federal labor law regarding rehabilitation services or the federal Individuals with Disabilities Education Act.

(7) Safeguards must be taken to protect the health and welfare of individuals receiving services under a waiver, including safeguards established in

¹⁰⁰ *The bill defines "level of care determination" as a determination of whether an individual needs the level of care provided by a hospital, nursing facility, or ICF/MR and whether the individual, if determined to need that level of care, would receive such services if not for a home and community-based services waiver.*

rules governing waivers and safeguards established by licensing and certification requirements that are applicable to the providers of the waiver's services.

(8) No services are to be provided under a waiver by a provider that is subject to standards that federal law governing the Supplemental Security Income program requires be established if the provider fails to comply with the standards applicable to the provider.

(9) An individual determined to be eligible for a waiver, or such individual's representatives, must be informed of the waiver's services, including any choices that the individual or representative may make regarding the services, and given the choice of either receiving services under the waiver or, as appropriate, hospital, nursing facility, or ICF/MR services if such services are available.

The bill authorizes the Ohio Department of Job and Family Services (ODJFS) to review and approve, modify, or deny written plans of care and individual service plans that the bill requires be created for individuals determined eligible for a home and community-based services waiver. If a state agency or political subdivision contracts with ODJFS to administer a waiver and approves, modifies, or denies a written plan of care or individual service plan pursuant to the agency or subdivision's administration of the waiver, ODJFS is permitted to review the agency or subdivision's approval, modification, or denial and order the agency or subdivision to reverse or modify the approval, modification, or denial. ODJFS is to be granted full and immediate access to any records that ODJFS needs to implement these duties.

State agencies and political subdivisions that administer a home and community-based services waiver are required to maintain, for a period of time ODJFS must specify, financial records documenting the costs of services provided under the waiver. This includes records of independent audits. The state agency or political subdivision must make the financial records available on request to the United States Secretary of Health and Human Services, United States Comptroller General, and their designees.

The bill provides that state agencies and political subdivisions administering a home and community-based services waiver are financially accountable for funds expended for services provided under the waiver.

Each state agency and political subdivision that contracts with ODJFS to administer a home and community-based services waiver, or one or more aspects of such a waiver, is required to provide ODJFS a written assurance that the agency or subdivision will not violate the bill's requirements regarding such waivers.

Medicaid waivers administered by the Ohio Department of Job and Family Services

(R.C. 5111.97 (renumbered 5111.86))

Current law authorizes the Ohio Department of Job and Family Services (ODJFS) to submit a request to the United States Secretary of Health and Human Services to obtain waivers of federal Medicaid requirements that would otherwise be violated in the creation and implementation of two Medicaid home and community-based services programs to replace the Ohio Home Care Program. In the request, ODJFS may specify, among other things, that one of the replacement programs will provide home and community-based services to individuals in need of nursing facility care and the other will provide services to individuals in need of hospital care. The individuals may include individuals enrolled in the Ohio Home Care Program. As the replacement programs are implemented, ODJFS must reduce the maximum number of individuals who may be enrolled in the Ohio Home Care Program by the number of individuals who are transferred to the replacement programs. When all individuals who are eligible to be transferred are transferred, ODJFS may seek federal approval to terminate the Ohio Home Care Program.

The bill repeals these provisions effective October 1, 2005, and provides instead that ODJFS may request federal approval to create and implement two or more Medicaid waiver programs under which home and community-based services are provided to individuals who need the level of care provided by a nursing facility or hospital. The requests may specify the maximum number of individuals who may be enrolled in each of the waivers included in the requests, the maximum amount the Medicaid program may expend each year for each individual enrolled in the waivers, and the maximum amount the Medicaid program may expend each year for all individuals enrolled in the waivers. If approved, ODJFS is to administer the waivers.

The bill provides that ODJFS may, to the extent necessary for the efficient and economical administration of Medicaid waivers, transfer an individual enrolled in a ODJFS-administered waiver that received federal approval before October 1, 2005, to a ODJFS-administered waiver the bill authorizes if the individual is eligible for the waiver and the transfer does not jeopardize the individual's health or safety. ODJFS is permitted, after the first of any such waivers begins enrollment, to seek federal approval to cease enrolling additional individuals in the Ohio Home Care Program.

Home and community-based services to replace ICF/MR service

(primary R.C. 5111.88 (new); other R.C. sections: 5111.26 (renumbered 5111.23), 5111.88 (renumbered 5111.89), 5111.881, 5111.882, 5111.883, and 5111.884)

The bill requires the Ohio Department of Job and Family Services (ODJFS) to seek federal approval, not later than January 1, 2007, to create a Medicaid waiver under which individuals with mental retardation or a developmental disability who would receive the intermediate care facility for the mentally retarded (ICF/MR) service if that service were available to the individuals receive instead home and community-based services. ODJFS is also required to seek federal approval to terminate the ICF/MR service. If approved, the termination is to take place on the date the new waiver begins to be implemented statewide.

If it receives federal approval to create the new waiver, ODJFS may contract with the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) to assign the day-to-day administration of the waiver to ODMR/DD. Whichever agency administers the waiver is required to phase in its implementation. As part of the phase-in process, ODJFS or ODMR/DD must do all of the following:

(1) Select one or more providers to provide home and community-based services under the waiver during an initial testing phase.

(2) During the testing phase, make adjustments to the waiver's implementation that ODJFS or, if ODMR/DD administers the waiver, ODMR/DD and ODJFS agree are necessary for the waiver to be implemented effectively statewide.

(3) After ODJFS or, if ODMR/DD administers the waiver, ODMR/DD and ODJFS agree that the waiver can be implemented statewide effectively, provide for the waiver to be so implemented.

(4) Ensure that the phase-in process does not cause any individual receiving the ICF/MR service to suffer an interruption in Medicaid-covered services that the individual is eligible to receive.

The bill provides that an individual enrolled in the new waiver has the right to choose the provider from which the individual will receive home and community-based services.

Assisted living Medicaid waiver

(R.C. 5111.89 to 5111.893)

The bill authorizes the Ohio Department of Job and Family Services (ODJFS) to submit a request to the U.S. Secretary of Health and Human Services for a waiver of federal Medicaid requirements in order to create and implement a program under which assisted living services are provided to eligible Medicaid recipients. The bill defines "assisted living services" as home and community-based services providing personal care, homemaking, chores, attendant care, medication oversight, and therapeutic social and recreational programming.

Eligibility

(R.C. 5111.891)

To be eligible for the Assisted Living Medicaid program, an individual must meet all of the following requirements:

- (1) Require an intermediate level of care;¹⁰¹
- (2) Reside in a nursing home and be seeking to move to a residential care facility (RCF) or be a participant in certain Medicaid waiver components¹⁰² who would move to a nursing facility if not for the Assisted Living program;
- (3) Meet all other eligibility requirements established under rules adopted by the ODJFS or the Department of Aging related to the Assisted Living program.

¹⁰¹ *An Ohio administrative rule provides that an individual requires an intermediate level of care if (1) the individual's physical and mental condition and resulting service needs have been evaluated and it is determined that the individual requires more than a level of minimum care, the individual's needs do not meet the level of skilled care, and the individual does not qualify for treatment in an intermediate care facility, and (2) the individual requires hands-on assistance with at least one activity of daily living and is unable to perform self-administration of medication and requires medication administration to be performed by another person (Ohio Administrative Code §5101:3-3-06).*

¹⁰² *The bill provides that if the individual seeking admission to the Assisted Living Medicaid waiver component is not in a nursing facility seeking transfer to a residential care facility, the individual must be a participant in the PASSPORT program, the Choices program, or a Medicaid waiver component administered by ODJFS. The Department of Aging administers the PASSPORT and Choices programs.*

Residential care facility staffing requirements

(R.C. 5111.892)

The bill requires a residential care facility providing services under the Assisted Living Medicaid waiver to have on site staff, 24 hours a day, individuals who are qualified to do all of the following:

- (1) Meet the scheduled and unpredicted needs of individuals in the Assisted Living program in a manner that promotes the individuals' dignity and independence;
- (2) Provide supervision services for those individuals;
- (3) Help keep the individuals safe and secure.

Evaluation of Assisted Living program

(R.C. 5111.893)

The bill provides that if the Assisted Living Medicaid waiver is approved by the Secretary, the Director of Aging must contract with a person or government entity to evaluate the program's cost effectiveness. The Director must provide results of the evaluation to the Governor, President and Minority Leader of the Senate, and Speaker and Minority Leader of the House of Representatives not later than June 30, 2007.

Appropriations related to the Assisted Living Medicaid waiver

(Section 206.66.36)

The bill provides that once ODJFS enters into a contract with the Department of Aging to administer the Assisted Living program, ODJFS must submit quarterly reports to the Director of Budget and Management outlining the estimated costs of the program for the upcoming quarter, including the state and federal share of the costs. On receipt of the estimated costs, the Director of Budget and Management must make the necessary transfers and increases within the General Revenue Fund. The funds transferred and increased are appropriated under the bill.

Ohio Access Success Project

(R.C. 5111.88 (renumbered 5111.97))

The Director of Job and Family Services is permitted to establish, to the extent funds are available, the Ohio Access Success Project to help Medicaid

recipients transition from residing in a nursing facility to residing in a community setting. There are a number of eligibility requirements for the Ohio Access Success Project. Among other requirements, a Medicaid recipient must receive Medicaid-funded nursing facility services at the time of application and need the level of care provided by nursing facilities.

The bill changes one of the eligibility requirements. Under current law, a Medicaid recipient must have resided continuously in a nursing facility for not less than 18 months before applying to participate in the Ohio Access Success Project. The bill reduces the number of months to 12.

Medicaid Estate Recovery Program

Overview

Medicaid estate recovery is a federal requirement that states seek from the estates of certain deceased Medicaid recipients the cost of certain correctly paid Medicaid benefits. Federal law gives states some discretion in how to define "estate" for the purposes of Medicaid estate recovery systems. A state may limit recovery to assets included in an individual's probate estate or permit recovery against any real or personal property or other assets in which the individual had any legal title or interest at the time of death, to the extent of the interest. (42 U.S.C. 1396p(b)(4).) Currently, Ohio limits recovery to the assets included in the Medicaid recipient's probate estate (R.C. 5111.11). The bill expands Ohio's Medicaid Estate Recovery Program to permit recovery against any real or personal property or other assets in which the individual had any legal title or interest at the time of death, to the extent of the interest. The bill also amends the Medicaid Estate Recovery Program law to make it more closely parallel federal law.

Generally

(R.C. 5111.11)

Existing law. For the purpose of recovering the cost of services correctly paid under Medicaid to a recipient age 55 or older, the Ohio Department of Job and Family Services (ODJFS) must institute an estate recovery program against the property and estates of Medicaid recipients to recover Medicaid correctly paid on their behalf to the extent that federal law and regulations permit the implementation of a program of that nature. ODJFS must seek to recover Medicaid correctly paid only after the recipient and the recipient's surviving spouse, if any, have died and only at a time when the recipient has no surviving child who is under age 21 or blind or permanently and totally disabled.

ODJFS may enter into a contract with any individual or private entity under which the individual or private entity administers the estate recovery program on ODJFS's behalf or performs any of the functions required to carry out the program. The contract may provide for the individual or private entity to be compensated from the property recovered from the estates of Medicaid recipients or may provide for another manner of compensation agreed to by the individual or private entity and ODJFS. Regardless of whether it is administered by ODJFS or an individual or private entity under contract with ODJFS, the program must be administered in accordance with applicable requirements of federal law and regulations and state law and rules.

The bill. Under the bill, ODJFS continues to be required to institute an estate recovery program, but the bill narrows the Medicaid services for which recovery may be made while expanding the definition of "estate" from which recovery may be made.¹⁰³ Under the program, ODJFS is required to generally do both of the following:

(1) For the costs of state Medicaid plan services the Medicaid program correctly pays on behalf of an institutionalized individual¹⁰⁴ of any age, seek

¹⁰³ *The bill relocates ODJFS' authority to contract with any individual or private entity to administer the Medicaid Estate Recovery Program on behalf of ODJFS or perform functions required to carry out the program. (R.C. 5111.11(B) and (D) and 5111.112 and conforming changes in R.C. 3721.15, 5111.113 (renumbered from R.C. 5111.112), 5111.114 (renumbered from R.C. 5111.113), and 5731.39.) The bill also permits ODJFS to contract with a government entity, not just an individual or private entity, to perform functions required to carry out the program.*

¹⁰⁴ *Under the bill, "institutionalized individual" means an individual who: (1) is an inpatient in an institution, (2) is required, as a condition of the Medicaid program paying for the individual's services in the institution, to spend for costs of medical or nursing care all of the individual's income except for an amount for personal needs specified by ODJFS, and (3) cannot reasonably be expected to be discharged from the institution and return home.*

"Institution" means a nursing facility, intermediate care facility for the mentally retarded, or a medical institution.

For the purpose of determining whether an individual meets the definition of "institutionalized individual," the bill creates a rebuttable presumption that the individual cannot reasonably be expected to be discharged from an institution and return home if either of the following is the case: (1) the individual declares that he or she does not intend to return home, or (2) the individual has been an inpatient in an institution for at least six months without a discharge plan.

adjustment or recovery from the individual's estate or on the sale of property of the individual or spouse that is subject to a Medicaid estate recovery lien;

(2) For the costs of state Medicaid plan services the Medicaid program correctly pays on behalf of an individual 55 years of age or older who is not an institutionalized individual, seek adjustment or recovery from the individual's estate.

Current law provides for recovering the cost of services correctly paid under Medicaid. The bill limits recovery to the costs of state Medicaid plan services, which is defined as services covered by the Medicaid program pursuant to the state Medicaid plan or an amendment to the plan.¹⁰⁵ Services not included in the state Medicaid plan, or an amendment to the plan, are therefore excluded from recovery. This includes services provided under Medicaid's managed care system and waiver services such as home and community-based services.

Exceptions

(R.C. 5111.11(C))

Under the bill, no adjustment or recovery may be made from an institutionalized individual's estate or on the sale of property of an institutionalized individual that is subject to a Medicaid estate recovery lien or from a non-institutionalized individual's estate while: (1) the individual's spouse is alive, or (2) a child of the individual (if the child is under age 21 or is considered blind or disabled under the federal law governing the Supplemental Security Income Program) is alive.

Also, under the bill no adjustment or recovery may be made from an institutionalized individual's home that is subject to a Medicaid estate recovery lien while either of the following lawfully reside in the home:

(1) The institutionalized individual's sibling who resided in the home for at least one year immediately before the date of the institutionalized individual's admission to the institution and on a continuous basis since that time;

(2) The institutionalized individual's child who provided care to the institutionalized individual that delayed the institutionalized individual's institutionalization and resided in the home for at least two years immediately before the date of the institutionalized individual's admission to the institution and on a continuous basis since that time.

¹⁰⁵ R.C. 5111.02.

Waiver

(R.C. 5111.11(D))

The bill requires, rather than permits as under existing law, ODJFS to waive seeking adjustment or recovery of Medicaid correctly paid if the Director of Job and Family Services (ODJFS Director) determines that adjustment or recovery would work an undue hardship under criteria established by the United States Secretary of Health and Human Services.

Definition of "estate"

(R.C. 5111.11(A)(1))

Under existing law, "estate" means, for the purposes of the Medicaid estate recovery law, all property to be administered under the Probate Code and property that would be administered under that Code if it were not subject to certain release from administration provisions.¹⁰⁶

The bill expands the definition to also include other assets, including interests in property. Under the bill, "estate" includes both (1) all real and personal property and other assets to be administered under the Probate Code and property that would be administered under that Code if it were not subject to certain release from administration provisions, and (2) any other real and personal property and other assets in which an individual had any legal title or interest at the time of death¹⁰⁷ (to the extent of the interest), including assets conveyed to a survivor, heir, or assign of the individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

Conforming changes

(R.C. 5111.11 and 5111.111)

The bill specifies that the Medicaid Estate Recovery Program authorizes ODJFS to seek adjustment, as well as recovery. This amendment mirrors federal law, but the meaning of "adjustment" is unclear.

¹⁰⁶ *Certain small estates and intestate estates that go entirely to the surviving spouse may obtain a release or summary release from administration under the Probate Code (R.C. 2113.03 and 2113.031).*

¹⁰⁷ *Under the bill, "time of death" is prohibited from being construed to mean a time after which a legal title or interest in real or personal property or other asset may pass by survivorship or other operation of law due to the death of the decedent or terminate by reason of the decedent's death.*

Medicaid estate recovery liens

(R.C. 5111.111)

When lien may be imposed. Under existing law, ODJFS may place a lien against the property of a Medicaid recipient or recipient's spouse that ODJFS may recover as part of the Medicaid Estate Recovery Program. Existing law excludes from the lien property of a recipient of home and community-based services,¹⁰⁸ and the spouse of such a recipient.

Under the bill, generally, no lien may be imposed against the property of an individual before the individual's death on account of Medicaid paid or to be paid on the individual's behalf. But, ODJFS generally may impose a lien against the real property of a Medicaid recipient *who is an institutionalized individual* and against the real property of the recipient's spouse, including any real property that is jointly held by the recipient and spouse. The lien may be imposed on account of Medicaid paid or to be paid on the recipient's behalf for state Medicaid plan services. As discussed earlier, the bill defines "state Medicaid plan services" in a way that excludes services provided under Medicaid's managed care system and waiver services such as home and community-based services.

But, under the bill no lien may be imposed against the home of a Medicaid recipient if any of the following lawfully resides in the home: (1) the recipient's spouse, (2) the recipient's child who is under 21 years of age or is considered to be blind or disabled under the federal law governing the Supplemental Security Income Program, or (3) the recipient's sibling who has an equity interest in the home and resided in the home for at least one year immediately before the date of the recipient's admission to the institution.

Certificate. Under existing law, when Medicaid is paid on behalf of any person in circumstances under which federal law and regulations and this provision permit the imposition of a lien, the ODJFS Director or a person designated by the Director *may* sign a certificate to that effect.

The bill *requires* the ODJFS Director or a person designated by the Director to sign a certificate to effectuate a lien required to be imposed under these provisions.

Recording and duration of the lien. Under existing law, the county department of job and family services must record the certificate, or a certified copy, in the county real estate mortgage records of every county in which real

¹⁰⁸ "Home and community-based services" means services provided pursuant to a waiver under 42 U.S.C.A. 1396n.

property of the recipient or spouse is situated. From the time of recording the certificate, the lien attaches to all real property of the recipient or spouse described in the certificate for all amounts of aid that are paid or that are paid thereafter. Upon recording the certificate, all persons are charged with notice of the lien and the ODJFS' rights under it. ODJFS may waive the priority of its lien to provide for certain costs and fees. The lien remains until satisfied.

The bill specifies that a lien imposed with respect to a Medicaid recipient under the Medicaid estate recovery lien provisions dissolves on the recipient's discharge from the institution and return home.

Administrator of Medicaid Estate Recovery Program

(R.C. 2113.041(A))

The bill clarifies that the affidavit that the Medicaid Estate Recovery Program Administrator may present to a financial institution requesting that the financial institution release account proceeds to recover the cost of services correctly provided to a Medicaid recipient applies to a Medicaid recipient who is subject to the Medicaid Estate Recovery Program.

State Medicaid plan amendment

(Section 206.66.48)

The bill requires the ODJFS Director to submit a state Medicaid plan amendment to the United States Secretary of Health and Human Services as necessary for the implementation of the bill's changes to the Medicaid Estate Recovery Program.

ODJFS' duties under the Medicare Prescription Drug, Modernization and Improvement Act of 2003

(R.C. 329.04 and 5111.98)

The bill authorizes the Ohio Department of Job and Family Services (ODJFS) to take, as necessary to fulfill ODJFS' duties under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, any of the following actions:

- (1) Adopting rules;
- (2) Assigning duties to county departments of job and family services;

(3) Making payments to the United States Department of Health and Human Services from appropriations made to ODJFS for that purpose.

Rules must be adopted as follows:

- If the rules pertain to ODJFS' duties regarding service providers, they must be adopted in accordance with the Administrative Procedures Act (R.C. Chapter 119.).
- If the rules pertain to ODJFS' duties regarding individuals' eligibility for services, they must be adopted in accordance with R.C. 111.15.¹⁰⁹
- If the rules pertain to ODJFS' duties regarding financial and operational matters between ODJFS and county departments, they must be adopted in accordance with R.C. 111.15 as if they were internal management rules.

VIII. Hospital Care Assurance Program

Under the Hospital Care Assurance Program (HCAP), (1) hospitals are annually assessed an amount based on their total facility costs and (2) government hospitals make annual intergovernmental transfers to the Ohio Department of Job and Family Services (ODJFS). ODJFS distributes to hospitals money generated by assessments, intergovernmental transfers, and federal matching funds generated by the assessments and transfers. A hospital compensated under HCAP must provide, without charge, basic, medically necessary, hospital-level services to Ohio residents who are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty guidelines.

HCAP is scheduled to terminate on October 16, 2005. The bill delays the termination until October 16, 2007. (Sections 403.17 and 403.18)

IX. Disability Medical Assistance

Elimination of Disability Medical Assistance Program

(R.C. 9.24, 127.16, 131.23, 323.01, 329.04, 329.051, 2305.234, 2744.05, 3111.04, 3119.54, 3317.029, 3317.10, 3702.74, 4123.27, 4731.65, 4731.71, 5101.181, 5101.26, 5101.31, 5101.36, 5110.01, 5110.05, 5112.03, 5112.08, 5112.17,

¹⁰⁹ Adoption of rules under R.C. Chapter 119. requires a public hearing; adoption of rules under R.C. 111.15 does not.

5115.20, 5115.22, and 5115.23; Section 206.66.42; R.C. 5115.10, 5115.11, 5115.12, 5115.13, and 5115.14 (repeal))

Under law in existence prior to the enactment of the 2004-2005 biennium main operating budget bill (Am. Sub. H.B. 95 of the 125th General Assembly), Ohio had a Disability Assistance Program for low income persons who were generally ineligible for assistance under the Ohio Works First Program, the federal Supplemental Security Income Program, and Medicaid. Law enacted by H.B. 95 separated the Disability Assistance Program into two programs: the Disability Financial Assistance Program and the Disability Medical Assistance Program. It required the Ohio Department of Job and Family Services (ODJFS) to establish distinct requirements, eligibility determination procedures, administrative rules, and potential limitations for each program.

To be eligible for the Disability Medical Assistance Program, current law and administrative rules provide that an individual must:

- Be "medication dependent";¹¹⁰
- Be ineligible for any category of Medicaid;¹¹¹
- Be an Ohio resident;¹¹²
- Be a United States citizen, qualified alien, or meet certain citizenship requirements;¹¹³
- Be in a living arrangement other than a county home, city infirmary, jail, or public institution;
- Assign parental support and third party payments for medical care to the Department;¹¹⁴

¹¹⁰ *An individual is "medication dependent" if a physician has certified that the individual is under ongoing treatment for a chronic medical condition requiring continuous prescription medication for a long-term, indefinite period of time and for whom the loss of such medication would result in a significant risk of a medical emergency and loss of employability which will last at least nine months. Ohio Administrative Code (O.A.C.) 5101:1-42-01.*

¹¹¹ *R.C. 5115.11.*

¹¹² *Residency qualifications are established in O.A.C. 5101:1-39-54.*

¹¹³ *Citizenship qualifications are established in O.A.C. 5101:1-38-02.3.*

- Be a member of an "assistance group"¹¹⁵ or "family group."¹¹⁶

A person who is eligible for the Disability Medical Assistance Program may receive "covered services." Defined in administrative rule, "covered services" include a specified number of outpatient and inpatient visits, prescription drug services, medical supply services, laboratory and radiological services, and dental services limited to extractions and radiographs.¹¹⁷

Pursuant to ODJFS rule-making authority, a county department of job and family services administers the Disability Medical Assistance Program in a particular county.¹¹⁸ The Program receives no federal funding and has a capped appropriation that may limit the number of individuals approved for assistance.¹¹⁹

The bill terminates the Disability Medical Assistance Program effective October 1, 2005. However, it maintains current law to the extent necessary for ODJFS to carry out duties to deal with issues associated with the termination of the Program. The bill also permits ODJFS to take reasonable steps to inform Program recipients about the termination of the Program and requires county departments of job and family services to take action with respect to termination activities when requested by ODJFS.

¹¹⁴ O.A.C. 5101:1-38-02.2.

¹¹⁵ An "assistance group" is defined as applicants for or recipients of disability medical assistance who are living together and treated as a unit for purposes of determining eligibility for disability medical assistance. The assistance group is formed by selecting all of the covered individuals who are medication dependent from the family group. The assistance group must contain the following covered individuals: (1) an individual, (2) a married couple. O.A.C. 5101:1-42-01(B)(3).

¹¹⁶ A "family group" is defined as the assistance group, and any persons related to any member of the assistance group by blood, adoption, or marriage who are living in the same home as the assistance group. O.A.C. 5101:1-42-01(B)(2).

¹¹⁷ O.A.C. 5101:3-23-01(B).

¹¹⁸ R.C. 5115.13; O.A.C. 5101:1-42-01.

¹¹⁹ O.A.C. 5101:1-42-01(A).

County share of public assistance expenditures for calendar year 2007

(R.C. 5101.16 (not in the bill); Section 206.66.18)

Under current law, counties are responsible for a share of the costs of certain public assistance programs, including Ohio Works First (OWF), Prevention, Retention, and Contingency (PRC) programs, and the Disability Financial and Medical Assistance Programs. Generally, a county's share of the costs of the public assistance programs for a state fiscal year is the sum of the following:

- The amount that is 25% of the county's total expenditures the Ohio Department of Job and Family Services (ODJFS) determines are allowable for the Disability Financial Assistance and Disability Medical Assistance Programs and county administration of these programs during the state fiscal year ending in the previous calendar year.
- The amount that is 10% of the county's total expenditures ODJFS determines are allowable for county administration of food stamps and Medicaid during the state fiscal year ending in the previous calendar year, less the amount of federal reimbursement credited to the county for the state fiscal year ending in the previous calendar year.
- A percentage, as determined by ODJFS in rules, of the county's share of program and administrative expenditures during federal fiscal year 1994 for assistance and services, other than child care, provided under the former Aid to Dependent Children and Job Opportunities and Basic Skills Training Programs.

If the above formula operated for calendar year 2007, a county's share of public assistance expenditures for 2007 would be calculated based on nine months of expenditures for the Disability Medical Assistance Program since the bill terminates this Program effective October 1, 2005. The bill, however, notwithstanding current law and directs that a county's share of public assistance expenditures for calendar year 2007 must be an amount equal to the county's share of public expenditures for calendar year 2006 which will include 12 months of expenditures for that Program.

X. Title XX Social Services

Title XX of the Social Security Act authorizes a block grant program under which states receive federal funds to be used for social services. In Ohio, the

funds are divided among three state agencies: the Departments of Job and Family Services, Mental Health, and Mental Retardation and Developmental Disabilities.

Audits of state agency Title XX expenditures

(R.C. 5101.46(F))

Under current law, each of the three state agencies receiving Title XX funds must commission an entity independent of itself to conduct an audit of its Title XX expenditures. The audits must occur at least biennially and copies must be submitted to the General Assembly and the United States Secretary of Health and Human Services.

The bill eliminates the requirement of independent, biennial audits of the three state agencies' Title XX expenditures.

Audits of Title XX social services providers

(R.C. 5101.46(F))

Current law authorizes the three state agencies that receive Title XX funds, as well as their respective local agencies,¹²⁰ to require an entity under contract to provide Title XX social services to submit to an audit on the basis of alleged misuse or improper accounting of funds. The cost of the audit must be reimbursed under a subsequent or amended Title XX contract with the provider. If there are adverse findings in the audit, the state or local agency may terminate or refuse to enter into a Title XX contract with the provider.

The bill expressly requires a social services provider to reimburse the state or local agency for the cost of an audit, while eliminating the provision specifying that the cost is to be reimbursed under a subsequent or amended Title XX contract. If an audit demonstrates that the provider is responsible for one or more adverse findings, the bill requires the provider to reimburse the appropriate state or local agency the amount of the adverse findings. The bill continues the agency's authority to terminate or refuse to enter into Title XX contracts with the provider.

¹²⁰ For the Ohio Department of Job and Family Services, a local agency is a county department of job and family services; for the Department of Mental Health, it is a board of alcohol, drug addiction, and mental health services; for the Department of Mental Retardation and Developmental Disabilities, it is a county board of mental retardation and developmental disabilities.

Rules governing the Title XX program

(R.C. 5101.46)

Current law permits the Ohio Department of Job and Family Services (ODJFS) to adopt rules as necessary to carry out the purposes of the Title XX statutes. Generally, the rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.), which requires public hearings. However, internal management rules governing fiscal and administrative matters can be adopted under procedures that do not require public hearings.

The bill authorizes ODJFS to adopt rules to implement and carry out the Title XX statutes, and eliminates the provision specifying that ODJFS may adopt rules "as necessary." Rules governing ODJFS's financial and operational matters or matters between ODJFS and county departments of job and family services must be adopted as internal management rules. Rules governing eligibility for services, program participation, and other matters pertaining to applicants and participants must be adopted in accordance with the Administrative Procedure Act.

Use of TANF funds for Title XX social services

(R.C. 5101.461 (primary); 329.04, 5101.35, and 5101.821)

Title IV-A of the Social Security Act, the federal law authorizing the Temporary Assistance for Needy Families (TANF) Block Grant, allows states to use a percentage of the funds they receive for Title XX social services.¹²¹ Current law in Ohio includes provisions specifying that the Ohio Department of Job and Family Services' (ODJFS) distribution of TANF funds for Title XX services is not subject to other provisions governing the distribution of Title XX funds.

The bill creates a separate statute governing the use of TANF funds for Title XX social services. Under the bill, ODJFS is expressly permitted to use TANF funds for purposes of providing Title XX social services, to the extent authorized by federal law. The bill specifies that the amount used cannot exceed the maximum amount permitted by federal law. It also specifies that the funds and the provision of social services with the funds are not subject to other statutes governing Title XX social services.

¹²¹ 42 United States Code 604.

Audits of TANF/Title XX social service providers

The bill authorizes ODJFS and any county department of job and family services to require an entity under contract to provide Title XX social services with TANF funds to submit to an audit on the basis of alleged misuse or improper accounting of funds. If an audit is required, the social services provider is required to reimburse ODJFS or the county department for the cost of the audit.

If an audit demonstrates that a social services provider is responsible for one or more adverse findings, the bill requires the provider to reimburse ODJFS or the county department the amount of the adverse findings. The amount cannot be reimbursed with the TANF funds received to provide social services. ODJFS and the county departments are authorized to terminate or refuse to enter into a contract with a social services provider if there are adverse findings that are the responsibility of the provider.

Rules governing TANF/Title XX social services

The bill permits ODJFS to adopt rules to implement and carry out the purposes of the statute governing the use of TANF funds for Title XX social services. Rules governing ODJFS's financial and operational matters or matters between ODJFS and county departments are to be adopted as internal management rules under procedures that do not require public hearings. Rules governing eligibility for services, program participation, and other matters pertaining to applicants and participants must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.), which requires public hearings.

JUDICIARY/SUPREME COURT

- Provides a \$500 vehicle allowance per month for the chief justice and the justices of the Supreme Court.

Vehicle allowance for Supreme Court justices

(R.C. 141.04)

Current law provides that the annual salaries of the chief justice of the Supreme Court and of the justices of the Supreme Court are payable from the state treasury and, for each calendar year from 2002 through 2008, the annual salaries of the chief justice and the justices must be increased by an amount equal to the adjustment percentage for that year multiplied by the compensation paid the

preceding year. The adjustment percentage for a year is the lesser of the following: (1) 3% or (2) the percentage increase, if any, in the consumer price index over the 12-month period that ends on September 30 of the immediately preceding year, rounded to the nearest 1/10 of 1%.

The bill provides that, in addition to the salaries payable pursuant to the provision described above, the chief justice and the justices are entitled to a vehicle allowance of \$500 per month, payable from the state treasury. This allowance must be increased on January 1 of each odd numbered year by an amount equal to the percentage increase, if any, in the consumer price index for the immediately preceding 24-month period for which information is available.

LOCAL GOVERNMENT

- Provides new procedures for the county mechanisms, county comprehensive family service coordination plans, and dispute resolution processes of family and children first county councils.
- Raises the bid amount under the Competitive Bidding on County Purchases Law for which a bond or other specified form of bid guaranty is required from in excess of \$10,000 to in excess of \$25,000.
- Requires that necessary medical care for a person confined in a county jail or in the custody of a law enforcement officer prior to confinement that cannot be provided by the jail's regular physician be provided by a medical provider at the Medicaid reimbursement rate.
- Transfers the power to fix the compensation of the librarian and up to two assistant librarians of a law library association's law library from the judges of the court of common pleas to the association's board of trustees.
- Pursuant to a graduated schedule for FY 2006 through FY 2009, generally apportions the responsibility for payment of the compensation of the librarian and up to two assistant librarians of an association's law library, as well as the payment of the costs of the space, utilities, furniture, and fixtures of the association's law library, between the board of county commissioners and the association's board of trustees.
- Beginning in FY 2010, requires the association's board of trustees to assume full financial responsibility for paying the librarian's and all

assistant librarians' compensation as well as the costs of the space, utilities, furniture, and fixtures for the association's law library.

- Generally continues a county's responsibility to provide a law library association with space and utilities for its law library in the county courthouse or elsewhere in the county.
- Eliminates the county's responsibility to (1) pay the librarian's and up to two assistant librarians' compensation and the costs of the space, utilities, furniture, and fixtures for the association's law library if the association itself obtains space for its law library and (2) provide a law library association with space and utilities for its law library in the county courthouse or elsewhere in the county if the association itself obtains space for its law library.
- Generally requires boards of county commissioners to provide office space and utilities to their county's general health district's board of health through FY 2005; generally requires them to pay in FY 2006 through FY 2009 specified decreasing proportions of the cost of the office space and utilities; specifies that they have no obligation to provide or pay for the office space and utilities after FY 2009; permits them in FY 2010 and thereafter to contract to provide the office space and utilities; and permits them in any fiscal year, in their discretion and notwithstanding the aforementioned fiscal year limitations, to provide the office space and utilities free of charge.
- Relieves a board of county commissioners of its office space and utilities obligations if the board of health of the county's general health district acquires office space on its own in any of several specified manners.
- Provides that a general health district special levy can be used to cover the costs of its office space and utilities.
- Expands a board of county commissioners' authority to adopt a quarterly spending plan for all appropriations for a fiscal year from the county general fund by instead authorizing the adoption of such a plan for any appropriations from any county fund and for any office, department, or division the board chooses.



Procedure changes to family and children first county councils

(R.C. 121.37, 121.38, 121.381, and 121.382)

Under current law, each board of county commissioners must establish a county family and children first council to facilitate the provision of services to children and families by various agencies, including local boards of education and health, the county boards of alcohol, drug addiction, and mental health services, and mental retardation and developmental disabilities, and the county department of job and family services.

Procedures for the county service coordination mechanism

Currently, each county must develop a service coordination mechanism that includes a procedure for each of the following:

(1) Assessment of the needs of any child, including a child who is an abused, neglected, dependent, unruly, or delinquent and under the jurisdiction of the juvenile court, or a child whose parent or custodian is voluntarily seeking services;

(2) Assessment of the service needs of the family of any child, including a child whose parent or custodian is voluntarily seeking services;

(3) Development of a comprehensive joint service plan that designates service responsibilities among the various state and local agencies that provide relevant services;

(4) Resolution of disputes among the agencies providing services.

The bill requires county councils to develop the following procedures in addition to those required by current law:

(1) A means by which a family can refer itself to the county council;

(2) A means by which an agency or juvenile court can refer a child and family to the county council;

(3) A procedure that permits a family to be involved by notifying and inviting the family to all meetings involved in the mechanism or permits a family to initiate a meeting to develop or review the family's service coordination plan and allows the family to invite an advocate, mentor, or support person;

(4) A procedure for notifying and inviting appropriate staff from involved agencies to all meetings;

(5) A procedure for ensuring that a service coordination meeting is conducted before a non-emergency out-of-home placement or within 10 days after an emergency out-of-home placement. (The bill specifies that this requirement is not to be interpreted to interfere with the decisions of a juvenile court regarding an out-of-home placement, long-term placement, or emergency out-of-home placement.)

(6) A procedure for monitoring the progress and tracking the outcomes of each service coordination plan requested to assure continued progress, appropriateness of placement, and continuity of care after discharge from placement;

(7) A procedure for protecting the confidentiality of all personal family information disclosed during meetings or contained in the service coordination plan.

The bill modifies the procedure for assessing a family involved in the service mechanism by requiring the council to assess the needs and strengths of a family who is referred to the council as well as ensuring that parents and custodians are afforded the opportunity to participate in the service coordination plan.

Changes to the county council comprehensive joint service plan

Under current law, each county is required to develop a comprehensive joint service plan that designates service responsibilities among the state and local agencies that provide services to children and includes a service coordination process for dealing with a child who is alleged to be unruly. The bill would require the renamed comprehensive family service coordination plan to do the following:

(1) Designate a lead family plan coordinator, approved by the family, to ensure coordination of and fidelity to the plan;

(2) Ensure that the assistance and services provided are responsive to the strengths and needs of the family, as well as the family's culture, race, and ethnic group, by allowing the family to offer information and suggestions and participate in decisions;

(3) Ensure that the child and family's needs are met in the least restrictive environment;

(4) Include timelines for completion of goals specified in the plan with regular reviews to monitor progress;

(5) Include a plan for dealing with short-term crisis situations and safety concerns.

Changes to the service coordination process for children alleged to be unruly

Current law requires the comprehensive joint service plan to include a service coordination process for dealing with a child who is alleged to be unruly. Currently, the service coordination process may also include:

(1) An assessment of the needs and strengths of the child and the child's family and the services they need;

(2) Designation of the person or agency to conduct the assessment of the child and the child's family and designation of the instruments to be used to conduct the assessment;

(3) Designation of the agency to provide case management services to the child and the child's family;

(4) An emphasis on the personal responsibilities of the child and the parental responsibilities of the parents, guardian, or custodian of the child;

(5) Involvement of local law enforcement agencies and officials.

The bill modifies two of these elements. First, the assessment of needs and strengths of the child and the child's family is conducted under the procedures of the county council mechanism. Second, the service coordination process does not need to designate an agency to provide case management services to the child and the child's family.

One requirement of the service coordination process is to include methods to divert the child from the juvenile court system, which can include a number of actions including providing the child and the child's family a short-term respite from a short-term crisis situation involving a confrontation between the child and the parents, guardian, or custodian.

Under the bill, the method for dealing with short-term crisis situations is no longer part of the service coordination process. Instead, it is part of the service coordination plan (See "**Changes to the county council comprehensive family service coordination plan**" above).

Dispute resolution processes

Current law requires the county council to include in its mechanism a dispute resolution procedure to resolve conflict among agencies. In addition to using dispute resolution for agency disputes, the bill authorizes the county councils to use their dispute resolution processes to resolve disputes between an agency and the parents or custodians of a child receiving services from the agency. Disputes between the agency and the recipient of services must be conducted under new procedures.

Under the bill, a parent or custodian who disagrees with a decision made by a county council regarding services for a child may initiate the dispute resolution process. Not later than 60 days after the parent or custodian initiates the process, the council is required to make findings regarding the dispute and issue a written determination of its findings. The bill also provides that each agency that is the subject of the dispute must continue providing its services or funding for its services to the child or family for the duration of the dispute resolution process.

Bids and their guaranties for county purchases

(R.C. 307.88(A))

Current law provides that bids submitted under the Competitive Bidding on County Purchases Law must be in a form prescribed by the contracting authority and filed in a sealed envelope at the time and place mentioned in the newspaper, trade paper or other publication, electronic mail, and/or Internet notices advertising an invitation for bids. Although competitive bidding generally is required under the Law when anything is to be purchased, leased, leased with an option or agreement to purchase, or constructed by a county or contracting authority at a *cost in excess of \$25,000* (R.C. 307.86--not in the bill), and although newspaper publication notice of any purchase, lease, lease with an option or agreement to purchase, or construction contract is mandated under the Law only when the contract is in excess of \$25,000 (R.C. 307.87--not in the bill), the Law also states that a bid *in excess of \$10,000* for a contract for the construction, demolition, alteration, repair, or reconstruction of *an improvement* generally must meet the bid guaranty requirements of the Public Improvements Law, which mandates that a bid be accompanied by a specified bond, or certified check, cashier's check, or letter of credit, conditioned as prescribed in the Public Improvements Law.^{122 and 123} The bill raises the bid threshold to bids *in excess of*

¹²² A "contracting authority" is any board, department, commission, authority, trustee, official, administrator, agent, or individual with authority to contract for or on behalf of the county or any county agency, department, authority, commission, office, or board (R.C. 307.92--not in the bill).

\$25,000 before compliance with the Public Improvements Law's bid guaranty requirements is necessary.

Current law also specifies that if a bid is in excess of \$10,000 and for *any other contract* authorized under the Competitive Bidding on County Purchases Law--i.e., a non-public improvement contract, it must be accompanied by a bond or certified check, cashier's check, or money order on a solvent bank or savings and loan association, in a reasonable amount stated in the notices advertising the proposed contract, but not to exceed 5% of the bid, conditioned that the bidder, if the bidder's bid is accepted, will execute a contract in conformity to the invitation for bids and the bid. The bill raises the bid threshold for non-public improvement contracts to in excess of \$25,000 before a described bid guaranty must accompany a submitted bid.

Payment for necessary medical care of county jail inmates at the Medicaid reimbursement rate

(R.C. 341.192)

If necessary medical care for a person confined in a county jail or in the custody of a law enforcement officer prior to confinement in the county jail cannot be provided by the jail's regular physician, the bill requires that the medical care be provided by a medical provider and requires the county to pay a medical provider for necessary care an amount not exceeding the authorized Medicaid reimbursement rate for the same service. The bill defines "necessary care" as medical care of a nonelective nature that cannot be postponed until after the period of confinement of a person who is confined in a county jail or in the custody of a law enforcement officer without endangering the life or health of the person. It also defines "medical provider" as a physician, hospital, laboratory, pharmacy, or other health care provider that is not employed by or under contract to a county to provide medical services to persons confined in the county jail and that is a Medicaid provider under the medical assistance program. It defines "medical assistance program" as the program established by the Department of Job and Family Services to provide medical assistance under Medicaid.

¹²³ *Under current law, there is a potential exception to compliance with the Public Improvements Law bid guaranty requirements. The board of county commissioners, by a unanimous vote, may permit a contracting authority to exempt bids from some or all of those bid guaranty requirements if the estimated cost is more than \$10,000 but less than \$25,000 (R.C. 307.88(B)).*

Law libraries

Overview

(R.C. 3375.48 and 3375.55)

Continuing law requires the law library association in each county ("association") that receives fines and penalties, and moneys arising from forfeited bail, under certain statutes to furnish to all members of the General Assembly, the officers of the county in which the association is located, the officers of the townships and municipal corporations in that county, and the judges of the courts in that county admission to the association's law library and the use of its books, materials, and equipment free of charge.

Setting of compensation for law librarians

(R.C. 3375.48)

An association's board of trustees appoints a librarian and assistant librarians for its law library. Current law gives the judges of the court of common pleas of the county the power to fix the compensation of the librarian and up to two assistant librarians, and that compensation is payable 100% from the county treasury. Under the bill, this compensation fixing power is transferred from the judges of the court of common pleas to the association's board of trustees. Generally, the board of trustees is also responsible under the bill for paying the compensation of the librarian and all of the assistant librarians--but see the bill's costs payment schedule provisions for fiscal years 2006-2009 below.

Provision of space and utilities

(R.C. 3375.49)

Under current law, the board of county commissioners must provide suitable rooms with sufficient and suitable bookcases in the county courthouse for the use of the association's law library or, if there are no suitable rooms in the courthouse, any other suitable rooms in the county seat with sufficient and suitable bookcases. Additionally, the board must provide heat and light for the rooms. This provision must be 100% at the county's expense.

The bill generally continues these responsibilities by requiring the board of county commissioners to provide a law library association with *space and utilities* for its law library in the county courthouse or in any other building in the county. However, the bill also provides that, if at any point the association's board of trustees rents, leases, lease-purchases, or otherwise acquires space for its law library, or constructs, enlarges, renovates, or otherwise modifies buildings or other

structures to provide space for the use of its law library, the board of county commissioners has no further obligation to provide the association with the space and utilities. And, as discussed below, the bill modifies the county's payment responsibility for the costs of the space and utilities for the association's law library.

Payment of compensation and costs

(R.C. 3375.48, 3375.49, and 3375.54)

Current law requires a board of county commissioners to make certain payments with regard to an association's law library. Specifically, the board must pay the compensation of the librarian and up to two assistant librarians of the law library, as well as the costs of providing suitable rooms, sufficient and suitable bookcases, heating, and lighting for the law library.

As part of the previously discussed changes made by the bill, responsibility for payment of the *compensation* of the librarian and up to two assistant librarians of an association's law library, as well as the *costs* of the space, utilities, furniture, and fixtures of an association's law library is gradually transferred from the board of county commissioners to the association's board of trustees pursuant to the following schedule:

Fiscal Year	Responsibility to pay the compensation and costs
2005	The board of county commissioners must pay 100%.
2006	The board of county commissioners must pay 80%, and the association's board of trustees must pay 20%.
2007	The board of county commissioners must pay 60%, and the association's board of trustees must pay 40%.
2008	The board of county commissioners must pay 40%, and the association's board of trustees must pay 60%.
2009	The board of county commissioners must pay 20%, and the association's board of trustees must pay 80%.
2010 and thereafter	The association's board of trustees must pay 100%.

However, if at any point the association's board of trustees rents, leases, lease-purchases, or otherwise acquires space for its law library, or constructs, enlarges, renovates, or otherwise modifies buildings or other structures to provide space for the use of its law library, the board of county commissioners has no

further responsibility to pay the compensation and costs in accordance with the latter schedule.

General health district office space and utilities

(R.C. 3709.29 and 3709.34)

Existing law

Current law provides that a board of county commissioners, as well as the legislative authority of a city, "may" furnish suitable quarters for any board of health or health department having jurisdiction over all or a major part of the county or city. The Ohio Attorney General has opined that a board of county commissioners is *required to provide and pay* for "office space and utilities" under this law. (See 1996 Op. Att'y Gen. No. 96-016, 1989 Op. Att'y Gen. No. 89-038, 1986 Op. Att'y Gen. No. 86-037, 1985 Op. Att'y Gen. No. 85-003, and 1980 Op. Att'y Gen. No. 80-086.)

Changes proposed by the bill

Separation and county responsibility in general. The bill separates current law's provision for cities furnishing suitable quarters for their board of health or health department from new provisions for counties and their general health district board of health. In separating the provisions, the bill reflects the Attorney General's interpretation of current law and specifically generally *requires* (but see "Caveat," below) a board of county commissioners to provide "office space and utilities" for the board of health having jurisdiction over the county's general health district through FY 2005. Thereafter, the board of county commissioners generally must make reduced *payments* for the office space and utilities until FY 2010, at which time the board will no longer have a duty to provide or pay for the office space and utilities.

Schedule of responsibility for payments. The board of county commissioners' reduced payments for FY 2006, 2007, 2008, and 2009 are to be determined as follows:

- The board of county commissioners must make a written estimate of the total cost for the ensuing fiscal year of providing the office space and utilities to the board of health no later than September 30 of 2005, 2006, 2007, and 2008. This estimate must include (1) the total square feet of space to be used by the board of health, (2) the total square feet of any common areas that should be reasonably allocated to the board of health and the method for making this allocation, (3) the actual cost per square foot for both the space used by and the

common areas allocated to the board of health, (4) an explanation of the method used to determine the actual cost per square foot, (5) the estimated cost of providing utilities, including an explanation of how this cost was determined, and (6) any other estimated costs the board of county commissioners anticipates will be incurred to provide the office space and utilities, including an explanation of them and the rationale used to determine them.

- The board of county commissioners must forward a copy of the estimate to the director of the board of health not later than October 5 in 2005, 2006, 2007, and 2008. The director then must review the estimate and notify the board of county commissioners within 20 days of its receipt whether the director agrees with the estimate or has specific objections to it, including the reasons for any objections. If the director agrees, the estimate becomes the "final estimate of total costs" upon which the county's and the board of health's respective responsibilities for making payments will be based in the ensuing fiscal year. Failure of the director to timely submit objections is "deemed" to mean agreement with the board of county commissioners' estimate.
- If the director so objects within the 20-day period, the board of county commissioners must review the specific objections and may send a revised estimate to the director within ten days after receiving the objections. The director then must respond to this revised estimate within ten days after its receipt. If the director disagrees with a revised estimate, the director must send specific objections to the board of county commissioners within the ten-day period. But, if the director agrees with it, the revised estimate is the "final estimate of total costs" upon which the county's and the board of health's respective responsibilities for making payments will be based in the ensuing fiscal year. If the director fails to timely respond to a revised estimate, that estimate is "deemed" to be the final estimate of total costs.
- If the director timely objects to the original estimate and there is no revision to it by the board of county commissioners, or if the director timely and specifically objects to a revised estimate, the probate judge of the county must determine the final estimate of total costs and certify this amount to the director and the board of county commissioners before January 1 of the ensuing fiscal year to which the estimate applies.

- Once the final estimate of total costs is established, the county generally must pay the following percentages of the estimate: 80% for FY 2006; 60% for FY 2007; 40% for FY 2008; and 20% for FY 2009. The board of health will be responsible for the remainder of any costs incurred in excess of these amounts for office space and utilities, including any unanticipated or unexpected increases in costs beyond the final estimate of total cost.

Fiscal year 2010 and thereafter--generally. In FY 2010, although the board of county commissioners will no longer be obligated to provide or pay for office space or utilities for the board of health of the general health district, it may enter into a contract with the board of health to provide it with office space and utilities. Any such contract cannot be made or renewed for a term of more than four years. In addition, in the discretion of the board of county commissioners, it may provide office space and utilities for the board of health free of charge--even in FY 2006 through FY 2009.

Caveat. Notwithstanding the bill's provisions imposing responsibility upon a county to provide office space and utilities to the board of health of its general health district through FY 2005 and imposing responsibility upon a county to make payments for the office space and utilities as described under '**Schedule of responsibility for payments,**' above, during FY 2006 through FY 2009, if the board of health rents, leases, lease-purchases, or otherwise acquires office space to facilitate the performance of its functions, or constructs, enlarges, renovates, or otherwise modifies buildings or other structures for that purpose, the board of county commissioners is relieved of its statutory responsibilities to either provide or pay in any percentage for the board of health's office space and utilities.

General health district levy. The bill also specifies that a property tax special levy outside the ten-mill limitation to provide a general health district's board of health with sufficient funds to carry out its general health district program as authorized by continuing law may include the board's costs for office space and utilities.

County quarterly spending plan authority

(R.C. 5705.392)

Under current law, a board of county commissioners may adopt as part of its annual appropriation resolution a spending plan (or in the case of an amended appropriation resolution, an amended spending plan) setting forth a quarterly schedule of expenses and expenditures of *all appropriations* for the fiscal year from the county *general fund*. The spending plan must be classified to set forth separately a quarterly schedule of expenses and expenditures for *each* office,

department, and division, and, within each, the amount appropriated for personal services. Each office, department, and division is limited in its expenses and expenditures of moneys appropriated from the general fund during any quarter by the schedule established in the spending plan. The schedule is a limitation during the quarter on entering into contracts and giving orders involving the expenditure of money for purposes of obtaining the requisite certificate of available funds under existing law.

The bill changes this authority to allow a board of county commissioners to adopt a spending plan with a quarterly schedule of expenses and expenditures of *any* appropriations for the fiscal year from *any* county fund and for *any* office, department, or division it chooses. Under the bill, the board of county commissioners must give written notice to each office, department, or division for which it intends to provide a spending plan. The notice must be sent by regular first class mail or given by personal service at least 30 days before the adoption of the appropriation resolution or amended appropriation resolution. And, the notice must include a copy of the proposed spending plan. The bill authorizes an office, department, or division to meet with the board of county commissioners at any regular session of the board to comment on the notice, express concerns, or ask questions about the proposed spending plan.

OHIO LOTTERY COMMISSION

- Creates in the state treasury the Charitable Gaming Oversight Fund in which the State Lottery Commission must deposit money it receives from the Attorney General under an agreement between the two agencies for the Commission to carry out certain duties under the Charitable Gaming Law on the Attorney General's behalf.
- Authorizes money in the Fund not necessary for the Commission to perform its agreed to charitable gaming oversight, licensing, and monitoring functions to be transferred by the Office of Budget and Management to the Lottery Profits Education Fund.

Creation of the Charitable Gaming Oversight Fund

(R.C. 3770.061)

The bill creates in the state treasury the Charitable Gaming Oversight Fund. The State Lottery Commission must credit to the Fund any money it receives from

the Attorney General's Office under any agreement the Commission and the Office have entered into under a provision of the Charitable Gaming Law that authorizes the Attorney General to enter into a written contract with another state agency to delegate to that agency powers of the Attorney General under the Law (R.C. 2915.08(I)--not in the bill). The Commission must use money in the Fund to provide oversight, licensing, and monitoring of charitable gaming activities in accordance with the agreement and the Law.

Not later than July 1 of each fiscal year or as soon as possible thereafter, the Commission may certify to the Office of Budget and Management (OBM) any unobligated fund balances not necessary to be used for the latter purposes. The Commission may request OBM to transfer these balances to the Lottery Profits Education Fund, which under current law must be used solely for the support of elementary, secondary, vocational, and special education programs or as provided in applicable bond proceedings for the payment of debt service on obligations issued to pay the cost of capital facilities.

DEPARTMENT OF MENTAL HEALTH

- Revises the method for determining the amount a patient, patient's estate, or liable relative is to be charged for inpatient care and treatment at a hospital under the control of the Department of Mental Health.

Billing methodology for Department of Mental Health hospital inpatients

Current law

(R.C. 5121.01 to 5121.05, 5101.06 to 5121.12, and 5121.21)

Under current law, the Departments of Mental Health and Mental Retardation and Developmental Disabilities must, at least annually, compute the cost to support a patient in a hospital controlled by the Department of Mental Health or a resident in an institution controlled by the Department of Mental Retardation and Developmental Disabilities. The costs the Departments compute must be based on the projected average per capita cost of the care and treatment of patients and residents.

The patient or resident and the estate or liable relatives of the patient or resident¹²⁴ are jointly and severally liable for the cost of support of a patient or resident. Annually, each department must determine the ability of the foregoing persons to pay for the costs and the amounts the department will charge each person. To make these determinations, the departments must investigate these persons' financial conditions. All investigations and determinations must be completed within 90 days after a patient or resident is admitted.

In general, a patient or resident *without* dependents is liable for the full cost of support; however, a patient or resident may enter into an agreement with the department by which payments may be made at some future point in time.

A patient or resident *with* dependents, or a liable relative with or without dependents, is liable for a certain percentage of the cost of support for the first 30 days of admission according to a sliding scale based on adjusted gross annual income and number of dependents. Income is adjusted for items associated with the needs of dependents and medical, funeral, and related expenses. "Dependent" includes the liable relative and any person who receives more than half the person's support from the patient, resident, or the patient or resident's liable relative. A person may claim an additional dependent if:

- The liable relative is blind;
- The liable relative is over age 65;
- A dependent child is a college student with expenses in excess of \$50 per month;
- The services of a housekeeper, costing in excess of \$50 per month, are required if the person who normally keeps house for minor children is the patient or resident.

Beyond the 30th day of care and treatment, the patient or resident with dependents, or liable relative with or without dependents, is charged an amount equal to a percentage of a base support rate that is currently around \$8.40 per day.¹²⁵ The percentage the departments will charge a particular patient, resident,

¹²⁴ *Liabile relatives are (1) the patient's or resident's spouse and (2) if the patient or resident is under age 18, the patient's or resident's parents (R.C. 5121.06(A)).*

¹²⁵ *Beginning January 1, 1978, the Departments are required to increase the base rate when the consumer price index average is more than 4.0 for the preceding calendar year by not more than the average for such calendar year (R.C. 5121.04(B)(2)). Tonya Fasone, of the Department of Mental Health, stated that the base rate is approximately \$8.40 per day at the present time.*

or liable relative is determined according to the sliding scale mentioned above that is based on the person's adjusted gross annual income and number of dependents. If the departments determine that a person is liable for less than 50% of the base support rate, but the patient or resident either has a liable relative with an estate valued at more than \$1,500 or the patient or resident has a dependent and an estate valued at more than \$1,500, an amount equal to 50% of the cost of support or base rate support amount must be paid.

If the patient or resident is covered by an insurance policy or other contract that pays for the care and treatment of mental illness or mental retardation, the insurer or other payor is liable for an amount equal to the lesser of the cost of support or the benefits provided under the policy or contract. A patient or resident must assign any payments or reimbursements received to the respective department. If the patient or resident refuses to assign payments or received reimbursements within ten days of receipt, the patient's or resident's liability for the services equals the patient's or resident's cost of support plus the benefits provided under the policy or contract. However, the patient or resident is not liable for an amount in excess of the respective department's actual cost to support the patient or resident.

If a patient or resident is the beneficiary of a supplemental services trust for persons with disabilities, the law governing these trusts applies to the determination of the patient's or resident's financial condition.¹²⁶

The departments may enter into extended payment agreements with patients, residents, or liable relatives. However, the departments are precluded from taking a security interest, mortgage, or lien against the principal family residence of a patient, resident, or liable relative with dependents. The department must commence all actions to enforce collection of payments within six years after the date of default of an agreement to pay costs of support or the date a payment becomes delinquent.

A liable relative who pays an amount owed one of the departments may recover from other persons under the following circumstances:

¹²⁶ *The primary law governing supplemental services trusts is R.C. 1339.51. In short, assets used to create these trusts must come from a person without a legal obligation of support and cannot belong to the beneficiary. Expenditures from these trusts are limited to "supplemental services"--things that are considered non-necessities like recreational items, vacations, or items for which Medicaid or other third-party payors have denied payment. David A. Zwyer, Esq. "Estate and Future Planning for Ohioans with Disabilities and Their Families," Ohio Developmental Disabilities Council (Feb. 2004).*

- Any liable person may recover from the patient or resident, the patient's or resident's guardian, or from the executor or administrator of the patient's or resident's estate the full amount of payment made by the liable relative.
- Any liable relative may recover from the patient's or resident's spouse the full amount of payment made by the liable relative.
- A minor patient's or resident's mother may recover from the minor patient's or resident's father the full amount of payment made by the mother.

The bill

The bill revises current law to establish a separate methodology for the Department of Mental Health to follow in determining how much a patient, patient's estate, and liable relatives must be charged for a patient's *inpatient* care and treatment at a hospital established, controlled, or supervised by the Department of Mental Health. The separate methodology applicable to inpatients appears in a new part of R.C. Chapter 5121. beginning at R.C. 5121.30.

The billing methodology in current law (see "Current law," above) remains applicable to residents in facilities under the jurisdiction of the Department of Mental Retardation and Developmental Disabilities and to community mental health services recipients who receive state-operated community mental health services.

In addition, because a separate billing methodology is established for inpatients, the bill repeats miscellaneous provisions of current law in the new part of R.C. Chapter 5121. to show that these provisions apply not only to residents and community mental health services recipients, but to inpatients as well. These provisions deal with the following:

- Traveling and incidental expenses incurred in conveying patients to hospitals and clothing them (R.C. 5121.31);
- Discovery tools the Department may use to investigate a patient's, estate's, or liable relative's financial condition (R.C. 5121.38);
- Submission of patient or liable relative financial information to the Department by managing officers of Department institutions (R.C. 5121.39);

- Extended payment plans negotiated between the Department and the patient, patient's estate, or patient's liable relative (R.C. 5121.44);
- Patient commitments to hospitals pursuant to judicial proceedings (R.C. 5121.50);
- Appointment of a guardian on the petition of a Department agent (R.C. 5121.51);
- Burial and cremation of indigents who die while admitted to a hospital (R.C. 5121.53);
- Recovery by a liable relative or parent from certain persons for amounts paid by that relative or parent for a patient's care (R.C. 5121.54).

Determination of applicable per diem charge and ancillary per diem rate (R.C. 5121.32). The bill requires the Department of Mental Health to annually determine the applicable per diem charge and ancillary per diem rate for each hospital¹²⁷ operated by the Department. In determining this charge and rate, the Department must consider the average actual per diem cost of maintaining and treating a patient at the hospital or, at the Department's discretion, the average actual per diem cost of maintaining and treating a patient in a unit of the hospital.

General rule--full applicable per diem charge applies (R.C. 5121.33 and 5121.34). The general rule under the new methodology is that that unless certain exceptions apply (see "**Exceptions to the general rule**," below), the Department of Mental Health must charge a patient, patient's estate, or liable relative an amount equal to the sum of the following:

- The applicable per diem charge multiplied by the number of days the patient was admitted to the hospital;
- An amount that was previously billed but not paid.

As in current law, a patient, patient's estate, and liable relatives are jointly and severally liable for the total amount owed as determined by the Department.

Exceptions to the general rule (R.C. 5121.35, 5121.43, 5121.46, 5121.47, 5121.49, and 5121.52). The Department of Mental Health must charge a person

¹²⁷ "Hospital" is defined in the bill to mean an institution, hospital, or other place established, controlled, or supervised by the Department of Mental Health under R.C. Chapter 5119. (R.C. 5121.10(D)).

an amount that differs from the amount computed under the general rule, however, if any of the following is true:

- The person qualifies for a discount;
- The patient has insurance coverage that pays for mental health services;
- The person is a member of a family unit that has more than one patient admitted to a hospital;
- The person has paid all amounts charged by the Department for the care and treatment of a particular patient for 15 consecutive years;
- The person has paid amounts charged by the Department for the care and treatment of more than one patient for a total of 15 consecutive years;
- The person has petitioned the Department for a release from, or a modification or cancellation of, charges and the petition has been granted;
- The patient or liable person has died and the Department has decided to waive the presentation of any claim for support against the decedent's estate because a dependent of the person will directly benefit from the person's estate.

Discounts (R.C. 5121.36, 5121.37, and 5121.55). A person may qualify for a discount either by filing an application for a discount with the Department of Mental Health within 120 days of admission to a hospital or by being assessed as eligible for a discount by the Department through a financial assessment process. The bill provides that the Department must charge a person an amount discounted from the amount computed pursuant to the general rule for the first 30 days of inpatient care and treatment if the following are true:

- The person's countable assets have a value not greater than an amount equal to 50% of the gross annual income that corresponds with the family size of the patient, estate, or liable relative under the federal poverty guidelines;

- The person's gross annual income does not exceed 400% of the federal poverty level.¹²⁸

The amount of the discount for the first 30 inpatient days varies according to a sliding scale based on the person's annual gross income and the number of days the person is admitted. For example, a single person with no dependents who has an annual gross income no greater than 175% of the federal poverty level receives a 100% discount for the first 14 days of inpatient care and treatment; conversely, a similar single person with an annual gross income at 399% of the federal poverty level receives a 10% discount for the first 14 days.

A patient who is charged a discount for the first 30 inpatient days and who has an annual gross income not greater than 175% of the federal poverty level can not be charged beyond the 30th day. A patient who similarly qualified for a discount and has an annual gross income greater than 175% of the federal poverty level must be charged an amount equal to the sum of the following for the days the patient is admitted beyond the 30th day:

- The ancillary per diem rate multiplied by the number of days the patient was admitted to the hospital;
- An amount that was previously charged but not paid.

The bill requires the Director of Mental Health to adopt rules in accordance with the Ohio Administrative Procedure Act (R.C. Chapter 119.) regarding the application form a person must use to apply for a discount as described above.

Insurance coverage (R.C. 5121.43). If a patient is covered by an insurance policy or other contract that provides for payment of expenses associated with the care and treatment of mental illness, the bill provides that the new billing methodology is inapplicable to the extent that the policy or contract is in force. The patient's insurer or other third party payor must pay for the patient's support obligation in amounts equal to the lesser of the amount computed under the general rule (see "**General rule--full applicable per diem charge applies,**" above) or the benefits provided under the policy or contract.

An insured, policy owner, or other person must assign payment of all assignable benefits directly to the Department of Mental Health and pay to the Department, within ten days of receipt, all insurance or other benefits received as

¹²⁸ Under the federal poverty guidelines for 2004 (the most recent year for which these guidelines are available), a single person with no dependents would qualify for a discount if the person's countable assets do not exceed \$4,655 and gross annual income does not exceed \$37,240.

reimbursement or payment for expenses incurred by the patient or for any other reason. If the insured, policy owner, or other person refuses to assign payment to the Department or refuses to pay received reimbursements or payments to the Department within ten days of receipt, the total liability of the insured, policy owner, or other person equals the sum of the amount computed under the general rule (see "General rule--full applicable per diem charge applies," above) and the amounts payable under the terms of the policy or contract. Despite this provision, the bill limits an insurer's or payor's liability by providing that in no event can total liability exceed the Department of Mental Health's actual cost of providing care and treatment to the patient.

The bill also provides that the Department may disqualify patients and liable relatives who have retained third party funds for future discounts. The Attorney General, at the Department's request, may petition a court to compel the insured, owner, or other person having an interest in the policy or contract to comply with the foregoing assignment requirements.

Delinquent payments (R.C. 5121.45). The bill requires the Department of Mental Health to commence an action to enforce the collection of a delinquent payment¹²⁹ not later than six years after the later of the following:

- The last date the Department received money to satisfy the delinquent payment;
- The date the charge was due.

In all actions to enforce the collection of delinquent payments, a court must receive into evidence the proof of claim document made by the Department, as the state party, together with all debts and credits. The bill provides that the proof of claim document is prima-facie evidence¹³⁰ of the facts stated in the document.

¹²⁹ *The bill defines "delinquent payment" as an amount owed by a patient, patient's estate, or liable relative to the Department of Mental Health for which the person has failed to do either of the following not later than 90 days after the service associated with the charge was incurred: (1) make payment in full, or (2) make payment in accordance with the terms of an extended payment agreement entered into under the bill.*

¹³⁰ *"Prima-facie evidence" means the document, "on its face," is sufficient to prove the facts stated in the document unless there is substantial contradictory evidence.*

DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

- Terminates the community alternative funding system for services for persons with mental retardation or a developmental disability effective July 1, 2005.
- Repeals state law governing the certification of habilitation centers.
- Eliminates state law giving county boards of mental retardation and developmental disabilities (county MR/DD boards) Medicaid local administrative authority regarding Medicaid case management services.
- Eliminates a requirement that the Department of Mental Retardation and Developmental Disabilities (ODMR/DD) pay the nonfederal share of Medicaid case management services if the services are provided by an agency with which ODMR/DD has contracted to provide protective services.
- Provides that a certified habilitation center may provide Medicaid case management services until the earlier of (1) an amendment to the state Medicaid plan that provides that only county MR/DD boards may provide Medicaid case management services and (2) the habilitation center ceases to meet the certification requirements.
- Eliminates a requirement that ODMR/DD adopt rules governing contracts between a county MR/DD board and a provider of services to individuals with mental retardation or a developmental disability.
- Increases the administrative fee county MR/DD boards are charged for Medicaid paid claims for case management services and ODMR/DD-administered home and community-based services to 1½% (from 1%) of the total value of paid claims; clarifies what services are subject to the fee; and changes how ODMR/DD and the Department of Job and Family Services may use moneys collected from the fee.
- Authorizes a county MR/DD board, through the next biennium, to give priority for services to no more than 400 individuals under age 22 who have service needs of an unusual scope or intensity due to a mental or physical condition.

- Authorizes a county MR/DD board to continue to use, until December 31, 2007, criteria specified in rules to determine, when two or more individuals qualify for priority on a waiting list for home and community-based services, the order in which the individuals will be given priority.

Community alternative funding system terminated

(primary R.C. 5111.041 (repealed); other R.C. sections: 127.16, 140.01, 3323.021, 3702.51, 3721.01, 3722.01, 3722.02, 5111.042, 5123.01, 5123.041 (repealed), 5123.046, 5123.047, 5123.048 (repealed), 5123.049, 5123.0412, 5123.34, 5123.71, 5123.76, 5126.01, 5126.035, 5126.042, 5126.054, 5126.055, 5126.056, 5126.057, 5126.12, and 5705.091; Sections 206.66.78 and 209.09.09)

The bill repeals a requirement that the Medicaid program cover habilitation center services. The repeal goes into effect July 1, 2005. The system by which the Medicaid program pays for habilitation center services is often referred to as the community alternative funding system (CAFS).

As part of the termination of the Medicaid program's coverage of habilitation center services, the Department of Job and Family Services (ODJFS) is no longer required to adopt rules governing this issue.¹³¹ State law requiring that a county board of mental retardation and developmental disabilities (county MR/DD board) or school district pay the nonfederal share of Medicaid expenditures for habilitation center services under certain circumstances is also eliminated.

Current law defines "habilitation center services" as services provided by a habilitation center certified by the Department of Mental Retardation and Developmental Disabilities (ODMR/DD). ODMR/DD is currently required to certify habilitation centers that meet certification requirements established in ODJFS rules. The bill repeals the requirement that ODMR/DD certify habilitation centers.

Each county MR/DD board is required to certify to ODMR/DD the average number of individuals age 16 or older receiving adult services such as job training,

¹³¹ *ODJFS rules governing habilitation center services provide that such services include the following services: active treatment, skills development, counseling and social work, nursing and delegated nursing, occupational therapy, physical therapy, psychology, speech language pathology and audiology, and transportation.*

vocational evaluation, and community employment services daily during the first full week of October. A separate count must be made for persons enrolled in traditional adult services who are eligible for but not enrolled in active treatment¹³² under CAFS, persons enrolled in traditional adult services who are eligible for and enrolled in active treatment under CAFS, and persons enrolled in traditional adult services but who are not eligible for active treatment under CAFS. ODMR/DD is required to pay county MR/DD boards an annual state subsidy based on the counts. The bill eliminates the references to CAFS with the result that a separate count must be made for, and the annual state subsidy is based on, persons enrolled in traditional adult services who are eligible for but not enrolled in active treatment, persons enrolled in traditional adult services who are eligible for and enrolled in active treatment, and persons enrolled in traditional adult services but who are not eligible for active treatment.

ODJFS and ODMR/DD are authorized by the bill to inform individuals who received habilitation center services under CAFS on June 30, 2005, and such individuals' representatives about alternative services that may be available to the individuals. ODJFS is permitted to require county departments of job and family services, and ODMR/DD is permitted to require county MR/DD boards, to provide such information to the individuals and their representatives.

The bill provides that habilitation center services provided before July 1, 2005, are subject to the laws, rules, standards, guidelines, and orders regarding habilitation center services that were in effect at the time the services were provided.

ODJFS is permitted to use funds appropriated to it for the purpose of habilitation center services, and ODMR/DD may use funds appropriated to it for such purpose, to satisfy a claim or contingent claim for habilitation center services provided before July 1, 2005, if ODJFS or ODMR/DD receives the claim or contingent claim before July 1, 2006. Neither department has any liability to satisfy (1) a claim for services provided on or after July 1, 2005 or (2) a claim for services provided before July 1, 2005, if the department receives the claim on or after July 1, 2006.

¹³² "Active treatment" is defined as a continuous treatment program that includes aggressive and consistent implementation of a program of specialized and generic training, treatment, health services, and related services and is directed toward the acquisition of behaviors necessary for an individual with mental retardation or a developmental disability to function with as much self-determination and independence as possible and toward the prevention of deceleration, regression, or loss of current optimal functional status.

The bill provides that an individual may initiate or continue a state hearing, administrative appeal, or appeal to a court of common pleas regarding a decision or order concerning habilitation center services that were available before July 1, 2005. However, a decision resulting from such a hearing or appeal may not extend an individual's eligibility for habilitation center services beyond June 30, 2005. The hearing and appeals system may not be utilized to contest the July 1, 2005, termination of CAFS.

Neither of the following are abrogated by CAFS's termination: (1) the right of recovery that ODJFS and a county department of job and family services have regarding habilitation center services provided before July 1, 2005, and (2) the right to medical support or payments from a third party that is assigned to ODJFS for such services.

The bill authorizes the Director of Job and Family Services to adopt rules as necessary to terminate CAFS on July 1, 2005.

Medicaid case management services

(primary R.C. 5126.055; other R.C. sections: 5111.042, 5123.047, and 5126.057; Section 209.09.10)

Medicaid case management services are case management services provided to an individual with mental retardation or a developmental disability that the state Medicaid plan requires. Medicaid case management services, along with certain home and community-based waiver services and habilitation center services, are Medicaid-funded services that the Department of Mental Retardation and Developmental Disabilities (ODMR/DD) administers pursuant to an interagency agreement with the Department of Job and Family Services (ODJFS).

County boards of mental retardation and developmental disabilities (county MR/DD boards) are given Medicaid local administrative authority to perform certain tasks for individuals seeking or receiving Medicaid case management, habilitation center, or ODMR/DD-administered home and community-based services. The tasks include providing ODMR/DD and ODJFS recommendations regarding services individuals should receive and, if either department approves, reduces, or terminates a service because of the county MR/DD board's recommendation, present the department with the reasons for the recommendations at a state hearing available to individuals unhappy with a decision regarding public assistance.

As part of the termination of the Medicaid program's coverage of habilitation center services, the bill repeals the law giving county MR/DD boards Medicaid local administrative authority regarding that service. The bill also

repeals the law giving county MR/DD boards such authority regarding Medicaid case management services. With the repeal of the authority, county MR/DD boards are no longer required to perform the tasks associated with the authority. The bill maintains law giving county MR/DD boards Medicaid local administrative authority regarding ODMR/DD-administered home and community-based services.¹³³

State law specifies when ODMR/DD or a county MR/DD board must pay the nonfederal share of Medicaid expenditures for Medicaid case management services. ODMR/DD is responsible for the nonfederal share if (1) the services are provided to an individual who a county MR/DD board has determined is not eligible for county MR/DD board services or (2) the services are provided to an individual by a public or private agency with which ODMR/DD has contracted to provide protective services to the individual. Otherwise, a county MR/DD board is responsible for the nonfederal share.

The bill eliminates the requirement that ODMR/DD pay the nonfederal share if the services are provided to an individual by a public or private agency with which ODMR/DD has contracted to provide protective services to the individual. The bill also eliminates law providing that a county MR/DD board is responsible for paying the nonfederal share only if it has Medicaid local administrative authority for Medicaid case management services.

As discussed earlier,¹³⁴ the bill eliminates the requirement that ODMR/DD certify habilitation centers. The bill provides, however, that a habilitation center holding on June 30, 2005, a valid certificate is permitted to provide Medicaid case management services until the earlier of the following:

(1) The date the United States Secretary of Health and Human Services approves an amendment to the state Medicaid plan that provides that only county MR/DD boards may provide Medicaid case management services;

(2) The habilitation center ceases to meet the certification requirements in effect on June 30, 2005.

¹³³ *An official with ODMR/DD states that county MR/DD boards may continue to perform Medicaid local administrative authority tasks regarding Medicaid case management services as part of their Medicaid local administrative authority tasks regarding ODMR/DD-administered home and community-based services.*

¹³⁴ *See "Community alternative funding system terminated" above.*

Rules governing service contracts

(R.C. 5126.035)

State law establishes requirements for contracts between a county board of mental retardation and developmental disabilities (county MR/DD board) and a provider of services to an individual with mental retardation or a developmental disability. Such a service contract must include a general operating agreement component and an individual service needs addendum. The service contract must comply with all applicable statewide Medicaid requirements if the provider is to provide home and community-based services administered by the Department of Mental Retardation and Developmental Disabilities (ODMR/DD) or Medicaid case management services.¹³⁵

Current law also requires that a services contract comply with rules that the Director of ODMR/DD is required to adopt. The bill eliminates the requirement that the Director adopt such rules and, accordingly, the requirement that a service contract comply with the rules.¹³⁶

Fee increase for county boards of mental retardation and developmental disabilities

(R.C. 5123.0412)

Current law requires the Department of Mental Retardation and Developmental Disabilities (ODMR/DD) to charge a county board of mental retardation and developmental disabilities (county MR/DD board) 1% of the total value of all Medicaid paid claims for case management services and ODMR/DD-administered home and community-based services. The bill increases the fee to 1½% of all paid claims for these services.

Clarification of services subject to fee

Current law provides that the fee is equal to 1% of all Medicaid paid claims for Medicaid case management services and ODMR/DD-administered home and community-based services for which the county MR/DD board contracts or provides itself.

¹³⁵ *The requirement to comply with all applicable statewide Medicaid requirements also applies if the provider is to provide habilitation center services.*

¹³⁶ *An official with ODMR/DD stated that no such rules have been adopted.*

The bill provides that the fee is equal to 1½% of all paid claims for Medicaid case management services and ODMR/DD-administered home and community-based services provided during the year to an individual eligible for services from the county MR/DD board without reference to a contractual relationship with the board or service by the board itself.

Use of fees collected

Current law allows ODMR/DD and the Department of Job and Family Services (ODJFS)¹³⁷ to use the fees for two primary purposes:

(1) Administrative and oversight costs of habilitation center services, Medicaid case management services, and ODMR/DD-administered home and community-based services that a county MR/DD board develops or that a county MR/DD board provides for by contract with a person or government entity;

(2) Providing technical support to the county MR/DD boards.

The bill makes two changes. First, the fees collected may no longer be used for the administration and oversight of habilitation services. Second, the bill clarifies that, with regard to ODMR/DD-administered home and community-based services provided by county MR/DD boards, the fees may be used for any administrative or oversight cost related to the provision of these services without reference to a contractual relationship between the county MR/DD board and the service provider.

Priority waiting lists for home and community-based services

(R.C. 5126.042)

Current law requires a county board of mental retardation and developmental disabilities (county MR/DD board) to create waiting lists for the programs and services it offers if the demand for such services exceeds the available resources. Separate waiting lists may be created for each of the services offered by the county MR/DD board. The law provides that as federal Medicaid funds become available, individuals who are eligible for home and community-based services administered by the Department of Mental Retardation and Developmental Disabilities (ODMR/DD) and meet certain requirements should be given priority for services over other individuals on the waiting list. The individuals eligible for this priority are those who are less than 22 years old and have one of the following needs that is unusual in scope or intensity:

¹³⁷ *The fees collected are split between ODMR/DD and ODJFS pursuant to an interagency agreement between the two departments.*

- (1) Severe behavior problems for which a behavior support plan is needed;
- (2) An emotional disorder for which anti-psychotic medication is needed;
- (3) A medical condition that leaves the individual dependent on life-support medical technology;
- (4) A condition affecting multiple body systems for which a combination of specialized medical, psychological, education, or habilitation services are needed;
- (5) A condition the county MR/DD board determines to be comparable in severity to any of the above listed conditions and places the individual at risk of institutionalization.

Current law provides that only 400 individuals may be given such priority in fiscal years 2004 and 2005. The bill provides that 400 individuals may be given priority in 2006 and 2007.

Current law provides that when two or more individuals on a waiting list for ODMR/DD-administered home and community-based services have priority for services, a county MR/DD board may use criteria developed by ODMR/DD to determine which individual may obtain services first. Current law also requires ODMR/DD to adopt rules establishing the criteria to be used by county MR/DD boards. The bill extends these provisions through December 31, 2007.

DEPARTMENT OF NATURAL RESOURCES

- Allows the Chief of the Division of Forestry to adopt rules establishing fees and charges for the use of state forests and for any service that is provided under a program administered by the Division.
- Eliminates authorization for the Chief of the Division of Natural Areas and Preserves to enter into an agreement with the United States Department of Commerce for the purpose of receiving grants pertaining to Old Woman Creek National Estuarine Research Reserve because oversight of the Reserve has been transferred to the Division of Wildlife.
- Exempts real property that is within a nature preserve from special assessments for sewer, water, or electrical service, and establishes recording requirements for county auditors regarding the exemptions.

- Authorizes the governing bodies of certain public entities to apply to the Water and Sewer Commission for an advance of money from the Water and Sewer Fund in an amount equal to the portion of the costs of a water or sewer improvement that is to be financed by assessments on real property within a nature preserve whose collection is prohibited under the bill, and requires the advanced money to be repaid to the Commission if the assessments subsequently are collected.
- Requires the Chief of the Division of Water to adopt rules designating certain classes of dams that are to be inspected periodically by registered professional engineers hired by the dam owners rather than being inspected by the Chief, and requires the rules to establish standards and procedures governing such private inspections.
- Establishes the authority of the Chief of the Division of Water to establish terms and conditions, including rates to be charged, for the dissemination of information from any computer database that consists of geographic information and that is maintained by the Division of Water, and exempts from certain provisions in the Public Records Law the dissemination of public records that are contained in such a computer database.
- Changes one of the funding sources that the Division of Wildlife uses to pay school districts in which land owned by the state and administered by the Division is located from federal wildlife restoration funds to fines, penalties, and forfeitures credited to the Wildlife Fund.
- Specifies that persons under the age of 18 qualify for a youth hunting license, youth deer or wild turkey permit, and youth fur taker permit rather than persons under the age of 16 as in current law, and allows nonresident youths to obtain a youth fur taker permit.
- Eliminates the requirement that a person carry a fur taker permit affixed to a hunting license, and instead requires only that the person carry the fur taker permit.
- Eliminates the requirement that a person's signature be written across the face of a fur taker permit, and instead requires only that the signature be written on the permit.

- Prohibits the trapping, capturing, removal, relocation, or control of nuisance native or nonnative wildlife without an annual nuisance animal control permit issued by the Division of Wildlife, and requires the adoption of rules establishing procedures for the issuance of the permits and for record-keeping pertaining to the permits.
- Eliminates the annual registration permit issued by the Chief of the Division of Wildlife for buying or otherwise acquiring or conveying ginseng, replaces it with two new permits--an annual ginseng collector permit and an annual ginseng dealer permit, and establishes fees for resident and nonresident ginseng collector permits and ginseng dealer permits.
- Specifies that a ginseng collector permit is not required if a landowner, or the landowner's spouse or child, is harvesting or otherwise collecting ginseng on land that is owned by the landowner.
- Specifies that a waiver, discount, or reduction in the fee for a state park parking permit issued pursuant to rules adopted by the Division of Parks and Recreation is not available unless otherwise provided by Division rule.
- Requires the Division of Parks and Recreation to adopt rules establishing a discount program for park services and rentals, but not for the purchase of merchandise, for all persons who are issued a Golden Buckeye Card.
- Eliminates the Parks and Recreation Depreciation Reserve Fund, which is used to maintain revenue-producing facilities of the Division of Parks and Recreation.
- Establishes the Watercraft Revolving Loan Fund consisting of money appropriated to it, money from the repayment of loans, and money from other specified sources, and authorizes the Director of Natural Resources to use money in the Fund to make loans for marine recreational facilities and projects related to the use of light draft vessels, including refuge harbors.
- Establishes procedures and requirements governing the revolving loan program that the Fund supports.

- Requires every nonresident owner or operator of a snowmobile, off-highway motorcycle, or all-purpose vehicle to obtain a \$5 temporary operating permit and eliminates registration reciprocity.
- Increases the three-year registration fee for a snowmobile, off-highway motorcycle, or all-purpose vehicle from \$5 to \$15.
- Requires the Tax Commissioner, rather than the Treasurer of State as in current law, to credit 14.2% of the money collected from the severance tax on coal to the Coal Mining Administration and Reclamation Reserve Fund rather than the Reclamation Forfeiture Fund when the balance in the former Fund drops below \$2 million during a fiscal year.
- Provides that real property acquired by the Department of Natural Resources for which an application for property tax exemption has been filed must be removed from the county tax list and duplicate and cannot accrue taxes or penalties while the application for tax exemption is being processed.
- Exempts from the tax savings recoupment charges that are levied on land that is converted from an agricultural use to a non-agricultural use, conversions performed by specified divisions of the Department.

Fees and charges for use of state forests and services provided under Division of Forestry programs

(R.C. 1503.01 and 1533.18 and 1533.181 (not in the bill))

Current law requires the Chief of the Division of Forestry to administer the Division of Forestry Law and allows the Chief to adopt rules for the administration, use, visitation, and protection of the state forests. The bill adds that the rules may establish fees and charges for the use of state forests and for any service that is provided under a program that is administered by the Division. In addition, the bill specifies that such a fee or charge for the use of a state forest cannot be considered the payment of a fee or consideration by a recreational user as described in the statutes that grant to property owners immunity from liability to recreational users. Current law defines "recreational user" for that purpose to mean a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or an agency of it, or a lease payment or fee paid to the owner of privately owned lands, to enter upon premises to hunt, fish, trap,

camp, hike, swim, operate a snowmobile or all-purpose vehicle, or engage in other recreational pursuits.

Old Woman Creek National Estuarine Research Reserve

(R.C. 1517.02 and 1533.28 (not in the bill))

Current law authorizes the Chief of the Division of Natural Areas and Preserves, with the approval of the Director of Natural Resources, to enter into an agreement with the United States Department of Commerce for the purpose of receiving grants to continue the management, operation, research, and programming at Old Woman Creek National Estuarine Research Reserve. However, the Department of Natural Resources has transferred the oversight of the Reserve to the Division of Wildlife and has transferred to that Division the authority to enter into the grant agreement with the United States Department of Commerce regarding the Reserve. The Division of Wildlife has existing legal authority to enter into such agreements with federal agencies. The bill, therefore, eliminates the provision creating the authority for the Chief of the Division of Natural Areas and Preserves to enter into such a grant agreement.

Exemption from special assessments for real property in nature preserves

(R.C. 1517.052, 1525.11, 1525.12, and 6111.034)

Under the bill, no public entity with authority to levy special assessments on real property can collect an assessment for purposes of sewer, water, or electrical service on real property that is within a nature preserve without the permission of the owner. For purposes of the bill, a nature preserve is an area that is established:

(1) In the case of counties, prior to the adoption of a resolution of necessity by a board of county commissioners for a water supply improvement under the County Water Supply Systems Law or for a sanitary or drainage facility improvement under the Sewer Districts and County Sewers Law;

(2) In the case of municipal corporations, prior to whichever of the following occurs first:

(a) The adoption of the resolution of necessity by the municipal legislative authority for the payment of a public improvement by special assessment under the statutes governing special assessments for that purpose or for the construction or repair of sidewalks, curbs, or gutters under the statutes governing special assessments for that purpose;

(b) The service of notice on all or some of the owners to be assessed for the installation of sewer or water connections under the statutes governing special assessments for that purpose;

(c) The adoption of the ordinance or resolution by the municipal legislative authority declaring the necessity for the improvement, the costs of which are to be assessed under procedures authorized by a municipal charter adopted pursuant to the Ohio Constitution, or, if no such ordinance or resolution is required under the charter, the service of the first notice on all or some of the owners of lands to be assessed, or the adoption of the first ordinance or resolution by the municipal legislative authority pertaining to the assessment proceedings under the charter.

(3) In the case of a regional water and sewer district, prior to the adoption of a resolution of necessity by the board of trustees of the district under the Regional Water and Sewer Districts Law.

The bill requires the county auditor, for each special assessment levied by a public entity on real property within a nature preserve for purposes of sewer, water, or electrical service, to make and maintain a list showing all of the following:

(1) The name of the owner of each lot, tract, or parcel of land that is exempt from the collection of the special assessment under the bill;

(2) A description of the exempt land;

(3) The purpose of the special assessment; and

(4) The amount of the uncollected assessment on the exempt land.

In the case of a county project that is constructed under the County Water Supply Systems Law or the Sewer Districts and County Sewers Law, the county auditor may use a list provided for in those Laws in lieu of the list required by the bill. The auditor also must record the assessments that are not collected under the bill in the water-works record that is required by the statute governing the certification by boards of county commissioners of all of the special assessments levied by the boards under the County Water Systems Law or the sewer improvement record that is required by the statute governing the certification by boards of county commissioners of all assessments levied by the boards under the Sewer Districts and County Sewers Law. The recording of the assessments does not permit the collection of the assessments until the time that exempt lands are withdrawn from dedication as a nature preserve.

Under the bill, a board of county commissioners, legislative authority of a municipal corporation, or other governing board of any other public entity may



apply to the Water and Sewer Commission created in current law for an advance of money from the existing Water and Sewer Fund in an amount equal to that portion of the costs of a water or sewer improvement authorized by law that is to be financed by assessments whose collection is prohibited under the bill. The application for such an advance of money must be made in the manner prescribed by rules of the Commission. Upon collection of any assessment whose collection was prohibited under the bill, the board of county commissioners, legislative authority, or other governing board must repay the Commission the amount of any money advanced by it in regard to the assessments. The bill adds references to the provisions pertaining to special assessments that are not collectable on real property within nature preserves to the statutes governing the use of the Water and Sewer Fund.

Privatization of inspection of certain dams

(R.C. 1521.062)

Current law requires, with certain exceptions, all dams, dikes, and levees that are constructed in Ohio to be inspected periodically by the Chief of the Division of Water to ensure that continued operation and use of a dam, dike, or levee does not constitute a hazard to life, health, or property. The bill specifies that the Chief is not required to inspect dams that, in accordance with rules adopted under the bill, are required to be inspected by registered professional engineers who have been approved for that purpose by the Chief.

The bill specifies that the Chief, in accordance with the Administrative Procedure Act, must adopt and may amend or rescind rules that do all of the following: (1) designate classes of dams for which dam owners must obtain the services of a registered professional engineer to periodically inspect the dams and to prepare reports of the inspections for submittal to the Chief, (2) establish standards in accordance with which the Chief must approve or disapprove registered professional engineers to inspect dams together with procedures governing the approval process, (3) establish schedules, standards, and procedures governing periodic inspections and standards and procedures governing the preparation and submittal of inspection reports, and (4) establish provisions regarding enforcement of the bill's provisions concerning dam inspections and rules adopted under them.

The bill specifies that, in accordance with the rules, the owner of a dam that is in a class of dams that is designated in the rules for inspection by registered professional engineers must obtain the services of a registered professional engineer who has been approved by the Chief to conduct the periodic inspection of dams pursuant to schedules and other standards and procedures established in the rules. The bill retains a provision specifying that intervals between periodic

inspections must be determined by the Chief, but cannot exceed five years. Under the bill, a dam that is designated under the rules for inspection by a registered professional engineer, but that is not inspected within a five-year period may be inspected by the Chief at the owner's expense.

Under both current law and the bill, an inspection report must be prepared following the inspection of a dam, dike, or levee. Current law requires the Chief to furnish the owner a report of the inspection and to inform the owner of any required repairs, maintenance, investigations, and other remedial and operational measures. The bill eliminates a provision authorizing the Chief to use inspection reports prepared for the owner of the dam, dike, or levee by a registered professional engineer.

The bill requires a registered professional engineer who inspects a dam that is in the class of dams that is designated in the rules for inspection by registered professional engineers to prepare a report of the inspection in accordance with the rules and to provide the inspection report to the dam owner who must submit it to the Chief. In the case of a dam, dike, or levee that the Chief inspects, the bill retains the requirement that the Chief furnish a report of the inspection to the owner of the dam, dike, or levee. It also retains the requirement that the Chief inform the owner of any required repairs, maintenance, investigations, and other remedial and operational measures, but applies the requirement to any dam, dike, or levee that has been inspected, either by the Chief or by a registered professional engineer, and that is the subject of an inspection report prepared or received by the Chief.

Dissemination of information from certain computer databases maintained by Division of Water

(R.C. 149.43 and 1521.151)

The bill specifies that the Chief of the Division of Water is not required to allow access to or the use of a computer database that consists of geographic information and that is maintained by the Division of Water, except under terms and conditions that are acceptable to the Chief. The Chief must establish procedures and reasonable rates to be charged for the dissemination, upon the request of any person, of specified records stored in such a computer database other than records that the Chief considers to be confidential. The Chief also may establish specific rates that are reasonable to charge for the special extraction of information from such a computer database or for the compilation of data or maps.

The bill exempts from certain provisions in the Public Records Law the dissemination of information contained in such computer databases maintained by the Division of Water. It specifies that its provisions, and not the portions of the

Public Records Law to which the exemptions apply, govern the dissemination of public records contained in any computer database that consists of geographic information and that is maintained by the Division of Water.

The first exemption from the Public Records Law applies to a provision that requires all public records to be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours and that also requires a public office or person responsible for public records to make copies available at cost, within a reasonable period of time. The provision further requires public offices to maintain public records in a manner that they can be made available for inspection in accordance with those requirements.

The second exemption from the Public Records Law applies to a provision specifying that if a person chooses to obtain a copy of a public record, the public office or person responsible for the public record must permit that person to choose to have the public record duplicated on paper, on the same medium on which the public office or person responsible for the public record keeps it, or on any other medium on which the public office or person responsible for the public office determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. The exemption also applies to a provision specifying that when the person requesting the copy makes a choice regarding the medium on which the public record is duplicated, the public office or person responsible for the public record must provide a copy of it in accordance with the choice made by the requesting person.

The third exemption applies to a provision in the Public Records Law requiring a public office or person responsible for public records who received a proper public records request to transmit a copy of a public record to any person by United States mail within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay the mailing costs in advance.

Division of Wildlife's sources of funding for payments to school districts

(R.C. 1531.27)

Current law requires the Chief of the Division of Wildlife to pay to the treasurers of counties in which lands owned by the state and administered by the Division are located an annual amount equal to 1% of the total value of the lands exclusive of improvements. The money must be used for school purposes in the local school districts. The payments must be made from funds accruing to the Division from the sale of hunting or fishing licenses and federal wildlife

restoration funds. The Director of Natural Resources determines the allocation of amounts to be paid from those sources.

The bill changes one of the funding sources that the Division uses to pay school districts. It removes federal wildlife restoration funds and replaces them with fines, penalties, and forfeitures credited to the Wildlife Fund.

Youth hunting licenses and permits; fur taker permits

(R.C. 1533.10, 1533.11, and 1533.111)

Existing law specifies that persons under the age of 16 qualify for a youth hunting license, youth deer or wild turkey permit, and youth fur taker permit. The bill raises the age qualification for the youth license and permits to persons under the age of 18.

Additionally, current law requires each applicant for a fur taker permit who is an Ohio resident and under the age of 16 years to procure a special youth fur taker permit. In addition to changing the age qualification (see above), the bill eliminates the requirement that an applicant for a youth permit be an Ohio resident.

Finally, current law requires every person, while hunting or trapping fur-bearing animals on lands of another, to carry the person's fur taker permit affixed to his hunting license with his signature written across the face of the permit. The bill makes two changes in this provision. First, it eliminates the requirement that the person's fur taker permit be affixed to the hunting license and instead requires only that the person carry the fur taker permit. Second, it eliminates the requirement that a person's signature be written across the face of a fur taker permit and instead requires only that the signature be written on the permit.

Nuisance animal control permits

(R.C. 1533.122 and 1533.99)

The bill specifies that, unless otherwise provided by rules adopted by the Chief of the Division of Wildlife, a person who traps, captures, removes, relocates, or controls nuisance native or nonnative wildlife must obtain an annual nuisance animal control permit issued by the Division under the bill and must conduct those activities in accordance with the bill and the rules adopted under it. Unless otherwise provided by those rules, a nuisance animal control permit expires on March 15 of each year and the fee for such a permit is \$100. While engaged in trapping, capturing, removal, relocation, or control of nuisance native or nonnative wildlife, a person must carry the person's nuisance animal control permit and must exhibit the permit to any law enforcement officer requesting it.

The bill requires the Chief to adopt, in accordance with current law, rules governing the trapping, capturing, removal, relocation, and control of nuisance native or nonnative wildlife. The rules must establish procedures for the issuance of nuisance animal control permits and for the record-keeping that is required under the bill, including procedures for the annual submission of records (see below). In addition, the rules may establish requirements and procedures for the administration of an examination prior to the issuance of a permit. The rules may require the examination to test knowledge of current wildlife rules, animal life history, control methods, and other pertinent information. The rules may require that an applicant for a nuisance animal control permit pass the examination in order to receive a permit and may establish a fee for the administration of the test.

The bill specifies that in accordance with the rules, a person who has been issued a nuisance animal control permit and who has engaged in the trapping, capturing, removal, relocation, or control of nuisance native or nonnative wildlife must keep accurate, legible, written records of all of the following: (1) the address of the property and the name of the owner of the property where nuisance native or nonnative wildlife have been trapped, captured, removed, relocated, or controlled, (2) the method used to trap, capture, remove, relocate, or control the nuisance native or nonnative wildlife, (3) the type and number of species of nuisance native or nonnative wildlife trapped, captured, removed, relocated, or controlled, (4) the disposition of nuisance native or nonnative wildlife trapped, captured, removed, relocated, or controlled, and (5) any other information required by the Chief. All records must be kept on forms provided by the Division and be made available for inspection by a representative of the Division at reasonable hours. A copy of all such records that are kept during the annual term of a nuisance animal control permit must be mailed to the Division each year.

The bill prohibits a person from violating its provisions related to nuisance animal control permits or a rule adopted pursuant to those provisions. Whoever violates that prohibition is guilty of a misdemeanor of the third degree.

Ginseng collector permit and ginseng dealer permit

(R.C. 1533.181)

Existing law requires a person who buys or otherwise acquires or conveys ginseng for resale or export to obtain an annual registration permit issued by the Chief of the Division of Wildlife in accordance with rules adopted by the Chief. The bill eliminates the annual registration permit for buying or otherwise acquiring or conveying ginseng and replaces it with two new permits. First, the bill requires a person harvesting or otherwise collecting ginseng to obtain an annual ginseng collector permit from the Chief. The fee for a resident ginseng collector permit is \$24, and the fee for a nonresident ginseng collector permit is

\$125. In addition, the bill specifies that a ginseng collector permit is not required if a landowner, or the landowner's spouse or child, is harvesting or otherwise collecting ginseng on land that is owned by the landowner. Second, the bill requires a person buying, selling, or otherwise conveying ginseng for resale or export to obtain an annual ginseng dealer permit from the Chief. The fee for a ginseng dealer permit is \$75.

State park fees

Parking permits

(R.C. 1541.03 and 1533.18 and 1533.181, not in the bill)

Current law specifies that all lands and waters dedicated and set apart for state park purposes are under the control and management of the Division of Parks and Recreation to protect, maintain, and keep in repair. The Division has authority to adopt rules necessary for the proper management of state parks, including the establishment of fees and charges for admission to state parks and for use of facilities in them. The bill retains the Division's authority over the state parks and the authority to adopt rules for that purpose. It then specifies that notwithstanding any provision in state law to the contrary, a waiver, discount, or reduction in the fee for a state park parking permit issued pursuant to rules adopted by the Division is not available unless otherwise provided by Division rule. In addition, the bill specifies that a fee to purchase a state park parking permit cannot be considered an admission fee or a fee or consideration paid to the owner, lessee, or occupant of the premises for purposes of the statutes that grant to property owners immunity from liability to recreational users. Current law defines "recreational user" for that purpose to mean a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or an agency of it, or a lease payment or fee paid to the owner of privately owned lands, to enter upon premises to hunt, fish, trap, camp, hike, swim, operate a snowmobile or all-purpose vehicle, or engage in other recreational pursuits.

Discount program for Golden Buckeye Card holders

(R.C. 1541.03)

The bill requires the Division to adopt rules establishing a discount program for all persons who are issued a Golden Buckeye Card. The discount program must provide a discount for all park services and rentals, but cannot provide a discount for the purchase of merchandise.

Current law requires that every Ohio resident who is 65 years of age or older or who is permanently and totally disabled and who furnishes evidence of that age or disability in a manner prescribed by Division rule must be charged one-half of the regular fee for camping, except on weekends and holidays designated by the Division. Such a person cannot be charged more than 90% of the regular charges for state recreational facilities, equipment, services, and food service operations utilized by the person at any time of year, whether maintained or operated by the state or leased for operation by another entity. The bill retains the discounts for camping and state recreational facilities, equipment, services, and food service operations, but qualifies that those discounts apply unless otherwise provided by Division rule.

Elimination of Parks and Recreation Depreciation Reserve Fund

(R.C. 1541.221)

Current law specifies that notwithstanding the statute governing the State Park Fund, 10% of the receipts from revenue-producing facilities of the Division of Parks and Recreation in the Department of Natural Resources must be transferred quarterly from the State Park Fund to the Parks and Recreation Depreciation Reserve Fund. The purpose of the latter Fund is to maintain the revenue-producing facilities in the best economic operating condition. The bill eliminates the Parks and Recreation Depreciation Reserve Fund, thus retaining all of the receipts from the revenue-producing facilities in the State Park Fund.

Watercraft Revolving Loan Fund and related program

(R.C. 1547.721, 1547.722, 1547.723, 1547.724, 1547.725, and 1547.726)

The bill creates the Watercraft Revolving Loan Fund in the state treasury. The Fund consists of money appropriated or transferred to it, money received and credited to the Fund under the revolving loan program established by the bill, and any grants, gifts, or contributions of moneys received for deposit to the credit of the Fund.

The bill requires the Director of Natural Resources to use money in the Fund for the purpose of a revolving loan program under which he makes loans in accordance with the bill for eligible projects and takes actions under the bill necessary to fulfill that purpose. Under the bill, the Director may delegate any of his duties or responsibilities involving the program to the Chief of the Division of Watercraft.

For purposes of the revolving loan program, the bill defines "eligible project" as a project that involves the acquisition, construction, establishment,

reconstruction, rehabilitation, renovation, enlargement, improvement, equipping, furnishing, or development of either of the following: (1) marine recreational facilities, or (2) refuge harbors and other projects for the harboring, mooring, docking, launching, and storing of light draft vessels. The bill requires the Director to adopt rules in accordance with the Administrative Procedure Act that are necessary to implement the program, including rules that define "marine recreational facilities," "refuge harbors," and "light draft vessels."

The bill authorizes the Director to establish separate accounts in the Watercraft Revolving Loan Fund for particular projects or otherwise. Income from the investment of money in the Fund must be credited to the Fund, and, if the Director so requires, to particular accounts in the Fund.

The bill specifies that with the approval of the Controlling Board, and subject to the other applicable provisions of the bill, the Director may lend moneys in the Fund to public or private entities for the purpose of paying the allowable costs of an eligible project. The bill requires the Director's rules to define what constitutes the "allowable costs" of an eligible project.

Loans may be made under the program only if the Director determines that all of the following apply: (1) the project is an eligible project and is economically sound, (2) the borrower is unable to finance the necessary allowable costs through ordinary financial channels upon comparable terms, (3) the repayment of the loan will be adequately secured by a mortgage, lien, assignment, or pledge at a level of priority as the Director may require, and (4) the amount of the loan does not exceed 90% of the total cost of the project.

The bill specifies that these determinations of the Director are conclusive for purposes of the validity of a loan commitment evidenced by a loan agreement that he signs. Further, the Director's determinations that a project constitutes an eligible project and that the costs of such a project are allowable costs together with all other determinations relevant to the project or to an action taken or agreement entered into pursuant to the revolving loan program are conclusive for purposes of the validity and enforceability of rights of parties arising from actions taken and agreements entered into under the program.

The Director may take any actions necessary or appropriate with respect to a loan made under the revolving loan program, including facilitating the collection of amounts due on a loan. The bill also specifically authorizes the Director to do any of the following with respect to the program: (1) establish fees, charges, rates of interest, times of payment of interest and principal, and other terms, conditions, and provisions of and security for loans made from the Watercraft Revolving Loan Fund that the Director determines to be appropriate and in furtherance of the purpose for which the loans are made, (2) retain the services of or employ

financial consultants, appraisers, consulting engineers, superintendents, managers, construction and accounting experts, attorneys, and employees, agents, and independent contractors that the Director determines to be necessary and fix the compensation for their services, (3) receive and accept from any person grants, gifts, contributions of money, property, labor, and other things of value to be held, used, and applied only for the purpose for which the grants, gifts, and contributions are made, and (4) enter into appropriate agreements with other governmental entities to provide for payment of allowable costs related to the development of eligible projects for which loans have been made from the Fund, the operation of facilities associated with eligible projects, and any governmental action that a governmental entity is authorized to take, including undertaking on behalf and at the request of the Director any action that he is authorized to undertake pursuant to the revolving loan program.

Under the bill, all state agencies must cooperate with and provide assistance to the Director as is necessary for the administration of the revolving loan program. The bill defines "state agency," by reference to existing law, as every organized body, office, or agency established by the laws of the state for the exercise of any function of state government.

Finally, the bill requires all money received by the state from the repayment of loans made from the Fund, including interest, fees, and charges associated with such loans, to be deposited to the credit of the Watercraft Revolving Loan Fund.

All-purpose and other special vehicles

Nonresident operation

(R.C. 4519.02 and 4519.09)

Current law establishes registration reciprocity for a nonresident to operate a snowmobile, off-highway motorcycle, or all-purpose vehicle in this state if the person lives in a state that has a registration requirement for those vehicles that is similar to Ohio's registration law. If the nonresident owner or operator of the special vehicle lives in a state that does not have a registration requirement similar to Ohio's, the person must obtain a \$5 temporary operating permit that is valid for up to 15 days in order to operate the vehicle in Ohio.

The bill eliminates registration reciprocity and requires every nonresident owner or operator of a snowmobile, off-highway motorcycle, or all-purpose vehicle to obtain a \$5, 15-day temporary operating permit to operate the vehicle in Ohio.

Registration fee

(R.C. 4519.04)

The bill increases the three-year registration fee for a snowmobile, off-highway motorcycle, or all-purpose vehicle from \$5 to \$15. After \$1.25 of the registration fee is paid to the State Bureau of Motor Vehicles Fund, the balance of the fee is paid to the State Recreational Vehicle Fund and used by the Department of Natural Resources for specified purposes, including enforcement of the registration law, providing trails for the vehicles, purchasing additional land for use by the vehicles, and vehicle-related safety programs (R.C. 4519.11, not in the bill).

Distribution of money from severance tax on coal

(R.C. 5479.02)

Under current law, specified percentages of the money received from the severance tax on coal must be credited to the following funds: Geological Mapping Fund, Reclamation Forfeiture Fund, Coal Mining Administration and Reclamation Reserve Fund, and Unreclaimed Lands Fund. When the Chief of the Division of Mineral Resources Management finds at any time during a fiscal year that the balance of the Coal Mining Administration and Reclamation Reserve Fund is below \$2 million, the Chief must certify that fact to the Director of Budget and Management. Upon receipt of the Chief's certification, the Director must direct the Treasurer of State to credit, during the remainder of the fiscal year for which the certification is made, the 14.2% of the money collected from the severance tax on coal that is usually credited to the Reclamation Forfeiture Fund instead to the Coal Mining Administration and Reclamation Reserve Fund. The bill requires the Tax Commissioner, rather than the Treasurer of State, to credit the 14.2% of the money collected on the severance tax on coal to the Coal Mining Administration and Reclamation Reserve Fund when directed by the Director of Budget and Management.

Department of Natural Resources real property tax exemption

(R.C. 5713.08)

Under current law, real property that is acquired by the state in fee simple is exempt from property taxes from the date of acquisition of title or the date of possession, whichever is earlier, provided that all taxes, interest, and penalties have been paid to the date of acquisition of title or the date of possession by the state. In practice, real property taxes continue to be assessed against such property while the application for tax exempt status is being processed. The money from

such taxes is later refunded to the state. The bill provides that real property acquired by the Department of Natural Resources for which an application for exemption has been filed must be removed from the tax list and duplicate and does not accrue taxes or penalties while the application for tax exemption is being processed.

Exemption of certain conversions of agricultural property by the Department from tax savings recoupment charges

(R.C. 5713.34)

Agricultural land, unlike all other real property, is not valued for tax purpose at its true or fair market value. Rather, land devoted exclusively to agricultural use ("CAUV") is valued at the current value the land has for agricultural use. Valuing agricultural land at the current value the land has for agricultural use results in tax savings for the owner of the land. If CAUV land is converted to a nonagricultural use, the county recovers a portion of this tax savings by levying a charge on the land. The charge is equal to the amount of the tax savings on the land during the three years immediately preceding the year in which the conversion occurs.

Generally, public entities that acquire and covert agricultural land must pay tax savings recoupment charges. The bill exempts certain conversions performed by various divisions of the Department of Natural Resources from having to pay the tax savings recoupment charges upon converting agricultural land. Specifically, the bill exempts conversions performed by the Divisions of Forestry, Natural Areas and Preserves, Wildlife, and Parks and Recreation. The exemption applies only if the converted land remains principally undeveloped and is used exclusively for a public purpose such as active or passive outdoor recreation.

OHIO BOARD OF NURSING

- Requires the Board of Nursing to establish and conduct the Medication Aide Pilot Program to utilize medication aides to administer medications pursuant to a nurse's delegation to residents of nursing homes and residential care facilities.
- Creates the Medication Aide Pilot Program Council.

Medication Aide Pilot Program

(Section 209.21)

The bill requires the Board of Nursing to establish and conduct the Medication Aide Pilot Program to utilize medication aides to administer medications, including prescription medications, to residents of nursing homes and residential care facilities pursuant to a nurse's delegation.¹³⁸

Medication Aide Pilot Program Council

The bill creates the Medication Aide Pilot Program Council, which is to consult with the Board of Nursing in establishing and creating the Medication Aide Pilot Program. The Council is comprised of the following members:

- (1) A registered nurse recommended by the Ohio Nurses Association who is working in long-term care;
- (2) A licensed practical nurse recommended by the Licensed Practical Nurse Association of Ohio who is working in long-term care;
- (3) A registered nurse recommended by the Ohio Nurses Association who has experience in researching gerontology issues;
- (4) An advanced practice nurse recommended by the Ohio Association of Advanced Practice Nurses who has experience in gerontology;

¹³⁸ For purposes of this section, "medication" means a drug, as defined in the Revised Code (R.C. 4729.01); "prescription medication" means a drug that may be dispensed only on a prescription. "Nurse" means (1) a registered nurse or (2) a licensed practical nurse who has completed a course in medication administration.

Nursing homes and residential care facilities are licensed by the Ohio Department of Health. A residential facility is a facility that provides accommodations for seventeen or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment; or a facility that provides accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, any of the skilled nursing care (R.C. 3721.01).

A nursing home is a facility that provides care to persons who by reason of illness or physical or mental impairment required skilled nursing care or personal care services (R.C. 3721.01).

(5) A representative of the Ohio Health Care Association who is appointed by the Association;

(6) A representative of the Association of Ohio Philanthropic Homes, Housing, and Services for the Aging who is appointed by the Association;

(7) A representative of the Ohio Academy of Nursing Homes who is appointed by the Academy;

(8) A representative of the Ohio Assisted Living Association who is appointed by the Association;

(9) A representative of the Ohio Association of Long Term Care Ombudsmen who is appointed by the Association;

(10) A representative of the Office of State Long-term Care Ombudsperson Program;

(11) A representative of the American Association of Retired Persons who is appointed by the Association;

(12) A representative of facility residents and families of facility residents who is appointed by the Board of Nursing;

(13) A representative of the Ohio Pharmacists Association who is appointed by the Association;

(14) A representative of certified nursing assistants who is appointed by the Department of Health;

(15) A representative of the Department of Health with expertise in the Department's Competency Evaluation Program who is appointed by the Department;

A member or representative of the Board of Nursing must serve as the Council chairperson. Council members receive no compensation for their service.

Council duties

The Medication Aide Pilot Program Council is to consult with the Board of Nursing in establishing and conducting the Medication Aide Pilot Program. The Council must make recommendations to the Board regarding the design of the Program and protection of the health and welfare of the residents of facilities participating in the Program. The Council must also make recommendations about the content of training required for medication aides and whether a

medication aide may administer a prescription drug through a gastrostomy or jejunostomy tube and if so, the amount and type of training the medication aide needs to be adequately prepared to do so.¹³⁹

Program operation

Within the first six months after the bill's effective date, the Board of Nursing, in consultation with the Medication Aide Pilot Program Council, is to design the Program and establish standards to govern medication aides, nursing homes, and residential care facilities participating in the Program. The standards must include training requirements for medication aides and for staff members of participating facilities. The Board must also select facilities to participate in the Program. The Board must commence operation of the Program not later than six months after the bill's effective date and continue operating the Program for at least one year.

The bill specifies that the Board of Nursing must operate the Medication Aide Pilot Program in a manner "consistent with human protection and other ethical concerns typically associated with research studies involving live subjects."

Independent evaluator

In consultation with the Medication Aide Pilot Program Council, the Board of Nursing must, within the first six months following the bill's effective date, select an independent evaluator to assess the Program. The independent evaluator must do all of the following:

- Assess whether medication aides are able to safely administer medications, including prescription medications, to nursing home and residential care facility residents;
- Determine the financial implications of nursing homes and residential care facilities utilizing medication aides;
- Prepare and submit a report of its findings to the Board and the Council.

Medication aides

Notwithstanding provisions in current law restricting authority to administer prescription medication to certain licensed health care professionals, an

¹³⁹ *Gastrostomy is the surgical insertion of a feeding tube into the stomach. Jejunostomy is the surgical insertion of a feeding tube into the jejunum, part of the small intestine.*

individual authorized by the Board of Nursing to participate in the Medication Aide Pilot Program as a medication aide may administer medications, including prescription medications, to residents of nursing homes and residential care facilities participating in the Program. Responsibility for the administration must be delegated to the medication aide by a nurse.¹⁴⁰ Medication aides may administer only oral, topical, vaginal, or rectal medications or medications administered as drops to the eye, ear, or nose. They cannot administer any medication that requires titration, or any medication that is a Schedule I or Schedule II controlled substance.¹⁴¹

An individual who wishes to participate in the Medication Aide Pilot Program as a medication aide must seek authorization from the Board of Nursing by applying to the Board on a form provided by the Board. To be authorized to participate, the individual must be authorized for employment as a nurse aide due to having successfully completed a training and competency program approved by the Director of Health and must pay a fee, if one is required by the Board.¹⁴² The individual must also satisfactorily complete a medication aide training course that includes the following components and satisfy any other requirements established by the Board's standards:

- At least 60 clock hours of instruction;
- Classroom instruction on medication administration;
- Supervised clinical practice in administration of prescription medications;
- An examination that tests the ability to safely administer prescription medications.

An individual's authorization to participate in the Program as a medication aide is valid until the date that the Program ceases to be operated, unless the Board earlier terminates the individual's authorization to participate. The Board may deny or terminate an individual's authorization to participate in the Program for reasons specified by the Board.

¹⁴⁰ *Delegation must be in accordance with rules governing nursing delegation adopted under the nursing law (Revised Code Chapter 4723.).*

¹⁴¹ *Controlled substances are drugs, such as narcotics, that are subject to special restrictions because of the potential for abuse (R.C. 3719.01).*

¹⁴² *The exception is that nursing students are ineligible to participate in the Program.*

Participating facilities

Notwithstanding provisions in current law that prohibit the employment of an individual other than a licensed nurse to perform nursing tasks (including administering medication), a nursing home or residential care facility that participates in the Medication Aide Pilot Program may, during the period the Program is operated, utilize one or more medication aides to administer medications, including prescription medications, to participating residents.

To participate in the Program, a nursing home or residential care facility must volunteer by applying to the Board of Nursing on a form provided by the Board. To be eligible to participate, the facility must agree to observe the standards established by the Board to govern the Program and meet the following requirements:

- If the facility is a nursing home, it must be free of deficiencies and have not been found in the two most recent surveys or inspections of the home to have provided substandard care to a resident or to have had deficiencies with regard to the administration of medication.
- If the facility is a residential care facility, it must be free of deficiencies related to the provision of skilled nursing care or the administration of medication.

The Board must select from the eligible facilities 80 nursing homes and 40 residential care facilities to participate in the Program. The Board may terminate a participating facility's participation in the Program on receipt of evidence the Board finds credible that the facility's continued participation in the Program poses an imminent danger, risk of serious harm, or jeopardy to a participating resident.

Immunity for reporting medication errors

The bill provides criminal and civil immunity for individuals who report medication errors at a participating facility. Under the bill, a "medication error" means a failure to follow the prescriber's instructions when administering a prescription medication to a participating resident. The bill provides "no person employed by a participating facility who reports in good faith a medication error at a participating facility shall be subject to criminal liability or disciplinary action, or be liable in damages to any person or government entity in a civil action for injury, death, or loss to person or property resulting from the reporting of the medication error."

Final report

The bill requires the Board of Nursing with the assistance of the Medication Aide Pilot Program Council to prepare, or cause to be prepared, a final report on the Program that includes an examination of the Program's safety and financial implications. The report must be submitted not later than two years after the bill's effective date to the Governor, the President and Minority Leader of the House of Representatives, the Speaker and Minority Leader of the Senate, and the Director of Health.

OHIO PUBLIC DEFENDER COMMISSION

- Requires the court to assess a non-refundable \$25 application fee to a person who requests or is provided a state public defender, a county or joint county public defender, or any other counsel appointed by the court and allows the court to waive or reduce the fee upon a finding that the person lacks the financial resources that are sufficient to pay the fee.
- Prohibits a court, state public defender, or county or joint county public defender from denying a person the assistance of counsel solely due to the person's failure to pay the application fee.
- Allows the court to consider a person's willful failure to pay the application fee as an enhancement factor when imposing the person's sentence.
- Requires the clerk of courts to deposit all such application fees with the county treasurer, requires the county to retain 80% of the application fees to offset the costs of providing legal representation to indigent persons, and requires the county auditor to remit 20% of the application fees to the State Public Defender for deposit into the state treasury to the credit of the Client Payment Fund.
- Changes how much a county is required to pay the State Public Defender for legal representation of an indigent defendant from 50% of the actual cost of representation to (1) for the amount identified as legal fees, 100% less the state reimbursement rate, as calculated by the State Public Defender for the month the case terminated, and (2) 100% of the amount identified as expenses.

- Requires a county to pay the State Public Defender 100% of the cost of investigation or mitigation services provided by the State Public Defender to private appointed counsel or to a county or joint county public defender.
- Allows funds in the state treasury's County Representation Fund to also be used to pay for investigation or mitigation services provided by the State Public Defender.

Background information

(R.C. 120.05, 120.06, 120.13, 120.15, 120.23, 120.25, and 120.33)

Ohio has a State Public Defender, as well as county and joint county public defenders, who provide legal representation to indigent adults and juveniles who are charged with the commission of an offense. In lieu of using a county public defender or joint county public defender to represent indigent persons, the board of county commissioners of any county may adopt a resolution to pay counsel who are either personally selected by the indigent person or appointed by the court. The State Public Defender, county public defenders, and joint county public defenders are required to determine whether or not the person is indigent, subject to review by the court. The applicable public defender must investigate the financial status of each person to be represented, at the earliest time the circumstances permit, and may require the person represented to disclose the records of public or private income sources and property, otherwise confidential, which may be of aid in determining indigency.

When the State Public Defender is designated by the court or requested by a county public defender or joint county public defender to provide legal representation for an indigent person in any case other than certain cases the State Public Defender defends because of a contract with a county public defender commission or a joint county public defender commission, the State Public Defender must send to the county in which the case is filed an itemized bill for 50% of the actual cost of the representation. The county, upon receipt of the itemized bill, must pay the 50%. Money received from the counties is to be deposited in the state treasury's County Representation Fund for the use of the State Public Defender's legal representation of indigent defendants when designated by the court or requested by a county or joint county public defender.

Operation of the bill

Application fee for indigent defendants

(R.C. 120.36)

Under current law, if a person represented by a state public defender, county public defender, or joint county public defender has, or may reasonably be expected to have, the means to meet some part of the cost of the services rendered to the person, the person must reimburse the State Public Defender, county public defender, or joint county public defender in an amount that the person can reasonably be expected to pay. If it is determined by the State Public Defender, county public defender, joint county public defender, or the court that the legal representation was provided to a person not entitled to representation, the person may be required to reimburse the State Public Defender, county public defender, or joint county public defender for the costs of the representation provided.

The bill provides that if a person who is a defendant in a criminal case 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 filed 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 courts of the county. The person must pay the application fee at the same time the person files an affidavit of indigency or a financial disclosure form with the court or within seven days of that date. If the person does not pay the application fee within that seven-day period, the court must assess the application fee at sentencing or at the final disposition of the case. The court must assess an application fee one time per case. The court may waive or reduce the fee upon a finding that the person lacks financial resources that are sufficient to pay the fee.

The bill prohibits a court, state public defender, or county or joint county public defender from denying a person the assistance of counsel solely due to the person's failure to pay the application fee. A person's present inability, failure, or refusal to pay the application fee does not disqualify that person from legal representation. The bill allows the court to consider a person's willful failure to pay the fee as an enhancement factor when imposing the person's sentence if the person is convicted of or pleads guilty to the commission of an offense for which the penalty or any possible adjudication includes the potential loss of liberty.

The bill provides that the application fee is separate from and in addition to any other amount assessed against a person who is found to be able to contribute toward the cost of the person's legal representation.

The bill requires the clerk of courts to deposit all application fees collected pursuant to the above-described provisions with the county treasurer. The county must retain 80% of the application fees to offset the costs of providing legal representation to indigent persons. Each month, the county auditor must remit 20% of the application fees to the State Public Defender, who must deposit the remitted fees into the state treasury to the credit of the Client Payment Fund. The State Public Defender may use that money in accordance with the law creating the Fund.

The bill requires the clerk of courts of each county, on or before the first day of March of each year, to provide the State Public Defender and the State Auditor a report including all of the following:

- (1) The number of persons 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 for whom the court waived the application fee;
- (3) The dollar value of the assessed application fees in the previous year;
- (4) The amount of assessed application fees collected in the previous year;
- (5) The balance of unpaid assessed application fees at the open and close of the previous year.

Billing practices of the State Public Defender

(R.C. 120.06(D), 120.13(F), and 120.23(I))

The bill modifies how much a county is required to pay the State Public Defender for legal representation. The bill requires the State Public Defender to send the county in which the case is filed a bill detailing the actual cost of the legal representation that separately itemizes legal fees and expenses. The county, then, is responsible for paying the State Public Defender (1) for the amount identified as legal fees in the itemized bill, 100% less the state reimbursement rate, as calculated by the State Public Defender for the month the case terminated, and (2) 100% of the amount identified as expenses in the itemized bill.

After payment of the itemized bill, the bill permits the county to submit the cost of the expenses (excluding legal fees) to the State Public Defender for reimbursement pursuant to R.C. 120.33.

The bill also specifies that if the State Public Defender provides investigation or mitigation services to private appointed counsel or to a county or

joint county public defender, other than in certain cases when the Defender has a contract with a county public defender commission or a joint county public defender commission pursuant to R.C. 120.04(C)(7), the State Public Defender is required to send to the county in which the case is filed a bill itemizing the actual cost of the provided services. The county, then, is required to pay 100% of the amount as set forth in the itemized bill. Upon payment of the bill, the county may submit the cost of the investigation and mitigation services to the State Public Defender for reimbursement pursuant to R.C. 120.33.

Finally, the bill permits funds in the County Representation Fund, discussed above, to be used by the State Public Defender to provide investigation or mitigation services, including investigation or mitigation services to private appointed counsel or a county or joint county public defender, as approved by the court.

PUBLIC UTILITIES COMMISSION OF OHIO

- Changes the minimum annual assessment against a railroad and a public utility for maintaining the Public Utilities Commission from \$50 to \$100.
- Beginning in 2006, revises the schedule by which the Commission collects the assessments from utilities.
- Eliminates the need to transfer funds from the General Revenue Fund to the Public Utilities Fund so the Commission can operate during the beginning of each fiscal year.
- Increases the maximum amount the Commission generally may assess against a public utility or a railroad for each violation of statutes or orders from \$1,000 to \$10,000.
- Specifies that the forfeitures collected from a public utility or a railroad be credited to the General Revenue Fund.
- Increases the forfeiture amount the Commission can assess for gas pipe-line safety violations from \$10,000 for each day of each violation to \$100,000.
- Increases the cap the Commission can assess for a series of gas pipe-line safety violations from \$500,000 to \$1 million.

- Caps for each of four state agencies with nuclear safety functions the maximum amount that may be assessed per fiscal year for the agency against nuclear utilities by the Utility Radiological Safety Board, which cap is applicable in the event the utilities and the agency cannot agree on a negotiated grant amount to fund its nuclear safety activities and funding is then to be otherwise provided through an assessment.

Assessments collected from railroads and public utilities for maintaining the Public Utilities Commission

(R.C. 4905.10)

For the purpose of maintaining the Public Utilities Commission (PUCO), each railroad and public utility pays a yearly assessment. The amount is calculated by first computing an assessment in proportion to the intrastate gross earnings or receipts of the railroad or utility for the preceding calendar year. The PUCO may include in the initial computation, any amount underreported by a railroad or utility from a prior year. Excluded from the computation are earnings or receipts from sales to other public utilities. Under the bill, the PUCO may also exclude from the computation any overreported amount from a prior year.

Under current law, a final computation of the assessment imposes a \$50 assessment on each railroad and utility whose assessment under the initial computation equaled \$50 or less. The bill changes the minimum yearly assessment against each railroad and utility from \$50 to \$100. The railroad and utility payments are deposited in the state treasury to the credit of the Public Utilities Fund.

Currently, the PUCO must notify each railroad and utility of the sum assessed against it by October 1 of each year, after which payment is to be made to the PUCO. The bill changes this schedule, to require that by May 15 of each year beginning in the 2006 calendar year, the PUCO must notify each railroad and utility that had an assessment against it for the current fiscal year of more than \$1,000, that the railroad or utility must pay 50% of that amount to the PUCO by June 20. This payment is an initial payment for the next fiscal year. The bill requires the PUCO to make a final determination of the assessment against each railroad and utility by October 1 of each year, deducting any initial payment received, and to notify the railroad and utility of that amount. Each railroad or utility must pay the PUCO the remaining assessment amount by November 1 of that year.

Under current law, at the beginning of each fiscal year, the Director of Budget and Management transfers an amount from the General Revenue Fund (GRF) to the Public Utilities Fund so the PUCO can maintain operations during the first four months of the fiscal year. The amount transferred by the Director must be transferred back into the GRF from the Public Utilities Fund by December 31. Under the bill, beginning in calendar year 2006, these obligations no longer apply because under the bill's new assessment schedule the Public Utilities Fund will receive sufficient revenue from the initial assessment payment to operate at the beginning of each fiscal year.

Forfeitures assessed by the Commission

General forfeitures against a public utility or railroad

(R.C. 4905.54)

The Public Utilities Commission (PUCO) may assess forfeitures against a public utility or a railroad that violates a statute or fails to comply with a Commission order, direction, or requirement. Generally under current law, the maximum forfeiture amount the PUCO can assess is \$1,000 for each violation or failure to comply. Each day's continuance of the violation or failure is a separate offense. The bill increases the maximum forfeiture amount for each violation or failure to comply to \$10,000, and specifies that the collected forfeitures be credited to the General Revenue Fund.¹⁴³

Forfeitures for gas pipe-line safety violations

(R.C. 4905.95)

If the PUCO finds that a gas pipe-line operator violated or failed to comply with the gas pipe-line safety code, the PUCO may assess forfeitures against the operator. The bill increases the forfeiture amount from a maximum of \$10,000 for each day of each violation to a maximum of \$100,000. The bill also increases the aggregate cap on the amount of such forfeitures that may be assessed against an operator for a related series of violations or noncompliances from \$500,000 to \$1 million. These forfeitures are also credited to the General Revenue Fund.

¹⁴³ A maximum forfeiture of \$10,000 for each day of each violation can already be assessed for violations or failures to comply under R.C. 4905.83 dealing with hazardous materials, R.C. 4905.95 dealing with operators of gas pipe-lines (the bill increases maximum gas pipe-line forfeiture to \$100,000), and R.C. 4919.99, 4921.99, and 4923.99 dealing with a roadside inspection for an interstate operator, a motor transportation company, and a private motor carrier, respectively.

Utility Radiological Safety Board Assessments

(Section 306.03)

Under continuing law, the Utility Radiological Safety Board's (URSB) authority to levy assessments against nuclear utilities is limited in part by assessment caps specified in main operating appropriations acts. The main funding source for the nuclear safety functions of state agencies that are URSB members are direct grants negotiated between each member agency and Ohio's nuclear electric utilities but, if a member agency disagrees with a grant amount, it can obtain funding by requesting the URSB to levy assessments against the utilities in amounts generally proportional to their intrastate gross receipts. If a member agency seeks an assessment that would exceed 75% of the applicable budgetary cap, continuing law provides that the member agency may request Controlling Board approval of the assessment. The Controlling Board cannot approve an assessment that exceeds the budgetary maximum or that will be used for unauthorized purposes. The bill specifies for four member agencies maximums that are constant in amount for FY 2006 and 2007, in the fiscal year amounts of \$73,059 for the Department of Agriculture, \$850,000 for the Department of Health, \$286,114 for the Environmental Protection Agency, and \$1,260,000 for the Emergency Management Agency.

OHIO BOARD OF REGENTS

- Establishes a tuition cap of 6% on annual increases of in-state undergraduate instructional and general fees at state institutions of higher education, but allows institutions to increase fees an additional 3% if the increase is used exclusively to fund scholarships for low-income students.
- Phases out the Ohio Instructional Grant (OIG) Program by limiting participation to students who enroll in an undergraduate program before July 1, 2006.
- Creates the Ohio College Opportunity Grant Program, a need-based financial aid program for students who first enroll in an undergraduate program after July 1, 2006.
- Specifies that, in addition to refunds of OIG payments as under current law, refunds of payments made under the new Ohio College Opportunity Grant Program be paid into the Instructional Grant Reconciliation Fund,



and changes the name of the fund to the State Need-Based Financial Aid Reconciliation Fund.

- Requires the Board of Regents to conduct audits to determine the validity of information provided by students and parents regarding eligibility for financial aid and requires institutions of higher education to adjust students' financial aid award where the Board determines appropriate.
- Requires the Board of Regents to conduct audits to ensure that institutions of higher education are complying with the Board's financial aid rules, and specifies that the institutions are fully liable to reimburse the Board for the unauthorized use of financial aid funds.
- Requires the Board of Regents to adopt a rule establishing fees to fund the cost of (1) reviewing an application for a certificate of authorization to award degrees at a nonpublic institution and (2) reviews determined necessary upon examining a nonpublic institution's annual report.
- Expands the scope of the current articulation and transfer system to include career-technical institutions by requiring the Board of Regents to develop policies and procedures by April 15, 2007, to ensure that students can transfer technical courses to state institutions of higher education.
- Sets a December 30, 2005, deadline for the State Architect to establish the Local Administration Competency Certification Program (enacted by Am. Sub. H.B. 16 of the 126th General Assembly to certify state universities and state community colleges to administer their own capital facilities projects).
- Specifies that an institution's local administration competency certification remains valid unless revoked by the State Architect for failure (1) to employ a sufficient number of personnel who have successfully completed the certification program or (2) to conduct biennial audits of self-administered capital facilities projects.
- Creates in the state treasury the National Guard Scholarship Reserve Fund for purposes of paying scholarship obligations in excess of the GRF appropriations made for that purpose, and authorizes the Director of Budget and Management to transfer from the GRF to the Reserve Fund an amount not exceeding the prior year's unencumbered balance of GRF

appropriations made for purposes of the Ohio National Guard Scholarship Program.

Cap on undergraduate tuition increases at state institutions of higher education

(Section 209.63.60)

The bill imposes a limit on the amount of in-state, undergraduate instructional and general fees the board of trustees of a state university, community college, state community college, technical college, and university branch (collectively, "state institutions") may charge. In general, the boards of trustees of these state institutions may only increase undergraduate instructional and general fees for Ohio residents 6% from the prior academic year. Although the bill does not explicitly state in which academic years this 6% cap is effective, presumably the bill means the 2005-2006 and 2006-2007 academic years.

The bill permits state institutions to impose an additional 3% increase if the proceeds of this increase are used for "Access Scholarship Grants," which are scholarships for low-income students. However, no institution may authorize an increase in excess of 6% in a single vote of its board. Before a board of trustees can vote for the additional increase, the institution must submit a financial aid report to the Board of Regents, which must include a plan describing how this additional tuition increase will be used in addition to current institutional dollars committed to financial aid and outlined performance measures. This report must also disclose all types of need-based and merit-based financial aid provided to students through all types of institutional aid in the prior academic year, and a description of the various aid programs, criteria used for selection, recipient statistics by award type, and actual scholarship amounts. At the end of each academic year, the institutions that have authorized a tuition increase above the 6% cap must submit a report to the Board of Regents regarding their performance in meeting the goals outlined in their financial aid plans.

As in previous biennia when the General Assembly has imposed tuition caps, the bill authorizes an institution to increase tuition above the stated cap to comply with institutional covenants related to obligations, unfunded mandates, or legally binding obligations or commitments made before the bill's effective date, with respect to which the institution identified the fee increase as the source of the funds. The Board of Regents must report these additional increases to the Controlling Board. In addition, the Board of Regents, with the Controlling Board's approval, may modify the caps "to respond to exceptional circumstances."

Phasing out of the Ohio Instructional Grant Program

(R.C. 3333.12)

The Board of Regents administers the Ohio Instructional Grant Program, which pays grants to full-time, Ohio resident students who attend a public, private nonprofit, or career institution of higher education in Ohio and are enrolled in a program leading to an associate or bachelor's degree. The Board establishes all rules concerning applications for the grants.

Grant amounts vary based on whether an applicant is financially dependent or independent; the combined family income (if dependent) or the student and spouse income (if independent); the number of dependents; and whether the applicant attends a private nonprofit, public, or career institution. The amount of the grant cannot exceed the total instructional and general fees charged by the student's school.

The bill phases out the Program by limiting participation to students who enroll in an undergraduate program before July 1, 2006. The grant amounts are unchanged for the biennium, remaining at the levels set for fiscal year 2005.

Creation of the Ohio College Opportunity Grant Program

(substantive provisions in R.C. 3333.122; conforming changes in R.C. 3315.37, 3332.092, 3333.04, 3333.044, 3333.27, 3333.28, 3333.38, 3345.32, and 5107.58)

The bill creates the Ohio College Opportunity Grant Program as a substitute for the Ohio Instructional Grant Program for students who are residents of Ohio and first enroll in an undergraduate program after July 1, 2006.¹⁴⁴ The grant amount awarded to the student is based on the United States Department of Education's method of determining financial need. This is done by determining the student's "Expected Family Contribution" (EFC).

Eligibility

To receive a grant the student must be enrolled in one of the following:

(1) An accredited institution of higher education in Ohio that meets the requirements of Title VI of the Civil Rights Act of 1964, which prohibits

¹⁴⁴ Students who participated in either the Early College High School Program or the Post-Secondary Enrollment Options Program before July 1, 2006, are not excluded from eligibility for a grant. See R.C. 3333.122(A)(2).

discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance;

(2) A nonprofit institution that has a certificate of authorization from the Board of Regents;

(3) A private institution that has a certificate of registration from the State Board of Career Colleges and Schools and program authorization from the Board of Regents to award an associate or bachelor's degree;

(4) A for-profit institution that is exempt from regulation by the Board of Career Colleges and Schools, but for which the Board of Regents has issued a certificate of authorization, and is accredited by the appropriate accrediting association;¹⁴⁵

(5) A technical education program sponsored by a private institution in Ohio that is at least two years in duration, and that meets the requirements of Title VI of the Civil Rights Act of 1964.

The Board is directed to prescribe the manner of applications for the grants. The applications can be made in conjunction with the United States government's or the institution of higher education's student assistance programs. The grants are to be paid through the institution in which the student is enrolled. The institution must certify the student's eligibility for the grant.

A grant is available to a student as long as the student is making adequate progress towards a nursing diploma or an associate or bachelor's degree, but no student may receive a grant for more than the equivalent of five academic years. If the student is taking fewer than the number of hours needed to be considered full-time, a grant to that student is based on the number of credit hours the student is enrolled. However, no student may receive more than one grant on the basis of less than full-time enrollment. The bill requires the Board to define "full-time student," "three-quarters-time student," "half-time student," and "one-quarter-time student."

Amount of grant awards per academic year

Separate tables set forth the grant amounts, one for each category of student (full-time, three-quarters-time, half-time, or one-quarter-time, based on the number of credit hours). Each table varies the grant amounts based on the ranges of expected family contribution and the type of institution in which the student is

¹⁴⁵ *Currently, this provision applies to only DeVry University and the University of Phoenix.*

enrolled (public, private, or career). The grant is for one academic year, which represents two semesters or three quarters. If a full-time student is enrolled for an additional semester or quarter in an academic year, the student may receive another grant, equal to a portion of the maximum prescribed amount, for that additional term.

The maximum expected family contribution that a student could have and still be eligible for a grant is \$2,190. A full-time student with that expected family contribution score would then be eligible for a \$300 grant if attending a public institution, a \$480 grant if attending a career college, or a \$600 grant if attending a private institution. If a full-time student's expected family contribution is \$0, the student would be eligible for a \$2,496 grant if attending a public institution, a \$3,996 grant if attending a career college, or a \$4,992 grant if attending a private institution.

A three-quarters-time student with an expected family contribution of \$2,190 would be eligible for a \$228 grant if attending a public institution, a \$360 grant if attending a career college, or a \$450 grant if attending a private institution. A three-quarters-time student with an expected family contribution of \$0 would be eligible for a \$1,872 grant if attending a public institution, a \$3,000 grant if attending a career college, or a \$3,744 grant if attending a private institution.

A half-time student with an expected family contribution of \$2,190 would be eligible for a \$150 grant if attending a public institution, a \$240 grant if attending a career college, or a \$300 grant if attending a private institution. A half-time student with an expected family contribution of \$0 would be eligible for a \$1,248 grant if attending a public institution, a \$1,998 grant if attending a career college, or a \$2,496 grant if attending a private institution.

A one-quarter-time student with an expected family contribution of \$2,190 would be eligible for a \$78 grant if attending a public institution, a \$120 grant if attending a career college, or a \$150 grant if attending a private institution. A one-quarter-time student with an expected family contribution of \$0 would be eligible for a \$624 grant if attending a public institution, a \$1,002 grant if attending a career college, or a \$1,248 grant if attending a private institution.

Ineligibility for a grant

As with the current Ohio Instructional Grant program, there are three situations in which a student who otherwise would be eligible to receive a grant would be determined ineligible. First, no grant may be awarded to a person serving a term of imprisonment. Second, a student studying theology, religion, or another field in preparation for a religious profession is ineligible if the program

does not lead to an accredited bachelor of arts, bachelor of science, associate of arts, or associate of science degree.

Third, a student is ineligible to receive a grant if the student is attending an institution with a cohort default rate, as determined by the U.S. Secretary of Education, equal to or greater than 30% for each of the preceding two fiscal years. The "cohort default rate" means the number of current and former students of an institution who default on federally guaranteed student loans.¹⁴⁶ However, a student would still be eligible if, upon recalculation, the cohort default is lower than 30%, if the Secretary allows the institution to continue to participate in federal financial aid programs, or if the student has previously received an Ohio College Opportunity Grant and meets all other eligibility requirements.

Institutions must refund grants to the state if student no longer eligible

The bill requires institutions to refund money due to the state if the institution receives grants for students who are no longer eligible for all or any part of the grant. The institution must refund the money due within 30 days after the beginning of the quarter or term immediately following the quarter or term in which the student was no longer eligible to receive all or part of the grant. If the institution fails to refund the money in the allowed time, there is a 1% per month interest charge.

State Need-Based Financial Aid Reconciliation Fund

(R.C. 3333.121)

The bill renames the Instructional Grant Reconciliation Fund as the State Need-Based Financial Aid Reconciliation Fund. This fund is to receive refunds of Ohio Instructional Grant payments (as under current law) and refunds of Ohio College Opportunity Grant payments, both made by institutions when they receive grant moneys under those programs for students who are not eligible to receive them. Similar to current law, money in the fund is to be used by the Board of Regents to pay institutions of higher education any outstanding obligations owed from the prior year for the grant programs. Any amount in the fund that exceeds the amount necessary to reconcile prior year payments must be transferred to the General Revenue Fund.

¹⁴⁶ See 20 U.S.C. 1085.

Financial aid audits

(R.C. 3333.047)

The bill directs the Board of Regents to conduct two types of audits for state financial aid programs. First, the Board is required to conduct audits to determine the validity of information regarding eligibility for financial aid that is provided by students and parents. Each institution is required to adjust a student's financial aid if the Board determines such action to be appropriate due to the reporting of inaccurate eligibility data. Second, the Board is required to conduct audits to ensure that the institutions of higher education are complying with the Board's rules governing state student financial aid programs. If an audit finds that an institution has failed to comply with rules, the institution is "fully liable" to reimburse the Board for the unauthorized use of student financial aid funds.

Fees for certificates of authorization and annual reports

(R.C. 1713.03)

Current law requires that, before a private institution of higher education or a career college may offer a degree, it must receive a certificate of authorization from the Board of Regents. The institution must apply to the Board for the certificate, and must file an annual report with the Board.

The bill requires the Board of Regents to establish fees, which each private institution must pay, for reviewing applications for certificates of authorization and for further reviews the Board determines are necessary after examining the institution's annual reports.

Transfer of career-technical education coursework to state institutions of higher education

(R.C. 3333.162)

The bill expands the scope of the current articulation and transfer system to include career-technical institutions by requiring the Board of Regents to develop policies and procedures by April 15, 2007, to ensure that students can transfer technical courses completed through an adult career-technical education institution to any state institution of higher education "without unnecessary duplication or institutional barriers." The Board is directed to develop these policies and procedures in consultation with the Department of Education, public adult career-technical education institutions, and institutions of higher education. The policies and procedures must build upon the existing articulation agreement and transfer

initiative course equivalency system, where applicable. The Board must report its progress on this issue to the General Assembly by April 15, 2006.

Background

The Board of Regents has developed an Articulation and Transfer Policy, which is intended to ensure that credits will transfer between state institutions of higher education.¹⁴⁷ Under the policy, the transfer of credits and the application of those credits to the transferring student's program of study is dependent on whether the transferring student has completed an associate degree, the student's grade point average, and what courses the student has completed. The policy also requires state institutions to develop a "transfer module," which is a set of general education curriculum courses, such as English composition, mathematics, social and behavioral sciences, arts and humanities, and natural and physical sciences, that represent a common body of knowledge required at all state institutions. A student who completes transfer module courses at one institution can transfer those courses to another state institution and have those courses fulfill the corresponding general education courses at the receiving institution.

In addition, the Revised Code directs the Board to implement several policies designed to further facilitate the transfer of students and credits between state institutions of higher education.¹⁴⁸ These include:

(1) The development of policies and procedures that state institutions must comply with to ensure that students can transfer between state institutions without unnecessary duplication of coursework or institutional barriers;

(2) The development of a "universal course equivalency classification system";

(3) The development of a transfer system whereby a student who completes an associate degree program that includes approved transfer module courses will be admitted to another state institution's baccalaureate program, will have priority over out-of-state students with associate degrees and transfer students without such degrees in regards to admittance to the program, and will compete on the same basis as students native to that institution for admission to specific programs;

¹⁴⁷ The policy is available through the Ohio Board of Regents' website: <http://www.regents.state.oh.us/transfer/policy.html>. The General Assembly required the development of the policy in Am. Sub. S.B. 268 and Am. Sub. H.B. 111 of the 118th General Assembly.

¹⁴⁸ R.C. 3333.16, not in the bill.

(4) A study of the feasibility of developing a transfer marketing agenda to both inform Ohioans of the availability of transfer options and to encourage adults to return to higher education;

(5) A study of the feasibility of articulation and transfer policies for students with associate degrees from career schools and colleges that have certificates of registration from the State Board of Career Colleges and Schools who transfer to state institutions of higher education; and

(6) A requirement of all state colleges and universities to fully implement the Course Applicability System, which is an internet-accessible database that provides information on course equivalency between participating institutions,¹⁴⁹ in advising transfer students.

Local administration competency certification program

(R.C. 123.17)

Background

Am. Sub. H.B. 16 of the 126th General Assembly, the capital appropriations act for the 2005-2006 biennium, requires the State Architect to create a local administration competency certification program to certify state universities (including the Medical University of Ohio at Toledo and the Northeastern Ohio Universities College of Medicine) and state community colleges to administer capital facilities projects without oversight from the Department of Administrative Services (DAS).¹⁵⁰ To be certified under the program, an institution must select employees responsible for administering capital facilities projects to participate in the program. The program must provide instruction about the Public Improvements Law and DAS rules and policies regarding capital projects. Specifically, the program must cover (1) the planning, design, and construction process, (2) contract requirements, (3) construction management, and (4) project management.

The State Architect must award local administration competency certification to a state university or state community college that meets the following criteria:

¹⁴⁹ Information about the Course Applicability System is available at <http://www.regents.state.oh.us/transfer>.

¹⁵⁰ Am. Sub. H.B. 16 of the 126th General Assembly was signed by the Governor on February 3, 2005.

(1) The institution applies for certification in the manner prescribed by the State Architect;

(2) The State Architect determines that a sufficient number of the institution's employees, representing a sufficient number of employee classifications, has completed the program to ensure that the institution's capital projects will be conducted successfully and in accordance with law;

(3) The institution's board of trustees provides written assurance that the institution will enroll additional employees in the certification program as needed to compensate for employee turnover;

(4) The State Architect determines that the employees who have completed the program demonstrate satisfactory knowledge of and competency in the requirements for administering capital projects;

(5) The board of trustees provides written assurance that the institution will conduct biennial audits of its administration of capital projects;

(6) The board of trustees agrees in writing to hold the state and DAS harmless for any claim of injury, loss, or damage resulting from the institution's administration of a capital project; and

(7) The institution pays a program fee.

The bill

The bill makes four changes to the local administration competency certification program. First, it directs the State Architect to establish the program by December 30, 2005. Second, it specifies that the program fee established by the State Architect is subject to approval by the Director of Budget and Management. The fee amount must cover the costs of implementing the program, including the costs for instructional materials and training sessions. Third, it specifies that the State Architect must determine that an institution's employees have "successfully" completed the certification program prior to awarding certification.

Finally, the bill requires the State Architect to revoke an institution's certification to administer its own capital facilities projects if the State Architect determines that the institution either (1) has not maintained a sufficient number of employees responsible for the administration of capital projects who have successfully completed the certification program and demonstrated satisfactory knowledge of and competency in the requirements for administering those projects or (2) is not conducting biennial audits of its capital projects. An institution's certification remains valid unless revoked for one of these reasons. When

certification is revoked, the State Architect must provide written notification of that fact to the institution's board of trustees.

National Guard Scholarship Reserve Fund

(R.C. 5919.341)

Under current law, the Ohio National Guard Scholarship Program provides scholarships to institutions of higher education in Ohio for a specified number of eligible National Guard participants (R.C. 5919.34, not in the bill). The bill creates in the state treasury the National Guard Scholarship Reserve Fund for purposes of paying scholarship obligations in excess of the General Revenue Fund (GRF) appropriations made for that purpose.

The Ohio Board of Regents is required by the bill to certify to the Director of Budget and Management, not later than September 1 of each fiscal year, the unencumbered balance of the GRF appropriations made in the immediately preceding fiscal year for purposes of the National Guard Scholarship Program. Upon receipt of the certification, the Director is permitted to transfer an amount not exceeding the certified amount from the GRF to the National Guard Scholarship Reserve Fund. Moneys in the Reserve Fund are to be used to pay scholarship obligations in excess of the GRF appropriations made for that purpose. At the request of the Adjutant General, the Board of Regents is to seek Controlling Board approval to establish appropriations as necessary.

The bill authorizes the Director to transfer any unencumbered balance from the Reserve Fund to the GRF.

RESPIRATORY CARE BOARD

- Authorizes the Ohio Respiratory Care Board to charge convenience fees for renewing a license or limited permit electronically by credit card.

Convenience fees for renewals

(R.C. 4761.07)

Currently, for license or limited permit renewals, the Ohio Respiratory Care Board may charge (1) not in excess of \$100 for renewing a license, and (2) not in excess of \$10 for renewing a limited permit. The bill authorizes the Board to charge convenience fees that are in addition to these renewal fees.

Specifically, a nonrefundable convenience fee may be charged if the license or limited permit is renewed electronically by credit card, provided that the convenience fee (1) complies with Ohio law regulating convenience fees charged when making any payments to the Ohio Board of Deposit by a financial transaction device, including disclosures relating to the fee, (2) does not exceed the cost of processing charged by Ohio's credit card processor and is in accordance with guidelines of credit card issuers and processors, and (3) relates to the convenience of the person renewing, such as eliminating the need to make payment in person.

RETIREMENT SYSTEMS

- Eliminates a requirement that an annual payment of \$1.2 million be made by the state to the Ohio Police and Fire Pension Fund.

Elimination of appropriation to Ohio Police and Fire Pension Fund

(R.C. 742.36 (repealed) and 742.59)

Current law requires the state to make an annual payment of \$1.2 million to the Ohio Police and Fire Pension Fund (OP&F). This payment, known as the "state contribution," is deposited in the Police Officers' Employers Contribution Fund and the Firefighters' Employers Contribution Fund, into which employer contributions and interest earned on the contributions are deposited. According to the Ohio Retirement Study Council, the state contribution was made by the state annually to the local police and firemen pension funds in existence prior to their consolidation into OP&F in 1967. The state contribution continued to be paid to OP&F and has remained unchanged since the consolidation in 1967.¹⁵¹ The bill eliminates the state contribution.

STATE BOARD OF SANITARIAN REGISTRATION

- Requires the State Board of Sanitarian Registration to "provide" to registered sanitarians, rather than to mail, a list and applicable updates of a list of approved continuing education courses.

¹⁵¹ *Ohio Retirement Study Council. "Ohio Retirement Systems General Revenue Fund--Subsidies," p. 2 www.orsc.org, visited 02-07-05.*

- Increases fees the Board charges for applications, renewals, and late fees for registration of sanitarians and sanitarians-in-training.

Notification of sanitarian continuing education courses

(R.C. 4736.11; Section 612.09)

Current law requires that at least once annually the State Board of Sanitarian Registration mail each registered sanitarian a list of approved continuing education courses and upon an individual's request, mail updates of the list to the requestor. The bill instead requires the Board to "provide" a list annually, therefore allowing the Board to use electronic means of communication. The bill also requires the Board to supply a list of "applicable" courses approved by the Board upon request.

Under the bill, these changes to the Board's notification for continuing education take effect October 1, 2005.

Sanitarian fees

(R.C. 4736.12)

The bill increases the fees the State Board of Sanitarian Registration must charge as follows:

- (1) For application as a sanitarian-in-training, from \$75 to \$80;
- (2) For registration as a sanitarian by a sanitarian-in-training, from \$75 to \$80;
- (3) For registration as a sanitarian by any other person, from \$150 to \$160;
- (4) For renewal fees for registered sanitarians and sanitarians-in-training, from \$69 to \$74;
- (5) For late applications for renewal, from \$25 to \$27.

OHIO STATE SCHOOL FOR THE BLIND/ SCHOOL FOR THE DEAF

- Allows the State School for the Blind and the State School for the Deaf to administer moneys donated or granted by federal or third parties for use in the education of students who are blind and visually-impaired or deaf and hearing-impaired.
- Creates a Student Account Fund for both the State School for the Blind and the State School for the Deaf as custodial funds for students' personal accounts.
- Creates the Educational Program Expenses Fund for the State School for the Deaf to collect moneys raised, given, or otherwise designated for its use to be disbursed in school and student activities.
- Creates the Student Activity and Work-Study Fund for the State School for the Blind to receive donations and other moneys for use in school operating expenses, student activities, and scholarships.

Administration of donations and federal funds

(R.C. 3325.10 and 3325.15)

Under existing law, the State School for the Deaf and the State School for the Blind are under the control and supervision of the State Board of Education and, therefore, apparently do not have legal authority to autonomously receive money from outside parties or the federal government (R.C. 3325.01, not in the bill). The bill authorizes the School for the Blind and the School for the Deaf to receive and administer any gifts, donations, or bequests relating to the education of blind and visually-impaired students or deaf and hearing-impaired students, respectively.

The bill also authorizes the School for the Blind and the School for the Deaf to receive and administer any federal funds as they relate to the education of blind or visually-impaired students or deaf and hearing-impaired students, respectively. Generally, federal funds for schools are passed through the

Department of Education. However, this provision appears to allow for direct application for and administration of federal funds by the two schools.¹⁵²

Custodial funds for students

(R.C. 3325.12 and 3325.17)

The bill establishes a custodial fund (in the custody of the Treasurer of State, but not part of the state treasury) that must consist of any money received from parents or guardians of students at the School for the Blind that is designated for the students to use in activities of their choice. Likewise, a similar fund is established for the students at the School for the Deaf. The bill directs the Treasurer of State to disburse money from the funds for the students on order of the superintendents of the schools or their designees.

The Treasurer of State may invest any portion of the funds not needed for immediate use, subject to the laws governing investment of state funds. Any investment earnings must be credited back to the funds and allocated among the student accounts in proportion to the amount invested from each student's account.

State School for the Deaf Educational Program Expenses Fund

(R.C. 3325.16)

The bill creates within the state treasury the Educational Program Expenses Fund for the State School for the Deaf to hold moneys received by the School from donations, bequests, student fundraising activities, fees charged for camps and workshops, gate receipts from athletic contests, and the Student Work Experience Program operated by the School.¹⁵³ Any other money designated for deposit in the fund by the Superintendent of the School for the Deaf must also be credited to the fund. Under existing law, the State School for the Deaf is under the control and supervision of the State Board of Education (R.C. 3325.01, not in the

¹⁵² According to the Office of Budget and Management, the School for the Deaf currently accepts two major federal grants. The first is the Virtual Reality Education for Assisted Learning grant, which uses innovative technology to help the disabled, including allowing students at the School for the Deaf to interact with students at other schools with similar technology. The grant has a \$1 million appropriation for fiscal years 2006 and 2007 each. The second grant, \$250,000 per year, funds the preschool for both hearing and hearing-impaired children that is operated by the School for the Deaf.

¹⁵³ According to the Office of Budget and Management, the Student Work Experience Program is a catering business run by the students that generates approximately \$2,500 per year. Donations generally amount to between \$4,000 and \$5,000 per year.

bill). Notwithstanding that statute, the bill specifies that the State Board's approval is not required to designate money for deposit into the fund.

The State School for the Deaf must use money in the fund for educational programs, after-school activities, and expenses associated with student activities and clubs.

State School for the Blind Student Activity and Work-Study Fund

(R.C. 3325.11)

The bill creates within the state treasury the Student Activity and Work-Study Fund for the State School for the Blind to hold moneys received by the School from donations, bequests, and the school vocational program.¹⁵⁴ Any other money designated for deposit in the fund by the Superintendent of the School for the Blind must also be credited to the fund. Under existing law, the State School for the Blind is under the control and supervision of the State Board of Education (R.C. 3325.01, not in the bill). Notwithstanding that statute, the bill specifies that the State Board's approval is not required to designate money for deposit into the fund.

The State School for the Blind must use money in the fund for school operating expenses, including personal services (salaries), maintenance, and equipment related to student support, activities, and vocational programs, and for providing scholarships to students for further training upon graduation.

SCHOOL FACILITIES COMMISSION

- Transfers responsibility for a program that provides school districts with interest-free loans for vocational classroom facilities from the State Board of Education to the Ohio School Facilities Commission.
- Excludes school districts that have received state facilities assistance, or are expected to receive such assistance within three fiscal years, from eligibility for the loan program, unless the loan is for equipment not covered by the Commission's programs.

¹⁵⁴ According to the Office of Budget and Management, the vocational program generated approximately \$5,300 for fiscal year 2005. Donation totals generally lie between \$4,500 and \$8,000 for any given year.

- Renames the Vocational School Building Assistance Fund the Career-Technical School Building Assistance Fund.
- Authorizes the Director of Budget and Management to transfer investment earnings of the Education Facilities Trust Fund to the Ohio School Facilities Commission Fund to pay operating expenses of the Commission.
- Provides supplemental payments to relatively low-wealth school districts participating in the School Building Assistance Program in order to equalize the amount they raise from their maintenance levies.
- Requires excess balances in the School District Property Tax Replacement Fund to be devoted to making those payments.

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. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. The poorest districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served. Joint vocational school districts are served by the Vocational School Facilities Assistance Program, which is similar to CFAP.

Other programs have been established to address the particular needs of certain types of districts. The Exceptional Needs School Facilities Assistance Program provides low-wealth districts and "large land area" districts with funding in advance of their district-wide CFAP projects to construct single buildings in order to address acute health and safety issues. The Expedited Local Partnership Program permits most school districts that have not been served under CFAP to enter into agreements permitting them to apply the advance expenditure of *district* money on approved parts of their district-wide needs toward their shares of their CFAP projects when they become eligible for that program. The Accelerated Urban School Building Assistance Program allows Big-Eight school districts that

are not yet eligible for assistance under CFAP to receive that assistance earlier than otherwise permitted.¹⁵⁵

Career-technical school building assistance loan program

(R.C. 3318.47, 3318.48, and 3318.49; Section 315.06)

Current law authorizes the State Board of Education to make interest-free loans to school districts to help finance the construction, renovation, or purchase of vocational classroom facilities or the purchase of vocational education equipment. These loans are paid from the Vocational School Building Assistance Fund. Districts must meet eligibility criteria, including demonstrated financial need and the ability to repay the loan within 15 years (or five years for loans for equipment purchases). Upon approval of a district for a loan, the State Board and the district must enter into an agreement specifying the terms of the loan. If the district fails to repay the loan, the State Board may deduct the amount of the overdue payments from the district's state aid.

The bill transfers responsibility for the loan program from the State Board to the Ohio School Facilities Commission. It also places two new restrictions on eligibility for the loans. First, it generally limits eligibility for a loan to school districts that, on the date of application, have not previously received state assistance under one of the Commission's programs and are not reasonably expected to receive such assistance within three fiscal years. The only exception is for districts applying for a loan solely to purchase vocational education equipment that is not an approved project cost under the Commission's programs. Second, a district must agree to comply with all applicable design specifications and policies of the Commission in the construction, renovation, or purchase of facilities or equipment paid for with the loan, unless the Commission waives this requirement. If a school district participating in the Expedited Local Partnership Program receives a loan, it cannot apply that loan toward the local resources the district spends prior to receiving assistance under CFAP.

The bill requires the Commission to operate the loan program in the same manner as under current law. Upon the request of the Executive Director of the Commission, the State Board must withhold state funds from a school district that misses a loan payment. The State Board must transfer the amount of the missed payment to the Commission within ten days after the request. The bill also changes the name of the fund from which the loans are paid to the Career-Technical School Building Assistance Fund.

¹⁵⁵ See R.C. Chapter 3318.

To facilitate the transfer of the loan program to the School Facilities Commission, the Commission must develop and approve a transition plan in consultation with the Department of Education. All materials, assets, liabilities, and records of the Department necessary to implement the loan program must be turned over to the Commission along with all current and pending loans and appropriations, encumbrances, and funds associated with the program. These transfers must occur within 120 days after the bill's effective date. The Department of Education must continue to administer the loan program until the earlier of 120 days after the bill's effective date or the date on which the Commission approves the transition plan. Finally, the Department must provide the Commission with any administrative assistance it requires during the transition period.

Investment earnings of Education Facilities Trust Fund

(R.C. 3318.33)

The bill authorizes the Director of Budget and Management to transfer investment earnings of the Education Facilities Trust Fund to the Ohio School Facilities Commission Fund. (The Education Facilities Trust Fund receives the portion of the tobacco master settlement agreement that is to be used to pay the state's share of the construction, renovation, or repair of elementary and secondary schools.¹⁵⁶)

Background

Under continuing law, the operational expenses of the Ohio School Facilities Commission are paid from the Ohio School Facilities Commission Fund. Moneys in the fund may be used for (1) personnel and administrative expenses, (2) evaluations of classroom facilities, (3) preparation of building design specifications, (4) project management services, and (5) other purposes necessary for the Commission to carry out its duties. Continuing law already authorizes the Director of Budget and Management to transfer investment earnings of the Public School Building Fund, which is used to implement classroom facilities projects, and the School Building Program Assistance Fund, which covers the state share of facilities projects, to the Ohio School Facilities Commission Fund.

¹⁵⁶ See R.C. 183.02(F) and 183.26, not in the bill.

School facilities projects: equalization of maintenance levies

(R.C. 3318.111, 5727.84, and 5727.85)

The bill provides a supplemental payment to relatively low-wealth city, local, and exempted village school districts participating in the School Building Assistance Program in order to equalize the amount they raise from the requisite half-mill maintenance levy.

Under current law, school districts receiving state school building assistance are required, as a condition of receiving the assistance, to raise money locally to pay for the cost of maintaining the facilities constructed with state assistance. Generally, the money must be raised by levying a one-half-mill property tax (equal to 0.05%, or \$1 for every \$2,000 in taxable value) for at least 23 years, but school districts levying a permanent improvement tax, certain other forms of school district property tax, or a school district income tax may apply the proceeds of that tax toward the maintenance levy requirement (so long as the purpose of the applied levy is not inconsistent with paying maintenance expenses). The maintenance levy requirement is in addition to, and separate from, each school district's local contribution to the construction costs of the building project.

The bill provides a supplemental payment to school districts that raise less local revenue per pupil than the average school district in the state, beginning July 2006. The effect of the payment is to allow each school district ranking below the statewide average in terms of property valuation per pupil to have as much maintenance money for its SFC-assisted project as the average school district in the state. Specifically, the supplemental payment equals the district's enrollment (formula ADM) multiplied by the difference between (1) the per-pupil revenue yield from a half-mill property tax throughout the state and (2) the district's per-pupil revenue yield from a half-mill property tax in the district.

The equalization payment also is available for school districts that have entered into a project agreement with the SFC before July 2006 if their per-pupil tax yield is below the state average. In such cases, the computation of the district's yield per pupil is made on the basis of the district's yield per pupil and the statewide average as of September 1, 2006.

The comparison of a school district's yield per pupil with the statewide average is determined at a single point in time, when the district comes up to the top of the ranking and enters into its project agreement with the School Facilities Commission. From that time forward until the 23-year maintenance levy requirement expires, no update of a district's relative yield per pupil is made, so the amount of the supplemental payment does not change even if the district's

relative yield per pupil increases or decreases, either because of subsequent changes in enrollment or property wealth.

The Department of Education must compute the statewide average yield per pupil and each school district's yield per pupil by July 1, 2006, and provide them to the School Facilities Commission. Then, by July 1 of each year beginning in 2007, the Department must recompute the statewide average yield per pupil and the yield per pupil of each school district that has entered into a project agreement and provide the resulting figures to the School Facilities Commission. The Commission must use those computations to determine eligibility for the equalization payments and the amount of those payments. Computations do not have to be made for school districts that have entered into an expedited local partnership program agreement until the district comes up to the top of the assistance rankings and thereby becomes eligible to receive building assistance.

Equalization payments are to be made in the fourth quarter of each fiscal year until a district's maintenance levy requirement expires. Districts must credit the payments to their Classroom Maintenance Facilities Fund and use the money only to pay for maintaining SFC-assisted facilities.

A special state fund is created from which equalization payments are to be made. The fund, to be named the "Half-mill Equalization Fund," is to receive transfers from the School District Property Tax Replacement Fund whenever the balance in the equalization fund is insufficient to make all the equalization payments or whenever there is a surplus in the replacement fund after all property tax replacement payments have been made. Under current law, surpluses in the replacement fund are to be distributed on a per-pupil basis among all school districts, including joint vocational school districts, and spent for capital improvements. If there is a surplus balance in the equalization fund after all equalization payments have been made, the School Facilities Commission may request that the Controlling Board transfer a "reasonable amount" of the surplus to the Public School Building Fund.

Interest accruing to balances in the equalization fund is to remain to the credit of the fund.

OHIO SCHOOLNET COMMISSION

- Eliminates the Ohio SchoolNet Commission effective July 1, 2005, and transfers its functions, assets, liabilities, and employees to an agency designated by the Governor, based upon recommendations of any task



force appointed by the Governor to consider issues of administrative reorganization.

Elimination of the Commission and transfer of functions to an agency designated by the Governor

(R.C. 3301.80 (repealed); R.C. 125.05, 183.28, 3314.074, 3317.06, 3317.50, 3317.51, 3319.22, and 3319.235; Sections 315.10 and 315.11)

The Ohio SchoolNet Commission is an independent state agency charged with providing financial assistance and technical services to school districts and community schools in the acquisition and implementation of education technology. Responsibilities of the Commission include making grants to districts and schools for the procurement of support services for their education technology and establishing model professional development programs to assist teachers in integrating technology into their classrooms. The Commission is made up of 13 members, although it employs an executive director to carry out the duties of the Commission.¹⁵⁷

Effective July 1, 2005, the bill eliminates the Ohio SchoolNet Commission and transfers its duties and authorities, assets, liabilities, and employees to an agency designated by the Governor, based upon recommendations of any task force appointed by the Governor to consider issues of administrative reorganization.¹⁵⁸ The Commission's responsibilities will be overseen by the chief administrator of the designated agency following the transfer.

After the transfer, the agency designate by the Governor assumes all ongoing business of the former Commission and the Commission's rules remain in effect until amended or rescinded by the agency. Employees of the former Commission must be transferred to the agency or dismissed according to task force recommendations approved by the Governor. Current Commission

¹⁵⁷ R.C. 3301.80 (repealed) and R.C. 3319.235. *The Commission consists of nine voting members and four nonvoting legislative members appointed by the President of the Senate and the Speaker of the House of Representatives. Voting members are the Superintendent of Public Instruction, Director of Budget and Management, Director of Administrative Services, Chairperson of the Public Utilities Commission of Ohio (PUCO), Director of the Ohio Educational Telecommunications Network Commission, and four members of the general public.*

¹⁵⁸ *Among the assets specifically cited by the bill to be transferred are vehicles and equipment assigned to Commission employees and records of the Commission.*

employees are in the unclassified service and, therefore, are not subject to the Collective Bargaining Law. Under the bill, all such employees who are reassigned to the designated agency maintain their status in the unclassified service. New employees hired by the agency after July 1, 2005, to handle the functions of the former Commission would also be in the unclassified service while employed in those positions.

The Director of Budget and Management must replace the Commission in any legal proceedings pending at the time of the transfer. The Director also may move cash balances between funds and cancel or re-establish encumbrances as needed to complete the transfer.

SECRETARY OF STATE

- Requires notary publics to provide the Secretary of State with notice of (1) any changes to a notary's name or address and (2) the effective date of a notary's resignation of commission.
- Makes a conforming change in the law that moved responsibility for the appointment and commission of railroad company and hospital police officers from the Governor to the Secretary of State.

Notary public name or address change and resignation

(R.C. 147.05, 147.10, 147.11, 147.12, and 147.371)

Existing law provides for the registration of notary publics with the Ohio Secretary of State, fees for obtaining a commission or a duplicate commission in the event of loss, a prohibition against acting after a commission has expired and a penalty, and a statement about the effect of an official act done after a commission has expired. The bill requires that a properly commissioned notary public notify the Secretary of State and the appropriate clerk of courts within 30 days after legally changing the notary's name or address on a form prescribed by the Secretary of State. The Secretary of State then must issue a duplicate commission as a notary public after receipt of the properly completed, prescribed name change form and a fee of \$2.

Under the bill, a notary, other than an attorney, who resigns a notary public commission must deliver to the Secretary of State, on a form prescribed by the Secretary of State, a written notice indicating the effective date of resignation.

The bill prohibits a notary public from performing notary acts knowing that the notary has resigned a commission, and specifies a penalty fine of up to \$500 for a violation. However, the bill also specifies that any official act done by a notary public after the notary resigns is valid as if done during the notary public's term of office.

Commissions for special police officers

(R.C. 4973.171)

Under continuing law, as amended by Am. Sub. H.B. 95 of the 125th General Assembly, the Secretary of State is authorized to appoint and commission police officers for banks and building and loan associations, railroad companies, certain companies under contract with the United States Atomic Energy Commission, and hospitals. Prior to Am. Sub. H.B. 95, the Governor was responsible for these appointments. (R.C. 4973.17, *not in the bill.*)

Current law prohibits a person from being appointed or commissioned as a railroad or hospital police officer if the person has been convicted of or pleaded guilty to a felony after January 1, 1997. However, this current provision states that the Governor (instead of the Secretary of State) is the officer responsible for ensuring that a felon is not appointed or commissioned as a railroad or hospital police officer. The bill conforms the provision to the previous statutory change that moved responsibility for the appointment and commission of railroad company and hospital police officers from the Governor to the Secretary of State, so that the Secretary of State is responsible for ensuring that a felon is not appointed or commissioned as a railroad or hospital police officer.

DEPARTMENT OF TAXATION

I. Commercial Activity Tax

- Imposes a new business privilege tax on the basis of the annual gross receipts of all forms of business organization having taxable gross receipts in excess of \$40,000, other than financial institutions, public utilities, dealers in intangibles, insurance companies, and nonprofit organizations with no unrelated business income.
- When fully phased in, the annual tax equals \$100 on taxable gross receipts up to \$1 million, plus 0.26% of taxable gross receipts in excess of \$1 million, with the percentage subject to upward or downward



adjustment if revenue departs by more than 10% from the target of \$815 million over the first two years.

- Devotes revenue to the state General Revenue Fund and, for the first 13 years, to reimburse school districts and other local taxing units for the exemption and phase-out of taxes on most business tangible personal property.

II. Corporation Franchise Tax

- Phases out the corporation franchise tax over five years for all corporations other than financial institutions.
- Clarifies the corporation franchise tax treatment of LLCs and other associations treated as corporations under federal tax law.

III. Personal Income Tax

- Reduces personal income tax dollar amounts and rates by 21% over five years, beginning in 2005.
- Delays yearly inflationary adjustments to the income tax bracket dollar amounts until 2010.
- Eliminates the existing personal income tax deduction for tuition and fees paid to postsecondary educational institutions located in Ohio.
- Creates a nonrefundable personal income tax credit for taxpayers having adjusted gross incomes (less exemptions) of \$10,000 or less.
- Makes taxation of trust income, which is currently scheduled to end with taxable years of a trust beginning in 2004, permanent.
- Establishes additional criteria for determining the extent to which a trust is a resident of Ohio for Ohio income tax purposes.
- Specifies that the existing income tax credit for Ohio residents who incur out-of-state income tax liabilities is not available to taxpayers who deduct, or are required to deduct, their out-of-state income tax liabilities in computing their income tax bases.

IV. Property Taxes and Transfer Fees

- Eliminates the 10% rollback for real property that is not classified by the county auditor as "qualifying property," which is lands and improvements thereon that are used for residential or agricultural purposes.
- Increases the real property transfer fee, from \$1, or 10¢ for each \$100 or fraction of \$100, whichever is greater, of the value of the real property, used manufactured home, or used mobile home transferred, to the greater of \$1 or 20¢ for each \$100 or fraction of \$100 of the value of that property or home transferred.
- Provides that the county auditor must deposit one-half of the transfer fee in the state treasury to the credit of the General Revenue Fund.
- Exempts newly installed machinery and equipment used in business from taxation, and phases out the taxation of existing business machinery and equipment by 2007.
- Accelerates the current phase-down of the taxation of business inventory, compressing it into a four-year phase-out.
- Reimburses school districts and other local taxing units for some of the revenue reductions caused by the bill's exemption and phase-out of machinery and equipment taxation and for the accelerated phase-out of inventory taxation.
- Makes most patterns, jigs, dies, and drawings subject to property taxation.
- Makes compensable reductions in the assessment rate on tangible personal property of electric companies.
- Requires businesses that supply electricity to others as an incidental line of business to report the portion of their electricity supplying-related property in the same manner as public utility electric companies, and to continue paying taxes on that portion of the property even if it otherwise would be subject to the phase-out of taxes on machinery and equipment.

- Reclassifies railroad track of a public utility railroad company as real property instead of tangible personal property, and transfers assessment authority of such tracks to county auditors.
- Accelerates the phase-out of state reimbursement for the \$10,000 business tangible personal property tax exemption, ending in fiscal year 2009, rather than fiscal year 2012.
- Establishes a procedure to determine how property tax replacement payments are to be made to school districts or joint vocational school districts that merge with or transfer territory to other districts.
- Changes the computation used to determine the amount of money deposited each year in the Property Tax Administration Fund.
- Allows the state, when it acquires property, to pay estimated taxes on the property at the time of acquisition rather than subsequent to the acquisition as in current law.

V. Sales and Use Taxes

- Establishes a permanent sales and use tax rate of 5½%, effective July 1, 2005.
- Establishes procedures to govern the transmission to the Treasurer of State of sales and use taxes collected by common pleas court clerks with applications for certificates of title for motor vehicles, watercraft, and outboard motors.

VI. Kilowatt-hour Tax

- Increases the kilowatt-hour tax by approximately 30% for all electric distribution companies, except self-assessors.
- Increases from 4% to 5% the percentage rate paid on the total price of all electricity distributed to a commercial or industrial self-assessor.
- Revises the percentages of kilowatt-hour tax revenues credited to the General Revenue Fund, Local Government Fund, Local Government Revenue Assistance Fund, School District Property Tax Replacement Fund, and Local Government Property Tax Replacement Fund.

VII. Tobacco and Alcohol Taxes

- Increases the existing cigarette excise tax from 27.5 mills (2.75¢) per cigarette to 50 mills (5¢) per cigarette, effective July 1, 2005.
- Increases the existing excise tax levied on tobacco products other than cigarettes from 17% to 30% of the wholesale price of the tobacco product, effective July 1, 2005.
- Doubles each of the existing taxes levied on the sale and distribution of wine, mixed beverages, cider, and beer effective July 1, 2005.

VIII. Other Taxation Provisions

- Reduces distributions to local governments from the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund.
- Constructively eliminates the additional estate "sponge" tax and generation-skipping tax provisions by revising references to the Internal Revenue Code in those provisions, so that they generally incorporate any federal estate tax changes that have been made since the last time those provisions were amended.
- Repeals the estate tax deduction for family-owned businesses.
- Adopts a general definition of the Internal Revenue Code for purposes of the state estate tax law.
- Clarifies what constitutes a taxpayer audit for the purposes of the time at which certain of a taxpayer's rights are invoked, by stating that an audit does not include providing information to a taxpayer, serving notice of an assessment, or conducting certain kinds of investigations, which do not involve a visit by a tax authority.
- Clarifies the treatment of expenses and losses of a pass-through entity subject to the pass-through entity withholding tax.
- Authorizes the Tax Commissioner to require a social security number, employer identification number, or other identifying information from persons filing documents with the Department of Taxation.

I. Commercial Activity Tax

New business privilege tax

(R.C. 140.08, 5703.052, 5703.053, 5703.70; Chapter 5751.; Section 557.09)

The bill imposes a new tax on businesses and other entities that generate business income, beginning July 1, 2005. The tax, referred to as the "commercial activity tax," is an excise tax for the privilege of doing business in Ohio (like the existing corporation franchise tax), but is imposed on the basis of gross receipts instead of net worth or net income. The bill prohibits taxpayers from billing any other person for the tax (but does not thereby prohibit taxpayers from recovering all or part of the expense of the tax as a cost of doing business).

The first tax return and tax payment are due February 10, 2006, based on gross receipts for the six-month period running from July 1 through December 31, 2005.

Persons subject to tax

(R.C. 5751.01)

The tax applies to any legal person with more than \$40,000 in annual taxable gross receipts in Ohio regardless of the person's legal or organizational form (e.g., corporation, partnership, limited liability company, S corporation, sole proprietor, business trust, estate, etc.), but does not apply to financial institutions, insurance companies, public utilities subject to the public utility excise tax, dealers in intangibles, or to nonprofit organizations that do not generate unrelated business income that is taxable for federal income tax purposes. If a nonprofit organization, including an organization operating a hospital, does generate federally taxable unrelated business income, the organization is taxed on the basis of the taxable gross receipts underlying that income.¹⁵⁹

In the first six months the tax is in effect, the \$40,000 exclusion applies to a person's taxable gross receipts during all of 2005.

¹⁵⁹ *Under federal income tax law, nonprofit organizations are taxed on income unrelated to their principal business, such as net income from a gift shop operated by a hospital.*

Computation of tax

(R.C. 5751.01, 5751.03, 5751.031, and 5751.032)

Initial rate. The tax is levied in two parts: on the first \$1 million in taxable gross receipts, the tax is \$100; on taxable gross receipts in excess of \$1 million, the tax is 0.26% (2.6 mills per dollar) of those taxable gross receipts, at least for the first two years the tax is imposed.

Rate adjustment. The 0.26% rate on taxable gross receipts in excess of \$1 million is subject to upward or downward adjustment if revenue during the first two years departs by more than 10% from the target revenue for the first two years of \$815 million. By September 30, 2007, the Tax Commissioner is required to compute a rate that would have produced the target revenue over the initial two years the tax was imposed.

Phase-in of tax. In recognition of the new tax being imposed at the same time as the bill phases out the corporation franchise tax (as explained elsewhere in this analysis), the bill phases in the tax for all taxpayers other than those having annual taxable gross receipts of less than \$1 million (and thus owing less than \$100) and choosing to pay the tax annually rather than quarterly (as explained below).

The tax becomes effective July 1, 2005. In the first six months of the tax, the tax equals \$50 on the first \$500,000 in taxable gross receipts during that period, plus 0.06% on taxable gross receipts in excess of \$500,000 during that period. (This rate results from multiplying the permanent 0.26% rate by 23%, which is the initial phase-in percentage--see immediately below--then rounding to the nearest hundredth per cent.)

In the first quarter of 2006, only 23% of the tax as normally computed is payable; for the four quarters running from April 2006 to April 2007, 40% of the normal tax is due; for the four quarters running from April 2007 to April 2008, 60% of the normal tax is due; for the four quarters running from April 2008 to April 2009, 80% of the normal tax is due; from April 2009 on, the tax is payable on the basis of the permanent computation of 0.26% (or the adjusted rate, as explained above).

"Taxable gross receipts"

(R.C. 5751.01 and 5751.02)

The tax applies to taxable gross receipts, which is the portion of a taxpayer's total gross receipts situated to Ohio under the bill's situsing provisions. Total gross receipts is defined broadly to include the total amount realized,

without deduction for the cost of goods sold or other expenses, in transactions from activities that contribute to the production of gross income. It includes the fair market value of any property and any services received and any debt transferred or forgiven as consideration, and the total amount realized with regard to unrelated business income of a tax-exempt organization. The bill specifies certain examples of gross receipts, including:

- Amounts realized from the sale, exchange, or other disposition of property
- Amounts realized from performing services
- Amounts realized from rentals, leases, or other use or possession of the taxpayer's property or capital

Taxpayers that are members of a commonly owned or controlled group of businesses must include their taxable gross receipts from sales or other transactions with other members of the group unless they elect to be treated on a consolidated basis (as explained below).

Gross receipts are to be calculated on an accrual, rather than cash, basis, unless the taxpayer is not required to use accrual basis accounting for federal income tax purposes. If a cash discount is allowed and is actually taken in a transaction, the discount is deductible from gross receipts. Likewise, the value of returns and similar allowances is deductible. And if a taxpayer is owed an uncollectible payment from a transaction that was previously included in taxable gross receipts the taxpayer previously paid tax on, the uncollectible amount is deductible as a bad debt. (The bill sets forth specific rules for what constitutes such a bad debt in R.C. 5751.01(E)(3)(c).)

Excluded amounts. The bill specifically excludes certain amounts from the calculation of gross receipts if they are not received in the ordinary course of the taxpayer's trade or business and are not a form of payment for a transaction contributing to the production of gross receipts, including:

- Interest income
- Dividends and distributions
- Receipts from assets for which capital gain treatment is given under federal law but without regard to the holding period

- Proceeds attributable to the repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or marketable instrument
- The principal amount received under a repurchase agreement or on account of any transaction properly characterized as a loan to the taxpayer
- Contributions received by a trust, plan, or other arrangement, any of which is described in section 501(a) of the Internal Revenue Code, or to any of the various pension and deferred compensation plans given favorable federal tax treatment
- Compensation received by an employee for services rendered to or for an employer, including fringe benefits and expense reimbursements
- Proceeds from the issuance of the taxpayer's own stock, options, warrants, puts, or calls, or from the sale of the person's treasury stock
- Proceeds on the account of payments from life insurance policies
- Gifts or charitable contributions, membership dues, and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; fundraising receipts if excess receipts are donated or used exclusively for charitable purposes; and proceeds received by a nonprofit organization except those proceeds realized with regard to its unrelated business income
- Damages in excess of amounts that, if received without litigation, would be gross receipts
- Property, money, and other amounts received or acquired by an agent on behalf of another in excess of the agent's commission, fee, or other remuneration
- Tax refunds and other tax benefit recoveries
- Pension reversions
- Contributions to capital



Also excluded from the calculation of gross receipts are any receipts the taxation of which is prohibited by the Ohio Constitution, the United States Constitution, or federal law.

Situsing receipts to Ohio. Only gross receipts sitused to Ohio are taxable. The bill prescribes specific situsing rules for various kinds of gross receipts. The following kinds of receipts are sitused to Ohio as follows:

- Gross rents and royalties from real property located in Ohio
- Gross rents and royalties from tangible personal property to the extent it is located or used in Ohio
- Gross receipts from the sale of real property located in Ohio
- Gross receipts from the sale of tangible personal property if the property is received in Ohio by the purchaser
- Gross receipts from the sale, exchange, disposition, or other grant of the right to use trademarks, trade names, patents, copyrights, and similar intellectual property to the extent the receipts are based on the amount of use of the property in this state; if receipts are based on the right to use property and the payor has the right to use the property in Ohio, receipts are sitused to Ohio to the extent they are based on the right to use the property in Ohio
- Gross receipts from the sale of services, and all other gross receipts not otherwise sitused as provided above, are sitused to Ohio in the proportion to the purchaser's benefit in Ohio as compared to the purchaser's benefit everywhere
- Gross receipts from the sale of electricity and electric transmission and distribution services are sitused in the same manner as under the corporation franchise tax (see R.C. 5733.059)

If the foregoing situsing rules do not fairly represent a taxpayer's gross receipts in Ohio, alternative rules may be applied with the Tax Commissioner's approval. The Tax Commissioner also may prescribe rules providing alternative situsing rules for all taxpayers or for a subset of taxpayers in a particular trade or business.

Use of revenue

(R.C. 5751.20 to 5751.22)

Revenue from the new commercial activity tax will be for the General Revenue Fund (GRF) and to reimburse school districts and other local taxing units for the phase-out of taxes from business machinery and equipment and for the acceleration in the phase-out of taxes from business inventories. Initially, revenue from the new tax is to be credited to the newly created Commercial Activities Tax Receipts Fund, and thence divided between the GRF and the newly created School District Tangible Property Tax Replacement Fund (SDRF) and Local Government Tangible Property Tax Replacement Fund (LGRF) in specified proportions until the end of fiscal year 2018, as follows:

Division of CAT revenue			
Fiscal Year	GRF	SDRF	LGRF
2006	83%	11.9%	5.1%
2007	37.3%	43.9%	18.8%
2008	27.7%	50.6%	21.7%
2009	36.2%	44.6%	19.1%
2010	41.8%	40.7%	17.5%
2011	36.8%	44.2%	19.0%
2012	40.0%	44.2%	15.8%
2013	42.9%	44.2%	12.8%
2014	45.7%	44.2%	10.1%
2015	48.2%	44.2%	7.6%
2016	50.6%	44.2%	5.2%
2017	52.8%	44.2%	3.0%
2018	54.8%	44.2%	1.0%
2019 and on	100%	0%	0%

The revenue credited to the School District Tangible Property Tax Replacement Fund and Local Government Tangible Property Tax Replacement Fund is to be used to provide the reimbursement to school districts and other local taxing units for the phase-out of taxes on business machinery and equipment and inventory, as explained under the heading "**Phase-out of tax on business machinery and equipment.**"

Tax credits

(R.C. 122.17, 122.171, 5751.50 to 5751.52, and 5751.98)

The bill permits four of the credits that currently apply to the corporation franchise tax and personal income tax to be applied against the new commercial activity tax, beginning in 2008:

- The refundable jobs creation credit (currently R.C. 122.17)
- The nonrefundable jobs retention credit (R.C. 122.171)
- The nonrefundable credit for qualified research expenses (R.C. 5733.351)
- The nonrefundable credit for research and development loan payments (R.C. 5733.352)

If a corporation or other person claims such a credit against the franchise or income tax, the person may not claim the same credit amount against the new tax.

Generally, the same terms and conditions that govern the credits under the corporation franchise tax and personal income tax law also govern the credits under the new tax law. One difference, however, is that some taxpayers will pay the new tax on a quarterly basis, and they may apply the credits against quarterly tax payments. However, any applicable limit on carryforward periods or on credit maximums are still on an annual basis, meaning they are not affected by the quarterly payment requirement of some taxpayers.

Registration and fee

(R.C. 5751.05(B) and 5751.11)

Every legal person subject to the new tax must register with the Tax Commissioner by November 15, 2005, or within 30 days after first becoming subject to the tax. The registration must be made on a form provided by the Commissioner that must include various items of information about the taxpayer (enumerated in R.C. 5751.05(B)).

A one-time \$15 registration fee is payable if the person registers electronically; if registration is not done electronically, the fee is \$20. If a person registers after the due date, an additional fee may be charged of up to \$100 per month, up to \$1,000. Persons that would otherwise be subject to the tax but that begin business after November 30 in any year are exempt from the fee, as are

persons that do not surpass the \$40,000 taxable gross receipts threshold as of December 1.

The registration fee may be waived by the Tax Commissioner. Fee collections are credited to a fund to defray the Commissioner's costs of administering the tax, including promoting awareness of the tax during its initial implementation.

The Tax Commissioner may revoke a registration if a taxpayer fails to comply with any requirement of the tax, but only after providing the taxpayer with 30 days' notice of intent to revoke and providing an informal hearing. If a taxpayer's registration is revoked, the taxpayer is barred from engaging in business in Ohio thereafter, and may not re-register without paying outstanding taxes, penalties, and interest. Nor may any other person holding at least a 10% interest in that taxpayer's business re-register or register anew unless those amounts are paid.

Any person required to have an active registration but that does not is prohibited from generating taxable gross receipts in Ohio; a violation may be prosecuted as a first degree misdemeanor for a first offense, or a fourth degree felony for subsequent offenses. Any person that fails to comply with the bill's registration, tax payment, fee payment, or tax filing requirements is prohibited from conducting business in Ohio. Violation of any provisions of the new chapter, other than the prohibition against generating taxable gross receipts without a registration, carries a fine of up to \$500 or imprisonment of up to 30 days, or both.

The Tax Commissioner is required to make an electronic list available to the public identifying registered taxpayers, as well as of persons whose registration has been revoked or cancelled within the preceding four years.

Consolidation of related taxpayers

(R.C. 5751.01(B), (G), and (H), and 5751.011)

The bill permits a group of commonly owned or controlled persons to elect to file and pay the tax on a consolidated basis in exchange for excluding otherwise taxable gross receipts from transactions with other members of the group. (Receipts may not be excluded, however, if the purchasing member uses the purchased good or service in Ohio.) Each member of the group remains jointly and severally liable for the tax and associated penalties and interest, and each member is subject to assessment.

Once made, the consolidation election means the group must file as a single taxpayer for eight consecutive calendar quarters so long as at least two members

satisfy the ownership and control criteria. The election rolls over to the following eight quarters unless the group cancels it before the expiration of the election. If a person is no longer under common ownership or control with the group, it must report and pay the tax as a separate taxpayer or as part of a combined taxpayer group (see below). If a person is added to the group after the election, it must be added to the consolidated group for the purpose of paying and reporting the tax on a consolidated basis, and the group must notify the Tax Commissioner of the addition with the next return filed. The exemption for taxpayers having taxable gross receipts of \$40,000 or less does not apply to consolidated taxpayers.

If a consolidation election is in effect for a group, the group must report and pay the tax on the basis of every member's taxable gross receipts, including members that do not have substantial nexus with Ohio. For this purpose, substantial nexus means a person satisfies at least one of the following criteria:

- It owns or uses a part or all of its capital in Ohio
- It holds a certificate of compliance authorizing it to do business in Ohio
- It owns or leases property in Ohio
- It has one or more individuals performing services in Ohio
- It has "bright-line presence" in Ohio (explained below)
- It otherwise has nexus with Ohio to the extent that the state may require the person to remit the tax under the United States Constitution.

The bill defines "bright-line presence" as any one of the following conditions:

- Having property in Ohio with an aggregate value of at least \$50,000 (where value equals original cost or, in the case of rented property, eight times the net annual rental charge)
- Having payroll in Ohio of at least \$50,000 (including any amount subject to Ohio income tax withholding and any other compensation paid to an individual under the supervision or control of the person for work done in Ohio)
- Having taxable gross receipts in Ohio of at least \$500,000

- Having in Ohio at least 25% of the person's total property, total payroll, or total sales
- Being domiciled in this state either as an individual or for corporate, commercial, or other business purposes.

The Tax Commissioner may require one of the members of a consolidated group to undertake the registration and tax payment requirements on behalf of the group. The registration fee is \$20 for each member of the group, up to a maximum per-group fee of \$200. The consolidation election must be made on a form prescribed by the Tax Commissioner, and must be accepted by the Commissioner if the group satisfies the criteria for making such an election.

Combined taxpayer group

(R.C. 5751.012)

Any group of persons subject to the new tax and also being under common ownership or control, but not electing to be treated as a consolidated taxpayer group, will be treated as a "combined taxpayer" group. Like a consolidated taxpayer group, a combined taxpayer group must report and pay the tax as a single taxpayer, and each member of the group is jointly and severally liable for the group's tax and any associated penalty and interest and is individually subject to assessment. A combined group must register as a group and is subject to the same \$20 per member registration fee as a consolidated group, up to a maximum of \$200. And the exemption for taxpayers having taxable gross receipts of \$40,000 or less does not apply to combined taxpayers. However, unlike members of a group making the consolidation election, members of a combined taxpayer group may not exclude receipts arising from transactions between the members.

Tax periods

(R.C. 5751.04)

The new commercial activity tax is an annual tax, but taxpayers generating annual taxable gross receipts of \$1 million or more are required to pay the tax on a quarterly basis. Such taxpayers are referred to as "calendar quarter taxpayers." They must report and pay the tax within 40 days after the end of each quarterly period, which follows the calendar quarters: January through March, April through June, July through September, and October through December. The Tax Commissioner is authorized to approve alternative filing and payment schedules for a taxpayer if the taxpayer shows the need for an alternative. The Tax Commissioner also can adopt alternative filing and payment rules for groups of taxpayers without the taxpayers seeking approval.

Taxpayers having estimated annual taxable gross receipts of less than \$1 million may report and pay the tax on a calendar year basis, but only if the taxpayers make an election to do so. Such taxpayers are referred to as "calendar year taxpayers." The tax report and payment is due within 40 days after the end of the calendar year. Once a calendar year taxpayer's annual taxable gross receipts reach \$1 million, the taxpayer must begin to report and pay on a quarterly basis in the following year, and must continue to do so until the taxpayer again qualifies for annual reporting and payment and receives written approval to do so from the Tax Commissioner.

General administration

(R.C. 5751.05, 5751.06, 5751.07, 5751.08, 5751.081, 5751.09, 5751.10, 5751.11, and 5751.12)

Payments. Tax payments must be made either quarterly or annually, depending on the taxpayer's status as a quarterly taxpayer or annual taxpayer. Calendar quarter taxpayers must make payments electronically and, if the Tax Commissioner requires, file returns electronically. Such taxpayers may be excused from the electronic filing and payment requirement by applying to the Tax Commissioner, who may excuse taxpayers for good cause.

Penalties and interest. Penalties are imposed for not filing and paying the tax or for not filing and paying on time. The penalty for late filing and payment is up to \$50 or 10% of the amount due, whichever is greater. In the case of underpaid tax, the penalty is up to 15% of the underpayment, including in those cases where payment is made after the taxpayer is notified of the deficiency by the Tax Commissioner. Penalties also may be imposed if taxpayers required to file and pay electronically fail to do so. The penalty is up to 5% of the payment due for the first two occasions, and 10% for subsequent occasions.

A penalty also may be imposed if a taxpayer fails to switch from being a calendar year taxpayer to a calendar quarter taxpayer once the taxpayer's annual taxable gross receipts exceeds \$2 million (giving such taxpayers a \$1 million margin of error). The penalty may be up to 10% of the amount of taxable gross receipts over \$2 million.

A penalty is imposed on persons who have been notified of the registration requirement but that fail to register within 60 days. The penalty is up to 35% of the tax found to be due.

Interest accrues against unpaid amounts at the normal statutory rate of 3 percentage points above the current yield on marketable United States government securities having a remaining maturity of three years or less. The interest accrues

from the due date to the time the tax is paid or an assessment is issued, whichever occurs first.

The Tax Commissioner is authorized to waive penalties, but not interest, and is authorized to adopt rules governing waiver of penalties.

Refunds. Refunds are available for overpaid, illegal, or erroneously paid taxes. Refunds must be applied for within the four-year statute of limitations on the issuance of assessments. Interest accrues on refund amounts at the same rate as it accrues on underpayments. Refunds also may be issued to a taxpayer that, "because of the operation of that taxpayer's business operations," is not able to exclude the full \$1 million excludable annually from the 0.26% tax on receipts above \$1 million. A refund may not be issued to any registered taxpayer for the \$100 tax on the first \$1 million in annual receipts unless the taxpayer cancels the registration before February 10 of the current year.

As with other taxes, refunds must be offset for various debts to the state, including unpaid workers compensation premiums, unemployment compensation contributions, unpaid motor vehicle fees, and incorrect medical assistance payments.

Anyone who files a fraudulent refund claim is subject to a fine of up to \$1,000 or imprisonment for up to 60 days or both.

Assessments. As with other taxes, the Tax Commissioner may issue assessments for unpaid or unreported commercial activity taxes. The assessment provisions are substantially the same as for other state taxes, except the statute of limitations for issuing an assessment is four years unless fraud or failure to file is involved, in which case there is no time limit. (For comparison, the limit under the corporation franchise tax is three years except for fraud or failure to file, and the limit for personal income taxes is four years except for fraud or failure to file.) Also, since the commercial activity tax is based on gross receipts, the Tax Commissioner may use sampling in conducting an audit of a taxpayer.

Winding-up obligations. Taxpayers quitting business or transferring their business to another person must pay the commercial activity tax and file a return within 15 days afterwards. The purchaser or other successor, if there is such a person, must withhold enough money from the purchase money to cover the tax obligation until the former owner produces a receipt showing payment of the tax due or a certificate showing no tax is due. The purchaser is liable for any unpaid tax due.

Recordkeeping. The bill authorizes the Tax Commissioner to prescribe recordkeeping requirements applicable under the commercial activity tax.



Information is confidential taxpayer information, except for the listing of registered taxpayers.

Challenging legality of tax's application

(R.C. 5751.31)

The bill provides for taxpayer appeals directly to the Ohio Supreme Court when the Tax Commissioner issues a final determination in response to a taxpayer's challenge of an assessment and the primary issue raised by the taxpayer is the constitutionality of the bill's "bright-line presence" provision as a standard conferring Ohio nexus status on a person. (See R.C. 5751.01(G)(5), as explained under the heading "Consolidation of related taxpayers," above.) The appeal must be made within 30 days after issuance of the final determination.

If the bill's bright-line presence standard is ruled unconstitutional under the Ohio Constitution or United States Constitution, the bill authorizes the Tax Commissioner to require taxpayers having taxable gross receipts in Ohio to provide a report detailing purchases they make from persons that are not registered to collect the commercial activity tax.

II. Corporation Franchise Tax

Phase-out of corporation franchise tax

(R.C. 5733.01(G))

The bill phases out the corporation franchise tax over five years, beginning with tax year 2006, for all corporations other than banks and other financial institutions, which will continue to be subject to the franchise tax on the basis of their net worth (at a rate of 1.3%).

The phase-out begins with tax year 2006, and the tax is eliminated for nonfinancial corporations beginning in 2010. The phase-out is made in even increments over the intervening five years. In 2006, corporations will owe the greater of the minimum tax (which is \$50 or \$1,000, depending on a corporation's employment level and gross receipts)¹⁶⁰ or 4/5 of the tax they would otherwise owe under current law after deducting nonrefundable credits. If a corporation has refundable credits for the year, or is entitled to the credit for taxes paid on its behalf by a partnership of which it is a partner, the refundable or partnership credit

¹⁶⁰ The \$1,000 minimum tax applies to any corporation having at least 300 employees or worldwide gross receipts of \$5 million or more.

is subtracted from the reduced tax.¹⁶¹ Likewise, in 2007, corporations owe the greater of the minimum tax or 3/5 of the tax they otherwise would owe after deducting nonrefundable credits. Refundable credits and the partnership credit are subtracted from that amount. The fractions decline in 2008 to 2/5 and in 2009 to 1/5, and any refundable credits and the partnership credit are subtracted in the same fashion in each of those years.

The corporation franchise tax has been in place in one form or other since 1902. Originally a tax on net worth, in 1971 it was converted to a tax computed on the basis of net worth or net income, with taxpayers owing tax on whichever computation yields the higher tax. Currently, the rate of tax on general business corporations is 0.4% of net worth or 8.5% of net income (5.1% on the first \$50,000).

Some noncorporations treated as corporations

(R.C. 5733.01(E))

The bill clarifies that any entity that is taxed as a corporation under federal income tax law (such as some limited liability companies) also is to be treated as a corporation under Ohio's corporation franchise tax law. Although this principle is stated in current law, the bill makes it clear that any equity stake in such an entity (such as a membership interest in such an LLC) is to be treated in the same manner as owning capital stock of a corporation for the purposes of the aspects of the franchise tax law referring to capital stock of corporations.

III. Personal Income Tax

Tax rates reduced uniformly by 21%

(R.C. 5747.02(A))

Current law establishes nine income tax brackets, each with a corresponding tax dollar amount and tax rate. The current income brackets and applicable tax dollar amounts and tax rates for each bracket is as follows:

¹⁶¹ *The partnership credit, known as the "qualifying pass-through entity tax credit," is a credit for taxes paid by a partnership or other pass-through entity on behalf of a corporation that is a partner or owner of a pass-through entity doing business in Ohio, but which itself does not have any taxable business presence in the state. A withholding tax is imposed on the partnership or entity to ensure that the corporation satisfies its franchise tax obligation. The corporation then is credited with the tax paid on its behalf by the entity against the corporation's individual franchise tax obligation.*

Taxable income	Tax
\$5,000 or less	.743%
More than \$5,000 but not more than \$10,000	\$37.15 plus 1.486% of the amount in excess of \$5,000
More than \$10,000 but not more than \$15,000	\$111.45 plus 2.972% of the amount in excess of \$10,000
More than \$15,000 but not more than \$20,000	\$260.05 plus 3.715% of the amount in excess of \$15,000
More than \$20,000 but not more than \$40,000	\$445.80 plus 4.457% of the amount in excess of \$20,000
More than \$40,000 but not more than \$80,000	\$1,337.20 plus 5.201% of the amount in excess of \$40,000
More than \$80,000 but not more than \$100,000	\$3,417.60 plus 5.943% of the amount in excess of \$80,000
More than \$100,000 but not more than \$200,000	\$4,606.20 plus 6.9% of the amount in excess of \$100,000

The bill reduces the rates and amounts within each bracket by a total of 21% over five years, beginning with taxable years beginning in 2005, in nearly even per-year increments. The resulting tax brackets for 2009 and thereafter are as follows:

Taxable income	Tax
\$5,000 or less	.587%
More than \$5,000 but not more than \$10,000	\$29.35 plus 1.174% of the amount in excess of \$5,000
More than \$10,000 but not more than \$15,000	\$88.05 plus 2.348% of the amount in excess of \$10,000
More than \$15,000 but not more than \$20,000	\$205.45 plus 2.935% of the amount in excess of \$15,000
More than \$20,000 but not more than \$40,000	\$352.20 plus 3.521% of the amount in excess of \$20,000
More than \$40,000 but not more than \$80,000	\$1,056.40 plus 4.109% of the amount in excess of \$40,000

Taxable income	Tax
More than \$80,000 but not more than \$100,000	\$2,700.00 plus 4.695% of the amount in excess of \$80,000
More than \$100,000 but not more than \$200,000	\$3,639.00 plus 5.451% of the amount in excess of \$100,000
More than \$200,000	\$9,090.00 plus 5.925% of the amount in excess of \$200,000

For each taxable year beginning after 2009, the income tax dollar amounts and rates are the same as for taxable years beginning in 2009.

Inflation adjustments delayed

(R.C. 5747.02(A))

Under existing law, beginning in July of 2005, the Tax Commissioner is to make yearly adjustments to each of the existing tax bracket income amounts to account for general price inflation. The bill postpones commencement of these yearly adjustments until 2010.

Deduction for qualified tuition and fees eliminated

(R.C. 5747.01(A)(18))

Existing law permits taxpayers to take a deduction for certain tuition costs and fees paid by them on their own behalf or on behalf of a spouse or dependent during the taxable year. The deduction is available for tuition and fees paid to a state university or other postsecondary institution located in Ohio. For taxpayers enrolled in a full-time course of study, the deduction is available for tuition and fees paid in each of the first two years of postsecondary education. For taxpayers enrolled part-time, the deduction is available for tuition and fees paid for the academic equivalent of the first two years of postsecondary education during a maximum of five taxable years. The total amount of tuition and fees that may be deducted by a taxpayer for all taxable years is \$5,000. The deduction is not available to individuals filing a joint return showing a combined federal adjusted gross income¹⁶² greater than \$100,000 and is not available to single filers having federal adjusted gross income in excess of \$50,000.

¹⁶² A taxpayer's Ohio adjusted gross income, which is the income tax base from which Ohio income tax liability is calculated, is calculated on the basis of the taxpayer's federal adjusted gross income (R.C. 5747.01(A)).

The bill eliminates the deduction for tuition and fees. The bill provides that the deduction is not available for any taxable year beginning after December 31, 2005.

Credit for low-income taxpayers created

(R.C. 5747.056, 5747.08, and 5747.98)

The bill creates a nonrefundable¹⁶³ credit for individuals whose Ohio adjusted gross income (less exemptions) does not exceed \$10,000. The amount of the credit varies depending upon the taxable year for which it is claimed. For taxable years beginning in 2005, the credit equals \$107. For taxable years beginning in 2006, the credit equals \$102. For taxable years beginning in 2007, the credit equals \$98. For taxable years beginning in 2008, the credit equals \$93. For taxable years beginning in 2009 or thereafter, the credit equals \$88.

Taxation of trust income made permanent

(R.C. 5747.01 and 5747.02(B))

Under existing law, the income tax applies to trusts for only three taxable years; namely, the taxable years of a trust beginning in 2002, 2003, and 2004. Thus, under existing law, the last year in which trusts are subject to the personal income tax is the taxable year of a trust beginning in 2004. The bill makes application of the personal income tax to trusts permanent, beginning with taxable years beginning in 2005.

Trust residency rules

(R.C. 5747.01(I)(3)(a)(iii) and (I)(3)(d)(iii))

The residency of a trust determines the extent to which the trust's nonbusiness income is taxable by Ohio. If a trust is not a resident trust, it is entitled to a credit for taxes paid to another state on the nonbusiness income.

Under continuing law, a trust is considered a resident trust to the extent it consists of assets transferred under any of the following three conditions:

¹⁶³ A "nonrefundable" credit is a credit that can be claimed by a taxpayer only to the extent the amount of the credit does not exceed the taxpayer's tax liability. If a nonrefundable credit exceeds a taxpayer's tax liability, the taxpayer is not entitled to a refund of the excess.

(1) With respect to certain testamentary and irrevocable inter vivos trusts, the assets were transferred by a person, a court, or a governmental entity or instrumentality on account of the decedent-transferor's death;

(2) The assets were transferred by a person domiciled in Ohio (for Ohio income tax purposes) at the time of transfer, provided at least one of the trust's beneficiaries is domiciled in Ohio (for Ohio income tax purposes) during some portion of the trust's current taxable year;

(3) The assets were transferred by a person domiciled in Ohio (for Ohio income tax purposes) when the trust became irrevocable, but only if at least one of the trust's beneficiaries was an Ohio resident (for Ohio income tax purposes) during some portion of the trust's taxable year.

The bill specifies that with respect to (3) above, a trust is considered a resident trust even when the trust became irrevocable upon the death of a person domiciled in Ohio (for Ohio income tax purposes).

Under continuing law, the extent to which a trust consists of assets transferred to it from any of the sources enumerated in (1), (2), and (3) above is ascertained by multiplying the fair market value of the trust's assets by a "qualifying ratio"¹⁶⁴ that is based, generally, on the relationship of the fair market value of the transferred assets at the time of transfer to the fair market value of all of the trust's assets at that time. The bill provides that the domicile of a trust's beneficiaries is not to be taken into account in this computation insofar as the sources are as described in (2) or (3) above.

Credit for a resident's out-of-state income tax liability disallowed if the out-of-state income tax liability is deducted in computing the resident's tax base

(R.C. 5747.01 and 5747.05)

Continuing law allows a credit 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 the following:

¹⁶⁴ *The first time the trust receives assets, the numerator of the qualifying ratio is the fair market value of those assets at that time and the denominator is the fair market value of all of the trust's assets at that time. Each subsequent time the trust receives assets the numerator of the qualifying ratio is the sum of (1) the fair market value of the trust's assets immediately prior to the subsequent transfer multiplied by the last qualifying ratio computed, and (2) the fair market value of the subsequently transferred assets at the time transferred. The denominator is the fair market value of all of the trust's assets immediately after the subsequent transfer.*

(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 tax base from which Ohio income tax liability is calculated, Ohio adjusted gross income, is defined under continuing law as a taxpayer's federal adjusted gross income, adjusted as prescribed under continuing Ohio law. Thus, a taxpayer's Ohio income tax base is derived from the taxpayer's federal adjusted gross income.

The bill provides that the credit for income taxes paid by Ohio residents to other states or the District of Columbia is not available to any taxpayer who 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. Thus, the bill precludes a resident taxpayer from claiming the credit when the taxpayer deducted, or should have deducted, the out-of-state income taxes in computing the taxpayer's federal income tax base. Because Ohio's income tax base is derived from the federal income tax base, the effect of the bill is to preclude a resident taxpayer from taking, for state income tax purposes, a deduction for out-of-state income taxes and also claiming a credit with respect to those taxes.

IV. Property Taxes and Transfer Fees

Elimination of the 10% rollback in real property taxes for certain real property

(R.C. 319.302 and 323.152; Section 557.15)

Under current law, all real property, and manufactured and mobile homes that are treated as real property for purposes of property taxation, receive a reduction of 10% of the property tax bill (known as the "rollback"). Beginning in tax year 2006, the bill requires that the county auditor classify each parcel of real property according to its principal, current use, and apply the 10% rollback only to property that is classified as "qualifying property" or to manufactured or mobile homes. Under the bill, only lands and improvements thereon that are used for residential or agricultural purposes may be classified as "qualifying property." All other lands and improvements thereon, and minerals or rights to minerals, will no longer receive the rollback. The bill requires that the Tax Commissioner adopt

rules governing this classification of property, and no property may be classified except in accordance with those rules.

Under the bill, the county auditor also must reclassify each parcel of real property whose principal, current use has changed from the preceding year to reflect the use of the property as of January 1 of the current tax year.

Continuing law provides for the reduction of real property taxes on homesteads and manufactured home taxes on manufactured or mobile homes, in an amount equal to $\frac{1}{4}$ of the amount by which taxes are reduced under the 10% rollback (which equals 2½%). The bill replaces this equation with language that simply states that to provide a partial exemption, real property taxes on homesteads and manufactured home taxes on manufactured or mobile homes is 2½% of the amount of taxes to be levied on the homestead or home.

Increase in real property transfer fee

(R.C. 319.54; Section 557.18)

Continuing law requires that county auditors charge fees for transferring real property or used manufactured or mobile homes. Currently, the fee is \$1, or 10¢ for each \$100 or fraction of \$100, whichever is greater, of the value of the real property, used manufactured home, or used mobile home transferred.

The bill increases the fee to the greater of \$1, or 20¢ for each \$100 or fraction of \$100 of the value of the property or home transferred. The increase applies to any conveyance of real property presented to the county auditor on or after July 1, 2005, regardless of its time of execution or delivery. The bill requires that the county auditor deposit the greater of \$1 or one-half of the fee in the county treasury to the credit of the county general fund, and deposit the balance in the state treasury to the credit of the General Revenue Fund (GRF). The deposit to the credit of the GRF must be made by the 15th day of the month following the date the fee was received by the county auditor. If the county auditor fails to make the deposit by that time, the Tax Commissioner may withhold Local Government Fund money allocated to the county until such time the deposit is made.

Phase-out of tax on business machinery and equipment

(R.C. 5711.21, 5711.22, 5727.02, 5727.031, and 5727.06)

Exemption of new business machinery and equipment

The bill exempts from property taxation all machinery and equipment used in business that is installed (or otherwise first used in business in Ohio) after the end of 2004. The exemption applies to all such property if it was not used in



business before 2005 by the property's owner or by a related member or predecessor of the owner, unless the property was the inventory of the owner, related member, or predecessor (in which case the property is subject to the phase-out described below).

Phase-out of tax on existing business machinery and equipment

For machinery and equipment used in business in Ohio before the end of 2004, taxation of the property is phased out over two years so that the property will be totally exempt in 2007 and thereafter. In 2005, the property will be taxed on 25% of its value, as provided under current law. In 2006, it will be taxed on 12-1/2% of its value. In 2007 and thereafter, it will be exempted from taxation entirely.

Accelerated phase-out of tax on business inventory

The bill accelerates the current phase-down of the taxation of business inventory. Currently, taxes on business inventory is being phased out over several years according to a schedule that is contingent, during the first few years, on a trigger requiring increasing statewide property tax collections, and that provides for an automatic two percentage point-per-year reduction in the assessment rate after 2006. Currently, the assessment rate has been reduced from 25% to 23%; the phase-down of the assessment rate has not operated for two consecutive years because statewide property tax collections have not increased year-on-year for two years.

The bill dispenses with the current triggering mechanism and the two-percentage-point automatic phase-down and replaces them with a compressed phase-down schedule, eliminating taxes on business inventory by 2010. Under the compressed phase-down, the assessment rate for 2005 and 2006 remains at 23%. In 2007, the rate declines to 21%, then to 14% in 2008, 7% in 2009, and 0% in 2010 and thereafter, effectively repealing the taxation of business inventory after 2009.

Reimbursement of local taxing units

(R.C. 5751.21 to 5751.22)

The bill provides reimbursement to school districts and other local taxing units for some of the net revenue reduction that would result from the bill's exemption of newly installed machinery and equipment, phase-out of existing machinery and equipment, and the accelerated business inventory phase-out. Reimbursement is to be paid to school districts and joint vocational school districts from the newly created School District Tangible Property Tax Replacement Fund,

and to other local taxing units through the newly created Local Government Tangible Property Tax Replacement Fund. These funds are to be funded by a portion of the Commercial Activity Tax proposed by the bill. The bill prescribes specific computations and procedures for the Tax Commissioner and the Department of Education to implement the reimbursement.

School districts. Generally, the reimbursement for school districts (including joint vocational school districts) is based on the net revenue effect of the bill's property tax exemption and phase-outs after offsetting the increased state funding school districts receive when their taxable property values decline, and disregarding the effects of the previously enacted phase-down of business inventory taxes. The revenue effect of the previously enacted inventory tax phase-out is essentially subtracted from the revenue effect of the bill's exemptions and phase-outs, meaning the bill does not reimburse districts for revenue losses resulting from the previously enacted phase-down. (Nor does current law provide direct reimbursement for the previously enacted phase-down.) For the same reason, the state education aid offset incorporated in the bill's reimbursement formula does not offset state aid increases to the extent those increases result from the previously enacted inventory tax phase-down. In other words, the bill's reimbursement provision reimburses only for net revenue losses resulting from the bill's tax changes, disregarding previously enacted changes.

The reimbursable net revenue losses generally are computed on the basis of school district levies in effect in 2005 (so long as the levy was approved by voters before September 1, 2005). In the case of levies raising a fixed sum of money, such as bond levies and emergency levies, reimbursable losses are computed for as long as the district continues to impose the levy after 2005 and through 2018, including, in the case of emergency levies only, any renewals for the same amount as the original emergency levy minus the 2006 reimbursement amount. The total reimbursement for all fixed-sum levies imposed over the same territory is to within 1/2-mill worth of the reimbursable loss. The unreimbursed 1/2-mill is divided among the overlapping school districts and local taxing units in proportion to the relative rates of their reimbursable fixed-sum levies. For example, if a school district's fixed-sum levies constitute 60% of all reimbursable fixed-sum levies over a territory, 60% of the unreimbursed 1/2-mill (0.30 mills) is not reimbursed to the school district. Instead, the rate of the district's fixed-sum levies will increase by a total of 0.30 mills, and the total of the other overlapping taxing units' levies will increase by the remaining 0.20 mills.

Reimbursement for fixed-rate levies is to be paid in declining amounts through the end of fiscal year 2018. Fixed-sum levies and unvoted millage for debt are fully reimbursed through the end of fiscal year 2017. Reimbursement

payments are to be made quarterly in February, May, August, and November, beginning May 2006.

Other taxing units. Reimbursement to local taxing units other than school districts and joint vocational school districts is similar in concept to the school district reimbursement except there is no offset for increases in state aid. Accordingly, local taxing units are reimbursed for the net revenue losses caused by the bill's exemption of newly installed machinery and equipment, the phase-out of taxes on existing machinery and equipment, and the incremental revenue loss from the accelerated phase-out of taxes on inventory. Revenue losses from the previously enacted phase-down of inventory taxes are not reimbursed. Levies qualify for reimbursement under the same terms as for school district levies, except local taxing units do not impose emergency levies of the sort that school districts may impose. Reimbursement for fixed-rate levies is to be paid in declining amounts through the end of calendar year 2017. Fixed-sum levies and unvoted millage for debt are to be fully reimbursed through 2017. Reimbursement payments are to be made quarterly in February, May, August, and November, beginning May 2006.

Elimination of the tax exemption for patterns, dies, jigs, and drawings

(R.C. 5701.03)

The bill terminates the existing tax exemption for certain kinds of tangible personal property. Under current law, patterns, jigs, dies, and drawings that a person holds for their own use and not for selling to others in the course of their business (including as inventory) are not taxable. The bill terminates the exemption after the end of tax year 2005, making the property taxable beginning in 2006.

Such property becomes taxable whether it is held by a business or a public utility, but an exemption remains for the cost of drawings used by most public utilities and all interexchange telecommunications companies, so long as the drawings are used to provide the utility's or company's services. To qualify for the continued exemption, the cost of the drawings must be documented. The continued exemption does not apply to drawings of electric companies or of combined companies acting as electric companies.

Reduction in assessment rate on public utility property

(R.C. 5727.01 and 5727.111)

In recognition of the terminated exemption for patterns, jigs, dies, and drawings, the bill reduces the assessment rate on electric company tangible

personal property. Currently, most electric companies' transmission and distribution equipment is taxed on 88% of its value and their other property is taxed on 25% of value. The bill reduces the 88% assessment rate for transmission and distribution equipment to 85% and reduces the 25% assessment rate for all other property to 24%. The reductions take effect beginning in tax year 2006.

The bill does not change the current assessment rates on the property of rural electric companies, which are cooperatives and other organizations providing electricity to their members, primarily in rural communities.

Tax treatment of nonutility electricity providers

(R.C. 5711.21, 5711.22, 5727.02, and 5727.031)

Currently, when a business other than an electric company generates or distributes electricity for its own use, as in large manufacturing operations, and provides electricity to others (for example, when excess capacity is available), the property used to generate or distribute the electricity is treated, in effect, as partly business property and partly public utility property. This treatment recognizes that the method of deriving the value of public utility property and business property differs, as do the respective assessment rates. Under current law, the value of the property is divided into two parts each year on the basis of the relative percentage of the electricity used by the generator and by anyone else in the previous year. The part attributed to the generator is valued and assessed like business property (at 25%), and the part attributed to generation for others is treated as electric company property; i.e., the transmission and distribution component of that part is valued and assessed like that of electric companies (at 88%), and the generation component is valued and assessed like that of electric companies (at 25%).

Under the bill, businesses that generate electricity and supply some of it to others, but whose primary business is not supplying electricity, will continue to be taxed on their electricity-related property in the same manner as under current law. However, because much of the part of that property attributed to the business's own electricity use will no longer be taxable after 2009 (because of the bill's phase-out of tax on business machinery and equipment), the business will be required to report its electricity-related property as an electric company does. Its report will have to contain only the part of the value of the property attributed to supplying electricity to others (determined on the basis of the relative percentage of electricity supplied to others, as in current law). The reportable property will continue to be determined and assessed as under current law--i.e., in the same manner as for the equivalent electric company property--but at the bill's new assessment rates: 85% for transmission and distribution property, and 25% for all other property.

Railroad property

(R.C. 5701.03, 5713.01, 5727.06, and 5727.12)

Currently, railroad tracks owned and operated by a railroad company are classified as a business fixture rather than real property. Business fixtures are taxed as a form of tangible personal property instead of real property, even though they may have many of the attributes of real property, primarily in terms of relative permanence as a feature of land.

The bill reclassifies railroad tracks owned and operated (or leased) by a railroad company as real property, rather than as business fixtures, beginning in 2006. Accordingly, county auditors will become responsible for appraising and assessing such tracks beginning in 2006, in lieu of the Tax Commissioner.

Leased property

(R.C. 5711.21, 5711.22, and 5727.06)

Currently, property owned by someone other than a public utility or interexchange telecommunications company but leased by that person to a public utility or interexchange telecommunications company is valued and assessed as if it were owned by the public utility or interexchange telecommunications company.

Such leased property would continue to be treated in this manner, but, from tax year 2006 and thereafter, it would have to be reported by the public utility or interexchange telecommunications company leasing the property, instead of the lessor.

Accelerate phase-out of state reimbursement for \$10,000 business property exemption

(R.C. 321.24(G))

Continuing law exempts the first \$10,000 of a business's tangible personal property from property taxation (R.C. 5709.01(C)(3)). Currently, the state reimburses local taxing districts for the resulting revenue reduction, but Am. Sub. H.B. 95 of the 125th General Assembly phases-out the state's reimbursement for the exemption, over ten years. Under the phase-out, county treasurers receive a payment each year from the General Revenue Fund that is a reduced percentage of the county's fiscal year 2003 reimbursement. The payment is then apportioned among the county's taxing districts as if levied and collected as personal property taxes. No further reimbursements are to be paid after fiscal year 2012.

The bill accelerates the phase-out period so that no reimbursement payments are made after fiscal year 2009.

School district property tax replacement payments when mergers occur

(R.C. 5727.85)

Under continuing law, school districts and joint vocational school districts receive property tax replacement payments to offset the loss of revenues that occurred when the assessment rates on the tangible personal property of rural electric companies, electric companies, and natural gas companies were reduced. Those replacement payments come from a portion of the kilowatt-hour and MCF tax revenues, and are based on a district's fixed-rate levy loss and fixed-sum levy loss. The bill establishes a procedure to determine how payments are to be made to those districts that merge with or transfer territory to other districts, as follows:

Type of merger or transfer of territory:	Fixed-rate levy loss:	Fixed-sum levy loss:
Complete merger of two or more districts	Successor district receives the sum of the fixed-rate levy losses for each district merged.	Successor district receives the sum of the fixed-sum levy losses for each district merged.
Transfer of part of a district's territory to an existing district	Recipient district receives the transferring district's total fixed-rate levy loss times a fraction, with the numerator being the value of electric company tangible personal property in the part of the territory transferred, and the denominator being the total value of that property in the entire district from which the territory was transferred.	The Department of Education makes an equitable division of the fixed-sum levy losses for both districts, if the recipient district takes on debt from the other district.
Transfer of part of one or more districts' territory to form a new district between January 1, 2000, and January 1, 2005	New district receives just its current fixed-rate levy loss through August 2006. From February 2007 to August 2016, the new district receives the lesser of (1) an amount determined using existing law's calculation of the district's state education aid and inflation-adjusted property tax loss, or (2)	The Department of Education makes an equitable division of the fixed-sum levy losses for all the districts, if the new district takes on debt from the other district(s).



Type of merger or transfer of territory:	Fixed-rate levy loss:	Fixed-sum levy loss:
	the amount determined for local taxing units, which is phased-out per a schedule under existing law.	
Transfer of part of one or more districts' territory to form a new district on or after January 1, 2005	New district does not receive any fixed-rate levy loss. The transferring district(s) continue to receive their current fixed-rate levy loss.	New district does not receive any fixed-sum levy loss, unless it takes on debt from the other district(s), in which case the Department of Education makes an equitable division of the losses for the districts.

The bill also changes one of the dates by which the Director of Budget and Management must transfer amounts from the School District Property Tax Replacement Fund to the General Revenue Fund, from February 2017 to May 2017.

Computation used to determine amounts deposited each year in the Property Tax Administration Fund changed

(R.C. 321.24 and 5703.80)

Continuing law provides for a percentage of real property tax rollback reimbursements to local governments to be diverted to a special fund known as the Property Tax Administration Fund to be used by the Department of Taxation to defray its costs of administering property taxation and of equalizing real property. The Department oversees the equalization of real property valuation throughout the state, and administers the assessment of all public utility property and tangible personal property of businesses operating in more than one county.

The fund is funded from a portion of the state reimbursement that otherwise is payable to taxing districts for the 10% rollback for real property. Under current law, the portion diverted to the fund is the sum of the following components:

- 0.3% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes);
- 0.15% of the taxes charged against public utility personal property;

- 0.75% of taxes charged against tangible personal property of businesses owning property in more than one county (the property of such businesses is assessed by the Department);

The bill changes the computation used to determine the portion of the 10% rollback reimbursement to be diverted to the fund. Under the bill, the portion diverted to the fund is computed as follows:

- For fiscal year 2006:
 - 0.33% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes); plus
 - 0.5% of the taxes charged against public utility personal property; plus
 - 0.5% of the taxes charged against tangible personal property of businesses owning property in more than one county.
- For fiscal year 2007:
 - 0.35% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes); plus
 - 0.56% of the taxes charged against public utility personal property; plus
 - 0.56% of the taxes charged against tangible personal property of businesses owning property in more than one county.
- For fiscal year 2008 and thereafter:
 - 0.35% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes); plus
 - 0.6% of the taxes charged against public utility personal property; plus
 - 0.6% of the taxes charged against tangible personal property of businesses owning property in more than one county.

State payment of estimated taxes for acquired property

(R.C. 319.20)

Existing law specifies that whenever the state acquires an entire parcel or a part only of a parcel of real property in fee simple, the county auditor, upon application of the grantor or the property owner or the state, must prepare an estimate of the taxes that are a lien on the property, but have not been determined, assessed, and levied for the year in which the property was acquired. The county auditor must apportion the estimated taxes proportionately between the grantor and the state for the period of the lien year that each had or would have had ownership or possession of the property, whichever is earlier. The bill requires the county auditor to accept payment from the state for estimated taxes at the time that the real property is acquired.

V. Sales and Use Taxes

Rate change

(R.C. 5739.02, 5739.025, 5739.10, and 5741.02)

Am. Sub. H.B. 95 of the 125th General Assembly temporarily increased state sales and use taxes, from 5% to 6%. The temporary increase applies to sales occurring on and after July 1, 2003, but before July 1, 2005. Under current law, the rate is scheduled to return to 5% on July 1, 2005.

The bill establishes a permanent sales and use tax rate of 5½%, beginning July 1, 2005. This rate also applies to the vendors' excise tax for the privilege of engaging in the business of making retail sales on and after July 1, 2005. To reflect the tax rate change, the bill revises the tax rate schedules that specify how the tax is applied to fractions of dollars when sales are not in exact dollar amounts.

Transmission to the Treasurer of State of sales and use taxes collected by court clerks upon issuing certificates of title

(R.C. 1548.06 and 4505.06)

Under continuing law, applications for certificates of title for motor vehicles, watercraft, and watercraft outboard motors are filed with the clerks of the courts of common pleas, and the clerks are required to collect unpaid sales and use taxes from the applicants at the time the applications are filed. The clerks retain a poundage fee for collecting the taxes. Under existing law, the clerks forward the taxes collected by them to the Treasurer of State in a manner prescribed by the Tax Commissioner.

The bill establishes procedures to govern the transmission to the Treasurer of State of sales and use taxes collected by the court clerks. The bill provides that the clerks are to transmit sales and use taxes resulting from sales of motor vehicles, off-highway vehicles, all-purpose vehicles, and titled watercraft and outboard motors during the week to the Treasurer on or before the Friday following the close of that week. If, on any Friday, the offices of a court clerk or the state are closed, the tax must be forwarded to the Treasurer on or before the next day on which the offices are open. Every remittance of tax made by a clerk must be accompanied by a remittance report. Under the bill, the Tax Commissioner is to determine the form of this report. Upon receiving a tax remittance and report, the Treasurer is required to date stamp the report and forward it to the Tax Commissioner. The Treasurer may require the court clerks to transmit tax collections and remittance reports electronically.

If the tax due for any week with respect to titled watercraft and outboard motors is not remitted by a court clerk in accordance with the procedures outlined in the bill, the clerk must forfeit the poundage fees collected by the clerk for sales made during that week. If the tax due for any week with respect to motor vehicles, off-highway vehicles, and all-purpose vehicles is not remitted by a court clerk in accordance with the bill's procedures, the Tax Commissioner may, but is not required to, compel the clerk to forfeit the poundage fees collected by the clerk for sales made during that week.

VI. The Kilowatt-hour Tax

Increase in the tax

(R.C. 5727.81(A) and (C)(2); Section 557.21)

A kilowatt-hour (kWh) tax is imposed on electric distribution companies for all electricity distributed by them through meters of end users, or to unmetered locations, in this state. The bill increases the kWh tax by approximately 30%, beginning in the tax measurement period that includes July 1, 2005. The tax rate increases as follows:

Kilowatt hours distributed	Tax rate per kilowatt hour under current law	Tax rate per kilowatt hour under the bill
For the first 2,000:	\$.00465	\$.00605
For the next 2,001 to 15,000:	\$.00419	\$.00545
For 15,001 and above:	\$.00363	\$.00472

Under current law, commercial or industrial purchasers that are self-assessing the kWh tax (because of their high-volume consumption of electricity) are required to pay the tax at a rate of \$.00075 per kWh on the first 504 million kWhs distributed to them, plus 4% of the total price of all electricity distributed to them. The bill retains the rate of \$.00075 per kWh on the first 504 million kWhs, but raises the percentage to 5% of the total price of all electricity, distributed to a self-assessor.

Changes to distribution of the tax

(R.C. 5727.84(B))

Revenues from the kWh tax are deposited in the Kilowatt-Hour Tax Receipts Fund, to the credit of five funds. The bill revises the percentages of kWh tax revenues that are credited to those funds after July 31, 2005, as follows:

	Percentage credited under current law	Percentage credited under the bill
General Revenue Fund	59.976%	69.213%
Local Government Fund	2.646%	2.035%
Local Government Revenue Assistance Fund	.378%	.291%
School District Property Tax Replacement Fund	25.4%	19.538%
Local Government Property Tax Replacement Fund	11.6%	8.923%

Under current law, if, in fiscal years 2002-2006, the kWh tax revenues are less than \$552 million, the amount credited to the General Revenue Fund (GRF) must be reduced by the amount necessary to credit to the Local Government Fund and Local Government Revenue Assistance Fund the amount each would have received if the tax did raise that amount in the fiscal year. Beginning in fiscal year 2007, if the tax revenues are less than \$552 million, current law requires that the amount credited to GRF be reduced by the amount necessary to credit to all four of the other funds the amount each one would have received if the tax did raise that amount in the fiscal year.

The bill changes these threshold amounts to \$703,800,000 for fiscal year 2006, and to \$717,600,000 for fiscal year 2007 and fiscal years thereafter.

VII. Tobacco and Alcohol Taxes

Cigarette tax

(R.C. 5743.02 and 5743.32; Section 612.27)

Under existing law, an excise tax is levied on the sale, use, consumption, or storage in this state of cigarettes at the rate of 27.5 mills per cigarette. The bill increases the tax to 50 mills per cigarette. (A "mill" is equal to one-tenth of one cent. Accordingly, 10 mills equals one cent, 27.5 mills equals 2.75¢, and 50 mills equals 5¢. So, an excise tax of 50 mills per cigarette equates to a tax of \$1 on a package of cigarettes containing 20 cigarettes.) The increase takes effect July 1, 2005.

Tobacco products tax

(R.C. 5743.51, 5743.62, and 5743.63; Section 612.27)

Continuing law levies an excise tax on the sale, use, consumption, or storage in this state of tobacco products other than cigarettes at the rate of 17% of the wholesale price of the tobacco product. The bill increases the tax to 30% of the wholesale price. The increase takes effect July 1, 2005.

"Floor tax" on cigarette inventories

(Section 557.06)

The bill requires wholesale and retail dealers to pay the "net additional tax" resulting from the bill's increase in the cigarette tax on stamped cigarettes and unaffixed Ohio tax stamps in their possession on July 1, 2005, the date on which the tax increase takes effect. The "net additional tax" is the net additional tax resulting from the bill's increase in the cigarette tax due on all packages of Ohio stamped cigarettes and on all unaffixed Ohio cigarette tax stamps that a wholesale or retail dealer has on hand as of the beginning of business on July 1, 2005. On or before August 31, 2005, each dealer must pay the additional tax due and file a return with the Treasurer of State showing the net additional tax due, along with any other information the Commissioner considers necessary to administer the net additional tax.

A dealer who fails to file a return or pay the net additional tax must pay a late charge of \$50 or 10% of the net additional tax due, whichever is greater. Interest accrues on additional tax that is not timely paid. Unpaid or unreported net additional taxes, late charges, and interest may be collected by assessment.

Beer sold in sealed bottles and cans

(R.C. 4301.42)

Under continuing law, a tax is levied on the sale of beer in sealed bottles and cans containing 12 or fewer ounces of liquid content. Currently, the tax is levied at the rate of fourteen one-hundredths (0.14) of one cent on each ounce or fractional part of an ounce of liquid content. The bill increases the tax to twenty-eight one-hundredths (0.28) of one cent.

Current law levies a tax on the sale of beer in sealed bottles and cans in excess of 12 ounces at the rate of eighty-four one-hundredths (0.84) of one cent on each six ounces of liquid content or fractional part of each six ounces of liquid content. The bill increases the tax to one and sixty-eight one-hundredths (1.68) cents.

Beer sold in containers other than sealed bottles and cans

(R.C. 4305.01)

Under current law, a tax is levied on the sale or distribution of beer in barrels or other containers that are not sealed bottles or cans at the rate of \$5.58 per barrel of 31 gallons. The bill increases the tax to \$11.16 per barrel.

Wine, mixed beverages, and cider

(R.C. 4301.43)

Current law levies a tax on the sale or distribution of wine containing at least 4% alcohol by volume but not more than 14% alcohol by volume at the rate of 30¢ per wine gallon. The bill increases the tax to 60¢ per wine gallon.

Under current law, a tax is levied on the sale or distribution of wine containing more than 14% alcohol by volume but not more than 21% alcohol by volume at the rate of 98¢ per wine gallon. The bill increases the tax to \$1.96 per wine gallon.

Current law levies a tax on the sale or distribution of vermouth at the rate of \$1.08 per wine gallon. The bill increases the tax to \$2.16 per wine gallon.

Under current law, a tax is levied on the sale or distribution of sparkling and carbonated wine and champagne at the rate of \$1.48 per wine gallon. The bill increases the tax to \$2.96 per wine gallon.

Current law levies a tax on prepared and bottled highballs, cocktails, cordials, and other mixed beverages at the rate of \$1.20 per wine gallon. The bill increases the tax to \$2.40 per wine gallon.

Finally, under current law, a tax is levied on cider at the rate of 24¢ per wine gallon. The bill increases the tax to 48¢ per wine gallon.

Effective date of alcohol tax increases

(Section 612.27)

The alcohol tax increases take effect July 1, 2005.

VIII. Other Taxation Provisions

Local Government Funds

(Section 557.12)

The bill reduces the amount of state tax revenue credited to the three state-local revenue sharing funds, and thus the amount of revenue available for distribution to counties, municipal corporations, townships, public library systems, and other special-purpose subdivisions receiving revenue sharing payments. The revenue sharing funds involved are the Local Government Fund (LGF), the Local Government Revenue Assistance Fund (LGRAF), and the Library and Local Government Support Fund (LLGSF).

Current law

Under permanent law provisions that have been suspended since the beginning of fiscal year 2002, each of the funds was credited with a percentage of the state's major tax sources, including the income tax, sales and use tax, corporation franchise tax, public utility excise tax, and kilowatt-hour (kWh) tax. Under those suspended provisions, the LGF would have received 4.2% of revenue from those taxes (except the kWh tax) and the LGRAF would have received 0.6%; the LLGSF would have received 5.7% of the income tax. After the percentage of revenue was credited to those funds, the remaining revenue was credited to the state's General Revenue Fund (GRF). Beginning with fiscal year 2002, the percentages were suspended to reserve more of the revenue for the GRF. The revenue credited to the LGF, LGRAF, and LLGSF was fixed or "frozen" at their respective fiscal year 2001 levels.

Money in the LGF is distributed among counties, townships, municipal corporations (cities and villages), and some other special-purpose subdivisions (e.g., park districts) under a three-stage system. The bill does not directly affect

how money is distributed among subdivisions, only the amount of money to be distributed. At the first stage, LGF money is divided into a municipal share (for municipal corporations levying an income tax) and a share for all subdivisions in a county participating in the county's LGF distribution. Under the "permanent" distribution formula as it operated before FY 2002, slightly less than 10% of the LGF was set aside for allocation only to municipal corporations levying an income tax, and the remaining 90% or so was allocated among all participating subdivisions in a county (including municipal corporations levying an income tax). This remaining subdivision allocation was then distributed under one of two formulas, with the formula yielding the higher payment for a county being applied to that county. Under either formula, the 90% subdivision share was divided into fourths, with three-fourths distributed in proportion to municipal taxable property value in the county and one-fourth distributed in proportion to county population. One formula added a third factor: the county's 1983 deposits tax revenue. Until 1983, counties received revenue from a tax on deposits held in the county at the rate of 1-3/8 mills per dollar of deposits. This second LGF formula ensured that each county received 145.45% of its 1983 deposits taxes (145.45% represents what the revenue would be if the deposits tax had been levied at a rate of two mills). The total of the counties' deposit tax portion was deducted from the counties' approximately 90% share of the LGF, and an additional \$6 million was deducted. The remaining amount was then divided into fourths, with three-fourths distributed in proportion to municipal taxable property value in each county and one-fourth distributed in proportion to county population, as in the first formula.

The minimum distribution under either formula (disregarding the deposits tax portion) was \$225,000 per county. Each county's share of the LGF was the higher of the two formula computations. The shares of all the counties were added together, and each county's amount was divided into the total to yield the county's percentage of the total county part of the LGF. There was a hold-harmless guaranteeing each county at least the amount it received in 1983.

In addition to a county's formula amount, each county receives five mills' worth of the eight-mill state tax on dealers in intangibles originating from dealers in that county (except certain dealers that are subsidiaries of financial institutions); this five-mill portion of the distribution is not affected by the bill. The sum of the formula amount and the five mill portion is then apportioned among the county and the townships, municipal corporations, and some special-purpose districts in the county. In almost all counties, the apportionment is based on a formula negotiated under the supervision of the county budget commission. In a few counties, the apportionment follows the statutory method, which apportions on the basis of relative "need." Generally, need is measured by a subdivision's expenditures less its locally generated revenue.

The approximately one-tenth of the LGF allocated for municipal corporations levying an income tax is distributed in proportion to each municipal corporation's relative municipal income tax collections compared to total municipal income tax collections.

The pre-FY 2002 LGRAF distribution method was simpler than that of the LGF, and was based entirely on relative county populations. Each county received a percentage of the LGRAF equal to the county's percentage of Ohio's population. LGRAF distributions have been more or less frozen since the beginning of FY 2002.

The pre-FY 2002 LLGSF was distributed among counties for further distribution primarily to library systems in the county under a formula that essentially replaced the repealed intangible property tax revenue (repealed in 1986) and allowed for growth from that base amount on both an overall basis and on a per-capita basis. LLGSF distributions have been more or less frozen since the beginning of FY 2002.

Proposed reductions in LGF, LGRAF, and LLGSF

LGF and LGRAF

Deposits and distributions initially frozen, then reduced. The bill reduces the amount of state revenue credited to the LGF, LGRAF, and LLGSF in fiscal years 2006 and 2007. The reduction begins with deposits to those funds in December 2005; until then, the monthly deposits are frozen at the level for the corresponding month in FY 2005. The amount of money credited to the LGF and LGRAF in the first five months of FY 2006 is fixed or "frozen" at the amount distributed in the first five months of FY 2004, except for specified changes in deposits from the public utility excise tax and kilowatt-hour tax (which together account for less than 4% of the total deposits to the funds). Beginning in December 2005, the amount credited to the LGF and LGRAF from their three major sources--income tax, sales and use tax, and corporation franchise tax, which account for about 96% of all deposits--is reduced by somewhat less than 20% below the frozen FY 2005 amount.

The overall reduction is somewhat less than 20% because the reduction does not take effect until December 2005, and it is offset by an amount guaranteeing that each county undivided fund receives 90% of the calendar year 2005 amount distributed to the villages and townships in the county. In other words, the reduction is somewhat less than 20% because the share of total LGF and LGRAF distributions that ultimately was received by townships and villages in CY 2005 will be reduced by only 10%. For example, if the amount of LGF money ultimately received by the townships and villages in a county during CY

2005 was \$1 million, then this portion will be reduced by only 10% (\$100,000) instead of by 20% (\$200,000). Statewide, if the total amount of LGF money ultimately received by the townships and villages during CY 2005 was \$85 million, then this portion will be reduced by only 10% (\$8.5 million) instead of by 20% (\$17 million).¹⁶⁵ But the remaining portion of LGF distributions (about 85% of the total LGF, representing the LGF share ultimately received by counties, cities, and subdivisions other than townships and villages) will be reduced by 20% for distributions made between January 2006 and July 2007. In total, from January 2006 through July 2007, each county undivided fund will receive an LGF distribution equal to 90% of its CY 2005 "township and village" portion plus 80% of its remaining, non-"township and village" portion.

Deposits into the LGRAF are reduced in the same manner, including the 90% "floor" on the "township and village" portion of LGRAF.

The additional money required to satisfy the 90% floor on the township and village portion of LGF and LGRAF distributions is to be derived from the income tax.

Although the bill guarantees that the "township and village" portion of LGF and LGRAF distributions to each county between January 2006 and July 2007 is not reduced by more than 10%, it does not guarantee that townships and villages in each county will receive only a 10% reduction in their distributions. The bill only reduces the amount distributed from the LGF and LGRAF to each county's undivided fund. The distributions within each county will continue to be determined by the county's allocation formula or, in the few counties that have not adopted their own formula, the statutory "needs" formula. Therefore, the overall reduction could be allocated among all subdivisions according to the applicable intra-county formula, with townships and villages receiving a reduction of more than 10% and all other subdivisions receiving a reduction of somewhat less than 20%.

Direct municipal distributions. The nearly 10% share of the LGF and LGRAF distributed directly to municipal corporations (i.e., cities and villages) levying an income tax is initially frozen and then reduced to reflect the freeze and reduction in the tax deposits into the LGF, except the reduction for villages is only 10%. Specifically, for each of the first five months of FY 2006, each municipal corporation entitled to a direct LGF distribution will receive the same amount it received in the corresponding month in FY 2005. Then, from January 2006

¹⁶⁵ *The dollar figures used here are illustrative. The actual figures vary somewhat from those presented here.*

through July 2007, each village will receive 90% of its direct LGF distribution for CY 2005, and each city will receive 80% of its CY 2005 distribution.

LLGSF

Reductions also are made in the LLGSF. For the first five months of FY 2006, monthly deposits into the LLGSF are equal to the previously frozen amounts for the corresponding month in FY 2005. Then, beginning in December 2005, and extending through the end of the biennium, the monthly deposits are reduced by 5% from the previously frozen levels in FY 2005. In each month from August 2005 to July 2007, each county undivided fund will receive the same percentage of the LLGSF as it received in the corresponding month from August 2004 through July 2005. In other words, each county undivided fund will receive the same percentage of the total frozen and reduced amount credited to the LLGSF during the FY 2006-2007 biennium.

Estate taxes

Overview of the additional estate tax, generation-skipping tax, and the family-owned business deduction

Ohio's estate tax consists of four distinct levies: the basic tax, the additional estate tax, the generation-skipping tax, and the nonresident tax. The bill addresses the additional estate tax and the generation-skipping tax, in light of changes made in the federal estate tax law, which affects those two state taxes. The additional estate tax (R.C. 5731.18) is equal to the maximum credit allowed by federal estate tax law for paying state death taxes, while the generation-skipping tax (R.C. 5731.181) is equal to the federal credit for state taxes paid on generation-skipping transfers (of property to a person who is two or more generations below the transferor, such as from a grandparent to a grandchild). Both taxes, known as "sponge" taxes because they allow the state to absorb as much revenue from an estate as is permitted by the federal credits, are equal to the difference between state tax liability and the estate's federal credit. In effect, both sponge taxes allow Ohio to collect more tax from an estate without increasing the estate's combined federal/state tax liability, because federal tax liability is reduced by the amount of the additional estate tax and generation-skipping tax liability.

The bill also addresses the family-owned business deduction because of revisions made to the federal estate tax law, which greatly affects this deduction. Federal law permits estates to avoid federal estate taxes on any part of the estate consisting of family-owned businesses inherited by or passed to family members. These family-owned business interests are deducted in computing the value of the estate that is subject to the federal estate tax. Ohio also has a deduction modeled closely after this federal deduction, for the value of a family-owned business

(including a farm) when computing the Ohio estate tax, to the extent the business is passed on to other family members. The state deduction may be claimed **only** if the federal deduction is claimed against federal estate tax liability.

Federal changes that have affected the state estate tax law

The federal "Economic Growth and Tax Relief Reconciliation Act of 2001" (the "Act") phased out the federal credits for paying state death taxes and state generation-skipping transfer taxes. These credits no longer apply, respectively, to estates of decedents dying after December 31, 2004, or to generation-skipping transfers made after that date. Under the Act's sunset clause, the credits are scheduled to be restored to their current forms in 2011, assuming Congress does not intervene before that year and repeal or revise the credits.

The Act also suspended the federal deduction for family-owned business interests by providing that the deduction does not apply to estates of decedents dying after December 31, 2003. But, technically, the Act's sunset clause reinstates the deduction in 2011.

Constructive elimination of the additional estate tax and generation-skipping tax; repeal of the deduction for family-owned businesses

(R.C. 5731.01(F), 5731.14, 5731.18, and 5731.181; repeal of 5731.20; Section 557.24)

The bill amends the additional estate tax and generation-skipping tax statutes by revising the references to the Internal Revenue Code (IRC) in them, thereby incorporating changes made by the Act. For purposes of the entire state estate tax law, the bill defines the "Internal Revenue Code" to be the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C.A. 1, as amended. Under an Ohio Supreme Court decision, *State v. Gill*, 63 Ohio St.3d 53 (1992), updating Ohio statutory references to federal law incorporates changes in the federal law occurring since the most recent amendment of the Ohio statute. Therefore, updating references to the IRC in Ohio's two sponge tax statutes has the effect of incorporating the federal Act's phase-out of the federal credit for paying state death taxes and state generation-skipping taxes. In other words, the bill constructively repeals Ohio's additional estate sponge tax and the generation-skipping sponge tax for decedents dying on and after the bill's effective date.

The bill repeals outright the state estate tax deduction for family-owned businesses, since the Act revised federal law to suspend the federal deduction for family-owned business interests for estates of decedents dying after December 31, 2003.

These amendments and the repeal take effect immediately on the day the Governor signs the bill.

Temporary tax credit

(Section 557.03)

The bill grants a tax credit against the additional estate "sponge" tax to the estate of a decedent who dies on or after January 1, 2002, but before the effective date of the bill's changes. In effect, the credit retroactively gives those relatively few larger estates that are subject to the sponge tax the tax reduction they would have received if Ohio's law had reflected the phase-out of the federal credit for state estate taxes. Specifically, the credit equals the portion of the additional estate sponge tax that is over and above the sponge tax that would have been imposed if the tax had been equal to the maximum federal credit allowable for paying state estate taxes under the federal law that was in effect and applicable on the date of the decedent's death.

Additional amendments made to incorporate federal tax law changes

(R.C. 5731.01(B), (D), and (F), 5731.05(C), and 5731.131; Section 612.21)

The bill also revises all other IRC references in the state estate tax law, with the effect of generally incorporating any applicable federal tax law changes made since the last time those state laws were amended. The actual effect of this incorporation is difficult to discern, but the substantive effect does not appear to be substantial.

These amendments take effect immediately on the day the Governor signs the bill.

Taxpayer audits

(R.C. 5703.50)

Under current law, various rights are granted to taxpayers that become effective when a taxpayer is subjected to an audit by the Department of Taxation or a county auditor, including the right to receive information about the Department's role in the audit and the taxpayer's right to be represented or accompanied by an attorney, accountant, tax professional, or other competent advisor. (The rights are set forth in R.C. 5703.51.) What constitutes an "audit," and therefore what invokes a taxpayer's rights, is specifically defined by current law: "audit" means the examination of a taxpayer or the inspection of the taxpayer's books, records, memoranda, or accounts for the purpose of determining

tax liability. Current law, unchanged by the bill, requires that the Department notify a taxpayer when an audit is considered to have begun.

The bill changes the definition of "audit," and therefore what activity invokes a taxpayer's rights under an audit. The bill defines "audit" as a visit by an employee of the Department of Taxation to one or more of the taxpayer's business locations or other locations designated by the taxpayer to inspect the taxpayer's books, records, memoranda, or accounts for the purpose of determining tax liability. "Audit" does not include being served an assessment (i.e., formal notice of outstanding liability) or any other type of document or notification, and does not include an investigation by an enforcement agent or other Department employee to verify that a taxpayer has the appropriate license or registration, to conduct a test purchase, or to conduct a "similar" investigation.

Pass-through entity tax law: technical and conforming changes

(R.C. 5733.40; Section 557.27)

A withholding tax currently is imposed on distributive shares held by nonresident investors in pass-through entities (e.g., partnerships, limited liability companies, S corporations) that have a taxable business presence in Ohio. The tax helps ensure satisfaction of the investors' Ohio tax liabilities, especially if they lack any tax-related connection with Ohio other than their ownership of an entity doing business in Ohio. The tax is imposed on the entity on the basis of the nonresident investors' respective tax liabilities to Ohio (whether corporation franchise or personal income, depending on the status of the investor). In computing the amount of tax to be withheld, the entity's expenses and losses paid to a related entity are apportioned to Ohio under the weighted three-factor formula (sales, property, and payroll). In computing a nonresident investor's individual tax and the corresponding nonresident credit, only compensation expenses paid to a related entity are apportioned.

The bill ensures that all expenses a pass-through entity pays to a related entity are apportioned for the purposes of both the withholding tax and computing the nonresident investors' individual tax and the corresponding nonresident credit.

The bill also expressly provides that, for the purposes of the pass-through entity tax, a nonresident investor's distributive share of a pass-through entity (which is the basis for measuring the withholding tax on account of the investor) includes income amounts from a qualified subchapter S subsidiary ("QSSS"). A QSSS is a wholly-owned subsidiary of an S corporation that is treated for federal tax purposes as not being separate from the parent S corporation. The bill's treatment of QSSS distributive shares under the pass-through entity tax is consistent with the current treatment of distributive shares of a "disregarded

entity," which is a company owned by a parent company but not treated as separate from the parent for tax purposes (e.g., a limited liability company with but a single member).

Tax Commissioner authorized to require identifying information from persons filing tax documents with the Department of Taxation

(R.C. 5703.057, 5703.26 (not in the bill), and 5703.99 (not in the bill))

Overview

The bill authorizes the Tax Commissioner to require any person filing a tax document with the Department of Taxation to provide identifying information requested by the Commissioner, including the person's social security number, federal employer identification number, or other identification number requested by the Commissioner. A person who is required to provide identifying information is required to notify the Commissioner of any changes with respect to that information prior to, or at the time of, filing the next tax document requiring identifying information. The bill states that the Tax Commissioner is being granted authority to request identifying information in order to increase the efficiency with which the Commissioner administers taxes and fees.

Confidentiality of social security numbers

The bill requires that the Commissioner maintain the confidentiality of individuals' social security numbers. Specifically, the bill provides that when transmitting or otherwise making use of a tax document that contains a person's social security number, the Commissioner is to take all reasonable measures necessary to ensure that the general public is unable to view the number. The bill directs the Commissioner to mask social security numbers when necessary to maintain their confidentiality.

Commissioner may impose penalties for failure to provide or update identifying information

The bill permits the Commissioner to impose penalties for failures to provide identifying information. If the Commissioner requests identifying information from a person and the person does not respond by providing valid identifying information within thirty days after the request is made, the Commissioner may impose a penalty upon that person of up to \$100. If, after the expiration of the initial 30 day period, the Commissioner makes one or more subsequent requests for identifying information, and valid identifying information is not provided to the Commissioner within 30 days after the Commissioner makes the subsequent request, the Commissioner may impose an additional penalty of up

to \$200 for each subsequent request that a person fails to comply with in a timely fashion. The bill provides, further, that if a person required to provide identifying information fails to notify the Commissioner of a change with respect to that information within 30 days after filing the next tax document requiring the identifying information, the Commissioner may impose a penalty upon that person of up to \$50.

Under the bill, penalties imposed by the Commissioner may be billed and assessed by the Commissioner in the same manner as the tax or fee with respect to which the Commissioner seeks the identifying information. The bill specifies that the penalties are in addition to any applicable criminal penalties and any other penalties that the Commissioner is authorized by law to impose.

Criminal penalties

Continuing law makes it a criminal offense to file a false or fraudulent document with the Department of Taxation with the intent to defraud the state or any of its political subdivisions. Violation of this criminal prohibition constitutes a felony of the fifth degree, which is punishable by six to 12 months of confinement and a fine of up to \$5,000, upon which a court may impose an additional fine of up to \$7,500. The bill specifies that the criminal prohibition for filing false or fraudulent tax documents with intent to defraud applies with respect to tax documents containing false or fraudulent identifying information.

DEPARTMENT OF TRANSPORTATION

- Modifies the annual license and registration taxes for general aviation aircraft, and allows the tax revenue to be used for capital improvements as well as maintenance.

General aviation license tax

(R.C. 4561.17, 4561.18, and 4561.21)

Under current law, the owner of a glider is required to pay an annual license and registration tax of \$3. The owner of any other general aviation aircraft, including a balloon, is required to pay an annual license and registration tax of \$100. The bill increases the annual tax for a glider to \$15, decreases the annual tax for a balloon to the same amount (\$15), and changes the annual tax for all other general aviation aircraft to \$15 per seat.

All such tax revenue is deposited into the County Airport Maintenance Assistance Fund, which the bill renames as the Airport Assistance Fund. Current law requires the Director of Transportation to distribute money in the fund to counties to assist them in maintaining airports they own. The bill requires the Director to distribute the money to "eligible recipients" for maintenance, and also for capital improvements, to any publicly owned airports.

OHIO TUITION TRUST AUTHORITY

- Permits the rollover or termination of an account under either the Guaranteed College Savings Program or the Variable College Savings Program for any reason by filing written notice with the Tuition Trust Authority.
- Changes the method of calculating refunds under the Guaranteed Program and the Variable Program when an account is terminated.
- Permits scholarship programs to receive refunds upon filing a written request with the Authority.
- Eliminates the requirement that the Authority refund amounts when a beneficiary is awarded a scholarship, a waiver of tuition, or similar financial aid.
- Eliminates the requirement that an institution of higher education return to the Authority a share of any refund it makes when a beneficiary withdraws from school.
- Revises terms in the Tuition Trust Authority law.

Background

Under section 529 of the Internal Revenue Code, states may establish and maintain a state tuition program under which a person (1) may purchase credit toward tuition on behalf of a designated beneficiary that entitles the beneficiary to the waiver or payment of qualified higher education expenses or (2) may make contributions to an account set up for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account. These programs

receive favorable federal and state tax treatment for their assets and distributions to beneficiaries.

In Ohio, under continuing law, the Ohio Tuition Trust Authority operates two college savings programs that correspond to the types permitted by federal law: (1) a guaranteed savings program and (2) a variable savings program. Each program allows beneficiaries to acquire savings toward the future payment of college tuition. A person may participate in one or both of the savings programs.

Guaranteed College Savings Program

Contributors to the Guaranteed College Savings Program purchase tuition credits on behalf of a designated beneficiary at approximately 1% of the weighted average tuition charged at public four-year universities in Ohio for the year the credits are purchased, although the actual cost may be higher if the Authority determines that a price adjustment is necessary to maintain the actuarial soundness of the program. Each credit may be redeemed upon the beneficiary's enrollment at a college, university, or other institution of higher education anywhere in the United States for 1% of the weighted average tuition charged at public four-year universities in Ohio for the year in which the credits are spent for college expenses. Tuition credits under the Guaranteed Program are backed by the full faith and credit of the State of Ohio. The program is based upon the assumption that 100 tuition credits equal one year of college tuition so that purchasers may be reasonably certain of the percentage of future college tuition costs that will be covered by the credits they acquire.

Variable College Savings Program

Under the Variable College Savings Program, rather than purchasing tuition credits, an individual contributes money to an investment account managed by the state, or its agent, for the benefit of the beneficiary. Assets of the Variable Program are invested in savings accounts, life insurance or annuity contracts, securities, bonds, or other investment products in accordance with a plan adopted by the Authority. Because the program is market-based, it generally provides a variable rate of return and contributors assume all investment risk.

Changes in Tuition Trust terminology

(R.C. 2329.66, 3334.01, 3334.02, 3334.03, 3334.07, 3334.08, 3334.09, 3334.10, 3334.11, 3334.12, 3334.15, 3334.16, 3334.17, 3334.18, 5747.01, and 5747.70)

The bill amends various terms in the Tuition Trust Authority Law. Under current law, a credit purchased under the Guaranteed Program is referred to as a "tuition credit." The bill instead refers to "tuition units" and specifies that "tuition

units" include tuition credits purchased prior to July 1, 1994. The bill also refers to a "tuition payment contract" instead of a "tuition credit contract."

Account termination and refunds under the Guaranteed Program

(R.C. 3334.10(A))

Current law

Current law specifies how to calculate refunds to tuition credit purchasers upon termination of an account under the Guaranteed College Savings Program. The amount of the refund is calculated differently depending on the reason for the termination. Reasons under current law for which an account may be terminated are: (1) death or permanent disability of the beneficiary, (2) the decision of the beneficiary not to attend an institution of higher education and to request termination of the account, (3) completion of a degree by the beneficiary, (4) rollover of the account into an equivalent tuition program in another state, and (5) any other reason allowed by the Authority.

If a Guaranteed Program account is terminated because of the reason described in (1), above, the refund equals the total purchase price of tuition credits on account or, if greater, 1% of the weighted average tuition (WAT) times the number of unused tuition units on account, with no administrative fee or penalty assessed. If an account is terminated for the reasons described in (2) or (3), above, the refund equals at least 1% of current WAT times the number of unused units on account, minus "reasonable" administrative fees and minus any penalty required for the program to comply with section 529. If an account is terminated for any other allowable reason, the Authority may refund either the amount refundable for reason (1) or the amount refundable for reason (2) or (3). However, the Authority may choose to refund a lesser amount than refundable for reason (2) or (3) to the extent necessary to meet the refund penalty requirements for qualified state tuition programs under section 529 of the Internal Revenue Code.

The bill

The bill removes language specifying the allowable reasons for terminating a Guaranteed Program account and allowing the Authority to determine other allowable reasons for account termination. Instead, unless otherwise provided for in the tuition payment contract, a tuition unit purchaser may rollover amounts to another qualified tuition program under section 529 or may terminate the account for any reason by filing written notice with the Authority.

If the account is terminated and the beneficiary is under 18 years old, the bill specifies that the Authority must use actuarially sound principles to determine



the amount of the refund. The bill does not address termination of an account if the beneficiary is age 18 or older. The legal meaning of this silence is unclear.

Refund calculations when a Guaranteed Program account is terminated because of the beneficiary's death or permanent disability will continue to equal the purchase price of all unused tuition units on account, or 1% of WAT times the number of unused units on account, whichever is greater, with no administrative fee or penalty assessed (as under current law).

If all or part of the amount in a Guaranteed Program account is liquidated for a rollover to another qualified tuition program under section 529, the bill specifies that the rollover amount must be determined in an actuarially sound manner.

Account termination and refunds under the Variable Program

(R.C. 3334.10(B))

Currently, Variable Program accounts may be terminated for any reason upon filing a written "request" with the Authority, but only after a minimum period of time specified by the Authority. The amount of the refund depends on the reason for termination. If the account is terminated because of the death or permanent disability of the beneficiary or because funds in the account are rolled over into another state's section 529 plan, the refund equals the account balance minus any administrative fees. (The Authority is permitted to limit the extent to which an account may be rolled over.) If the account is terminated for any other reason, the refund equals the account balance, minus any administrative fees, and minus any penalty required for the Variable Program to qualify as a section 529 plan.

The bill provides that the contributor to a Variable Program account may rollover amounts to another qualified tuition program under section 529 as well as terminate the account for any reason. The bill also requires only that the contributor file a written notice of termination with the Authority, rather than a "request" for termination, and allows the contributor to receive an amount equal to the account balance, less any applicable administrative fees, regardless of the reason for termination or rollover.

Refunds to scholarship programs

(R.C. 3334.10(C))

Under current law, entities that establish programs to award scholarships of tuition units may receive refunds only for just cause with the approval of the Authority. The bill removes the "just cause" condition and the requirement for

Authority approval and allows refunds to scholarship programs upon the filing of a written request with the Authority.

Elimination of refunds for beneficiaries receiving scholarships

(R.C. 3334.10(F))

The bill repeals a provision in current law that requires the Authority to refund an amount if a beneficiary is awarded a scholarship (other than from a scholarship program operated through the Authority), a waiver of tuition, or similar subvention. Under that provision, each academic term, the Authority must refund to the person designated in the payment contract or, in the case of a beneficiary under a scholarship program, to the beneficiary, an amount equal to the value of the tuition credits or the amounts in the Variable Program account that are not needed on account of the scholarship, waiver, or similar subvention.

Refund of tuition in case of withdrawal from school

(R.C. 3334.10(G))

Currently, if a beneficiary withdraws from an institution of higher education before the end of an academic term, the institution of higher education must return to the Authority a prorated share of any tuition refund it makes. The share returned must equal the portion of tuition paid from the beneficiary's account under the Guaranteed Program or the Variable Program. The Authority, in turn, must credit this share (less any reasonable charges imposed by the Authority) to the beneficiary's account.

The bill eliminates this procedure for dealing with the early withdrawal of a beneficiary from an institution of higher education. Presumably, the beneficiary or the contributor would keep the tuition refund from the institution, and the amount paid from a college savings program for that academic term would remain deducted from the beneficiary's account.

DEPARTMENT OF YOUTH SERVICES

- Eliminates the requirement that a community corrections facility not be meeting its minimum occupancy threshold before the Department of Youth Services may refer a child to the facility.
- Authorizes a committing court to consider a referral of a child by the Department to a community corrections facility on less than 45 days' notice to the court.

Referral of children by the Department of Youth Services to community corrections facilities

(R.C. 5129.36(E)(2))

Existing law allows the Department of Youth Services to make a referral of a child in its custody to a community corrections facility if the facility is not meeting its minimum occupancy threshold as established by the Department. Existing law requires that the Department notify the committing court of its intention to place a child in a community corrections facility at least 45 days before the referral. The bill eliminates the requirement that a community corrections facility not be meeting the minimum occupancy threshold before the Department may refer a child to the facility, and it authorizes the committing court to consider a referral on less than 45 days' notice to the court.

MISCELLANEOUS

- Increases the surcharge on civil actions not in a small claims division (from \$15 to \$25) and on civil actions in a small claims division (from \$7 to \$10) that are used for the charitable purpose of providing financial assistance to legal aid societies.
- Establishes a 15% set-aside from moneys in the Legal Aid Fund for the Legal Assistance Foundation Fund.
- Clarifies the Ohio Legal Assistance Foundation's ability to utilize its 4.5% administrative set-aside for administering all filing fee surcharges and the IOTA program, in addition to already recognized IOLTA accounts.
- Authorizes the Ohio Community Service Council to accept donations, sponsor events, and sell promotional items.
- Allows specified public authorities to solicit single bids and award single, aggregate contracts for entire public improvement projects.
- Requires a school district or any public institution belonging to the school district to award public improvement contracts to the lowest responsible bidder.

- Expresses the intent of the General Assembly to consolidate specified boards and commissions into the Departments of Health, Commerce, and Public Safety; requires the directors of these departments 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.
- Permits the use of appropriations to satisfy judgments, settlements, and administrative awards made against the state.

Legal Aid Fund

(R.C. 120.52)

Current 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 Legal Aid Fund is required to contain all funds credited to it by the Treasurer of State from municipal courts, county courts, courts of common pleas, interest earned on funds deposited in an interest-bearing trust account (IOLTA), or a depository institution. The bill provides that the Legal Aid Fund is also required to include funds from interest on trust accounts (IOTA).

Current law requires the State Public Defender, through the Ohio Legal Assistance Foundation, to administer the payment of moneys out of the Legal Aid Fund. Four and one-half per cent of the moneys in the Fund must be reserved for the actual, reasonable costs of administering laws governing legal aid society funding. The bill requires that this four and one-half per cent also be reserved for the actual, reasonable costs of administering certain provisions of law dealing with municipal court costs, county court costs, court of common pleas costs, and IOTA accounts. (R.C. 1901.26, 1907.24, and 2303.201 provide for certain court costs to be collected for the Legal Aid Fund but also include other special court costs.)

Current law also requires the Ohio Legal Assistance Foundation to establish rules governing the administration of the Legal Aid Fund, including the programs regarding interest on IOLTA accounts. The bill requires the rules governing the administration of the Legal Aid Fund to include certain programs established in the law regarding municipal court costs, county court costs, court of common pleas costs, and IOTA accounts.

Ohio Legal Assistance Foundation

(R.C. 120.53)

Current 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 to allocate moneys contained in the Legal Aid Fund twice each year for distribution to applicants that filed their applications in the previous calendar year and were deemed to be eligible applicants. All moneys contained in the Fund on January 1 of a calendar year must be allocated, after deduction of the costs of administering the provisions governing legal aid society funding and the programs regarding IOLTA accounts. The bill includes in this deduction the costs of administering the programs established in the law regarding certain municipal court costs, county court costs, and court of common pleas costs and IOTA accounts. Current law also requires that, in making the allocations, the moneys in the Fund that were generated from the municipal court, county court, court of common pleas, and IOLTA accounts and all income generated from the investment of such moneys must be apportioned, in part, after deduction of the amount authorized and used for actual, reasonable administrative costs:

(a) Five per cent of the moneys remaining in the Fund, plus any moneys reserved for administrative costs that are not used for actual, reasonable administrative costs, must be reserved for distribution of legal aid societies that provide assistance to special population groups of their eligible clients, engage in special projects that have a substantial impact on their local service area or on significant segments of the state's poverty population, or provide legal training or support to other legal aid societies in the state;

(b) After deduction of the amount described above, one and three-quarters per cent of the moneys remaining in the Fund must be apportioned among entities that received financial assistance from the Legal Aid Fund prior to June 30, 1995, but that, on and after that date, no longer qualify as a legal aid society that is eligible for financial assistance.

The bill modifies this provision by including IOTA accounts among the list of programs that generated money in the Legal Aid Fund. The bill removes the requirement that any moneys reserved for administrative costs that are not used for actual, reasonable administrative costs be reserved and instead provides that the 5% of the moneys remaining in the Fund be reserved for use in the manner described in the law governing the Legal Assistance Foundation Fund. The bill also includes a requirement that after deduction of the amounts described above, 15% of the moneys remaining in the Fund be placed in the Legal Assistance



Foundation Fund for use in the manner described in the law governing the Legal Assistance Foundation Fund.

Filing fees

(R.C. 1901.26, 1907.24, and 2303.201)

Current law requires municipal courts and county courts to collect in all its divisions except the small claims divisions, and requires courts of common pleas to collect, the sum of \$15 as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state. The bill increases this amount to \$25. Under current law, municipal courts and county courts, in their small claims divisions, are required to collect \$7 as an additional filing fee for this same purpose. The bill increases this amount to \$10.

Under current law, all such moneys from the municipal court must be transmitted on the first business day of each month by the clerk of the court to the Treasurer of State. The bill modifies this requirement by stating that the moneys *collected during a month* must be transmitted *on or before* the 20th day of *the following month* by the clerk of the court to the Treasurer of State *in a manner prescribed by the Treasurer of State or by the Ohio Legal Assistance Foundation*. The bill also requires that the moneys collected by county courts and courts of common pleas be transmitted by the clerk of the court to the Treasurer of State in a manner prescribed by the Treasurer of State or by the Ohio Legal Assistance Foundation. The additional filing fees collected by the court of common pleas do not apply to a probate division of a court of common pleas, except that the additional filing fees apply to name change, guardianship, and adoption proceedings. The bill includes decedents' estate proceedings in this requirement.

Ohio Community Service Council Gifts and Donations Fund

(R.C. 121.403)

Among its other statutory duties, the Ohio Community Service Council is to assist various state boards and departments, school districts, and institutions of higher education in coordinating community service programs through cooperative efforts between institutions and organizations in the public and private sectors. The bill authorizes the Council to accept monetary gifts or donations, sponsor events that further its purpose and charge fees for participation in or attendance at those events, and sell promotional items. All moneys received as a result of the activities authorized by the bill must be deposited into the Ohio Community Service Council Gifts and Donations Fund created by the bill. The Fund is in the state treasury, and moneys in the fund may be used only as follows: (1) to pay

operating expenses of the Council, including payroll, personal services, maintenance, equipment, and subsidy payments, (2) to support Council programs promoting volunteerism and community service in Ohio, and (3) as matching funds for federal grants.

Contracts under the Public Improvements Law

Single and multiple prime contracts

(R.C. 153.50 and 153.51)

Under current law, an officer, board, or other authority of the state, a county, township, municipal corporation, or school district, or of any public institution belonging thereto (hereafter "public authority") is required to solicit separate and distinct bids for furnishing materials or doing work for plumbing and gas fitting; steam and hot-water heating, ventilating apparatus, and steam-power plant; and electrical equipment. A public authority may only solicit single bids if the cost for that class of work is less than \$5,000.

Currently, a public authority may not award a single, aggregate contract for an entire project or for a greater portion of the project than is embraced in one class of work unless one of the following applies: (1) the separate bids do not cover all the work or materials required, or (2) the bids for the whole or two or more kinds of work or materials are lower than the separate bids combined.

The bill allows the public authority to choose whether to solicit separate and distinct bids for branches or class of work or bids for a single, aggregate contract for the entire project. Determining which type of bid to solicit is left to the discretion of the public authority.

School districts awarding contracts

(R.C. 153.52)

Currently, school districts, along with counties, townships, municipal corporations, and any public institutions belonging to those entities, must award contracts for the separate branches of work described above to the lowest and best separate bidder. Any public authority of the state or public institution belonging to the state must award contracts to the lowest responsive and responsible separate bidder. Criteria for determining the lowest responsive and responsible separate bidder is contained in current law.

The bill requires school districts to award contracts to the lowest responsible bidder as described under current law for both separate contracts for the branches of work and single, aggregate contracts for the entire project. The

bill also requires public authorities of the state, counties, townships, municipal corporations, and any public institutions belonging to those entities, to award single, aggregate contracts according to the same requirements for separate and distinct contracts pertaining to these entities, as described above.

Consolidation of certain boards and commissions

(Section 315.03)

The bill contains an expression of the intent of the General Assembly to consolidate specified boards and commissions into the Departments of Health, Commerce, and Public Safety not later than July 1, 2006. The bill also requires the directors of these departments 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.

Department of Health

The bill states that it is the intent of the General Assembly to consolidate the following health-related regulatory boards within the Department of Health:

- (1) The Chemical Dependency Professionals Board;
- (2) The Board of Chiropractic Examiners;
- (3) The Counselor, Social Worker, and Marriage and Family Therapist Board;
- (4) The State Dental Board;
- (5) The Ohio Board of Dietetics;
- (6) The State Medical Board;
- (7) The Board of Nursing;
- (8) The Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board;
- (9) The Ohio Optical Dispensers Board;
- (10) The State Board of Optometry;
- (11) The State Board of Orthotics, Prosthetics, and Pedorthics;
- (12) The State Board of Pharmacy;

- (13) The State Board of Psychology;
- (14) The Ohio Respiratory Care Board;
- (15) The Board of Speech-Language Pathology and Audiology;
- (16) The State Veterinary Medical Licensing Board.

Department of Commerce

The bill states that it is the intent of the General Assembly to consolidate the following regulatory boards and commissions within the Department of Commerce:

- (1) The Accountancy Board;
- (2) The State Board of Examiners of Architects;
- (3) The Ohio Athletic Commission;
- (4) The Barber Board;
- (5) The State Board of Cosmetology;
- (6) The Board of Embalmers and Funeral Directors;
- (7) The State Board of Registration for Professional Engineers and Surveyors;
- (8) The Manufactured Homes Commission;
- (9) The Board of Motor Vehicle Collision Repair Registration;
- (10) The State Board of Sanitarian Registration.

Department of Public Safety

The bill states that it is the intent of the General Assembly to consolidate the Ohio Medical Transportation Board within the Department of Public Safety.

Transition team and recommendations

Under the bill the Director of Budget and Management and the Directors of Administrative Services, Commerce, Health, and Public Safety must appoint representatives to a transition team.

The transition team is to develop a plan to ensure the smooth and timely consolidation of the boards into the respective departments. It is required to address the details of the consolidations, identifying necessary statutory changes and working with the Office of Budget and Management to develop budgets for the respective departments and the consolidated boards and commissions. It may recommend additional regulatory boards or commissions to be consolidated and may recommend modifications to the planned consolidations.

The bill requires the transition team to submit a report containing recommendations and the details for the consolidations not later than December 31, 2005, to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The report and recommendations must address the following issues, and may address additional issues:

- (1) The necessary levels of funding;
- (2) The savings projected as a result of the consolidations;
- (3) The consolidation of activities between each board or commission and the department providing centralized services, including the role of the members of the board or commission and the role of the department;
- (4) The staffing levels needed, whether employees must be retained, and whether any employees retained have civil service status;
- (5) The continuation of the standards and procedures of the board or commission;
- (6) The continuation of rules and whether any rules need to be amended as a result of the consolidations;
- (7) The transfer of assets, liabilities, and contractual obligations;
- (8) The transfer of records and other materials pertaining to the board or commission.

Implementing legislation

The bill expresses the intent of the General Assembly to introduce a bill in fiscal year 2006 that will include the necessary statutory changes to effect the consolidations and that will include revised appropriations for the departments and the consolidated boards and commissions for fiscal year 2007.

Satisfaction of judgments and settlements against the state

(Section 303.12)

The bill provides that an appropriation made in it or in any other bill may be used to satisfy judgments, settlements, or administrative awards ordered or approved by the Court of Claims or by any other court of competent jurisdiction in connection with civil actions against the state. This authorization, however, does not apply to appropriations to be applied to or used for payment of guarantees by or on behalf of the state, or for payments under lease agreements relating to, or debt service on, bonds, notes, or other obligations of the state. In addition, the authorization includes appropriations from funds into which proceeds or direct obligations of the state are deposited only to the extent that the judgment, settlement, or administrative award is for, or represents, capital costs for which the appropriation may otherwise be used and is consistent with the purpose for which any related obligations were issued or entered into. This provision of the bill is not intended to subject the state to suit in any forum in which it is not otherwise subject to suit, and it is not intended to waive or compromise any defense or right available to the state in any suit against it.

NOTE ON EFFECTIVE DATES

(Sections 609.03 to 615.90)

Section 1d of Article II of the Ohio Constitution states that "laws providing for tax levies [and] appropriations for the current expenses of the state government and state institutions *** shall go into immediate effect," and "shall not be subject to the referendum." R.C. 1.471 implements this provision with 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 bill includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a *codified* section in the bill is subject to the referendum and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The bill also includes many exceptions to the default provision which provide that specified codified provisions are not subject to the referendum and go into



immediate effect. For example, many of the bill's provisions that provide for or are essential to the implementation of a tax levy go into immediate effect.

The bill provides that its *uncodified* sections are not subject to the referendum and take effect immediately, except as otherwise specifically provided. The uncodified sections that are subject to the referendum are identified with an asterisk in the bill, and take effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition).

The bill also specifies that an item that composes the whole or part of an uncodified section contained in the bill (other than an amending, enacting, or repealing clause) has no effect after June 30, 2007, unless its context clearly indicates otherwise.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduction	02-15-05	pp. 207-210

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