Bill Analysis

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126th General Assembly
(As Passed by the House)

Reps. Calvert, Flowers, Martin, McGregor, Peterson, Schlichter, Webster, Aslanides, Blasdel, Coley, Collier, Combs, DeWine, Dolan, C. Evans, D. Evans, Hagan, Kearns, Kilbane, Law, T. Patton, Seaver, Setzer, Wagoner, White, Widowfield, Husted

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

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

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* *This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Budget in Detail spreadsheet and Comparison Document for H.B. 66 for an analysis of such provisions.*

ADJUTANT GENERAL

- Creates the National Guard Benefit Fund to reimburse active duty members of the Ohio National Guard who choose to purchase federal life insurance.

- Creates the National Guard Benefit Fund from which the Adjutant General must pay a $100,000 death benefit if an active duty member of the Ohio National Guard dies while performing active duty.

- Requires the Commander of the Ohio Military Reserve annually to report expenditures and the use of funds to the General Assembly.

- Creates the Ohio Military Reserve Homeland Security Study Commission to evaluate the Ohio Military Reserve.

Reimbursement of federal life insurance premiums for active duty members of the Ohio National Guard

(R.C. 5919.31)

The bill creates the National Guard Benefit Fund from which the Adjutant General must reimburse an active duty member of the Ohio National Guard if the member chooses to purchase federal life insurance from the Servicemembers' Group Life Insurance program. "Active duty member" already is defined in existing law to mean a member of the Ohio National Guard under active duty pursuant to an executive order of the President of the United States, an act of the Congress of the United States, or an order of the Governor. The National Guard Benefit Fund will consist of transfers of moneys or receipts made in accordance with the law. If the Fund does not have sufficient moneys to reimburse members, the Adjutant General may request additional money from the Controlling Board. The bill gives the Adjutant General powers to adopt rules to implement these provisions.

Death benefit for active duty members of the Ohio National Guard

(R.C. 5919.33)

Under existing law, the Adjutant General must pay a $20,000 death benefit to an Ohio National Guard member's beneficiary if the member dies while performing state active duty under orders issued by the Adjutant General on behalf

of the Governor. Under the bill, the Adjutant General must pay a $100,000 death benefit to any active duty member of the Ohio National Guard who dies while performing active duty. The bill specifically defines "active duty member" to be a member of the Ohio National Guard under active duty pursuant to an executive order of the President of the United States, an act of the Congress of the United States, or an order of the Governor.

Under existing law, the Adjutant General must pay the death benefit from the Adjutant General's appropriations if the Director of Budget and Management certifies that funds are available. The bill creates the National Guard Benefit Fund (another proposed change also creates this same fund) from which the Adjutant General must pay the death benefit. The Fund will consist of transfers of moneys and receipts made in accordance with the law.

The Ohio Military Reserve

(R.C. 5920.01; Section 560.03)

The Ohio Military Reserve (OHMR) is organized in Ohio as a reserve military force to defend the state when the Ohio National Guard is unable to do so. The Governor is Commander-in-Chief and is responsible for prescribing rules under which the OHMR operates. The OHMR cannot be called into the military service of the United States. Enlistment in the OHMR does not exempt a person from military service under any law of the United States.

The bill requires the Commander of the Ohio Military Reserve annually, within three months of the end of the state fiscal year, to provide a written report of expenditures and the use of funds to the General Assembly.

The bill creates the Ohio Military Reserve Homeland Security Study Commission to evaluate the role and effectiveness of the Ohio Military Reserve. The Commission consists of seven members: the Chair of the House Commerce and Labor committee, who serves as chairperson, two members of the House of Representatives appointed by the Speaker of the House, two members of the Senate appointed by the President of the Senate, the Adjutant General or a representative the Adjutant General designates, and the Director of Public Safety or a representative the Director designates. The bill directs the Commission to report its findings to the General Assembly before January 1, 2006.

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.

- Establishes the Office of Information Technology in the Department of Administrative Services to advise the Governor regarding the superintendence and implementation of statewide information technology policy and to lead, oversee, and direct activities regarding the development and use of information technology by specified state agencies.

- 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.

- Includes cargo vans within the types of motor vehicles subject to the Fleet Management Law.

- Generally requires state agencies subject to the Fleet Management Law to acquire motor vehicles through the master leasing program established by the Department.

- Prohibits reimbursement to state employees who use their own personal vehicles for any mileage incurred above an amount the Department determines annually unless the Department approves reimbursement for the excess mileage in accordance with specified standards.

- Requires state institutions of higher education to use the Department's vehicle fleet management software system, fuel card program to pay for fuel and vehicle maintenance, and bulk fuel purchases contract to make bulk fuel purchases.

- 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 universities[1] 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, 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.

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[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.*

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.

Office of Information Technology

(R.C. 125.041 and 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 must lead, oversee, and direct state agency activities related to information technology development and use.[2] In that regard, the CIO must do all of the following:

[2] *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 office of the Auditor of State, Treasurer of State, Secretary of State, or Attorney General, the General Assembly or any legislative agency, or the courts or any judicial agency (division (F)).*

- 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.

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 (DAS) 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

The bill continues to define a "motor vehicle" as described above, but also includes a cargo van within the definition, for purposes of the Fleet Management Law.

Current law excludes from that definition of "motor vehicle" any vehicle mentioned 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.

Acquisitions under DAS' master leasing program

DAS' exclusive authority over the acquisition and management of all motor vehicles used by state agencies includes approving the purchase or lease of each motor vehicle for use by a state agency and determining whether a motor vehicle will be leased or purchased for that use. The bill generally requires that, on and after July 1, 2005, each state agency acquire all *passenger motor vehicles* under DAS master leasing program. If DAS determines, however, that acquisition under this program is not the most economical method and if DAS and the state agency

can provide economic justification for doing so, DAS may approve the purchase, rather than the lease, of a passenger motor vehicle for the acquiring state agency.

Limit on reimbursement for state employees who use their personal vehicles

The bill requires the Director to adopt rules that prohibit the reimbursement of state employees who use their own motor vehicles for any mileage they incur above an amount that DAS must determine annually, unless reimbursement for the excess mileage is approved by DAS in accordance with standards for that approval the Director must establish in those rules.

Requirements for state institutions of higher education

Although the bill does *not remove* state institutions of higher education from their general exemption from the Fleet Management Law (R.C. 125.831(D)), it requires each state institution of higher education to do all of the following relating to motor vehicles that the institution acquires and manages:

- Use DAS' vehicle fleet management software system to track the motor vehicles.
- Use DAS' fuel card program to purchase fuel for, or to pay for the maintenance of, the motor vehicles.
- Make bulk fuel purchases for the motor vehicles under DAS' contract for those purchases.

The bill defines "state institution of higher education" for purposes of the Fleet Management Law to mean each of the four-year state universities, the Northeastern Ohio Universities College of Medicine, the Medical University of Ohio at Toledo, and each community college, state community college, university branch, or technical college.

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" 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

- 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 from the Department.

- 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.

- Creates the PASSPORT Evaluation Panel to select an independent contractor to conduct an evaluation of the PASSPORT Program.

- Requires the PASSPORT Evaluation Panel to approve a final report by not later than June 30, 2007.

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

(R.C. 173.39 to 173.397)

The bill requires the Department of Aging to certify providers of community-based long-term care services[3] under programs the Department administers and prohibits the Department 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, contracts with the Department or the Department's designee to provide the services, and provides 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 establish procedures for ensuring that PASSPORT agencies comply with criminal background check requirements under the law governing the PASSPORT program and evaluating the services provided by persons and government entities seeking or holding a certificate to ensure they are provided in a quality manner advantageous to the individual receiving the 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.

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[3] *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).*

Disciplinary action and enforcement

Under the bill, the Department is authorized to take disciplinary action against a provider. The Department must adopt rules 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.

Certification fees

The Department must adopt rules establishing the certification fee. The fee is to be set at an amount that enables the Department to collect enough revenue to cover all of the Department's costs of its certification duties under the bill.

The bill establishes the Community-Based Long-Term Care Provider Certification Fund in the state treasury into which the certification fees for community-based long-term care service providers are to be deposited. The Department is required to use the money in the fund for its certification duties under the bill.

Rules governing contracts and payments

The Department is required by the bill to adopt rules concerning contracts between the Department, or the Department's designee, and persons and government entities regarding community-based long-term care services provided under a program the Department administers. The Department must also adopt rules concerning the Department's payments for such services.

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.[4] 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 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).

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[4] *"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)).*

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 Disabilities[5] 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

[5] *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).*

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.

(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.[6]

(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.

[6] *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)).*

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.

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.[7] 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 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.

[7] *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.*

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.[8] This Ohio Long-Term Care Consumer Guide 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.

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[8] *"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 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).*

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.

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:

(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.[9]

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

[9] *"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).)*

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 the care and services provided and must regularly evaluate the participant's condition.[10]

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;

[10] *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).*

- Be able to remain safely in a community setting at the time of initial enrollment.[11]

Currently, Ohio has two PACE sites: TriHealth SeniorLink located in Cincinnati and Concordia Care in Cleveland Heights.[12]

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, will apply.[13] 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.[14] 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.

PASSPORT Evaluation Panel

(Section 206.66.66)

The bill creates the PASSPORT Evaluation Panel to oversee the performance of an evaluation of the PASSPORT Program conducted by an independent contractor. The Panel is composed of the following members:

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[11] 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>.

[12] Id. TriHealth SeniorLink serves Hamilton County and parts of Warren, Butler, and Clermont counties. Concordia Care serves Cuyahoga County.

[13] Telephone interview with Matt Hobbs, Legislative Liaison, JFS (Feb. 15, 2005).

[14] 79 Stat. 286 (1965), 42 U.S.C. 1396u-4.

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

(2) The Director of Aging or the Director's designee;

(3) A representative of the Central Ohio Agency on Aging, appointed by the Agency;

(4) A representative of PASSPORT providers, appointed by the Director of Aging;

(5) A representative of the Ohio Academy of Nursing Homes, appointed by the Academy;

(6) A representative of the Ohio Health Care Association, appointed by the Association;

(7) A representative of the Association for Ohio Philanthropic Homes and Housing for the Aging, appointed by the Association;

(8) A representative of Scripps Gerontology Center at Miami University, appointed by the Center.

The Panel must convene by not later than 60 days after the bill's effective date. Panel members are not to be compensated for their service. The Department of Aging must provide assistance to the Panel, including support services and meeting space.

The bill requires the Panel to establish criteria to be used in selecting an independent contractor to evaluate the PASSPORT Program. The criteria must specify that the independent contractor may not be affiliated with any state agency. The Panel must accept and evaluate bids from potential contractors in accordance with the request for proposals process administered by the Department of Administrative Services (DAS) and select a contractor that meets the criteria established by the Panel.

The independent contractor selected by the Panel must do all of the following in conducting the evaluation of the PASSPORT Program:

(1) Evaluate the types of services provided under the program and determine the amount expended for each service;

(2) Sample audit provider records and billing for services to determine their accuracy;

(3) Determine elements of the program that may be vulnerable to fraud;

(4) Evaluate the cost-effectiveness of services provided under the program;

(5) Evaluate the population served and the appropriateness of the program for that population;

(6) Evaluate past and present waiting lists for services and determine the impact outcomes of the delay in services;

(7) Evaluate program outcomes to determine the program's effectiveness in preventing nursing home administrations;

(8) Recommend improvements to correct any deficiencies found during the evaluation process, including methods to achieve greater effectiveness in attaining program objectives;

(9) Any additional action requested by the PASSPORT Evaluation Panel.

The independent contractor must issue to the Panel quarterly reports and, by not later than May 15, 2007, a final report of its findings. By not later than June 30, 2007, the Panel must approve a final report.

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.

- 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.

- Prohibits political subdivisions from regulating or enacting legislation relating to (1) the registration, packaging, labeling, sale, storage, distribution, use, or application of fertilizer or (2) the registration, labeling, sale, storage, transportation, distribution, notification of use, use, or planting of seed.

- 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.

- Applies the existing $50 fee for an annual amusement ride permit only to residential amusement rides, and establishes a $150 permit fee for commercial amusement rides.

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.

Prohibition against regulation of fertilizer and seed by political subdivisions

(R.C. 905.501 and 907.111)

Current law prohibits a political subdivision from regulating the application of fertilizer, or requiring a person licensed or registered under the state statutes governing fertilizers to obtain a license or permit to operate in a manner described in those statutes or to satisfy any other condition except as provided by a statute or rule of this state or of the United States. "Political subdivision" means a county, township, or municipal corporation and any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state. The bill expands the activities that political subdivisions cannot regulate to include the registration, packaging, labeling, sale, storage, distribution, and use of fertilizers.

In addition, the bill prohibits a political subdivision from enacting, adopting, or continuing in effect local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use, or application of fertilizers. "Local legislation" is defined to include, but be not limited to, an ordinance, resolution, regulation, rule, motion, or amendment that is enacted or adopted by a political subdivision.

Similar to the above prohibition against regulation of fertilizer by political subdivisions, the bill prohibits regulation of seed by political subdivisions. It specifies that the Department of Agriculture has sole and exclusive authority to regulate the registration, labeling, sale, storage, transportation, distribution, notification of use, use, and planting of seed within the state. It then states that the regulation of seed is a matter of general statewide interest that requires uniform statewide regulation and that the Agricultural Seed Law and rules adopted under it constitute a comprehensive plan with respect to all aspects of the regulation of seed within Ohio.

Under the bill, no political subdivision can do any of the following:

(1) Regulate the registration, labeling, sale, storage, transportation, distribution, notification of use, use, or planting of seed;

(2) Require a person who has been issued a permit or license under the Agricultural Seed Law to obtain a permit or license to operate in a manner described in that Law or to satisfy any other condition except as provided by a statute or rule of this state or of the United States; or

(3) Require a person who has registered a legume innoculant under the Agricultural Seed Law to register that innoculant in a manner described in that Law or to satisfy any other condition except as provided by a statute or rule of this state or of the United States.

The bill also prohibits a political subdivision from enacting, adopting, or continuing in effect local legislation relating to the permitting or licensure of any person who is required to obtain a permit or license under the Agricultural Seed Law or to the registration, labeling, sale, storage, transportation, distribution, notification of use, use, or planting of seed.

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.[15]

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.

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

[15] *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.*

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.[16] 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.[17] 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 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

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[16] 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 40º F, or lower (R.C. 915.01, not in the bill).

[17] 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).

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.

Amusement ride permit fee

(R.C. 1711.53)

Under current law, the Department of Agriculture charges a $50 fee for an annual amusement ride permit. The bill applies the $50 permit fee only to residential amusement rides, and establishes a $150 permit fee for commercial amusement rides.

Existing law defines "amusement ride" to mean any mechanical device, aquatic device, or combination of devices that carries or conveys passengers on, along, around, over, or through a fixed or restricted course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement (R.C. 1711.50, not in the bill). The bill does not further define "residential" amusement ride or "commercial" amusement ride.

STATE BOARD OF EXAMINERS OF ARCHITECTS

- Permits the State Board of Examiners of Architects to impose a fine against certificate holders in addition to other disciplinary actions the Board may take under current law.

Imposition of fines against certificate holders

(R.C. 4703.15)

Under current law, the State Board of Examiners of Architects may deny renewal of, revoke, or suspend any certificate of qualification to practice architecture or any certificate of authorization, if the certificate holder engages in specified practices or violates the Board's rules governing the standards of service, conduct, and practice of architects. The bill permits the Board, in addition to those disciplinary actions specified, to impose a fine against a certificate holder. The fine may be not more than $1,000 for each offense, but cannot exceed $5,000 regardless of the number of offenses the certificate holder has committed between the time the fine is imposed and the time any previous fine was imposed.

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.

ATTORNEY GENERAL

- Removes the Chief Justice of the Supreme Court from the State Victims Assistance Advisory Committee.
- Specifies when various classes of debts fall due for the purpose of when they must be certified to the Attorney General for collection.
- Authorizes the selling of debts owed to the state to private parties.
- Requires the Auditor of State to review state agencies' procedures for collecting debts owed to them.

Removal of Chief Justice from the State Victims Assistance Advisory Committee

(R.C. 109.91)

The Crime Victims Assistance Advisory Committee (1) advises the Attorney General's Crime Victims Assistance Office in determining crime and delinquency victim service needs and policies and in improving and exercising leadership in the quality of crime and delinquency victim programs and (2) reviews and recommends to the Crime Victims Assistance Office the victim assistance programs that should be considered for the receipt of state financial assistance. Under current law, the committee consists of a chairperson appointed by the Attorney General, 15 members appointed by the Attorney General from specified categories of persons, and four ex officio nonvoting members: the Chief Justice of the Supreme Court, the Attorney General, a member of the Senate designated by the President of the Senate, and a member of the House of

Representatives designated by the Speaker of the House. The bill removes the Chief Justice from the committee.

Debts owed to the state

Time at which debts must be certified to the Attorney General for collection

(R.C. 131.02)

Under continuing law, whenever a debt owed to the state is not paid within 45 days after payment is due, the public official responsible for administering the law under which the debt arose must certify the debt to the Attorney General for collection. The bill specifies when various classes of debts fall due for the purpose of when they must be certified to the Attorney General.

Under the bill, a payment is due at whichever of the following times apply with respect to the debt:

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

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

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

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

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

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

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

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

(9) Any other appropriate time determined by the officer, employee, or agent responsible for administering the law under which the debt arose on the

basis of statutory requirements or the business processes of the agency to which the debt is owed.

If more than one of the times specified in (1) to (9) above applies with respect to a debt, the debt falls due for purposes of when it must be certified to the Attorney General for collection at the earliest of the applicable times.

The bill also specifies that an unpaid amount that a student owes to an institution of higher education shall be certified to the Attorney General for collection within ten days after the next academic session begins if that tenth day occurs after the usual 45-day period before a debt is certified for collection.

Sale of debts to private parties

(R.C. 131.022)

The bill authorizes the Attorney General to sell or to otherwise transfer to private parties certain claims arising from debts certified to the Attorney General for collection. The Attorney General may sell such a claim if it has been final for at least one year. The Attorney General may not sell a claim for which an arrangement has been made for payment, unless the person owing the debt from which the claim arose has failed to comply with the terms of the arrangement for more than 30 days. Along with the claim itself, the Attorney General is authorized to sell to private parties an amount representing the collection costs incurred with respect to the claim, interest accruing on the claim, and fees imposed by the Attorney General.

The bill authorizes the Attorney General to sell claims through private negotiated sales or public auctions, which includes auctions conducted through the internet. The Attorney General may consolidate any number of claims for sale as a single unit.

Within 60 days before first offering a debt for sale, the Attorney General must mail written notice to the debtor, which specifies all of the following:

(1) The nature and amount of the claim;

(2) The manner in which the debtor may contact the Attorney General to arrange terms for payment of the claim; and

(3) That if the debtor does not contact the Attorney General within 60 days after the date the notice is issued and arrange terms for payment, then

- The claim will be offered for sale to a private party for collection by that party by any legal means;

- The debtor is denied any right to seek and obtain any refund of any amount from which the claim arises; and

- The debtor waives any right the debtor may have with respect to confidentiality of information regarding the claim to the extent confidentiality is provided for under the Revised Code.

Under the bill, a claim becomes the property of the person to which the claim is sold or transferred, and may be sold, transferred, or otherwise disposed of by that person. The owner of the claim is entitled to all the proceeds from the collection of the claim. Purchasers or transferees are bound by all applicable laws governing debt collection.

The bill specifies that, solely for the purpose of completing the sale or transfer of a claim, the Attorney General may disclose information about the debtor that would otherwise be confidential under the Revised Code. A debtor has no right of action with respect to such a disclosure.

Finally, the bill provides that upon the sale or transfer of a claim, no refund may be issued or paid to the debtor for any part of the debt from which the claim arose.

Review of state agencies' debt collection procedures

(Section 503.03)

The bill requires that, sometime during 2005, the Auditor of State examine the degree to which each state agency complies with the procedures set forth in continuing law with respect to collecting debts owed to them and certifying delinquent debts to the Attorney General for collection. Specifically, the Auditor is required to examine:

(1) The practices and procedures used by the agency to collect claims before the claims are certified to the Attorney General;

(2) The number of individuals employed by the agency or engaged under contract with the agency in 2003 and 2004 whose only, or primary, duty was to collect debts owed to the agency; and

(3) With respect to claims certified to the Attorney General in 2003 and 2004, the average number of days elapsing between the last day for timely payment of the claims and the day the agency certified the claim.

For purposes of completing the Auditor's examination, the Auditor may request a state agency to provide reports to the Auditor on the matters described

above. The bill requires that state agencies provide the reports within 60 days after the request; however, the Auditor may extend the time for up to another 60 days for good cause.

On or before March 31, 2006, the Auditor is required to submit a written report on the Auditor's findings to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the Legislative Service Commission.

AUDITOR OF STATE

- Beginning in January, 2006, requires the Auditor of State annually to adjust county, township, municipal, and Department of Transportation force account limits by the percentage increase, if any, in the consumer price index over the preceding year.

County, township, municipal, and Department of Transportation force account limits

(R.C. 117.16, 117.162, 723.52, 723.53, 5517.02, 5543.19, and 5575.01)

In general, "force account" is a term used in regard to the cost of a highway project. Below the amount established for a force account project, a governmental agency may use its own labor force and equipment; above the amount established by law, the governmental agency generally must competitively bid a project. The Revised Code establishes force account limits for the Department of Transportation, counties, townships, and municipal corporations, as follows: (1) for ODOT, $25,000 per mile for maintenance or repair of a state highway and $50,000 for bridges, culverts, and traffic control signals, (2) for counties, $30,000 per mile for construction or reconstruction of roads and $100,000 for construction, reconstruction, improvement, maintenance, or repair of bridges or culverts, (3) for townships, $45,000 overall and $15,000 per mile for maintenance and repair of roads, and (4) for municipal corporations, $30,000 for construction, reconstruction, or repair of a street.

The bill requires the Auditor of State, not later than January 31 each year, to (1) adjust county, township, municipal, and ODOT force account limits by the percentage increase, if any, in the consumer price index over the 12-month period that ended on December 31 of the preceding year, rounded to the nearest one-tenth of one per cent, and (2) post the new force account limits on the Auditor of State's

Internet site on the World Wide Web. Force account limits adjusted to reflect an increase in the consumer price index are effective for the following 12-month period beginning February 1.

OHIO STATE BARBER BOARD

- Requires the Barber Board to review annually the rules the Board is required to adopt, compare those rules with the rules adopted by the State Board of Cosmetology, and adopt new rules similar to any cosmetology rules that the Barber Board determines would be beneficial to the barbering profession.

Annual review of Barber Board's rules

(R.C. 4709.05)

Under current law, the Barber Board is required to adopt rules concerning sanitary conditions of barber shops and schools, the contents of licensing examinations for barbers, continuing education requirements for barbers, licensing requirements for barber schools and teachers, requirements for barber students, and any other area the Barber Board determines appropriate. The bill requires the Barber Board to review these rules annually in order to compare them with the rules adopted by the State Board of Cosmetology. If the Barber Board determines that the cosmetology rules including, but not limited to, rules concerning using career technical schools, would be beneficial to the barbering profession, the bill requires the Barber Board to adopt rules for barbers similar to the cosmetology rules.

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."

CAPITOL SQUARE REVIEW AND ADVISORY BOARD

- Requires that the hiring of the Executive Director of the Capitol Square Review and Advisory Board be approved by the President of the Senate and the Speaker of the House of Representatives.

Hiring of the Executive Director

(R.C. 105.41)

Under current law, the Capitol Square Review and Advisory Board is required to employ the Executive Director of the Board. The bill requires that the hiring of that officer be approved by the President of the Senate and the Speaker of the House of Representatives.

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.

- Reduces the minimum price discount for wholesale purchases of spirituous liquor from 12.5% to 6% of the retail selling price of that liquor.

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.

Minimum price discount for spirituous liquor wholesale purchases

(R.C. 4301.10(B)(4))

Current law grants the Division of Liquor Control the authority to fix the wholesale and retail prices for the various classes, varieties, and brands of

spirituous liquor sold by the Division. However, it requires the Division to fix wholesale prices at a discount, which must be not less than 12.5% of the retail selling prices. The bill reduces this minimum price discount to 6% of the retail selling prices.

OFFICE OF CONSUMERS' COUNSEL

- Negates the Consumers' Counsel's authority to operate a telephone call consumer response center, and requires the Counsel to forward telephoned complaints against utilities to the Public Utilities Commission call center.
- 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.

Call center for consumer complaints against public utilities

(R.C. 4905.261, 4911.02, and 4911.021)

Committee testimony indicated that both the Public Utilities Commission (PUCO) and the Consumers' Counsel receive and respond to telephoned consumer's public utilities complaints. The bill expressly requires the Commission to operate a telephone call center for consumer complaints against any public utility by any person, firm, or corporation.

The bill negates the Consumers' Counsel authority to operate a telephone call consumer response center for residential consumer complaints, and limits the Consumers' Counsel's ability to take action with respect to consumer complaints to written complaints. The Consumers' Counsel must forward any calls received concerning consumer complaints to the PUCO's call center.

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.)

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.

DEPARTMENT OF DEVELOPMENT

- Makes permanent the Shovel Ready Sites Program in the Department of Development, currently established as a pilot program in uncodified law, to provide grants for projects to port authorities and development entities approved by the Director of Development, specifies the purposes for which the grants may be used, and requires the Director to adopt rules establishing procedures and requirements necessary for the administration of the Program.

- 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 loan guarantees for the general Small Businesses Program and expands the purposes for which these loan guarantees may be made.

- Prohibits the Third Frontier Commission from making any grants or loans for any activities involving stem cell research with embryonic tissue.

Shovel Ready Sites Program

(R.C. 122.083)

Current uncodified law establishes the Shovel Ready Sites Pilot Program in the Department of Development to provide grants for projects to port authorities and development entities approved by the Director of Development. The bill makes the program permanent by placing it in codified law and specifies that grants may be used to pay the costs of any or all of the following: (1) acquisition of property, including options, (2) preparation of sites, including brownfield clean-up activities, (3) construction of road, water, telecommunication, and utility infrastructure, and (4) payment of professional fees the amount of which cannot

exceed 20% of the grant amount for a project. In addition, the bill requires the Director to adopt rules in accordance with the Administrative Procedure Act that establish procedures and requirements necessary for the administration of the program, including a requirement that a recipient of a grant enter into an agreement with the Director governing the use of the grant. Finally, the bill creates in the state treasury the Shovel Ready Sites Fund consisting of money appropriated to it. The Fund must be used solely for the purposes of the Shovel Ready Sites Program.

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.

Prohibition against Third Frontier Commission funding embryonic stem cell research

(R.C. 184.02)

Current law creates the Third Frontier Commission for the purpose of supporting high technology research and development capabilities in Ohio, primarily through the issuance of grants and loans. The bill prohibits the Commission from making any grants or loans to individuals, public agencies, private companies or organizations, or joint ventures for any activities involving stem cell research with embryonic tissue.

DEPARTMENT OF EDUCATION

Base-cost funding

- Prescribes that the formula amount is $5,283 for fiscal year 2006 and $5,399 for fiscal year 2007.

- Beginning with 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.

- Beginning with fiscal year 2007, 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.

- Beginning with fiscal year 2007, 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 2006.

- Changes the method of calculating city, exempted village, and local school districts' charge-off to account for some of the value of payments the district receives under economic development tax exemption agreements.

- Requires the Tax Commissioner annually to certify to the Department of Education the value of property in a city, exempted village, and local school district that is exempt from taxation under tax increment financing agreements.

- Requires the Director of Development annually to certify to the Department of Education the total amount of payments received by each city, exempted village, and local school district during the preceding tax year under other kinds of economic development tax exemption agreements.

- Requires the treasurer of any school district that receives payments in lieu of taxes under a contract or agreement with another party (not tax increment financing agreements) to report the amount of those payments to the Director of Development and authorizes the State Board of Education to suspend or revoke a treasurer's license for willful failure to comply with that reporting requirement.

- 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 100% for fiscal year 2006 and 50% for fiscal year 2007.

- Provides additional state transitional aid in fiscal years 2006 and 2007 to prevent any city, exempted village, or local school district's state "SF-3 funding plus charge-off supplement" for the current fiscal year from being less than it was in the previous fiscal year.

- Provides additional state transitional aid to prevent any joint vocational school district's fiscal year 2007 "joint vocational funding" from decreasing by more than 5% from the previous fiscal year.

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).

Disadvantaged pupil impact aid and poverty-based assistance

- For fiscal year 2006, requires a 2% across-the-board increase in Disadvantaged Pupil Impact Aid payment for most school districts and community schools (instead of the amount prescribed by the statutory formula).

- Beginning with fiscal year 2007, renames the Disadvantaged Pupil Impact Aid subsidy as "Poverty-Based Assistance" and expands the subsidy to include additional payments for (1) services to limited-English proficient students, (2) teacher professional development, (3) dropout prevention in the Big-Eight districts, and (4) community outreach programs in the Urban-21 districts.

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.

- For fiscal years 2006 and 2007, specifies that the local share of the calculated amount for transportation is 2% greater than in the previous year (instead of as prescribed under the transportation subsidy formula) for purposes of computing a district's charge-off supplement and excess cost supplement.

- 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 refers 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.

- Changes the date for determining the eligibility of children for handicapped preschool units based on their age from December 1 to the date on which the children must have attained the minimum age to start school in their school districts (August 1 or September 30).

- Requires the Department of Education by July 1 of each year (beginning in 2006) to electronically report to the General Assembly the number of

handicapped preschool children served the previous fiscal year, disaggregated according to category of handicap.

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.

- Requires each school district to provide a second certification of formula ADM, covering the week in the spring that the fourth through eighth-grade achievement tests are administered, to be used to calculate state payments in the first half of the following fiscal year.

- Requires school districts to report any student who is absent from school without legitimate excuse for 21 consecutive days or, if the student's school operates under an alternative attendance schedule, for 105 consecutive hours.

- Requires the Department of Education to remove from a district's formula ADM any student absent without legitimate excuse for 21 consecutive days or for 105 consecutive hours and requires the Department, if it determines that a district has failed to report an absent student, to remove the student plus the equivalent of one additional student from the district's formula ADM.

- Requires the Auditor of State to conduct annual audits of the average daily information reported by a random sample of school districts.

- Establishes a new, three-year payment to phase out (rather than immediately terminate) "gap aid" subsidies to school districts that pass property tax or income tax levies in tax year 2005 or thereafter.

Scholarship programs

- Establishes the Educational Choice Scholarship Program, beginning in the 2006-2007 school year, to provide scholarships for students residing in academic emergency and academic watch school districts to attend private schools that register with the Superintendent of Public Instruction.

- Directs the Department of Education to award not more than 18,000 Educational Choice scholarships in fiscal year 2007.

- Excludes students who are eligible to participate in the Pilot Project Scholarship Program (the Cleveland voucher program) from participation in the Educational Choice Scholarship Program.

- Expands eligibility for scholarships under the (Cleveland) Pilot Project Scholarship Program to eleventh and twelfth graders.

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

- Reauthorizes the Pilot Project Special Education Scholarship Program for fiscal years 2006 and 2007, under which the parent of an identified autistic child may receive an annual scholarship of up to $20,000 (which is deducted from the account of the child's resident school district) to pay for the child's IEP services at a private or another public provider.

Community schools

- Establishes a statewide cap until July 1, 2007, on the number of community schools sponsored by the school districts in which they are located of 25 more than the number of such schools on the bill's effective date.

- Extends the current statewide cap on the number of community schools sponsored by other entities for two years to July 1, 2007, and increases the cap to 250 (from the current 225) for that period.

- Exempts community schools solely serving dropouts and schools sponsored by the designee of a state university board of trustees from counting toward the caps.

- Creates a one-year moratorium on the establishment of new Internet- or computer-based community schools ("e-schools").

- Requires students, other than kindergarteners, to have been enrolled in a public school for at least one semester in the previous three school years in order to enroll in an Internet- or computer-based community school.

- Requires Internet- or computer-based community schools to provide a location within 50 miles of a student's residence at which the student can take the achievement tests and diagnostic assessments.

- Requires community school sponsors approved on or after the provision's effective date to have a record of financial responsibility and successful implementation of educational programs.

- Specifies that if an entity that sponsors or operates out-of-state schools seeks approval to sponsor community schools in Ohio, at least one of those out-of-state schools must perform better than or comparably to Ohio schools in academic watch.

- Limits an entity not designated by a state university to sponsoring 35 community schools, but permits the Department of Education to increase that limit up to 50 schools.

- Exempts community schools solely serving dropouts from counting toward any sponsor's limit.

- Requires the Department to assume sponsorship of any schools in excess of the number an entity is allowed to sponsor.

- Requires the contract between the sponsor and governing authority of a new community school to be adopted by March 15 prior to the school year in which the school will open.

- Specifies that a community school's contract with its sponsor is void if the school (1) fails to open within one year after the contract is adopted or (2) permanently closes prior to the contract's expiration.

- Requires community schools, other than those schools solely serving dropouts, to open by September 30 each year beginning in the 2006-2007 school year.

- Permits the establishment of a community school to simultaneously serve autistic students and non-disabled students.

- Prohibits Internet- or computer-based community schools from receiving vocational education weighted funding, parity aid, or poverty-based assistance, including funding for all-day kindergarten.

- Provides for payments to community schools, other than Internet- or computer-based community schools, of per-pupil amounts of the four new components of poverty-based assistance.

- Requires the Department of Education to administer a self-insurance surety program for participating community schools to pay surety claims up to $1 million per occurrence or $3 million aggregate.

Statewide testing

- Beginning in the 2006-2007 school year, requires the spring administration of elementary-level achievement tests generally to be no earlier than Monday of the week of May 1, instead of in mid-March as under current law.

- Authorizes the State Board of Education to designate a testing period one week earlier than the general testing period for administration of achievement tests to limited English proficient students.

- Requires alternate assessments for special education students to be completed and submitted to the test scoring company by April 1 of the school year in which the assessment is given.

- Beginning in the 2006-2007 school year, requires student scores on the spring achievement tests to be returned to school districts by June 15.

- Requires a student's data verification code to be included on each achievement test administered to the student.

- Permits companies hired to score the achievement tests to have access to personally identifiable student information.

- Requires the Department of Education and contracting entities to use the data verification codes to protect student privacy when conducting studies and research projects.

- Specifies that the initial administration of each elementary-level achievement test is a public record and that at least 40% of the questions used to compute student scores on subsequent administrations of those tests are public records.

- Specifies that only the spring administration of the Ohio Graduation Test (OGT) is a public record.

- Eliminates the requirement for the State Board of Education to adopt diagnostic assessments for grades 3 through 8, except for third grade writing.

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 child 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.

Post-Secondary Enrollment Options Program

- Restricts participation in the Post-Secondary Enrollment Options Program after July 1, 2005, to Ohio residents.

- Specifies that the purpose of the Post-Secondary Enrollment Options Program is to provide enriched education opportunities that are beyond the opportunities offered by the students' high school.

- Requires the student or the student's parent to reimburse state funds paid to a college for a course in which the student does not attain a passing final grade in the course.

- Disqualifies from Option B of the program those students enrolled in (1) nonchartered nonpublic high schools, and (2) physical education college courses.

- Permits students who participate under Option A to elect to receive high school credit, as well as college credit, for successfully completed college courses.

School district RIF authority

- Allows boards of education and governing boards of educational service centers to reduce the number of teachers for financial reasons.

- Expands the reasons for which these boards may reduce the number of nonteaching employees to include the same reasons the board would reduce the number of teaching employees.

- Specifies that the changes for school districts' and educational service centers' authority to make reductions in force apply to existing collective bargaining agreements.

- Permits the board of education of a local or exempted village school district (non-civil-service school districts) to terminate the positions of transportation employees for reasons of economy and efficiency and to contract with an independent agent to provide student transportation services as long as specified conditions are satisfied.

- Clarifies that an individual whose transportation staff position with a school district has been terminated under the bill's provisions is not entitled to unemployment compensation benefits for the period between the academic term in which the individual's position was terminated and the next succeeding academic term, unless the individual ultimately is not offered an employment opportunity for that next term.

Other education provisions

- Creates the Ohio Center for Autism and Low Incidence (OCALI) within the Department of Education to administer programs and coordinate services for infants, preschool and school-age children, and adults with autism and other disabilities.

- Limits eligibility for the annual stipend paid to teachers certified by the National Board for Professional Teaching Standards to the ten-year period of the teacher's initial certification.

- Requires the Superintendent of Public Instruction to adopt a statewide grade acceleration policy by March 31, 2006, and requires school districts that have not adopted their own grade acceleration policy to comply with the statewide policy.

- Specifically authorizes joint vocational school districts and educational service centers (in addition to city, local, and exempted village school districts under current law) to provide latchkey programs.

- Authorizes school districts and educational service centers to expend money from their general funds for latchkey programs.

- Eliminates the requirement that school districts produce annual "spending plans" (detailing all revenues available for appropriation and expected expenditures, including outstanding debts) to be filed with the Department of Education.

- Eliminates the requirement that school districts file their amended certificates of estimated resources with the Department of Education.

- Eliminates requirements that the Department of Education file monthly and annual statistical reports with the Governor, the Senate, the House of Representatives, the Auditor of State, and the Legislative Service Commission.

- Requires city, local, and exempted village school districts to transport their high school pupils who attend career-technical classes at another district, including a joint vocational school district, from the student's high school to the career-technical program.

- Requires a school district that is in fiscal watch or fiscal emergency status to update its five-year projection of revenues and expenditures once the Superintendent of Public Instruction approves the district's financial plan or financial recovery plan.

- Exempts a school district from making otherwise required deposits into certain "set-aside" funds while in a fiscal emergency period and excuses it from eliminating deficits in those funds that accrued in prior years.

- Prohibits a school district, or individual school operated by a district, from operating without a charter issued by the State Board of Education.

- Requires the State Board of Education, upon considering the charter of a new school district, to require the party proposing the new district to submit a map, certified by the county auditor, showing the boundaries of the new district.

- Establishes the School Physical Fitness and Wellness Advisory Council to develop, by December 31, 2005, best practices guidelines and evaluation strategies for school districts regarding nutrition education, physical activity for students, and student wellness.

- Establishes a legislative committee to study the feasibility and economic impact of school district consolidation.

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).[18]

Base-cost formula

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

[18] *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. Beginning with fiscal year 2007, 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."

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.[19] 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 continues to apply a 2.2% inflation factor to derive the formula amounts for fiscal years 2006 and 2007.

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

(R.C. 3317.012(A))

Using the 2.2% inflation factor, described above, the bill specifies that the per-pupil base cost (or "formula amount") is $5,283 for fiscal year 2006 and $5,399 for fiscal year 2007.

Overview of the bill's changes to the base-cost formula

(R.C. 3317.022)

The bill maintains the current base-cost formula for fiscal year 2006 except for changes to the calculation of the district's charge-off (described below). Beginning with fiscal year 2007, however, the bill prescribes a formula under which a school district is to receive in combined school district and state funds the greater of:

(1) The amount the district received in fiscal year 2006; or

[19] *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.*

(2) The sum of (the product of the district's formula ADM multiplied by the formula amount) and the sum of four new base funding supplements (also described below).

Beginning in fiscal year 2007, the bill eliminates the use of the cost-of-doing-business factor, except for determining the fiscal year 2006 base-cost guarantee.

Charge-off to account for payments a district receives in lieu of taxes

(R.C. 3317.02(X) and (Y), 3317.021, 3317.022, and 3317.0216)

The bill changes the method of calculating a city, exempted village, or local school district's charge-off (or presumed district share of the base cost).[20] It makes two separate changes in order to account for payments a district might receive as a result of economic development tax exemption agreements. First, it multiplies 23 mills (or .023) by the sum of the district's recognized valuation (as under current law) plus the value of real property in the district that is exempted from taxation under municipal, county, or township tax increment financing (TIF) agreements (as if that property was subject to taxation). The bill calls this latter amount "incentive district tax-exempt value." Second, it adds to that product, *one-half* of the amount of any "payments in lieu of taxes" the district received in the previous tax year as a result of tax exemption agreements for urban renewal programs, community redevelopment corporations, community reinvestment areas, and enterprise zones (not including TIF agreements).

Thus, under the bill the charge-off of a district for which property is exempted from taxation under a TIF agreement (apparently regardless of whether or not the district actually receives any payments in lieu of taxes under that agreement) or that receives payments under other exemption agreements will be larger, and correspondingly its state payment will be smaller, than they would be without the bill's changes.

Reporting of the amount of payments received by school districts

(R.C. 3317.021(E))

While the bill requires the Tax Commissioner to include the value of tax exempted property under TIF arrangements to the Department of Education along with the Commissioner's annual report to the Department under current law, the bill provides a different mechanism for reporting to the Department the amount of

[20] *The changes made to the charge-off described in this section do not apply to joint vocational school districts.*

the actual payments in lieu of taxes a district receives under other tax exemption arrangements. For the latter calculation, the bill requires the Director of Development annually to certify to the Department of Education the amount of the total payments in lieu of taxes received by each city, exempted village, and local school district during the previous tax year. Furthermore, for this purpose, the bill requires the treasurer of a school district to report to the Director the amount of the annual payments the district will receive under a tax exemption contract or agreement whenever the district enters into such a contract or agreement. The bill also states that the State Board of Education may suspend or revoke the license of a district treasurer for willfully reporting erroneous, inaccurate, or incomplete data to the Director.

Background

Under current law, not changed by the bill, municipal corporations, townships, and counties may grant tax exemptions to certain taxpayers in return for specified investments made in the community. These tax incentives are generally used to stimulate development in areas that might not otherwise witness much improvement. The agreement entered into by the developer and the subdivision granting the exemption may prescribe payments to be made by the developer to offset some or all of the revenue a taxing entity might forgo because of the exemption. In some cases, a school district may receive some of those payments.

Revised base-cost formula for fiscal year 2006

(R.C. 3317.022)

The base-cost formula for fiscal year 2006 is as follows:

Cost-of-doing-business factor X formula amount X formula ADM –
{[0.023 X (recognized valuation + "incentive district tax-exempt value")]}
+
(0.50 X "payments in lieu of taxes")

Base funding supplements

(R.C. 3317.012(B))

Beginning with fiscal year 2007, 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 ($27 in fiscal year 2007) times the

district's formula ADM times a phase-in multiple of 50% 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 ($240 in fiscal year 2007) times a phase-in multiple of 50% 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 ($6 in fiscal year 2007) 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.[21]

(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.[22] 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.

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[21] *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.*

[22] *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.*

Revised base-cost formula for fiscal year 2007

(R.C. 3317.022)

The bill uses the new base funding supplements in setting forth the following revised formula for calculating a district's total base-cost funding for fiscal year 2007 and thereafter:

The *greater* of (a) or (b) minus {[0.023 times (recognized valuation plus "incentive district tax-exempt value")] plus 0.50 times "payments in lieu of takes}

Where:

(a) = Cost-of-doing-business factor for fiscal year 2006 x the formula amount for fiscal year 2006 x formula ADM for fiscal year 2006;

(b) = (formula amount for the current fiscal year x the current formula ADM) + the sum of all four of the base funding supplements.

Under this formula, the funding supplements being phased in replace the cost-of-doing-business factor. But each 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 2006, the last year in which the cost-of-doing-business factor is proposed to be used.

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. The bill retains the current formula for fiscal year 2006 but prescribes a revised formula for fiscal year 2007 that is similar (but not identical) to the one the bill prescribes for city, exempted village, and local districts. Under the bill, the revised fiscal year 2007 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 2006 x the formula amount for fiscal year 2006 x formula ADM for fiscal year 2006;

(b) = formula amount for the current fiscal year x the current formula ADM.

The bill does not provide for the payment of base funding supplements to JVSDs. Also, because JVSDs generally do not receive payments in lieu of taxes (as described above), the bill does not change the charge-off calculation for JVSDs.

School Funding Advisory Council

(Section 206.09.96)

The bill 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 up to 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 losses in state funding due to the bill's funding formula changes, the bill specifies that in both fiscal years 2006 and 2007, no school district's "SF-3 funding plus charge-off supplement" be less than it was for the prior fiscal year. Accordingly, the Department of Education must pay a district additional state funds, as necessary, to eliminate any decrease in either fiscal year.

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.[23]

In addition, the bill guarantees that no JVSD will receive a decrease in its "joint vocational funding" in excess of 5% in fiscal year 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.

The bill does not provide any transitional aid to JVSDs for fiscal year 2006.

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[23] *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.)*

State aid guarantee payments

(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.

Under the bill, in fiscal year 2006, eligible school districts (including JVSDs) are to receive the full amount of the guarantee, but the amount calculated in fiscal year 2007 is to be reduced by 50%.

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 2006 (including the fiscal year 2006 cost-of-doing-business factor) or the current year formula amount plus a per pupil amount of the four new base funding supplements.

Disadvantaged pupil impact aid (DPIA) and poverty-based assistance--background

Under current codified law, an additional, nonequalized state subsidy is paid to school districts with threshold percentages of resident children from families receiving public assistance. Known as "disadvantaged pupil impact aid" or "DPIA," the amount of the subsidy depends largely on the district's "DPIA index," which is its percentage of children receiving public assistance compared to the statewide percentage of such children. Three separate calculations determine the total amount of a district's DPIA funds:

(1) Any district with a DPIA index greater than or equal to 0.35 (meaning its proportion of children receiving public assistance is at least 35% of the

statewide proportion) receives money for safety and remediation. Districts with DPIA indices between 0.35 and 1.00 receive $230 per pupil in a public assistance family. The per pupil amount increases proportionately for districts whose indices are greater than 1.00 as the DPIA index increases.

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

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

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

DPIA payments for fiscal year 2006

(Section 206.09.38)

The bill provides for an across-the-board 2% increase in DPIA for school districts in fiscal year 2006, instead of computing the subsidy as required under the statutory formula. Districts that receive the DPIA guarantee, however, continue to receive the same amount they have received since fiscal year 1998. Also, if a district did not receive a DPIA payment in fiscal year 2005 but would qualify for one under the formula in fiscal year 2006, the bill directs the Department of Education to calculate and pay the subsidy to that district based on the statutory formulas, except that the district's DPIA index and DPIA student count must be based solely on Ohio Works First data, instead of other indicators specified in law. This is similar to the way districts were paid DPIA in fiscal years 2004 and 2005 under the operating budget act for the 2004-2005 fiscal biennium.[24]

The across-the-board 2% increase also applies to community schools, in the same way as uncodified law provided for DPIA for community schools in fiscal year 2005.[25] Currently, that law prescribes detailed instructions for the calculation of state DPIA payments to community schools, in light of the 2% across-the-board

[24] *Section 41.10 of Am. Sub. H.B. 95 as amended by Am. Sub. S.B. 2, both of the 125th General Assembly.*

[25] *Section 16 of Am. Sub. SB. 2 of the 125th General Assembly.*

DPIA increase provided in the 2003-2005 biennial budget act for school districts. The bill directs the Department to make DPIA payments to community schools (except Internet- or computer-based community schools) in fiscal year 2006 in the same manner as in fiscal year 2005 assuming a 2% increase over the fiscal year 2005 payments. Essentially, the provision directs the Department of Education to calculate the amount of each DPIA component paid to each school district and divide that by the number of students for whom it is paid. The resulting per pupil amount is the payment that "follows" each qualifying student enrolled in a community school and that is deducted from the state payments to the school district where the student otherwise is legally entitled to attend school.

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).

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.

Poverty-based assistance payments for fiscal year 2007

(R.C. 3317.029 and Section 612.18; conforming changes in R.C. 3314.03, 3314.08, 3314.13, 3317.0212, and 3317.0217)

Beginning with fiscal year 2007, the bill revises the Disadvantaged Pupil Impact Aid (DPIA) subsidy, 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 guidelines[26] 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.

[26] *The 2005 federal poverty guideline for a family of three is $16,090.*

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* (instead of 1998) 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.

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 ($27 in fiscal year 2007) per student for districts with a poverty index equal to 0.25 and ends with 2% of the base-cost formula amount ($108 in fiscal year 2007) 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 ($216 in fiscal year 2007) per student for a district with a poverty index equal to 1.25, to 14% of the base-cost formula amount ($756 in fiscal year

2007) 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 50% of the calculation be paid 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 $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 ($694 in fiscal year 2007) per limited-English proficient student for a district with a poverty index equal to 1.0, to 25.702% ($1,388 in fiscal year 2007) of the base-cost formula amount per limited-English proficient

student for districts with a poverty index of 2.0 or higher. This subsidy is phased-in, with districts eligible for 50% of the formula calculation in fiscal year 2007.

Counting limited-English proficient students after fiscal year 2007. In fiscal year 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 December 31, 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 ($240 in fiscal year 2007) per teacher. The bill phases in this component by directing that districts be paid for 50% of the formula calculation 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 ($27 in fiscal year 2007), 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 ($41 in fiscal year 2007). 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 ($67 in fiscal year 2007).

The bill phases in this component by directing that districts be paid for 50% of the formula calculation 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 $44,396 for fiscal year 2007. The bill phases in this component by directing that districts be paid for 50% of the formula calculation 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 students, 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 students. 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 206.09.37)

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.[27]

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[27] *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.*

Transportation subsidy

(Section 206.09.21)

Background

Each school district is eligible for a subsidy for transporting students to and from school.[28] 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.

The formula itself is based on the statistical method of multivariate regression analysis.[29] 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).[30] 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.

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[28] *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 that 30 minutes. District also may provide transportation to resident students in grades 9 through 12. (R.C. 3327.01.)*

[29] *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).*

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

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.

District share of pupil transportation for other funding calculations

For fiscal years 2006 and 2007, the bill specifies that, for purposes of computing a school district's charge-off supplement and excess cost supplement, the local share of the calculated amount for transportation is 2% greater than in the previous year (instead of the greater of the district's state share percentage or 60%, as prescribed under the transportation subsidy formula).

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.[31] 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.

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[31] *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.)*

The following weights are prescribed by current law for special education and related services.[32]

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

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 is 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

[32] *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).*

of (1) one-half of the district's costs in excess of the threshold amount and (2) 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.[33]

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.

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

[33] *R.C. 3314.08(E), 3317.022(C)(3), and 3317.16(E).*

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 credit to a district the amount of excess costs calculated for providing special education and related services to a child who is a resident of another district and to deduct that amount from the child's district of residence.

Switch from unit funding to 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.[34]

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, except for a change in the date for counting students in applicable units (see below).

Date for counting of students in handicapped preschool units

(R.C. 3317.05)

State and federal law both mandate a free, appropriate public education for preschool children who are identified as disabled, whom state law refers to as

[34] *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.*

"handicapped preschool children."[35] School districts, educational service centers, state institutions, community schools, and county MR/DD boards all may receive unit funding (as described above) for services for handicapped preschool children. To be counted in a handicapped preschool unit, currently a child must be at least three years old but less than six years old (that is, not of "compulsory school age") by December 1. The bill provides instead that a child must be at least three but less than six years old by either *September 30*, or by *August 1* if the child's school district has adopted a resolution prescribing August 1 as the date by which children must be five or six years old, respectively, to be enrolled in kindergarten or first grade.[36]

Report on the number of handicapped preschool children served

(R.C. 3323.20)

The bill requires the Department of Education by July 1 of each year (beginning in 2006) to report to the General Assembly by electronic means the number of handicapped preschool children who received services during the previous fiscal year for which the Department paid a provider. The report must disaggregate the data according to each category of handicap (as used to determine the weights for purposes of funding special education and related services to school-age children) regardless of whether those weights are used to fund services to those preschool children (see "***Special education weighted funding Background***" above).[37]

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[35] *R.C. 3323.01, not in the bill.*

[36] *Current law, not changed by the bill, authorizes a district board of education to adopt August 1, instead of September 30, as the date by which a child must be either five or six years old, respectively, for admission to kindergarten or first grade. (R.C. 3321.01, not in the bill.)*

[37] *In almost all cases, the special education weights would not be used to calculate funding for services to handicapped preschool children because those children are served through a unit funded system. However, preschool and school-age students with autism who are awarded a scholarship under the Pilot Project Special Education Scholarship Program are counted in the category six special education ADM of the child's resident school district. That category is one of the six categories used to determine funding for school-age special education children. (See "**Pilot Project Special Education Scholarship Program reauthorized**" below.)*

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 currently must be 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 (thereby pushing the payment into the next 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.

Twice-annual certification of formula ADM

(R.C. 3317.01 and 3317.03)

"Formula ADM" (average daily membership) is the figure that represents for school funding purposes each school district's full-time-equivalent enrollment. Under current law, the formula ADM is certified once annually for the first full week of October. Until this "October count" is finalized each year, the Department estimates each district's payments.

Beginning in fiscal year 2006, the bill requires each school district to make a second certification of its formula ADM, in the spring. This certification must be for the week in which the state achievement tests for grades 4 to 8 are administered. This means that in fiscal year 2006, the second formula ADM must be certified for the week of March 6, 2006, and in fiscal year 2007 and thereafter, during the week that contains May 1.[38]

Fiscal year 2006 is the last year payments will be calculated based solely on the October count. The second certification of formula ADM is first used in school funding formulas in fiscal year 2007. Beginning that year, a school district's funding for the first half (July through December) is based on the formula ADM certified in the previous spring, and its funding for the second half (January through June) is based on the formula ADM certified in the previous October. In fiscal year 2007, for example, funding for July through December 2006 will be based on formula ADM certified in the spring of 2006, and funding for January through June 2007 will be based on formula ADM certified in October 2006.

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[38] *The bill moves the testing week beginning in the 2006-2007 school year. See "**Later administration of spring achievement tests**," below.*

Removing truant students from a school district's formula ADM

(R.C. 3317.034)

The bill requires school districts to report to the Department of Education any of its students who are absent without legitimate excuse (that is, "truant") for 21 consecutive days or, if the student's school operates on an alternative attendance schedule, for 105 consecutive hours the student's school is open for instruction. The bill, then, requires the Department to subtract that student from the district's formula ADM.[39] The bill further requires the Department to subtract that student and the equivalent of one additional student from the district's formula ADM, if the Department determines that the district has failed to report a truant student as required.

Random audits of school district ADM reports

(R.C. 3317.035)

The bill directs the Auditor of State to conduct annual random audits of the average daily membership information reported to the Department by school districts. The Auditor of State is to determine the number of districts to audit each year.

Gap aid phase-down for school districts passing taxes

(R.C. 3317.0216)

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

Districts that receive this "gap aid" potentially face losing it if their voters approve new property or income taxes. New taxes can disqualify a district for gap aid in the first fiscal year that the taxes are counted in the funding formulas (for example, tax year 2005 taxes are used in fiscal year 2007 state funding

[39] *A community school (charter school), which currently must offer 920 hours of "learning opportunities" to its enrolled students, currently is required to withdraw any student who has failed without legitimate excuse to participate in 105 consecutive hours of those learning opportunities (R.C. 3314.03(A)(5)(b) and (11)).*

calculations). The bill prescribes a method to phase-down the payment over three years, rather than end it immediately.

Specifically, the Department of Education must make the payments to a district that previously received gap aid but becomes ineligible if (1) the ineligibility is the result of a property tax or income tax levy approved for tax year 2005 or later and (2) the Department determines that the levy exceeded, by at least one mill, the millage-equivalent amount of its previous gap aid payment. For the next three years, rather than losing its entire gap aid subsidy, the district would receive 75%, 50%, and 25%, respectively, of its last full gap aid payment.

A district may receive the phase-out payments only once. Therefore, if the district were again to qualify for gap aid, it could not also again receive the phase-out payments should a subsequent levy render it ineligible.

Educational Choice Scholarship Program

(R.C. 109.57, 109.572, 3310.01 to 3310.17, and 3317.03; Section 206.10.03)

The bill establishes the Educational Choice Scholarship Program to provide scholarships for primary and secondary students residing in "academic emergency" and "academic watch" school districts to use for the sole purpose of paying tuition at private schools.[40] This program does not apply to any school district included in the Pilot Project Scholarship Program, which currently operates only in the Cleveland Municipal School District. Under the bill, the first Educational Choice Scholarships would be awarded by the Department of Education to students for use in the 2006-2007 school year.

In awarding scholarships, the Department first must award scholarships to eligible students who received them in the previous school year, and then must award the remaining scholarships on the basis of a lottery. To participate in the program, the parent of an eligible student, or the student if at least 18 years old, must notify the Department of the student's and parent's names and address, the name of the private school in which the student has been accepted for enrollment, and the amount of the tuition charged by the school.

Private schools that wish to enroll students under the program must first register with the Superintendent of Public Instruction and meet other requirements prescribed by the bill (see "***Registered private schools***" below).

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[40] *The Ohio Department of Education (ODE) is required under continuing law to rate each school district's academic performance based on standards adopted by the State Board of Education and the federal No Child Left Behind Act of 2001 (R.C. 3302.03, not in the bill).*

Eligible students

(R.C. 3310.01(A), 3310.03, and 3310.05)

To be eligible under the Educational Choice Scholarship Program, a student must meet *all* of the following conditions:

(1) The student's resident district is a school district declared to be in a state of academic emergency or academic watch in the most recent rating of school districts that is published prior to the first day of July of the school year for which a scholarship is sought. The Department of Education rates school districts in August of each year, so, for example, the performance rating applying to scholarships awarded for the 2005-2006 school year (which begins July 1, 2005) is the one published by the Department in August 2004.

(2) The student's resident district is not a district in which the Pilot Project Scholarship Program is operating (currently only the Cleveland Municipal School District).[41]

(3) During the school year immediately prior to the school year for which a scholarship is sought for the first time, the student was enrolled in either the student's resident school district or a community ("charter") school.

The bill specifies that a student who receives a scholarship under the Educational Choice Scholarship Program remains eligible and may continue to receive scholarships in subsequent school years until the student completes grade 12, so long as the student's resident district remains the same, regardless of the district's future academic rating. On the other hand, the Department must cease awarding *first-time* scholarships for students in a particular district if that district ceases to be in a state of academic emergency or academic watch.

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[41] *The Pilot Project Scholarship Program provides scholarships to attend private schools or other public schools or to engage tutors for students in any school district that is or has been under a federal court order requiring supervision and operational management by the Superintendent of Public Instruction. Currently only the Cleveland Municipal School District is such a district. The program targets low-income students, but all students residing in the district are eligible. The maximum annual scholarship amount for students in grades K through 8 is $2,700 and for students in grades 9 and 10 is $2,430. No public schools currently accept scholarship students under the program. (R.C. 3313.974 to 3313.979.)*

Scholarship amount

(R.C. 3310.08, 3310.09, and 3310.13)

The amount of each annual Educational Choice scholarship is the *lesser* of (1) the actual cost per pupil of the private school in which the student is enrolled or (2) a "maximum" amount that is specified in the bill. That maximum amount in fiscal year 2007 is:

(a) $4,000 for grades K through 4;

(b) $4,500 for grades 5 through 8; and

(c) $5,000 for grades 9 through 12.

In future fiscal years, the maximum amount is to be inflated by the rate of change in the Consumer Price Index for the 12-month period ending on June 30 of the previous fiscal year.[42]

Each registered private school must annually report its actual cost per pupil to the Superintendent of Public Instruction.

Financing of scholarships

(R.C. 3310.08, 3317.02, and 3317.03)

The bill requires the resident school district of each student awarded an Educational Choice scholarship to report the number of its resident students who have received a scholarship. That number, while not included in the district's formula ADM for most school funding, will be added to the district's base-cost calculation. This will credit the district with state base-cost funding. The Department of Education then must deduct the aggregate amount of the proposed Educational Choice scholarships paid to a school district's students from the district's state funding account.

The Department of Education must disclose on the SF-3 form of a school district from which a deduction is made for Educational Choice scholarships both the aggregate and per pupil differences between (1) the district's state base-cost funding and (2) what its state base-cost funding would have been if the scholarship students had not been included in the district's formula ADM.

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[42] *The bill specifies use of the Consumer Price Index (all urban consumers, all items) prepared by the U.S. Bureau of Labor Statistics as the measure of inflation for the annual maximum amount.*

Number of scholarships

(R.C. 3310.17; Section 206.10.03)

Under the bill, the General Assembly is to prescribe the maximum number of scholarships that may be awarded under the program in each year. The bill specifies that, in fiscal year 2007, the maximum number of scholarships under the program is 18,000.

Scholarship payments

(R.C. 3310.08)

The bill requires the Department of Education to pay to the parent of each eligible student awarded a scholarship or to the student, if at least 18 years old, periodic partial payments of the scholarship in the same proportion to the total scholarship amount and at the same times as the Department makes payments to community schools (charter schools). The Department also must proportionately reduce or terminate the payments for any student who withdraws from school prior to the end of the school year in the same manner as payments are reduced or terminated for students who withdraw from a community school before the end of a school year. (Community schools are paid monthly a pro rata share of an annual amount based on the number of full-time equivalent students enrolled that month. When a student withdraws, a community school ceases to receive the future monthly pro rata amounts for that student.)

Registered private schools

(R.C. 3310.11, 3310.12, and 3310.14)

The bill specifies that a private school may not receive payments from a parent or student who is paid a scholarship under the program until the chief administrator of the school registers the school with the Superintendent of Public Instruction.[43]

To register, a school must do all of the following:

(1) The school must indicate in writing its commitment to follow all the program's requirements.

[43] *A similar registration requirement under current law applies to private schools that participate in the Pilot Project Scholarship Program (R.C. 3313.976).*

(2) The school must meet minimum education standards prescribed by the State Board of Education.

(3) The school must satisfy at least one of the following conditions:

(a) It holds a charter granted by the State Board;

(b) It is accredited by a national organization that accredits schools that teach grades K through 12; or

(c) It has been in continuous operation for not less than five years, during which time the school has served not fewer than 2/3 the number of grade levels that the school will serve as a registered private school.

(4) The school must agree to elect to administer all of the applicable state achievement tests to the scholarship students. (It is not required to administer them to nonscholarship students.)

(5) The school must not discriminate on the basis of race, religion, national origin, or ethnic background.

(6) If the school does not have positions available for all applicants who wish to enroll in the school under the program, the school fills the available positions on a random selection basis or a first-come first-served basis, or some combination of both, except that the school may give priority to students previously enrolled in the school or to students who live in the same household as a student currently or previously enrolled.

(7) If the school is not chartered by the State Board, the school must agree to request criminal records checks for all employment applicants who if hired would be responsible for the care, custody, or control of a child, in the same manner required of a school district.[44] Moreover, the school must agree not to hire certain applicants for positions requiring the care, custody, or control of a child if their criminal records checks reveal any of several criminal violations specified under continuing law.[45]

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[44] *R.C. 109.57(F)(2) and (J) and 109.572(E) and (F)(6) specify that the Superintendent of the Bureau of Criminal Identification and Investigation is to conduct criminal records checks for applicants for employment in these registered private schools. A similar requirement currently applies to applicants for employment in school districts, community schools, and chartered nonpublic schools.*

[45] *R.C. 3319.39, not in the bill.*

(8) The school must agree to retain on file accurate and complete documentation of employee criminal records checks, student attendance records, and records of tuition charges and payments for each student for whom an Educational Choice scholarship is paid.

In addition, each registered private school must file either of the following with the Superintendent of Public Instruction:

(1) A surety bond payable to the state in an amount equal to the *greater* of $500,000 or the aggregate amount of scholarships paid under the program to students enrolled in the school in the previous school year; or

(2) An unconditional guarantee by a third party for payment of any moneys that the school might owe to the state. The third party must have a net worth of not less than $10 million, as determined by the Auditor of State.

Excess tuition charges

(R.C. 3310.13)

The bill prohibits a registered private school from charging any Educational Choice scholarship student whose family income is less than 200% of the federal poverty guidelines a tuition fee that is greater than 105% of the total scholarship amount paid for that student.[46] On the other hand, the bill explicitly permits a registered private school to charge any other student the difference between the amount of the scholarship and the school's regular tuition.

Each school must permit a scholarship student's family, at the family's option, to provide volunteer services in lieu of cash to pay all or part of the amount of the school's tuition not paid for by the scholarship.

Revocation of a school's registration

(R.C. 3310.15)

The bill requires the Superintendent of Public Instruction to revoke the registration of any registered private school if, after a hearing, the Superintendent determines that the school is in violation of any of the registration requirements or the provisions regarding excess tuition charges (see above).

[46] *The 2005 federal poverty guideline for a family of three is $16,090. 200% of that amount is $32,180.*

Transportation of scholarship students

(R.C. 3310.04)

The bill specifies that Educational Choice scholarship students are entitled to transportation to and from the private schools they attend in the manner prescribed under continuing law. That law requires school districts to provide transportation to nonpublic school students in grades K to 8 who reside in the district and who 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 direct travel time by school bus, from the district school the student would otherwise attend to the nonpublic school, is more than 30 minutes. Districts are eligible for state subsidies for transporting nonpublic school students.[47]

Start-up; State Board of Education rulemaking authority

(R.C. 3310.16; Section 206.10.03)

The bill requires the State Board to adopt rules that prescribe procedures for the administration of the Educational Choice Scholarship Program that pertain to the registration of private schools; application for and determining eligibility for scholarships; calculating, paying, and accounting for scholarship awards; and monitoring compliance by private schools with program requirements. The bill also states that the State Board or the Department of Education may not require registered private schools to comply with any education laws or rules or other requirements that are not specified under the program's provisions if they otherwise would not apply to nonpublic schools.[48]

The State Board must adopt its rules so that they are in effect and the program is operational for the 2006-2007 school year. In the meantime, the Superintendent of Public Instruction, by September 1, 2005, must begin preparations to implement the program. The Superintendent must ensure that school districts, nonpublic schools, students, and parents are notified of the

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[47] *R.C. 3317.022 and 3327.01.*

[48] *Some requirements in continuing law already apply to nonpublic schools. For example, a chartered nonpublic school must comply with many but not all of the provisions that apply to school districts, such as high school curriculum and diploma requirements and immunization record requirements. In addition, all schools, regardless of whether they are public or private or are chartered or nonchartered, must comply with state and local health and safety regulations.*

program and how it may affect them. This information must be supplied in sufficient time for affected parties to meet deadlines imposed by the Superintendent.

Purpose statement

(R.C. 3310.06)

The bill states that it is the policy adopted by the General Assembly that the Educational Choice Scholarship Program is one of several options available for students enrolled in academic watch or academic emergency school districts. It further states that those students may choose to enroll in the schools of the student's resident district, in community schools, in the schools of another school district pursuant to an open enrollment policy, in registered private schools with or without an Educational Choice scholarship, or in other schools as the law may provide. Those other choices might include, for example, enrolling in another school district or in some other type of private school and paying tuition to that district or private school.

Eligibility for scholarships under the (Cleveland) 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 eleventh or twelfth grade.[49] The bill also codifies a long-standing practice to allow new students to enter the scholarship program in any of grades K to 8.[50]

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[49] *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*

Pilot Project Special Education Scholarship Program

(Section 206.09.84)

The budget act for the 2003-2005 biennium established a temporary pilot program to pay scholarships to the parents of certain autistic children to be used for services at public or nonpublic special education programs that are not operated by or for the child's resident school district.[51] The bill reauthorizes that program and increases the maximum amount of the scholarship to $20,000 (from 15,000 under current law).

Under the program, as reauthorized in the bill, in fiscal years 2006 and 2007, the Department of Education is required to pay upon application a scholarship to the parent of a child identified as autistic who is entitled to receive special education and related services at the child's resident school district in any grade from preschool to 12th grade. The scholarship is to be used solely to pay part or all of the cost of sending the child to a public or nonpublic special education program instead of the one provided by the child's resident school district. The amount of the scholarship is the lesser of the amount charged by the special education program or $20,000. The law further prescribes that the scholarship is to be used to pay for only those services specified in the child's "individualized education program."

The amount of the scholarship is to be deducted from the state aid account of the child's resident school district. The district, therefore, is authorized to count the child in the district's formula ADM and category six formula ADM. The district, then, retains the balance of any amount of state funding credited to the district after the scholarship amount is deducted.

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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)).

[50] *R.C. 3313.975(C)(1).*

[51] *Section 41.33 of Am. Sub. H.B. 95 of the 125th General Assembly, as subsequently amended.*

Changes to community school law

Background

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

A conversion community school, created by converting an existing school district school, may be located in and sponsored by any school district in the state. On the other hand, a "start-up" community school may be located only in a "challenged school district." A challenged school district is any of the following: (1) a "Big-Eight" school district, (2) a school district in academic watch or academic emergency, or (3) a school district in the original community school pilot project area (Lucas County).[52]

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

(1) The school district in which the school is located;

(2) A school district located in the same county as the district in which the school is located has a major portion of its territory;

(3) A joint vocational school district serving the same county as the district in which the school is located has a major portion of its territory;

(4) An educational service center;

(5) The board of trustees of a state university (or the board's designee) under certain specified conditions; or

(6) A federally tax exempt entity under certain specified conditions.[53]

Until the enactment of Sub. H.B. 364 of the 124th General Assembly, effective April 8, 2003, the State Board of Education was authorized to sponsor start-up community schools. That act eliminated the State Board's authority to

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[52] *The "Big-Eight" districts are Akron, Canton, Dayton, Cincinnati, Cleveland, Columbus, Toledo, and Youngstown. (R.C. 3314.02(A)(3).)*

[53] *R.C. 3314.015(B)(1) and 3314.02(C)(1)(a) through (f).*

sponsor schools, except that it permits the State Board to continue its existing sponsorship of schools for up to two school years while the schools secure new sponsors. After that, the State Board may sponsor community schools only in specified exigent circumstances.

Cap on community schools

(R.C. 3314.013(A)(4), (5), and (8))

There is currently a statewide limit of 225 start-up community schools sponsored by entities other than the school districts in which they are located. That cap is set to expire July 1, 2005.

The bill extends the cap for two years to July 1, 2007, and increases it to 250 schools for that period. But it exempts community schools sponsored by an entity designated by the board of trustees of a state university and schools whose mission is solely to serve dropouts from counting toward the cap. Also, as under current law, the cap does not apply to community schools sponsored by the school districts in which they are located. However, the bill establishes a separate statewide cap on the number of district-sponsored schools until July 1, 2007. That cap, which is equal to 25 more than the number of such schools in existence on the provision's effective date, also does not apply to schools solely serving dropouts. The bill specifies that the existence of a cap or moratorium (see below) on community schools does not prohibit an existing school from offering additional grades.

Moratorium on new Internet- or computer-based community schools

(R.C. 3314.013(A)(6) and (7))

The bill prohibits any entity from sponsoring a new Internet- or computer-based community school ("e-school") for one year after the provision's immediate effective date.[54] However, all qualified sponsors may renew any contracts with existing Internet- or computer-based schools when those contracts are eligible for renewal. In addition, during the moratorium period, all qualified sponsors, except a tax exempt entity, may assume the sponsorship of existing Internet- or computer-based schools formerly sponsored by other entities. The bill retains a provision of

[54] *An Internet- or computer-based community school is one in which students "work primarily from their residences on assignments in nonclassroom-based learning opportunities provided via an Internet- or other computer-based instructional method that does not rely on regular classroom instruction or via comprehensive instructional methods that include Internet-based, other computer-based, and noncomputer-based learning opportunities" (R.C. 3314.02(A)(7)).*

current law that prohibits a tax exempt entity from sponsoring any schools other than existing schools formerly sponsored by the State Board of Education until July 1, 2005. After that date, the bill allows a tax exempt entity to sponsor an existing or new community school as under current law, but prohibits the entity from sponsoring a new Internet- or computer-based community school for the balance of the moratorium period.

Admission to Internet- or computer-based community schools

(R.C. 3314.06(I))

Under the bill, a student in grades 1 through 12 may not be admitted to an Internet- or computer-based community school unless the student was enrolled in a public school, including another community school, for at least one semester out of the three preceding school years. Kindergarteners may enroll in an Internet- or computer-based community school directly. This provision applies to students admitted to the schools on or after the bill's effective date.

Administration of state assessments in Internet- or computer-based community schools

(R.C. 3314.035)

As public schools, all community schools must administer the state-developed achievement tests and diagnostic assessments in the same manner as school districts. The bill requires Internet- or computer-based community schools to provide each of their students a location within 50 miles of the student's residence at which to take the achievement tests and diagnostic assessments.

Criteria for approval of sponsors

(R.C. 3314.015(B)(1))

Continuing law requires the Department of Education to adopt rules containing criteria for the approval of community school sponsors.[55] These rules must require an entity seeking approval for sponsorship to provide evidence of its ability and willingness to provide proper oversight. The bill adds two new requirements for sponsors approved on or after the provision's effective date. First, entities seeking approval for sponsorship must have a record of financial responsibility and successful implementation of educational programs. Second, if the entity sponsors or operates schools in another state, at least one of those

[55] *See Ohio Administrative Code 3301-102-03.*

schools must be performing as well as or better than Ohio schools in academic watch, as determined by the Department.[56]

Limit on number of schools an entity may sponsor

(R.C. 3314.015(B)(1); Section 206.10.09)

Current law allows an entity approved for sponsorship to sponsor any number of community schools. With two exceptions, the bill limits a sponsoring entity to 35 schools, but permits the Department of Education to increase that limit up to 50 schools on a case-by-case basis. The bill's exceptions apply to sponsoring entities designated by state university boards of trustees, which are not subject to any limit on the number of schools they may sponsor, and to community schools solely serving dropouts, which are not counted toward the limit imposed on any type of sponsor.

When the Department approves an entity for sponsorship, it must inform the entity of any cap to which it is subject. Existing sponsors must be notified of the number of schools they may sponsor within 30 days after the provision's effective date. If the entity exceeds its cap, the Department must assume sponsorship of the schools in excess of the cap. The schools placed under the Department's sponsorship are the ones that most recently entered into a contract with the entity for sponsorship.[57]

Deadline for adoption of contract

(R.C. 3314.02(D))

The bill requires the contract between the sponsor and governing authority of a new community school to be adopted by March 15 prior to the school year in which the school will open.[58] This deadline only affects contracts adopted on or after the provision's effective date. Therefore, a school whose contract is adopted

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[56] A school in academic watch does not meet the federal standard of adequate yearly progress and either meets 31%-49% of the performance indicators established by the State Board of Education or attains a performance index score set by the Department (R.C. 3302.03(B)).

[57] Under continuing law, the Department's term of sponsorship lasts until the schools find new sponsors, but no longer than two school years (R.C. 3314.015(C)).

[58] A majority vote of both the sponsor's governing board and the school's governing authority is necessary to adopt the contract.

after March 15, 2005, but before the provision's effective date would be able to open in the 2005-2006 school year.

Nullification of contract

(R.C. 3314.03(F))

Under the bill, the contract between a community school and its sponsor becomes void if the school (1) fails to open for operation within one year after adoption of the contract or (2) permanently closes prior to the contract's expiration.[59] Furthermore, the school may not enter into a contract with another sponsor. A school whose contract is nullified for one of these reasons does not count toward the statewide cap on community schools.

Opening date for schools

(R.C. 3314.03(A)(25))

Under current law, a community school may open at any time during the school year. Beginning in the 2006-2007 school year, the bill generally requires community schools to open for instruction by September 30 each year. This restriction does not apply to schools whose mission is solely to serve dropouts, which may open at any time during the school year as under current law. If a school fails to open by September 30 in its initial year of operation, the school's contract with its sponsor is void.[60] A school serving dropouts must open for its first year of operation within one year after the adoption of the contract to avoid nullifying the contract.

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[59] Under continuing law, a school's sponsor must suspend the school's operations for a violation of health and safety standards and may suspend them for (1) failure to meet student performance requirements, (2) fiscal mismanagement, (3) a violation of the contract or law, or (4) other good cause (R.C. 3314.072). The bill specifies that a school is not considered permanently closed because its operations have been temporarily suspended for one of these reasons.

*[60] This provision of the bill appears to conflict with the provision described above (see "**Nullification of contract**"), which gives a school one full year after adoption of the contract to open for operations without voiding the contract. Since the bill's deadline for adoption of the contract is March 15 prior to the school year the school will open (see "**Deadline for adoption of contract**" above), nullifying a contract for failure to open by September 30 would give some schools less than one year to open, even if they adopt their contracts well before the March 15 deadline.*

Community school to serve autistic students and non-disabled students

(R.C. 3314.03(A)(5) and (19), 3314.06, and 3314.061)

The bill permits the establishment of a community school to simultaneously provide (1) special education and related services to autistic students and (2) regular educational programs for non-disabled students. The contract between the sponsor and governing authority of such a school must specify the school's admission standards, including the target ratio of autistic students to non-disabled students and the total number of each type of student the school may enroll. Despite these targets, the school may not deny admission to a disabled student on the basis of the student's disability, even if the disability is not autism, unless the school is fully enrolled. As required by current law for all community schools, if the applicants for enrollment exceed the school's capacity limits, the school must admit students by lottery after giving preference to students enrolled the previous year and students residing in the school district where the school is located. However, since the school sets different capacity limits for autistic and non-disabled students, it must hold separate lotteries for each group.

State payments to community schools

(R.C. 3314.08(C) and (D) and 3314.13)

Under current law, community schools receive various state payments, including base-cost funding, special education and vocational education weights, handicapped preschool and gifted units, parity aid, and Disadvantaged Pupil Impact Aid (DPIA), which the bill renames "poverty-based assistance." In most cases, these payments are deducted from the state aid accounts of the school districts in which the community school's students are entitled to attend school and paid to the community school by the Department of Education.

The bill prohibits Internet- or computer-based community schools ("e-schools") from receiving (1) vocational education weighted funding, (2) parity aid, and (3) poverty-based assistance, including funding for all-day kindergarten. Internet- or computer-based community schools retain eligibility under the bill for state base-cost and special education payments.

The bill also provides for traditional ("brick and mortar") community schools to receive per-pupil payments of the four new components of poverty-based assistance that direct assistance to (1) services for limited English proficient students, (2) professional development, (3) dropout prevention, and (4) community outreach.

Self-insurance surety program for community schools

(R.C. 3314.29)

The bill requires the Department of Education to establish and administer a self-insurance surety program for community schools for the purpose of paying surety claims. The program, which is to be owned proportionally by contributing schools, covers all surety claims up to $1 million per occurrence or $3 million aggregate. Claims in excess of these amounts must be paid from a surety bond obtained by the Department. While the bill states that the "surety limit" is $25 million, it is not clear whether this limit applies to each school individually or to all participating schools combined.

To determine the amount each participating school must contribute to the program, the Department must establish a "fair, self-adjusting mechanism" that takes into account the school's (1) relative exposure and loss experience, (2) enrollment size, and (3) academic and financial performance.[61] Contributions must be deposited into the Community School Surety Fund, which is created by the bill in the custody of the Treasurer of State. Fund moneys must be used for the payment of surety claims and the program's administration, including the payment of broker fees up to $300,000 annually. Investment earnings of the fund are credited to the fund.

Later administration of spring achievement tests

(R.C. 3301.0710(C) and (H); Section 612.09)

All achievement tests must be administered in the spring, currently during the second or third week of March. These weeks have been designated for testing by rule of the State Board of Education, and are the earliest weeks permitted by the Revised Code.[62] In addition, the third grade reading achievement test is also administered in October and in June or July, giving each student up to three opportunities to take it. And the Ohio Graduation Test (OGT) is administered in October as well as in March for eleventh and twelfth graders who have not yet passed each part.

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[61] *This mechanism must be adopted by rule in accordance with the Administrative Procedure Act (R.C. Chapter 119.).*

[62] *The State Board's rule prescribing the current testing schedule is Ohio Administrative Code § 3301-13-02. Current statute requires the State Board to schedule the tests so that all tests but the Ohio Graduation Test (OGT) is administered no earlier than the second week of March, and the OGT is administered to tenth graders no earlier than the third week in March (R.C. 3301.0710(C)).*

Beginning in the 2006-2007 school year, the bill requires the spring administration of the *elementary*-level achievement tests generally to begin no earlier than Monday of the week of May 1. The bill further requires the State Board to designate consecutive days for the administration of those tests within each grade. The bill does not change the spring administration dates for the OGT.

However, the bill creates exceptions to the general testing periods for special education students and limited English proficient students. These exceptions apply to all achievement tests, including the OGT, starting in the 2006-2007 school year. For special education students who take an alternate assessment, instead of the regular achievement test, those assessments must be completed and school districts must submit them to the test scoring company hired by the Department of Education by April 1.[63] Limited English proficient students may be tested one week earlier than the general testing period at the State Board's discretion.

Deadlines for submission of tests and return of scores to districts

(R.C. 3301.0711(G); Section 612.09)

Current law grants the Department of Education a maximum of 60 days after the administration of an achievement test to score that test and inform school districts of students' scores. The bill maintains this 60-day deadline for the fall and summer administrations of the third grade reading achievement test and for administrations of the OGT. For all other achievement tests, however, the bill shortens the deadline for returning test scores beginning in the 2006-2007 school year. Starting that year, students' scores from the spring administrations of the tests must be returned to districts by June 15. Due to the earliest possible administration date of April 26 for most students, this deadline would allow a maximum of 50 days to score the elementary-level tests and report the results to school districts. The bill also specifies that the test results may be reported to districts by either the Department or the test scoring company with which it contracts.

To meet the shortened deadline for returning student scores after the spring administrations of the elementary-level tests, the bill requires districts to submit

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[63] *Under continuing law, a special education student may be excused from taking an achievement test if no "reasonable accommodation" can be made to enable the student to take the test and the student's individualized education program (IEP) specifies an alternate assessment approved by the Department. An alternate assessment must produce measurable results comparable to those produced by the achievement tests. (R.C. 3301.0711(C)(1).)*

those tests to the test scoring company under contract with the Department no later than the Friday after the tests are given. Tests given during the make-up period, which is the nine days following the scheduled test date, must be submitted by the Friday after the students take the make-up test.

Use of student data verification codes

(R.C. 3301.0711(A)(1) and (I), 3301.0714(D), and 3301.12; Section 612.09)

Under continuing law, each school district or community school is required to assign a unique data verification code to every student for purposes of reporting student-level data to the Education Management Information System (EMIS). Except as necessary to assign the data verification code, personally identifiable student information may not be reported to any person who is not employed by a school district or data acquisition site and authorized to have access to that information.[64]

The bill makes several changes regarding the use of data verification codes. First, it requires each achievement test to include the data verification code of the student to whom it is administered. Second, it allows employees of companies hired by the Department of Education to grade the achievement tests to have access to students' personal information. This access presumably would enable a test scoring company to match a test booklet or answers with a particular student by using the data verification code. Third, the bill prohibits test scoring companies from releasing students' test results except for the purpose of reporting the scores to districts. The State Board of Education may require use of the data verification codes to protect the confidentiality of student test scores. All of these changes take effect with the 2006-2007 school year.

Finally, the bill permits studies and research projects conducted by the Department or a contracting entity to include analysis of EMIS data. The studies or projects, however, must maintain the confidentiality of student data by using the students' data verification codes. The bill explicitly prohibits the Superintendent of Public Instruction, the Department, the State Board, or an entity conducting a study or project on their behalf from having access to a student's name, address, or social security number while analyzing student data. As noted above, this prohibition does not apply to a test scoring company.

[64] *Data acquisition sites provide administrative computer services, including EMIS data reporting, to school districts and other education entities.*

Public release of achievement tests

(R.C. 3301.0711(N))

Under current law, all achievement tests become public records on July 1 (or July 16 for the third grade reading test) following their administration. Test questions that are not used to compute a student's score are not public records and must be redacted from the tests prior to their release.[65]

The bill places additional restrictions on the public release of achievement tests. As the elementary-level tests are phased in through 2007, only the initial administration of each test is subject to public release in its entirety (except for questions that do not count toward a student's score). On subsequent administrations of those tests, a minimum of 40% of the questions used for scoring the test must become a public record. Questions that the Department of Education determines will be needed for reuse on future tests are not public records and must be redacted. The spring administration of the Ohio Graduation Test (OGT) is a public record, but the fall and summer administrations of the OGT are not available to the public under the bill.

Elimination of certain diagnostic assessments

(R.C. 3301.079(D) and 3301.0715)

The bill eliminates the requirement for the State Board to adopt diagnostic assessments for grades 3 through 8, except in third grade writing. According to the Department of Education, the third grade writing assessment and the K through 2 assessments have been developed and provided to districts and community schools. The remaining diagnostic assessments, which are eliminated by the bill, have yet to be developed. The bill's changes do not affect which students must take the assessments or the requirement to provide intervention services to struggling students.

Background

Current law requires the State Board of Education, by July 1, 2008, to adopt diagnostic assessments for grades K through 2 in reading, writing, and math, and

[65] *Test questions not included in a student's score are field test questions, which are used to determine the validity of proposed questions, and anchor questions, which are included on various versions of the same test to ensure they are of comparable difficulty (R.C. 3301.0711(N)(2) and (3)).*

for grades 3 through 8 in those subjects and science and social studies.[66] The diagnostic assessments must be aligned with the statewide academic standards and be designed to measure student mastery of those standards. School districts and community schools must administer the appropriate diagnostic assessments to (1) students in grades K through 2, (2) students enrolled in schools that have not made adequate yearly progress for two or more consecutive school years, and (3) certain transfer students.[67] Students whose diagnostic assessments show that they are not performing at grade level must receive intervention services.

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.[68] 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

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[66] *The State Board, however, is prohibited from adopting a diagnostic assessment for any subject area and grade level in which an achievement test is given (R.C. 3301.079(D)(3)).*

[67] *Adequate yearly progress, or AYP, is a measure required by the federal No Child Left Behind Act of 2001. It is a combination of student performance on state assessments and at least one other academic indicator. Districts that made AYP in the previous school year may administer diagnostic assessments other than the state-developed ones in grades 1 through 8 (R.C. 3301.0715(E)).*

[68] *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.*

elimination of the state-funded Head Start programs does not affect traditional Head Start programs funded by direct federal aid.

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 child care to certain TANF-eligible children.[69] 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.[70] The Initiative is administered by the Department of Education and the Department of Job and

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[69] *As used in the bill, a TANF-eligible child is a child eligible for services under Title IV-A of the Social Security Act, whose family income does not exceed 185% of the federal poverty line* at application. *If the family income of a child receiving early learning services under the early learning initiative subsequently exceeds 195% of the federal poverty line, the child ceases to be eligible for an early learning program.*

[70] *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).)

Family Services in accordance with an interagency agreement and rules adopted by the Department of Job and Family Services in consultation with the Department of Education.[71] The joint rules for the Early Learning Initiative must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

Department of Education duties. 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.

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.

Department of Job and Family Services duties. The bill directs that the rules adopted by the Department of Job and Family Services include provisions regarding the establishment of co-payments for families of eligible children whose family income is more than 165% of the federal poverty line but equal to or less than 195% of the federal poverty line. The county department of job and family services must establish co-payment requirements in accordance with these rules.[72] Also, in consultation with the Department of Education, the Department of Job and Family Services must establish a caretaker employment eligibility requirement for participation in the Early Learning Initiative that specifies the minimum number of hours that the caretaker of the TANF-eligible child must be employed and the time period over which the minimum number of hours is to be measured.

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[71] 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 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.)

[72] The rules must exempt from co-payment requirements those families whose family income is equal to or less than 165% of the federal poverty line.

Finally, the Department of Job and Family Services must provide up to 10,000 slots of services for eligible children in fiscal year 2006 and up to 12,000 slots of services for eligible children in fiscal year 2007 through the Early Learning Initiative. In each fiscal year, the Department must allocate at least 17 slots of services to each Ohio county.

Joint duties. Finally, in consultation with each other, the Department of Job and Family Services and 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.

Contract, reimbursement, corrective action. 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.[73] 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;

(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;

[73] *These contracts are not subject to competitive bidding.*

(8) A requirement that a child enrolled in a Head Start Plus program during fiscal year 2005 be given higher priority if the child enrolls in an early learning program and is TANF-eligible.

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.

Use of funds for publicly funded child care. If, on or after December 31 of each fiscal year, the Director of Budget and Management, in consultation with the Director of Job and Family Services and the Superintendent of Public Instruction, determines that there is a balance of funds in the Early Learning Initiative in either fiscal year 2006 or fiscal year 2007, the Director of Budget and Management may approve the use of the funds by the Department of Job and Family Services to provide publicly funded child care.

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.[74] 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

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

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:

(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;[75]

(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

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[75] *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.*

appropriated for early childhood education programs.[76] 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 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.

[76] *The per-pupil amount also may be adjusted for inflation.*

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. 3301.85 and 3301.87; R.C. 109.57, 3301.86, 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.[77] (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.[78]) 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

[77] *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).)*

[78] *See R.C. 3319.39, not in the bill.*

services directly to children under a grant, unless they meet rehabilitation standards established by the State Board of Education.[79]

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

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.

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 high schools are paid out of a separate state set-aside, since those schools do not receive operations funding from the state.

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[79] *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)).*

Purpose statement

(R.C. 3365.02)

The bill specifies that the purpose of PSEO is "to provide enriched education opportunities to secondary grade students that are equivalent to or beyond the opportunities offered by the high school in which they are enrolled."

Ohio residency

(R.C. 3365.02; Section 206.09.99(B))

The bill specifies that a student must be a resident of Ohio to participate in PSEO. 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* school in the state may not be a resident but under current law might still be eligible to participate in PSEO. The bill would eliminate this possibility beginning July 1, 2005.

Reimbursement requirement

(R.C. 3365.02(H) and 3365.11; Section 206.09.99(F))

The bill requires the student or the student's parent to reimburse state funds paid to a college for a course in which the student does not attain a passing final grade in the course. The Superintendent of Public Instruction must initiate proceedings to seek the reimbursement and may request the Attorney General to bring a civil cause of action in a common pleas court. Funds collected must be returned to the school district or community school from which they were deducted. If the student was enrolled in a nonpublic school, the funds must be credited to the General Revenue Fund.

Disqualification from Option B

(R.C. 3365.02, 3365.021, 3365.04, 3365.07, and 3365.10; Section 206.09.99(D) and (E))

Beginning with the 2006-2007 school year, the bill disqualifies from Option B of the program (1) students in nonchartered nonpublic high schools and (2) students enrolled in physical education college courses. Those students remain eligible, however, to participate in Option A.

High school credit for Option A

(R.C. 3365.04, 3365.041, 3365.05, and 3365.08; Section 206.09.99(G))

Beginning in the 2005-2006 school year, the bill permits a student who elects Option A (under which the student or the student's parent pays the cost of the college course) also to elect to receive high school, as well as college, credit for successfully completing the course. If the student elects high school credit, the high school must award credit on the same basis that it awards credit for college courses paid by the state under Option B. The student retains the option to receive only college credit for courses under Option A.

Reduction of the number of school district employees for financial reasons

Application to existing collective bargaining agreements

(Section 563.03)

The bill revises and expands the statutory authority of school districts to make reductions in force among their teachers and nonteaching employees, and specifies that these revisions apply to existing collective bargaining contracts. It characterizes these statutory changes as "being essential and necessary for the public welfare by enabling sound fiscal management practices in the operation of the public schools and public school programs."

Teachers

(R.C. 3319.17)

Current law allows a board of education or educational service center (ESC) governing board to make a reasonable reduction in teaching employees when, for any of certain statutorily specified reasons, the board decides that it will be necessary to reduce the number of teachers it employs. Among the reasons for which a board may reduce the number of teaching employees, in the case of any district or service center, are: (1) return to duty of regular teachers after leaves of absence, (2) suspension of schools, and (3) territorial changes affecting the district or center. The bill adds that the board also may make a reasonable reduction of teaching employees for financial reasons. The bill does not define "financial reasons."

Suspension of teachers' contracts

(R.C. 3319.17(C))

In making any reduction for any of the authorized reasons, current law requires a school district board or an ESC governing board to proceed to suspend contracts in accordance with the recommendation of the superintendent of schools who must, within each teaching field or service area affected, give preference to teachers on continuing contracts (i.e., tenure) and to teachers who have greater seniority. The bill requires that preference be given first to teachers on continuing contracts and then to teachers who have greater seniority. Also, the bill allows a board, on a case-by-case basis, instead of suspending a contract in whole, to suspend a contract in part, so that an individual is required to work a percentage of the time the employee otherwise is required to work under the contract and receives a commensurate percentage of the full compensation the employee otherwise would receive.

Restoration of teachers

(R.C. 3319.17(C))

Under current law, teachers whose continuing contracts are suspended by any board pursuant to the reduction process have the right of restoration to continuing service status by that board in the order of seniority of service in the district or service center, if and when teaching positions become vacant or are created for which any of such teachers are or become qualified. The bill adds that no teacher whose continuing contract has been suspended can lose that right of restoration to continuing service status by reason of having declined recall to a position that is less than full-time or, if the teacher was not employed full-time just prior to suspension of the teacher's continuing contract, to a position requiring a lesser percentage of full-time employment than the position the teacher last held while employed in the district or service center.

Reduction of the number of nonteaching employees

(R.C. 3319.081 and 3319.172)

Current law establishes an employment contract system that controls nonteaching employees who are employed in school districts wherein the Ohio Civil Service Law does not apply (local and exempted village districts and ESCs and whose contracts of employment are not otherwise provided by law.[80] Under

[80] *Nonteaching employees of city school districts are generally subject to the Civil Service Law, unless the district opts out through collective bargaining or if a home rule*

continuing law, contracts provided through this system may be terminated by a majority vote of the board of education. Except as provided below, continuing law specifies that these contracts may be terminated only for violation of written rules and regulations as set forth by the board of education or incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or any other acts of misfeasance, malfeasance, or nonfeasance. Continuing law also specifies that sexual battery against a student is grounds for termination.

The bill adds a method by which, and expands the reasons for which, these contracts may be terminated. It specifies that the board of education of each school district wherein the provisions of the Civil Service Law do not apply, and each ESC governing board, may adopt a resolution ordering reasonable reductions in the number of nonteaching employees for any of the reasons described above for making reductions in teaching employees. Therefore, in addition to the reasons for reduction discussed under "***Teachers***," above, a board may make a reduction for any of the following reasons:

(1) In the case of any city, exempted village, local, or joint vocational school district, decreased enrollment of pupils in the district;

(2) In the case of any governing board of an ESC providing any particular service directly to pupils pursuant to one or more interdistrict contracts, reduction in the total number of pupils the governing board is required to provide with the service under all interdistrict contracts as a result of the termination or nonrenewal of one or more of these interdistrict contracts;

(3) In the case of any ESC governing board providing any particular service that it does not provide directly to pupils pursuant to one or more interdistrict contracts, reduction in the total level of the service the governing board is required to provide under all interdistrict contracts as a result of the termination or nonrenewal of one or more of these interdistrict contracts.

Suspension of contracts for nonteaching employees

(R.C. 3319.172)

In making any reduction in nonteaching employees by adopting a resolution, the district board or ESC governing board must proceed to suspend contracts in accordance with the recommendation of the superintendent of the district or ESC who must, within each pay classification affected, give preference

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municipality excludes school district employees from the Civil Service Law (see Ohio Assoc. of Public School Employees v. City of Twinsburg (1988), 36 Ohio St.3d 180).

first to employees under continuing contracts and then to employees on the basis of seniority. On a case-by-case basis, in lieu of suspending a contract in whole, a board may suspend a contract in part, so that an individual is required to work a percentage of the time the employee otherwise is required to work under the contract and receives a commensurate percentage of the full compensation the employee otherwise would receive under the contract.

Restoration of nonteaching employees

(R.C. 3319.172)

The bill specifies that similar to teachers, any nonteaching employee whose continuing contract is suspended under this section has the right of restoration to continuing service status by the district or ESC board that suspended that contract in order of seniority of service in the district or service center, if and when a nonteaching position for which the employee is qualified becomes vacant or is created. The bill specifies that no nonteaching employee whose continuing contract has been suspended under this provision can lose that right of restoration to continuing service status by reason of having declined recall to a position requiring fewer regularly scheduled hours of work than required by the position the employee last held while employed in the district or ESC.

Termination of school district transportation staff

Background

Continuing law provides that employment of nonteaching personnel in "city" school districts is controlled by the state Civil Service Law, codified in R.C. Chapter 124. Employment of such personnel in "exempted village" and "local" school districts is instead controlled by separate specific statutes.[81] In either case, however, unless otherwise specified, the provisions of any effective collective bargaining agreement prevail over conflicting statutes in matters that are subjects of collective bargaining.

Under the Civil Service Law, a city school district board may abolish any of its nonteaching staff positions "as a result of a reorganization for the efficient operation of the [district], for reasons of economy, or for lack of work."[82] If a city school district board does abolish positions, it must do so in compliance with statutorily prescribed procedures, which include an order for layoffs based on seniority of employment, a right to displace less-senior personnel, a right to fill

[81] *R.C. 3319.081, 3319.082 (not in the bill), and 3319.083 (not in the bill).*

[82] *R.C. 124.321(D), not in the bill.*

other vacancies, reinstatement rights, and an appeal procedure.[83] On the other hand, nonteaching employees in exempted village and local districts (non-Civil Service districts) may be "terminated *only* for violation of [the district board's] written rules and regulations . . . or for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or any other acts of misfeasance, malfeasance, or nonfeasance."[84] In interpreting this provision, the Supreme Court of Ohio has held that absent any provision of a collective bargaining agreement to the contrary, the board of a non-Civil Service school district has *no* authority to lay off its nonteaching employees for economic reasons. The Court has further interpreted this provision as giving "statutory job security" to nonteaching employees.[85] Thus, under current law, an exempted village or local school district board may not terminate nonteaching staff positions (such as those of bus drivers) and replace them with labor supplied by independent contractors.

Termination of transportation staff positions and replacement with services provided by an independent agent

(R.C. 3319.081(C) and 3319.0810(A))

The bill authorizes the termination of transportation staff positions for "reasons of economy and efficiency" by the boards of non-Civil Service school districts. In that case, rather than employ its own staff to transport students the board must contract with an independent agent to provide transportation services. This provision of the bill does not appear to permit the lay off of any board-employed transportation personnel for economic reasons unless the district intends to contract for at least some nonpublic personnel. However, another provision

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[83] *Employment of teachers in both Civil Service and non-Civil Service school districts is controlled by other specific statutes that provide (among other things) procedures for termination of positions when it is necessary to reduce the number of teachers for certain specified reasons (R.C. 3319.17, not in the bill).*

[84] *R.C. 3319.081(C), emphasis added. The statute also specifically provides that sexual battery against a student at the school (R.C. 2907.03(A)(7)) is grounds for termination.*

[85] *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn. (1998), 82 Ohio St.3d 222, 226. In a subsequent action in the same case, the Court clarified that certain bus drivers illegally laid off by the local school district board were entitled to reinstatement to their positions as school district-employed bus drivers with back pay and benefits. The Court also held that the board was not authorized to lay off those employees by abolishing their positions while in effect retaining those positions to be filled by contract nonpublic employees. See State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn. (2001), 93 Ohio St.3d 558, 561-562.*

permits reductions in force among teachers and nonteaching employees for "financial reasons" (see "***Reduction of the number of nonteaching employees***," above).

Neverless, this provision prescribes conditions for laying off transportation employees and contracting with an independent agent for transportation services. First, any collective bargaining agreement between the board and the labor organization representing the terminated employees must have expired, must expire within 60 days after the termination notice, or must contain provisions permitting the termination of positions while the agreement is in force.

Second, the board must permit any employee whose position is terminated to fill any vacancy within the district's organization for which the employee is qualified. In so doing, the board must follow procedures for filling the vacancies established in the collective bargaining agreement between the labor organization representing the terminated employees and the board, if it is still in force and contains such provisions. If the agreement is not in force or does not contain provisions for reemployment of the terminated employees in new positions, then the board is required to offer reemployment on the basis of seniority.

Third, the board must permit any terminated employee to fill the employee's former position in the event the board reinstates that position within one year after the date the position is terminated. The bill specifically does not require the board to reinstate an employee under this condition if the collective bargaining agreement between the labor organization representing the terminated employees and the board, if one is in force at the time of the terminations, provides otherwise.

Fourth, the board must permit a terminated employee to appeal, pursuant to the Administrative Procedure Act (R.C. Chapter 119.), the board's decision to terminate the employee, not to reemploy the employee, or not to reinstate the employee.

Fifth, the contract entered into by the board and an independent agent for the provision of transportation services must contain a stipulation requiring the agent to consider hiring the terminated district employees for similar positions within the agent's organization.

Sixth, the contract between the board and the independent agent also must require the agent to recognize for purposes of collective bargaining between the former district employees and the agent any labor organization that represented those employees at the time of the terminations as long as the following additional conditions are satisfied:

(1) A majority of the employees in the former school district bargaining unit agree to representation by that labor organization;

(2) Federal law does not prohibit the representation; and

(3) The labor organization is not prohibited from representing nonpublic employees either under other provisions of law or its own governing instruments.

No employee may be compelled to be included in the bargaining unit represented by that labor organization if there is another one within the agent's organization that is applicable to the employee.

Recourse if school district board does not comply with conditions

(R.C. 3319.0810(B))

If the school district board fails to comply with any of the prescribed lay-off conditions, including enforcement of the required contractual obligations, the bill provides that the terminations of transportation staff positions are void. In such instances, the board is required to reinstate the positions and fill them with the employees who filled those positions just prior to the terminations. The employees must be compensated at a rate equal to their rate of compensation in those positions just prior to the terminations plus any increases paid to other nonteaching employees since the terminations. In addition, the employees must receive back pay for the period from the date of the terminations to the date of reinstatement minus any pay the employees received while the board was in compliance with the bill's provisions. The bill grants any employee aggrieved by the board's failure to comply with any of the bill's provisions the specific right to sue the board for reinstatement of the employee's former position or for damages in lieu of reinstatement.[86]

Terminated employees not entitled to unemployment compensation benefits for period between academic terms

(R.C. 4141.29(I)(1)(b))

Nonteaching school district employees are generally not entitled to receive unemployment compensation benefits for the period between two successive academic terms, because it is presumed that they have a "reasonable assurance" of

[86] *Under the bill, suit may be brought in the court of common pleas for the county in which the school district is located or, if the school district is located in more than one county, in the court of common pleas for the county in which the majority of the territory of the school district is located.*

employment in the second of those two terms. If, however, an employee is not actually offered an employment opportunity for that second term, then the employee may be eligible for retroactive benefits for the period between the terms.[87] The bill clarifies that an individual whose transportation staff position with a school district has been terminated under the bill's provisions has a "reasonable assurance" of reemployment by an educational institution or by the nonpublic employer that contracts with the school district board to provide transportation services. Thus, the individual is not entitled to unemployment compensation benefits during the period between the academic term in which the individual's position was terminated and the next succeeding academic term, unless the individual ultimately is *not* offered an employment opportunity for that next term.[88]

Ohio Center for Autism and Low Incidence

(R.C. 3323.30, 3323.31, 3323.32, and 3323.33)

The bill formally establishes the Ohio Center for Autism and Low Incidence (OCALI) to administer programs and coordinate services for infants, preschool and school-age children, and adults with autism and other low incidence disabilities involving hearing, vision, orthopedics, traumatic brain injuries, and general health. (OCALI is currently operating within the Department of Education as an information clearinghouse under a federally funded initiative of the Department of Education.) The bill places OCALI within the Department's Office for Exceptional Children. The bill requires the Superintendent of Public Instruction, in consultation with an advisory board, to appoint the OCALI executive director.

The Superintendent must establish and organize an advisory board to assist and advise the Department in the operation of OCALI. As determined by the Superintendent, the advisory board consists of individuals who are stakeholders in

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[87] *R.C. 4141.29(I)(1)(b) first and third paragraphs. A similar provision applies to teachers (R.C. 4141.29(I)(1)(c)). The "reasonable assurance" provision appears to presume that an employee will be employed by some educational institution, whether the one the employee worked for during the first of the two successive terms or another one. Under the state education law, the board of a non-Civil Service school district must notify a nonteaching employee by June 1 if the board is not going to renew the employee's contract (R.C. 3319.083, not in the bill). But under the state unemployment compensation law, the board must notify the employee of nonrenewal by April 30 (R.C. 4141.29(I)(1)(e)). Among other various factors, in order to be eligible for unemployment benefits, an individual must not willfully reject a legitimate employment offer.*

[88] *R.C. 4141.29(I)(1)(b) second paragraph.*

the service to persons with autism and low incidence disabilities, including the following:

(1) Persons with autism and low incidence disabilities;

(2) Parents and family members;

(3) Educators and other professionals;

(4) Higher education instructors; and

(5) Representatives of state agencies.

In its administration and coordination of programs, OCALI is charged with the following goals:

(1) Collaborate and consult with state agencies that serve persons with autism and low incidence disabilities;

(2) Collaborate and consult with institutions of higher education in development and implementation of courses for educators and other professionals serving persons with autism and low incidence disabilities;

(3) Collaborate with parent and professional organizations;

(4) Create and implement programs for professional development, technical assistance, intervention services, and research in the treatment of persons with autism and low incidence disabilities;

(5) Create a regional network for communication and dissemination of information among educators and professionals serving persons with autism and low incidence disabilities; and

(6) Develop a statewide clearinghouse for information about autism spectrum disorders and low incidence disabilities.

In developing the statewide clearinghouse, OCALI must also (a) maintain a collection of resources for public distribution, (b) monitor information on resources, trends, policies, services, and current educational interventions, and (c) respond to requests for information from parents and educators of children with autism and low incidence disabilities.

Stipend for National Board certified teachers

(R.C. 3319.55)

Under continuing law, public and chartered nonpublic school teachers who hold valid teaching certificates issued by the National Board for Professional Teaching Standards are eligible for annual state-funded stipends. The National Board is an independent organization that awards certificates to teachers whose instructional practices, as demonstrated by evaluations of content knowledge and classroom performance, meet rigorous standards of teaching quality. The certificates are valid for ten years, but can be renewed for an additional ten-year period.

The bill limits a teacher's eligibility for an annual state stipend to the ten-year period of the initial certification. That is teachers who renew their National Board certification for another ten-year period are not eligible for the state stipends.

Adoption of a statewide "grade acceleration" policy

(R.C. 3324.10)

The bill requires the Superintendent of Public Instruction to adopt a statewide grade acceleration policy, and provide each district with a copy of the policy, by March 31, 2006. "Grade acceleration" means the promotion of students to a grade higher than the one that would generally follow the grade the student has completed. The Superintendent of Public Instruction must review grade acceleration policies currently used in school districts throughout the state and adopt the policy that represents the best practices. The statewide policy will be effective for the 2006-2007 school year. However, a school district is required to comply with the statewide grade acceleration policy only if it has not adopted a grade acceleration policy for use in its district.

School district latchkey programs

(R.C. 3313.207, 3313.208, and 3313.209)

Current law

Currently, a board of education of a city, local, or exempted village school district is permitted to operate a latchkey program after assessing the need for such a program and determining the best and most efficient manner of providing the program to children in its district. The board is prohibited from expending money from the general fund of the district to provide the program, however, unless the

money is from an appropriation of the General Assembly that specifically permits the expenditure.

Current law also allows a board of education that does not operate a latchkey program (1) to provide ancillary services and to make payments to any provider that operates a latchkey program that enrolls one or more children who are residents of the school district, or (2) to furnish ancillary services or employees solely for use in conjunction with the program's operation to any person or entity that operates a latchkey program. Ancillary services include (a) space in a school district building that is used for other school district purposes in addition to latchkey programs, (b) utilities furnished in conjunction with the space, or (c) transportation to a latchkey program on a regular school bus. The board is again, though, expressly prohibited from using money from the general fund of the district to pay for these services, except under certain circumstances.

The bill

The bill extends the ability to provide latchkey programs to joint vocational school districts and educational service center and removes the restriction against using money from the general fund to provide for the program. The bill also removes the restriction against expending money from the general fund for ancillary services.

Elimination of school districts' annual spending plan and submission of certificate of estimated resources

(R.C. 3313.489 and 5705.391; Repealed R.C. 3311.40)

Under current law, each board of education must adopt, as part of its annual appropriation measure, a spending plan setting forth a schedule of expenses and expenditures of all appropriated funds as well as all revenues available for appropriation by the school district for the fiscal year. A copy of the appropriation measure and spending plan must be submitted to the Superintendent of Public Instruction, who is required to use it to determine whether the district will incur any expenses during that year that will impair its financial ability to operate its schools with the revenues available to it.

The bill eliminates the mandate for the annual spending plan and requires the Superintendent to make the determination based upon the districts' five-year projections of revenues and expenditures already required by law. It also eliminates the requirement that school districts file their amended certificates of estimated resources, produced by the county budget commission and filed with the school district pursuant to R.C. 5705.35, and their annual appropriations measure with the Department of Education.

Elimination of requirement to file statistical reports

(R.C. 3317.09)

The bill eliminates (1) the requirement that the Department of Education must file a monthly report, regarding distribution of money to a school district by the state, with the Senate, the House of Representatives, the Legislative Service Commission, and the Governor, and (2) the requirement that the Department must file its annual statistical report, detailing receipts of revenues and expenditures for all school districts, with those officials as well as with the Auditor of State.

Transportation of pupils attending vocational education programs

(R.C. 3327.01)

The bill codifies a provision requiring the boards of education of all city, local, and exempted village school districts that transport pupils according to a career-technical plan approved by the State Board of Education. Specifically, it requires them to transport high school pupils who attend career-technical classes at another district, including a joint vocational school district, from the public high school operated by the district to which the student is assigned to the career-technical program.

Updated five-year projections for fiscal watch and fiscal emergency school districts

(R.C. 3316.043)

The bill requires that upon the approval by the Superintendent of Public Instruction of a financial plan (required for fiscal watch districts) or a financial recovery plan (required for fiscal emergency districts), the board of education of a school district that is in fiscal watch status, or the financial planning and supervision commission for a district in fiscal emergency status, must revise the district's five-year projection of revenues and expenditures so that the projection is consistent with the financial plan or financial recovery plan.

Suspension of set-asides for school districts in fiscal emergency

(R.C. 3315.17, 3315.18, 3316.06, and 3316.16)

Current law requires the board of education of each city, exempted village, local, and joint vocational school district to establish a "Textbook and Instructional Materials Fund" and a "Capital and Maintenance Fund" and deposit into each of those funds an amount equal to 3% (or another percentage if established by the Auditor of State) of the base-cost formula amount for the

preceding fiscal year, multiplied by the district's student population for the preceding fiscal year. Money in the Textbook and Instructional Materials Fund must be used solely for textbooks, instructional software, and instructional materials, supplies, and equipment, while money in the Capital and Maintenance Fund must be used solely for acquisition, replacement, enhancement, maintenance, or repair of permanent improvements. Any money not used in either fund in any fiscal year carries over to the next fiscal year.

The bill exempts a school district from making otherwise required deposits into the funds while the district is in a fiscal emergency period and excuses the district from eliminating any deficits in the funds that accrued in prior years. Before the district's financial planning and supervision commission is terminated, however, the district's five-year financial forecast must project that the district will comply with the requirement to make those deposits the year after the commission is proposed to be terminated.

Prohibition against school district operation without a charter

(R.C. 3301.16)

Under current law, the State Board of Education has the power to classify and charter school districts and individual schools within each district. The Board also has the power to revoke the charter of any school district or school that fails to meet the Board's standards for elementary and high schools. The bill explicitly prohibits any school district or individual school operated by a school district from operating without a charter issued by the Board.

Map required in chartering new school districts

(R.C. 3301.16)

The bill requires the State Board of Education to require any party proposing the creation of a new school district to submit to the Board a map, certified by the county auditor of the county in which the proposed new district is located, that shows the boundaries of the proposed new district. If the new district is located in more than one county, the map must be certified by the county auditor of each county.

School Physical Fitness and Wellness Advisory Council

(Section 206.10.12)

The bill establishes the School Physical Fitness and Wellness Advisory Council to develop best practices regarding nutrition education, physical activity for students, and school-based activities and school-business partnerships that

promote student wellness. The Council must provide information no later than December 31, 2005, to school districts participating in the federal school lunch program to facilitate adoption of local wellness policies, and must develop strategies for evaluating the implementation of the policies.

The ten members of the School Physical Fitness and Wellness Advisory Council include one representative of each of the following:

(1) Ohio Association for Health, Physical Education, Recreation and Dance;

(2) Ohio School Food Service Association;

(3) Ohio School Boards Association;

(4) Ohio Dietetic Association;

(5) Ohio State Medical Association;

(6) The food industry, appointed by the Ohio Chamber of Commerce;

(7) Ohio Parent Teacher Association;

(8) Ohio Soft Drink Association;

(9) Department of Education, appointed by the Superintendent of Public Instruction; and

(10) Ohio Parks and Recreation Association.

The representative of the Department of Education serves as chairperson.

Legislative committee to study school district consolidation

(Section 206.10.06)

The bill establishes a legislative committee, composed of six members including two majority party members and one minority party member from each house, appointed by the Speaker of the House and the Senate President, respectively. The committee must study the feasibility and economic impact (including possible cost savings) of city, local, and exempted village school district consolidation. If the committee determines that school district consolidation is feasible, the committee must recommend legislation to accomplish the consolidation. The committee must report its findings to the General Assembly not later than one year after the bill's effective date. Following its report of findings, the committee is dissolved.

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.[89]

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.[90] 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

[89] *Repealed R.C. 3353.02, 3353.03, and 3353.04.*

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

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 $1.50 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.

- 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.

- Specifies that the fee levied on the disposal of construction and demolition debris at a solid waste facility under the Construction and Demolition Debris Law does not apply if there is no licensed construction and demolition debris facility within 35 miles of the solid waste facility as determined by a facility's property boundaries rather than within 40 miles as in current law.

- Specifies that state solid waste disposal fees are to be collected at transfer facilities as well as at disposal facilities as in existing law, excludes from the fees materials that are separated or removed for recycling, and amends the procedures for collecting and remitting the fees.

- Excludes certain shale and clay products from the definition of "solid wastes."

- Establishes a new 25¢ per ton or 12.5¢ per cubic yard fee on the disposal of construction and demolition debris, and requires the proceeds of the fee to be credited to the Soil and Water Conservation District Assistance Fund created by the bill to provide matching funding for soil and water conservation district projects.

- 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.

- Increases the state tire sale fee by $1, requires the proceeds to be credited to 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.

- 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 requirements governing the issuance of section 401 water quality certifications under the Water Pollution Control Law for dredging and filling operations in wetlands that are not isolated wetlands and for three categories of streams.

- Establishes different levels of review and criteria for the issuance or denial of a section 401 water quality certification depending on the category and size of the wetland or stream that is subject to dredging or filling.

- Establishes requirements governing the completeness review of applications for section 401 water quality certifications and public notice and hearing requirements concerning applications.

- Generally subjects standards and procedures that are used to evaluate mitigation proposals to review under the Administrative Procedure Act in order to have the force of law.

- Establishes an application fee of $200 for a section 401 water quality certification, 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, projects authorized by general or nationwide permits issued by the U.S. Army Corps of Engineers, and coal mining and reclamation operations 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 fee

(R.C. 3734.57 and 3745.015)

The bill establishes a new solid waste disposal fee of $1.50 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 July 1, 2005.

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 requires the disposal fees to be collected by either a solid waste transfer facility or a solid waste disposal facility, whichever facility first receives the solid wastes. The fees are required to be collected by a transfer facility if the solid wastes are taken to the transfer facility prior to being transported to a solid waste disposal facility for disposal. The fees must be collected by a solid waste

disposal facility if the solid wastes are not taken to a solid waste transfer facility prior to being transported to the disposal facility. The fees must be collected by the owner or operator of the solid waste transfer or disposal facility as a trustee for the state. However, the bill specifies that the fees do not apply to materials separated from a mixed waste stream for recycling by a generator or materials removed from the solid waste stream through recycling, as "recycling" is defined in rules adopted by the Director.

The bill applies the requirement that owners and operators of solid waste facilities submit a return to the owners and operators of both transfer and disposal facilities 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 at 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 at 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 ¾ 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 ¾ 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.

Exclusion from construction and demolition debris disposal fee

(R.C. 3714.07)

Current law establishes a 30¢ per cubic yard or 60¢ per ton fee, as applicable, on the disposal of construction and demolition debris at a construction and demolition debris facility or at a solid waste facility. However, the requirement that the fee be levied on the disposal of construction and demolition debris at a solid waste facility does not apply if there is no licensed construction and demolition debris facility within 40 miles of the solid waste facility as determined by a facility's property boundaries. The bill revises this exclusion by reducing the distance between facilities to within 35 miles rather than within 40 miles as in current law.

Definition of "solid wastes"

(R.C. 3734.01)

The bill excludes from the definition of "solid wastes" in the Solid, Infectious, and Hazardous Waste Law nontoxic, nonhazardous, unwanted fired and unfired, glazed and unglazed, structural shale and clay products.

Construction and demolition debris disposal fee to fund projects of soil and water conservation districts

(R.C. 1515.14 and 3714.073)

Current law establishes construction and demolition debris disposal fees of 60¢ per ton or 30¢ per cubic yard, the proceeds of which must be used by the Environmental Protection Agency or a local board of health, as applicable, to administer the Construction and Demolition Debris Law and rules adopted under it. In addition, current law authorizes the Director of Environmental Protection to adopt a fee of 10¢ per ton or 5¢ per cubic yard for certain ground water monitoring purposes related to construction and demolition debris facilities.

The bill establishes an additional 25¢ per ton or 12.5¢ per cubic yard fee on the disposal of construction and demolition debris and requires the proceeds of the new fee to be deposited into the Soil and Water Conservation District Assistance Fund, which is created by the bill. The Fund must be used to provide funding to soil and water conservation districts as matching money for local contributions to the districts.

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.

New fee on tire sales to fund recycling and litter prevention program

(R.C. 1502.02, 3734.901(A)(3), and 5733.122 (repealed))

The bill enacts an additional $1 per tire fee on the sale of tires. The proceeds of the new fee are required to be credited to 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.

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
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.

Section 401 water quality certifications

(R.C. 3745.114, 6111.02, 6111.028 (repealed), 6111.0210, 6111.0211, 6111.0212, and 6111.0213)

Background

Under the Clean Water Act (also known as the Federal Water Pollution Control Act), persons that propose to dredge or fill waters of the state, including wetlands, must apply to the United States Army Corps of Engineers (Army Corps) for a permit under section 404 of that Act. The permit commonly is referred to as a "section 404 permit." Generally, a section 404 permit is required before a person may dredge or fill waters of the state, including wetlands. In addition, the Clean Water Act requires persons to receive a water quality certification under section 401 of the Act from the state that the dredging or filling will not result in a violation of certain water quality standards. The receipt of the certification from the state is a precondition to the issuance of the section 404 permit issued by the Army Corps. This certification is commonly referred to as a section 401 water quality certification. The bill defines "section 401 water quality certification" to mean certification pursuant to section 401 of the Clean Water Act and the state Water Pollution Control Law and rules adopted under it that any discharge, as set forth in section 401, will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act.

However, the Clean Water Act does not regulate isolated wetlands. State law thus has established a permit program for regulation of impacts to isolated

wetlands. The program includes a system of tiered review for different categories of isolated wetlands. The bill establishes a system of review for the issuance of section 401 water quality certifications for wetlands that are not isolated wetlands and for streams. It establishes a similar system of tiered review, but does not apply identical requirements. The bill's requirements regarding non-isolated wetlands and streams replace the current rules of the Ohio Environmental Protection Agency (OEPA) pertaining to section 401 water quality certifications that have been adopted under the Water Pollution Control Law.

Wetlands categories and types of streams

The bill establishes three categories of non-isolated wetlands by application of existing law: category 1, category 2, and category 3 wetlands. It also establishes three categories of streams by new definitions: ephemeral, intermittent, and perennial. Generally, category 1 wetlands are less ecologically significant than category 2 and category 3 wetlands, and ephemeral streams are less ecologically significant than intermittent streams, which are less ecologically significant than perennial streams.

The different categories of wetlands are defined as those categories described in rules adopted under the Water Pollution Control Law and as determined to be a category 1, category 2, or category 3 wetland, respectively, through application of the OEA's "Ohio Rapid Assessment Method for Wetlands version 5.0" (ORAM), including the ORAM version 5.0 quantitative score calibration dated August 15, 2000, unless an application for a section 401 water quality certification was submitted prior to February 28, 2001, in which case the permit applicant may elect to proceed in accordance with the ORAM version 4.1. ORAM is a scoring system used by the OEPA to determine into which category a given wetland fits.

"Ephemeral stream" is defined by the bill to mean a stream that flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and that has channel bottom that is always above the local water table. "Intermittent stream" is defined to mean a stream that is below the local water table and flows for at least a part of each year and that obtains its flow from both surface runoff and ground water discharge. Finally, "perennial stream" means a stream or a part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface water runoff. "Perennial stream" does not include an intermittent stream or an ephemeral stream.

Level 1 review

Under the bill, the discharge of dredge or fill material[91] into a category 1 or a category 2 wetland of three acres or less or such a discharge impacting a portion of an ephemeral stream of 1,000 linear feet or less, a portion of an intermittent stream of 500 linear feet or less, or a portion of a perennial stream of 100 linear feet or less requires a section 401 water quality certification issued by the Director of Environmental Protection and is subject to level one review requirements.

Level one review applies only to the discharge of dredge or fill material into a category 1 or category 2 wetland or an ephemeral, intermittent, or perennial stream as described above. A level one review requires, and is limited to, the submission of a pre-activity notice that includes an application; an acceptable delineation; a wetland or stream categorization, as applicable; a description of the project; a description of the acreage of the wetland or of the linear footage of the stream, as applicable, that will be subject to dredging or filling; site photographs; and a mitigation proposal for the impact to the wetland or stream, as applicable, that includes both of the following:

(1) The submission of an analysis of technically feasible and economically reasonable on-site alternatives to the proposed dredging or filling of the wetland or

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[91] *"Dredged material" or "dredge material" is defined by the bill to mean material that is excavated or dredged from a wetland, including an isolated wetland, or a stream. "Dredged material" does not include material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for production of food, fiber, and forest products. "Discharge of dredged material" is defined as having the same meaning as in applicable federal regulations. These definitions replace similar definitions in existing law that are applicable only to isolated wetlands.*

"Fill material" is defined in existing law to mean any material that is used to fill an aquatic area, to replace an aquatic area with dry land, or to change the bottom elevation of a wetland or stream (added by the bill) for any purpose and that consists of suitable material that is free from toxic contaminants in other than trace quantities. "Fill material" does not include either: (1) material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for the production of food, fiber, and forest products, or (2) material placed for the purpose of maintenance of existing structures, including emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures.

Under the bill, both "discharge of dredged material" and "discharge of fill material" have the same meaning as in federal regulations.

stream, as applicable, that would have a less adverse impact on the wetland ecosystem; and

(2) The submission of information indicating whether high quality waters, as defined in rules adopted by the OEPA, are to be avoided by the proposed dredging or filling of the wetland or stream, as applicable.

The Director must grant or deny a section 401 water quality certification for the proposed dredging or filling of a wetland or stream that is subject to level one review not later than 120 days after receipt of an application for the certification. The Director must issue a section 401 water quality certification after a level one review unless the Director determines that the applicant has failed to demonstrate all of the following:

(1) There is no technically feasible and economically reasonable on-site alternative to the proposed dredging or filling that would have a less adverse impact on the wetland or stream ecosystem;

(2) Reasonable buffers have been provided for any wetland or stream that will be avoided at the site where the proposed dredging or filling will take place;

(3) The wetland or stream is not locally or regionally scarce within the watershed in which it is located and does not contain endangered species;

(4) The impact would not result in significant degradation to the aquatic ecosystem;

(5) Appropriate mitigation has been proposed for any unavoidable impacts;

(6) Storm water and water quality controls will be installed to ensure that peak post-development rates of surface water runoff from the impacted wetland or stream do not greatly exceed the peak pre-development rates of surface water runoff from the wetland or stream; water quality improvement measures must be incorporated into the design of the storm water control measures that are required by laws of this state and federal law; and

(7) Any additional, technically feasible and economically reasonable, site-specific requirements that are determined necessary by the Director to protect water quality have been satisfied.

Mitigation[92] for the proposed dredging or filling of a wetland or stream that is subject to level one review must be conducted by the applicant. Without the objection of the Director and at the discretion of the applicant, the applicant must conduct either on-site mitigation, mitigation at a wetland mitigation bank within the same Army Corps district as the location of the proposed dredging or filling of the wetland or stream, or off-site mitigation.

Level 2 review

The discharge of dredge or fill material into a category 1 or category 2 wetland of greater than three acres or a category 3 wetland or such a discharge impacting a portion of an ephemeral stream of greater than 1000 linear feet, a portion of an intermittent stream greater than 500 linear feet, or a portion of a perennial stream of greater than 100 linear feet requires a section 401 water quality certification issued by the Director of Environmental Protection and is subject to level two review requirements.

Level two review applies to the discharge of dredge or fill material into a category 1, category 2, or category 3 wetland or an ephemeral, intermittent, or perennial stream described above and requires all of the following:

(1) All of the information required to be submitted with a pre-activity notice under a level 1 review (see above);

(2) A full antidegradation review conducted in accordance with rules adopted under Water Pollution Control Law; and

(3) The submission of information indicating whether high quality waters, as defined in rules adopted by the OEPA, are to be avoided by the proposed dredging or filling of the wetland or stream, as applicable.

The Director must issue or deny a section 401 water quality certification for the proposed dredging or filling of a wetland or stream that is subject to level two review not later than 150 days after the receipt of an application for the certification. The Director must not issue a section 401 water quality certification for the proposed dredging or filling of a wetland or stream that is subject to level two review unless the Director determines that the applicant for the certification has demonstrated that the proposed dredging or filling will not prevent or interfere with the attainment or maintenance of applicable state water quality standards.

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[92] *"Mitigation" is defined in current law to mean the restoration, creation, enhancement, or, in exceptional circumstances, preservation of wetlands expressly for the purpose of compensating for wetland impacts. The bill expands this definition to include streams.*

The Director also may deny an application for a section 401 water quality certification under level two review if the Director determines that the proposed dredging or filling of the wetland or stream will result in an adverse short-term or long-term impact on water quality. The Director may impose terms and conditions on a section 401 water quality certification under level two review that are appropriate or necessary to ensure adequate protection of state water quality and to ensure compliance with the Water Pollution Control Law and rules adopted under it. In addition, prior to the issuance of a section 401 water quality certification under level two review, or prior to, during, or after the dredging or filling of the wetland or stream that is the subject of the certification, the Director may require that the applicant or certification holder perform various environmental quality tests, including, without limitation, chemical analyses of water, sediment, or fill material and bioassays, in order to ensure adequate protection of water quality.

Mitigation for the proposed dredging or filling of a wetland or stream that is subject to level two review must be conducted by the applicant and must occur in the following preferred order:

(1) Technically feasible and economically reasonable mitigation to the extent that the on-site mitigation would provide significant benefits to the aquatic habitat despite the modification of the site due to development;

(2) Technically feasible and economically reasonable off-site mitigation within the same watershed;

(3) If the proposed dredging or filling of the wetland or stream will take place within a mitigation bank service area, within that mitigation bank service area; and

(4) If there is a significant ecological reason that the mitigation should not be limited to the watershed in which the wetland or stream is located and if the proposed mitigation will result in a substantially greater ecological benefit, in a watershed that is adjacent to the watershed in which the wetland or stream is located.

Certification completeness review

Not later than 15 business days after the receipt of an application for a section 401 water quality certification under the Water Pollution Control Law, the Director of Environmental Protection must notify the applicant if the application is complete. If the application is not complete, the Director must include in the notice an itemized list of the information or materials that are necessary to

complete the application. Time periods specified in statute or rule must be tolled until the application is determined by the Director to be complete.

Public participation requirements

Not later than 21 days after the receipt of a complete application for a section 401 water quality certification, the Director must publish notice of its receipt in a newspaper of general circulation in the county in which the proposed project that is the subject of the application is to take place. The notice is required to contain only the name of the applicant, the proposed location of the project, a description of the proposed impact, and the proposed mitigation of the impact. The Director must accept comments concerning the application and requests for a public hearing concerning the application for not more than 15 days following the publication of notice concerning the application.

If the Director receives a request for a public hearing on the application and determines that there is significant public interest in such a hearing as evidenced by the public comments received concerning the application and other requests for a public hearing on the application, the Director or the Director's representative must conduct a public hearing concerning the application. Notice of the public hearing must be published not later than 30 days prior to the date of the hearing in a newspaper of general circulation in the county in which the project that is the subject of the application is to take place. If a public hearing is requested concerning an application, the Director must accept comments concerning the application until five business days after the public hearing. A public hearing must take place not later than 70 days after the receipt of the application.

Use of standards and procedures to evaluate mitigation proposals

Under the bill, all wetland, stream, or lake mitigation standards, scientific methods, processes, and other procedures or policies that are used by or approved for use by the Director to evaluate or measure or to determine the approval or denial of a mitigation proposal is subject to the Administrative Procedure Act's rule adoption provisions before the standards, scientific methods, processes, or other procedures or policies have the force of law. Until that time, any such mitigation standards, scientific methods, processes, or any other procedures or policies that are used by or approved for use by the Director to evaluate, measure, or determine the success, approval, or denial of a mitigation proposal, but that have not been subject to review under those provisions of the Administrative Procedure Act cannot be used as the basis for any certification or permit denial or as a standard applied to mitigation. All wetland restoration or creation performed for mitigation of wetland impacts authorized by the Director must result in the restoration or creation of wetlands that meet or exceed the quality of the wetland impacted as measured by the ORAM.

Fees

Currently, there is no authority in state law for the OEPA 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 OEPA's administration of surface water protection programs.

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

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.

GENERAL ASSEMBLY

- Requires state agencies that must submit a report, recommendation, or other similar document to the General Assembly in a hard copy format to, when technologically feasible, submit it through electronic means, rather than in the hard copy format, and display it on the agency's web site.

Submission of legislative reports via electronic means

(R.C. 101.68(D))

The bill provides that, notwithstanding any statutory provision to the contrary, whenever a statute or rule requires a state agency to submit a report, recommendation, or other similar document to the General Assembly or its members, or a chamber of the General Assembly or the chamber's members, in a paper, book, or other hard copy format, the report, recommendation, or other similar document, to the extent technologically feasible, must be submitted through electronic means rather than in the hard copy format. Furthermore, the agency must display the report, recommendation, or other similar document on a web site it maintains.

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.

- Provides that boards of county commissioners are permitted, rather than required, to pay for tuberculosis treatment to the extent that payment is not made through third-party benefits.

- Requires the Director of Health to adopt rules to implement the "Choose Life" Fund.

- Provides that it is not the General Assembly's intent that the Department of Health create a new position to implement and administer the "Choose Life" Fund.

- 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.

- Provides that a CON application to increase beds in a nursing home is exempt from the moratorium if the application concerns converting residential care facility beds to nursing home beds in the same facility and the beds were previously converted from nursing home beds to residential care facility beds for the purpose of the Assisted Living Medicaid Waiver program.

- 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.

- 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.

- Exempts Medicare-qualified "religious nonmedical health care institutions" that rely solely on religious methods of healing from the nursing home laws requiring use of nurse aides who have undergone nurse aide training and competency evaluation programs.

- Eliminates a requirement that the Director of Health convene the Nursing Facility Regulatory Reform Task Force if the Secretary of the U.S. Department of Health and Human Services approves development of an alternative regulatory procedure for nursing facilities subject to federal regulation.

- Increases radiology registration and inspection fees.

- Makes Medicaid-eligible individuals ineligible for the Program for Medically Handicapped Children except in limited circumstances.

- Requires the Public Health Council to revise rules to return financial eligibility requirements to the levels in effect prior to October 13, 2003.

- Creates the Legislative Committee on the Future Funding of the Bureau for Children with Medical Handicaps.

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.[93]

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

[93] *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.*

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 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.

County liability for tuberculosis treatment

(R.C. 339.73)

Under current law, the boards of county commissioners serve as the payer of last resort for treatment of patients with tuberculosis and are required to pay for treatment to the extent that payment is not made through third-party benefits. The bill makes this provision permissive, providing that a board of county commissioners may pay for treatment to the extent that payment is not made through third-party benefits.

Administration and implementation of the "Choose Life" Fund

(R.C. 3701.65)

Under current law recently enacted by Sub. S.B. 156 of the 125th General Assembly, a person may apply to the Registrar of Motor Vehicles for the issuance of "Choose Life" license plates. For each application for registration and renewal the Registrar receives for these plates, the Registrar must collect a contribution of

$20 and transmit it to the Treasurer of State for deposit in the "Choose Life" Fund. Money in the Fund is to be annually distributed by the Director of Health to any eligible private, nonprofit organization that completes an application form developed by the Director and is selected for funding.

The bill requires the Director of Health to adopt rules to implement the "Choose Life" Fund. It also provides that it is not the General Assembly's intent that the Department of Health create a new position to implement and administer the "Choose Life" Fund but that it use existing personnel.

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 same corporation or other business;

(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.

Beds reconverted from residential care facility beds

The Director is required by the bill 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 an increase in beds that is attributable solely to the conversion of residential care facility beds to nursing home beds that are located in the same existing facility[94] and were previously converted from nursing home beds to residential care facility beds for the purpose of the facility's participation in the Assisted Living Waiver program.[95] The Director may not authorize under the application any additional beds beyond those being converted from residential care facility beds to nursing home 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.

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[94] *This provision too is limited to a facility that 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 with the 24-months immediately before the date the CON application is filed.*

[95] *See "**Assisted living Medicaid waiver**" in the part of the analysis below regarding the Department of Job and Family Services.*

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:[96]

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

(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.

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;

(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.

[96] *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).*

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.

Religious nonmedical health care institutions: nurse aide training exemption

(R.C. 3721.21)

Under current law, a nursing home may not use individuals as nurse aides unless they have successfully completed a training and competency evaluation program approved by the Director of Health. A nurse aide is an individual who provides nursing and nursing-related services to residents in a nursing home, either as a member of the staff or as a volunteer.

The bill exempts "religious nonmedical health care institutions" from the nurse aide training requirement. Specifically, it provides that the term "nurse aide" does not include an individual providing nursing and nursing-related services in a religious nonmedical health care institution, if the individual (1) has been trained in the principles of nonmedical care and (2) is recognized by the institution as being competent in the administration of care within the religious tenets practiced by the institution's residents.

For purposes of these provisions, the bill defines a "religious nonmedical health care institution" as an institution that meets or exceeds the conditions to receive Medicare payments for inpatient hospital services or post-hospital extended care services furnished to an individual in such an institution. Under federal law, a "religious nonmedical health care institution" is defined primarily as an institution that provides only nonmedical nursing items and services exclusively to patients who choose to rely solely on a religious method of healing and for whom the acceptance of medical health services would be inconsistent with their religious beliefs. In addition, the institution must (1) be tax-exempt, (2) be lawfully operated, (3) provide nonmedical items and services through experienced nonmedical nursing personnel on a 24-hour basis, (4) not be owned by or affiliated with a provider of medical treatment or services, (5) have in effect a utilization plan that meets specified requirements, (6) provide the U.S. Secretary of Health and Human Services with information as required, and (7) meet any other requirements the Secretary establishes.[97]

Elimination of Nursing Facility Regulatory Reform Task Force

(Section 490.06)

The bill repeals an uncodified provision of Am. Sub. H.B. 95 of the 125th General Assembly (Section 147) requiring the Director of Health to request approval from the Secretary of the U.S. Department of Health and Human Services to develop an alternative regulatory procedure for nursing facilities. On

[97] *42 United States Code 1395x(ss)(1).*

receiving approval, the Director was to convene the Nursing Facility Regulatory Reform Task Force.

The Task Force was to review the effectiveness of regulatory procedures regarding the quality of care and quality of life of nursing facility residents, develop recommendations for improvements to the procedures, and evaluate the effect of various changes to nursing home law. It was to submit a report of its findings to the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate.

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.

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

Eligibility for the Program for Medically Handicapped Children

(R.C. 3701.021 and 3701.023; Section ____)

The Program for Medically Handicapped Children is in the Department of Health and is known as the Bureau for Children with Medical Handicaps (BCMH). The bill makes two changes to the eligibility requirements for services under BCMH. First, the bill states that an individual eligible for Medicaid,[98] is not eligible for services under BCMH. Second, the bill requires the Public Health Council to revise rules to return financial eligibility requirements to the levels in effect prior to October 13, 2003.

Effect of Medicaid eligibility

Under current law, an individual may receive benefits under the Medicaid program and under BCMH. The bill provides that if an individual is eligible for Medicaid, that individual is not eligible to receive services under BCMH.

The bill provides one exception. If an individual is eligible for Medicaid under the "spend-down" provision contained in federal rule[99] as a result of costs incurred on the individual's behalf under BCMH, the individual may receive BCMH services if the cost to the state to enable the individual to be eligible for both BCMH and Medicaid is less than the cost to the state of providing services to the individual under BCMH alone.

Removal of exemption for religious beliefs

The Department of Health requires all individuals applying for BCMH services to seek payment for medical expenses from all other third-party payers before resorting to BCMH payment. This includes applying for Medicaid. Under current law, if applying for Medicaid violates the religious beliefs of a medically handicapped child or the parent or guardian of a medically handicapped child, the

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[98] This refers to the Medicaid program established under Chapter 5111. of the Revised Code.

[99] 42 C.F.R. 435.121(e)(4). Under the "spend-down" provision, an individual qualifies for Medicaid by spending a sufficient amount of the individual's own funds for medical care, making the individual's income low enough to qualify for Medicaid. According to the Department of Health, sometimes it is cost effective for the state to pay for a portion of an individual's medical expenses under BCMH (paying for the individual's "spend-down"), allowing that individual to qualify for Medicaid (which would pay the bulk of the individual's expenses), which is a state-federal program, rather than requiring the state to pay for all of the individual's expenses under BCMH alone.

child, parent, or guardian is not required to apply for Medicaid in order to receive BCMH services. The bill removes this exemption.

BCMH eligibility

A rule establishing different financial eligibility levels for BCMH went into effect October 13, 2003. The bill requires the Public Health Council to revise the rule not later than December 1, 2005. As part of the revision, the Council is required to return the eligibility levels for fiscal years 2006 and 2007 to the levels in effect prior to October 13, 2003.

Legislative Committee on the Future Funding of the Bureau for Children with Medical Handicaps

The bill creates the Legislative Committee on the Future Funding of the Bureau for Children with Medical Handicaps. The Committee is to examine issues involving BCMH operations, services, and funding and make recommendations to the Governor and members of the General Assembly. The bill requires the Committee to do the following:

(1) Examine the current status of the Bureau and recommend best practices to be used in assisting working parents who have children with special health needs;

(2) Review all existing statutes and programs in Ohio pertaining to the Bureau;

(3) Review payment strategies in other states that facilitate adequate care for children with chronic conditions and support their families;

(4) Review all funding sources for the Bureau including funding received from county levies, the state General Revenue Fund and other state-based sources, the federal Maternal and Child Health block grant of Title V of the "Social Security Act";

(5) Request testimony from parents of children with special health needs and the child themselves and from health care professionals and other individuals who provide services to Bureau patients.

Membership

The Committee will consist of the following individuals, who are not to be compensated:

(1) Three members of the House of Representatives, appointed by the Speaker of the House of Representatives, not more than two of whom may belong to the same political party as the Speaker;

(2) Three members of the Senate, appointed by the President of the Senate, not more than two of whom may belong to the same political party as the President;

(3) Two members of the general public, one appointed by each the Speaker and the President, who suffer from a disease or disorder covered by BCMH;

(4) Two members of the general public, appointed by the Governor, who suffer from a disease or disorder covered by BCMH;

(5) The Director of Health, or the Director's designee;

(6) The Director of the Office of Budget and Management, or the Director's designee;

(7) The Superintendent of Insurance, or the Superintendent's designee;

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

(9) One person designated by the County Commissioners Association of Ohio;

(10) One person designated by the Ohio Children's Hospital Association;

(11) One person designated by the Ohio Association of Health Plans;

(12) One person designated by the American Academy of Pediatrics.

Report

The bill requires the Committee to submit a report, not later than December 31, 2005, including an analysis of the current system of services covered by BCMH and determinations and recommendations regarding how the state can best address the current and future needs of patients served by BCMH if necessary. The Committee is required to submit the report to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives. The committee will cease to exist on submitting the report.

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.[100] A "meeting" is any prearranged discussion of the public business of the public body by a majority of its members.[101] 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.[102]

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

- Creates the School Employees Health Care Board, charged with designing life and medical insurance plans to be used by all persons employed by Ohio's public schools.

- Requires health insuring corporations providing coverage to Medicaid patients to post a $1million performance bond.

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[100] *See R.C. 121.22, not in the bill.*

[101] *R.C. 121.22(B)(2).*

[102] *R.C. 121.22(C).*

- Requires additional moneys to be paid into the Department of Insurance Operating Fund; increases the fees the Superintendent of Insurance must charge; and eliminates the fee foreign insurance companies must pay for interest checks and coupons accruing on bonds and securities.

- Eliminates the exemption from the unauthorized foreign insurance tax for insurance companies that issue policies to "employer insureds."

- Eliminates the requirement that a licensed insurance company or certified health insuring corporation notify the Superintendent when the insurer is disciplined in another state.

- Eliminates the requirement that authorized foreign insurers publish their annual certificates of compliance and the requirement that the Superintendent issue annual certificates of compliance to those insurers.

School Employees Health Care Board

(R.C. 9.83, 9.90, 9.901, 3311.19, 3313.12, 3313.202, 3313.33, 4117.03, and 4117.08)

The bill creates a new board, the School Employees Health Care Board, to design life and medical plans to be used by all persons employed by Ohio's public schools. The Board, in consultation with the Superintendent of Insurance, is required to negotiate with insurers authorized to do business in this state, and in accordance with competitive selection procedures, contract for plans meeting the Board's designs. For this purpose, a "public school" means a school in a city, local, exempted village, or joint vocational school district, and the educational service centers associated with those schools.

The Board consists of nine members, including individuals with experience with public school benefit programs, health care industry providers, and medical plan beneficiaries. The Governor, the Speaker of the House of Representatives, and the President of the Senate each are to appoint three members. Board members may not be employed by, represent, or otherwise be affiliated with any private entity providing services to the Board, employers, or employees.

The bill provides that members of the School Employees Health Care Board are to serve four-year terms. It contains fairly common provisions governing staggered initial appointments, service until successor is appointed, filling of vacancies, uncompensated service of Board members except for actual

and necessary expenses, the initial meeting called by the Governor, election of a chairperson, minimum meetings (4) per year, and notice of meeting, applicability of the Open Meetings and Public Records Laws, what constitutes a quorum, and removal of a member for misconduct.

The School Employees Health Care Board must: (1) design multiple life and medical plans to provide an optimal combination of coverage, cost, choice, and stability, (2) include both state and regional preferred provider plans, (3) set goals for the employer and employee contributions to the premium cost, in order to encourage use of the plans, (4) set employee copayments, deductibles, exclusions, limitations, formularies, and other responsibilities, (5) utilize cost-containment measures, and (6) annually create and distribute to the Governor, the Speaker of the House of Representatives, and the President of the Senate, a report covering the plan's background, coverage options, plan administration and operations, employee and employer contribution rates, the relationship between the rates and the School Employees Health Care Fund's balance, alternative employee and employer cost-sharing strategies, an evaluation of the effectiveness of cost-saving programs and efforts to control and manage member eligibility, and on efforts to prevent and detect fraud and to manage and monitor Board contracts. The bill requires the Board to release its initial designs for life and medical plans no later than March 15, 2006.

School districts offering employee health care benefits through consortiums of two or more districts, or consortiums of one or more districts and one or more political subdivisions or their agencies or instrumentalities, covering 5,000 or more employees as of January 1, 2005, may request permission from the School Employees Health Care Board to continue the use of the plans. The Board is required to grant its initial or continued approval based on an actuarial evaluation of the consortium's existing plan offerings, if the evaluation determines the consortium plans' benefits and costs are equivalent to or better than the Board's plans. Initial approval is for one year; approval each year thereafter requires annual re-application to and approval by the Board. The Board is to be given access to all relevant information prior to making its decision. Once a school district chooses to offer the Board's plans the district is thereafter prohibited from offering the consortium's plans. Members of a school district's board of education may obtain coverage under the plans, but are required to pay all of the premiums for that coverage if they elect to participate.

The bill authorizes the School Employees Health Care Board to contract with other state agencies as necessary to implement and operate the Board's life and medical plans, and requires it to contract with the Department of Administrative Services for central services until the Board is able to obtain the services from other sources. The Board must reimburse the Department of

Administrative Services for those services. The Board's administrative duties include maintaining funds in the School Employees Health Care Fund (below) to provide for the long-term stability and solvency of the plans designed by the Board, to provide appropriate health care information and preventative care programs, and to coordinate contracts for services related to the Board's life and medical plans. A school district's board of education is responsible for distributing detailed information about the Board's plans to the district's employees a minimum of 90 days prior to the start of employee coverage.

The bill also creates the School Employees Health Care Fund in the state treasury. Participating schools pay all employer and employee premiums for Board-designed plans to the School Employees Health Care Board for deposit into this fund. Money in the fund only may be used for the provision of life and medical benefits to public school employees and related expenses.

School district employees may continue to bargain collectively with regard to life and medical benefits, however, after the bill takes effect, those benefits must be obtained through the insurers contracted to provide the Board-designed life and medical plans. The employees may choose from any of the plans agreed to during collective bargaining. While the result may not affect the total of the premium paid to the School Employees Health Care Board, employees may agree during collective bargaining to pay a higher percentage of the premium than would otherwise be required under the Board plan. Employees may not be allowed to contribute a lesser percentage of premium than at the level set by the Board.

The bill also requires the Ohio Board of Regents to report to the Governor, the Speaker of the House of Representatives, and the President of the Senate within 18 months after the bill's effective date on the feasibility of setting up a similar program for public institutions of higher education.

Medicaid health insuring corporations to post performance bond

(R.C. 1751.03, 1751.271, 3903.14, and 3903.421)

The bill requires each health insuring corporation providing coverage to Medicaid recipients to post a performance bond in the amount of $1 million, as security to fulfill the health insuring corporation's obligations to its contracted providers for services rendered to Medicaid recipients in the event of liquidation or rehabilitation proceedings. The bond is payable to the Department of Insurance in the event that the health insuring corporation is placed in rehabilitation or liquidation proceedings. In lieu of a performance bond, the bill permits a Medicaid health insuring corporation to deposit securities that are acceptable to the Superintendent of Insurance in the amount of one million dollars, with the Superintendent; the health insuring corporation is entitled to the interest on these

securities as long as the health insuring corporation remains solvent. The bond or securities become a special deposit upon the start of the delinquency proceedings and are subject to distribution under Chapter 3903. of the Revised Code.

The bill requires that the performance bond be issued by a surety company licensed with the Department. The bond or deposit, or any replacement bond or deposit, must be in a form acceptable to the Superintendent and must remain in effect for the duration of the health insuring corporation's license and thereafter until all claims against the Medicaid health insuring corporation have been paid in full. Documentation of the bond must be filed with the Superintendent prior to the issuance of a Medicaid health insuring corporation's certificate of authority. Annually thereafter, 30 days prior to the renewal of the health insuring corporation's certificate of authority, health insuring corporations are required by the bill to furnish the Superintendent with evidence that the required bond remains in effect.

Under the bill, a rehabilitation plan for a Medicaid health insuring corporation may include the use of the proceeds of the performance bond or securities first to pay the claims of the health insuring corporation's contracted providers for services rendered. Contracted providers with claims against the health insuring corporation are given first priority under the bill against the proceeds of the bond or securities, to the exclusion of other creditors. If the amount of the proceeds are not sufficient to satisfy all of the allowed claims of contracted providers for services rendered to Medicaid recipients, the contracted providers are to share in the proceeds pro rata, then any unpaid balance of contracted providers' claims are to be allowed for payment from the general assets of the estate consistent with the priorities as listed in Chapter 3903. of the Revised Code. If the amount of the proceeds exceeds the allowed claims of the contracted providers for services rendered to Medicaid recipients, however, the excess amount becomes a general asset of the health insuring corporation's estate, to be distributed to other claimants pursuant to the listed priorities.

Additional moneys for the Department of Insurance Operating Fund and fee increases

(R.C. 3901.021 and 3905.40)

Under existing law, three-fourths of the fees collected for issuing certificates of compliance and copies of those certificates, along with other types of fees, must be credited to the Department of Insurance Operating Fund. The remaining one-fourth must be credited to the General Revenue Fund.

The bill requires seven-tenths of the fees collected for issuing certificates of compliance and copies of those certificates, filing each "statement," and issuing

each certificate of authority or license and copies of those certificates or licenses be credited to the Operating Fund. The bill requires the remaining three-tenths be credited to the General Revenue Fund. The bill also requires other revenues collected by the Superintendent, such as registration fees for seminars or conferences and grants from private entities, be credited to the Operating Fund.

The bill increases the fees for all of the following:

(1) For filing each "statement," from $25 to $175;

(2) For issuing each certificate of authority or license, from $5 to $175;

(3) For issuing certificates of compliance or certified copies of the certificates, from $20 to $60.

The bill eliminates the requirement that a foreign insurance company doing business in the state pay for forwarding interest checks and coupons accruing upon bonds and securities.

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

(R.C. 3901.17 and 3905.36)

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.

Insurer's notification to Superintendent of Insurance concerning out-of-state discipline

(R.C. 3901.41)

Under existing law, a licensed insurance company or certified health insuring corporation must notify the Superintendent of Insurance within 30 days if the insurer is disciplined in another state in one of the following manners: (1) suspension or revocation of the right to transact business in the state, (2) receipt of an order to show cause why the insurer's license should not be suspended or revoked, or (3) penalized for violating the insurance laws of the state. If the Superintendent has knowledge that an insurer failed to provide the above notice, the Superintendent may order a hearing and require the insurer to show cause why the Superintendent should not suspend or revoke the insurer's right to transact business in this state or impose a monetary fine. The bill eliminates the above provisions.

Certificates of compliance for authorized foreign insurers

(R.C. 3901.78; R.C. 3901.781, 3901.782, 3901.783, and 3901.784 (repealed))

Under existing law, each insurance company authorized to do business in this state but not incorporated under the laws of this state is required to publish its annual certificate of compliance, which is issued by the Superintendent of Insurance. The insurance company or association of insurers must publish the certificate in a newspaper of general circulation in each county where the company or association has an agency. The bill eliminates the requirement these companies and associations publish their annual certificates of compliance.

Under existing law, the Superintendent is required to issue annual certificates of compliance to the above companies and associations. The Superintendent is permitted to issue other certificates of compliance upon request or in any other circumstance the Superintendent determines to be appropriate. The bill eliminates the requirement that the Superintendent issue annual certificates of compliance. Under the bill, the Superintendent may issue certificates of compliance upon request or in any other circumstance the Superintendent determines to be appropriate.

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 increase a county's share of public assistance expenditures to the extent the county is responsible for the state being required to increase its maintenance of efforts requirements under the Temporary Assistance for Needy Families block grant.

- 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.

- Specifies that the Director of ODJFS may not accept applications, determine eligibility, redetermine eligibility, and perform related administrative activities for public assistance programs if federal law requires that individuals apply in person.

- Requires ODJFS, no later than March 1 of each year, to create a list of the 25 drugs most often dispensed to Ohio's Best Rx Program participants and determine the average percentage savings in the amount terminal distributors charge participants for each drug included on the list.

- Requires ODJFS to assess the feasibility of an interagency agreement with the Rehabilitation Services Commission whereby the Commission would perform disability determinations for certain programs and services offered by ODJFS or a county department of job and family services and submit a written report to the leaders of the Senate and House of Representatives.

- Creates the Medicaid Transition Council to oversee the future transfer of the Medicaid program from the Department of Job and Family Services to a new department and requires the Council to submit a written report of its findings to the Governor by not later than December 31, 2006.

II. Workforce Development

- Authorizes an additional action 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.

- Specifies in Ohio law the Governor's authority to decertify a local workforce investment board and the reasons for which the Governor may decertify a board, as already provided in federal law.

- Allows the Governor to declare an emergency if the Governor finds that access to basic federal "Workforce Investment Act" services is not provided and to consult with chief elected officials in a local area to arrange for an alternative entity to temporarily provide WIA services.

III. Child Care

- Provides that if the Department of Job and Family Services uses geographic location or economic region as a factor in establishing reimbursement for providers of publicly funded child day-care, a location or region can be no larger than a county.

- 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.

- Creates the Kinship Caregiver Subsidy Program under which a monthly subsidy is to be provided out of the TANF Block Grant to a kinship caregiver to help care for a child in the place of a child's parents.

- 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

- Provides that the Director of ODJFS must, rather than may, establish a co-payment program under which Medicaid recipients may be assessed a co-payment for services and permits a Medicaid provider, under specified conditions, to refuse services to a Medicaid recipient who owes the provider a co-payment for a service.

- Prohibits a provider from waiving a Medicaid co-payment and a provider or manufacturer from paying a co-payment on behalf of a Medicaid recipient.

- 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 Department of Job and Family Services to provide Medicaid coverage of dental services for recipients under 21 years of age during the next biennium in at least the amount, duration, and scope that the Department covered dental services immediately before the effective date of this section of the bill.

- Requires the Director of Job and Family Services to adopt rules specifying the amount, duration, and scope of dental services provided under Medicaid to recipients 21 years of age or older.

- Requires continuation of Medicaid coverage of vision services in the amounts, duration, and scope currently in effect.

- 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.

- Prohibits the Medicaid program from providing reimbursement for prescription drugs for treatment of erectile dysfunction.

- Requires ODJFS to resume operation of the Long-Term Care Pharmacy Management Incentive Payment Program beginning on July 1, 2005 and, if necessary to resume the Program, apply for a waiver of federal Medicaid requirements.

- Requires ODJFS to establish a program to update, on a daily basis, the maximum allowable cost for each generic prescription drug and control number for each generic prescription drug available under Medicaid.

- Revises state law governing the Medicaid reimbursement methodology and procedures for nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR).

- Freezes the fiscal years 2006 and 2007 Medicaid reimbursement rates, for nursing facilities and ICFs/MR at the fiscal year 2005 rate.

- 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.

- Increases the nursing home franchise permit fee to $6.25 per bed per day for fiscal years 2006 and 2007.

- Revises the law governing how money in the Nursing Facility Stabilization Fund is to be used.

- 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.

- 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, beginning July 1, 2006, that Medicaid recipients whose eligibility is based on being aged, blind, or disabled be designated as participants in the Medicaid care management system, except for persons who are: (1) under age 21, (2) institutionalized, (3) eligible for Medicaid by spending down income, (4) dually eligible for Medicaid and Medicare, or (5) recipients of Medicaid waiver services.

- Requires the aged, blind, and disabled care management system to be implemented in all counties and requires the participants to be enrolled in health insuring corporations.

- Excludes alcohol, drug addiction, and mental health services covered by Medicaid as rehabilitative services from being included in any component of the Medicaid care management system, but permits recipients of such services to be included in the system for purposes of receiving other Medicaid services.

- 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 a health insuring corporation (HIC) under contract with Medicaid to pay ODJFS a quarterly franchise permit fee from January 1, 2006, to July 1, 2007, to be used to pay for Medicaid services, administrative costs, and Medicaid contracts with HICs.

- Provides for the fee to be 4.5% of the Medicaid HIC's quarterly managed care premiums, unless (1) ODJFS adopts rules decreasing the percentage or increasing it to not more than 6% or (2) the fee is reduced or terminated to comply with federal law or because the fee does not qualify for matching federal funds.

- Permits ODJFS to take disciplinary actions against a Medicaid HIC for failing to pay the fee or failing to cooperate in an audit.

- Requires the Department of Job and Family Services to create a pilot program under which chronically ill children are included in the Medicaid care management system. The pilot program will include a medical home where chronically ill children will receive health care services.

- The Department is required to maintain statistics on physician expenditures, hospital expenditures, preventable hospitalizations, and any other matters the Department deems necessary.

- Requires ODJFS to establish the Medicaid Care Management Working Group to develop guidelines to govern managed care contracts under the Medicaid Program.

- 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.

- Requires the Medicaid interagency agreements between ODJFS and the Departments of Mental Health and Alcohol and Drug Addiction Services regarding Medicaid-covered alcohol, drug addiction, and mental health services to address procedures for utilization review, utilization management, care management, and a provider-specific fixed-rate reimbursement system.

- 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.

- Revises current law that permits ODJFS to seek Medicaid waivers to provide early intervention services for children under age three and therapeutic services for children with autism.

- Permits ODJFS to seek Medicaid waivers to provide specialized habilitative services for adults with autism.

- Creates the Intermediate Care Facility for the Mentally Retarded Waiver Study Council to study issues involving the use of a Medicaid waiver component to replace the ICF/MR service.

- Permits ODJFS to seek a federal Medicaid waiver authorizing the Assisted Living Program under which supervision and personal care services are provided to not more than 1,000 individuals residing in a residential care facility.

- 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.

- Requires the Department of Job and Family Services to enter into an interagency agreement with the Department of Administrative Services to acquire a computer system to be known as the Medicaid Enterprise Data Warehouse to monitor Medicaid services administered by various state agencies.

- Requires ODJFS to create a pilot program under which chronically ill children are included in the Medicaid care management system. The pilot program will include a medical home where chronically ill children will receive health care services.

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.

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.

- Gives the Franklin County Court of Common Pleas exclusive, original jurisdiction over actions or proceedings for declaratory or injunctive relief regarding payments to providers of goods and services under the Medicaid program.

XI. Food Stamp Program

- Requires ODJFS to implement a federally authorized exemption to the Food Stamp Program's work requirement for fiscal years 2006 and 2007.

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 bill establishes a new reason for which ODJFS may take disciplinary action against a board of county commissioners or county family services agency: the board or agency is solely or partially responsible, as determined by the Director of ODJFS, for failure to comply with a requirement established under federal law governing the Temporary Assistance for Needy Families (TANF) Block Grant that results in the state being required to increase state spending to meet the maintenance of effort requirement established by federal TANF law.[103] The disciplinary action that ODJFS may take under this circumstance is to increase the county's share of public assistance expenditures to the extent the responsible entity is responsible for the state being required to increase state spending to meet the maintenance of effort requirement.

[103] *Federal TANF law requires states to spend a certain amount of state funds on qualifying activities for the state to receive its full share of the federal block grant.*

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 specifically authorizes the Director to re-determine eligibility also. 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. 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.

The bill creates an exception to the authority that the Director otherwise has as discussed above. The Director may not accept applications, determine eligibility, redetermine eligibility, and perform related administrative activities for a program discussed above if federal law requires that individuals apply in person for the program.

Statistics on frequently dispensed drugs under the Ohio's Best Rx Program

(R.C. 5110.39)

Current law requires ODJFS, by April 1, 2005, to create a list of the 25 drugs most often dispensed to Ohio's Best Rx Program participants under the Program and to determine the average percentage savings Program participants receive for each of these 25 drugs. The percentage savings is to be calculated by comparing the average amount that terminal distributors charge Program participants for each of the drugs, on a date selected by ODJFS, to the average of the terminal distributors' usual and customary charge for each of the drugs on that date. The bill requires ODJFS to calculate the prices annually no later than March 1.

ODJFS study of interagency agreement with Rehabilitation Services Commission

(Section 206.66.46)

The bill requires ODJFS to assess the feasibility of an interagency agreement between ODJFS and the Rehabilitation Services Commission whereby the Commission would perform disability determinations for programs and services offered by ODJFS or by a county department of job and family services in which disability is an eligibility requirement. The bill also requires ODJFS to estimate potential cost-savings and other advantages, as well as any potential disadvantages, that might result from such an agreement, and to determine how such an agreement could be implemented, including an estimate of the approximate time needed to implement it.

By not later than six months after the bill's effective date, ODJFS must prepare and submit a written report of its findings to the Speaker and Minority Leader of the House of Representatives and to the President and Minority Leader of the Senate.

Medicaid Transition Council

(Section 206.66.52)

The bill creates a Medicaid Transition Council to oversee the future transfer of the Medicaid program from the Department of Job and Family Services to a new department, comprised of the following individuals:

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

(2) The Director of Aging or the Director's designee;

(3) The Director of Drug and Alcohol Addiction Services or the Director's designee;

(4) The Director of Health or the Director's designee;

(5) The Director of Mental Health or the Director's designee;

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

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

(8) The State Chief Information Officer or the Officer's designee;

(9) An individual appointed by the Speaker of the House of Representatives;

(10) An individual appointed by the President of the Senate.

The Council must initiate, guide, and oversee the implementation of measures recommended by the Ohio Commission to Reform Medicaid and devise a centralized financing function to coordinate the activities of all executive agencies that deliver Medicaid services. With regard to the future creation of a Medicaid department, the Council must design the scope and structure of the new department, develop a business plan to direct the transition of the Medicaid program from JFS to the new department, and secure resources required to implement the business plan. The Council must submit a written report of its findings to the Governor by not later than December 31, 2006.

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 to issue a notice of intent to revoke approval of all or part of a local development plan effected that conflicts with state or federal law and then to effect the revocation.

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 modifies the dispute resolution process by removing the time requirements for the process and allowing the parties to develop a written resolution to the dispute at any time prior to submitting the written report described in the paragraph below. Thus, the formal review of the dispute and the informal dispute resolution process may occur at the same time.

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.

In addition to the disciplinary actions taken by the Director against local workforce development boards, the bill specifies in statute that the Governor, as stated in federal law, may decertify a local workforce development board for any of the following reasons in accordance with division (e) of section 117 of the "Workforce Investment Act of 1998" 112 Stat. 936, 29 U.S.C. 2801, as amended ("WIA"):

(1) Fraud or abuse;

(2) Failure to carry out the requirements of WIA, including failure to meet performance standards established by the federal government for two consecutive years.

Under the bill, if the Governor finds that access to basic WIA services is not being provided in a local area, the Governor may declare an emergency and in consultation with the chief elected officials of the local area affected, arrange for provision of these services through an alternative entity during the time period in which resolution of the problem preventing service delivery in the local area is pending. The bill specifies that an action taken by the Governor as described above is not subject to the appeals process provided in continuing law.

III. Child Care

Reimbursement determination for publicly funded child day-care

(R.C. 5104.30)

The Department of Job and Family Services is the state agency authorized to reimburse child day-care providers for providing publicly funded child day-care to eligible individuals from state and federal funds provided for child day-care services. The level of reimbursement may be based on a number of variables including the type of care provided, the age or special needs of the child served, and the geographic location of the provider of child day-care services. The bill states that if JFS uses geographic location or economic region as a factor in determining reimbursement ceilings, JFS may not use a geographic location or economic region larger than a county.

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.[104]

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.

Employment Retention Incentive Program

(Section 206.67.10)

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.

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[104] *42 C.F.R. 260.31.*

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 in accordance with the application process established by the rules and 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. The rules establishing the application process may not require that applications be submitted to county departments of job and family services.

Title IV-A Demonstration Program

(R.C. 5101.803; 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 an entity that meets the proposal's criteria and, if the entity's proposed project does not potentially affect persons in each county of the state, provides ODJFS evidence

that the entity has notified the county department of job and family services of each county where persons may be affected by the project.[105] 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 agencies[106] and state agencies that administer other TANF programs under the supervision of ODJFS. For example, the government and private, not-for-profit entities are 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.

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[105] *The notice to the county departments must be in writing.*

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

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.

Kinship Caregiver Subsidy Program

(Primary R.C. 5101.802; ancillary R.C. 2151.86, 3125.18, 5101.35, 5101.80, 5101.801, 5101.802, and 5153.16)

The bill creates the Kinship Caregiver Subsidy Program. Under the Program and to the extent funds are available, a monthly subsidy of $250 is to be given to a kinship caregiver[107] on behalf of each eligible minor child the kinship caregiver cares for in place of the child's parents. The public children services agency in each county is to administer the Program under the direction of the Director of Job and Family Services and is to make all eligibility determinations and redeterminations.[108] A kinship caregiver may receive the monthly subsidy on behalf of a minor child if all of the following requirements are met:

(1) The kinship caregiver applies to a public children services agency;

(2) The child for whom the kinship caregiver is to receive the subsidy payment is a child with special needs as determined under existing ODJFS rules[109] and related to the kinship caregiver;

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[107] *A kinship caregiver is a person 18 years of age or older, caring for a child in place of the child's parents, and is related to the child in one of the following relationships: grandparents (including great-, great-great-, or great-great-great), siblings, aunts, uncles, nieces, nephews (including great-, great-great-, or great-great-great), first cousins, first cousins once removed, stepparents, stepsiblings, spouses or former spouses of any of the above, and the legal guardian or custodian of the child (R.C. 5101.85, not in the bill).*

[108] *Redeterminations are to be done annually.*

[109] *To be classified as a child with "special needs" under these rules, the public children services agency must have determined that the child cannot be returned to the home of the child's parents and has one of the following conditions or factors that would require the child to receive adoption assistance or medical assistance: (1) the child is in a sibling group that should be placed together, (2) the child is a member of a minority or ethnic group, (3) the child's age, (4) the child has remained in custody of the public*

(3) A juvenile court has adjudicated that the child is an abused, neglected, or dependent child and determined that it is not in the child's best interest to be returned to the child's parents;

(4) The kinship caregiver is either the child's legal custodian or legal guardian;

(5) The child has resided with the kinship caregiver for at least six months pursuant to a placement approval process and continues to reside with the kinship caregiver;

(6) The gross income of the kinship caregiver's family does not exceed 120% of the median income for a family of the same size, including the child, as determined for this state by the U.S. Secretary of Health and Human Services;

(7) Neither the kinship caregiver nor the child is participating in the Ohio Works First program nor has participation been terminated due to a sanction;

(8) The kinship caregiver and any individuals age 18 years or older living with the kinship caregiver pass the criminal background checks required (see "***Criminal record checks of kinship caregivers***" below);

(9) The kinship caregiver and child meet all other eligibility requirements established in rules adopted by the Director of Job and Family Services.

Rulemaking

The bill requires the Director of Job and Family Services to adopt rules establishing the following:

(1) The application process for the program;

(2) The placement approval process through which a child is placed with a kinship caregiver;

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children services agency for more than one year, (5) the child has a medical condition, physical impairment, mental retardation, or a developmental disability, (6) the child has an emotional or behavioral problem, (7) the child has a social or medical history, or the child's family has a social or medical history, that may place the child at risk of acquiring a medical condition, a physical, mental, or developmental disability, or an emotional disorder, (8) has been in the home of the prospective adoptive parent(s) as a foster child for at least one year and would experience severe separation and loss if placed in another setting, (9) has experienced previous adoption disruption or multiple placements (Ohio Administrative Code §5101:2-47-30).

(3) Additional eligibility requirements for the program;

(4) The eligibility determination and redetermination process for the program;

(5) The amount of the subsidy provided under the program;

(6) The method by which the subsidy is provided to a kinship caregiver on behalf of an eligible child;

(7) Anything else the Director considers necessary.

Criminal record checks of kinship caregivers

The bill requires the executive director of a public children services agency to request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check of any individual applying to be a kinship caregiver and all other persons 18 years of age or older who reside with the kinship caregiver. The fee incurred for the records check may be charged to the applicant. The report of the criminal records check is not a public record.

A public children services agency must deny the application of any kinship caregiver applicant who fails to provide the information necessary to conduct the investigation. Unless the applicant meets rehabilitation standards established by the Department of Job and Family Services, a kinship caregiver application must be denied if the kinship caregiver applicant or any individual 18 years of age or older who resides with the applicant has been convicted of or pleaded guilty to and of the specified crimes, which include murder, kidnapping, sex offenses, arson, robbery, and many other offenses.

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.[110] 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 teens[111] 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

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[110] 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.

[111] "Teen" is defined as an OWF participant who is under age 18, or age 18 and in school, and a parent or pregnant.

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.

Medicaid co-payment program

(R.C. 5111.0112)

Current law authorizes the Director of Job and Family Services to establish a co-payment program under which Medicaid recipient may be charged a co-payment for services. The bill requires that the co-payment program be established.

The program must establish co-payment requirements for all groups of Medicaid recipients and services, as permitted by federal law. The co-payment program does not apply to generic drug services. The amount of the co-payments is required to be the maximum amount permitted under federal law, which are as follows:[112]

(1) For services for which the state pays $10 or less, $.50 co-payment;

(2) For services for which the state pays $10.01 to $25, $1 co-payment;

(3) For services for which the state pays $25.01 to $50, $2 co-payment;

(4) For services for which the state pays $50.01 or more, $3 co-payment.

The bill specifies that, while no Medicaid provider may refuse services to a Medicaid recipient who is unable to pay a co-payment for the service, this prohibition does not relieve a Medicaid recipient from the obligation to pay the co-payment, nor does it prohibit a provider from attempting to collect unpaid co-payments. No provider may waive a Medicaid recipient's obligation to pay the provider a co-payment, and no provider or drug manufacturer (including the manufacturer's representative, employee, independent contractor, or agent) may pay a co-payment on a Medicaid recipient's behalf.

The bill also provides that, if it is a routine business practice of the provider to refuse service to any individual who owes the provider an outstanding debt, the provider may consider an unpaid Medicaid co-payment as an outstanding debt. If the provider intends to refuse service to a Medicaid recipient who owes the provider an outstanding debt, the provider must notify the recipient of the provider's intent to refuse services.

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[112] *42 C.F.R. 447.54.*

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 entity 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.[113]

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.

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[113] *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 5111.914)

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.[114]

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.

Medicaid coverage of dental services

(Section 206.66.44)

Under rules adopted by the Director of Job and Family Services, Medicaid provides coverage for dental services. For fiscal years 2006 and 2007, the bill requires Medicaid to provide dental services for recipients under age 21 in at least the amount, duration, and scope that it does immediately before the effective date

[114] *R.C. 5111.16 and 5111.85.*

of this section of the bill. The bill requires the Director to adopt rules specifying the amount, duration, and scope of dental services that Medicaid will provide to recipients age 21 or older.

Medicaid coverage of vision services

(Section 206.66.45)

The bill requires the Medicaid program to cover vision services for recipients in at least the amount, duration, and scope that the program covers such services immediately prior to the effective date of this section of the bill.

Prohibition on reimbursement for erectile dysfunction drugs

The bill prohibits the Medicaid program from providing reimbursement for prescription drugs for treatment of erectile dysfunction, such as Viagra®, as part of the Medicaid prescription drug service.

Long-Term Care Pharmacy Management Incentive Payment Program

(R.C. 5111.072)

The bill requires ODJFS, to the extent permitted by federal law, to resume operation of the Long-Term Care Pharmacy Management Incentive Payment Program, a component of the Medicaid program operated by ODJFS from July 1, 2002, to June 30, 2004 pursuant to administrative rule.[115] As necessary, ODJFS must apply for waivers of federal Medicaid requirements that would otherwise be violated in the administration of the Program. Under the bill, ODJFS must require a pharmacy to participate in the Program as a condition of being reimbursed for providing pharmacy services to institutionalized Medicaid recipients.[116] (If a pharmacy provides pharmacy services to other Medicaid recipients, the bill excludes that portion of the pharmacy's business from the Program.) ODJFS must distribute the Program's management incentive payments to qualified pharmacies on a quarterly basis during each state fiscal year.

The bill authorizes ODJFS to contract with a pharmacy benefits manager or any other entity to perform all or part of the department's duties regarding the Program, other than pursuing waivers. The bill also authorizes ODJFS to adopt, in

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[115] *Ohio Administrative Code 5101:3-9-08.*

[116] *The bill defines "institutionalized Medicaid recipient" as a recipient of assistance under the Medicaid program who resides in a nursing facility or intermediate care facility for the mentally retarded (ICF/MR).*

accordance with R.C. Chapter 119., any rules it considers necessary to implement and administer the Program.

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.

Program to update maximum allowable costs and control numbers for generic prescription drugs

(R.C. 5111.083)

Under rules adopted by ODJFS, Medicaid reimbursement for a "maximum allowable cost" drug may not be at a rate higher than the Federal Upper Limit price for the drug.[117] A "maximum allowable cost" drug is a prescription drug with available generic equivalents under the Federal Upper Limit Program. The Federal Upper Limit Program was established by the United States Department of Health and Human Services in 1987 as a means to limit the amount that Medicaid could reimburse for drugs with available generic equivalents.[118] A Federal Upper Limit price for a drug is established if there are three or more versions of the drug rated therapeutically equivalent and at least three suppliers for the drug are listed in the current editions of published national compendia.[119]

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[117] *O.A.C. 5101:3-9-05(B)(1)(a).*

[118] *"Federal Upper Limits on Drugs," available at <http://www.cms.hhs.gov/medicaid/drugs/drug10.asp> (visited March 18, 2005).*

[119] *Id.*

The bill requires the Director of Job and Family Services to establish a program to do both of the following on a daily basis:

(1) Update the maximum allowable cost for each generic prescription drug available under Medicaid. The substitute bill defines "maximum allowable cost" to mean the price established for a prescription drug pursuant to the Federal Upper Limit drug listing published by the United States Department of Health and Human Services in Part 6, Addendum A of the "State Medicaid Manual."

(2) Update the "control number" for each generic prescription drug available under Medicaid. The substitute bill defines "control number" to mean the number assigned to a prescription drug by the drug's manufacturer.

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.[120] The amount ODJFS pays a nursing facility or ICF/MR is determined by formulas established in the Revised Code.

Reimbursement formula revised

(primary R.C. 5111.20; R.C. 5111.02, 5111.21, 5111.22, 5111.221, 5111.222, 5111.23, 5111.231 (5111.232), new 5111.231, 5111.234, 5111.235, 5111.24, 5111.241, 5111.242, 5111.25, 5111.251, 5111.254, 5111.255, 5111.256, 5111.257 (5111.258), new 5111.257, 5111.26, 5111.261, 5111.262 (repealed), new 5111.262, 5111.263, 5111.264, 5111.265, 5111.266, 5111.27, 5111.28, 5111.29, 5111.291, 5111.30, 5111.31, 5111.32, and 5111.33)

The bill substantially revises the Revised Code's Medicaid reimbursement formula for nursing facilities and ICFs/MR. But, because of uncodified provisions

[120] *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.*

of the bill establishing rates for fiscal years 2006 and 2007,[121] the revisions will not affect facilities' rates until fiscal year 2008.

Costs centers. Among the revisions are changes to the categories into which nursing facilities and ICFs/MR's costs are placed for the purpose of calculating reimbursement rates. The categories are referred to as cost centers. Current law establishes four cost centers: capital, direct, indirect, and other protected. The bill provides that some of the current cost centers are no longer applicable to nursing facilities, establishes a new cost center for nursing facilities called ancillary and support costs, and makes other changes to the cost centers. The following table compares the nursing facilities' cost centers under current law and their cost centers under the bill.

	NFs' current cost centers	NFs' proposed cost centers
Capital costs	Cost of ownership and nonextensive renovation. "Costs of ownership" are the actual expenses incurred for all of the following: (1) depreciation and interest on any capital assets that cost $500 or more per item, including buildings, building improvements that are not approved as nonextensive renovations, equipment, extensive renovations, and transportation equipment, (2) amortization and interest on land improvements and leasehold improvements, (3) amortization of financing costs, and (4) except as provided in indirect care costs, lease and rent of land, building, and equipment. The costs of capital assets of less than $500 per item may be considered capital costs of ownership in accordance with a provider's practice.	Cost of ownership only. The part of the costs of ownership concerning depreciation and interest on capital assets that cost $500 or more per item no longer includes (1) extensive renovations or (2) equipment for which the costs were reported as administrative and general costs on the facility's Medicaid cost report covering calendar year 1992.

[121] *See "**Fiscal years 2006 and 2007 reimbursement system for long-term care facilities**" below.*

	NFs' current cost centers	NFs' proposed cost centers
	"Costs of nonextensive renovation" are the actual expenses incurred for depreciation or amortization and interest on renovations that are not extensive renovations.	
Direct care costs	Costs for all of the following: (1) registered nurses, licensed practical nurses, and nurse aides employed by the facility, (2) direct care staff, administrative nursing staff, medical directors, social services staff, activities staff, psychologists and psychology assistants, social workers and counselors, habilitation staff, qualified mental retardation professionals, program directors, respiratory therapists, habilitation supervisors, and other persons holding degrees qualifying them to provide therapy, (3) purchased nursing services, (4) quality assurance, (5) training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or self-insurance claims and related costs for personnel listed above, other than purchased nursing services, (6) consulting and management fees related to direct care, (7) allocated direct care home office costs, and (8) other direct-care resources specified as direct care costs in rules.	Does not include costs for social services staff, activities staff, psychologists, psychology assistants, social workers, or counselors. Includes costs for medical supplies, emergency oxygen, habilitation supplies, and universal precautions supplies.

	NFs' current cost centers	NFs' proposed cost centers
Other protected costs	Costs for (1) medical supplies, (2) real estate, franchise, and property taxes, (3) natural gas, fuel oil, water, electricity, sewage, and refuse and hazardous medical waste collection, (4) allocated other protected home office costs, and (5) any additional costs defined as other protected costs in rules.	None
Indirect care costs	All reasonable costs that are not capital, direct care, or other protected costs. Includes costs for all of the following: habilitation supplies, pharmacy consultants, medical and habilitation records, program supplies, incontinence supplies, food, enterals, dietary supplies and personnel, laundry, housekeeping, security, administration, liability insurance, bookkeeping, purchasing department, human resources, communications, travel, dues, license fees, subscriptions, home office costs not otherwise allocated, legal services, accounting services, minor equipment, maintenance and repairs, help-wanted advertising, informational advertising, start-up costs, organizational expenses, other interest, property insurance, employee training and staff development, employee benefits, payroll taxes, and	None

	NFs' current cost centers	NFs' proposed cost centers
	workers' compensation premiums or self-insurance claims and related costs for personnel listed above. Also includes the cost for equipment, including vehicles, acquired by operating lease executed before December 1, 1992, if the costs are reported as administrative and general costs on the facility's Medicaid cost report covering calendar year 1992.	
Ancillary and support	None	All reasonable costs incurred by a nursing facility that are not direct care or capital costs. Includes costs for all of the following: activities, social services, pharmacy consultants, medical and habilitation records, program supplies, incontinence supplies, food, enterals, dietary supplies and personnel, laundry, housekeeping, security, administration, medical equipment, utilities, liability insurance, bookkeeping, purchasing department, human resources, communications, travel, dues, license fees, subscriptions, home office costs not otherwise allocated, legal services, accounting services, minor equipment, maintenance and repairs, help-wanted advertising, informational advertising, start-up costs, organizational expenses, other interest, property insurance, employee training and staff development, employee benefits, payroll

	NFs' current cost centers	NFs' proposed cost centers
		taxes, and workers' compensation premiums or self-insurance claims and related costs for personnel listed above. Also includes costs for equipment, including vehicles, acquired by operating lease executed before December 1, 1992, if the costs are reported as administrative and general costs on the facility's Medicaid cost report for the cost reporting period covering calendar year 1992.

Capital costs. In addition to revising what is considered to be a nursing facility's capital costs, the bill revises how a nursing facility is to be reimbursed under Medicaid for capital costs. For example, the bill provides that, for the purpose of determining a nursing facility's occupancy rate used in the calculation of the facility's capital cost per diem, ODJFS is required to include any beds that the nursing facility removes from the Medicaid program after June 30, 2005, unless the nursing facility also removes the beds from its licensed bed capacity.

Direct care costs. The bill revises the calculation of nursing facilities' direct care costs. For example, a nursing facility's direct care reimbursement rate is subject to a maximum costs per case-mix unit established for the facility's direct care peer group. Current law requires that ODJFS exclude from its calculation of a peer group's maximum costs per case-mix unit any nursing facility in the group that participated in Medicaid under the same operator for less than twelve months during the calendar year preceding the fiscal year in which the rate will be paid. The bill requires that ODJFS exclude either the facilities excluded under current law or any nursing facility in the group that has a cost per case-mix unit that is more than one standard deviation greater or less than the mean cost per case-mix unit for all nursing facilities in the group for the calendar year preceding the fiscal year in which the rate will be paid.

Ancillary and support costs. The bill establishes a reimbursement formula for the new nursing facility cost center called ancillary and support costs. Like other cost centers, the reimbursement rate is determined prospectively. The reimbursement rate is based on the prices for a nursing facility's ancillary and support costs.

Reimbursement rate for taxes. Under current law, a nursing facility's costs for real estate, franchise, and property taxes are reimbursed under the Medicaid program as part of the facility's other protected costs. As shown in the table above, the bill eliminates the other protected cost center for nursing facilities. Nonetheless, the bill requires that ODJFS pay nursing facilities a per resident per day rate equal to the desk-reviewed, actual, allowable real estate, personal property, corporate franchise, and commercial activity taxes the nursing facility paid during the calendar year preceding the fiscal year for which the payment is made divided by the number of inpatient days the facility would have had had its occupancy rate been 100% during that calendar year.

Quality incentive payment. In addition to revising the cost centers for nursing facilities, the bill establishes a quality incentive payment for each nursing facility placed in the first, second, or third quality tier groups provided for by the bill. Nursing facilities placed in the first group are to receive the highest payment. Nursing facilities placed in the second group are to receive the second highest payment. Nursing facilities placed in the third group are to receive the third highest payment. Nursing facilities placed in the fourth group are not to receive a payment. The mean payment, weighted by Medicaid days, is to be two per cent of the average rate for all nursing facilities calculated under the nursing facility reimbursement formula, excluding the part of the formula regarding the quality incentive payment. Nursing facilities placed in the fourth group must be included for the purpose of determining the mean payment.

ODJFS is required to place each nursing facility in one of the four tier groups annually. Each tier group must consist of one quarter of all nursing facilities participating in the Medicaid program. Which group a nursing facility is placed in depends on how many quality points the facility earns. The first group is to consist of the quarter of nursing facilities individually awarded the most number of quality points. The second, third, and fourth groups are to consist of the quarters of nursing facilities individually awarded the second, third, or fourth most number of quality points.

A nursing facility earns one quality point for each of the following accountability measures the facility meets:

(1) Having no health deficiencies on the facility's most recent standard survey;

(2) Having no health deficiencies with a scope and severity level greater than E, as determined under nursing facility certification standards for the Medicaid program, on the facility's most recent standard survey;

(3) Having resident satisfaction above the statewide average;

(4) Having family satisfaction above the statewide average;

(5) Having a number of hours of employing nurses that is above the statewide average;

(6) Having an employee retention rate that is above the average for the facility's direct care peer group;

(7) Having an occupancy rate that is above the statewide average;

(8) Having a Medicaid utilization rate that is above the statewide average;

(9) Having a case-mix score for direct care costs that is above the statewide average.

Limits on categories of reasonable costs. Current law prohibits ODJFS, in determining whether a nursing facility or ICFs/MR's direct care and indirect care costs are allowable expenses under the Medicaid program, from placing limits on specific categories of reasonable costs. There are exceptions to this prohibition. ODJFS may place limits on how much Medicaid will reimburse for compensation of owners, compensation of relatives of owners, compensation of administrators, and costs for resident meals that are prepared and consumed outside the facility.[122] The bill generally prohibits ODJFS, in determining whether a nursing facility's direct care and ancillary and support costs are allowable, from placing limits on specific categories of reasonable costs. The bill does not permit ODJFS to place limits on reimbursement for compensation of nursing facility owners, compensation of relatives of owners, compensation of administrators, and costs for resident meals that are prepared and consumed outside the nursing facility.

Amortization cost not an allowable cost. 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 and the application for the certificate of need authorizing the relocation is filed

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[122] *A limit on costs for compensation of an owner or relative of an owner must be based on compensation costs for individuals who hold a comparable position but are not an owner or relative of an owner. If an owner or relative of an owner serves a nursing facility in a capacity such as corporate officer, proprietor, or partner for which no comparable position is listed on the nursing facility's Medicaid cost report, the limit must be based on civil service equivalents and specified in rules. A limit on costs for administrators must be based on compensation costs for administrators who are not an owner or relative of an owner. A limit on costs for resident meals that are prepared and consumed outside a nursing facility must be based on the statewide average cost of serving and preparing meals in all nursing facilities.*

with the Director of Health on or after July 1, 2005, amortization of the cost of acquiring operating rights for the relocated beds is not an allowable cost for the purpose of determining the facility's Medicaid reimbursement rate.

Setting a nursing facility's initial rates. ODJFS uses a nursing facility's Medicaid cost report covering a previous calendar year when determining the facility's Medicaid reimbursement rate. This is not possible when a nursing facility is new to the Medicaid program and therefore does not have a prior Medicaid cost report. The bill revises the system for setting a nursing facility's initial reimbursement rate to reflect the revisions to the reimbursement formula.

Reconsideration of rates. Current law requires the Director of ODJFS to adopt rules establishing a process under which a nursing facility, ICF/MR, or group or association of facilities, may seek reconsideration of their Medicaid reimbursement rate. The rules must provide that when Medicaid certified beds are added to an existing facility, replaced at the same site, or subject to a change of ownership or lease, ODJFS, through the rate reconsideration process, must, subject to certain limitations, increase the facility's rate for capital costs proportionately to account for the costs of the beds that are added, replaced, or subject to a change of ownership or lease. The bill provides that this requirement no longer applies to nursing facilities and establishes new requirements when a nursing facility undergoes a change of provider that ODJFS determines is an arm's length transaction, adds or replaces one or more Medicaid certified beds, or renovates one or more of the facility's beds at a cost of $26,000 or more per bed.

In the case of a nursing facility that undergoes a change of provider that ODJFS determines is an arm's length transaction, ODJFS must pay the new provider the same rate that the previous provider received on the day before the change of provider. However, the rate for capital costs must be determined using projected capital costs if the new provider provides ODJFS the projected capital costs. ODJFS is required to adjust this rate (1) starting the next July 1st to reflect new rate calculations for all nursing facilities made in accordance with the statutory reimbursement formula and (2) following the new provider's submission of the nursing facility's first Medicaid cost report. ODJFS must pay the adjusted rate based on the Medicaid cost report beginning the first day of the calendar quarter that begins more than 90 days after ODJFS receives the cost report.

In the case of a nursing facility that adds or replaces one or more Medicaid certified beds or renovates one or more of its beds at a cost of $26,000 or more per bed, the rate for the added, replaced, or renovated beds is to be the same as the rate for the nursing facility's existing beds. However, ODJFS is required to calculate the rate for capital costs using projected capital costs for the added, replaced, or renovated beds if the provider provides the department the projected capital costs.

Current law provides that the rules concerning reconsideration of Medicaid reimbursement rates must include a means by which ODJFS may increase a nursing facility or ICFs/MR's rate on demonstration that the facility's actual, allowable costs have increased because of extreme circumstances. The rules must specify the circumstances that would justify a rate increase because of extreme circumstances. The bill eliminates a requirement that the rules provide, in the case of nursing facilities, that such circumstances (1) include increased security costs for an inner-city nursing facility and an increase in workers' compensation experience rating of greater than five per cent for a nursing facility that has an appropriate claims management program and (2) exclude a change of ownership that results from bankruptcy, foreclosure, or findings of violations of Medicaid certification requirements. The bill establishes a requirement that the rules provide that extreme circumstances include, for nursing facilities and ICFs/MR, natural disasters.

Medicaid cost report's due date after change of provider. The bill provides that if a nursing facility undergoes a change of provider that ODJFS determines is an arm's length transaction, the new provider must submit a Medicaid cost report to ODJFS for that facility not later than 90 days after the end of the facility's first full three calendar months of operation after the change of provider.

If a nursing facility undergoes a change of provider that ODJFS determines is not an arm's length transaction, the new provider is required to file a Medicaid cost report at the same time the previous provider would have been required to file the previous provider's next cost report if the previous provider had not ceased to be the provider.[123] The new provider's cost report must cover the portion of the calendar year during which the new provider operated the nursing facility and the portion of the calendar year during which the previous provider operated the facility.

Fiscal years 2006 and 2007 reimbursement system for long-term facilities

(Sections 206.66.27 and 206.66.28)

The bill provides that a nursing facility or 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 nursing facility or ICF/MR services provided during those fiscal years, the rate the nursing facility or

[123] *The previous provider would have had to file the previous provider's next Medicaid cost report within 90 days after the end of the calendar year unless granted a 14-day extension.*

ICF/MR is paid on June 30, 2005. However, in the case of a nursing facility, the rate for fiscal years 2006 and 2007 is not to include any amount of the rate paid on June 30, 2005, that reflects reimbursement to the nursing facility for the nursing home franchise permit fee.[124]

Facilities that undergo a change of provider. The bill provides that if a nursing facility or ICF/MR undergoes a change of provider during fiscal year 2006 or 2007, the facility is to be paid, for nursing facility or ICF/MR services the facility provides during the period beginning on the effective date of the change of provider and ending June 30, 2007, the rate paid to the previous provider provided on the day immediately before the effective date of the change of provider. However, in the case of a nursing facility that undergoes a change of provider effective July 1, 2005, the rate for the new provider is to be the rate paid to the previous provider for nursing facility services that the previous provider provided on June 30, 2005, less any amount of that rate that reflects reimbursement to the previous provider for the nursing home franchise permit fee.[125]

Facilities that begin participation in Medicaid. If, during fiscal year 2006 or 2007, a nursing facility or ICF/MR obtains certification as a nursing facility or ICF/MR from the Director of Health and begins participation in the Medicaid program, the facility is to be paid, for nursing facility or ICF/MR services provided during the period beginning on the date the facility begins to participate in Medicaid and ending June 30, 2007, a rate that is the median of all rates paid to nursing facilities or ICFs/MR on July 1, 2006.

Rate for beds added to a facility. The bill provides that if, during fiscal year 2006 or 2007, one or more Medicaid-certified beds are added to a nursing facility or ICF/MR with a valid Medicaid provider agreement for the time that the beds are added, the facility is to be paid a rate for the new beds that is the same as the facility's rate for the Medicaid-certified beds that are in the facility on the day before the new beds are added.

Adjustments. The bill provides that an adjustment necessitated by an audit of a nursing facility or ICF/MR's 2003 Medicaid cost report may be applied to a rate established for the facility for fiscal year 2006 or 2007.

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[124] *See "**Nursing home franchise permit fee**" below.*

[125] *See "**Nursing home franchise permit fee**" below.*

Medicaid provider agreements

(R.C. 5111.20, 5111.21, 5111.22, 5111.221, 5111.222, 5111.23, and 5111.31)

One condition for a nursing facility or ICF/MR to obtain Medicaid payments for providing services to Medicaid recipients is for the facility to enter into a Medicaid provider agreement with ODJFS. The bill provides that the provider agreement is between an operator of a nursing facility or ICF/MR and ODJFS. "Operator" is defined by the bill as a person or governmental entity responsible for the daily operating and management decisions for a nursing facility or ICF/MR. Current law defines "provider" as a person or government entity that operates a nursing facility or ICF/MR under 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. The bill requires instead that the provider agreement include a provision under which ODJFS agrees to make payments to an operator for Medicaid-covered services the nursing facility or ICF/MR provides to a resident who is a Medicaid recipient.

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.

Nursing home franchise permit fee

(R.C. 3721.50, 3721.51, 3721.511 (repealed), 3721.52, 3721.541, 3721.56, 3721.561, 3721.58, 5111.20, 5111.235, and 5111.266)

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.

Fee increased for FY 2006 and 2007. Current law provides that the fee is to be reduced to $1 per bed per day starting in fiscal year 2006. The bill increases the fee to $6.25 for fiscal years 2006 and 2007. It is reduced to $1 starting in fiscal year 2008.

Uses of money collected from the franchise permit fee. The first $1 collected from the franchise permit fee 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,[126] 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 to make (1) Medicaid payments to nursing facilities and (2) quarterly payments, beginning in the third quarter of calendar year 2005, to nursing facilities to reimburse the cost of the franchise permit fee. Money in the Nursing Facility Stabilization Fund has been used to reimburse nursing facilities for the portion of the franchise permit fee that is deposited into that fund. (As discussed above, for fiscal year 2005 this is 76.74% of the fee.) For previous fiscal years, nursing facilities have been reimbursed for the remaining portion of the fee as part of their "other protected costs" which is part of the statutory formula establishing nursing facilities' Medicaid reimbursement rates. There will no longer be an "other protected costs" category for nursing facilities under the bill's revisions to the statutory formula. This is why money in the Nursing Facility Stabilization Fund is

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[126] *"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.*

to begin to be used to reimburse nursing facilities for the entire fee, not just the portion of the fee not otherwise reimbursed as part of a facility's other protected costs.

Because the bill provides for money in the Nursing Facility Stabilization Fund to be used to reimburse the entire franchise permit fee rather than have a portion of the fee be reimbursed as part of the statutory formula, the bill requires that a provider of a nursing facility filing its Medicaid cost report with ODJFS report as a nonreimbursable expense the entire cost of the nursing facility's franchise permit fee rather than just a portion of the fee.

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.

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.).[127]

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.[128] 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

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[127] *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.*

[128] *ICFs/MR are subject to a different franchise permit fee. See "**ICF/MR franchise permit fee**" below.*

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.[129]

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.

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.

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[129] *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.*

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.).[130]

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.[131]

Medicaid care management

(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. Under the system, ODJFS may require or permit participants to obtain health care services from providers designated by ODJFS and through managed care organizations under contract with ODJFS.

Mandatory enrollment service areas

In implementing the care management 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.

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[130] *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.*

[131] *The bill, in addition to removing the Council from the list of entities scheduled to be sunset on December 31, 2010, unless renewed by the General Assembly, makes a technical change in that list by removing a duplicate reference to the Consumer Advisory Committee to the Rehabilitation Services Commission.*

Aged, blind, and disabled persons

Beginning July 1, 2006, ODJFS must designate as care management participants all persons who receive Medicaid on the basis of being aged, blind, or disabled. The requirement, however, does not apply to the following: (1) persons under age 21, other than children designated as participants in the bill's pilot program for chronically ill children, (2) institutionalized persons,[132] (3) persons eligible for Medicaid by spending down income, (4) persons dually eligible for Medicaid and Medicare, and (5) persons to the extent they are receiving Medicaid services through a waiver component of the program.

The bill specifies that the care management system for aged, blind, and disabled persons must be implemented in all counties. It also specifies that ODJFS must require the designated participants to enroll in health insuring corporations.

Behavioral health services

The bill specifies that alcohol, drug addiction, and mental health services covered by Medicaid under the federal option of covering rehabilitative services cannot be included in any component of the care management system. The recipients of the services, however, may be designated as participants in the system for purposes of obtaining other Medicaid-covered services.

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

[132] *The bill does not specify the meaning of "institutionalized."*

organization. The bill also specifies that the reimbursement rate does 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 franchise permit fee

(R.C. 5111.177)

Under Ohio's Medicaid law, the Ohio Department of Job and Family Services (ODJFS) can contract with managed care organizations, including health insuring corporations (HICs), to provide services for Medicaid recipients. The bill establishes a temporary fee to be charged to Medicaid HICs, and procedures for enforcing the fee and specifies how the fee is to be used.

Franchise permit fee

The bill requires each Medicaid HIC[133] to pay a franchise permit fee for each calendar quarter occurring between January 1, 2006, and June 30, 2007. The fee is equal to 4.5% of the managed care premiums the HIC receives in the applicable calendar quarter, excluding the amount of any managed care premiums returned or refunded to enrollees, members, or premium payers. The managed care premium amount that is to be used in calculating the fee includes any premium payment, capitation payment, or other payment the Medicaid HIC receives for providing, or arranging for the provision of, health care services to its members or enrollees in Ohio.

ODJFS is authorized to adopt rules decreasing the fee, or increasing the fee to no more than 6% of managed care premiums received. However, the bill requires ODJFS to reduce or terminate collection of the fee if it determines that (1) the reduction or termination is required to comply with federal law or (2) the fee does not qualify as a state share of Medicaid expenditures eligible for federal financial participation.

The fee is to be paid on or before the 30th day following the quarter to which the fee applies. When submitting the fee, the Medicaid HIC must file a

[133] *The bill defines "Medicaid health insuring corporation" as a HIC that holds a certificate of authority as a HIC under Ohio law and has entered into a contract with ODJFS to serve Medicaid recipients.*

report that includes all information required by ODJFS and any necessary supporting documentation.

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 HIC to determine whether the HIC 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 HIC that fails to pay the franchise permit fee is subject to any or all of the following penalties:

(1) A monetary penalty 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 paid by Medicaid;

(3) Termination of the HIC's Medicaid provider agreement.

None of these penalties replaces the requirement that the HIC pay the franchise permit fee due.

Enforcement procedures

The bill authorizes ODJFS to withhold future managed care premiums from any Medicaid HIC that fails to pay the franchise permit fee until the fee is paid. ODJFS may withhold an amount equal to the past due franchise fee and does not need to provide notice to the HIC of the withheld premiums.

Under the bill, ODJFS may commence actions to terminate the Medicaid provider agreement between ODJFS and the HIC 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 resolving disputes between ODJFS and a Medicaid HIC. First, the HIC 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 HIC owes an additional franchise permit fee or penalty as the result of an audit;

(2) ODJFS is proposing to terminate the HIC's Medicaid provider agreement and the law regarding Medicaid provider agreements requires a hearing.[134]

For disputes that do not require a hearing, the HIC 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 the HIC must act in order to exercise its opportunity for reconsideration;

(2) Permit the HIC to present written arguments or other materials to support its position.

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 HICs.

Care management pilot program for chronically ill children

(R.C. 5111.161)

The bill requires the Department of Job and Family Services to create a pilot program under which chronically ill children are included in the Medicaid care management system. As defined in the bill, a "chronically ill child" is an individual under age 21 years who meets the conditions established in state law for

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[134] *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.)*

Medicaid eligibility on the basis of being blind or disabled. The Department is required to adopt rules as necessary to implement the program, including rules that specify standards and procedures to be used in designating which children are required to participate in the program. The program is to include a medical home where chronically ill children will receive health care services.

Purposes of the pilot program

The bill provides that the purpose of the pilot program is to determine whether occurrences of acute illnesses and hospitalizations among chronically ill children can be prevented or reduced by establishing a medical home for these children where care is administered proactively and in an accessible, continuous, family-centered, coordinated, and compassionate setting.

The medical home for chronically ill children is required to comply with all of the following:

(1) Provide a physician, with specialized experience in pediatrics, to serve as the care coordinator for each child;

(2) Allow a child to receive care from any health care practitioner appropriate to the child's needs, with oversight and direction from the care coordinator;

(3) Require the care coordinator to establish a relationship of mutual responsibility with the child's parents to develop a long-term disease prevention strategy and provide disease management and education services.

Implementation and operation of the pilot program

The Department is required to implement the program not later than October 1, 2006, or later if the Department has not yet received federal approval. The pilot program will run until October 1, 2008, unless the Department determines that the care management system is not a cost-effective means of providing Medicaid services to chronically ill children or the combined state and federal cost of the program reaches $3 million. The pilot is to operate in at least three counties, with Hamilton and Muskingum counties given priority.

The bill requires Medicaid to provide reimbursement for the reasonable and necessary costs of the services associated with care coordination including case management, care plan oversight, preventive care, health and behavior care assessment and intervention, and any service modifier that reflects the provision of prolonged services or additional care.

Pilot program evaluation

The Department is required to maintain statistics on physician expenditures, hospital expenditures, preventable hospitalizations, and any other matters the Department deems necessary. Relying on these statistics, the Department is required to conduct an evaluation of the pilot program's effectiveness.

Medicaid Care Management Working Group

(Section 206.66.43)

The bill requires ODJFS to establish the Medicaid Care Management Working Group, comprised of the following:

(1) Eleven individuals appointed by ODJFS:

(a) Four to represent Medicaid care management plans;

(b) Four to represent major health care and behavioral care trade associations;

(c) Two to represent consumer advocates;

(d) One to represent county boards of job and family services.

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

(3) The Director of Health or the Director's designee;

(4) The Superintendent of Insurance or the Superintendent's designee;

(5) The Director of Aging or the Director's designee;

(6) The Director of Mental Health or the Director's designee;

(7) The Director of Alcohol and Drug Addiction Services or the Director's designee;

(8) The Director of Mental Retardation and Developmental Disabilities (MR/DD) or the Director's designee;

(9) The Director of the Rehabilitative Services Commission.

The bill requires the Medicaid Care Management Working Group to develop guidelines to govern managed care contracts for services provided under

the Medicaid Program. In developing the guidelines, the Working Group must do all of the following:

(1) Incorporate best practice standards used in current managed care programs to maximize patient and provider satisfaction and best practice standards for maintaining quality of care and cost effectiveness in a managed care setting;

(2) Consider how best to increase consistency and facilitate care management expansion;

(3) Provide for the coordination of regulatory relationships, including improved methods to resolve contract issues among participants in managed care systems that provide services under the Medicaid Program;

(4) Consider the feasibility of establishing an incentive program under which a managed care organization participating in the Medicaid Program could receive financial incentives for positive health care outcomes. In considering such a program, the Working Group must determine specific measures of positive health care outcomes for high-risk populations, identify outcomes that constitute positive health care outcomes, and recommend ways to fund the program from the Medicaid Program's managed care budget.

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.

Medicaid coverage of alcohol, drug addiction, and mental health services

(R.C. 5111.911; Section 206.67.18)

Current law permits ODJFS to enter into interagency agreements with other state agencies to administer components of the Medicaid program. In the case of the Departments of Mental Health and Alcohol and Drug Addiction Services, the agreements must require or specify how providers will be paid and the responsibilities of each Department for reimbursing providers, including program oversight and quality assurance.

The bill provides that the interagency agreements between ODJFS and the Departments must require or specify (1) a process for making payment to providers based on a "provider-specific fixed-rate reimbursement methodology" and (2) procedures for program oversight and quality assurance that include procedures for "utilization review, utilization management, and care management." The bill specifies that the payment procedures apply to providers of alcohol, drug addiction, and mental health services covered by Medicaid under the federal option of covering rehabilitative services.

The bill's requirements to modify the elements of the interagency agreements must be implemented, to the maximum extent possible, in a manner that is consistent with the *State of Ohio Community Behavioral Health Medicaid Business Plan*, which was finalized in August 2004 by ODJFS, the Departments of Mental Health and Alcohol and Drug Addiction Services, and the Ohio Association of Behavioral Health Authorities. For implementation of the modifications, the bill establishes the following schedule:

(1) As soon as practicable for utilization review;

(2) July 1, 2006, for utilization management and care management;

(3) July 1, 2007, for provider-specific fixed-rate reimbursement.

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 determination[135] 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.

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[135] *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.*

(7) Safeguards must be taken to protect the health and welfare of individuals receiving services under a waiver, including safeguards established in 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.

Medicaid waivers for individuals with autism or developmental delays or disabilities

(R.C. 5111.87)

Current law authorizes the Director of ODJFS to apply to the federal government for one or more Medicaid waivers under which home and community-based services are provided in the form of either or both of (1) early intervention services for children under age three that are provided or arranged by county boards of mental retardation and developmental disabilities and (2) therapeutic services for children who have autism and are under age six at the time of enrollment. The bill provides instead that the Director may apply for one or more Medicaid waivers under which home and community-based services are provided in the form of (1) early intervention and supportive services for children under age three who have developmental delays or disabilities the Director determines are significant, (2) therapeutic services for children of any age who have autism, and (3) specialized habilitative services for individuals who are age 18 or older and have autism.

The bill places limits on the waivers concerning therapeutic services for children with autism and specialized habilitative services for adults with autism. Neither such waiver may provide services that are available under another Medicaid waiver program. No waiver concerning therapeutic services for children with autism may provide services to an individual that the individual is eligible to receive through an individualized education program.

Current law authorizes the Director of Mental Retardation and Developmental Disabilities (MR/DD) to request that the Director of ODJFS apply for one or more of the Medicaid waivers authorized by current law. The bill provides that the Director of MR/DD and Director of Health may request that the Director of ODJFS apply for one or more of the Medicaid waivers the bill authorizes.

Intermediate Care Facility for the Mentally Retarded Waiver Study Council

(Section 206.66.30)

Council membership

The bill creates the Intermediate Care Facility for the Mentally Retarded (ICF/MR) Waiver Study Council. The Council includes the following members:

(1) One member of the House of Representatives appointed by the Speaker of the House of Representatives;

(2) One member of the Senate appointed by the President of the Senate;

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

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

(5) One representative of each of the following organizations, appointed by the organization: Advocacy and Protective Services, Inc., the Arc of Ohio, the Ohio League for the Mentally Retarded, People First of Ohio, the Ohio Association of County Boards of Mental Retardation and Developmental Disabilities, the Ohio Provider Resource Association, and the Ohio Health Care Association.

Members of the Council are not to be compensated for serving on the Council.

Council duties

The Council is required to study the use of a Medicaid waiver component to replace current ICF/MR services and address the following topics:

(1) The services that would be made available to individuals under the waiver component compared to current ICF/MR services;

(2) Sources of funding for services under the waiver component and adequacy of those funding sources, compared to current ICF/MR services;

(3) The impact of converting the ICF/MR service into a Medicaid waiver component on the individuals served, their families and guardians, county boards of mental retardation and developmental disabilities, and providers of services;

(4) The impact of converting the ICF/MR service into a Medicaid waiver component on the ability of individuals and their families and guardians to choose services and residential settings they consider appropriate;

(5) The advisability of including developmental centers operated by the Department of Mental Retardation and Developmental Disabilities in the waiver component;

(6) The methodology for reimbursing providers of services under the waiver component compared to the current methodology for reimbursement under the ICF/MR service;

(7) The cost-effectiveness of the waiver component, including administrative costs and federal funding, compared to the ICF/MR service;

(8) The most effective administrative structure for the waiver component;

(9) Any other matters the Council considers appropriate.

Council report

The bill requires the Council to submit a report, not later than January 1, 2007, of its findings and its recommendation on whether the state should submit a request for approval of a waiver to the United States Secretary of Health and Human Services. If the Council recommends that the state request approval of a waiver, the Council shall include in its report detailed recommendations addressing all of the matters listed above. The Council is required to submit its report to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate.

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 not more than 1,000 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;[136]

[136] *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*

(2) At the time of application for the Assisted Living program, reside in a nursing home and be seeking to move to a residential care facility (RCF) or be a participant in certain Medicaid waiver components[137] who would move to a nursing facility if not for the Assisted Living program;

(3) At the time of receiving services under the Assisted Living program, reside in a residential care facility that either (1) is licensed on October 1, 2005, and consists of beds that previously were licensed as nursing home beds and were converted to residential care facility beds or is part of a system of continuing care that is operated in conjunction with a nursing facility and one or more other facilities that provide a less intensive level of care and provides residents a contractual right of admission to the nursing facility or (2) is licensed, but not necessarily on October 1, 2005, and owned or operated by a metropolitan housing authority that has a contract with the U.S. Department of Housing and Urban Development to receive an operating subsidy or rental assistance for the residents;

(4) Meet all other eligibility requirements established under rules adopted by the ODJFS or the Department of Aging related to the Assisted Living program.

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.

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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).

[137] 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.

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. The bill continues to require ODJFS to institute an estate recovery program but expands the definition of "estate" from which recovery may be made.[138] Under the program, ODJFS is required to generally do both of the following:

(1) For the costs of services the Medicaid program correctly pays on behalf of an institutionalized individual[139] of any age, seek 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 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.

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

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[138] *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.*

[139] *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.

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.

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.[140]

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[140] *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).*

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 death[141] (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.

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,[142] 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.

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[141] *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.*

[142] *"Home and community-based services" means services provided pursuant to a waiver under 42 U.S.C.A. 1396n.*

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 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.[143]

- 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.

[143] *Adoption of rules under R.C. Chapter 119. requires a public hearing; adoption of rules under R.C. 111.15 does not.*

Medicaid Enterprise Data Warehouse computer system

(R.C. 5111.915)

The bill requires ODJFS to enter into an interagency agreement with the Department of Administrative Services to acquire through competitive selection a computer system to monitor Medicaid services administered by the state. This computer system is to be known as the Medicaid Enterprise Data Warehouse. The system is to be used to enhance fraud and abuse detection, improve program management and budgeting, and improve performance measurement capabilities of all state agencies serving Medicaid recipients.[144] The Department of Administrative Services is required to take all necessary steps to receive and review bids for the Medicaid Enterprise Data Warehouse within 90 days after the bill's effective.

The Department of Administrative Services may contract only with a vendor who has performed the following services prior to the Department accepting the vendor's bid:

(1) Successfully implemented an enterprise data warehouse in a state whose health and human services budget, including Medicaid, is equal to or exceeds Ohio's Medicaid budget;

(2) Demonstrated the ability to link, at a minimum, data sets related to Medicaid, Temporary Assistance for Needy Families (TANF), and vital records information.

Care management pilot program for chronically ill children

(R.C. 5111.161)

The bill requires the Ohio Department of Job and Family Services (ODJFS) to create a pilot program under which chronically ill children are included in the Medicaid care management system. As defined in the bill, a "chronically ill child" is an individual under age 21 years who meets the conditions established in state law for Medicaid eligibility on the basis of being blind or disabled. ODJFS is required to adopt rules as necessary to implement the program, including rules that specify standards and procedures to be used in designating which children are required to participate in the program. The program is to include a medical home where chronically ill children will receive health care services.

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[144] *Agencies serving Medicaid recipients include the Departments of Aging, Alcohol and Drug Addiction Services, Health, and Mental Health, and Mental Retardation and Developmental Disabilities, as well as ODJFS.*

Purposes of the pilot program

The bill provides that the purpose of the pilot program is to determine whether occurrences of acute illnesses and hospitalizations among chronically ill children can be prevented or reduced by establishing a medical home for these children where care is administered proactively and in an accessible, continuous, family-centered, coordinated, and compassionate setting.

The medical home for chronically ill children is required to comply with all of the following:

(1) Provide a physician, with specialized experience in pediatrics, to serve as the care coordinator for each child;

(2) Allow a child to receive care from any health care practitioner appropriate to the child's needs, with oversight and direction from the care coordinator;

(3) Require the care coordinator to establish a relationship of mutual responsibility with the child's parents to develop a long-term disease prevention strategy and provide disease management and education services.

Implementation and operation of the pilot program

ODJFS is required to implement the program not later than October 1, 2006, or later if ODJFS has not yet received federal approval. The pilot program will run until October 1, 2008, unless ODJFS determines that the care management system is not a cost-effective means of providing Medicaid services to chronically ill children or the combined state and federal cost of the program reaches $3 million. The pilot is to operate in at least three counties, with Hamilton and Muskingum counties given priority.

The bill requires Medicaid to provide reimbursement for the reasonable and necessary costs of the services associated with care coordination including case management, care plan oversight, preventive care, health and behavior care assessment and intervention, and any service modifier that reflects the provision of prolonged services or additional care.

Pilot program evaluation

ODJFS is required to maintain statistics on physician expenditures, hospital expenditures, preventable hospitalizations, and any other matters deemed necessary. Relying on these statistics, ODJFS is required to conduct an evaluation of the pilot program's effectiveness.

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, 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";[145]

[145] *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*

- Be ineligible for any category of Medicaid;[146]
- Be an Ohio resident;[147]
- Be a United States citizen, qualified alien, or meet certain citizenship requirements;[148]
- 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;[149]
- Be a member of an "assistance group"[150] or "family group."[151]

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.[152]

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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.

[146] *R.C. 5115.11.*

[147] *Residency qualifications are established in O.A.C. 5101:1-39-54.*

[148] *Citizenship qualifications are established in O.A.C. 5101:1-38-02.3.*

[149] *O.A.C. 5101:1-38-02.2.*

[150] *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).*

[151] *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).*

[152] *O.A.C. 5101:3-23-01(B).*

Pursuant to ODJFS rule-making authority, a county department of job and family services administers the Disability Medical Assistance Program in a particular county.[153] The Program receives no federal funding and has a capped appropriation that may limit the number of individuals approved for assistance.[154]

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.

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,[155] to require an entity under contract to

[153] *R.C. 5115.13; O.A.C. 5101:1-42-01.*

[154] *O.A.C. 5101:1-42-01(A).*

[155] *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*

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.

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

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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.

use a percentage of the funds they receive for Title XX social services.[156] 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.

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.

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[156] *42 United States Code 604.*

Jurisdiction over Medicaid payments

(R.C. 5111.026)

The bill provides that the Franklin County Court of Common Pleas has exclusive, original jurisdiction over any action or proceeding for declaratory or injunctive relief regarding payments to providers of goods and services under the Medicaid program that are not subject to the provisions of R.C. 5111.06 (regarding actions taken by the Department of Job and Family Services following the issuance of an adjudication order).

XI. Food Stamp Program

The Food Stamp Program is a federal program administered by ODJFS and county departments of job and family services. It is designed to raise the nutritional levels of low-income individuals and families.

Food Stamp Program work requirements

(Section 206.67.24)

Under federal law governing the Food Stamp Program, no physically and mentally fit individual age 18 to 50 is eligible for food stamp benefits if, during the preceding 36-month period, the individual received food stamp benefits for not less than three months during which the individual failed to (1) work at least 20 hours per week, averaged monthly, (2) participate in and comply with the requirements of a work program for 20 hours or more per week, or (3) participate in and comply with the requirements of a workfare program. The federal law provides certain exceptions to this work requirement.

One of the exceptions is that a state may request that the United States Secretary of Agriculture waive the applicability of the work requirement to any group of individuals in the state if the Secretary makes a determination that the area in which the individuals reside has an unemployment rate of over 10% or does not have a sufficient number of jobs to provide employment for the individuals. The act requires ODJFS to request that the Secretary issue the waiver for fiscal years 2006 and 2007. ODJFS is required to make monthly determinations of which counties the waiver is to be in effect in. No individual may be exempted from the work requirements for more than a total of 12 months during the fiscal biennium.

ODJFS is required by the act to report to the Speaker and Minority Leader of the House of Representatives and President and Minority Leader of the Senate on receipt or rejection of the waiver.

JUDICIARY/SUPREME COURT

- Provides a $500 vehicle allowance per month for the chief justice and the justices of the Supreme Court.
- Requires the clerk of the Medina Municipal Court to be elected, not appointed, and be compensated in the same manner as other elected clerks of municipal courts having a territory population of 100,000 or more.
- Removes an indigent person's right to appointed counsel in certain civil proceedings in juvenile 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.

Election of the Medina municipal court clerk

(R.C. 1901.31; Section 509.03)

Under continuing law, clerks of municipal courts may be either appointed or elected. For municipal courts with a population in the court territory of 100,000 or more, clerks of the courts generally are elected in the same manner as judges

are elected to those courts. That is, they generally are elected on the nonpartisan ballot for terms of six years). The manner in which those judges, and the associated clerks, are nominated depends upon whether municipal charter provisions apply to the court.

Under existing law, regardless of the territory of the Medina Municipal Court, the clerk of that Court is required to be appointed by the judges of that Court. The clerk must hold office until the clerk's successor is similarly appointed and qualified. The bill eliminates this specific appointment provision, so that the general rule applicable to municipal courts with a population in the court territory of 100,000 or more will apply. Thus, under the bill, the clerk of the Medina Municipal Court must be elected on the nonpartisan ballot for a term of six years.

The bill requires the clerk of the Medina Municipal Court to be elected by the qualified electors of the territory of the court at the first general election that occurs not less than six months after the bill's effective date for non-appropriation provisions. The term of the clerk elected in that general election must commence on January 1 of the following year and continue until the clerk's successor is elected and qualified according to the normal schedule for the election of the judge of that court. The bill provides that the current clerk of the Medina Municipal Court will continue in office until the elected clerk takes office. If the office becomes vacant prior to that date, the judges of the Medina Municipal Court must appoint a clerk to serve until the elected clerk takes office.

Compensation of the Clerk of the Medina Municipal Court

(R.C. 1901.31)

For certain municipal courts, including the Medina Municipal Court, the clerk receives the annual compensation that the presiding judge of the court prescribes, if the court's revenue for the preceding year equals or exceeds the expenditures for the operation of the court payable from the city treasury, or the annual compensation that the legislative authority prescribes, if the court's revenue for the preceding year is less than the expenditures for the operation of the court. Generally, in a municipal court with a population in the court territory of 100,000 or more, the clerk receives annual compensation equal to 85% of the salary of a judge of the court.

The bill eliminates the specific compensation provision applicable to the clerk of the Medina Municipal Court. Thus, under the bill, the general rule applicable to municipal courts with a population in the court territory of 100,000 or more will apply. Under the bill, then, the clerk of the Medina Municipal Court will receive annual compensation equal to 85% of the salary of the judge of the court.

Removal of the right to counsel for indigents in certain civil juvenile proceedings

(R.C. 2151.352)

Current law gives any child, a child's parents or custodian, or any other person in loco parentis of a child the right to representation by legal counsel at all stages of proceedings in juvenile courts under R.C. Chapter 2151. or 2152. If the person is indigent and is unable to employ counsel, the person is entitled to have counsel appointed pursuant to R.C. Chapter 120. Counsel appointed pursuant to R.C. Chapter 120. include state public defenders, county public defenders, joint county public defenders, and counsel appointed through a county appointed counsel system.

For certain civil matters only, the bill removes an indigent person's right to appointed counsel when the person is a party to a proceeding in juvenile court. Under the bill, a child, a child's parents or custodian, or any other person in loco parentis of the child is entitled to representation by legal counsel at all stages of a juvenile court proceeding. However, if the party is indigent, the party is not entitled to appointed counsel in a civil matter if the court is exercising jurisdiction pursuant to one of the following bases listed in R.C. 2151.23(A)(2), (3), (9), (10), (11), (12), or (13); (B)(2) through (6); (C); (D); or (F)(1) or (2):

(1) To determine the custody of any child not a ward of another Ohio court;

(2) To hear and determine any application for a writ of habeas corpus involving the custody of a child;

(3) To hear and determine requests for the extension of temporary custody agreements and requests for court approval of certain permanent custody agreements;

(4) To hear and determine applications for consent to marry;

(5) To hear and determine a request for an order for the support of any child if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic abuse, or an action for support under the Uniform Interstate Family Support Act;

(6) To hear an action under R.C. 121.38 concerning an agency dispute with a county Family and Children First Council's decision regarding a child's services;

(7) To hear and determine a violation of the compulsory attendance laws;

(8) To determine the paternity of a child born out of wedlock;

(9) Any action under the Uniform Interstate Family Support Act;

(10) To hear and determine an application for a child support order for any child if the child is not a ward of another Ohio court;

(11) To hear and determine an action under R.C. 3111.28 regarding the rescission of an acknowledgment of paternity;

(12) To hear and determine a motion for relief from a paternity determination or support order under R.C. 3119.961;

(13) Certain actions for divorce or legal separation that involve the custody or care of children;

(14) All matters as to custody and support of children after a divorce decree has been granted.

JOINT LEGISLATIVE ETHICS COMMITTEE

- Designates the Joint Legislative Ethics Committee as the appropriate ethics commission for matters relating to the employees of the Capitol Square Review and Advisory Board.

Expansion of Joint Legislative Ethics Committee jurisdiction

(R.C. 102.01)

For purposes of the Ethics Law (R.C. Chapter 102.), a public official or employee falls under the jurisdiction of the "appropriate ethics commission" -- either the Joint Legislative Ethics Committee (JLEC), the Board of Commissioners on Grievances and Discipline of the Supreme Court, or the Ohio Ethics Commission. Currently, the employees of the Capitol Square Review and Advisory Board fall under the Ohio Ethics Commission's jurisdiction. The bill places them instead under JLEC's jurisdiction, which currently includes matters relating to General Assembly members, General Assembly employees, Legislative Service Commission employees, and candidates for the office of member of the General Assembly.

LOCAL GOVERNMENT

- Permits agencies and instrumentalities of political subdivisions to establish and maintain individual and joint self-insurance programs to provide health care benefits to officers and employees of the agency or instrumentality.

- Provides new procedures for the county mechanisms, county comprehensive family service coordination plans, and dispute resolution processes of family and children first county councils and modifies membership provisions.

- 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.

- Permits the boards of trustees of (1) school district public libraries, (2) county free public libraries, (3) township free public libraries, (4) municipal free public libraries, (5) county library districts, and (6) regional library districts to assess fees for services other than the circulation of printed materials.

- 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 calendar year 2007 through calendar year 2010, 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 calendar year 2011, 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.

- Prescribes certain limitations on the spending authority of county boards of election.

- Creates the Task Force on Law Library Associations and requires it to study and make specified recommendations as to the structure, funding, and administration of law library associations' law libraries.

- 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.

- Creates the Local Government and Library Financing and Support Committee to study potential sources of state funding for the Local Government Fund, the Library and Local Government Support Fund, and Local Government Revenue Assistance Fund that have the capacity to allow for growth in funding levels and to provide stability in funding levels, and then to report its recommendations and suggested implementing legislation to the Governor and General Assembly.

- Creates the Local Government Public Notice Task Force to study local government public notice requirements and issue a report that includes recommendations for meeting those requirements in alternative more economical and efficient ways, considering what is also practical.

Health care benefits for agencies of political subdivisions

(R.C. 9.833)

Continuing law grants political subdivisions, including municipal corporations, townships, counties, school districts, and other bodies corporate and politic smaller than the state, the authority to provide health care benefits to the subdivision's officers and employees through individual or joint self-insurance programs. The bill extends this authority to agencies and instrumentalities of political subdivisions. The bill requires an agency or instrumentality that establishes and maintains a self-insurance health care program to reserve the funds necessary to cover the potential costs of the program in a special fund established by resolution duly adopted by the agency's or instrumentality's governing board. Funding costs may be allocated among funds on the basis of relative exposure and loss experience.

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.

Membership of county family and children first councils

Current law requires the following county officials to serve as members of the county's family and children first council:

(1) Director of the board of alcohol, drug addiction, and mental health services that serves the county or, in the case of a county that has a board of alcohol and drug addiction services and a community mental health board, the directors of both boards;

(2) Health commissioner;

(3) Director of the county department of job and family services;

(4) Executive director of the public children services agency;

(5) Superintendent of the county board of mental retardation and developmental disabilities;

(6) Senior juvenile court judge or another juvenile court judge;

(7) Superintendent of the school district with the largest number of pupils residing in the county;

(8) School superintendent representing all other school districts with territory in the county;

(9) A representative of the municipal corporation with the largest population in the county;

(10) President of the board of county commissioners;

(11) A representative of the regional office of the department of youth services;

(12) A representative of the county's Head Start agencies;

(13) A representative of the county's early intervention collaborative.

Three council members--the health commissioner, the president of the board of county commissioners and the director of the board of alcohol, drug

addiction, and mental health services (when the board serves more than one county)--are permitted to designate an individual to serve on the council for the member. The bill authorizes each council member listed above to designate an individual to serve on the council for the member, except that a board of county commissioners, rather than the president of the board, may designate an individual to serve on the council in the president's stead.

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 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.[157 and 158] The bill raises the bid threshold to bids *in excess of*

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[157] *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).*

[158] *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)).*

$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.

Assessment of library fees

(R.C. 3375.40)

The bill permits each board of library trustees of (1) school district public libraries, (2) county free public libraries, (3) township free public libraries, (4) municipal free public libraries, (5) county library districts, and (6) regional library districts to assess uniform fees for the provision of services to patrons of the library, with the exception that no fee may be assessed for the circulation of

printed materials. However, the board may assess fines for printed materials not returned according to its rules.

Law libraries

Overview

(R.C. 3375.48 and 3375.55)

Current law requires the law library association in each county ("association") that receives fines and penalties, and moneys arising from forfeited bail, under certain statues 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 free of charge. The bill continues this requirement and adds materials and equipment of the law library to the free of charge use.

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 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:

Calendar Year	Responsibility to pay the compensation and costs
Through 2006	The board of county commissioners must pay 100%.
2007	The board of county commissioners must pay 80%, and the association's board of trustees must pay 20%.
2008	The board of county commissioners must pay 60%, and the association's board of trustees must pay 40%.
2009	The board of county commissioners must pay 40%, and the association's board of trustees must pay 60%.
2010	The board of county commissioners must pay 20%, and the association's board of trustees must pay 80%.
2011 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.

Spending authority of county boards of elections

(R.C. 3501.141 and 3501.17)

Current law authorizes the board of elections of a county to contract, purchase, or otherwise procure and pay all or any part of the cost of group insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs and that may provide sickness and accident insurance, or group life insurance, or a combination of any of those types of insurance or coverage for the full-time employees of the board and their immediate dependents. The bill specifies that the authority to provide such coverage applies only when the board of county commissioners, by resolution, denies the coverage discussed above to full-time employees of the board of elections.

In addition, current law authorizes a county board of elections to procure and pay all or any part of the cost of group hospitalization, surgical, major medical, or sickness and accident insurance or a combination of those types of insurance or coverage for the board members and their dependents when a member's term begins. The bill adds that a board may do so only with the approval of the board of county commissioners.

Current law requires the expenses of a county board of elections to be paid from the county treasury in the same manner that other county expenses are paid. If a board of county commissioners fails to appropriate an amount sufficient to provide for the necessary and proper expenses of the board of elections, the board of elections may apply to the court of common pleas within the county, which must fix the amount necessary to be appropriated. The bill eliminates the authority of a board of elections to apply to the court of common pleas for the board's expenses when a board of county commissioners fails to appropriate the necessary amount.

Current law prohibits a board of elections from incurring any obligation involving the expenditure of money unless there are moneys sufficient in the funds appropriated for it to meet the obligations. The bill retains that prohibition, but adds that the funds for the obligations must be appropriated pursuant to the Tax

Levy Law. It also allows the board to transfer funds only as provided under that Law.

Task Force on Law Library Associations

(Section 501.03)

Appointments. The bill creates the Task Force on Law Library Associations, which is comprised of the following 13 members:

- One member appointed by the Speaker of the House of Representatives;
- One member appointed by the Minority Leader of the House of Representatives;
- One member appointed by the President of the Senate;
- One member appointed by the Minority Leader of the Senate;
- Three members appointed by the Ohio Judicial Conference, two of whom must be judges who are members of the Conference and one of whom must be a law librarian associated with an association;
- Three members appointed by the County Commissioners Association of Ohio, one of whom must be a representative of the public;
- Three members appointed by the Ohio State Bar Association, two of whom must be attorneys licensed to practice law in Ohio and one of whom must be a law librarian associated with an association.

Appointments to the Task Force must be made by September 1, 2005, and vacancies are to be filled in the manner provided for original appointments.

Task force duties. The bill charges the Task Force with the following duties:

- Gather information on and study the current state of the associations, with particular emphasis on the structure, funding, and administration of their law

libraries, and on the effect of technology on, and access to, their law libraries.

- Make recommendations on the structure, funding, and administration of these law libraries presently and over the next five calendar years.

- Make recommendations as to how to ensure that these law libraries remain open and may be made available to members of the public.

The Task Force must report its findings and recommendations to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, and the Chief Justice of the Supreme Court by June 30, 2006.

The Task Force ceases to exist upon the submission of its report and is not subject to the Sunset Review Law.

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.

Local Government and Library Financing and Support Committee

(Section 503.12)

The bill creates a Local Government and Library Financing and Support Committee consisting of the following eight members:

- Four members of the House of Representatives who are members of the House Finance and Appropriations Committee, two appointed each by the House Speaker and the House Minority Leader.

- Four members of the Senate who are members of the Senate Finance and Financial Institutions Committee, two appointed each by the Senate President and the Senate Minority Leader.

The House Speaker must designate one of the Committee's members as its chairperson.

The Committee must study potential sources of state funding for the Local Government Fund, the Library and Local Government Support Fund, and the Local Government Revenue Assistance Fund that have the capacity to allow for growth in funding levels and to provide stability in funding levels. The Committee must submit a report to the Governor and the General Assembly not later than June 1, 2006, setting forth its recommendations for sources for the three funds and suggested legislation to implement the recommendations. Before the Committee ceases to exist on December 31, 2006, and after the June 1, 2006, report deadline, it may submit additional recommendations to the Governor and the General Assembly.

The Committee's staff assistance must come from the Tax Commissioner and the Legislative Service Commission, upon request.

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.

- Permits a person working for or on behalf of a tobacco cessation program to provide tobacco cessation counseling, without the use of medication and without the need for parent or guardian knowledge or consent, to a minor age 14 or older at the minor's request.

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 resident[159] 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;

[159] *Liable 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)).*

- 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.[160] The percentage the departments will charge a particular patient, resident, 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.[161]

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[160] *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.*

[161] *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*

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:

- 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

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payment. David A. Zwyer, Esq. "Estate and Future Planning for Ohioans with Disabilities and Their Families," Ohio Developmental Disabilities Council (Feb. 2004).

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 hospital[162] 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

[162] *"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)).*

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 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.[163]

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.

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[163] *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.*

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 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 payment[164] 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

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[164] *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.*

state party, together with all debts and credits. The bill provides that the proof of claim document is prima-facie evidence[165] of the facts stated in the document.

Confidential outpatient tobacco cessation counseling

(R.C. 5122.04)

Current law

Under current law, a mental health professional[166] may provide outpatient mental health services, excluding the use of medication and without the consent or knowledge of the minor's parent or guardian, at the request of a minor age 14 or older. In general, the minor's parent or guardian may not be informed of the services without the minor's consent unless (1) the mental health professional treating the minor determines that there is a compelling need for disclosure based on a substantial probability of harm to the minor or to other persons, and (2) the minor is notified of the mental health professional's intent to inform the minor's parent or guardian.

The minor is limited to not more than six sessions or 30 days of services, whichever occurs sooner. After this time period, the mental health professional must terminate the services or, with the consent of the minor, notify the minor's parent or guardian to obtain consent to provide further treatment. The minor's parent or guardian is not liable for the costs of the outpatient mental health services.

The bill

The bill permits a person working for or on behalf of a tobacco cessation program to provide tobacco cessation counseling under the same conditions and limitations described above for confidential outpatient mental health services.

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[165] *"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.*

[166] *A "mental health professional" is a person who is qualified to work with mentally ill persons pursuant to standards established by the Director of Mental Health under R.C. 5119.611.*

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.

- Differentiates between residential facilities that are not intermediate care facilities for the mentally retarded (ICFs/MR) and residential facilities that are ICFs/MR by designating non-ICF/MR residential facilities as residential facilities I and residential facilities that are ICFs/MR as residential facilities II.

- Establishing special staffing requirements for residential facilities II.

- Revises the limitation on the issuance of residential facility licenses by applying the limitation only to residential facility II licenses and providing that the maximum number of licensed residential facility II beds cannot exceed 7,656, with certain exceptions.

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.[167] State law requiring

[167] *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.*

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, 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 treatment[168] 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.

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[168] *"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 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.

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.[169]

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.

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[169] *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.*

As discussed earlier,[170] 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.

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.[171]

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.[172]

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

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*[170] See "**Community alternative funding system terminated**" above.*

[171] The requirement to comply with all applicable statewide Medicaid requirements also applies if the provider is to provide habilitation center services.

[172] An official with ODMR/DD stated that no such rules have been adopted.

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.

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)[173] 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.

[173] *The fees collected are split between ODMR/DD and ODJFS pursuant to an interagency agreement between the two departments.*

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:

(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.

Residential facilities I and residential facilities II

(R.C. 5123.19)

The bill differentiates between residential facilities for persons with mental retardation or a developmental disability that are not intermediate care facilities for the mentally retarded (ICFs/MR) and residential facilities that are ICFs/MR. Under the bill, non-ICF/MR residential facilities are designated as residential facilities I and residential facilities that are ICFs/MR as residential facilities II.

Current law requires every person or government agency desiring to operate as a residential facility to apply for a license from the Director of Mental Retardation and Developmental Disability (MR/DD). The bill would further require any applicant for licensure to indicate in the application whether the applicant seeks licensure as a residential facility I or residential facility II. A nursing home seeking licensure must apply for licensure as a residential facility II for any portion of the home that is an ICF/MR.

Staffing requirements for residential facilities II

(R.C. 5123.1910)

The bill requires a residential facility II to employ a qualified mental retardation professional,[174] a medical director, and a registered nurse. If the facility provides special diets to any of its residents, the facility must also employ a licensed dietician

Rulemaking

Current law authorizes the Director of MR/DD to adopt rules providing standards for the operation of residential facilities and services provided at residential facilities. The bill authorizes the Director to adopt rules providing standards applicable to residential facilities II that do not apply to residential facilities I.

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[174] *A "qualified mental retardation professional" must have at least one year working with individuals with mental retardation or other developmental disabilities and who is a doctor of medicine or osteopathy, a registered nurse, or holds a bachelor's degree in a field relevant to the field in which the individual is employed (42 Code of Federal Regulations §483.430).*

Limitations on issuance of residential facility licenses

(R.C. 5123.196)

Current law authorizes the Director of MR/DD to issue no more than 10,838 licenses for residential facilities minus the number of beds that cease to be residential facility beds because a residential facility licensed is revoked, terminated, not renewed, or surrendered for any reason on or after July 1, 2003 or the number of beds that are voluntarily converted to use for supporting living on or after July 1, 2003.

Under the bill, the Director is authorized to license no more than 7,656 residential facility II licenses minus the number of beds that cease to be residential facility II beds because a residential facility II license is revoked, terminated, not renewed, or surrendered for any reason on or after July 1, 2005, or the number of beds that are voluntarily converted to use for supporting living on or after July 1, 2005. Under both current law and the bill, the Director is required to maintain an up-to-date written record of the maximum number of residential facility (residential facility II under the bill) beds allowed by law.

Current law states that the Director is not required to reduce the maximum number of beds by a bed that ceases to be a residential facility bed if the Director determines that the bed is needed to provide services to an individual with mental retardation or a developmental disability who resided in the residential facility in which the bed was located. The bill applies this provision only to residential facility II beds.

Both current law and the bill allow the Director to issue an interim license to a residential facility (residential facility II under the bill) and a waiver allowing the facility to admit more residents than the facility is licensed to admit regardless of whether the interim license or waiver will result in there being more beds in all residential facilities (residential facilities II under the bill) than is permitted by law.

BOARD OF MOTOR VEHICLE COLLISION REPAIR REGISTRATION

- Requires the Board of Motor Vehicle Collision Repair Registration to work with local fire and building departments to locate places of business being operated by persons who do not possess a registration certificate as a motor vehicle collision repair operator.

Enforcement actions

(R.C. 4775.04)

Current law establishes the Board of Motor Vehicle Collision Repair Registration to perform specified functions in relation to defined "motor vehicle collision repair operators." The bill expands upon those functions by requiring the Board, through its Executive Director or enforcement agents, to work with appropriate local fire departments and local certified building departments to locate persons operating places of business as a motor vehicle collision repair operator without a registration certificate (temporary or regular) for the place of business issued under the law governing the Board's functions.

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.

- 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.

- 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.

- Specifies that a person on active duty in the Armed Forces of the United States who is stationed in this state is eligible to obtain a resident hunting or fishing license regardless of whether the person qualifies as a resident of this state.

- 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 Division of Parks and Recreation from adopting rules establishing a fee for parking a motor vehicle in a state park or for admission to a state park.

- 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.

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.

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.

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.

Resident hunting and fishing licenses for certain military personnel

(R.C. 1533.10, 1533.11, 1533.111, 1533.112, 1533.12, and 1533.32)

Current law authorizes every person on active duty in the Armed Forces of the United States, while on leave or furlough, to take or catch fish of the kind lawfully permitted to be taken or caught within the state, to hunt any wild bird or wild quadruped lawfully permitted to be hunted within the state, and to trap fur-bearing animals lawfully permitted to be trapped within the state without procuring a fishing license, a hunting license, a fur taker permit, or a wetlands habitat stamp required by the laws governing hunting, fishing, and trapping, provided that the person must carry on the person when fishing, hunting, or trapping a card or other evidence identifying the person as being on active duty in the Armed Forces of the United States, and provided that the person is not otherwise violating any of the hunting, fishing, and trapping laws of this state. In order to hunt deer or wild turkey, such a person must obtain a special deer or wild turkey permit, as applicable, but the person need not obtain a hunting license in order to obtain such a permit.

Except for the persons described above who are on active duty in the Armed Forces of the United States and who, because they are on leave or furlough, may hunt, fish, or trap without procuring a fishing license, a hunting license, a fur taker permit, or a wetlands habitat stamp, the bill requires every person on active duty in the Armed Forces of the United States who is stationed in this state and who wishes to engage in an activity for which a license, permit, or stamp is required under the laws governing hunting, fishing, and trapping to obtain the requisite license, permit, or stamp. The bill specifies that such a person who is stationed in this state is eligible to obtain a resident hunting or fishing license regardless of whether the person qualifies as a resident of this state. To obtain a resident hunting or fishing license, the person must present a card or other evidence identifying the person as being on active duty in the Armed Forces of the United States and as being stationed in this state.

State park fees

Prohibition against rules establishing state park admission and parking fees

(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 generally retains the Division's authority over the state parks and the authority to adopt rules for that purpose. However, the bill prohibits the Division from adopting rules establishing fees or charges for parking a motor vehicle in a state park or for admission to a state park.

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.

Nonresident operation of all-purpose and other special vehicles

(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.

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.

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.[175]

[175] *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.*

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;

(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;

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).

(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;

(16) A representative of the Department of Job and Family Services 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.[176]

[176] *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.*

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 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.[177] Medication aides may

[177] *Delegation must be in accordance with rules governing nursing delegation adopted under the nursing law (Revised Code Chapter 4723.).*

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.[178]

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.[179] 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.

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.

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[178] *Controlled substances are drugs, such as narcotics, that are subject to special restrictions because of the potential for abuse (R.C. 3719.01).*

[179] *The exception is that nursing students are ineligible to participate in the Program.*

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 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 court. 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 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 court to forward all application fees collected pursuant to the above-described provisions to the county treasurer for deposit in the county treasury. 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 each clerk of court, 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.

The bill defines "clerk of court" to mean the clerk of the court of common pleas of the county, the clerk of the juvenile court of the county, the clerk of a municipal court in the county, the clerk of a county-operated municipal court, or the clerk of a county court in the county, whichever is applicable. The bill also provides that "county-operated municipal court" has the same meaning as in R.C. 1901.03 (the Auglaize county, Brown county, Clermont county, Columbiana county, Crawford county, Darke county, Hamilton county, Hocking county, Jackson county, Lawrence county, Madison county, Miami county, Morrow county, Ottawa county, Portage county, or Wayne county municipal court).

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.

DEPARTMENT OF PUBLIC SAFETY

- Requires the Division of Homeland Security and the Department of Public Safety to distribute homeland security funds on a county basis.

Homeland security funds

(R.C. 5502.03)

Existing law does not specify requirements for the distribution of homeland security funds. The bill requires the Division of Homeland Security and the Department of Public Safety to distribute homeland security funds on a county basis and prohibits the distribution of the funds on a regional basis.

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.[180]

[180] *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.*

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.

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.

- 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 criteria, 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.

- Requires state colleges and universities to award printing contracts under provisions of the "Buy Ohio" Law that governs the award of contracts for goods and services by the Department of Administrative Services and other state agencies.

- 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.

- Requires the Chancellor of the Board of Regents to allocate up to $70,000 for scholarships per year for students enrolled in the Columbus Program in Intergovernmental Issues at Kent State University, if there are sufficient funds available from General Revenue Fund appropriations made to the Board.

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. The boards of trustees of these state institutions may only increase undergraduate instructional and general fees for Ohio residents 6% over the amount charged on January 1, 2005, for the 2005-2006 academic year and 6% over the prior academic year for the 2006-2007 academic year. No institution may authorize an increase in excess of 6% in a single vote of its board.

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.[181] The grant amount awarded to the student is based on the United States Department of

[181] *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).*

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 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;[182]

(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

[182] *Currently, this provision applies to only DeVry University and the University of Phoenix.*

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 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.[183] 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

[183] *See 20 U.S.C. 1085.*

the amount necessary to reconcile prior year payments must be transferred to the General Revenue Fund.

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 criteria, policies, and procedures by April 15, 2007, to enable students to transfer technical courses completed through an adult career-technical education institution or a public secondary career-technical institution to a state institution of higher education "without unnecessary duplication or institutional barriers." The Board is directed to develop these criteria, policies, and procedures in consultation with the Department of Education, public adult and secondary career-technical education

institutions, and institutions of higher education. The criteria, 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.[184] 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.[185] 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

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[184] *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.*

[185] *R.C. 3333.16, not in the bill.*

compete on the same basis as students native to that institution for admission to specific programs;

(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,[186] 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).[187] 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.

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[186] *Information about the Course Applicability System is available at http://www.regents.state.oh.us/transfer.*

[187] *Am. Sub. H.B. 16 of the 126th General Assembly was signed by the Governor on February 3, 2005.*

The State Architect must award local administration competency certification to a state university or state community college that meets the following criteria:

(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.

Award of state university printing contracts

(R.C. 3345.10)

Existing law

Existing law requires state universities, municipal universities, state medical colleges, community colleges, technical colleges, and state community colleges (changed by the bill to the currently defined term of, and hereafter referred to as, "state institutions of higher education") to establish competitive bidding procedures for the purchase of *printed material* and to award all contracts for printed material in accordance with those procedures. Those contracts generally must be let to *vendors who have manufacturing facilities within Ohio*. If, however, the required printed materials are not available from such a vendor, an institution may purchase the materials from an out-of-state vendor. Vendors with manufacturing facilities within Ohio that would "execute the printing covered by a proposal" cannot be prohibited from submitting a proposal for consideration, and any such proposal that is properly submitted must be considered by a state institution of higher education.

Changes proposed by the bill

The bill continues to require state institutions of higher education (defined under the bill to mean each of the four-year state universities, the Northeastern Ohio Universities College of Medicine, the Medical University of Ohio at Toledo, and each community college, state community college, university branch, or technical college) to establish competitive bidding procedures for the purchase of printed material and to award all contracts for printed material in accordance with those procedures. But, it eliminates the remainder of the current law described above and instead mandates that the procedures an institution establishes require the institution to evaluate all bids received for contracts for the purchase of printed material in accordance with the *relevant criteria and procedures established in the "Buy Ohio" Law* that govern purchases by the Department of Administrative Services and other state agencies, when determining (a) whether bidders will produce the printed material at manufacturing facilities within Ohio or (b) whether out-of-state bidders *are located in states bordering Ohio or have a significant Ohio presence and, thus, are also qualified to bid*. One of these criterion is that a

non-Ohio business cannot bid on a *contract for state printing* if the business is located in a state that excludes Ohio businesses from bidding on state printing contracts in that state. (See R.C. 125.09(C)--not in the bill.)

The institution must select, in accordance with the procedures it establishes, a bid for printed materials from among bidders that fulfill the relevant Buy Ohio Law criteria where sufficient competition can be generated within Ohio to ensure that compliance with this requirement will not result in paying an excessive price or acquiring a disproportionately inferior product. If there are two or more bids from among those bidders, the bill declares that there is sufficient competition to prevent paying an excessive price or acquiring a disproportionately inferior product.

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.

Kent State University's Columbus program in intergovernmental issues

(R.C. 3333.36)

The Columbus Program in Intergovernmental Issues is an internship program offered by Kent State University that awards scholarships of up to $2,000 per student. Under continuing law, the Chancellor of the Board of Regents may

allocate to the program up to $70,000 in each fiscal year of funds appropriated to the Board.

The bill requires, rather than permits, the Chancellor to allocate up to $70,000, provided there are sufficient funds available from General Revenue Fund appropriations made to the Board that are unencumbered and unexpended. The bill also specifies that the Chancellor may use any General Revenue Funds appropriated to the Board that the Chancellor determines are available to fund scholarships for students in the program.

DEPARTMENT OF REHABILITATION AND CORRECTION

- Requires a contract for the private operation and management of a state or local correctional facility to include a convincing demonstration from the private entity that the private entity can realize at least a 10% savings (increased from current law's 5% provision) over the projected cost to the government entity of providing the same services to operate a correctional facility.

- Establishes the three-member Medical Hardship Prisoner Release Commission to be appointed by the Governor; authorizes the Director of the Department of Rehabilitation and Correction (DRC) to request the Commission to approve the release from imprisonment of a specified prisoner confined in a state prison, other than one confined under a sentence of death, because of a medical hardship of the prisoner that is one of the hardships for which prisoners are eligible for potential release under rules adopted by DRC; requires the Commission to promptly review such a request, determine whether the request should be approved or denied, and notify the Director of the determination; specifies that the Commission's approval of the request authorizes DRC to grant the prisoner a medical hardship release from imprisonment, that the Commission's denial prohibits DRC from granting the prisoner such a release, and that, after a denial, the Director may file a subsequent request for such a release for the prisoner; specifies that in no case may a prisoner confined in a state prison under a sentence of death be granted a medical hardship release under its provisions; and provides that, if DRC grants a medical hardship release to a prisoner, the prisoner is to be released from imprisonment as if the prisoner's stated prison term had expired, the prisoner is subject to a period of post-release control of up to three years after the release, DRC must impose upon the prisoner post-

release control sanctions to apply during the period of post-release control, and the prisoner generally is subject to the existing provisions that govern persons on post-release control.

- Creates the temporary 15-member Correctional Faith-Based Initiatives Task Force to study faith-based solutions to problems in the correctional system and to report to the Governor, Speaker of the House, and President of the Senate.

Private operation of a state or local correctional facility—increase the amount of cost savings to be realized

(R.C. 9.06)

Current law requires the Department of Rehabilitation and Correction to contract for the private operation and management of its initial "intensive program prison." Current law also permits the Department regarding any other state correctional facility, and counties and municipal corporations regarding any local correctional facility they operate, to contract for the private operation and management of a correctional facility. Contracts may be for an initial term of not more than two years, with an option to renew for additional two-year periods. The law sets forth criteria and specifications that a private contractor must satisfy in order to operate and manage any such state or local facility, and a series of requirements and statements that must be included in the contract. One criterion specifies that, before the contracting government entity may enter into the contract, the contractor must convincingly demonstrate to the government entity that it can operate the facility with the inmate capacity required by the government entity, provide the services required by law, and *realize at least a 5% savings over the projected cost to the government entity of providing the same services to operate the facility that is the subject of the contract.*

The bill changes the criterion described in the preceding paragraph so that it provides that, regarding contracts for the private operation and management of a state or local facility entered into or renewed on or after the bill's effective date, the contractor must convincingly demonstrate to the contracting government entity that it can *realize at least a 10% savings over the projected cost to the government entity of providing the same services to operate the subject facility*.

Release of prisoners in state correctional institutions for medical hardships

(R.C. 2929.13, 2929.14, 2967.13, 2967.24, 5120.16, and 5120.48)

The bill enacts a mechanism for the possible release of prisoners in state correctional institutions, other than those confined under a sentence of death, for medical hardships of the prisoners.

Establishment of Medical Hardship Prisoner Release Commission

The bill establishes within the office of the Governor the Medical Hardship Prisoner Release Commission, consisting of three members appointed by the Governor. One member will be a retired judge of an Ohio court of record, one will be a member of the Parole Board or a staff member of the Parole Board, and one member will be a "physician" (as defined in the bill for purposes of this provision, "physician" means a person authorized under R.C. Chapter 4731. to practice medicine and surgery, osteopathic medicine and surgery, or a limited branch of medicine). The Governor must make the initial appointments to the Commission not later than 90 days after the bill's effective date, and the Governor must oversee the operation of the Commission.

Of the initial appointments to the Commission, the member who is a retired judge will be appointed for a term ending December 31, 2008, the member who is a member or staff member of the Parole Board will be appointed for a term ending December 31, 2007, and the member who is a physician will be appointed for a term ending December 31, 2006. Thereafter, terms of office of all members will be three years, with each term ending on the same day of the same month as did the term it succeeds. Members may be reappointed. A vacancy on the Commission will be filled in the same manner provided for the original appointment; a member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed will hold office for the remainder of the predecessor's term. A member will continue in office subsequent to the expiration of his or her term until his or her successor takes office or until 60 days has elapsed, whichever occurs first.

The Commission must meet within two weeks after all members have been appointed and organize as necessary. It must select a Chairperson, a Vice-Chairperson, and any other necessary officers and adopt rules to govern its proceedings. Thereafter, it must meet as often as is necessary to perform its functions and duties set forth in the bill, as described below, and must meet otherwise upon the call of the Chairperson. Two members of the Commission constitute a quorum, and the votes of a majority of the quorum present is required to validate any action of the Commission. All business of the Commission must be conducted in public meetings. The members will serve without compensation,

but each member will be reimbursed for his or her actual and necessary expenses incurred in the performance of his or her official duties on the Commission. In the absence of the Chairperson, the Vice-Chairperson will be required to perform the Chairperson's duties. (R.C. 2967.24(A), (B), and (G).)

Submission to Commission of request for medical hardship release; review and determination by Commission

The bill provides that the Director of the Department of Rehabilitation and Correction (DRC) may file a written request with the Medical Hardship Prisoner Release Commission that requests that the Commission approve the release from imprisonment of a specified "prisoner" (see below) confined in a "state correctional institution" (see below), other than a prisoner confined in an institution under a sentence of death, because of a medical hardship of the prisoner that is one of the medical hardships for which prisoners are eligible for potential release under rules adopted by DRC. The request must identify the prisoner, the prisoner's medical hardship, each offense for which the prisoner is confined, the total length of the prisoner's sentence, and the remaining length of that sentence. DRC must provide the Commission with any other materials or information the Commission requests that is relevant to the request.

Upon receipt of a request from DRC's Director pursuant to this provision, the Commission promptly must review the request and the materials and information provided by DRC and promptly must determine whether it believes the specified prisoner should be granted a medical hardship release and whether the Director's request should be approved or denied. Upon making its determinations, the Commission promptly must notify DRC's Director, in writing, of the determinations. If the Commission approves the Director's request, DRC may grant the prisoner a medical hardship release from imprisonment, but if it denies the request, DRC cannot grant the prisoner a medical hardship release from imprisonment based on that request. If the Commission denies the Director's request, at any time after the denial, the Director may file a subsequent request, and the Commission must consider that request in the manner described in this paragraph. In no case may a prisoner who is confined in a state correctional institution under a sentence of death be granted a medical hardship release from imprisonment pursuant to this provision. (R.C. 2967.24(C).)

As used in these provisions: (1) "prisoner" means a person in actual confinement in a state correctional institution, and (2) "state correctional institution" includes any institution or facility operated by DRC that is used for the custody, care, or treatment of criminal, delinquent, or psychologically or psychiatrically disturbed offenders (existing R.C. 2967.01, not in the bill).

Approval by Commission of request for medical hardship release; grant release by DRC and post-release control sanctions

As stated above, under the bill, if the Medical Hardship Prisoner Release Commission approves a request by DRC's Director for a medical hardship release for a prisoner, DRC may grant the prisoner a medical hardship release from imprisonment. If DRC grants a medical hardship release to a prisoner pursuant to this provision, DRC must release the prisoner from imprisonment as if the prisoner's stated prison term had expired, and the prisoner is subject to a period of post-release control of up to three years after the prisoner's release from imprisonment (see below). Before the prisoner is released from imprisonment, DRC must impose upon the prisoner one or more post-release control sanctions to apply during the period of post-release control. DRC must impose the sanction or sanctions in accordance with existing R.C. 2967.28(D)(1), and existing R.C. 2967.28(D)(2) and (F) apply to the prisoner after his or her release from imprisonment and during the period of post-release control (see below). When the prisoner has faithfully performed the conditions and obligations of his or her post-release control sanctions and has obeyed the rules and regulations adopted by DRC's Adult Parole Authority (the APA) that apply to the released prisoner or has the period of post-release control terminated by a court pursuant to existing R.C. 2929.141, existing R.C. 2967.16(B) applies regarding the prisoner (see below). (R.C. 2967.24(D), and conforming changes in R.C. 2929.13(F) and (G), 2929.14(D), 2967.13(E), 5120.16(A), and 5120.48(B).)

Existing R.C. 2967.01, not in the bill, specifies that, for purposes of R.C. Chapter 2967., "post-release control" means a period of supervision by the APA after a prisoner's release from imprisonment that includes one or more post-release control sanctions imposed under R.C. 2967.28, and "post-release control sanction" means a sanction authorized under existing R.C. 2929.16 to 2929.18 (i.e., a residential sanction such as a term in a community-based correctional facility, jail, halfway house, or alternative residential facility, etc.; a nonresidential sanction, such as a term of day reporting, house arrest, community service drug treatment, probation supervision, monitored time, drug and alcohol monitoring, or curfew or a requirement that the offender obtain a job, education, or training, etc.; or a financial sanction such as restitution to the victim, a fine, a state fine, or reimbursement of the costs of other sanctions, etc.) and that is imposed upon a prisoner upon the prisoner's release from a prison term.

Existing R.C. 2967.28(D)(1), not in the bill, provides that, whenever the APA's Parole Board imposes any post-release control sanction upon a prisoner, in addition to imposing the sanction, it also must include as a condition of the post-release control that the individual not leave Ohio without permission of the court or the individual's parole or probation officer and that the individual abide by the

law. A post-release control sanction takes effect upon the prisoner's release from imprisonment.

Existing R.C. 2967.28(D)(2), not in the bill, provides that, at any time after a prisoner is released from imprisonment and during the period of applicable post-release control, the APA may review the prisoner's behavior under the post-release control sanctions imposed. The APA may determine, based upon the review and in accordance with specified standards, that a more restrictive or a less restrictive sanction is appropriate and may impose a different sanction. Generally, the APA also may recommend that the Parole Board reduce the duration of the period of post-release control. If the APA recommends that the Board reduce the duration of control, it must review the prisoner's behavior and generally may reduce the duration of the period of control.

Existing R.C. 2967.28(F), not in the bill, provides that, if a post-release control sanction is imposed upon an offender, the offender upon release from imprisonment is under the APA's general jurisdiction and generally must be supervised by its field services section through its parole and field officers, as if the offender had been placed on parole. If the offender violates any post-release control sanction, the person or entity that operates or administers the sanction or the program or activity that comprises the sanction must report the violation directly to the APA or the APA officer who supervises the offender. The APA's officers may treat the offender as if he or she were on parole and in violation of the parole. The provision then specifies procedures that apply when an offender violates a post-release control sanction, and the sanctions that may be imposed for the violation.

DRC rules specifying eligibility for potential medical hardship release; prisoners to which provisions apply; independent of existing provisions for parole of a dying prisoner

The bill requires DRC, by rule adopted under the Administrative Procedure Act, to specify the medical hardships for which prisoners are eligible for potential release from imprisonment pursuant to the above-described provisions.

The bill specifies that, except as otherwise described in this paragraph, the above-described medical hardship release provisions apply to all prisoners confined in a state correctional institution who are eligible for potential release for a medical hardship under the rules DRC adopts under the provision described in the preceding paragraph, including prisoners serving a term of life imprisonment without parole and prisoners serving a mandatory prison term. It specifies that the provisions do not apply to any prisoner confined in an institution under a sentence of death, and that no medical hardship release from imprisonment may be granted under the provisions to any prisoner who is so confined.

Finally, the bill states that the above-described procedures for medical hardship release of prisoners are separate from, and independent of, the existing procedures for parole of dying prisoners under existing R.C. 2967.05, not in the bill (R.C. 2967.24(E) and (F).)

Correctional Faith-Based Initiatives Task Force

(Section 503.09)

The bill creates the temporary 15-member Correctional Faith-Based Initiatives Task Force consisting of two members of the House of Representatives, one appointed by the Speaker and one by the House Minority Leader; two members of the Senate, one appointed by the President and one by the Senate Minority Leader; two members appointed by the Governor; the Directors of Rehabilitation and Correction, Job and Family Services, Youth Services, Alcohol and Drug Addiction, and Mental Health or each director's designee; three members appointed by the Director of Rehabilitation and Correction who have experience or expertise in correction faith-based programs; and one member appointed by the executive assistant in charge of the Governor's Office of Faith-Based and Community Initiatives. The task force is co-chaired by the Director of Rehabilitation and Correction or the director's designee and the Speaker's appointee and will meet at least once a month. The task force will study seamless faith-based solutions to problems in the correctional system, examine existing faith-based programs in persons in Ohio and other states and consider the adoption of other states' programs in Ohio, and consider the development of model faith-based penal institutions or faith-based units within penal institutions and faith-based programs to reduce recidivism, improve prison management, and deal with juveniles who have been held over to or are in the adult penal system or who have parents who are incarcerated. Within one year of its creation, the task force will submit a written report and recommendations to the Governor, Speaker of the House, and President of the Senate, whereupon it will cease to exist.

RETIREMENT SYSTEMS

- Includes municipal public safety directors in the law enforcement division of the Public Employees Retirement System (PERS-LE).

- Eliminates a requirement that an annual payment of $1.2 million be made by the state to the Ohio Police and Fire Pension Fund.

Municipal public safety directors included in PERS-LE

(R.C. 145.01, 145.33; Section 566.03)

Background

The Public Employees Retirement System (PERS) has special provisions for members who are law enforcement officers. Under these provisions members with sufficient qualifying service may retire earlier than other PERS members and will receive a benefit calculated under a different benefit formula. These law enforcement officers include a range of state, county, and township officers who, if they have 25 years of law enforcement service, qualify for full retirement at age 48 or 52, depending on the nature of their service. Those whose primary duties are preservation of the peace, protection of life and property, and enforcement of the law qualify at the earlier age; all others qualify at the later age. The employer and employee contribution rates for law enforcement officers are higher than those for other PERS members.

The following chart shows the difference in contribution rates, retirement eligibility, and benefit calculations between regular PERS members and members of PERS-LE.

PERS Feature	**Regular PERS Members**	**PERS Law Enforcement Officers** whose duties are to preserve the peace, protect life and property, and enforce the laws	**PERS Law Enforcement Officers** whose primary duties are **other than** to preserve the peace, protect life and property, and enforce the laws (public safety officers)
Employee Contribution Rate	8.5 % of earnable salary	10.1% of earnable salary	9.0% of earnable salary
Employer Contribution Rate	State--13.31% of earnable salary Local--13.55% of earnable salary	16.7% of earnable salary	16.7% of earnable salary
Regular Retirement Eligibility	At any age with 30 or more years of service	Age 48 with 25 years of service	Age 52 with 25 years of service

PERS Feature	Regular PERS Members	PERS Law Enforcement Officers whose duties are to preserve the peace, protect life and property, and enforce the laws	PERS Law Enforcement Officers whose primary duties are **other than** to preserve the peace, protect life and property, and enforce the laws (public safety officers)
	Age 65 with 5 years of service	Age 62 with 15 years of service	Age 62 with 15 years of service
Early Retirement Eligibility	Age 60 with 5 or more years of service Age 55 with 25 or more years of service	Any age with 15 or more years of service, but payment of benefits is deferred until age 52	Any age with 15 or more years of service, but payment of benefits is deferred until age 52 Age 48 with 25 or more years of service
Regular Retirement Benefit Formulas	The greater of: (a) $86 x years of service; (b) 2.2% final average salary (FAS) x years of service through 30 years, plus 2.5% FAS x years over 30, not to exceed 100% of FAS[188]	2.5% FAS x years of service through 25 years of service, plus 2.1% FAS x years over 25, not to the exceed 90% of FAS	2.5% FAS x years of service through 25 years of service, plus 2.1% FAS x years over 25, not to the exceed 90% of FAS

[188] *With some exceptions, final average salary is the average of the three years of contributing service in which the member's earnable salary was highest (R.C. 145.01).*

PERS Feature	Regular PERS Members	PERS Law Enforcement Officers whose duties are to preserve the peace, protect life and property, and enforce the laws	PERS Law Enforcement Officers whose primary duties are **other than** to preserve the peace, protect life and property, and enforce the laws (public safety officers)
Early Retirement Benefit Formulas	Less than 30 years of service, or under age 65, benefit is reduced 3 to 25%, depending on age and years of service	Under age 62 with at least 15 but less than 25 years of service, 1.5% FAS x years of service	Under age 62 with at least 15 but less than 25 years of service, 1.5% FAS x years of service At least age 48 but less than age 52 with 25 years of service, benefit is reduced 7 to 25%, depending on age

Municipal public safety directors

The bill provides for PERS members employed as municipal public safety directors to be included in PERS-LE. The bill defines "municipal public safety director" as a person who is employed full-time as the public safety director of a municipal corporation with the duty of directing the activities of the municipal corporation's police department and fire department. The bill gives each municipal public safety director currently in that position the option, within 90 days after the effective date of the bill, to indicate on a form supplied by PERS whether the director wishes to remain in regular PERS or join PERS-LE. Municipal public safety directors whose service in that position begins after the bill becomes effective are automatically enrolled in PERS-LE.

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.[189] 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.

- 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.

[189] *Ohio Retirement Study Council. "Ohio Retirement Systems General Revenue Fund--Subsidies," p. 2 www.orsc.org, visited 02-07-05.*

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.[190]

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.

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[190] *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.*

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.[191] 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 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.[192] 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

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[191] *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.*

[192] *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.*

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.

- 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.[193]

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

[193] *See R.C. Chapter 3318.*

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.

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.[194])

Background

Under continuing law, the operational expenses of the Ohio School Facilities Commission are paid from the Ohio School Facilities Commission Fund.

[194] *See R.C. 183.02(F) and 183.26, not in the bill.*

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.

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.[195]

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.[196] The Commission's responsibilities will be overseen by the chief administrator of the designated agency following the transfer.

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[195] *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.*

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

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 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.

BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

- Requires an individual who applies for an audiologist license on or after January 1, 2006, to have a doctor of audiology degree or the equivalent as determined by the Board of Speech-Language Pathology and Audiology.

- Permits an audiologist initially licensed or certified in another state before January 1, 2008, to obtain an audiologist license in this state even though the audiologist has a master's degree in audiology rather than a doctor of audiology degree.

- Eliminates a provision of current law regarding the renewal of a speech-language pathologist or audiologist license via exemption.

Licensure of audiologists

(R.C. 4753.03, 4753.06, 4753.071, 4753.08, and 4753.09)

The bill makes several changes to the licensure law for audiologists. First, starting January 1, 2006, the bill requires individuals seeking licensure as an audiologist to have obtained a doctor of audiology degree instead of a master's degree in audiology. Second, the bill permits an audiologist initially licensed or certified in another state prior to January 1, 2008, to obtain an audiologist license in this state even if the individual has only a master's degree in audiology. Finally, the bill eliminates a provision of current law regarding the renewal of a speech-language pathologist or audiologist license via exemption.

Licensure requirements

Under current law, an individual is eligible for a license to practice audiology if the individual holds, at a minimum, a master's degree in audiology. As of January 1, 2006, the bill would require an individual seeking licensure as an audiologist to obtain a doctor of audiology degree before the licensure could be issued.[197]

The bill also requires any individual who has a master's degree in audiology but not a doctor of audiology degree who applies for licensure as an audiologist before January 1, 2006 to prove that the individual meets certain levels of professional experience determined by rule. In order for the applicant to begin to obtain professional experience, the applicant must first obtain sufficient supervised

[197] *The doctor of audiology degree must be from an audiology program accredited by an organization recognized by the U.S. Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the Board of Speech-Language Pathology and Audiology.*

clinical experience as determined by the Board OF speech-Language Pathology and Audiology and pass the licensure examination administered by the Board.[198]

Licensure for individuals previously licensed in another state

Under law retained by the bill, the Board is required to waive the examination, educational, and professional experience requirements for any applicant for an audiology license who presents proof of current certification or licensure in good standing in a state that has standards at least equal to the standards for licensure in effect in Ohio. This procedure is referred to as licensure by exemption. Under the bill, to obtain an Ohio license, an applicant from another state must present proof of both of the following:

(1) The applicant is currently certified or licensed in a state that has standards at least equal to the standards for licensure as an audiologist in Ohio that were in effect on December 31, 2005 and that certification or license is in good standing;

(2) The applicant obtained that certification or licensure not later than December 31, 2007.

Removal of license renewal provision

The bill removes a provision of current law setting the requirements for license renewal for individuals initially licensed by exemption. Under current law, a license may not be renewed six years after the initial date of licensure for a person who obtained the license by exemption unless that person presents proof of the following:

(1) Completion of a bachelor's degree with a major in audiology or speech-pathology with at least 18 hours of courses related to the major;

(2) Completion of at least 150 hours of appropriately supervised clinical experience in audiology or speech-pathology.

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[198] *The clinical experience has to have been obtained in an accredited college or university, a cooperating program of a college or university, or another program approved by the board.*

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, dealers in intangibles, insurance companies, affiliates of the foregoing, public utilities, 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 all business tangible personal property.

II. Corporation Franchise Tax

- Phases out the corporation franchise tax over five years for all corporations other than financial institutions and their majority-owned nonfinancial affiliates.

- Clarifies the corporation franchise tax treatment of LLCs and other associations treated as corporations under federal tax law.

- Provides for a final series of payments to the Recycling and Litter Prevention Fund during FY 2006 equal to $1.5 million from the General Revenue Fund, and specifies that future litter taxes paid by corporations be used to fund recycling and litter prevention but not through the Recycling and Litter Prevention Fund.

- Limits the availability of the corporation franchise and personal income tax credits for purchases of new manufacturing and machinery and equipment to machinery and equipment purchased no later than June 30, 2005, and installed no later than June 30, 2006.

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

- Permits school district voters to approve a property tax that is not subject to reduction under the "H.B. 920" tax reduction factor law.

- Requires school boards to limit the revenue growth from such a tax to a specified annual percentage of no more than 4%.

- Exempts such a tax from the H.B. 920 tax reduction factor "20-mill floor," thus permitting school districts at or near the floor to levy the tax without subjecting other current expense millage to reduction under the tax reduction factor law.

- 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 from real property taxation certain buildings and land used by a state university.

- Provides that after December 31, 2007, municipal corporations may not create incentive districts in which real property is exempt from taxation (the date for townships and counties remains June 30, 2007).

- 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.

- Phases out the taxation of all other business tangible personal property ("furniture and fixtures") over five years beginning in 2006.

- Reimburses school districts and other local taxing units for some of the revenue reductions caused by the bill's exemption and phase-out of business personal property taxation and for the accelerated phase-out of inventory taxation.

- Makes most patterns, jigs, dies, and drawings subject to property taxation.

- Makes compensating 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.

- Makes changes in the tax increment financing law to eliminate a specific benefit test, permit TIF exemptions to begin at any time, and make clarifying changes in provisions governing school board approval of TIF tax exemptions.

- 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.

- Specifies how new or destroyed property is to be accounted for in the equalization of real property assessments.

- 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.

- Reduces the rate at which interest accrues on personal property tax underpayments and overpayments.

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.

- Exempts up to $300 worth of cigarettes per month from the use tax if they are not held for resale.

VI. Kilowatt-hour and Natural Gas Consumption Taxes

- 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.

- Provides that municipal electric utilities may not retain for their general funds any part of the tax rate increase.

- Revises the percentages of kilowatt-hour tax revenues credited to the General Revenue Fund (GRF), Local Government Fund, Local Government Revenue Assistance Fund, School District Property Tax Replacement Fund, and Local Government Property Tax Replacement Fund.

- Eliminates the threshold amounts that trigger the transfer of kilowatt-hour and natural gas consumption tax revenues from the GRF to other funds.

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.

- Exempts from the cigarette tax, sales of cigarettes to federally recognized Indian tribes within Indian country; sales to the U.S. government, and sales in foreign commerce.

- Establishes policies regarding taxation of cigarette sales to nontribal members within Indian country.

- Specifies who may affix tax stamps and establishes rules governing the shipping of unstamped cigarettes through Ohio.

- Requires cigarette manufacturers and importers to maintain records regarding cigarette sales and purchases, and establishes record keeping

requirements that pertain to manufacturers, importers, wholesalers, and dealers.

- Allows for public disclosure of certain records pertaining to cigarette sales and purchases.

- Requires every manufacturer and importer shipping cigarettes into or within Ohio to file a monthly report with the Tax Commissioner.

- Requires that the Tax Commissioner seize and destroy cigarettes held for sale or distribution in violation of Ohio's cigarette laws.

- Authorizes the Tax Commissioner to inspect facilities and records belonging to cigarette manufacturers, importers, wholesalers, and retailers, and requires that any inspection not conducted during normal business hours be conducted pursuant to a search warrant.

- Requires that cigarette manufacturers and importers obtain a license before trafficking in cigarettes in Ohio.

- Specifies additional information to be included in applications for licenses to traffic in cigarettes in Ohio.

- Specifies from whom, and to whom, manufacturers, importers, wholesalers, and retailers may buy and sell cigarettes.

- Establishes policies and procedures governing internet and mail order sales of cigarettes.

- Exempts up to $300 worth of cigarettes per month from the cigarette excise use tax if they are not held for resale.

- Increases the value (wholesale) of untaxed cigarettes that a person may transport within Ohio without the prior consent of the Tax Commissioner, from $60 to $300.

- 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.

- Specifies that the capital investment projects for which a job retention credit may be granted includes project costs paid after December 31, 2006.

- Permits the Tax Credit Authority to continue entering into agreements for job retention tax credits after June 30, 2007, which, under current law, is the date on which the authority to enter into such agreements is scheduled to expire.

- 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.

- Authorizes county auditors to use moneys in real estate assessment funds for estate tax enforcement.

- Permits a school district board when proposing a school district income tax to specify that the tax applies only to an individual's earned income.

- Reauthorizes municipal corporations to levy income taxes to be shared with an overlapping school district.

- Extends the existing tax credit for loans made to the program fund administered by the Venture Capital Authority to dealers in intangibles and public utilities, and clarifies the amount of refundable and nonrefundable venture capital tax credits that may be claimed by taxpayers for each tax reporting period.

- Increases the penalty for late estate tax payments and filings, and reduces the rate of interest accruing on unpaid estate taxes and overpayments.

- Revises motor fuel use tax permit and filing requirements.

- 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.

- Requires that the Tax Commissioner administer a temporary tax amnesty program from November 1, 2005, to December 15, 2005, under which taxpayers who voluntarily pay outstanding state taxes, tangible personal property taxes, county and transit authority sales taxes, and school district income taxes are not required to pay penalties associated with those outstanding taxes, are excused from having to pay one-half of the interest accruing on the taxes, and are immune from criminal and civil action in connection with the taxes.

I. Commercial Activity Tax

New business privilege tax

(R.C. 140.08, 5703.052, 5703.053, 5703.70, 5739.01(H); 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 tax is expressly made part of the "price" for purposes of the sales and use taxes, with the effect being that, if a taxpayer under the new tax makes sales subject to the sales and use tax, the price on which the sales or use tax is based is computed without any deduction for the commercial activity tax paid by the taxpayer-seller.

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(D))

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 "excluded persons." Nonprofit organizations are subject to the tax, but only if they 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.[199]

Persons not subject to the tax

(R.C. 5751.01(E))

To be an "excluded person," and therefore exempted altogether from the commercial activity tax, a legal person must either have annual taxable gross receipts under $40,000, or be a member of one of the following classes of legal persons:

- Banks and other financial institutions
- Bank holding companies
- Financial holding companies
- Savings and loan holding companies
- Financial services companies subject to state or federal supervision
- An affiliate of any of the foregoing if the affiliate is majority-owned or controlled by the foregoing (directly, or indirectly through other persons), even if the affiliate is not a financial business
- Insurance companies subject to and paying the insurance company tax

[199] *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.*

- Affiliates of such insurance companies if the affiliate is majority-owned or controlled by the insurance company (directly, or indirectly through other persons), even if the affiliate is not an insurance company

- Any person formed with the purpose of facilitating a securitization[200] or similar transaction for or by any of the foregoing (including the affiliates)

- Public utilities subject to and paying the public utility excise tax (but see below for combined companies)

- Dealers in intangibles subject to and paying the dealers in intangibles tax

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.

Except for public utilities, dealers in intangibles, insurance companies, and persons with $40,000 or less in taxable gross receipts, all excluded persons that are C corporations remain subject to the corporation franchise tax levied under R.C. Chapter 5733. on the basis of net income or net worth.

Receipts of combined companies (i.e., companies that are both electric companies and either natural gas or heating companies) are excluded from the commercial activity tax in proportion to the company's taxable gross receipts that are directly attributable to its natural gas or heating company (i.e., nonelectric) activities.

Computation of tax

(R.C. 5751.01, 5751.03, 5751.031, 5751.032, 5751.033, and 5751.034; Sections 557.09 and 557.13)

Initial rate. The tax is levied in two parts: on the first $1 million in taxable gross receipts, the tax is $100, which is due May 15, 2006, for the first time, then paid with the fourth-quarter or annual return thereafter; 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.

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[200] *Generally, securitization is the pooling and repackaging of loans into securities to be offered for sale to investors.*

Rate adjustments. Three tax rate adjustments are scheduled in the first five years of the new tax, as follows:

2007: 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.

2008: If FY 2008 revenue exceeds projections ($859 million), the excess revenue is diverted to the Budget Stabilization Fund (BSF) and, if revenue overruns by more than 5%, to a new fund used to reduce income tax rates. If revenue overruns by more than 10%, the rate is adjusted downward to produce the projected amount, and an amount equal to 5% of the projected revenue is credited to the new income tax reduction account created in the bill, with the remainder credited to the BSF.

2010: The same kind of rate adjustment and revenue diversion applies in 2010, but the projected revenue for FY 2010 is $1.548 billion instead of $859 million.

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 only $100).

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.) The return for that semiannual period must be filed not later than February 15, 2006.

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 5751.032)

The tax applies to taxable gross receipts, which is the portion of a taxpayer's total gross receipts sitused to Ohio under the bill's situsing provisions. Total gross receipts is defined broadly to include the total amount realized from sales by a person, without deduction for the cost of goods sold or other expenses, in transactions that contribute to the production of that person's 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 using the same accounting method a taxpayer uses 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(F)(3)(c).)

Excluded amounts. The bill specifically excludes the following amounts from the calculation of gross receipts:

- Interest income, except interest on credit sales
- Dividend income, distributions received, and distribution or proportionate shares from a pass-through entity

- 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

- Sales and use taxes collected by a vendor (including out of state vendors)

- Federal and state excise taxes on cigarettes and other tobacco products paid by any person (exclusion applies only to the various classes of dealers, distributors, manufacturers, or sellers of cigarettes or tobacco products)

- Federal and state excise taxes on liquor and other alcoholic beverages paid by any person (exclusion applies only to agency stores and the various classes of permit holders; exclusion for agency stores does not apply to agency compensation)

- Federal and state excise taxes on gasoline, diesel, or other motor vehicle fuel (exclusion applies only to the various classes of motor fuel dealers)

- Pari-mutuel wagers on horse racing

- Ohio lottery ticket receipts received by a lottery ticket sales agent in excess of commission, bonus, or reimbursement

- Receipts from selling hunting, fishing, and other ODNR-issued licenses by authorized agents in excess of their $1 fee

- Receipts received by a motor vehicle dealer from sales to another motor vehicle dealer for the purpose of resale by the purchasing dealer

- Amounts received relating to transactions between an electric company and a regional transmission organization that are mandated by the Federal Energy Regulatory Commission, even if those amounts are received in the ordinary course of the taxpayer's trade or business and are a form of payment for a transaction specified under "***Taxable gross receipts***," above.

- Receipts from selling accounts receivable to the extent the receivable was included in the seller's taxable gross receipts.

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.

A real estate broker's fees are included in taxable gross receipts only to the extent the fees are retained by the broker and not paid to another broker or an associated salesperson.

Situsing receipts to Ohio. Only gross receipts situsing to Ohio are taxable. The bill prescribes specific situsing rules for various kinds of gross receipts. The following kinds of receipts are situsing 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; the place where tangible personal property is ultimately received after all transportation has been completed will be considered the place where the purchaser receives the property even when the purchaser accepts property in Ohio and then transports the property by common carrier or by other means of transportation to a location outside Ohio; tangible personal property that is delivered into a foreign trade zone located in Ohio to a person in that zone, solely for purposes of further delivery out of state and without regard to the passage of title and to repackaging for further shipping purposes, is situsing to the location at which the person or person's affiliated customer completes delivery of the property to a location outside Ohio (in uncodified law, Section 557.13)

- 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 situsing 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 situsing as provided above, are situsing to Ohio in the proportion to the purchaser's benefit in Ohio as compared to the purchaser's benefit everywhere; where the benefit ultimately is received is "paramount" in determining this proportion

- 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.

Uncodified law in the bill (Section 557.13) provides that it is the intent of the General Assembly that the situsing provision be applied in a manner that is consistent with and identical to the situsing provisions that apply to the corporation franchise tax, and must be interpreted and applied by the Tax Commissioner in a manner that is consistent with the body of case law addressing the situsing of sales for purposes of the sales factor as determined under the corporation franchise tax law, and in a manner that is consistent with the Tax Commissioner's prior treatment of the sales factor situsing law for taxpayers under the corporation franchise tax law.

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%

Division of CAT revenue			
Fiscal Year	**GRF**	**SDRF**	**LGRF**
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, in addition to GRF money, to provide the reimbursement to school districts and other local taxing units for the phase-out of taxes on business personal property, as explained under the heading "***Phase-out of tax on business personal property***."

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:

- 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)

The credits would apply against the new commercial activity tax for tax reporting periods beginning on or after July 1, 2008. The credits can no longer be

claimed against the corporation franchise tax and personal income after that point; however, to the extent the credits have not been fully utilized with respect to those taxes, the credits can be carried forward and used against the commercial activity tax.

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. 5751.04)

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. 5751.04(A)).

A one-time $15 registration fee is payable if the person registers electronically; if registration is not done electronically, the fee is $20. The fee is credited toward the first tax payment due. If a person registers after the due date, an additional fee may be charged of up to $100 per month, up to $1,000, which the Tax Commissioner may abate; the additional fee is not credited against the tax due. 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.

Registration 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.

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) 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. Gross receipts related to the sale or transmission of electricity through the use of an intermediary regional transmission organization approved by the Federal Energy Regulatory Commission must be excluded from taxable gross receipts even if the receipts are from and to the same member of the group.

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 two tax years so long as at least two members satisfy the ownership and control criteria. The election rolls over to the following two tax years 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, as part of a combined taxpayer group (see below), or as a member of a different consolidated group that is eligible to file and pay tax on a consolidated basis. 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 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 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 year

(R.C. 5751.04 and 5751.05(A))

The new commercial activity tax is an annual tax levied on the basis of a "tax year" (which coincides with a calendar year), but taxpayers generating annual taxable gross receipts of $1 million or more are required to pay quarterly installments of the tax on the basis of quarterly taxable gross receipts. Taxpayers must report and pay the tax not later than the fifteenth day of the second month following the end of each quarterly period, which follows the calendar quarters: January through March, April through June, July through September, and October through December.

All taxpayers must pay a minimum $100 tax by February 15 following the end of the tax year and file an annual report for the tax year. Taxpayers whose taxable gross receipts exceed $250,000 for a quarter also must report and pay the tax for that quarter on the basis of the 0.26% tax rate on receipts above $250,000 per quarter. (In the first five years of the tax phase-in, the rate is a fraction of 0.26%--the "applicable tax rate.") If, when the annual report is due after the end of the tax year, a taxpayer does not have taxable gross receipts above $1 million but had taxable receipts above $250,000 for any of the quarters in the year (and paid tax on that basis), the tax paid in excess of the $100 minimum is refunded or, at the option of the taxpayer, applied to the next year's liability.

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 not later than the fifteenth day of the second month following 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. 5751.04, 5751.06, 5751.07, 5751.08, 5751.081, 5751.09, 5751.10, 5751.11, 5751.12, and 5751.99)

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. The debt must be "final," meaning that any time for appealing the debt has expired without an appeal being made.

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 if the Tax Commissioner has information indicating a tax underpayment. The sampling must be conducted for a representative period of time; the Commissioner must make a good faith effort to agree with the taxpayer on selecting the representative sample, and the sampling method must be one that has been prescribed by administrative rule.

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. The bill also requires the Tax Commissioner to make an electronic list available to the public identifying registered taxpayers, as well as persons whose registration has been revoked or cancelled within the preceding four years. Information is confidential taxpayer information, except for the listing of registered taxpayers.

Violations; criminal penalties. If any person fails to pay the tax, file required returns, or pay any penalty due, the Attorney General may initiate a *quo warranto* action against the person to revoke the person's privilege to conduct business in Ohio. Criminal penalties are imposed for filing a fraudulent refund claim (as described above under "***Refunds***"), and for any other violation, which is punishable by a fine of up to $500 and imprisonment for up to 30 days.

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 one arising under provisions in the Ohio Constitution governing the General Assembly's power to tax incomes and to levy excise and franchise taxes;[201] the manner in which the General Assembly may use moneys derived from motor vehicle license and fuel taxes;[202] or the General Assembly's power to tax food for human consumption.[203] The appeal must be made within 30 days after issuance of the final determination.

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, and the affiliates of financial institutions, insurance companies, and other corporations that are not subject to the commercial activity tax because they are "excluded persons," 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 corporations other than financial institutions and "excluded persons" 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)[204] 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

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[201] *Section 3, Article XII Ohio Constitution.*

[202] *Section 5a, Article XII, Ohio Constitution.*

[203] *Section 13, Article XII, Ohio Constitution.*

[204] *The $1,000 minimum tax applies to any corporation having at least 300 employees or worldwide gross receipts of $5 million or more.*

partner, the refundable or partnership credit is subtracted from the reduced tax.[205] 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.

Recycling and Litter Prevention Fund

(R.C. 5733.065 and 5733.066; Section 557.10)

Continuing law levies a tax on corporations for the privilege of manufacturing or selling "litter stream products" in this state. "Litter stream products" include such things as glass, metal, plastic, and container crowns. Under current law, these taxes are credited to the Recycling and Litter Prevention Fund and are used to fund recycling and litter prevention.

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[205] *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.*

The bill provides for a final series of payments to the Recycling and Litter Prevention Fund during FY 2006 equal to $1.5 million from the General Revenue Fund. The bill specifies, further, that future litter taxes paid by corporations be used to fund recycling and litter prevention but not through the Recycling and Litter Prevention Fund.

Tax credit for purchases of new manufacturing machinery and equipment not available for machinery and equipment purchased after June 30, 2005

(R.C. 5733.33 and 5747.31 (not in the bill))

Current law authorizes a tax credit against the corporation franchise and personal income taxes for new manufacturing machinery and equipment purchased and used in Ohio by corporations and other business organizations. The credit currently applies to purchases made on or before December 31, 2015. To qualify for the credit, a taxpayer must install the machinery and equipment in Ohio no later than December 31, 2016. The credit equals a percentage of a taxpayer's incremental increase in machinery and equipment investment in a county over its existing stock of machinery and equipment during a baseline period. The percentage is 7.5%, except when the machinery or equipment is purchased for use in certain economically depressed areas, in which case the percentage is 13.5%. The credit is claimed over a seven-year period. The credit is nonrefundable, but may be carried forward for three tax years, in the case of the corporation franchise tax, or three taxable years, in the case of the personal income tax.

The bill limits the availability of the credits to machinery and equipment purchased no later than June 30, 2005, and installed no later than June 30, 2006.

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:

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

Taxable income	Tax
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
More than $80,000 but not more than $100,000	$2,700.00 plus 4.695% of the amount in excess of $80,000

Taxable income	Tax
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 income[206] greater than $100,000 and is not available to single filers having federal adjusted gross income in excess of $50,000.

[206] *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 nonrefundable[207] 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:

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[207] *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"[208] 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.

The bill also narrows the definition of who is a qualifying beneficiary of a charitable lead trust, from current, future, and contingent beneficiaries to only current and future beneficiaries, not contingent beneficiaries. The narrowing of the beneficiary definition narrows the extent to which charitable lead trusts are subject to the income tax. As noted, a trust is taxable to the extent it "resides" in Ohio. A trust resides in Ohio if, among other things, assets were transferred to it by an Ohio-domiciled person, the trust is irrevocable, and at least one qualifying beneficiary is domiciled in Ohio.

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[208] *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.*

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:

(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

Voter approved property tax not subject to tax reduction factor

(R.C. 319.301, 323.17, 5705.02, 5705.214, 5705.219, and 5705.29)

The bill permits city, local, and exempted village school boards to levy a property tax outside the statutory 10-mill limitation on unvoted property tax rates but within the constitutional 1% limitation, which prohibits unvoted property taxes

in excess of 1% of the value of the property. The tax would have to be approved by voters. As a tax within the 1% limitation, the tax would be exempt from reduction under the H.B. 920 law preventing revenue from a levy from increasing when real estate values increase. Under the bill, the school board proposing the tax must limit the revenue growth to a fixed annual percentage of up to 4%. The resolution proposing the tax and any notices announcing the election on the tax would have to specify the percentage by which revenue from real property could grow each year.

Revenue from the tax would have to be reduced in any year that real property values in either class increase by more than the growth percentage fixed by the school board. (Increases in the total value of a class do not include property newly added to the tax list.) The reduction would be made in a manner similar to the current H.B. 920 law, except that revenue would be reduced only to the level at which the revenue growth equals the school board's percentage limit. Thus, if the limit on growth is 3%, revenue raised from each class of real property could increase by only 3%; if property values in either class increase by more than 3% in a year (excluding increases attributable to new property), then a H.B. 920 tax reduction factor would have to be applied so that the revenue produced from property in that class does not exceed the preceding year's revenue by more than 3%.

Rate of tax

The total tax rate levied under the new authority could not be greater than 8 mills. This would prevent the total rate that would be exempted from the tax reduction factor, 18 mills, from exceeding 1% of true value.

Purpose of tax; submission to voters

The new tax could be levied for current expenses, for specific permanent improvements or a class of permanent improvements, or for "general ongoing" permanent improvements. The tax could be levied for a specified number of years up to seven years. The procedure for submitting the tax to voters would be substantially identical to the procedure for submitting other property taxes to voters. The ballot proposition would have to state the term of the levy and the rate of the tax. The ballot also would have to state that revenue from real property would not increase by more than the percentage fixed by the school board. The tax would be subject to existing limits on the number of times property taxes may be proposed to voters in a single year (three times).

Renewal or replacement taxes; anticipation notes

The tax could be renewed upon its expiration. The tax also could be used to replace one or more existing property taxes. Tax anticipation notes could be issued by the school board, subject to existing limitations on the principal amount of the notes (50% of the first year's revenue for current expense levies and 50% of the first five years' revenue for permanent improvement levies or for general ongoing permanent improvement levies).

Tax is exempted from H.B. 920 tax reduction factor "floor"

Revenue reductions made under the H.B. 920 tax reduction factor law are prevented from reducing property taxes for current expenses below 2% of a school district's taxable property valuation (i.e., 20 effective mills). This so-called "20-mill floor" guarantees that a school district that levies 20 mills for operating expenses raises at least 20 mills in taxes for operating expenses, even if increases in the value of property otherwise would warrant H.B. 920 tax reductions great enough to cause the level of taxation to fall below 20 mills.[209]

Once a school district's revenue has been reduced to the 20-mill floor, the school district's revenue will "grow" in the sense that the district will receive 2% of its real property valuation, regardless of how rapidly that valuation appreciates from year to year. This is in contrast to a school district receiving revenue above the 20-mill floor--such a district's revenue growth will not respond to inflationary appreciation in real property values (i.e., appreciation other than from new property development or reclassification of property). One of the implications of the 20-mill floor is that if a school district at the 20-mill floor levies an additional tax for current expenses, the additional tax revenue exposes some of the district's previously authorized tax revenue to reduction under the H.B. 920 law. Consequently, the district's revenue will not grow in response to appreciation in property values as it did before, but the district would receive more revenue from the additional tax.

Under the bill, revenue from the new tax would not be counted toward the 20-mill floor. Thus, if a school district that has its revenue reduced to the 20-mill floor levies such a tax, its existing current expense revenue would not be exposed to further reduction under the H.B. 920 law, and therefore would continue to increase with increases in real property values.

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[209] *If the rate of tax levied for current expenses is less than 20 mills, then the floor is equal to that lower rate.*

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 2005, 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 ¼ 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. By the 15th day of the month

following the month in which the fee was received, the county auditor must forward the balance of the fee to the Treasurer of State for deposit in the state treasury to the credit of the General Revenue Fund (GRF). The county auditor must include with each balance forwarded to the Treasurer of State a report in such form as the Tax Commissioner prescribes. Upon receipt of the report, the Treasurer must date stamp the report and forward it to the Commissioner. If the county auditor fails to forward the balance by that time, the Tax Commissioner may withhold Local Government Fund money allocated to the county until the balance is forwarded. The Treasurer of State may require that the county auditor forward electronically any balances due and the reports.

The bill provides that the fee for transferring real property or used manufactured or mobile homes and the real property transfer tax levied on deeds by a county cannot ever exceed 50¢ for each $100 or fraction of $100 of the value of real property transferred.

Real property tax exemption for certain buildings and lands used by a state university

(R.C. 5709.07; Section 557.14)

Continuing law provides that public colleges and academies and all buildings connected with them, and all lands connected with public institutions of learning, not used with a view to profit, are exempt from real property taxation, but leasehold estates or real property held under the authority of a college or university of learning do not qualify for the exemption.

The bill creates a real property tax exemption for buildings and lands that satisfy all of the following:

(1) The buildings are used for housing or housing-related facilities (including parking facilities) for full-time students, faculty, or employees of a state university, or for other purposes related to the state university's educational purpose, and the lands are used for common space, walkways, and green spaces for students, faculty, or employees of a state university;

(2) The buildings and land are supervised or otherwise under the control, directly or indirectly, of a 501(c)(3) charitable organization (corporations, community chests, funds, or foundations, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals) with which the state university has entered into a joint agreement that entitles its students, faculty, or employees to use the lands or buildings;

(3) The state university has agreed under the terms of the joint agreement to make payments to the charitable organization in amounts sufficient to maintain agreed-upon debt service coverage ratios on bonds related to the lands or buildings.

The bill provides that the leasing of housing in such buildings to full-time students of the state university are not considered to be an activity with a view to profit; thus, they are exempt from real property taxation.

The bill defines a "state university" as a public institution of higher education that is a body politic and corporate, with each of the following recognized as a state university: University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University.

The bill provides that this new exemption applies to all applications pending, as of July 1, 2005, for exemption under the existing provision, and to all future applications for exemption under the new provision filed on or after that date. Notwithstanding the possibility that buildings and lands may qualify for a real property tax exemption under another section of the Revised Code specifically applicable to such buildings and lands, the above-described buildings and lands are nonetheless entitled to the new exemption.

Incentive districts

(R.C. 5709.40, 5709.73, and 5709.78)

Under existing law, the legislative authority of a municipal corporation, by ordinance, and a board of township trustees or board of county commissioners, by resolution, may create incentive districts and declare improvements to real property within a district to be a public purpose and exempt from taxation. An "incentive district" is an area not more than 300 acres with certain distress characteristics, including low-income residents or high unemployment. The ordinance or resolution must specify the life of the district and the percentage of improvements to be exempted, and must designate the public infrastructure improvements to be made that benefit or serve parcels in the district. Ordinances and resolutions creating incentive districts may not be adopted after June 30, 2007.

The bill provides that such ordinances and resolutions may not be adopted by a municipal corporation after December 31, 2007. This date change in no way applies to ordinances or resolutions that declare improvements to real property in a municipality, township, or county to be a public purpose and exempt the

improvements from taxation (the classic tax increment financing law). The date remains June 30, 2007, for townships and counties, possibly due to an engrossing error that should be corrected.

Phase-out of tax on business personal property

(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.

Phase-out of furniture and fixture property

The bill phases out the taxation of all other business tangible personal property ("furniture and fixtures") in equal, five-percentage-point increments, over five years beginning in 2006. All furniture and fixtures would become exempted from taxation in 2010 and would remain so thereafter. The current assessment rate is 25%.

Effect on certain taxpayers

Although the bill's phase-out of business tangible personal property taxation apparently is intended to apply to any such property regardless of ownership, the bill states that the phase-out and exemption "apply to the property of [certain "excluded persons"]." (See R.C. 5711.22(I).) An excluded person is a legal entity that is exempted from the commercial activity tax, including affiliates of financial institutions, certain financial holding companies and their nonfinancial affiliates, financial services companies, affiliates of insurance companies, affiliates of dealers in intangibles, entities created to pool and repackage loans for marketing to investors. There is the possibility this could be construed to mean that the phase-out and exemption for personal property applies only to such excluded persons under the *inclusio unius est exclusio alterius* canon of statutory construction, whereby to name on class of subjects is to exclude all other unnamed subjects.

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 and phase-out of machinery and equipment and furniture and fixtures, 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 and 5727.01(E)(3))

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.

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.

Tax increment financing

(R.C. 5709.40, 5709.41, 5709.73, 5709.77, and 5709.78; Section 612.12)

The bill permits real property tax exemptions granted under the tax increment financing (TIF) law to begin at any time specified in the TIF resolution or ordinance. Under current law, the exemption begins when the increased value from the parcel first appears on the tax list (whether through development or an increase in assessed value).

The bill eliminates a test to determine whether infrastructure financed with TIF payments in lieu of taxes directly benefits a parcel receives the TIF tax exemption. Under current law, infrastructure directly benefits an exempted parcel only if the parcel "places direct, additional demand" on the infrastructure. The bill eliminates this test, but continues to require that a parcel be directly benefited by the infrastructure financed with payments in lieu of taxes derived from that parcel. (The bill's changes in this regard pertain to TIF tax exemptions granted on a parcel-by-parcel basis, not the area-wide incentive districts.)

The bill makes other modifications to the provisions governing when school districts must approve of a TIF exemption, but do not appear to change the substance of those provisions. The changes expressly acknowledge that any compensation to be paid to the school district be negotiated to be mutually agreeable, and make other technical changes.

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.

Equalization of real property assessments

(R.C. 5715.24)

Under continuing law, all real property in a county is reappraised every six years for purposes of establishing its taxable value. The Tax Commissioner is required to determine whether the real property in counties that have completed a sexennial reappraisal in the current year has been properly assessed. If, upon reviewing a sexennial reappraisal, the Commissioner determines that the property is not properly listed for taxation, the Commissioner is required to increase or decrease the aggregate value of the real property, or any class of real property, by a percentage or amount that will cause it to be correctly assessed at its taxable value.

The bill provides that in determining whether a class of real property has been assessed at its correct taxable value and in determining any percent or amount by which the aggregate value of the class from a prior year should be increased or decreased to be correctly assessed, the value of new construction is not to be regarded as an increase in aggregate value from the prior year. Likewise, the value of property destroyed or demolished since the prior year is to be deducted from the aggregate value of that class for the prior year.

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 amount determined for local taxing units, which is phased-out per a schedule under existing law.	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).
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 treasurer to accept payment from the state for estimated taxes at the time that the real property is acquired. If the state has paid in full in the year in which the property is acquired that proportion of the estimated taxes that the Tax Commissioner determines are not subject to remission by the county auditor for such year under existing law that requires the county auditor to remit taxes that have not yet been assessed in the year the property is acquired, the bill requires that the estimated taxes paid are to be considered the tax liability on the exempted property for that year.

Interest rate reduced on personal property tax underpayments and overpayments

(R.C. 5703.47 and 5719.041)

Tangible personal property located and used in business in Ohio is subject to taxation by local taxing units. If the taxes are not paid on time, a 10% penalty is charged and interest accrues on the unpaid balance at the "rate per annum." If taxes are overpaid, interest accrues at the same rate on the overpayment until a refund is issued. Most of the interest on late payments is credited to the funds of local taxing units; interest on refunded overpayments is payable from the funds of local taxing units.

Continuing law provides that on October 15th of each year, the Tax Commissioner must determine the federal short-term rate, rounded to the nearest whole number per cent, plus 3%. That rate is the "rate per annum." The bill changes this rate for the personal property tax law. For purposes of that tax, the "federal short-term rate" is the federal short-term rate rounded to the nearest whole number per cent; thus, the bill reduces the interest rate that accrues on late personal property tax payments and on tax overpayments, by applying the "federal short-term rate," rather than the rate per annum.

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.

Use tax exemption for cigarettes

(R.C. 5741.02(C)(9); Section 612.27)

The bill exempts cigarettes a person uses, stores, or consumes in Ohio from the use tax, up to $300 worth per month (wholesale value). The exemption does not apply if the cigarettes are used or stored for resale. In effect, the exemption permits a person to purchase up to $300 worth of cigarettes outside Ohio and bring them back into Ohio without incurring any legal liability for use tax. No use tax report needs to be filed for such cigarettes. Under current law, cigarettes, like other goods, brought into the state are technically subject to the use tax. (The bill has a similar exemption from the cigarette excise use tax, explained below in the Tobacco and Alcohol Taxes section.)

The exemption takes effect July 1, 2005.

VI. The Kilowatt-hour and Natural Gas Consumption Taxes

The kWh 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.

Municipal electric utilities may not retain the tax increase

(R.C. 5727.81(C)(2) and 5727.82(A)(3))

Continuing law provides that a municipal electric utility may retain in its general fund that portion of the kilowatt-hour tax on the kilowatts distributed to end users located within its boundaries, but must pay to the Tax Commissioner the tax due on kilowatt hours distributed to end users located outside the municipality. The bill provides that, in this situation, a municipal electric utility cannot retain for its general fund any part of the tax rate **increase** imposed by the bill. Instead, the amount of the increase must be paid directly to the Tax Commissioner or Treasurer of State.

Changes to distribution of the kWh tax

(R.C. 5727.84(B)(1) to (5))

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%

Elimination of the trigger for reducing revenues credited to GRF

(R.C. 5727.84(B)(5) and (6))

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 (in the chart above) the amount each one would have received if the tax did raise that amount in the fiscal year.

The bill removes this trigger so that, regardless of the amount of revenues raised by the kWh tax, no reduction in the amount credited to the GRF occurs, and the other funds are not credited for any shortfall.

The natural gas consumption tax

Elimination of the threshold for transferring GRF moneys to other funds

(R.C. 5727.84(C)(3))

Under current law, if, beginning in fiscal year 2007, the natural gas consumption tax (mcf tax) revenues are less than $90 million, an amount equal to the difference between the amount collected and $90 million must be transferred from the GRF to the School District Property Tax Replacement Fund and the Local Government Property Tax Replacement Fund in the same percentages as if that amount had been collected as mcf taxes. The Tax Commissioner is required to certify to the Director of Budget and Management the amounts to be transferred.

The bill eliminates this threshold so that no revenues are transferred from GRF to either of the other funds, regardless of the amount of mcf taxes collected.

VII. Tobacco and Alcohol Taxes

Sale, distribution, and taxation of cigarettes

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 dealers to pay the "net additional tax" resulting from the bill's increase in the cigarette tax, less the dealer discount, on stamped cigarettes and unaffixed Ohio tax stamps in their possession on July 1, 2005, the date on which the tax increase takes effect. For retail dealers, 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 retail dealer has on hand as of the beginning of business on July 1, 2005.

In addition to filing the cigarette tax return, each wholesale dealer and retail dealer must file a return on forms prescribed by the Tax Commissioner showing net additional tax due and any other information the Commissioner needs to administer the tax. On or before September 30, 2005, each wholesale dealer and retail dealer must deliver the return to the Treasurer of State, together with payment of the net additional tax due. A wholesale or retail dealer may claim a credit of 5% of the net additional tax if the dealer delivers the return on or before August 15, 2005, together with the net additional tax minus the dealer credit. The Treasurer of State must stamp or otherwise mark on the return the date on which the return and payment were received, and show on the return by stamp or otherwise the amount of the tax payment remitted with the return. Upon receipt, the Treasurer of State must immediately transmit all returns filed to the Tax Commissioner.

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.

Persons subject to Ohio laws governing sale, distribution, and taxation of cigarettes

(R.C. 5743.01)

The bill exempts certain persons from the laws governing the sale, distribution, and taxation of cigarettes in Ohio. Specifically, the bill provides that the "wholesale dealers" to which such laws apply do not include any cigarette manufacturer, export warehouse proprietor, or cigarette importer possessing a valid federal license to conduct such business if the person sells cigarettes in Ohio only to:

(1) Wholesale dealers holding a valid Ohio license to traffic in cigarettes; or

(2) An export warehouse proprietor or another manufacturer.

The bill specifies that the class of retail dealers subject to Ohio's cigarette laws includes every person, other than a wholesale dealer, engaged in the business of selling cigarettes in this state, regardless of whether the person is located in Ohio or elsewhere. Accordingly, the bill provides, further, that, for purposes of Ohio's cigarette laws, a "sale" of cigarettes includes transactions in interstate or foreign commerce.

Exempt sales

(R.C. 5743.01, 5743.021, and 5743.03)

The bill specifies that the following types of sales are exempt from the cigarette tax:

(1) Cigarettes sold to or received by members of a federally recognized Indian tribe on the tribe's Indian country;

(2) Cigarettes sold to the United States government or to any instrumentality of the United States government;

(3) Cigarettes sold into foreign commerce or for use or consumption on ships regularly engaged in foreign commerce or interstate shipping.

Cigarettes intended for sale or distribution to these entities are not required to bear a tax stamp. However, these cigarettes must bear a tax-exempt stamp, which the Tax Commissioner is to provide free of charge.

Sales to nontribal members within Indian country

(R.C. 5743.021)

The bill provides that the rate of tax on cigarettes sold to or received by nontribal members within Indian country equals the sum of the tax rates levied under continuing law by the state, counties, and convention facility authorities, less any tribal tax rate. The bill provides that the resulting tax rate cannot be less than zero, however.

Cigarettes sold or distributed to nontribal members must bear a tax stamp; however, the Tax Commissioner is permitted to periodically rebate to Indian tribal entities that comply with Ohio's cigarette laws an amount equal to the lesser of the

tribal tax imposed on the sale or receipt of cigarettes or the face value of the tax stamps.

The bill directs the Tax Commissioner to prescribe rules governing the percentages of cigarette packages offered for sale by an Indian tribal entity that require tax stamps and tax-exempt stamps. The percentages prescribed by the Commissioner are to be based on the anticipated percentages of sales of cigarettes within the Indian country that are to be made to persons other than tribal members.

Tax stamps

(R.C. 5743.031)

The bill specifies that a wholesale dealer may affix tax stamps only to packages of cigarettes that the dealer received directly from a manufacturer or importer[210] of cigarettes that possesses a valid Ohio license to traffic in cigarettes. However, a wholesale dealer may affix tax stamps to packages of cigarettes that the dealer received directly from another licensed wholesale dealer if the Tax Commissioner has authorized the sale of the cigarettes between those wholesale dealers and the wholesale dealer that sold the cigarettes received them from a manufacturer or importer that possesses a valid Ohio license.

The bill provides that only a wholesale dealer that possesses a valid Ohio license may purchase or obtain tax stamps or tax-exempt stamps. A wholesale dealer may not sell or provide tax stamps to any other wholesale dealer or other person.

Under the bill, any person shipping unstamped cigarettes into Ohio to a person other than a licensed wholesale dealer must, before shipping the cigarettes, file notice of the shipment with the Tax Commissioner. The person transporting the unstamped cigarettes into or within Ohio must carry in the vehicle used to transport the cigarettes invoices or other documentation of the shipment, which contains information regarding the cigarettes, their seller, and their purchaser. However, this requirement does not apply to any common or contract carrier transporting cigarettes through Ohio to another location under a proper bill of lading or freight bill that states the quantity, source, and destination of the cigarettes.

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[210] The bill defines an "importer" as any person that directly or indirectly imports finished cigarettes into the United States (R.C. 5743.01(P)).

Records pertaining to cigarette sales and purchases

(R.C. 5743.071)

Under continuing law, every wholesale dealer and retail dealer must maintain complete and accurate records of purchases and sales of cigarettes, and must procure and retain all invoices, bills of lading, and other documents relating to purchases and sales of cigarettes. The bill extends these record-keeping duties to manufacturers and importers. The bill provides, further, that the invoices or documents must be maintained for each place of business and must show the name and address of the other party to the sale or purchase, and must show the quantity, by brand style, of the cigarettes sold or purchased.

With the Tax Commissioner's consent, a person with multiple places of business may keep centralized records. However, that person must transmit duplicates of the invoices or documents to each place of business within 72 hours after the Commissioner requests access to the records.

The bill specifies that reports submitted by license holders are to be made available to the public in accordance with Ohio's existing public records law (R.C. 149.43). However, information regarding quantities of cigarettes sold by brand style cannot be made available to anyone other than the Tax Commissioner, the United States Secretary of the Treasury, or law enforcement officials.

Manufacturer and importer reports

(R.C. 5743.072)

The bill requires that every manufacturer and every importer shipping cigarettes into or within Ohio file a monthly report with the Tax Commissioner in accordance with rules prescribed by the Commissioner. Indian tribal entities engaged in the retail sale or distribution of cigarettes must include in the report the name and address of each nontribal member that purchased cigarettes during the reporting period and the quantity of cigarettes, by brand style, purchased.

Seizure and forfeiture of cigarettes

(R.C. 5743.08)

Under continuing law, when the Tax Commissioner discovers that cigarette taxes have not been paid on cigarettes, the Commissioner may seize and take possession of the cigarettes. The bill provides that this authority extends not only to cigarettes for which taxes have not been paid, but to any cigarettes that are held for sale or distribution in violation of any of Ohio's cigarette laws.

Under current law, the Commissioner may sell cigarettes seized by the Commissioner. The bill specifies that the Commissioner is required instead to destroy the cigarettes. The Commissioner's destruction of cigarettes does not render the owner of the cigarettes immune from possible fines and penalties.

Tax Commissioner's inspection powers

(R.C. 5743.14)

Current law grants the Tax Commissioner general authority to inspect any place where cigarettes are sold or stored. The bill specifies that these inspections may be conducted by the Commissioner or the Commissioner's agents and that the Commissioner's inspection authority extends to the facilities and records of manufacturers, importers, wholesale dealers, and retail dealers. The bill provides, further, that the inspection must be conducted pursuant to a properly issued search warrant if it is conducted outside normal business hours.

The bill also authorizes the Commissioner or an agent of the Commissioner to stop and inspect any vehicle that the Commissioner or the Commissioner's agent has reasonable cause to believe is illegally transporting cigarettes.

Licenses to traffic in cigarettes

(R.C. 5743.15)

Continuing law requires that wholesale and retail businesses wishing to engage in the trafficking of cigarettes in Ohio first obtain a license to do so. The bill extends this licensing requirement to manufacturers and importers.

The bill also requires that firms, partnerships, and associations other than corporations that apply for a license state on their applications the name and address of each of their members. Likewise, corporate applicants must state the name and address of each of their officers.

Authorized sales

(R.C. 5743.20)

Current law specifies that wholesale dealers may not sell cigarettes to any person other than a licensed retail dealer. The bill adds an exception in the case of a licensed wholesale dealer who receives cigarettes directly from a licensed manufacturer or licensed importer and who, with the Tax Commissioner's permission, sells them directly to another licensed wholesale dealer. The bill requires that the Commissioner adopt rules governing such sales.

The bill also specifies that a retail dealer may not purchase cigarettes from any person other than a licensed wholesale dealer. In addition, the bill provides that a manufacturer or importer may not sell cigarettes to another person in Ohio other than to a licensed wholesale dealer. An importer is not permitted to purchase cigarettes from any person other than a licensed manufacturer or licensed importer.

Internet and mail order sales

The bill establishes policies and procedures regarding internet and mail order sales of cigarettes. These types of sales are referred to in the bill collectively as "delivery sales."

Shipment of delivery sales

(R.C. 5743.72(A) and (B), 2921.13, and 5743.73)

The bill provides that a merchant shipping cigarettes to a customer to whom the merchant has not previously shipped cigarettes must, prior to shipping the cigarettes, provide a written statement to the customer that advises the customer of age restrictions on the purchasing of cigarettes, confirms that the order was placed by the customer, advises the customer of health risks associated with smoking, and states that the sale is taxable under Ohio law. The merchant cannot proceed with the shipping of the cigarettes until the customer signs and returns the form to the merchant. If the merchant cannot independently confirm the purchaser's age using a federally or commercially available computer database, the purchaser must provide proof of the customer's age by sending the merchant a photocopy or other image of a valid government-issued identification. A customer who provides false information in connection with a delivery sale is subject to criminal prosecution for falsification, a misdemeanor of the first degree.

A merchant who is shipping cigarettes to a customer to whom the merchant has previously shipped cigarettes is not required to send the form and obtain the information described above. However, the merchant is required to verify that the information used by the merchant in the previous sale to confirm the customer's age remains valid.

Under the bill, a merchant that makes a delivery sale is required to either collect the sales tax due on the sale or to provide the customer with notice of the customer's obligation to remit sales tax with respect to the purchase. In either case, the merchant must provide the customer with a written statement of the amount of sales tax due on the sale.

The bill prohibits the delivery of cigarettes to any individual who appears to the party delivering the cigarettes to be under 27 years old without verifying that the customer is in fact 18 years of age or older using a driver's license or other identification card. All deliveries of cigarettes must be signed for at the time they are physically delivered to the customer.

Payment for delivery sales

(R.C. 5743.72(C) and (D))

The bill specifies that payment for a delivery sale must be made by check, credit card, or debit card issued in the name of the customer. The bill requires, further, that merchants submit to each credit or debit card company with which the merchant has sales such information as will result in the word "cigarettes" to be printed on the purchaser's credit or debit card statement.

Merchants to submit information pertaining to delivery sales to the Tax Commissioner

(R.C. 5743.74)

Before a merchant commences to make delivery sales, the merchant must provide the Tax Commissioner with a written statement containing the name of the merchant's business, its mailing address, the address of the merchant's principal place of business, and the addresses of each of the merchant's places of business in Ohio. A merchant must file with the Tax Commissioner a copy of the invoice for each delivery sale made to a customer in Ohio no later than the tenth day following the month in which the sale is made.

Tax Commissioner may impose penalties and seize and destroy cigarettes sold in violation of laws governing delivery sales

(R.C. 5743.75 and 5743.76)

The bill permits the Tax Commissioner to impose monetary penalties upon merchants for violating the laws governing Internet and mail order cigarette sales. The amount of the penalty that may be imposed by the Commissioner depends upon the nature of the violation and whether the violation is a repeat offense. The bill specifies that the Commissioner is to collect penalties by assessment in the same manner as the Commissioner collects cigarette taxes by assessment under continuing law. Penalties collected by the Commissioner are to be credited to the Cigarette Tax Enforcement Fund.

The bill also authorizes the Commissioner to seize cigarettes sold, or attempted to be sold, in violation of the laws governing Internet and mail order

cigarette sales. The seized cigarettes are forfeited to the state upon seizure. The bill directs the Commissioner to destroy these cigarettes.

Use tax exemption for cigarettes

(R.C. 5743.33 and 5743.331; Section 612.27)

The bill exempts cigarettes a person uses, stores, or consumes in Ohio from the cigarette excise use tax, up to $300 worth per month (wholesale value). The exemption does not apply if the cigarettes are used or stored for resale. In effect, the exemption permits a person to purchase up to $300 worth of cigarettes outside Ohio and bring them back into Ohio without incurring any legal liability for the cigarette excise use tax. No excise tax report needs to be filed for such cigarettes. Under current law, cigarettes brought into the state are technically subject to the cigarette excise use tax. (The bill has a similar exemption from the general use tax, explained above in the Sales and Use Taxes section.)

The exemption takes effect July 1, 2005.

Transportation of untaxed cigarettes

(R.C. 5747.33)

Current law prohibits transporting within the state untaxed cigarettes having a wholesale value greater than $60 without the prior consent of the Tax Commissioner. The bill increases the wholesale value of untaxed cigarettes that may be transported without the Commissioner's prior consent to $300.

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 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" as defined by state law. 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 below the frozen FY 2005 amount. The reduction in both LGF and LGRAF is 10% for the portion of LGF or LGRAF received by townships and villages; the reduction in LGF and LGRAF is 20% for cities, counties, and any other subdivisions receiving LGF or LGRAF money (except for townships and villages).

Any additional money required to pay for the township and village portion of LGF and LGRAF distributions is to be derived from the income tax.

A county's portion of LGF and LGRAF distributions increases by 10% if the county files a report with the Auditor of State on or before October 1, 2005, outlining past savings that have occurred from the consolidation of services or through regional cooperation and detailing future plans for the consolidation of services or additional or expanded regional cooperation. The bill requires that, on or before October 15, 2005, the Auditor of State notify the Tax Commissioner of which counties filed the report on or before the October 1, 2005, deadline.

More specifically, the report must describe the county's future plans with respect to consolidating services, including, but not limited to, consolidating fire, police, water, sewer, and solid waste services provided by the county. The report must describe any efforts already undertaken by the county to analyze how these future consolidation efforts would impact costs and effect existing collective bargaining agreements. If the county has yet to undertake such an analysis at the

time the report is filed, the report must set forth a timeline for completing the analyses.

The report must also describe the county's future plans with respect to cooperating with one or more neighboring political subdivisions in the financing of operations that serve all of the subdivisions. The report also is to describe the county's future plans, if any, to cooperate with other political subdivisions in the consolidation of purchasing or construction functions.

The bill provides that the Auditor of State may use the report for informational purposes only. The Auditor of State has no authority under the bill to approve or disapprove any plan described by a county in its report.

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 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.

Job retention tax credit

(R.C. 122.171)

Authority to enter into agreements for job retention tax credits extended

Under continuing law, Ohio's Tax Credit Authority may enter into agreements with employers whereby the employer undertakes to retain Ohio jobs through a "capital investment project" in exchange for a tax credit against the

corporation franchise tax or personal income tax. Under current law, the authority to enter into such agreements expires on June 30, 2007. The bill permits the Ohio Tax Credit Authority to continue entering into the agreements after this date.

Job retention tax credit: capital investment projects

Continuing law defines a "capital investment project" for which a job retention tax credit may be granted as an investment plan for a project site for the acquisition, construction, renovation, or repair of buildings, machinery, or equipment, or for the capitalized cost of research and product development. Eligibility for a job retention tax credit depends, in part, upon how much the employer has invested as part of the capital investment project. Under current law, project costs paid after December 31, 2006, are not to be included in computing investments in a capital investment project. The bill removes this restriction and makes project costs paid after that date part of the investments comprising a capital investment project.

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.

County auditors authorized to use moneys in real estate assessment funds for estate tax enforcement

(R.C. 325.31 and 5731.41)

Each county treasury has within it a real estate assessment fund, the moneys in which are used by a county to defray costs associated with administering various taxes. Continuing law sets forth the specific purposes for which a county may use moneys in the fund.

The bill specifies that in addition to the purposes set forth in continuing law, counties may use moneys in real estate assessment funds to defray costs incurred in enforcing estate taxes. More specifically, the bill permits a county to

use moneys in its fund to defray costs incurred in compensating estate tax enforcement agents who perform duties prescribed by the Tax Commissioner.

School district income tax on earnings

(R.C. 5748.01, 5748.02, 5748.03, 5748.04, and 5748.08)

Background

The board of education of any school district, except a joint vocational school district, may propose an income tax levy to the district's voters.[211] The proposal may be submitted separately or in combination with a property tax levy and bond issue for permanent improvements. Currently, a school district income tax is levied on the "taxable income" of (1) an individual during the portion of the tax year that the individual is a resident of the district and (2) on the estate of a decedent who was domiciled in the district at the time of death. It does not apply to corporate income.

Currently, an individual's "taxable income" is the individual's "Ohio adjusted gross income," which consists of *both*:

(A) "Earned income" (wages, salaries, tips, self-employment net earnings, and other employee compensation that is reported as earned income on state and federal income tax returns); and

(B) "Unearned income" (investment income, such as interest, dividends, and capital gains, and retirement benefits).

Alternative school district income tax base

The bill permits a school district board to choose to levy a school district income tax on only individual earned income instead of levying the tax on an individual's and a decedent's entire taxable income. Nevertheless, school districts are not required to use the alternative tax base and may continue to levy an income tax on taxable income as provided under current law. If the board opts to use the alternative tax base, however, the board must specify in its resolutions and the

[211] *The amount of a school district income tax levied for current expenses is counted toward the district's obligation to raise 20 mills of local tax effort in order to qualify for state funding for operations. Accordingly, the Tax Commissioner annually computes the amount of the income tax proceeds, when converted to a millage equivalent, that applies to the 20-mill requirement. (R.C. 3317.01(A) and 3317.021(D), neither section in the bill.)*

ballot language proposed to the voters that the tax, if approved, will be levied on only the "earned income of individuals residing in the school district."

The bill also makes modifications to the statutory procedures for levying and repealing school district income taxes to account for the new alternative tax base and the specifications that must be made by the district board in its resolutions and the applicable ballot language.

Reauthorization of municipal income tax sharing with school districts

(R.C. 718.09 and 718.10)

Between 1991 and the end of 2000, municipal corporations were permitted to enter into an agreement with an overlapping school district whereby the municipal corporation levied an income tax and shared at least 25% of the revenue with the school district. The tax had to be approved by voters of the municipal corporation. The municipal corporation and school district territory had to be at least 95% in common, or 90% in common if the remaining 10% of school district territory lay entirely within another municipal corporation with a population of 400,000 or more. A tax sharing agreement also could be made between a school district and two or more municipal corporations so long as the territory of the school district was at least 95% in common with all of those municipal corporations.

No such tax sharing agreements could be initiated after 2000, but any that existed by the end of 2000 could continue in effect. (According to the Department of Taxation, the City of Euclid and the Euclid City School District were the only municipal corporation and school district to have a tax sharing agreement in place when the authority was terminated.)

The bill permits municipal corporations to again levy income taxes to be shared with an overlapping school district under the same terms provided under the prior authority.

Tax credits under the Ohio Venture Capital Program

(R.C. 150.07, 150.10, 5707.031, 5725.19, 5727.241, 5729.08, 5733.49, and 5747.80)

Credit extended to dealers in intangibles and public utilities

Under the existing Ohio Venture Capital Program administered by the Ohio Venture Capital Authority, moneys in a "program fund" are invested in venture capital funds, which in turn invest in Ohio-based businesses that are in seed or early stages of development or established Ohio-based businesses that are

developing new methods or technologies. The program fund is funded through investments from private investors. Some of the profits from the program are put into the Ohio Venture Capital Fund (OVCF), which is used to secure the private investors against losses. To the extent the moneys in the OVCF are not adequate to secure an investor against losses, the investor is eligible for a tax credit granted by the Authority.

Currently, the Authority is authorized to approve tax credits against only the income tax, corporation franchise tax, and insurance company franchise taxes. The bill authorizes the Authority to approve credits against two additional existing taxes--the dealers in intangibles tax and the public utility tax.

Credit amounts

Under continuing law, a taxpayer who receives approval from the Authority for a tax credit may elect to receive either a refundable or a nonrefundable credit. The bill clarifies the amount of credit that may be claimed for any given tax reporting period with respect to each of the taxes to which the credit can potentially apply.

Current law specifies that taxpayers who elect a refundable credit and whose tax liability for any given reporting period is less than the amount of the credit receive a refund equal to 75% of the amount by which the credit exceeds the tax liability. The bill clarifies that this 75% amount is in addition to the amount of tax against which the credit is applied for that reporting period.

The bill specifies, further, that to the extent a taxpayer's tax liability for any given reporting period exceeds the amount of refundable credit that the taxpayer is entitled to claim, the amount of credit to which the taxpayer is entitled is the full amount of refundable credit authorized by the authority.

Finally, the bill provides that for purposes of determining whether the amount of a refundable venture capital credit exceeds the taxpayer's tax liability with respect to any given reporting period, the amount of the credit is to be compared against the taxpayer's tax liability after deducting all nonrefundable credit that the taxpayer is entitled to claim for that tax reporting period.

Estate tax penalty for late payments and filings increased; change to rate applied to overpayments and underpayments of the estate tax

(R.C. 5703.47, 5731.22, and 5731.23)

Under current law, failure to timely file an estate tax return and pay the tax within nine months following a decedent's death results in a penalty, with interest accruing on the unpaid balance. If the tax paid is more than the amount of tax

ultimately found to be due, the estate is entitled to interest on the overpayment. The overpayment and interest must be refunded by the cities, villages, or townships that received the overpayment, as well as from the state's general revenue fund, on a pro rata basis. Interest accrues from nine months from the date of the decedent's death or the date the tax is paid, whichever is later, to the date the overpayment is refunded.

Interest

Under current law, the rate of interest accruing on unpaid taxes, and paid on estate tax overpayments, is equal to three percentage points above the "federal short-term rate," which is a rate computed on the basis of an index of yields on short-term U.S. government securities.

The bill reduces the rate of interest that accrues on unpaid estate taxes and on estate tax overpayments. Instead of accruing at the "statutory" rate equal to the federal short-term rate plus 3%, interest will accrue at the federal short-term rate.

Penalties

Current law imposes a penalty for not paying or filing estate taxes on time equal to 5% of the tax due if the payment or filing is made within one month of the due date. If the payment or filing is more than one month late, an additional 5% is added for each additional month for up to four months, so the cumulative penalty cannot exceed 25% of the tax due. The penalty does not apply if the estate's representative shows that the late payment or filing is due to reasonable cause and not willful neglect. Also, in cases of fraud, current law requires the Tax Commissioner to impose an additional penalty of up to $10,000.

The bill changes the estate tax penalty so that it equals 10% of the unpaid tax regardless of how late the payment or filing occurs. The bill also eliminates the up-to-$10,000 additional penalty in cases of fraud.

Waiving penalties

Current law authorizes the Tax Commissioner to waive or "remit" the 5%-per-month penalty if an estate's representative shows that the late payment or filing is due to reasonable cause and not willful neglect.

The bill removes this remission authority from the Tax Commissioner and instead vests it in county auditors. Specifically, a county auditor may remit a penalty if the estate's representative applies for remission and shows that the lateness of the payment or filing is due to reasonable cause and not willful neglect. A county auditor may remit a penalty only after consulting with the county treasurer. Once the county auditor decides whether to remit a penalty, the auditor

must notify the estate's representative of the decision by mail. If remission is denied, the representative may appeal the decision by applying to the Tax Commissioner, either in person or by certified mail, within 60 days after the auditor mails notice of the decision. Once the Tax Commissioner decides on the appeal, the Commissioner must notify the representative, the county auditor, and the county treasurer. If the Commissioner's decision necessitates any correction in the county estate tax records, the county auditor and treasurer must correct the records accordingly. An estate representative who appealed to the Commissioner may appeal the Commissioner's decision by filing an exception with the probate court having jurisdiction over the estate in the same manner in which exceptions may be filed under current law from other determinations by the Commissioner regarding the tax on the estate (see R.C. 5731.30).

The bill authorizes the Tax Commissioner to issue orders and instructions for implementing the bill's remission provisions, and requires county auditors and treasurers to follow those orders and instructions.

Technical correction

(R.C. 5731.23)

The bill corrects a longstanding error in a statute governing estate tax payments. In 1971, Am. Sub. 413 of the 109th General Assembly (134 Ohio Laws 821, 822-823), removed language regarding discounts for early estate tax payments, but failed to remove related language stating that early payments should be paid on an estimated basis regardless of whether a return has been filed. The bill removes this related language to correct the error.

The motor fuel use tax

(R.C. 5728.01, 5728.02, 5728.03, 5728.04, 5728.06, and 5728.08)

The fuel use tax is levied on the amount of motor fuel consumed by commercial cars and commercial trucks in Ohio, when the fuel was purchased outside Ohio. Currently, the tax is equal to the same amount as the motor fuel tax, plus 2¢ per gallon. On and after July 1, 2005, the 2¢ per gallon surcharge is eliminated, and the use tax equals the same amount as the motor fuel tax. Payment of the fuel use tax is made by purchasing in Ohio the same amount of motor fuel as is consumed while operating commercial cars or trucks on Ohio's highways, or by direct payment to the Treasurer of State with a fuel use tax return. Every person liable for the tax must annually file a fuel use permit or a single-trip fuel use permit with the Tax Commissioner.

The bill provides that a person must obtain a fuel use permit only if operating a commercial car or commercial tractor upon public highways in two or more states (including the District of Columbia and Canada). This would eliminate the requirement that commercial cars or tractors operating intrastate file a fuel use permit. The bill also provides that the prohibition of operating a commercial car or commercial tractor without a fuel use permit or single trip fuel use permit does not apply if the car or tractor is operated intrastate.

Continuing law imposes the motor fuel use tax on three-axle commercial cars, commercial cars with two axles operated as part of a commercial tandem having a weight exceeding 26,000 pounds, or commercial tractors. The bill adds "regardless of weight" to the three-axle commercial cars, and provides that the tax is on two-axle commercial cars having a weight exceeding 26,000 pounds operated alone or as part of a commercial tandem.

Under current law, farm trucks with low fuel usage may file a return and pay the tax annually. The bill eliminates this requirement. Instead, the fuel use tax must be paid quarterly the same as other commercial cars or commercial tractors.

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.

Temporary tax amnesty program

(Section 553.01)

Program description

The bill requires that the Tax Commissioner administer a temporary tax amnesty program from November 1, 2005, to December 15, 2005, with respect to delinquent state taxes, tangible personal property taxes, county and transit authority sales taxes, and school district income taxes. The Commissioner is required to conduct the program between November 1, 2005 and December 15, 2005. The program applies only to taxes that were due and payable as of May 1, 2005, which were unreported or underreported, and which remain unpaid on the date on which the program commences. The program does not apply to any tax for which a notice of assessment or audit has been issued, for which a bill has been issued, or for which an audit has been conducted or is pending.

If, during the program, a person pays the full amount of delinquent taxes owed by the person and one-half of any interest that has accrued on the taxes, the Commissioner is required to waive all applicable penalties and the other one-half of any interest that accrued on the taxes. The bill authorizes the Commissioner to require a person participating in the program to file applicable returns or reports, including amended returns or reports. Persons owing tangible personal property taxes are required to file a return with the Commissioner listing all taxable

personal property not previously listed by the person on a tangible personal property tax return.

In addition to receiving a waiver of penalties and one-half of accrued interest, a person who participates in the program is immune from criminal prosecution or any civil action with respect to the taxes paid through the program. The bill specifies, further, that no assessment may be issued against any person with respect to a tax paid through the program.

The bill requires that the Commissioner issue forms and instructions for the program, and the Commissioner is authorized to take any other actions necessary to implement the program. The bill directs the Commissioner to publicize the program so as to maximize public awareness of the program and participation in it.

Distribution of taxes collected under the program

Generally, taxes and interest collected under the program will be credited to the General Revenue Fund. However, any tax collected under the program that a taxing district would have received had the tax been timely paid is distributed to that taxing district.

State reimbursement for $10,000 business property exemption

Continuing law exempts the first $10,000 of a business' tangible personal property from property taxation (R.C. 5709.01(C)(3)). Currently, the state reimburses local taxing districts for the resulting revenue reduction.[212] The bill specifies that taxing districts will not be reimbursed for the amounts by which the exemption reduces tangible personal property taxes collected under the program.

DEPARTMENT OF TRANSPORTATION

- Authorizes joint projects between transportation improvement districts (TIDs) and governmental agencies (including local governments) and, in connection with those joint projects, for a TID to purchase securities issued by the governmental agency.

[212] *The reimbursement for the $10,000 exemption is being phased out over the next several years. Under the bill, the reimbursement is scheduled to be completely phased-out by 2009 (see "**Accelerate phase-out of state reimbursement for $10,000 business property exemption**" above).*

- Specifically includes special assessments levied by a TID in the definition of its revenues.

- 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.

- Requires the Director of Transportation, after conferring with the Director of Natural Resources, to construct, repair, and maintain all roads and bridges within the state parks during fiscal years 2006 and 2007, and requires $5 million to be expended for the purpose in each fiscal year.

Transportation improvement district projects

(R.C. 133.09, 5540.01, 5540.032, and 5540.09)

The bill authorizes transportation improvement districts (TIDs) and governmental agencies (including local governments) to undertake joint projects that benefit both of them, and to jointly manage those projects. A governmental agency may issue securities to finance the project, and the TID is authorized to purchase those securities as an investment; the securities represent the governmental agency's obligation to the TID to pay the agency's portion of the joint project's cost. This securities purchase arrangement is made to be an exception from a provision of current law stating that a TID is not authorized to incur debt or liability on behalf of, or payable by, the state or its political subdivisions.

If a township issues securities under the bill's authority, the securities are exempted from the statutory voted and unvoted limitations on township debt.

The bill also adds special assessments levied by a TID in the statutory definition of its "revenues."

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.

Maintenance of state park roads

(Sections 401.11, 401.12, and 401.13)

Am. Sub. H.B. 68 of the 126th General Assembly earmarked $4,517,500 of highway construction appropriations to be used each fiscal year during the FY 2006-2007 biennium by the Department of Transportation for the construction, reconstruction, or maintenance of public access roads, including support features, to and within state facilities owned or operated by the Department of Natural Resources, "as requested by the Director of Natural Resources." The bill increases the earmark to $5 million. In addition, the bill removes the language directing the Department of Transportation to make such improvements "as requested by the Director of Natural Resources" and instead requires the Director of Transportation to confer with the Director of Natural Resources in fiscal years 2006 and 2007 concerning the establishment, construction, reconstruction, improvement, repair, and maintenance of all roads and bridges within the boundaries of all state parks, including all such parks and properties under the control and custody of the Department of Natural Resources. After conferring with the Director of Natural Resources, the Director of Transportation must expend $5 million in each fiscal year to establish, construct, reconstruct, improve, repair, and maintain all such roads and bridges.

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

- Modifies how a joint board of county commissioners decides to pay for the maintenance and other expenses of district detention facilities by including among the methods any other method agreed upon by unanimous vote of the joint board of county commissioners.

- 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.

Payment of maintenance and other expenses of a district detention facility

(R.C. 2152.43)

Current law permits the board of trustees of a district detention facility to apply to the Department of Youth Services for assistance in defraying the cost of operating and maintaining the facility. The current expenses of maintaining the

facility not paid from funds made available from the Department or from a donation or bequest of any real or personal property, and the cost of ordinary repairs to the facility, must be paid by each county in accordance with one of the following methods as approved by the joint board of county commissioners:

(1) In proportion to the number of children from that county who are maintained in the facility during the year;

(2) By a levy submitted by the joint board of county commissioners and approved by the electors of the district;

(3) In proportion to the taxable property of each county, as shown by its tax duplicate;

(4) In any combination of methods for payment described in (1), (2), or (3) above.

The bill modifies (4) above by providing that the current expenses of maintaining the facility and the cost of ordinary repairs may be paid in any other method agreed upon by unanimous vote of the joint board of county commissioners.

Referral of children by the Department of Youth Services to community corrections facilities

(R.C. 5139.36(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

In general

- 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.

- 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.

- Authorizes the Ohio Community Service Council to accept donations, sponsor events, and sell promotional items.

- Requires a contract for a county building or bridge construction project that exceeds $1,000, before it may have full force and effect, to be certified by the prosecuting attorney as being in accordance with the Public Improvements Contract Law, including, when applicable, its professional design services contract provisions.

- Requires a public authority's contract for professional design services, before it may have full force and effect, to be certified by the public authority's legal counsel as being in accordance with the professional design services contract provisions of the Public Improvements Contract Law.

- 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.

- Requires an independent marriage and family therapist to diagnose and treat mental and emotional disorders only under the supervision of a psychologist, psychiatrist, professional clinical counselor, or independent social worker.

- Eliminates the authority of a marriage and family therapist to diagnose and treat mental and emotional disorders under the supervision of an independent marriage and family therapist.

- 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.

- Requires, by January 1, 2007, that, following a specified type of efficiency study by the Department of Administrative Services, the Department prepare and submit to the Governor and legislative leaders a proposed reorganization plan for the executive branch of state government, which provides for the transfer of the powers, duties, and functions of various state entities to nine "provisional" departments.

- Authorizes the conveyance of certain real estate located in Athens County to Hocking.Athens.Perry Community Action.

Regulation of ephedrine, phenylpropanolamine, and pseudoephedrine products

- Specifically prohibits knowingly assembling or possessing any ephedrine product, phenylpropanolamine product, or pseudoephedrine product with the intent to use the product to manufacture methamphetamine or any other Schedule I or II controlled substance.

- Provides that, in a prosecution of this offense, the possession of 24 grams or more of an ephedrine, phenylpropanolamine, or pseudoephedrine product constitutes prima-facie evidence of an intent to use the product to manufacture methamphetamine or another Schedule I or II controlled substance.

- Creates the new offense of "illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product," which does all of the following: (1) prohibits an individual from purchasing, receiving, or otherwise acquiring more than six grams of any ephedrine product, phenylpropanolamine product, or pseudoephedrine product within a period of 30 days, unless dispensed by a pharmacist pursuant to a valid prescription, (2) prohibits a retailer or terminal distributor of dangerous drugs from: (a) knowingly selling, offering, or otherwise providing to

any individual within any 30-day period an amount of ephedrine product, phenylpropanolamine product, or pseudoephedrine product that exceeds specified limits unless dispensed by a pharmacist pursuant to a valid prescription, (b) failing to keep the product in a secure area and, prior to selling or providing the product to a person, determining that the person is age 18 years or older, or (c) selling, offering, or otherwise providing any of those products to an individual that the retailer or terminal distributor knows or reasonably should know is under age 18, subject to specified exceptions, and (3) prohibits an employee of a retailer or terminal distributor of dangerous drugs who is under 18 years of age from selling, offering to sell, holding for sale, delivering, or otherwise providing any ephedrine product, phenylpropanolamine product, or pseudoephedrine product to any individual.

- Enacts restrictions regarding transactions in any ephedrine, phenylpropanolamine, or pseudoephedrine product that are independent of the prohibitions described in the preceding dot point that: (1) require a retailer or terminal distributor of dangerous drugs that sells, offers, or otherwise provides an ephedrine product, phenylpropanolamine product, or pseudoephedrine product to the public to segregate pseudoephedrine products from other merchandise in a specified manner, and with regard to each time an ephedrine product, phenylpropanolamine product, or pseudoephedrine product is sold or otherwise provided, determine that the purchaser or recipient is at least 18 years of age and make a reasonable attempt to ensure that no individual purchases or receives more than a specified limit of ephedrine products, phenylpropanolamine products, and pseudoephedrine products within a 30-day period, (2) prohibit a retailer or terminal distributor of dangerous drugs from knowingly selling, offering, or otherwise providing to any individual within a 30-day period an amount of ephedrine product, phenylpropanolamine product, or pseudoephedrine product that exceeds specified limits, unless dispensed by a pharmacist pursuant to a prescription, (3) generally, prohibit a retailer or terminal distributor of dangerous drugs from selling, offering, or otherwise providing an ephedrine product, phenylpropanolamine product, or pseudoephedrine product to an individual who is under 18 years of age, and (4) prohibit an employee of a retailer or terminal distributor of dangerous drugs who is under 18 years of age from selling, offering, or otherwise providing any ephedrine product, phenylpropanolamine product, or pseudoephedrine product to any individual.

- Regarding the restrictions described in the preceding dot point, specifies that: (1) prescriptions, orders, and records maintained pursuant to those provisions and stocks of ephedrine products, phenylpropanolamine products, or pseudoephedrine products must be open for inspection to federal, state, county, and municipal officers, and employees of the State Board of Pharmacy whose duty it is to enforce the law relating to controlled substances, (2) such prescriptions, orders, records, and stocks must be open for inspection by the State Medical Board and its employees for purposes of enforcing R.C. Chapter 4731., (3) no person having knowledge of any such prescription, order, or record may divulge that knowledge, except in connection with a prosecution or proceeding in court or before a licensing board or officer, to which prosecution or proceeding the person to whom the prescriptions, orders, or records relate is a party, and (4) the State Board of Pharmacy may, by rule, exempt from those provisions ephedrine products, phenylpropanolamine products, or pseudoephedrine products that the Board finds are not used in the illegal manufacture of methamphetamine, if it determines that the particular product was formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

- Requires a retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler that sells, offers, or otherwise provides any ephedrine product, phenylpropanolamine product, or pseudoephedrine product and discovers the theft or significant loss of more than six grams of any of those products or combination of those products to immediately notify the State Board of Pharmacy and requires the Board to immediately notify certain law enforcement officials of the theft or loss.

- Expands the offense of endangering children to additionally prohibit a person from (1) possessing or using methamphetamine in the presence of a child under 18 years of age or a mentally or physically handicapped child under 21 years of age, or (2) possessing in the presence of the child an ephedrine product, phenylpropanolamine product, pseudoephedrine product, or combination of those products in excess of six grams.

- Expands the definition of "abused child" to include any child who is exposed to conduct constituting certain specified methamphetamine-related offenses.

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.

Certification of county building or bridge construction project contracts

(R.C. 153.44)

Under current law, before a contract for a county building or bridge construction project that exceeds $1,000 in amount can have full force and effect, the board of county commissioners must submit the contract to the prosecuting attorney. The prosecuting attorney, in turn, must determine whether the contract is in accordance with certain provisions of the Public Improvements Contract Law, which currently *do not include* the Law's professional design services contract provision, and, if it is endorse the contract with the prosecuting attorney's

certificate to that effect--thereby giving the contract full force and effect. Absent this certification, the contract is void.

The bill instead provides that, before a contract for a county building or bridge construction project that exceeds $1,000 in amount can have full force and effect, it must be certified by the prosecuting attorney as being in accordance with the applicable provisions of the *entire* Public Improvements Contract Law, including, when applicable, its professional design services contract provisions.[213]

Certification of professional design services contracts

(R.C. 153.692)

The bill provides that, before a public authority's contract for professional design services may have full force and effect, the public authority must submit the contract to its legal counsel.[214] The legal counsel, in turn, must determine whether the contract is in accordance with the professional design services contract provisions of the Public Improvements Contract Law and, if it is, endorse the contract with the legal counsel's certificate to that effect--thereby giving the contract full force and effect.

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

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[213] *The bill also removes the provision in current law that states that, absent the endorsement of the contract with the prosecuting attorney's certificate, the contract is void. However, since continuing law provides that the contract only has full force and effect upon the prosecuting attorney's endorsement, it would appear implicit that, absent the endorsement, the contract is void.*

[214] *A "public authority" is the state, a county, township, municipal corporation, school district, or other political subdivision, or any public agency, authority, board, commission, instrumentality, or special district of the state or a county, township, municipal corporation, school district, or other political subdivision (R.C. 153.65(A)--not in the bill).*

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.

Independent marriage and family therapists

(R.C. 4757.30)

Current Ohio law requires both marriage and family therapists and independent marriage and family therapists to meet certain requirements prior to licensure. However, in order to be distinguished as an independent marriage and family therapist, an applicant must further complete two calendar years of work experience in marriage and family therapy.

A licensed marriage and family therapist may diagnose and treat mental and emotional disorders only under the supervision of a psychologist, psychiatrist, professional clinical counselor, independent social worker, or independent marriage and family therapist. A licensed independent marriage and family therapist may diagnose and treat mental and emotional disorders without supervision.

The bill requires that an independent marriage and family therapist who diagnoses and treats mental and emotional disorders do so only under the supervision of a psychologist, psychiatrist, professional clinical counselor, or independent social worker. A marriage and family therapist may no longer diagnose and treat mental and emotional disorders under the supervision of an independent marriage and family therapist.

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 Ohio Board of Dietetics;

(5) The Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board;

(6) The Ohio Optical Dispensers Board;

(7) The State Board of Optometry;

(8) The State Board of Orthotics, Prosthetics, and Pedorthics;

(9) The State Board of Psychology;

(10) The Ohio Respiratory Care Board;

(11) The Board of Speech-Language Pathology and Audiology;

(12) 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 Ohio Athletic Commission;

(2) The Barber Board;

(3) The State Board of Cosmetology;

(4) The Board of Embalmers and Funeral Directors;

(5) The Manufactured Homes Commission;

(6) The Board of Motor Vehicle Collision Repair Registration;

(7) 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.

Efficiency study to create reorganization plan for the executive branch of state government

(Sections 315.03.03, 216.03.06, and 315.03.09)

Required efficiency study

Within 30 days after Section 315.03.03's effective date, the bill requires the Department of Administrative Services (DAS) to commence an efficiency study that is designed to create a plan for the reorganization of the executive branch of state government and that will achieve minimum total savings of (a) 20% in the current budgeted administrative costs for the agencies, departments, divisions, public bodies, and programs of the state that are proposed to be transferred to the provisional Departments of Business Coordination, Education, Finance and Operations, Human Resource Development, Public Health, Public Safety, Resource Protection, and Transportation and Infrastructure that the bill creates and (b) 10% in the current budgeted administrative costs for the agencies, departments, divisions, public bodies, and programs of the state that are proposed to be transferred to the provisional Department of Community and Institutional Rehabilitation that the bill creates.

The agencies, departments, divisions, public bodies, and programs that are proposed to be transferred to a provisional department are transferred only for purposes of the efficiency study. The bill states that it does not make or intend to make any temporary or permanent structural changes to or in any such state agency, department, division, public body, or program.

Results of the efficiency study and development of a reorganization plan

DAS must use the results of the efficiency study described above to do all of the following:

- Develop a detailed reorganization plan.
- Further reorganize the provisional departments.
- Eliminate duplication of effort among the provisional departments.
- Prepare a final report on the reorganization plan that must be delivered by electronic means to the Governor, House Speaker, Senate President, House Minority Leader, and Senate Minority Leader, and be posted on DAS's web site, not later than January 1, 2007.

The reorganization plan must cover or include all of the following related to the reorganization described above:

- Estimated costs.
- Projected savings in real dollar amounts.
- Projected improvements in service.
- Anticipated effects on cost-sharing and management of federal grants.
- Efficient citizen input into provisional department decisions.
- Methods of ensuring accountability for results.
- A proposed timetable for implementing the reorganization.
- Any legislation that must be enacted to implement the reorganization.

Specific provisional department structures

Department of Education. Under the bill, a provisional Department of Education, headed by a provisional Executive Director of Education, will consist of the following six divisions, each headed by a chief:

- A Division of Primary and Secondary Education.
- A Division of Higher Education for Four-Year Colleges and Universities.
- A Division of Higher Education for Two-Year Colleges.

- A Division of Education Finance.
- A Division of Education Technology.
- A Division of Cultural Resources.

Department of Public Safety. Under the bill, a provisional Department of Public Safety, headed by a provisional Executive Director of Public Safety, will consist of the following five divisions, each headed by a chief:

- A Division of Uniformed Services.
- A Division of Public Safety Services.
- A Division of Homeland Security and Emergency Management.
- A Division of Grants and Disbursements.
- A Division of Prevention and Enforcement.

Department of Public Health. Under the bill, a provisional Department of Public Health, headed by a provisional Executive Director of Public Health, will consist of the following five divisions, each headed by a chief:

- A Division of Health and Well-Being.
- A Division of Community Care Support Services.
- A Division of Medicaid Services.
- A Division of Medical Professional and State Healthcare System Regulation.
- A Division of Veterans' Affairs.

Department of Transportation and Infrastructure. Under the bill, a provisional Department of Transportation and Infrastructure, headed by a provisional Executive Director of Transportation and Infrastructure, will consist of the following five divisions, each headed by a chief:

- A Division of System Maintenance.
- A Division of System Regulation.
- A Division of System Design and Construction.

- A Division of Public Transportation.
- A Division of Infrastructure Financing and Revenue Distribution.

Department of Finance and Operations. Under the bill, a provisional Department of Finance and Operations, headed by a provisional Executive Director of Finance and Operations, will consist of the following six divisions, each headed by a chief:

- A General Services Division.
- A Human Resources Division.
- A Facilities and Maintenance Division.
- An Information Technology Division.
- A Division of Financial Operations.
- A Division of Revenue Administration.

Department of Human Resource Development. Under the bill, a provisional Department of Human Resource Development, headed by a provisional Executive Director of Human Resource Development, will consist of the following four divisions, each headed by a chief:

- An Employment Services Division.
- A Rehabilitation Services Division.
- A Children and Family Services Division.
- A Human Rights Division.

Department of Community and Institutional Rehabilitation. Under the bill, a provisional Department of Community and Institutional Rehabilitation, headed by a provisional Executive Director of Community and Institutional Rehabilitation, will consist of the following four divisions, each headed by a chief:

- A Division of Corrections Officer Administration.
- A Division of Correctional Support Services.
- A Division of Correctional Facilities Maintenance.

- A Division of Parole and Community Services.

Department of Business Coordination. Under the bill, a provisional Department of Business Coordination, headed by a provisional Executive Director of Business Coordination, will consist of the following four divisions, each headed by a chief:

- A Division of Licensing and Coordination.
- A Division of Financial Institutions and Securities.
- A Division of Building and Real Estate Coordination.
- A Division of Insurance Coordination.

Department of Resource Protection. Under the bill, a provisional Department of Resource Protection, headed by a provisional Executive Director of Resource Protection, will consist of the following five divisions, each headed by a chief:

- A Division of Land.
- A Waste and Water Division.
- A Resource Quality Assurance Division.
- A Division of Public Awareness.
- A Division of Grants and Disbursements.

Conveyance of real estate in Athens County

(Section 506.03)

The bill authorizes the Governor to execute a deed in the name of state conveying to Hocking.Athens.Perry Community Action, and its successors and assigns, all of the state's right, title, and interest in specified real estate in the Village of Glouster, Trimble Township, Athens County. The consideration for the conveyance is the purchase price of $1.

The bill specifies the procedures for the preparation, execution, and recording of the deed to the real estate upon the payment of that purchase price. Hocking.Athens.Perry Community Action must pay the costs of the conveyance.

This conveyance authority expires one year after Section 506.03's effective date.

Regulation of ephedrine, phenylpropanolamine, and pseudoephedrine products

(R.C. 2151.031, 2919.22, 2925.01, 2925.04, 2925.041, 2925.15, 3719.47, and 3719.48)

Background

Methamphetamine and amphetamine are Schedule II controlled substances. Methamphetamine is a stimulant that can be manufactured from the drugs ephedrine and pseudoephedrine. The drug amphetamine is a stimulant that can be manufactured from phenylpropanolamine; amphetamine is sometimes marketed as methamphetamine. Both phenylpropanolamine and pseudoephedrine have been included in common over-the-counter decongestant cold products and weight loss products, and ephedrine has been included in over-the-counter weight loss products. The federal Methamphetamine Anti-Proliferation Act, 21 U.S.C. 801 et seq., limits sale of pseudoephedrine and phenylpropanolamine drug products to nine-gram single transactions, with the package size not to exceed three grams. (This limit equals 300 tablets of 30 milligrams each.)[215]

Illegal assembly or possession of chemicals for the manufacture of drugs

(R.C. 2925.01 and 2925.041)

Existing law. Under existing law, a person is guilty of the offense of "illegal assembly or possession of chemicals for the manufacture of drugs" if the person knowingly assembles or possesses one or more chemicals that may be used to manufacture a Schedule I or II controlled substance with the intent to manufacture a Schedule I or II controlled substance in violation of the existing prohibition against manufacturing a controlled substance, which is contained in

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[215] *http://www.deadiversion.usdoj.gov/chem_prog/faqs/mapa_faq.htm#1 (March 3, 2005); http://www.deadiversion.usdoj.gov/pubs/brochures/pseudo/pseudo_notice.htm (March 7, 2005); http://www.usdoj.gov/dea/pubs/intel/01020/index.html#metham-phetamine (March 8, 2005); http://ods.od.nih.gov/factsheets/EphedraandEphedrine.asp (March 8, 2005); http://www.kci.org/meth_info/making_meth.htm (March 5, 2005); and http://www.fayettecounty sheriff.com/methamphetamine.htm (March 5, 2005).*

The federal Food and Drug Administration is taking steps to remove phenylpropanolamine from all drug products and has requested that all drug companies discontinue marketing products containing that chemical (http://www.fda.gov/cder/drug/infopage/ppa/ (March 8, 2005)).

R.C. 2925.04 and is the offense of "illegal manufacture of drugs."[216] (See "***Illegal manufacture of drugs***," below for a more complete description of the offense of illegal manufacture of drugs.)

Generally, "illegal assembly or possession of chemicals for the manufacture of drugs" is a felony of the third degree, and there is no presumption for or against a prison term. If the offense was committed in the vicinity of a juvenile or in the vicinity of a school, the offense is a felony of the second degree, and there is no presumption for or against a prison term. An offender is also subject to a mandatory fine, a driver's license revocation or suspension, and professional license sanctions if the person is a professionally licensed person. (R.C. 2925.041.)

Operation of the bill. The bill expands the offense of illegal assembly or possession of chemicals for the manufacture of drugs to also specifically prohibit a person from knowingly assembling or possessing any ephedrine product,[217] phenylpropanolamine product,[218] or pseudoephedrine product[219] with the intent to

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[216] *In a prosecution for illegal assembly or possession of chemicals for the manufacture of drugs, it is not necessary to allege or prove that the offender assembled or possessed all chemicals necessary to manufacture the controlled substance. The assembly or possession of a single chemical that may be used in the manufacture of a Schedule I or II controlled substance, with the intent to manufacture a Schedule I or II controlled substance, is sufficient to commit the offense. (R.C. 2925.041(B).)*

[217] *"Ephedrine product" means any "consumer product" (see below) that consists of a "single-ingredient preparation" (see below) of ephedrine in which ephedrine is the single active ingredient, except that it does not include a consumer product that is in pediatric form, or in liquid, liquid capsule, or gel capsule form (R.C. 2925.01(LL), enacted in the bill).*

"Ephedrine" means any material, compound, mixture, or preparation that contains any quantity of ephedrine, its salts or optical isomers, or salts of optical isomers (R.C. 2925.01(KK), enacted in the bill).

"Consumer product" means any food or drink that is consumed or used by humans and any drug, including a drug that may be provided legally only pursuant to a prescription, that is intended to be consumed or used by humans (R.C. 2925.01(JJ), enacted in the bill).

"Single-ingredient preparation" means a compound, mixture, preparation, or substance that contains a single active ingredient (R.C. 2925.01(SS), enacted in the bill).

[218] *"Phenylpropanolamine product" means any "consumer product" (see above) that consists of a "single-ingredient preparation" (see above) of phenylpropanolamine in which phenylpropanolamine is the single active ingredient, except that it does not include*

use the product to manufacture methamphetamine or any other Schedule I or II controlled substance.

In a prosecution for a violation of this new prohibition, the possession of 24 grams or more of an ephedrine product, phenylpropanolamine product, or pseudoephedrine product constitutes prima-facie evidence of the intent to use the product to manufacture methamphetamine or another Schedule I or II controlled substance.[220] But this prima-facie evidence designation does not apply to any of the following who lawfully possesses drug products in the course of legitimate business: (1) a retailer[221] that sells drug products or the agents or employees of a retailer that sells drug products in the course of carrying out their duties or employment with the retailer, (2) a wholesaler or the agents or employees of a wholesaler in the course of carrying out their duties or employment with the wholesaler, (3) a manufacturer or the agents or employees of a manufacturer in the course of carrying out their duties or employment with the manufacturer, (4) a pharmacist, (5) a licensed health care professional authorized to prescribe drugs possessing the drug products in the course of carrying out the person's profession, or (6) a terminal distributor of dangerous drugs.[222]

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a consumer product that is in pediatric form, or in liquid, liquid capsule, or gel capsule form (R.C. 2925.01(NN), enacted in the bill).

"Phenylpropanolamine" means any material, compound, mixture, or preparation that contains any quantity of phenylpropanolamine, its salts or optical isomers, or salts of optical isomers (R.C. 2925.01(MM), enacted in the bill).

[219] "Pseudoephedrine product" means any "consumer product" (see above) that consists of a "single-ingredient preparation" (see above) of pseudoephedrine in which pseudoephedrine is the single active ingredient. It does not include any such consumer product that is in pediatric form, or in liquid, liquid capsule, or gel capsule form (R.C. 2925.01(QQ), enacted in the bill).

"Pseudoephedrine" means any material, compound, mixture, or preparation that contains any quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers (R.C. 2925.01(PP), enacted in the bill).

[220] Twenty-four grams would constitute 800 pills of 30 milligrams each.

[221] "Retailer" means a place of business that offers consumer products for sale to the general public (R.C. 2925.01(RR), enacted in the bill).

[222] "Terminal distributor of dangerous drugs" means a person who is engaged in the sale of "dangerous drugs" (see below) at retail, or any person, other than a wholesale distributor or a pharmacist, who has possession, custody, or control of dangerous drugs

The bill does not otherwise change the offense or its penalties.

Illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product--criminal prohibitions

(R.C. 2925.01 and 2925.15)

The bill creates the new offense of "illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product," which consists of five distinct prohibitions.

First prohibition. The first prohibition prohibits any individual from purchasing, receiving, or otherwise acquiring more than six grams of any ephedrine product, phenylpropanolamine product, or pseudoephedrine product within a period of 30 days, unless dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health care professional authorized to prescribe drugs. A violation of this prohibition is a misdemeanor of the third degree if the offender previously has been convicted of any of the prohibitions constituting the offense of "illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product" (due to a drafting error, the bill currently does not specify the penalty for a violation of this prohibition if the offender has not previously been convicted of any of those prohibitions--the penalty for a violation if the offender has not previously been so convicted is supposed to be a minor misdemeanor).

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for any purpose other than for that person's own use and consumption (R.C. 2925.01(C), by reference to R.C. 4729.01(Q)).

"Dangerous drug" means any of the following (R.C. 2925.01(C), by reference to R.C. 4729.01(F)):

(1) Any drug to which either of the following applies: (a) under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription, or (b) under the pure food and drug law or the controlled substances law, the drug may be dispensed only upon a prescription;

(2) Any drug that contains a Schedule V controlled substance and that is exempt from the controlled substances law or to which that law does not apply;

(3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body.

Second prohibition. The second prohibition generally prohibits a retailer or terminal distributor of dangerous drugs from knowingly selling, offering to sell, holding for sale, delivering, or otherwise providing to any individual within any 30-day period an amount of ephedrine product, phenylpropanolamine product, or pseudoephedrine product that exceeds two packages of any one of those products or of any combination of those products, with neither package so sold or no combination of packages so sold, whichever is applicable, containing more than *six grams* of the product. The bill specifies that this prohibition does not apply to any quantity of ephedrine product, phenylpropanolamine product, or pseudoephedrine product dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs. A violation of this prohibition is a misdemeanor, and the offender must be fined not more than $350 (due to a drafting error, the bill also erroneously specifies that the penalty for a violation of this prohibition is a minor misdemeanor).

Third prohibition. The bill also requires each retailer or terminal distributor of dangerous drugs that sells, offers to sell, holds for sale, delivers, or otherwise provides any ephedrine product, phenylpropanolamine product, or pseudoephedrine product to the public to do all of the following: (1) keep each such product in a secure, locked area in the place of business of the retailer or terminal distributor or, if the place of business is a pharmacy, behind the counter, so that no member of the public may procure or purchase the product without the direct assistance of a pharmacist or other authorized employee of the retailer or terminal distributor, and (2) prior to selling or providing any such product to any person, determine, by examination of a valid proof of age,[223] that the purchaser or recipient is age 18 or older.

The bill then prohibits a retailer or terminal distributor of dangerous drugs that sells, offers to sell, holds for sale, delivers, or otherwise provides any ephedrine product, phenylpropanolamine product, or pseudoephedrine product to the public from failing to comply with the requirements described in the preceding paragraph.[224] Generally, a violation of this prohibition is a minor misdemeanor. But if the offender has previously been convicted of or pleaded guilty to a violation of any of the prohibitions constituting the offense of "illegal transactions

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[223] *"Proof of age" means a driver's license, commercial driver's license, military identification card, passport, or state identification card that shows a person is 18 years of age or older (R.C. 2925.01(OO), enacted in the bill).*

[224] *When an offense does not specify any criminal mental state, the default mental state is recklessness, unless the provision plainly indicates a purpose to impose strict criminal liability for the conduct described (R.C. 2901.21(B)).*

in an ephedrine, phenylpropanolamine, or pseudoephedrine product," the violation is a misdemeanor of the third degree.

Fourth prohibition. Under the fourth prohibition, the bill generally prohibits a retailer or terminal distributor of dangerous drugs from selling, offering to sell, holding for sale, delivering, or otherwise providing any ephedrine product, phenylpropanolamine product, or pseudoephedrine product to an individual that the retailer or terminal distributor knows or reasonably should know is under age 18. Generally, a violation of this prohibition is a minor misdemeanor. But if the offender previously has been convicted of or pleaded guilty to a violation of any of the prohibitions constituting the offense of "illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product," the violation is a misdemeanor of the third degree.

The bill specifies that the prohibition described in the preceding paragraph does not apply to any of the following: (1) a licensed health professional authorized to prescribe drugs or a pharmacist who dispenses, sells, or otherwise provides an ephedrine product, phenylpropanolamine product, or pseudoephedrine product to an individual under 18 years of age, (2) a parent or guardian of an individual under 18 years of age who provides such a product to the individual, or (3) a person who, as authorized by the individual's parent or guardian, dispenses, sells, or otherwise provides such a product to an individual under 18 years of age.

Fifth prohibition. The fifth prohibition prohibits an employee of a retailer or terminal distributor of dangerous drugs who is under 18 years of age from selling, offering to sell, holding for sale, delivering, or otherwise providing any ephedrine product, phenylpropanolamine product, or pseudoephedrine product to any individual. Generally, a violation of this prohibition is a minor misdemeanor. But if the offender previously has been convicted of any of the prohibitions constituting the offense of "illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product," the violation is a misdemeanor of the third degree.

Illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product--additional restrictions

(R.C. 3719.47)

The bill enacts four restrictions regarding transactions in any pseudoephedrine product that are independent of the prohibitions described above in "***Illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product--criminal prohibitions***." The bill does not provide a criminal penalty for a violation of any of the restrictions; the restrictions generally proscribe conduct that also is proscribed by the prohibitions described above in

"***Illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product--criminal prohibitions***."

First restriction. Under the first restriction, the bill requires a retailer or terminal distributor of dangerous drugs that sells, offers to sell, holds for sale, delivers, or otherwise provides an ephedrine product, phenylpropanolamine product, or pseudoephedrine product to the public to do all of the following: (1) segregate ephedrine products, phenylpropanolamine products, and pseudoephedrine products from other merchandise so that no member of the public may procure or purchase such products without the direct assistance of a pharmacist or other authorized employee of the retailer or terminal distributor, and (2) with regard to each time an ephedrine product, phenylpropanolamine product, or pseudoephedrine product is sold or otherwise provided, determine, by examination of a valid proof of age, that the purchaser or recipient is at least 18 years of age and make a reasonable attempt to ensure that no individual purchases or receives within a 30-day period an amount of an ephedrine product, phenylpropanolamine product, or pseudoephedrine product that exceeds two packages of any one of those products or of any combination of those products, with neither package so sold or no combination of packages so sold, whichever is applicable, containing more than six grams of the product. The bill does not provide a criminal penalty for a violation of this restriction. The restriction is consistent with the second and third prohibitions the bill enacts that are described above in "***Illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product--criminal prohibitions***."

Second restriction. The second restriction generally prohibits a retailer or terminal distributor of dangerous drugs from knowingly selling, offering to sell, holding for sale, delivering, or otherwise providing to any individual within any 30-day period an amount of ephedrine product, phenylpropanolamine product, or pseudoephedrine product that exceeds two packages of any one of those products or of any combination of those products, with neither package so sold or no combination of packages so sold, whichever is applicable, containing more than six grams of the product. This restriction does not apply to any quantity of ephedrine product, phenylpropanolamine product, or pseudoephedrine product dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional authorized to prescribe drugs. The bill does not provide a criminal penalty for a violation of this restriction. The restriction is consistent with the second prohibition the bill enacts that is described above in "***Illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product--criminal prohibitions***."

Third restriction. Under the third restriction, the bill generally prohibits a retailer or terminal distributor of dangerous drugs from selling, offering to sell,

holding for sale, delivering, or otherwise providing any ephedrine product, phenylpropanolamine product, or pseudoephedrine product to an individual who is under 18 years of age. This restriction does not apply to any of the following: (1) a licensed health professional authorized to prescribe drugs or a pharmacist who dispenses, sells, or otherwise provides an ephedrine product, phenylpropanolamine product, or pseudoephedrine product to an individual under 18 years of age, (2) a parent or guardian of an individual under 18 years of age who provides an ephedrine product, phenylpropanolamine product, or pseudoephedrine product to the individual, or (3) a person who, as authorized by the individual's parent or guardian, dispenses, sells, or otherwise provides an ephedrine product, phenylpropanolamine product, or pseudoephedrine product to an individual under 18 years of age. The bill does not provide a criminal penalty for a violation of this restriction. The restriction is consistent with the fourth prohibition the bill enacts that is described above in "***Illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product--criminal prohibitions***."

Fourth restriction. The fourth restriction prohibits an employee of a retailer or terminal distributor of dangerous drugs who is under 18 years of age from selling, offering to sell, holding for sale, delivering, or otherwise providing any pseudoephedrine product to any individual. The bill does not provide a criminal penalty for a violation of this restriction. The restriction is consistent with the fifth prohibition the bill enacts that is described above in "***Illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product--criminal prohibitions***."

Regarding the four restrictions described above, the bill specifies that: (1) prescriptions, orders, and records maintained pursuant to those provisions and stocks of ephedrine products, phenylpropanolamine products, or pseudoephedrine products must be open for inspection to federal, state, county, and municipal officers, and employees of the State Board of Pharmacy whose duty it is to enforce the laws of Ohio or of the United States relating to controlled substances, (2) such prescriptions, orders, records, and stocks must be open for inspection by the State Medical Board and its employees for purposes of enforcing R.C. Chapter 4731., (3) no person having knowledge of any such prescription, order, or record may divulge that knowledge, except in connection with a prosecution or proceeding in court or before a licensing board or officer, to which prosecution or proceeding the person to whom the prescriptions, orders, or records relate is a party, and (4) the State Board of Pharmacy may, by rule adopted in accordance with the Administrative Procedure Act, exempt from those provisions ephedrine products, phenylpropanolamine products, or pseudoephedrine products that the Board finds are not used in the illegal manufacture of methamphetamine; the Board may exempt an ephedrine product, phenylpropanolamine product, or pseudoephedrine product from those provisions if it determines that the product was formulated in

such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

As used in the restrictions described above, "consumer product," "ephedrine," "ephedrine product," "phenylpropanolamine," "phenylpropanolamine product," "proof of age," "pseudoephedrine," "pseudoephedrine product," "retailer," "single-ingredient preparation," and "terminal distributor of dangerous drugs" have the same meanings as are described above in "***Illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product--criminal prohibitions***." "Drug," "licensed health professional authorized to prescribe drugs," and "prescription" have the same meanings as in existing R.C. 4729.01. "Pharmacist" means a person licensed under R.C. Chapter 4729. to engage in the practice of pharmacy.

Notice of theft

(R.C. 3719.48)

Existing law requires a person to report the theft of dangerous drugs to law enforcement authorities, and the Ohio Administrative Code requires each prescriber and terminal or wholesale distributor of dangerous drugs, on discovery of the theft or significant loss of any dangerous drug or controlled substance, to also notify the State Board of Pharmacy and (if a controlled substance) the federal Drug Enforcement Administration (R.C. 2913.02(A) and (B)(6) and 2921.22(A) and (I) and O.A.C. 4729-9-15).

The bill expands the reporting requirements to apply to certain methamphetamine precursors. Under the bill, each retailer, terminal distributor of dangerous drugs, pharmacy, prescriber, or wholesaler that sells, offers to sell, holds for sale, delivers, or otherwise provides any ephedrine product, phenylpropanolamine product, or pseudoephedrine product and that discovers the theft or significant loss of more than six grams of any of those products or combination of those products immediately must notify the State Board of Pharmacy of the theft or loss. The initial report must be made by telephone and, within 30 days after the report is made, must be followed by a written report. The report must identify the product that was stolen or lost, the amount of the product stolen or lost, and the date and time of the discovery of the theft or loss.

On receiving the telephone report, the State Board of Pharmacy immediately must notify all of the following of the theft or loss: (1) the sheriff of the county in which the retailer, terminal distributor, pharmacy, prescriber, or wholesaler that made the report is located, and (2) if the retailer, terminal distributor, pharmacy, prescriber, or wholesaler that made the report is located in a

municipal corporation, the police department, marshal, or other law enforcement agency of that municipal corporation.

As used in these provisions, "consumer product," "ephedrine," ephedrine product," "phenylpropanolamine," "phenylpropanolamine product," "pseudoephedrine," "pseudoephedrine product," "retailer," and "single-ingredient preparation" have the same meanings as are described above in "***Illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product--criminal prohibitions***."

Endangering children

(R.C. 2919.22)

Existing law. The offense of "endangering children" contains a number of different prohibitions, the penalties for which range from a first degree misdemeanor to a second degree felony depending on the prohibition violated and the circumstances surrounding the violation. Included in the existing prohibitions are provisions that prohibit both of the following:

(1) A person from allowing a child under 18 years of age or a mentally or physically handicapped child under 21 years of age to be on the same parcel of real property and within 100 feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within 100 feet of, any act in violation of the prohibition against illegal manufacture of drugs or illegal assembly or possession of chemicals for the manufacture of drugs;

(2) A person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under 18 years of age or a mentally or physically handicapped child under 21 years of age, from creating a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support.

Operation of the bill. The bill expands the offense of endangering children to additionally prohibit a person from doing either of the following: (1) possessing or using methamphetamine in the presence of a child under 18 years of age or a mentally or physically handicapped child under 21 years of age, or (2) possessing in the presence of the child an ephedrine product, phenylpropanolamine product, pseudoephedrine product, or combination of those products in an amount in excess of six grams of the product or combination of those products.[225]

[225] *Six grams would constitute 200 pills of 30 milligrams each.*

A person who violates this prohibition is guilty of a fourth degree felony. As used in these provisions, "ephedrine product," "phenylpropanolamine product," and "pseudoephedrine product" have the same meanings as are described above in "***Illegal transactions in an ephedrine, phenylpropanolamine, or pseudoephedrine product--criminal prohibitions***."

Abused children

(R.C. 2151.031(F))

The bill expands the definition of "abused child"[226] that applies in the Juvenile Court Law so that, in addition to the categories of children included under existing law, it also includes any child who is exposed to any of the following: (1) methamphetamine or an ephedrine product, phenylpropanolamine product, or pseudoephedrine product in violation of the new prohibition the bill proposes as part of the offense of "endangering children," (2) conduct in violation of the offense of "illegal manufacture of drugs" that involves the manufacture of methamphetamine, or (3) conduct in violation of bill's new prohibition in the offense of "illegal assembly or possession of chemicals for the manufacture of drugs."

A court need not find that any person has been convicted of the offense in order to find that the child is an abused child.[227]

Illegal manufacture of drugs

(R.C. 2925.04)

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[226] *Under existing law, an "abused child" includes any child who: (1) is the victim of sexual activity, when that activity would constitute an offense under the sex offense laws, (2) is endangered as defined for the offense of endangering children, (3) exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it, (4) because of the acts of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare, or (5) is subjected to out-of-home care child abuse (R.C. 2151.031).*

[227] *Under existing law, unchanged by the bill, if a court adjudicates a child to be an abused child, the court may make certain statutorily specified orders of disposition, including orders that do any of the following: (a) place the child in protective supervision, (b) commit the child to the temporary custody of a public children services agency, a private child placing agency, either parent, a relative, or a probation officer for placement in a home approved by the court, or (c) commit the child to the permanent custody of a public children services agency or private child placing agency, if certain criteria are met. (R.C. 2151.353(A).)*

Existing law. A person who knowingly manufactures or otherwise engages in any part of the production of a controlled substance is guilty of the offense of illegal manufacture of drugs. The penalty for illegal manufacture of drugs depends on the type of drug involved and certain circumstances surrounding the violation.[228]

Generally, if the drug involved in the violation is any compound, mixture, preparation, or substance included in Schedule I or II of the controlled substances schedules, illegal manufacture of drugs is a second degree felony, and a prison term is mandatory. If the offense was committed in the vicinity of a juvenile or in the vicinity of a school, illegal manufacture of drugs is a felony of the first degree, and a prison term is mandatory. If the drug involved in the violation is methamphetamine[229] and the offense was committed on public premises, illegal manufacture of drugs is a felony of the first degree and a prison term is mandatory.

A person committing the offense of illegal manufacture of drugs generally is subject to a mandatory fine, a driver's license suspension, and, if the person is a professionally licensed person, sanctions regarding that professional license. If certain criteria are met, the offender may also be subject to an additional prison term as a serious drug offender.

Operation of the bill. The bill provides that if the drug involved in the offense of illegal manufacture of drugs is methamphetamine and the offense was committed in the vicinity of a juvenile or in the vicinity of a school, the offense is a felony of the first degree and a prison term is mandatory.

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[228] *This prohibition does not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and certain other persons whose conduct is in accordance with law and to certain other persons in relation to anabolic steroids (R.C. 2925.04(B), by reference to 2925.03(B)).*

[229] *Or any salt, isomer, or salt of an isomer of methamphetamine, or any compound, mixture, preparation, or substance containing methamphetamine or any salt, isomer, or salt of an isomer of methamphetamine.*

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
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Reported, H. Finance & Appropriations	04-12-05	pp. 387-388
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