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Legislative Service Commission

Bill Analysis

H.B. 119*

127th General Assembly
(As Introduced)

Rep. Dolan

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

* This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Budget in Detail spreadsheet for H.B. 119 for information on appropriations.

DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS)

- Harmonizes law with respect to the Department of Administrative Services Office of Risk Management authority to purchase fidelity bonding.

- Eliminates the Vehicle Liability Fund and combines the Vehicle Liability Program within the existing risk Management Reserve Fund.

- Creates new Schedules E-1 and E-2 rates of salaries and wages to be paid to exempt employees for pay periods including July 1, 2007, and July 1, 2008, providing a 3½% pay increase.

- Authorizes the Department of Administrative Services, but no other state agency, to provide printing or office reproduction services for political subdivisions.

- Eliminates the Department of Administrative Services' duties with respect to the central management of agency forms.

- Transfers the Office of Information Technology from the Department of Administrative Services to the Office of Budget and Management.

- Divides general purchasing authority, formerly vested wholly in the Department of Administrative Services, so that the Office of Information Technology has general purchasing authority with regard to information technology while the Department retains general purchasing authority for everything else.

- Establishes transition rules for the transfer of the Office of Information Technology from the Department of Administrative Services to the Office of Budget and Management.

- Transfers to the Department of Administrative Services the printing office of the Office of Information Technology and the mail and fulfillment services office of the Department of Job and Family Services.

- Authorizes the temporary assignment of the duties of a higher classification to exempt employees with commensurate pay.

Office of Risk Management

(R.C. 9.821 and 9.822)

Under current law, the Office of Risk Management within the Department of Administrative Services has the authority to provide all insurance coverages for the state. The bill harmonizes R.C. 9.821 with R.C. 125.03 (not in the bill) with respect to the authorization to purchase fidelity bonding, and eliminates specific authorization to establish and administer a self-insured fidelity bond program.

Risk Management Reserve Fund

(R.C. 9.823 and 9.83)

Under current law, the Director of Administrative Services, through the Office of Risk Management, operates the Vehicle Liability Fund, which is used to provide certain insurance and self-insurance for the state pursuant to R.C. 9.83. The bill eliminates the separate Vehicle Liability Fund and creates the Vehicle Liability Program within the existing Risk Management Reserve Fund. Amounts that under current law are deposited in the Vehicle Liability Fund instead will be deposited in the Risk Management Reserve Fund to the credit of the Vehicle Liability Program.

Schedules of rates for certain public employees

(R.C. 124.152)

Existing law provides that certain public employees are paid a wage or salary that is determined using one of four schedules of rates. Depending upon the type of employee, there is a specific schedule of rates that applies to and establishes the compensation for the employee.

Managerial and professional public employees who are permanent employees paid directly by warrant of the Director of Budget and Management, whose position is included in the state's job classification plan, and who are exempt from the Public Employee Collective Bargaining Law ("exempt employees") receive wages or salaries based upon the schedule of rates known as Schedule E-2.[1] Under the Schedule E-2, there are a number of different pay ranges

[1] Under R.C. 124.14(B), exempt employees, for purposes of R.C. 124.15 and R.C. 124.152, do not include any of the following: elected officials; legislative employees; employees of the Legislative Service Commission; employees in the Governor's office; employees who are in the unclassified civil service and exempt from collective bargaining coverage in the office of (a) the Secretary of State, (b) the Auditor of State, (c) the Treasurer of State, or (d) the Attorney General; employees of the Supreme Court;

to which an employee paid under that schedule is assigned. Then, for each pay range, there is a specific minimum and maximum hourly wage or annual salary that the employee may receive. (R.C. 124.152(B) and (C).)

Exempt employees who are not managerial or professional employees paid under Schedule E-2 receive wages or salaries based upon the schedule of rates known as Schedule E-1. Similar to the Schedule E-2, Schedule E-1 contains a number of different pay ranges to which an employee paid under that schedule is assigned. However, rather than having a minimum and maximum hourly wage and annual salary for each pay range as under Schedule E-2, pay ranges under Schedule E-1 contain a number of step values, one to which an employee is assigned, with each step providing for a specifically set hourly wage or annual salary. (R.C. 124.152(B) and (C).)

The bill enacts new Schedules E-1 and E-2. The new schedules will apply beginning on the first day of the pay period that includes July 1, 2007, and July 1, 2008, and each includes a 3½% increase in the salaries and wages. (R.C. 124.152(C) and (D).)[2]

Department of Administrative Services provision of printing or office reproduction services for political subdivisions

(R.C. 125.45)

Current law prohibits the Department of Administrative Services or any other state agency from performing printing or office reproduction services for political subdivisions. The bill instead prohibits no state agency, other than the Department of Administrative Services, from performing printing or office reproduction services for political subdivisions.

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employees of a county children services board that establishes its own compensation rates; any position for which the authority to determine compensation is given by law to an individual or entity other than the Department of Administrative Services; and employees of the Bureau of Workers' Compensation whose compensation the Administrator of Workers' Compensation establishes.

[2] The bill also provides two new Schedule E-1s for Step Seven Only that will apply beginning on the first day of the pay period that includes July 1, 2007, and July 1, 2008 (R.C. 124.152(F) and (G)).

Agency forms management

(R.C. 125.93, 125.95(repealed), 125.96, 125.97, and 125.98)

There is currently established in the Department of Administrative Services a state forms management program to: (1) assist state agencies in designing economical forms and establishing internal forms management capabilities, (2) establish basic design and specification criteria to standardize state forms, and (3) maintain a central forms repository of all state forms. State agencies generally are not permitted to utilize any form unless it has been approved by the program or the program has delegated management of the form to the agency. The law requires each state agency to appoint a forms management representative who, among other things, must ensure that every form used by the agency is presented to the program for registration prior to its reproduction.

The bill eliminates the Department's duties with respect to the central management of agency forms. It relieves the program of the responsibilities described in (2) and (3), above, and removes the requirement that forms be pre-approved by the program. The program does, however, retain its responsibility to provide forms management assistance to state agencies.

Transfer of the Office of Information Technology from the Department of Administrative Services to the Office of Budget and Management

Current law establishes the Office of Information Technology within the Department of Administrative Services, supervised by a Chief Information Officer. The Officer is appointed by and subject to the removal by the Governor. The Officer advises the Governor regarding the superintendence and implementation of statewide information technology policy, and leads, oversees, and directs state agency activities relating to information technology development and use. (R.C. 125.18, repealed by the bill.)

The bill removes the Office of Information Technology from the Department of Administrative Services and transfers it to the Office of Budget and Management. Under the bill, the State Chief Information Officer is appointed by the Director of Budget and Management, and is subject to removal at the director's pleasure. The Officer reports to the director, and is an assistant director of the Office of Budget and Management. The Officer supervises the Office of Information Technology, subject to the authority of the Director of Budget and Management. The Officer possesses all authority given to the Office of Information Technology, subject to the approval of the Director of Budget and Management. (R.C. 126.17.)

Authorities and responsibilities of the State Chief Information Officer within the Office of Budget and Management

The State Chief Information Officer continues to be responsible for leading, overseeing, and directing state agency activities relating to information technology development and use. In this regard, the Officer specifically continues to be responsible for:

(1) Coordinating and superintending statewide efforts to promote the common use and development of technology by state agencies;

(2) Establishing 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 are required to comply;

(3) Establishing criteria and review processes to identify state agency information technology projects that require alignment or oversight.

The Office of Information Technology continues to be required to establish policies and standards to govern and direct state agency participation in statewide technology programs and initiatives. As appropriate, the State Chief Information Officer continues to be required to provide the Director of Budget and Management with notice and advice regarding the appropriate allocation of resources for state agency information technology projects that require alignment or oversight. And the Officer continues to be authorized to prescribe the form and manner by which state agencies must provide, and can require state agencies to provide, information to fulfill the State Chief Information Officer's alignment and oversight role.

The State Chief Information Officer's authority over agency information technology development and use is limited to entities that fit under the definition of "state agency." "State agency" continues to be broadly defined for this purpose as every organized body, office, or agency established by state law for the exercise of any function of state government. Excluded from the definition, however, are state-supported institutions of higher education; the offices of the Auditor of State, Treasurer of State, Secretary of State, and Attorney General; the five state employee retirement systems; the General Assembly and any legislative agency; and the courts and any judicial agency. (R.C. 126.17(G).)

Information Technology purchasing Authority granted to the State Chief Information Officer

Under current law, the Department of Administrative Services possesses general power to purchase supplies and services for the use of state agencies, except for the Adjutant General, the Capital Square Review and Advisory Board, the Department of Rehabilitation and Correction, the General Assembly, the Bureau of Workers' Compensation, and institutions administered by boards of trustees (R.C. 125.02). The bill, however, divides this purchasing authority between the Department of Administrative Services and the Office of Information Technology: the Office of Information Technology has general purchasing authority for information technology services and supplies, and the Department of Administrative Services has general purchasing authority over supplies and services unrelated to information technology. (R.C. 125.01(H), 125.011, and 126.17(D).) For purposes of this division of authority, "information technology" means technologies and services that are used for information processing, including, but not limited to, software, computing hardware, communications technologies, and related services (R.C. 125.01(B)). The Department of Administrative Services and the Office of Information Technology are to consult with each other to promote consistency when they adopt rules to govern their respective purchasing activities (R.C. 125.011).

The Office's general purchasing authority for information technology services and supplies extends to "state agencies" (as defined above) (R.C. 126.17(G)) and is subject to the same limitations as is the Department's purchasing authority (as also described above) (R.C. 125.01 and 125.02).

In addition to its purchasing authority, the Office of Information Technology continues to be authorized to make contracts for, to operate, and to superintend technology supplies and services for state agencies (R.C. 126.17(E)), and continues to be authorized to establish cooperative agreements with local government agencies, with federal agencies, and with state agencies that are not under the authority of the Governor for the provision of technology services and the development of technology projects (R.C. 126.17(F)).

The bill creates the IT [Information Technology] Governance Fund in the State Treasury. The fund is to be a source of money that will enable the Office of Information Technology to carry out its responsibilities. It consists of revenues generated from payroll charges, billed services, administrative assessments, and other revenues that have been designated to support the Office in the discharge of its responsibilities. (R.C. 126.17(H).)

Accountability of the State Chief Information Officer

The bill requires the Officer annually to submit a report to the Governor addressing the statewide superintendence of information technology and the implementation of statewide information technology policy (R.C 126.17(B)). Beginning July 1, 2008, the Office of Information Technology is required, annually on or before December 31, to report to the finance committees in the House of Representatives and Senate indicating the effectiveness during the prior fiscal year of electronic procurement of information technology supplies and services (R.C. 125.073(B)).

Maintenance of the Ohio Business Gateway

Current law requires the Department of Administrative Services to create a business reply form that private businesses use to provide required information to state agencies (R.C. 125.30). The bill requires instead that the Office of Information Technology create the business reply form. The business reply form is to be capable of containing information that a private business is required to provide to state agencies on a regular basis. The Office of Information Technology is to adopt rules under the Administrative Procedure Act specifying the information the form is to contain. In doing this, the Office is authorized to consider the recommendations of interested parties from the small business community who have direct knowledge of and familiarity with current state reporting requirements that apply to, and the associated forms that are filed by, small businesses.

State agencies are required to use the business reply form to obtain information from private businesses. The Office, in turn, is required to establish procedures by which state agencies can share information that is collected through the business reply form. The procedures are to provide that information that has been designated confidential by a state agency is not to be made available to other state agencies having access to the business reply form. (R.C. 126.18(A) and (B).) The bill authorizes the Office of Information Technology to report to the Director of the Office of Budget and Management and to the finance and government committees of the House of Representatives and Senate regarding state agency compliance with the use of business reply forms, and to recommend a 5% reduction in the future appropriations of agencies that do not use the business reply form without good cause (R.C. 126.18(C)).

The bill also requires the Office of Information Technology to maintain the Ohio Business Gateway. The Ohio Business Gateway is an on-line network system that allows private businesses to electronically file reports (such as business tax returns and wage and hour reports) with state agencies. (R.C. 718.051, not in the bill.)

Maintenance of the Multi-Agency Radio Communications System

The Office of Information Technology also is responsible for maintaining the Multi-Agency Radio Communications System (MARCS). The purpose of MARCS is to provide statewide voice and data communications through a computer and communications network. Its primary use is to supply a communications backbone for statewide public safety uses in a single system that is shared by several state agencies. MARCS is to provide mobile voice, data, vehicle location services, and computer-aided dispatching. And the Office of Information Technology is to promote MARCS as a statewide inoperable communications system for public safety agencies at all levels of government. Subject to the approval of the MARCS Steering Committee (see below), the Office may make MARCS available to agencies for secondary uses not related to public safety. (R.C. 126.19(A).) The committee is authorized to permit these secondary uses only if they do not interfere with the system's primary public safety use (R.C. 126.19(B)). (R.C. 126.19 (A) and (B).)

The bill also establishes the MARCS Steering Committee, chaired by the State Chief Information Officer (or the Officer's designee), and consisting of the following members: the directors of Public Safety, Health, Natural Resources, Transportation, Rehabilitation and Correction, and Youth Services and a designee not from a state agency who is appointed by the Officer. The committee is to provide assistance to the Office of Information Technology in effectively and efficiently implementing MARCS, and in developing policies for ongoing management of the system. Upon dates prescribed by the State Chief Information Officer, the committee is to report to the Officer on the progress of MARCS implementation and the development of policies related to the system. (R.C. 126.19(B).)

Miscellaneous successions

The Office of Information Technology succeeds to the responsibilities of the Department of Administrative Services under the Ohio Uniform Electronic Transactions Act (R.C. Chapter 1306). The Office of Information Technology also succeeds to the Department's responsibility for administering and enforcing the Personal Information Systems Act insofar as it applies to state agencies (R.C. 1347.06).

The bill removes the Director of Budget and Management from the Ohio Business Gateway Steering Committee. The State Chief Information Officer, however, continues to be a member of the committee. (R.C. 5703.57.)

Transition rules for transfer of Office of Information Technology

(Section 515.03)

The bill prescribes transition rules to implement its transfer of the Office of Information Technology and the State Chief Information Officer from the Department of Administrative Services to the Office of Budget and Management. During the transition, the State Chief Information Officer is to continue to perform the duties, powers, and obligations of the Officer's office and of the Office of Information Technology that are provided for by law. In doing so, beginning July 1, 2007, the State Chief Information Officer is required to report to the Director of Budget and Management, instead of to the Director of Administrative Services. However, operations of the Office of Information Technology remain with the Department of Administrative Services until July 1, 2008, to allow time for the administrative reorganization occasioned by the transfer.

To this end during the transitional year, the Director of Budget and Management is to take various actions with respect to budget changes that are made necessary by the transfer, including administrative reorganization, program transfers, consolidation of funds, creation of new funds, transfers of cash balances from old to new funds, and canceling encumbrances against old funds and re-establishing them against new funds.[3] The Director also is authorized to transfer unencumbered or unallocated fiscal year 2007 appropriation balances to the appropriate appropriation items in fiscal years 2008 and 2009, to be used for the same purposes as in fiscal year 2007.

Nevertheless, beginning on July 1, 2007, the transfer has two consequences:

(1) Whenever the Department of Administrative Services, the Office of Information Technology, or the State Chief Information Officer is referred to in any law, contract, or other document in relation to statewide information

[3] At the request of the Director of Budget and Management, the State Chief Information Officer is to certify to the Director an estimate of the cash balance that is to be transferred from an old to a new fund. The Director then may transfer the estimated amount as needed to make payments. Not more than 30 days after certifying the estimated amount, the Officer is to certify to the Director the final amount of the cash balance to be transferred. The Director thereupon is to transfer the difference between the amounts previously transferred and the final amount. As needed, encumbrances against the old fund are to be cancelled and re-established against the new fund, for the same purpose and to the same vendor as under the predecessor old fund. Corresponding adjustments in appropriation accounts are to be made.

technology, the reference is to be understood as referring to the Office of Information Technology in the Office of Budget and Management.

(2) An action or proceeding pending in a court or an administrative proceeding pending before an administrative agency that relates to the Office of Information Technology in the Department of Administrative Services is not affected by the transfer and is to be prosecuted or defended in the name of the Director of Budget and Management or the Office of Budget and Management. (In all these actions and proceedings, the Director or Office, upon application to the court or agency, is to be substituted as a party.)

All funding, assets, and records of the Office of Information Technology are to be transferred from the Department of Administrative Services to the Office of Budget and Management on July 1, 2008. All rules, orders, policies, directives, and determinations of the State Chief Information Officer and the Office of Information Technology thereupon continue in effect as rules, orders, policies, directives, and determinations of the Officer and Office in the Office of Budget and Management, until they are modified or rescinded by the Officer, Office, or the Director of Budget and Management.[4]

Employees of the Office of Information Technology are to be transferred to the Office of Budget and Management. The State Chief Information Officer and the Directors of Administrative Services and of Budget and Management are to identify employees of the Department of Administrative Services who provide administrative support to the Office of Information Technology; these employees also are to be transferred to the Office of Budget and Management. Both these transfers are to occur on the first day of the first pay period for fiscal year 2009, subject, however, to the lay-off procedures of the Civil Service Act.

Transfer to the Department of Administrative Services of the Printing Office of the Office of Information Technology and the Mail and Fulfillment Services Office of the Department of Job and Family Services

(Sections 515.06 and 515.09)

The bill provides that effective July 1, 2007, or on the earliest date thereafter agreed to by the Director of Budget and Management and the Director of Administrative Services, the Office of Information Technology (OIT) Printing

[4] If necessary to ensure the integrity of the Administrative Code rule numbering system, and upon the request of the State Chief Information Officer or the Director of Budget and Management, the Director of the Legislative Service Commission is to renumber the rules of the Office of Information Technology to reflect its transfer to the Office of Budget and Management.

Office currently located on Integrity Drive in Columbus becomes part of the Department of Administrative Services (DAS).[5] Employees of the OIT Printing Office are to be transferred to DAS, subject, however, to the layoff provisions of the Civil Service Act and the contract between the state and all affected bargaining units. Transferred employees retain their positions and all benefits accruing to their positions.

The bill also provides that effective July 1, 2007, or on the earliest date thereafter agreed to by the Director of Job and Family Services and the Director of Administrative Services, the Department of Job and Family Services (DJFS) Mail and Fulfillment Office currently located on Integrity Drive in Columbus becomes part of DAS. Employees designated as staff of the Mail and Fulfillment Office are to be transferred to DAS, subject, however, to the layoff provisions of the Civil Service Act and the contract between the state and all affected bargaining units. Transferred employees retain their positions and all benefits accruing to their positions.

The bill requires the Director of Job and Family Services and the Director of Administrative Services to enter into an interagency agreement establishing terms and timetables for the implementation of the transfer. The agreement must include (1) provisions for credit to DJFS for prepaid postage, (2) agreements for the credit, transfer, or reimbursement of funds to DJFS to comply with terms and conditions applicable to federal funds DJFS expends for the purchase, maintenance, and operation of equipment, and (3) agreements for ongoing operations in compliance with federal requirements applicable to DJFS programs that utilize mail and fulfillment services, transfer of or sharing of lease agreements, and any other agreements that the Director of Job and Family Services and the Director of Administrative Services determine are necessary for successful implementation of the transfer.

As a result of the transfers, all functions, assets, and liabilities, including records, leases, and contracts, of the OIT Printing Office and the DJFS Mail and Fulfillment Office are transferred to the Department of Administrative Services. The Department is successor to, assumes the obligations of, and otherwise constitutes the continuation of the OIT Printing Office and the DJFS Mail and Fulfillment Office. A validation, cure, right, privilege, remedy, obligation, or liability conferred or incurred by, or otherwise relating to, either office is neither lost nor impaired by either transfer, and is to be administered by the Department of

[5] Current law houses the Office of Information Technology (OIT) in DAS (R.C. 125.18). Another provision of the bill transfers OIT to the Office of Budget and Management (OBM). Thus, the provision described here transfers the printing office of OIT back to DAS from OBM.

Administrative Services. All the rules, orders, policies, directives, and determinations of the OIT Printing Office and the DJFS Mail and Fulfillment Office continue in effect as rules, orders, policies, directives, and determinations of the Department of Administrative Services, until they are modified or rescinded by the Department.[6]

Any business begun but not completed by the OIT Printing Office or the DJFS Mail and Fulfillment Office at the time of the transfer is to be completed by the Department of Administrative Services, in the same manner, and with the same effect, as if it were completed by the office. An action or proceeding pending in a court or an administrative proceeding pending before an administrative agency to which the OIT Printing Office or the DJFS Mail and Fulfillment Office is a party is not affected by the transfer and is to be prosecuted or defended in the name of the Director of Administrative Services. (In all these actions and proceedings, the Director, upon application to the court or agency, is to be substituted as a party.)

The Director of Budget and Management is to take various actions with respect to budget changes that are made necessary by each transfer, including administrative reorganization, program transfers, consolidation of funds, creation of new funds, transfers of cash balances from old to new funds, and canceling encumbrances against old funds and re-establishing them against new funds. (Corresponding adjustments in appropriation accounts are to be made.) Not later than 60 days after the transfer of the OIT Printing Office, the Director of the Office of Information Technology is to certify to the Director of Budget and Management the amount of cash associated with printing services supported by the IT Services Delivery Fund. Similarly, not later than 60 days after the transfer of the DJFS Mail and Fulfillment Office, the Director of Job and Family Services is to certify to the Director of Budget and Management the amount of any unexpended balance of appropriations made to DJFS to support the office. Upon receiving the certifications, the Director of Budget and Management is to transfer the amount certified from the IT Services Delivery Fund or the unexpended appropriations to the State Printing Fund.

[6] If necessary to ensure the integrity of the Administrative Code rule numbering system, the Director of the Legislative Service Commission is to renumber the rules of the OIT Printing Office and the DJFS Mail and Fulfillment Office to reflect their transfer to the Department of Administrative Services.

Temporary assignment of duties of a higher classification to exempt employees

(Section 705.03)

An "exempt employee" is a public employee who is exempt from collective bargaining. The bill authorizes an appointing authority,[7] with an exempt employee's written consent, temporarily to assign the duties of a higher classification to the exempt employee. The period of time cannot exceed two years and the exempt employee is to be paid during the period at a rate commensurate with the duties of the higher classification. This temporary assignment authority is available only when a vacancy does not exist in the higher classification.

If it becomes necessary, the bill permits exempt employees who are assigned to duties within their agencies that concern maintaining operations during the Ohio Administrative Knowledge System (OAKS) implementation to agree to such a temporary assignment for a period exceeding two years.

DEPARTMENT OF AGING (AGE)

- Permits the Director of Aging to provide for the development and dissemination of Alzheimer's disease training materials for health and social services professionals, in place of a requirement that the Director develop and disseminate new training materials.

- Eliminates a provision permitting the Director to establish an Alzheimer's Disease Task Force.

- Requires the Director to adopt rules certifying living facilities for Residential State Supplement (RSS) program participants.

- Permits the Director to adopt rules giving priority on the RSS waiting list to certain individuals who receive Supplemental Security Income benefits.

- Creates the Unified Long-Term Care Budget Workgroup.

[7] An "appointing authority" is defined in R.C. 124.01 as an "officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution."

- Authorizes the Director of Budget and Management to create new funds, transfer funds among affected agencies, and take other actions in support of the Workgroup's proposals.

Alzheimer's Disease training materials

(R.C. 173.04(B))

Current law requires the Director of Aging to develop and disseminate new training materials or to disseminate existing Alzheimer's disease training materials for health and social services professionals who participate or assist in the care or treatment of Alzheimer's disease patients, including physicians, nurses, health care program administrators, social workers, and other health care professionals. The bill instead permits the Director to provide for the development and dissemination of Alzheimer's disease training materials.

Alzheimer's Disease Task Force

(R.C. 173.04(F); Sections 609.05 and 609.06)

Under current law, the Director of Aging is permitted, but not required, to create an Alzheimer's Disease Task Force to advise the Director on various issues pertaining to the care of Alzheimer's Disease patients. (According to the Office of Budget and Management, the Task Force has never been created.) The bill eliminates outright the provision permitting the Director to establish the Task Force.

Residential State Supplement program

(R.C. 173.35)

The Department of Aging administers the Residential State Supplement (RSS) program, which provides payments to aged, blind, and disabled adults at risk of needing institutional care. The payments must be used for the provision of accommodations, supervision, and personal care services.

Current law provides that, with certain exceptions, an individual must reside in a living facility licensed by the Department of Health to be eligible for RSS payments.[8] The bill requires the Director of Aging to adopt rules certifying

[8] An individual living in a licensed or certified living arrangement receiving state supplementation on November 15, 1990 or in an adult foster home certified by the Department of Aging can still receive RSS payments.

certain living facilities and to enter into an agreement with the Director of Mental Health to certify the facilities in accordance with the rules.

Current law provides that the Director of Aging may establish a waiting list of individuals eligible to receive RSS payments if moneys appropriated to the Department of Aging are insufficient to make payments to all eligible individuals. The bill authorizes the Director to adopt rules giving priority on the RSS waiting list to individuals placed on the waiting list on or after July 1, 2006, who receive Supplemental Security Income benefits. The bill provides that the rules are not to affect the place on the waiting list of any person who was on the list on July 1, 2006.

Unified Long-Term Care Budget Workgroup

(Section 213.30)

The bill creates the Unified Long-Term Care Budget Workgroup, consisting of the following members:

(1) The Director of Aging;

(2) Consumer advocates;

(3) Representatives of the provider community;

(4) State policy makers.

The Director is to serve as the Workgroup's chairperson.

The Workgroup is charged with developing a unified long-term care budget that facilitates the following:

(1) Providing a consumer a choice of services that meet the consumer's health care needs and improve the consumer's quality of life;

(2) Providing a continuum of services that meet the needs of a consumer throughout life;

(3) Consolidating policymaking authority and the associated budgets in a single entity to simplify the consumer's decision making and maximize the state's flexibility in meeting the consumer's needs;

(4) Assuring the state has a system that is cost effective and links disparate services across agencies and jurisdictions.

Not later than June 1, 2008, the Workgroup must submit a report to the Governor that considers the recommendations of the Medicaid Administrative Study Council, the Ohio Commission to Reform Medicaid, and the following:

(1) Recommendations regarding the structure of the unified long-term care budget;

(2) A plan outlining how funds can be transferred among involved agencies in a fiscally neutral manner;

(3) Identification of the resources needed to implement the unified budget in a multiphase approach starting in fiscal year 2009;

(4) Success criteria and tools to measure progress against the success criteria.

Director of Budget and Management authority

The bill authorizes the Director of Budget and Management to do any of the following in support of the Workgroup's proposal:

(1) Create new funds and account appropriation items to support and track funds associated with a unified long-term care budget;

(2) Transfer funds among affected agencies and adjust corresponding appropriation levels;

(3) Develop a reporting mechanism to show clearly how the funds are being transferred and expended.

DEPARTMENT OF AGRICULTURE (AGR)

- Authorizes the Director of Agriculture, in conducting investigations, inquiries, or hearings, to assess the party to an action that is brought before the Department of Agriculture pursuant to the Administrative Procedure Act specified costs incurred by the Department under certain circumstances, and provides that the assessment of costs may be appealed.

- Extends through June 30, 2009, the extra 2¢ earmark of wine tax revenue credited to the Ohio Grape Industries Fund.

Assessment of costs by Director of Agriculture for conducting investigations, inquiries, and hearings

(R.C. 901.261)

Under the bill, the Director of Agriculture, in conducting investigations, inquiries, or hearings, may assess the party to an action that is brought before the Department of Agriculture pursuant to the Administrative Procedure Act the actual costs incurred by the Department for depositions, investigations, issuance and service of subpoenas, witness fees, employment of a stenographer and hearing officer, and the production of books, accounts, papers, records, documents, and testimony if the applicable hearing officer determines that the party to the action has failed to comply with any statute or rule that is administered by the Director or if the hearing officer determines that the action was frivolous conduct by the party. The assessment of costs may be appealed to a court of competent jurisdiction.

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, 2007. The bill extends the extra 2¢ earmarking through June 30, 2009.

DEPARTMENT OF ALCOHOL AND DRUG ADDICTION SERVICES (ADA)

- Authorizes the Director of Alcohol and Drug Addiction Services to convene a study group to review the current provider rate structure and make recommendations.

Study of current provider rates

(Section 219.20)

The bill authorizes the Director of Alcohol and Drug Addiction Services to convene a study group to review the current provider rate structure and make recommendations. The study group must consist of state and county representatives and members of provider communities.

STATE BOARD OF EXAMINERS OF ARCHITECTS (ARC)

- Creates the architecture education assistance program to pay applicant enrollment fees for a required internship program.

Architecture education assistance program

(R.C. 4703.071)

Current law requires any person engaging in the practice of architecture to be certified by the State Board of Examiners of Architects. One prerequisite of certification is that applicants have completed an internship program (R.C. 4703.07 not in the bill). The bill establishes an architecture education assistance program to pay applicant enrollment fees for the required internship program and empowers the Board to adopt rules to establish eligibility and disbursement criteria.

ATHLETIC COMMISSION (ATH)

- Creates the Athletic Commission Promoter's License Fund, which must consist only of cash bonds, certified checks, and bank drafts the Ohio Athletic Commission receives from applicants for promoters' licenses.

- Requires the Commission to reimburse a promoter the amount of the cash bond, certified check, or bank draft required to be deposited with the Commission upon the expiration or revocation of the promoter's license.

- Requires a promoter who wishes to renew a promoter's license to pay to the Commission an additional administrative fee equal to 5% of the cash

bond, certified check, bank draft, or surety bond required of the promoter upon application for a license under existing law.

- Makes changes to the information a promoter's license must bear.

Public boxing or wrestling match or exhibition promoter's license

(R.C. 3773.31, not in the bill, 3773.35, and 3773.36)

Existing law requires a person who wishes to conduct a public boxing or wrestling match or exhibition to obtain a license from the Ohio Athletic Commission. That person is required to pay to the Commission an application fee accompanied by a cash bond, certified check, bank draft, or surety bond of not less than $5,000. The bill creates the Athletic Commission Promoter's License Fund, which will be in the custody of the Treasurer of State but will not be part of the state treasury. The fund must consist of all cash bonds, certified checks, and bank drafts the Commission receives from applicants as described above. All money in the fund, including investment earnings on that money, must be used solely to reimburse the cash bonds, certified checks, or bank drafts a promoter is required to deposit. Upon the expiration or revocation of a promoter's license, the Commission must reimburse a promoter the amount of the cash bond, certified check, or bank draft the promoter was required to deposit.

Under existing law, a promoter who wishes to renew a promoter's license must submit to the Commission an application for renewal along with payment of a renewal fee. The bill creates an additional renewal requirement that a promoter also must pay to the Commission an additional administrative fee equal to 5% of the total cash bond, certified check, bank draft, or surety bond required to be deposited upon initial application for a license, as described above.

Existing law requires a promoter's license issued by the Commission to bear the name of the licensee, the post office address of the licensee, the date of issue, a serial number designated by the Commission, the seal of the Commission, and the signature of the Commission chairperson. The bill changes the requirements that the license bear the date of issue and a serial number designated by the Commission to the date of expiration and an identification number issued by the Commission.

Under continuing law unchanged by the bill, "public boxing or wrestling match or exhibition" means any public or private competition that involves the sports of boxing, kick boxing, karate, tough man contests or tough guy contests, professional wrestling, or any other form of boxing or martial arts.

OFFICE OF BUDGET AND MANAGEMENT (OBM)

- Moves specified custodial funds into the state treasury.

- Makes the chief administrative officer of a state agency (or that person's designee), rather than the Director of Budget and Management, responsible for preauditing and approving a state agency's expenditures and other accounting transactions.

- Makes the chief administrative officer (or designee) responsible for ensuring that state agency purchases in which a state credit card is used are made in accordance with OBM guidelines and do not exceed the available balance in the appropriation to be charged.

- Authorizes OBM to review and audit vouchers and the documentation accompanying them, to maintain and periodically audit the financial records of and submission of vouchers by state agencies, and to provide assistance in the analysis of the financial position of state agencies.

- Creates the Forgery Recovery Fund in the state treasury to receive moneys collected by the Attorney General in cases of fraud or forgery involving state warrants.

- Creates the OAKS Support Organization Fund in the state treasury to pay the operating expenses of Ohio's enterprise resource planning system.

Certain custodial funds moved into the state treasury

(R.C. 109.93, 111.18, 173.85, and 173.86; Section 512.41)

The bill moves the following custodial funds into the state treasury, thereby requiring appropriations by the General Assembly in order to use the fund money:

(1) The Attorney General Education Fund. (This fund consists of gifts and grants received by the Attorney General for educational programs such as consumer protection, victims of crime, environmental protection, and peace officer training.)

(2) The Secretary of State Alternative Payment Program Fund. (This fund consists of fees paid under any alternative payment program implemented by the

Secretary of State that permits payment by means other than cash, check, money order, or credit card.)

(3) The Ohio's Best Rx Program Fund. (This fund generally consists of payments made by participating manufacturers, administrative fees, and amounts donated to the fund, and is used primarily to pay claims under the program.)

Responsibility for preauditing a request for payment from the state treasury

(R.C. 126.07 and 126.08(A)(8))

Under existing law, when a state agency receives an invoice for the purchase of goods or services, the agency initiates the procedure for paying for them by entering the necessary accounting information into the Central Accounting System. Overnight a computer at the Office of Budget and Management checks the information for such matters as whether sufficient money remains in the agency's appropriation to pay for the purchase and whether the vendor information is valid. If there are no problems with the proposed payment, the agency's fiscal officer prints out an original and one copy of a voucher that the agency will then use to authorize the payment. When the voucher authorizing payment is signed by one or more persons at the agency, the copy of the voucher is sent, together with a copy of the invoice and any other required documentation related to the purchase, to OBM--for two purposes:

(1) Preauditing, a process in which OBM examines the vouchers, contracts, etc., involved to substantiate the transaction, ensures that the signatures on the voucher are valid, and checks that its other requirements have been met;

(2) Making payment by means of electronic funds transfer or by drawing of a paper warrant on the state treasury. A warrant is a negotiable instrument, looking similar to and circulating much like a check, that promises payment upon the availability of money in the state treasury.

The bill transfers responsibility for the preaudit function regarding expenditures and other (accounting) transactions of a state agency from OBM to the chief administrative officer of the agency (the Director or, in an agency without a director, an equivalent officer), or to a person that the chief administrative officer designates for the purpose (for example, the agency's chief fiscal officer). The bill requires this person to examine all invoices, claims, vouchers, and other documents related to the payment and determine whether they meet all the requirements of OBM for making payment. If they do, the person is to certify his or her approval to OBM for payment. In other words, the agency that purchased the goods or services is to handle the routine paperwork related to the

purchase and to assume responsibility for ensuring that the payment is proper and that the supporting documents are in order.

At the same time, the bill leaves OBM with two of its existing functions related to making payments and gives it two additional powers. Specifically, the bill leaves unchanged the requirement that OBM not "approve payment" if it finds that there is not an unobligated balance in the appropriation for the payment, that the payment is not for a valid claim against the state that is legally due, or that insufficient documentation (which existing law refers to as "evidentiary matter") has been submitted. It also leaves OBM with the function of drawing warrants against the state treasury, a function that was transferred to it from the Auditor of State effective December 1, 2006.

One of the additional powers that the bill gives OBM is, prior to drawing a warrant on the state treasury, to "review and audit" the voucher and other documentation related to a transaction to determine if the transaction is in accordance with law. The other power it gives OBM is, *after* approving a payment, to perform such reviews and compliance checks as OBM considers necessary (R.C. 126.21(A)(8)).

Use of a payment card by a state agency

(R.C. 126.21(B))

The bill requires the chief administrative officer (or designee) of a state agency that uses a payment card (that is, a state credit card) for purchases to ensure that the purchases are made in accordance with guidelines issued by OBM and that the purchases do not exceed the unexpended, unencumbered, unobligated balance in the appropriation to be charged for the purchase.

OBM control over the financial transactions of state agencies

(R.C. 126.08)

Existing law authorizes OBM to exercise control over the financial transactions of state agencies except those in the judicial and legislative branches. The bill specifies that this control is to include approving, disapproving, voiding, or invalidating encumbrances or transactions. Existing law already gives OBM the power to approve or disapprove encumbrances. An encumbrance is a reservation of part of an appropriation, in the estimated amount of a purchase order, contract, etc., to ensure that money to pay for the goods or services that are being ordered or contracted for will be available when the goods are received or the services have been performed.

Auditing and accounting services to be provided by OBM

(R.C. 126.22)

Existing law empowers the Director of Budget and Management to (1) perform accounting services for and design and implement accounting systems with state agencies and (2) provide other accounting services, including the preparation and submission of reports. The bill specifies that these other accounting services include the maintenance and "periodic auditing" of the financial records of and submission of vouchers by state agencies and the provision of assistance in the analysis of the financial position of state agencies.

Forgery Recovery Fund

(R.C. 126.40)

The bill creates in the state treasury the Forgery Recovery Fund. The fund consists of all moneys collected by the Attorney General from the resolution of cases of fraud or forgery involving warrants issued by the Director of the Office of Budget and Management. The Director must use the fund to pay costs associated with the reissue of state warrants to payees whose warrants were fraudulently redeemed.

OAKS Support Organization Fund

(R.C. 126.40)

Ohio's enterprise resource planning system, called the Ohio Administrative Knowledge System, or OAKS, is a project aimed at improving the effectiveness, efficiency, and integration of central government business functions across all state agencies. OAKS integrates capital improvements, financials, fixed assets, human resources, and procurement.

The bill creates the OAKS Support Organization Fund in the state treasury for the purpose of paying the operating expenses of the system. The fund consists of cash transfers from OBM's Accounting and Budgeting Fund and DAS's Human Resources Services Fund, and other revenues designated to support the operating costs of OAKS. All investment earnings of the fund must be credited to it.

OFFICE OF CONSUMERS' COUNSEL (OCC)

- Repeals the provision that (1) prohibits the Consumers' Counsel from operating a telephone call center for consumer complaints and (2)

requires the Counsel to forward telephoned complaints against utilities to the Public Utilities Commission.

Consumers' Counsel call center

(R.C. 4911.021)

Current law expressly requires the Public Utilities Commission (PUCO) to operate a telephone call center for consumer complaints against any public utility by any person, firm, or corporation (R.C. 4905.261, not in the bill). Current law also prohibits the Consumers' Counsel from operating a telephone call center for consumer complaints and requires the Consumers' Counsel to forward any calls received concerning consumer complaints to the PUCO's call center. The bill repeals the provision that prohibits the Consumers' Counsel from operating a call center and requires the forwarding of telephoned complaints to the PUCO.

DEPARTMENT OF DEVELOPMENT (DEV)

- Authorizes the Department of Development to assess fees related to the federal Brownfield Revolving Loan Fund Program that is established under the federal Comprehensive Environmental Response, Compensation, and Liability Act and that is administered by the Department, and requires that the fees be used to support the federal Brownfield Revolving Loan Fund Program.

- Creates the International Trade Cooperative Projects Fund in the state treasury.

- Creates the Travel and Tourism Cooperative Projects Fund consisting of all grants, gifts, and contributions made to the Director of Development for marketing and promotion of travel and tourism within Ohio.

- Creates the Energy Projects Fund consisting of nonfederal revenue remitted to the Director of Development for the purpose of energy projects, and requires the Department of Development to use the money in the Fund for energy projects and to pay the costs incurred in administering the projects.

- Consolidates separate tax incentive administrative fee funds into a single Tax Incentive Programs Operating Fund consisting of existing fees charged under the job creation, job retention, community reinvestment area, and enterprise zone programs.

- Authorizes the Ohio Capital Access Loan Program to continue to make loans after the June 30, 2007, deadline currently in law.

Brownfield Revolving Loan Fund Program fees

(R.C. 122.011; Section 521.18)

Current law requires the Department of Development to develop and promote plans and programs designed to assure that state resources are efficiently used, economic growth is properly balanced, community growth is developed in an orderly manner, and local governments are coordinated with each other and the state. For those purposes, current law authorizes the Department to assist and cooperate with federal, state, and local governments and agencies in the coordination of programs to carry out the functions and duties of the Department; to coordinate the activities of state agencies that have an impact on carrying out the functions and duties of the Department; to create and operate a Division of Community Development to develop and administer programs and activities that are authorized by federal statute or Ohio law; and to perform other similar specified functions. The bill adds that the Department may assess fees related to the federal Brownfield Revolving Loan Fund Program that is established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and that is administered by the Department.

The bill requires Fund 4F2, State Special Projects, to be used for the deposit of private-sector funds from utility companies and the above fees and for the deposit of other miscellaneous state funds. Private-sector moneys must be used to: (1) pay the expenses of verifying the income-eligibility of HEAP applicants, (2) market economic development opportunities in the state, and (3) leverage additional federal funds. The bill requires that fees assessed under the bill be used to support the federal Brownfield Revolving Loan Fund Program. Finally, the bill requires state funds to be used to market economic development opportunities in the state.

International Trade Cooperative Projects Fund

(R.C. 122.051)

Under current law, the Director of Development is authorized to carry out certain functions for the purpose of encouraging, promoting, and assisting trade and commerce between Ohio and foreign nations. The bill creates the International Trade Cooperative Projects Fund in the state treasury which will receive money from private and nonprofit organizations involved in cooperative agreements related to foreign investment and cash transfers from other state agencies or any state or local government.

Travel and Tourism Cooperatives Projects Fund

(R.C. 122.071)

The bill creates the Travel and Tourism Cooperative Projects Fund in the state treasury consisting of all grants, gifts, and contributions made to the Director of Development for marketing and promotion of travel and tourism within Ohio pursuant to existing law.

Energy Projects Fund

(R.C. 122.076)

The bill creates the Energy Projects Fund in the state treasury consisting of nonfederal revenue that is remitted to the Director of Development for the purpose of energy projects and requires the Department of Development to use the money in the Fund for energy projects and to pay the costs incurred in administering the projects.

Tax Incentive Programs Operating Fund

(R.C. 122.17, 122.171, 122.174, 3735.672, and 5709.68; Section 263.20.50)

Under current law, rules established by the Director of Development may provide for recipients of tax credits under the job creation, job retention, community reinvestment area, and enterprise zone programs to pay a fee to cover the costs of administering each program. Currently, these fees are credited to separate funds.

Under the bill, these fees will be credited to a new and single fund: the Tax Incentive Programs Operating Fund. The fees must continue to be used to pay for the costs of administering the programs.

The Director of Budget and Management is directed to transfer the cash balance in the Job Creation Tax Credit Operating Fund to the Tax Incentive Programs Operating Fund, cancel appropriations against the former fund, and re-establish them against the new fund. The amounts of the re-established encumbrances are appropriated. The State Community Reinvestment Area Program Administration Fund and the State Enterprise Zone Program Administration Fund are eliminated.

Ohio Capital Access Loan Program

(R.C. 122.602)

Under existing law, the Director of Development administers the Capital Access Loan Program to assist participating financial institutions in making program loans to eligible businesses for working capital or fixed asset financing purposes. Current law, however, prohibits the Director from approving any capital access loan made after June 30, 2007, or entering into a participation agreement with any financial institution after that date. The bill removes this prohibition, thereby allowing the program to continue to make loans.

DEPARTMENT OF EDUCATION (EDU)

I. School Funding

Base-cost funding

- Prescribes the per pupil base-cost formula amount as $5,565 for FY 2008 and $5,732 for FY 2009 for all school districts and community schools except Internet- or computer-based community schools ("e-schools"), and $3,295 for FY 2008 and $3,387 for FY 2009 for e-schools.

- Eliminates the cost-of-doing-business factor from the base-cost formula.

- Increases by 3% each year the hourly rate used to calculate the base funding supplement for academic intervention.

- Retains in both years the 75% phase-in percentage for the base funding supplement for professional development.

- Eliminates the base-cost funding guarantee, which specifies that a district's state base-cost payment will not be lower than the lesser of its

FY 2005 state aggregate base-cost payment or its FY 2005 per pupil base-cost payment.

- Specifies that a district's state base-cost payment includes not only the base-cost calculation after the 23-mill local share ("charge-off") is deducted, but also the district's state poverty-based assistance and parity aid.

State share percentage

- Adds state poverty-based assistance and parity aid payments to the calculation of each school district's "state share percentage," which is used to calculate some of the district's categorical funding amounts, such as special education and vocational education funding.

Formula ADM

- Eliminates the second formula ADM report by school districts (which under current law is for the first full week in February).

- Formally specifies that a district's formula ADM is the final number verified by the Superintendent of Public Instruction, based on the number reported by the district, and formally authorizes the Superintendent to adjust a district's formula ADM to correct errors.

Parity aid

- Changes the calculation of state parity aid to equalize 8 mills in the 410 lowest-wealth districts in FY 2008 and 8.5 mills in the 367 lowest-wealth districts in FY 2009.

Poverty-based assistance

- Eliminates the guarantee that every school district will receive at least the same amount of poverty-based assistance that it received in FY 2005.

- Adds a new poverty-based assistance subsidy for assistance in closing the achievement gap in districts that have an "academic distress percentage" equaling or exceeding the statewide academic distress percentage.

- Retains the 70% phase-in percentage in both fiscal years for the subsidy for services to limited-English proficient students.

- Requires each district that receives poverty-based assistance to annually report to the Department of Education how it deployed the funds.

- Requires the Department of Education to make recommendations to a school district for deploying poverty-based assistance funds in a more effective manner, if the district does not meet adequate progress standards as defined by the Department.

- Revises the spending requirements for poverty-based assistance.

Special education funding

- Continues, in both years, to apply the 90% phase-in to the six prescribed special education weights, which has been applied since FY 2005.

- Increases the catastrophic threshold amount for special education and related services to $27,375 (from $26,500) for categories two through five and to $32,850 (from $31,800) for category six.

Transportation funding

- Specifies a 1% across-the-board increase in each school district's payment for regular student transportation in FY 2007 and FY 2008.

- Enacts a new permanent formula for transportation funding that is based on recommendations by the Department of Education and presumably would begin to operate in the 2009-2011 fiscal biennium.

Transitional aid

- Provides additional state transitional aid in FY 2008 and FY 2009 to prevent any school district's state funding for the current fiscal year from being less than it was in the previous fiscal year.

Other school funding provisions

- Removes from the revenue considered to be received by a school district, for purposes of calculating the state charge-off supplement ("gap aid"), the amount the district receives from the Tangible Personal Property Tax Replacement Fund or the General Revenue Fund for current expense taxes lost because of the phase-out of the tangible personal property tax.

- Eliminates the reappraisal guarantee that currently pays an additional subsidy to prevent a qualifying school district from losing state funds in the first year after the county auditor has reappraised or updated the valuation of taxable property.

- Revises the base for recalculating a school district's payments if necessary due to tax refunds paid to certain taxpayers, reductions to valuation or assessment complaints, or the creation of new tax exemptions.

- Specifies that payment to a school district based on a state aid recalculation be made on a date between June 1 of the current fiscal year and July 31 of the following fiscal year, as determined by the Director of Budget and Management (instead of on or before July 31 of the following fiscal year as under current law).

- Includes the Office of Budget and Management as a recipient of school district tax information that the Tax Commissioner and the Department of Development already provide to the Department of Education under current law.

II. Community Schools

Moratorium

- Places a moratorium on the establishment of new traditional ("brick and mortar") community schools, including conversion schools, between May 1, 2007, and July 1, 2009, with no exceptions.

- Prohibits a sponsor from assuming sponsorship of a "brick and mortar" community school from another sponsor during the moratorium.

- Eliminates authority for a sponsor to assume sponsorship of an e-school from another sponsor during the existing moratorium on new e-schools.

- Prohibits a community school that opened for operation after May 1, 2005, from operating from a residential facility that receives and cares for children until July 1, 2009.

Sponsors

- Limits an educational service center (ESC) to sponsoring community schools that are located in a county within the ESC's territory or in a contiguous county.

- Requires that for an entity that sponsors or operates out-of-state schools to be approved to sponsor community schools in Ohio, at least one of those out-of-state schools must perform as well as Ohio schools in continuous improvement (rather than academic watch, as under current law).

- Requires the contract between a community school and its sponsor to be "executed" by March 15 prior to the school year in which the school will open.

- Requires the sponsor of each community school to provide annual assurances to the Department of Education regarding the school's compliance with certain laws and the preparedness of the school's staff and facilities for the upcoming school year.

Operators

- Requires operators that manage the daily operations of a community school to be nonprofit entities.

- Requires community school governing authorities to award contracts for operators through a competitive bidding process established by the Department of Education.

Exemption from state laws

- Requires community schools to comply with all state laws and rules applicable to public schools, school districts, and boards of education.

Minimum school year

- Requires community schools to provide students with 180 days (instead of the current 920 hours) of learning opportunities each school year.

- Provides that any day in which an e-school student participates in less than five or more than ten hours of learning opportunities may not be

counted toward the 180 days of learning opportunities the school must provide to the student.

- Requires a community school to withdraw a student who fails to participate in 21 consecutive days (rather than the current 105 consecutive hours) of learning opportunities without excuse, and, unless the school solely serves dropouts, prohibits it from re-enrolling the student for the rest of the school year.

Other provisions

- Increases the minimum enrollment for community schools from 25 students to 100 students, but permits the Department of Education to grant waivers from the requirement.

- Requires each e-school to employ (instead of retain an affiliation with, as in current law) at least one full-time teacher of record for each 125 students enrolled in the school.

- Requires community schools to conduct criminal records checks of governing authority members.

- Shortens from four months to three months the deadline by which community schools must submit their end-of-year reports to sponsors and students' parents.

- Eliminates state payments to community schools for parity aid and poverty-based assistance for dropout prevention and community outreach.

- Specifies that, when a community school permanently closes, any funds remaining after payment of debts must be paid to the Department of Education for redistribution to the resident school districts of the community school's students.

- Repeals (1) a requirement that a school district first offer property suitable for classroom space for sale to start-up community schools in the district before otherwise disposing of it, (2) a requirement that a district offer property suitable for classroom space for sale to start-up community schools in the district when the district has not used the property for educational purposes for one school year and has not adopted a plan to so use that property within the next three years, and (3) a provision granting

a district that sells unused property to a community school under (2) the right of first refusal if the community school later disposes of the property.

III. Other Education Provisions

Educational Choice scholarships

- Repeals the Educational Choice Scholarship Pilot Program.

Early childhood education

- Establishes the Early Learning Initiative, paid for with Title IV-A (TANF) funds and jointly administered by the Ohio Department of Education and the Ohio Department of Job and Family Services, to provide early learning services to TANF-eligible children.

- Continues for the 2008-2009 biennium a GRF-funded program to support early childhood education programs offered by school districts and educational service centers to serve preschool children whose families earn up to 200% of the federal poverty guidelines.

- Eliminates the prohibition against a school district establishing a preschool program unless the district is eligible for poverty-based assistance and shows that other child care programs are not meeting its preschool needs.

- Postpones, from FY 2008 to FY 2010, the requirement that all teachers in state-funded early child education programs established prior to fiscal year 2007 have associate degrees.

- Sets the following new deadlines for state-funded early childhood education programs established during or after fiscal year 2007: (1) by fiscal year 2012, all teachers must have associate degrees and (2) by fiscal year 2013, half of the teachers must have bachelor's degrees.

- Beginning with the 2008-2009 school year, eliminates the authority of school districts to adopt August 1, instead of September 30, as the date by which a child must be five years old to be admitted to kindergarten and six years old for first grade.

Academic distress commissions

- Permits (rather than requires as under current law) the Superintendent of Public Instruction to establish an academic distress commission for a school district that has been in academic emergency and has not met adequate yearly progress for four or more consecutive school years.

- Requires that the two members of an academic distress commission appointed by the president of the district board be residents of the district.

- Requires each member of an academic distress commission to file a statement with the Ohio Ethics Commission disclosing pecuniary interests in financial transactions with the school district served by the commission.

- Adds several procedural specifications for the operation of an academic distress commission.

- Requires each academic distress commission to adopt an academic recovery plan approved by the Superintendent of Public Instruction.

Data and testing

- Repeals the current requirement for the Department of Education to sanction school districts and community schools that fail to properly report data to the Education Management Information System (EMIS) by withholding state payments, and replaces it with authorization for the Department to take a series of sequential actions (including withholding payments) against a school district, community school, or educational service center that fails to properly report EMIS data.

- Permits the Department to release certain funds withheld from an entity if the entity corrects its EMIS data reporting problems.

- Allows the Department to arrange for an audit of an entity's data reporting practices any time the Department believes the entity has not made a good faith effort to properly report EMIS data.

- Limits the highest performance rating a school district or building may receive based on the percentage of its students who do not take all required achievement tests.

- Requires foreign exchange students to pass the Ohio Graduation Test in social studies to qualify for the alternative conditions for a high school diploma.

- Revises the deadline for school districts to submit achievement tests to the scoring company.

Physical education standards

- Requires the State Board of Education, by December 31, 2008, to adopt the standards for physical education in grades K through 12 developed by the National Association for Sport and Physical Education (NASPE).

- Directs the Superintendent of Public Instruction to appoint a physical education coordinator.

School district RIF authority

- Removes the phrase "for financial reasons" from the list of statutory reasons a school district or educational service center may make reductions in force in its teaching or nonteaching staff.

- Eliminates a statutory procedure for a school district not covered by the state Civil Service Law to terminate some or all of its pupil transportation staff and to instead engage an independent contractor to provide pupil transportation.

Closed chartered nonpublic schools

- Requires the governing authority of a chartered nonpublic school to provide notice before closing the school.

- Requires the chief administrator of a closed chartered nonpublic school to deposit the school's records with the school district that received state auxiliary services funds on behalf of the school's students.

- Permits the school district receiving the records of a closed chartered nonpublic school to deduct from state auxiliary services funds a one-time payment for the cost of storing the records.

Other provisions

- Requires a school district to label equipment or materials it purchases or leases with state auxiliary services funds for loan to a chartered nonpublic school, unless the district determines that they are consumable or have a value of less than $200.

- Qualifies all public and chartered nonpublic school teachers who hold a valid teaching certification issued by the National Board for Professional Teaching Standards for an annual $2,500 stipend.

- Requires that each school district board specify the manner and deadline for a parent or student to notify the board of intent to appeal the student's suspension or expulsion from school.

- Changes a reference to special education teachers to "intervention specialists."

- Requires the Department of Education, in collaboration with the Board of Regents and the Governor's Workforce Policy Board, to develop and implement a plan by July 1, 2008, to move adult education and career programs from the Department to the Board of Regents.

I. School Funding

State funding for school districts

The bill makes changes to the codified laws, contained mostly in R.C. Chapter 3317., that prescribe the system for state funding of school districts and other entities that provide primary and secondary education. A detailed analysis of the current and proposed school funding system is available in the LSC Redbook for the Department of Education, published on the LSC web site at http://www.lsc.state.oh.us/budgetdocuments.html. The following table provides a synopsis of the changes the bill makes to school funding laws to implement the system. Please consult the LSC Redbook for the Department of Education for substantive and fiscal details.

SYNOPSIS OF THE BILL'S SCHOOL FUNDING PROVISIONS	
FUNDING COMPONENT	**SYNOPSIS**
Base-cost per pupil formula amount (R.C. 3317.012(A) and (B))	Using the current "building blocks" methodology, with one variation, calculates the base-cost per pupil formula amount as $5,565 for FY 2008 and $5,732 for FY 2009 for all school districts and community schools except Internet- or computer-based community schools ("e-schools"). The formula amount for e-schools is $3,295 for FY 2008 and $3,387 for FY 2009. The difference in the amounts is an attributed student-teacher ratio of 100:1 in e-schools compared to a ratio of 20:1 in all other schools. (The current, FY 2007 formula amount is $5,403 for all schools, including e-schools.)
Cost-of-doing-business factor (R.C. 3317.02, 3317.022, and 3317.16; conforming changes in R.C. 3313.98, 3314.08, 3317.014, 3317.023, 3317.0217, 3317.20, and 3365.01)	Eliminates the cost-of-doing-business factor from the base-cost formula. (Current law is phasing the factor down from a 7.5% maximum variation in FY 2005 to 5.0% in FY 2006 and 2.5% in FY 2007.)
Formula ADM (R.C. 3317.01, 3317.02, and 3317.03)	Eliminates the second formula ADM report by school districts (which under current law is during the first full week in February). School districts would resume the practice in place prior to FY 2007 of reporting formula ADM only for the first full week of October, with adjustments in February only for districts experiencing substantial mid-year enrollment growth. Formally specifies that a district's formula ADM is the final number verified by the Superintendent of Public Instruction, based on the number reported by the district for October. (See "***State verification of district formula ADM***" below.)

SYNOPSIS OF THE BILL'S SCHOOL FUNDING PROVISIONS	
FUNDING COMPONENT	**SYNOPSIS**
Base funding supplements (R.C. 3317.012(C))	Increases by 3% each year (from $20.40 in FY 2007 to $21.01 in FY 2008 and $21.64 in FY 2009) the hourly rate used to calculate the base funding supplement for academic intervention. Retains in both years the 75% phase-in percentage for the base funding supplement for professional development. This is the same phase-in percentage applied to this supplement in FY 2007. (The FY 2006 phase-in was 25%.) Also retains, unchanged, the calculation of the base funding supplements for data-based decision making.
Base-cost funding guarantee (R.C. 3317.022 and 3317.16; conforming changes in R.C. 3313.98, 3314.08, 3317.023, 3317.20, and 3365.01)	Eliminates the base cost funding guarantee, which specifies that a district's state base-cost payment will not be lower than the lesser of its FY 2005 state aggregate base-cost payment or its FY 2005 per pupil base-cost payment. (This guarantee is distinct from Transitional Aid, summarized below.)
Base-cost calculation (R.C. 3317.022(A), 3317.029(B), and 3317.0217)	Specifies that a district's state base-cost payment includes not only the base-cost calculation after the 23-mill local share ("charge-off") is deducted, but also the amount of state poverty-based assistance and parity aid calculated for the district.
State share percentage (R.C. 3317.022(A)(1) and (B)(2))	Adds state poverty-based assistance and parity aid payments to the calculation of each school district's "state share percentage," which is used to calculate some of the district's categorical funding amounts, such as special education and vocational education funding. Under current law, the calculation reflects only the percentage of a district's aggregate calculated base cost that covered by state funds after the district's 23-mill charge-off is deducted. Under the bill, the poverty-based assistance and parity aid payments are added to both the numerator and the denominator of the state share percentage calculation, so the percentage represents the proportion of state funds paid for base cost, poverty-based assistance, and parity aid after the 23-mill charge-off.

SYNOPSIS OF THE BILL'S SCHOOL FUNDING PROVISIONS	
FUNDING COMPONENT	**SYNOPSIS**
Parity aid (R.C. 3317.0217)	Changes the calculation of state parity aid so that the 410 lowest-wealth districts qualify in FY 2008 and the 367 lowest-wealth districts qualify in FY 2009. The subsidy equalizes what 8 mills, in FY 2008, and 8.5 mills, in FY 2009, will generate in a particular district with what that millage will generate in the 123rd wealthiest district. (Currently, the 490 lowest-wealth districts qualify for the subsidy, and the subsidy equalizes 7.5 mills.)
Poverty-based assistance to school districts (R.C. 3317.02(E) and 3317.029; conforming changes in R.C. 3314.08, 3317.016, and 3317.017)	Eliminates the FY 2005 guarantee. Revises the calculation of each district's poverty index by using the average formula ADM from the past three years, rather than the average for the current and previous two fiscal years. Adds a new subsidy for assistance in closing the achievement gap in districts that have a poverty index greater than or equal to 1.0 or an "academic distress percentage" equaling or exceeding the statewide academic distress percentage. Increases the hourly rate used to calculate the academic intervention subsidy by 3% each year, to equal the hourly rates for the base funding supplement for academic intervention. Renames the "class-size reduction" subsidy as a payment "for increased classroom learning opportunities," and increases the statewide average teacher salary that is a component of the formula by 3.3% each year, to equal the increased teacher salaries used to calculate the base-cost per pupil formula amount. Retains the 70% phase-in percentage in both fiscal years for the subsidy for services to limited-English proficient students. Applies no phase-in percentage to the payments for professional development, dropout prevention, and community outreach. (Current law also specifies no phase-in of these payments after FY 2007.) Requires each district that receives poverty-based assistance annually to report to the Department of Education how it deployed the funds. (See "***Reports on deployment of poverty-based assistance***" below.)

SYNOPSIS OF THE BILL'S SCHOOL FUNDING PROVISIONS	
FUNDING COMPONENT	**SYNOPSIS**
	Revises the spending requirements (see "***Poverty-based assistance spending requirements***" below).
Special education weighted funding (R.C. 3317.013)	Continues, in both years, to apply the 90% phase-in to the six prescribed special education weights, which has been applied since FY 2005. Changes the deadline, from May 30 to December 30, for the annual report the Department of Education must submit to the Office of Budget and Management itemizing the state and state and federal calculations of special education funding for each school district.
Special education catastrophic threshold (R.C. 3314.08(E), 3317.022(C)(3), and 3317.16(E))	Increases the catastrophic threshold amount for special education and related services to $27,375 for categories two through five (from $26,500 for FY 2006 and FY 2007) and to $32,850 for category six (from $31,800 for FY 2006 and FY 2007).
Speech-language services subsidy (R.C. 3317.022)	Maintains the $30,000 personnel allowance, in effect since FY 2002 to calculate the subsidy for speech-language services.
Vocational education weighted funding (R.C. 3317.014)	Retains the current weights prescribed for vocational (career-technical) additional weighted funding. Specifies a December 30 deadline for the Department of Education to submit its annual report itemizing the amount of state vocational education weighted funding that each school district spent for vocational education and associated services. The bill also requires that the report be submitted to the Office of Budget and Management, instead of the Governor as under current law, and accounts for spending in the prior fiscal year.
GRADS funding (R.C. 3317.024(N))	Maintains the $47,555 personnel allowance used since FY 2004 to calculate payments for GRADS ("Graduation, Reality, and Dual-Role Skills") for services to pregnant and parenting students.

SYNOPSIS OF THE BILL'S SCHOOL FUNDING PROVISIONS	
FUNDING COMPONENT	**SYNOPSIS**
Transportation funding (R.C. 3317.02(J) and (K) and 3317.022(D) and (F)(2); Section 269.20.80)	Specifies a 1% across-the-board increase in each school district's payment for regular student transportation in FY 2007 and FY 2008. Enacts a new permanent formula for transportation funding that is based on recommendations by the Department of Education and presumably would begin to operate in the 2009-2011 fiscal biennium. The new formula replaces the current statistical formula (not used since FY 2005) specified in the Revised Code, would be based on current-year ridership reported by each district in October, and includes enhanced payments for transporting community school and nonpublic school students.
Charge-off supplement ("Gap Aid") (R.C. 3317.0216)	Removes from the revenue considered to be received by a school district, for purposes of calculating the state charge-off supplement, the amount the district receives from the Tangible Personal Property Tax Replacement Fund or the General Revenue Fund for current expense taxes lost because of the phase-out of the tangible personal property tax.
Reappraisal guarantee (R.C. 3317.04)	Eliminates the reappraisal guarantee that currently pays an additional subsidy to a qualifying school district to prevent it from losing state funds in the first year after the county auditor has reappraised or updated the valuation of taxable property.
Transitional aid (Sections 269.30.80 and 269.30.90)	Provides additional state transitional aid in FY 2008 and FY 2009 to prevent any school district's state funding for the current fiscal year from being less than it was in the previous fiscal year.

State verification of district formula ADM

(R.C. 3317.02(D) and 3317.03(K))

A school district's formula ADM ("average daily membership") is an approximation of its full-time-equivalent enrollment. It is a component used to calculate several state subsidies to school districts. Each school district reports its formula ADM, and throughout the fiscal year the Department of Education makes corrections to the report and correspondingly adjusts the payments that are based on formula ADM.

A provision of current law technically defines formula ADM as the figure reported by the school district, with no explicit mention of the Department's authority to ensure that the report is as accurate as possible. The bill formally authorizes the Superintendent of Public Instruction, if the Superintendent discovers an error in a district's reported formula ADM, to order that it be adjusted in the amount of the error. It redefines "formula ADM" as being the final number verified by the Superintendent.

Poverty-based assistance reports; Department recommendations

(R.C. 3317.029(C) and (P))

The bill requires each school district that is paid poverty-based assistance to submit to the Department of Education an annual report on how the district deployed the funds. The report is due by September 30, presumably covering the previous fiscal year, and must be submitted in the form and manner required by the Department. The bill further states: "If a school district does not meet adequate progress standards as defined by the Department, the Department shall make recommendations to the district for deploying funds . . . in a more effective manner."

The bill also retains the provision of current law requiring each school district that receives Tier 2 or Tier 3 academic intervention payments to submit a plan to the Department describing how the district will deploy the funds. (Tier 2 academic intervention payments are available to districts with poverty indexes of 0.75 and higher, and Tier 3 payments are available to districts with poverty indexes of 1.5 or higher.[9])

Poverty-based assistance spending requirements

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

Current law

Current law restricts how districts may spend their poverty-based assistance. First, any district that receives a payment for all-day kindergarten must

[9] The poverty index measures a school district's percentage of children receiving public assistance, compared to the statewide percentage. For example, a district with a poverty index of 1.0 has the same proportion of children living in families receiving public assistance as the state as a whole. A district with a poverty index of 0.25 has a proportion of children receiving public assistance that is 25% of the statewide proportion. A district with a poverty index of 1.5 has a proportion of children receiving public assistance that is 150% of the statewide proportion.

use its poverty-based assistance to ensure that all-day kindergarten is provided to the number of all-day kindergarten students children reported by the district. After that, spending guidelines differ based on the district's poverty index.

(1) Districts with poverty indexes of 1.0 or greater must follow the individual spending guidelines established for the payments for academic intervention, limited-English proficient students, professional development, dropout prevention, and community outreach. They must use whatever remains of their poverty-based assistance (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.

(2) The spending guidelines are not as strict for districts with poverty indexes less than 1.0. Payments for academic intervention, dropout prevention, and community outreach must be spent for those purposes. The remainder of a district's payment may be spent on one or more services from an itemized list.

The bill's single list of possible expenditures

The bill somewhat loosens the restrictions and applies one set of spending options to all districts that receive more than $10,000 in poverty-based assistance. It retains the requirement that districts receiving payment for all-day kindergarten first assure that all-day kindergarten is provided to the number of students reported by the district. After that, a district may spend poverty-based assistance for any combination of the following:

(1) Services to students with limited-English proficiency through (a) hiring teachers or other personnel, (b) contracting for intervention services, or (c) providing other services to assist those students in passing the third-grade reading achievement test;

(2) Professional development for teachers and other licensed educational personnel, through programs identified by the Department of Education in (a) data-based decision making, (b) standards-based curriculum models, (c) high quality professional development activities that are research-based, as defined by standards developed by the Educator Standards Board, or (d) "professional learning communities";

(3) Programs identified by the Department of Education for preventing at-risk students from dropping out of school;

(4) Hiring or contracting community liaison officers, attendance or truant officers, or safety and security personnel;

(5) Programs designed to ensure that schools are free of drugs and violence and have a disciplined environment conducive to learning;

(6) Academic intervention programs for students who have failed or are in danger of failing any of the state achievement tests;

(7) Increasing the amount of instructional attention to children 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;

(8) Early childhood programs or early learning programs, as defined by the Department;

(9) To furnish free of charge to students whose families participate in Ohio Works First instructional materials for which the district ordinarily charges a fee;

(10) Programs "designed to reduce nonacademic barriers to learning, in accordance with guidelines developed by the Department"; and

(11) Free or reduced-price breakfast or lunch programs.

Also, a district that receives poverty-based assistance, but not the all-day kindergarten payment, presumably could elect to use its payment to provide all-day kindergarten.

Waivers

The bill permits a school district to apply to the Department for a waiver to spend poverty-based assistance for other programs. The district must specify on the waiver application its reason for the alternative expenditure and the intended benefits for disadvantaged students.

Use of new closing-the-achievement-gap payment

(R.C. 3317.029(A)(13) and (L))

The bill establishes a new component of poverty-based assistance for "assistance in closing the achievement gap." Eligible districts are those with a poverty index greater than or equal to 1.0 where the "academic distress percentage" is greater than or equal to the academic distress percentage statewide.

The academic distress percentage measures the percentage of school buildings that have been declared in academic watch or academic emergency.

If a district's academic distress percentage increases from year to year, the bill restricts how this payment may be used. First, if an academic distress commission has been appointed for the district (see "***Academic distress commissions***," below), the district must use the money for the commission's necessary expenses. Second, remaining funds may be used only for one or a combination of the following, and only in "buildings with the highest concentration of need":

(1) Assistance in improving student performance;

(2) Professional development for teachers and administrators; and

(3) Recruiting and retaining teachers and administrators.

The bill defines "buildings with the highest concentration of need" as those buildings that either have been designated as "in school improvement status" under the federal No Child Left Behind Act, or have percentages of students receiving assistance under Ohio Works First that is at least as high as the districtwide percentage. However, among the latter buildings, the district must give priority to those that have been declared to be in a state of academic watch or academic emergency.

Special education payments to institutions

(R.C. 3317.201)

The bill makes a nonsubstantive wording change regarding payments for special education to state institutions operated by the departments of Mental Health, Mental Retardation and Developmental Disabilities, Rehabilitation and Correction, and Youth Services. The bill replaces the phrase "the Department of Education annually shall pay" with the phrase "for each fiscal year the Department of Education shall pay."

Recalculating school district valuations

(R.C. 3317.02, 3317.026, 3317.027, 3317.028, and 5751.20)

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 change may reduce the actual revenue received by a district without a

corresponding reduction in the value on the tax duplicate. In all these cases, continuing law provides for a recalculation of a district's state aid to account for reduced property valuation.

Base for recalculating state payments

The bill changes the base from which these recalculations are made. Current law measures the difference between a district's "SF-3 payment" before and after a required recalculation and credits the district with the difference. The bill replaces the existing term "SF-3 payment" with a new term "state education aid." The new term "state education aid" lists most of the subsidies and adjustments accounted for on the Department of Education's "SF-3" form to school districts, including temporary transitional aid and transportation payments, but excluding units for disabled preschool students, disabled student transportation payments, transfers among districts and educational service centers, and deductions for school choice programs such as open enrollment, community schools, and the Autism Scholarship Program. The new term, "state education aid," is also used under the bill to calculate payments to a school district due to the phase-out of tangible personal property tax. (see "**DEPARTMENT OF TAXATION**" below).[10]

Reporting tax information

Currently, if the Tax Commissioner determines that a district's valuation has been affected by tax refunds of at least 3% of the total taxes charged and payable, or by tangible personal property valuation changes to the extent of at least 5% of the district's total, or by any newly granted exemption, the Tax Commissioner must report that information to the Department of Education so that the Department may recalculate the district's state payments accordingly. The bill requires the Tax Commissioner also to report that information to the Office of Budget and Management.

Timing of recalculated payments

Currently, the Department must pay a district its recalculated amount on or before July 31 of the fiscal year following the year for which the recalculations are

[10] Another defined term by the same name, "state education aid," is used to calculate replacement payments to school districts due to electric deregulation. That definition for that purpose is broader than the one created by the bill for use in determining a district's valuation recalculations or its replacement payments due to the phase-out of the tangible personal property tax. See R.C. 5727.84.

made.[11] The bill specifies that the payment date must be determined by the Director of Budget and Management and that the Director must select a date that is not earlier than June 1 of the current fiscal year and not later than July 31 of the following fiscal year. The bill further states that the Department of Education must not pay the district prior to approval by the Director of Budget and Management to do so.

School district tax certification

(R.C. 3317.015, 3317.021, 3317.025, and 3317.08)

In order for the Department of Education to calculate a school district's state and local funding, including its charge-off amount and its tuition rate for nonresident students, the Tax Commissioner is required to certify by June 1 each year the tax valuation of various categories and classes of property in the district, revenue from the district's income tax (if it has one), and the converted valuation equivalent of payments the district may receive under tax exemption agreements. For those same purposes, by April 1 each year, the Director of Development is required to report to both the Department of Education and Tax Commissioner the amount of payments a district receives under tax exemption agreements. The bill requires that the Tax Commissioner and Director of Development include the Office of Budget and Management as a recipient of these school district tax data when they make their respective certifications and report.

II. Community Schools

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

[11] Prior to 2005, those recalculated amounts had to be paid on or before June 30 of the year the adjustments were made.

academic emergency, or (3) a school district in the original community school pilot project area (Lucas County).[12]

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

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

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

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

(4) An educational service center;

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

(6) A federally tax-exempt entity under certain specified conditions.[13]

The Department of Education may take over sponsorship of community schools, but only in specified exigent circumstances.

Community school moratorium

(R.C. 3314.013 and 3314.014)

"Brick and mortar" schools

The bill places a moratorium on new "brick and mortar" community schools from May 1, 2007, to July 1, 2009. Until the moratorium expires on July 1, 2009, no start-up or conversion community schools may operate unless they were open for instruction as of May 1, 2007. The bill makes no exceptions to the moratorium. If a sponsor enters into a contract with a community school that was not open as of May 1, 2007, the contract is void and the sponsor cannot enter into a contract with the school until July 1, 2009.

Furthermore, the bill prohibits sponsors from entering into contracts with community schools between May 1, 2007, and July 1, 2009, except to renew a

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

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

contract (1) that the sponsor had entered into prior to May 1, 2007, with (2) a community school that was open as of that date. This prohibition would appear to preclude a school from switching sponsors during the moratorium. Therefore, if an existing school loses its sponsor for any reason, the school must close because it cannot acquire a new sponsor during the moratorium.

E-schools

Since May 1, 2005, there has been a moratorium on the establishment of new Internet- or computer-based community schools ("e-schools") until the effective date of standards enacted by the General Assembly governing the operation of e-schools. The General Assembly has not yet enacted e-school standards. Under current law, during the moratorium, sponsors may renew their contracts with existing e-schools when those contracts are eligible for renewal. In addition, sponsors may assume sponsorship of existing e-schools formerly sponsored by other entities.

The bill retains the provision allowing sponsors to renew their contracts with existing e-schools during the moratorium, but it prohibits sponsors from taking over sponsorship of an e-school from another sponsor. Therefore, if an existing e-school loses its sponsor for any reason, the school must close because it cannot acquire a new sponsor during the moratorium.

Current law--caps and exceptions

There are currently two caps on the number of community schools that may be established statewide, both of which are set to expire July 1, 2007. The first cap applies to start-up schools and conversion "e-schools" sponsored by the school districts in which they are located. The second cap applies to start-up schools sponsored by other entities. Each cap is equal to 30 more than the number of schools to which the cap applies that were open as of May 1, 2005.

Under current law, a new community school may open after the statewide cap to which it would otherwise be subject has been reached if the school's governing authority enters into a contract with an operator (see "***Contracts with operators***" below). Each operator may manage one school in excess of the cap for each school it manages in Ohio or another state on the date the cap is reached, excluding conversion community schools that are not e-schools, that has a performance rating of continuous improvement or better or performs comparably to a school so rated.

Another exception permits start-up community schools sponsored by entities other than the school districts in which the schools are located to open one additional community school in the 2006-2007 school year that serves the same

grades and provides the same educational program as the existing school. To qualify for the exception, the governing authority must have entered into a contract with an eligible sponsor and filed a copy of the contract with the Superintendent of Public Instruction before March 15, 2006. Additionally, the existing school must (1) currently be rated excellent or effective, (2) have made adequate yearly progress for the previous school year, (3) have been in operation for four or more school years, and (4) not be managed by an operator.

Prohibition on operating school from a residential facility

(Section 269.60.10)

Until July 1, 2009, a community school that opened for operation after May 1, 2005, is prohibited from operating from a residential "home." For this purpose, "home" includes a home, institution, foster home, group home, or other residential facility that is maintained by the Department of Youth Services or is licensed or otherwise authorized by the state to receive and care for children.

ESC sponsorship of community schools

(R.C. 3314.02(C)(1)(d) and (G)(3))

Existing law permits an educational service center (ESC) to sponsor a community school in any challenged school district. The bill restricts an ESC to sponsoring a community school in a challenged school district located in a county within the territory of the ESC or in a contiguous county. An ESC that, on the provision's effective date, sponsors a community school located outside of the ESC's territory or a contiguous county may continue to sponsor the school until the expiration of its contract with the school. At that time, the community school must secure a new sponsor to remain open.

Approval of out-of-state sponsors

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

Under current law, the Department of Education may approve an entity that sponsors or operates schools in another state to sponsor community schools in Ohio only if one or more of the entity's out-of-state schools performs as well as or better than Ohio schools in academic watch. The bill requires instead that at least one of the out-of-state schools perform comparably to or better than Ohio schools in *continuous improvement*.[14]

[14] Generally, a school in academic watch does not make the federal standard of adequate yearly progress (AYP) and either meets 31%-49% of the performance indicators

Deadline for execution of contract

(R.C. 3314.02(D))

Existing law 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. The contract must be signed by both parties by May 15. The bill specifies that the contract must be "executed" by March 15 and eliminates the May 15 deadline for signing the contract. This change likely means that the contract must be both adopted and signed by March 15. As under current law, the school's governing authority must notify the Department of Education when the contract has been executed.

Contracts with operators

(R.C. 3314.014, 3314.02(E)(3), 3314.024(A), and 3314.027)

The governing authority of a community school may hire an operator for the school. Under current law, an operator is (1) an individual or organization that manages the school's daily operations or (2) a nonprofit organization that provides programmatic oversight and support to the school and that retains the right to terminate its affiliation with the school if the school fails to meet the organization's quality standards.

The bill makes two changes regarding community school contracts with operators. First, it requires operators described in (1) above to be nonprofit entities. Under the bill, the governing authority of a community school cannot contract with a for-profit company to manage the school's daily operations. Community schools that have management contracts with for-profit companies on the effective date of this change are exempt from the prohibition until those contracts expire. In the future, those community schools may hire only nonprofit operators.[15]

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established by the State Board of Education or has a performance index score of 70-79. A school in continuous improvement either (1) makes AYP, meets less than 75% of the State Board's performance indicators, and has a performance index score of 0 to 89 or (2) does not make AYP and either meets 50%-74% of the performance indicators or has a performance index score of 80 to 89. (R.C. 3302.03(B).)

[15] Continuing law permits an operator whose contract with a community school is not renewed upon expiration to appeal the nonrenewal to the school's sponsor or, in some cases, the State Board of Education (R.C. 3314.026). The bill specifically states that for-profit operators whose contracts are not renewed in order to comply with the bill's provisions cannot appeal that action (R.C. 3314.027).

Second, the bill requires community school governing authorities to comply with a competitive bidding process established by the Department of Education prior to entering or renewing a contract with an operator.

Exemption from state laws

(R.C. 3314.04)

Existing law exempts community schools from most state laws and rules applicable to other public schools. The only exceptions are laws and rules that (1) are specifically applied to community schools by statute or a community school's contract with its sponsor or (2) grant certain rights to parents. The bill eliminates the general exemption and, instead, explicitly requires community schools to comply with all state laws and rules governing public schools, school districts, and boards of education.

Minimum school year

(R.C. 3314.03(A)(11)(a), 3314.08(L)(3), and 3314.27)

Under current law, the minimum school year for community schools is calculated in hours, rather than days as it is for school districts. Specifically, each community school must provide students with a minimum of 920 hours of learning opportunities in a school year. The bill changes the minimum school year for community schools from hours to days, and requires the schools to offer at least 180 days of learning opportunities each school year.

Daily hours logged by e-school students

(R.C. 3314.08(L)(3) and 3314.27)

In the case of e-school students, current law specifies that a student's time spent participating in learning opportunities over 10 hours in a 24-hour period does not count toward the minimum number of instructional hours due to that student. If an e-school requires its students to participate in learning opportunities on the basis of days rather than hours, a minimum of five hours of student participation constitutes one day.

The bill retains these hourly limits for e-school students, but applies them to all e-schools to reflect the change from hours to days in the minimum school year. Specifically, under the bill, any day in which an e-school student participates in less than five or more than ten hours of learning opportunities does not count toward the 180-day minimum.

Withdrawal of student for absences

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

Current law requires each community school to automatically withdraw a student who misses 105 consecutive hours of learning opportunities without a legitimate excuse. Because the bill changes the minimum school year from hours to days (see "***Minimum school year***" above), it requires the withdrawal to occur after 21 consecutive days of unexcused absences. Moreover, it prohibits a community school, unless the school solely serves dropouts, from re-enrolling the student for the duration of the school year.

Minimum enrollment

(R.C. 3314.03(A)(11)(a) and (G))

Community schools currently must enroll at least 25 students. The bill increases the minimum enrollment to 100 students. However, it also permits the Department of Education to grant waivers from the minimum enrollment based on criteria established by the Department. In developing its criteria, the Department must consider the effects of waivers on the financial viability of community schools.

E-school teachers

(R.C. 3314.21)

Current law requires each e-school to retain an "affiliation" with at least one full-time "teacher of record" licensed by the State Board of Education. A "teacher of record" is a teacher who is responsible for the overall academic development and achievement of a student and not merely the student's instruction in a single subject. Each e-school student must be assigned to at least one teacher of record, but no teacher of record may be primarily responsible for more than 125 students enrolled in the school that retains the teacher. Presumably, under current law, if a teacher of record is affiliated with more than one e-school, the teacher could be responsible for 125 students in each school and a higher number of students combined.

Under the bill, each e-school must *employ*, rather than retain an affiliation with, at least one full-time teacher of record for each 125 students enrolled in the school. Also, although the bill retains the limit of 125 students for which each teacher of record may be responsible, it eliminates the language applying the limit to each school with which the teacher works. In other words, under the bill, a teacher of record may be primarily responsible for the academic development of 125 students total, even if the teacher is employed by more than one e-school.

Sponsor assurances

(R.C. 3314.19)

The bill requires the sponsor of each community school to provide annual assurances to the Department of Education regarding the school's compliance with certain laws and the preparedness of the school's staff and facilities for the upcoming school year. These assurances must be submitted no later than ten business days before the school's opening day. Specifically, the sponsor must assure that:

(1) A current copy of the contract between the sponsor and the school's governing authority has been filed with the Department's Office of Community Schools and that any future modifications to the contract will also be filed;

(2) The school has submitted to the sponsor a plan for providing special education to disabled students and demonstrates the capacity to provide those services in accordance with state and federal law;

(3) The school has a plan for administering the state achievement tests and diagnostic assessments;

(4) School personnel have the training, knowledge, and resources to properly use and submit education data to all Department databases;

(5) All required information about the school has been submitted to the Ohio Educational Directory System;[16]

(6) The school satisfies the minimum enrollment requirement (see "***Minimum enrollment***" above);

(7) All classroom teachers are properly licensed by the State Board of Education;

(8) The school's fiscal officer holds a valid school district treasurer or business manager license or has completed the requisite number of hours of continuing education in school accounting;[17]

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[16] The Ohio Educational Directory System is a Department database that contains contact information for school districts, public and nonpublic schools, and educational service centers.

[17] See R.C. 3314.011.

(9) The school has conducted criminal records checks on all employees responsible for the care, custody, or control of a child and on all governing authority members. Current law does not require community schools to conduct criminal records checks of governing authority members; therefore, this provision appears to be a new requirement.

(10) The school holds (a) proof of property ownership or a lease for its facilities, (b) a certificate of occupancy, (c) liability insurance that the sponsor considers sufficient to indemnify the school's facilities, staff, and governing authority against risk, (d) a satisfactory health and safety inspection, (e) a satisfactory fire inspection, and (f) a valid food permit, if applicable;

(11) The sponsor has conducted a pre-opening site visit to the school;

(12) The school has designated an opening date for the school year that, unless the school solely serves dropouts, is no later than September 30; and

(13) The school has met all other requirements of the sponsor.

End-of-year reports

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

At the end of each school year, a community school must prepare a report describing its activities, financial status, and progress in meeting academic goals and performance standards. The school must submit the report to its sponsor and the parents of all students enrolled in the school. The bill requires the report to be submitted within three months after the end of the school year, instead of four months as currently required.

State payments to community schools

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

All community schools receive state payments for base-cost funding, special education weights, and handicapped preschool and gifted units. Under current law, traditional ("brick and mortar") community schools, but not e-schools, also are eligible for vocational education weights, parity aid, and poverty-based assistance. In most cases, these payments are deducted from the state aid accounts of the resident school districts of the community school's enrolled students.

The bill eliminates community school payments for parity aid and poverty-based assistance for dropout prevention and community outreach. This change affects only traditional community schools because current law already prohibits

these payments to e-schools. It also does not affect other poverty-based assistance amounts that may be paid to traditional community schools.

Distribution of assets of closed community school

(R.C. 3314.074)

Under current law, when a community school permanently closes, its assets must be distributed first to the retirement funds of school employees, school employees, and private creditors who are owed compensation. Any remaining funds must be paid to the General Revenue Fund. The bill requires that any funds remaining after debt payments be paid to the Department of Education, rather than the General Revenue Fund, for redistribution to the resident school districts of the students enrolled in the community school at the time it closed. Payments to each district must be proportional to the district's share of the community school's total enrollment.

Sale of school district property to community schools

(R.C. 3313.41 and 3318.08(U) and (V); repealed R.C. 3314.051)

Existing law grants start-up community schools the right of first refusal to unneeded or unused school district property in certain circumstances. The bill repeals these provisions, thereby requiring community schools to bid for district property under the same conditions as any other potential buyer.[18] (Generally, but for the repealed community school right of first refusal, a school district must offer property for sale at public auction and may use a private sale if the public auction is not successful or for sales to certain other public entities.)

Existing provisions

Under the provisions repealed by the bill, when a school district decides to sell property suitable for classroom space, it must first offer that property for sale to start-up community schools located in the district at a price no higher than fair market value. If no community school accepts the offer within 60 days, the district may dispose of the property in another lawful manner.

Also, whenever a school district has not used property suitable for classroom space for academic instruction, administration, storage, or any other

[18] The bill also repeals a provision that conditions the release of state funds for state-assisted school facilities projects on compliance with the requirement to first offer unneeded or unused school district property to community schools before selling or demolishing it (R.C. 3318.08(U) and (V)).

educational purpose for one full school year, the district must offer that property for sale to start-up community schools located in the district, unless the board of education adopts a resolution outlining a plan to use the property for an educational purpose within the next three school years. The district must offer the property at a price no higher than fair market value. If no community school accepts the offer, the district may keep the property or otherwise dispose of it. If a community school does buy the property and the school later decides to sell the property or permanently closes, the property first must be offered to the district from which it was purchased, at a price no higher than fair market value. If the district does not accept the offer within 60 days, the property may be disposed of in another manner.

III. Other Education Provisions

Educational Choice Scholarship Pilot Program

(Repealed R.C. 3310.01, 3310.02, 3310.03, 3310.04, 3310.05, 3310.06, 3310.07, 3310.08, 3310.09, 3310.10, 3310.11, 3310.12, 3310.13, 3310.14, and 3310.17; Conforming changes in R.C. 3301.0714, 3310.41, 3317.022, 3317.029, 3317.0217, 3317.03, and 5727.84)

The bill repeals the Educational Choice Scholarship Pilot Program. It does not affect either the Autism Scholarship Program[19] or the Cleveland Scholarship Program.[20]

Background

The Educational Choice Scholarship Pilot Program provides up to 14,000 scholarships each year to students in specified lower performing public schools to use to pay tuition at chartered nonpublic schools. The program is currently in its first year of operation. The maximum amount of each scholarship this year is

[19] The Autism Scholarship Program pays scholarships, of up to $20,000 per qualified child, to the parents of autistic children, which may be used for services at public or nonpublic special education programs that are not operated by or for the child's resident school district. It has been in operation since 2004.

[20] The Pilot Project Scholarship Program (the Cleveland Scholarship 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. Currently, only the Cleveland Municipal School District meets this criterion. The program has been in operation in Cleveland since 1995.

$4,250 for grades K through 8, and $5,000 for grades 9 through 12. In future fiscal years, the maximum amount is to be inflated by the rate of increase in the base-cost formula amount from the previous fiscal year. To finance the scholarships, the Department of Education deducts from the state funding account of each scholarship student's resident school district $5,200, for a student in grades 1 through 12, and $2,700, for a kindergarten student. These amounts, by statute, are to be used to fund scholarships under both the Educational Choice and the Cleveland scholarship programs.

TANF-funded Early Learning Initiative

(Section 309.40.60)

The bill establishes the Early Learning Initiative (ELI) paid for with federal Title IV-A (TANF) funds, to provide early learning services through an early learning program, on a full-day, part-day, or both a full-day and part-day basis, to eligible children. An eligible child is a child who is at least three years of age but not of compulsory school age or enrolled in kindergarten, is eligible for Title IV-A services,[21] and whose family income at the time of application does not exceed 185% of the federal poverty line in FY 2008 or 200% of the federal poverty line in FY 2009.[22] Each County Department of Job and Family Services (CDJFS) must determine eligibility for Title IV-A services for children who wish to enroll in an early learning program within 15 days after the CDJFS receives a completed application.

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[21] 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).)

[22] Participation in ELI does not prohibit or prevent an individual from obtaining a certificate of payment for publicly funded child-care.

The bill also specifies that early learning services must relate to the purpose of preventing and reducing the incidence of out-of-wedlock pregnancies and establishing annual numerical goals for preventing and reducing the incidence of these pregnancies (45 C.F.R. 260.20(c)).

ODE and the Ohio Department of Job and Family Services (ODJFS) must jointly administer ELI in accordance with the law governing the administration of Title IV-A programs. Under the bill, ODJFS and ODE have both separate and joint duties to fulfill for ELI.

ODJFS duties

The bill directs ODJFS to reimburse early learning agencies for Title IV-A services provided to eligible children under the terms of the ELI contract and in accordance with rules adopted by ODJFS and ODE (see "***Contracting with an early learning agency***" and "***Joint ODJFS and ODE duties***").

ODE duties

The bill directs ODE to (1) define the early learning services that will be provided to eligible children through ELI, (2) establish an application deadline for entities seeking to become early learning agencies, and (3) establish early learning program guidelines for school readiness to assess the operation of early learning programs.[23]

Joint ODJFS and ODE duties

The bill directs ODJFS and ODE to jointly:

(1) Develop an application form and criteria for the selection of early learning agencies that must include a requirement that early learning agencies or the early learning provider operating an early learning program on the agency's behalf must be licensed or certified by ODJFS under the Child Care Laws or ODE under the Preschool and School Child Program Laws;

(2) Adopt rules, in accordance with the Administrative Procedure Law (R.C. Chapter 119.), regarding all of the following:

(a) Establishing 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

[23] An early learning agency includes an early learning provider or an entity that enters into an agreement with an early learning provider to operate an early learning program on behalf of the entity.

185% of the federal poverty line in FY 2008 and 200% of the federal poverty line in FY 2009;

(b) An exemption from co-payment requirements for families whose family income is equal to or less than 165% of the federal poverty line;

(c) A definition of "enrollment" for the purpose of compensating early learning agencies;

(d) Establishing compensation rates for early learning agencies based on the enrollment of eligible children;

(3) Contract for up to 12,000 enrollment slots for eligible children in each fiscal year.

Contracting with an early learning agency

Once an entity applies to ODE to become an early learning agency, ODE must select entities that meet the criteria established in conjunction with ODJFS. When ODE selects an entity to be an early learning agency, ODJFS and ODE must enter into a contract with that entity, and ODE must designate the number of eligible children that the entity may enroll and notify ODJFS of the number. The bill also specifies that certain contracts will remain effective, regardless of the date of issuance of a state purchase order.

Terms of the contract

The contract between ODJFS, ODE, and each early learning agency must outline the terms and conditions applicable to the provision of Title IV-A services for eligible children and include the following:

(1) The respective duties of the early learning agency, ODJFS, and ODE;

(2) Requirements regarding the allowable use of and accountability for Title IV-A compensation paid under the contract;

(3) Reporting requirements, including a requirement that the early learning provider inform ODE when the provider learns that a kindergarten eligible child will not be enrolled in kindergarten;

(4) The compensation schedule payable under the contract;

(5) Audit requirements;

(6) Provisions for suspending, modifying, or terminating the contract.

Also, if an early learning agency, or an early learning provider operating on an agency's behalf, substantially fails to meet ODE'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 ODE. If the agency does not implement a corrective action plan, ODE may direct ODJFS to withhold funding from the agency or request that ODJFS suspend or terminate the agency's contract.

Early learning program duties

The bill requires each early learning program to do all of the following:

(1) Meet certain teacher qualification requirements;

(2) Align curriculum to early learning content standards;

(3) Meet any assessment requirements that apply to the program;

(4) Require teachers, except teachers enrolled and working to obtain a degree, to attend a minimum of 20 hours per biennium of professional development as prescribed by ODE regarding the implementation of early learning program guidelines for school readiness;

(5) Document and report child progress;

(6) Meet and report compliance with the early learning program guidelines for school success;

(7) Participate in early language and literacy classroom observation evaluation studies.

State-funded early childhood education programs

(Section 269.10.20)

The bill continues for the 2008-2009 biennium a GRF-funded program, originally established in the previous biennium and administered by the Department of Education, to support early childhood education programs serving preschool-age children from families earning up to 200% of the federal poverty guidelines.[24] Program providers may include school districts and educational

[24] See Section 206.09.06 of Am. Sub. H.B. 66 of the 126th General Assembly. A preschool-age child is one who is at least three years old but not yet eligible to start kindergarten. The 2007 federal poverty guideline for a family of three is $17,170. 200% of that amount is $34,340.

service centers (ESCs). School districts, other than joint vocational districts, must be eligible for poverty-based assistance to receive funding for new early childhood education programs in the 2008-2009 biennium, but school districts whose programs have been funded previously remain eligible for continued funding even if they do not receive poverty-based assistance. Families who earn more than the federal poverty guidelines must be charged for the programs their children attend in accordance with a sliding fee scale developed by the program provider.

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

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

(2) Align its curriculum to early learning content standards;

(3) Administer any diagnostic assessments adopted by the State Board of Education that are applicable to the program;[25]

(4) Require teachers, except for those working toward an associate or bachelor's degree in a related field, to attend at least 20 hours every two years of professional development regarding the implementation of early learning program guidelines for school readiness developed by the Department of Education;

(5) Document and report child progress;

(6) Meet and report compliance with the early learning program guidelines for school readiness; and

(7) Participate in early language and literacy classroom observation evaluation studies.

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. However, in each fiscal year, the bill

[25] Continuing law permits school districts to administer the kindergarten diagnostic assessment, known as the kindergarten readiness assessment, to a child up to four weeks prior to the child's first day of kindergarten on the condition that the results not be used to prohibit the child from starting school (R.C. 3301.0715(A)(3)). 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 or ESC.

caps at $18,622,151 the amount that may be distributed to providers that received funds in fiscal year 2007, unless the number of new providers since then is insufficient to expend the available funding. In that case, the Department may direct funding to previous recipients for program expansion, improvement, or special projects to promote quality and innovation. Conversely, if there are insufficient funds to serve all new providers in a fiscal year, the Department must determine which providers to fund using a selection process that gives priority in the following order: (1) to providers that, as of March 15, 2007, did not offer early childhood education programs but had offered those programs or public preschool programs at some time after June 30, 2000, and (2) to providers that demonstrate a need for early childhood education programs, including having higher rates of low-income preschool children to be served.

Funding must be distributed on a per-pupil basis. Per-pupil funding for programs established on or after March 15, 2007, must be sufficient to provide services for half of the statewide average length of the school day for 182 days each school year.[26] The Department may adjust funding as necessary so that the per-pupil amount, when multiplied by the number of eligible children receiving services on December 1 (or the first business day after that date), equals the total amount appropriated for early childhood education programs. The Department may use up to 2% of the total appropriation in each fiscal year for 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.

If a program provider has its funding withdrawn or voluntarily waives its right to funding, the provider must transfer property, equipment, and supplies

[26] The bill explicitly states that program providers may use other funds to offer services for a longer part of the school day or school year.

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 selection process.

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 web site.

School district preschool programs

(R.C. 3301.53 and 3313.646)

To establish a preschool program under existing law, a school district must (1) be eligible for poverty-based assistance and (2) demonstrate a need for the program that is not being met by an existing child care program. The bill allows any school district to establish a preschool program by eliminating the condition that the district qualify for poverty-based assistance.[27] It also removes the condition that the district have a need for the program that is not being met by another child care program and simply requires the district to show a need.

Staff qualifications for early childhood education programs

(R.C. 3301.311)

Under current law, teachers in preschool programs, early childhood education programs, and early learning programs must meet certain educational criteria for the programs to be eligible for state funding. Since fiscal year 2006, these programs have only qualified for state funding if half of their teachers were working toward an associate degree approved by the Department of Education. Beginning in fiscal year 2008, all of the program's teachers must have attained an approved associate degree to qualify for state funding. Finally, beginning in fiscal

[27] Under the bill, only districts that receive poverty-based assistance are eligible in the 2008-2009 biennium for state funding for new early childhood education programs (see "***State-funded early childhood education programs***" above). Consequently, districts that start a preschool program during the 2008-2009 biennium, but do not receive poverty-based assistance, would have to support the program with other funds during that time.

year 2011, half of the program's teachers must have attained a bachelor's degree approved by the Department to qualify for state funding.

The bill postpones one of these deadlines for programs established before fiscal year 2007 and sets new deadlines for programs established in that year or later. For programs started prior to fiscal year 2007, all teachers must have an approved associate degree by fiscal year 2010, instead of fiscal year 2008. For programs established during or after fiscal year 2007, all teachers must have an approved associate degree by fiscal year 2012 and half of those teachers must have an approved bachelor's degree by fiscal year 2013.

Date of program establishment	Year in current law program must meet requirement	Year in bill program must meet requirement
Before FY 2007		
50% of teachers working toward associate degree	FY 2006	FY 2006
100% of teachers with associate degree	FY 2008	FY 2010
50% of teachers with bachelor's degree	FY 2011	FY 2011
During or after FY 2007		
50% of teachers working toward associate degree	FY 2006	At establishment
100% of teachers with associate degree	FY 2008	FY 2012
50% of teachers with bachelor's degree	FY 2011	FY 2013

Kindergarten and first grade admission dates

(R.C. 3317.05 and 3321.01)

Under current law, the board of education of any school district may adopt a resolution that establishes August 1, instead of the statewide standard of September 30, as the day by which students must be five or six years old to be admitted to kindergarten or first grade, respectively.

The bill eliminates the districts' ability to adopt this resolution. Beginning in the 2008-2009 academic year, the bill establishes September 30 as the only cut-off date for entering kindergarten or first grade.

Academic distress commissions

(R.C. 3302.10)

Background

Current law provides that beginning July 1, 2007, the Superintendent of Public Instruction must establish an academic distress commission for each school district that has been in a state of academic emergency and has failed to make adequate yearly progress for four or more consecutive years. The commission remains in existence until the district's performance rating is upgraded to "continuous improvement" for two out of three school years, unless the Superintendent sooner determines that the district can perform adequately without the commission. Each commission must consist of three voting members appointed by the Superintendent of Public Instruction and two voting members appointed by the president of the district board of education.

The commission is directed to "assist the district for which it was established in improving the district's academic performance." In doing so, the commission may appoint, reassign, and terminate the contracts of district administrative personnel; contract with a private entity to perform school or district management functions; and establish a budget for the district and approve school district expenditures. (However, if a financial planning and supervision commission has been established under the school district fiscal emergency law, that commission, instead of the academic distress commission, is responsible for approving the district's budget and expenditures.)

The act makes several changes in the law regarding the establishment and operation of an academic distress commission.

Permissive rather than mandatory establishment

Under the bill, the Superintendent of Public Instruction is not required to establish a commission for each qualifying district. Rather, the bill specifies that the Superintendent "may" establish a commission, apparently leaving it to the discretion of the Superintendent to decide whether to do so on a case-by-case basis.

Membership appointment and conflicts of interest

The bill specifies that the two members appointed by the district board president must be residents of the district.[28]

It also provides that members of an academic distress commission do not need to file financial disclosure statements in the manner of a state or local government official or a candidate for office, unless they are otherwise required to do so by virtue of other positions they hold. On the other hand, the bill does require an academic distress commission's members to file with the Ohio Ethics Commission a signed written statement setting forth the general nature of sales of goods, property, or services or of loans to the school district, in which the member has a pecuniary interest. Such interest includes that of the member's immediate family or any corporation, partnership, or enterprise of which the member is an officer, director, or partner, or of which the member or an immediate family member owns more than a 5% interest, has a pecuniary interest, and of which sale, loan, or interest the commission member has knowledge. The statement must be supplemented from time to time to reflect changes in the general nature of those sales or loans.

New operating procedures

The bill adds numerous new operating procedures as follows:

(1) When an academic commission is established, the Superintendent of Public Instruction must provide written notice to the district board and request the board's president to submit the names of the president's appointees. Both the Superintendent of Public Instruction and the board president are to make their appointments within 30 days after the Superintendent's notice to the board.

(2) The Superintendent of Public Instruction must call the first meeting of the commission. The first meeting must include an overview of the commission's roles and responsibilities, and the requirements of the state Ethics Law and the Open Meeting Law. The commission also must adopt temporary bylaws at its first meeting until the adoption of permanent bylaws.[29]

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[28] It also adds that the members of the commission shall serve at the pleasure of their appointing authority during the life of the commission. A vacancy must be filled within 15 days. The bill also specifies that members serve without compensation, but are to be paid by the commission for their necessary and actual expenses incurred doing the business of the commission.

[29] The bill specifies that the temporary and permanent bylaws are not subject to the state Administrative Procedures Act.

(3) The Superintendent of Public Instruction must designate a chairperson for the commission from among the members appointed by the Superintendent. The chairperson is required to call and conduct meetings, set meeting agendas, and serve as a liaison between the commission and the district board. The chairperson also must appoint a secretary, who may not be a commission member.[30]

(4) The Department of Education must provide administrative support for each commission.

(5) The Attorney General must serve as the legal counsel for each commission.

(6) Commission members are not personally liable or subject to any suit, judgment, or claim for damages resulting from the exercise of or failure to exercise their powers, duties, and functions.

(7) Commission meetings are subject to the state Open Meetings Law, except that members need not be physically present to be part of a quorum or to vote, if the commission holds a meeting by teleconference and provisions are made for public attendance at any location involved in the teleconference.

Academic recovery plan

Each commission, within 120 days after its first meeting, must adopt an academic recovery plan for the school district, which must be approved by the Superintendent of Public Instruction prior to its implementation. The plan must include all of the following:

(1) Short-term and long-term actions to be taken to improve the district's academic performance;

(2) The sequence and timing of those actions;

(3) Resources that will be applied toward improvement efforts;

(4) Procedures for monitoring and evaluating improvement efforts;

(5) Reporting requirements.

The bill requires the commission to update the plan at least annually. It also directs county, state, and school district officers and employees to "assist the

[30] Three members constitute a quorum.

commission diligently and promptly in the implementation of the academic recovery plan."

Penalties for reporting inaccurate EMIS data

(R.C. 3301.0714(L))

Background--current law

The Education Management Information System (EMIS) is a statewide electronic database on students, school staff, districts, and buildings. The Department of Education uses EMIS data to calculate payments to and to monitor the performance of districts and schools.

Currently, if the Department determines that a school district or community school has failed to meet an EMIS report or correction deadline or reports data that indicates the district or school did not make a good faith effort in reporting data, the Department must send a report of the district's or school's actions. Upon making a report for the first time in a fiscal year, the Department must withhold 10% of the total amount of state funds due to the district or school for that fiscal year. Upon making a second report in a fiscal year, the Department must withhold an additional 20% of the total amount due during that fiscal year. The Department cannot release the withheld funds unless it determines that the district or school has taken corrective action within 45 days after the Department made its report.

New sequential actions authorized under the bill

The bill replaces the current penalties with a specified series of sequential actions that the Department may take if it determines that a district, community school, or educational service center reports incomplete or inaccurate data, reports data that does not conform to data requirements and descriptions published by the Department, fails to report data in a timely manner, or otherwise does not make a good faith effort to report data.

First, the Department may require the entity to review its data submission and submit corrected data. Second, it may withhold up to 10% of the entity's state payments for the fiscal year and require the entity to develop a corrective action plan. Third, it may withhold an additional 20% of the entity's state payments for the fiscal year. Fourth, the Department may direct Department staff or an outside organization to investigate the entity's data reporting practices and make recommendations for further penalties. Those recommendations may include withholding an additional 30% of the entity's state payments. The

recommendations also may include issuing a revised report card for the entity.[31] If the Department takes an action against an entity, the Department must make a report of the circumstances that prompted the action and send a copy of the report to the district or service center superintendent (or community school chief administrative officer) and maintain a copy of the report in its files.

If the Department withheld funds and it is later satisfied that the entity has corrected the reporting problem, it may release some of those funds. The bill also specifies that the withholding of funds may be appealed in accordance with Administrative Procedure Act (R.C. Chapter 119.). However, it also states that, in all cases of a disagreement between the Department and an entity regarding the appropriateness of an action taken, the burden of proof is on the entity to demonstrate that it made a good faith effort to report data.

School district and building performance ratings

(R.C. 3302.03)

The bill limits the highest academic performance rating a school district or building may receive based on the percentage of its students who do not take all required achievement tests. A district or building may be rated no higher than "continuous improvement" if 10% to 15% of the students are not tested; no higher than "academic watch" if more than 15% but not more than 20% of the students are not tested; and no higher than "academic emergency" if more than 20% of the students are not tested.

Background

Each city, exempted village, and local school district and each community school is required to administer the applicable state achievement tests to all students annually. Certain alternative assessments may be administered to some disabled students, and limited English proficient students who have been enrolled in the U.S. for less than one full school year may be excused from taking the reading or writing tests. The state achievement tests are as follows: reading test for each of grades 3 through 8 and grade 10; writing test for grades 4, 7, and 10; mathematics test for each of grades 3 through 8 and grade 10; science test for grades 5, 8, and 10; and social studies test for grades 5, 8, and 10.[32]

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[31] Prior to issuing a revised report card, the Department may hold a hearing, conducted by a referee appointed by the Department, so the entity may seek to demonstrate a good faith effort to report data.

[32] R.C. 3301.0710 and 3301.0711, neither section in the bill. Some of these tests are required under the federal No Child Left Behind Act.

Based largely on student test scores, the Department of Education annually rates the performance of each district and building (including most community schools). The five classes of performance are: "excellent," "effective," "in need of continuous improvement," "academic watch," and "academic emergency." A district or building is rated by (1) meeting or not meeting specified state standards (75% student proficiency on all state achievement tests administered, 93% attendance rate, and 90% graduation rate), (2) attaining a specified performance index score, or (3) making or not making "adequate yearly progress" (AYP) on state achievement tests among specified subgroups of test takers. As required under federal law, no district or building may make AYP, first, unless 95% of the students in a subgroup required to take a test actually take the test, and, second, unless a specified percentage of each subgroup of test takers attains scores set by the Department.

Currently, in calculating a district's or building's performance index, the Department gives weight to the number of students the district or building was supposed to test but did not. Such a student count as a "zero" in determining the performance index. However, in determining whether a district or building met a state performance standard, the Department considers only those students that actually took a required test and does not weight against the district or building any student who was supposed to take a test but did not. The bill takes these students into account by specifying that the percentages of students required to take a test but who did not be considered in determining the overall performance rating of a district or building.

OGT testing requirements for foreign exchange students

(R.C. 3313.615)

Under continuing law, to qualify for a diploma from a public or chartered nonpublic high school, students generally must (1) complete the high school curriculum and (2) pass the five Ohio Graduation Tests (OGT) in reading, writing, math, science, and social studies.[33] Foreign exchange students who meet the curriculum and testing requirements for graduation may receive a diploma from an Ohio high school. However, unlike other students, foreign exchange students are exempt from passing the social studies portion of the OGT if the student (1) is not a U.S. citizen, (2) is not a permanent resident of the United States, and (3) indicates no intention to reside in the United States after high school.[34] Under

[33] See R.C. 3313.61, 3313.611, 3313.612, 3314.03(A)(11)(f), and 3325.08 (none in the bill).

[34] R.C. 3313.61(H) and 3313.612(B)(2).

current law, foreign exchange students also may satisfy the alternative testing conditions for a diploma, which are designed for students who pass all but one portion of the OGT (see below). But since foreign exchange students are exempt from passing the social studies test, they need only pass three of the remaining four tests to qualify for a diploma under the alternative conditions.

The bill prohibits a foreign exchange student from qualifying for a high school diploma under the alternative testing conditions, unless the student passes the social studies test. In other words, the student must forgo the exemption from the social studies test. Furthermore, the student cannot use the social studies test as the one test for which the student fails to attain a passing score. If the student passes the social studies test but fails only one of the other subject area tests, the student may qualify for a diploma under the alternative conditions.

Background

The alternative testing conditions for a diploma apply only to students who pass all but one portion of the OGT and fail that one test by ten points or less. A student in this situation may still receive a diploma under the following conditions:

(1) The student has a 97% attendance rate in each of the last four school years and no expulsions during that time;

(2) The student has a grade point average of at least 2.5 out of 4.0 in the subject area of the failed test;

(3) The student completes the high school curriculum requirements;

(4) The student has taken advantage of school-sponsored intervention programs in the subject area of the failed test and has a 97% attendance rate in any of those programs that have been provided outside of the normal school day, week, or year, or the student has received comparable intervention services from another source; and

(5) The student's high school principal and each of the student's high school teachers in the subject area of the failed test recommend that the student graduate.

Shipping date of elementary achievement tests

(R.C. 3301.0711)

Under current law, each school district board must submit the state elementary achievement tests to the scoring company not later than the Friday after the tests are administered.

The bill changes the submission dates depending on the size of enrollment in the school district. Districts with a total enrollment of less than 2,500 must continue to submit their tests by the Friday after they are administered. Districts with enrollments of 2,500 or more, but less than 7,000, must submit their tests by the Monday after they are administered. Districts with enrollment sizes of 7,000 or more must submit their tests by the Tuesday after the tests are administered.

Physical education standards

(Section 269.60.20)

Background

Under current law, the State Board of Education is permitted to adopt academic standards or a model curriculum for physical education. However, if the State Board intends to adopt physical education standards or model curricula (or subsequently revise them), the standards or curricula must receive legislative approval through passage of a concurrent resolution. Neither chamber of the General Assembly may vote on a concurrent resolution approving physical education standards or curricula until its education committee holds at least one public hearing on the matter.[35]

The bill

The bill requires the State Board to adopt the most recent physical education standards for grades K through 12 developed by the National Association for Sport and Physical Education (NASPE). NASPE is a nonprofit organization of physical education professionals and researchers that supports physical activity programs and promotes awareness of the importance of physical education for youth.[36] The State Board must adopt the NASPE standards by December 31, 2008.[37] Presumably, the General Assembly must approve the State Board's adoption of the NASPE standards to make them effective.

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[35] R.C. 3301.0718(C).

[36] See NASPE's website at www.aahperd.org/naspe/ for more information.

[37] Current law, not changed by the bill, prohibits the State Board from adopting a diagnostic assessment or achievement test for any subject other than reading, writing, math, science, and social studies (R.C. 3301.0718(D)). Therefore, no diagnostic assessment or achievement test could be developed based on physical education standards.

The Department of Education must transmit the NASPE physical education standards to school districts in electronic form. If the standards cannot be transmitted electronically, the Department must use the least expensive means to make the standards available to districts. The bill also requires the Department to inform districts of revisions to the standards. This provision appears to require the State Board to update the physical education standards to reflect future changes by NASPE. School districts are not required to utilize or meet any of the NASPE standards.

Physical education coordinator

Under the bill, the Superintendent of Public Instruction must appoint a physical education coordinator within the Department of Education to provide guidance and oversight to school districts that follow the NASPE standards and to perform other duties assigned by the Superintendent. The physical education coordinator must be qualified for the position in terms of education, licensure, and experience, as determined by the Superintendent. The physical education coordinator's salary and other costs associated with the position must be paid from the Department's existing appropriations.

Reduction of the number of school district employees for financial reasons

(R.C. 3319.17)

Current law allows the board of a school district or educational service center 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 statutory reasons for which a board may reduce the number of teachers are: (1) return to duty of regular teachers after leaves of absence, (2) suspension of schools, (3) territorial changes affecting the district or center, and (4) *financial reasons*. These reasons for reductions in force also apply to nonteaching employees by a reference in another section of law (R.C. 3319.172, not in the bill).

The bill removes "financial reasons" from the list of statutory reasons a district or service center may make reductions in force. However, it appears that a district or service center board would still be free to negotiate a reduction-in-force provision in a collective bargaining agreement with its employees.[38]

[38] Am. Sub. H.B. 66 of the 126th General Assembly added the phrase "for financial reasons" to the statutory language. That act also provided that the section as amended at that time prevails over a collective bargaining agreement entered into after September 29, 2005. It thus appears that, currently, districts and service center employees are subject to reductions-in-force for financial reasons and cannot negotiate conflicting provisions.

Termination of school district transportation staff

(Repealed R.C. 3319.0810; conforming change in R.C. 3319.081)

Current law authorizes and prescribes detailed procedures for the board of a non-Civil Service school district (local and exempted village school districts and some city school districts) to use for the termination of some or all of its pupil transportation staff for "reasons of economy and efficiency." In that case, the board must contract with an independent agent to provide transportation services. Essentially, the statutory procedures provide for the consideration of employment of the terminated employees by the independent contractor, layoff and restoration according to seniority, and a right of appeal.

The bill eliminates these statutory provisions.

Chartered nonpublic school closing notice

(R.C. 3301.162 and 3317.06(N))

The bill requires the governing authority of a chartered nonpublic school to notify the Department of Education, the school district that receives state auxiliary services funding on behalf of the school's students, and the accrediting association that most recently accredited the school if the governing authority intends to close the school. The notice must include the school year and, if possible, the actual date the school will close.

The bill also requires the chief administrator of each chartered nonpublic school that closes to deposit the school's records with the school district that received state auxiliary services funding on behalf of the students enrolled in the school. In addition, the bill allows the school district that receives the records to charge a one-time reimbursement from auxiliary services funding for costs the district incurs to store the records.

Auxiliary services funds

(R.C. 3317.06)

Under current law, school districts receive state "auxiliary services" funding to pay for secular textbooks and other materials and services for students attending chartered nonpublic schools within the district.[39] The bill requires a

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Since the bill removes "financial reasons" from the statutory list, leaving the statute silent on that issue, it appears that the bill would permit collective bargaining on the issue.

[39] R.C. 3317.024(I), not in bill.

school district to label materials, equipment, computer hardware or software, textbooks, and electronic textbooks purchased or leased with auxiliary services funds for loan to a chartered nonpublic school, acknowledging that the items were purchased or leased with state funds. However, the district is not required to label such materials that the district determines are consumable in nature or have a value of less than $200.

Stipend for National Board certified teachers

(R.C. 3319.55)

Under continuing law, public and chartered nonpublic school teachers who hold valid certificates issued by the National Board for Professional Teaching Standards are eligible for annual state-funded stipends. Under current law, the amount of the stipend is $2,500 for any teacher who was accepted as a candidate for certification or licensure by the National Board by May 31, 2003, and was issued a certificate or license by December 31, 2004. The amount of the stipend for other teachers who have been issued a certificate or license is $1,000.

The bill sets the stipend amount at $2,500 for all teachers who have been issued a certificate or license by the National Board. It also eliminates the requirement for teachers to submit evidence of the date they were accepted into the certification program when applying for the stipend, because the amount of the stipend would no longer be determined according to the date of certification.

Background

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 state stipend is available only during the first ten-year certification. If state funds appropriated for the stipend are insufficient to pay the full stipend to all eligible teachers, the stipend amounts must be pro-rated.

Appeals of student suspensions and expulsions

(R.C. 3313.66 and 3313.661)

School district boards are required to adopt and post codes of conduct for their students. State law authorizes suspension of a student from school for up to ten days for minor infractions and expulsion from school for more than ten days for more serious violations. Some conduct, such as carrying or possessing a gun or knife at school, making a bomb threat, or causing serious property damage or personal injury while at school generally may result in an expulsion of one full

year. The law also prescribes due process procedures that must be followed by school administrators and boards. In general, due process requires notice and a chance to be heard prior to, or sometimes after, deprivation of the right to attend school. The decision to suspend or expel a student may be appealed to the district board, and the board's decision can be appealed to the appropriate court of common pleas.[40]

The bill specifies that in developing its required student discipline policy, each school district board must state the date and manner by which a student or a student's parent, guardian, or custodian may notify the board of intent to appeal an expulsion or suspension to the board. The bill further specifies that, in the case of an expulsion, the policy must not prescribe a deadline for notice of appeal that is less than 14 days after the date the notice of intent to expel was provided to the student, parent, guardian, or custodian.

Intervention specialists

(R.C. 3323.11)

The bill changes the term "special education teachers" to "intervention specialists" in the special education law. The latter term is consistent with the State Board of Education's educator licensing rules.

Transfer of adult education programs to Board of Regents

(Section 269.60.30)

The bill directs the Department of Education, in collaboration with the Board of Regents and the Governor's Workforce Policy Board,[41] to develop a plan to move adult education and career programs from the Department to the Board of Regents to improve education and technical skills for adult learners through enhanced course offerings and training opportunities. This plan must be submitted

[40] However, discipline of a disabled student is controlled by federal law. Under that law, a student may not be removed from the classroom prescribed in the student's individualized education program for more than ten cumulative days in a school year without a federally prescribed due process hearing. A school district may change a disabled student's placement to an appropriate interim alternative educational setting pending that hearing in some circumstances. Generally, the longest term that a disabled student may be removed from the classroom is 45 days. (20 U.S.C. 1415.)

[41] The State Workforce Policy Board is established and appointed by the Governor to assist in performing the state's duties under the federal Workforce Investment Act of 1998 (R.C. 6301.04).

to the Governor by November 30, 2007, and the movement of the programs must be completed by July 1, 2008. The bill authorizes the Director of Budget and Management to transfer budgetary appropriations to reflect the reorganization.

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS (FUN)

- Corrects reinstatement fee references under Embalmer, Funeral Director, and Crematory Licensing Law.

Embalmer, Funeral Director, and Crematory Licensing Law

(R.C. 4717.07)

The bill corrects several incorrect reinstatement fee references found in the Embalmer, Funeral Director, and Crematory Licensing Law in order to clarify what is the appropriate fee to be collected in each case.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

- Authorizes the Director of Environmental Protection to issue air pollution control operating permits with periods of validity of up to ten years rather than up to five years as in current law.

- Extends the sunset of the operation of the enhanced motor vehicle inspection and maintenance program (E-Check) from December 31, 2007, to December 31, 2009, in those counties where the program was in operation on January 3, 2006.

- Specifies that the Director of Environmental Protection must not implement or operate an enhanced motor vehicle inspection and maintenance program in an area of the state where such a program was not operating on January 3, 2006, pursuant to a contract entered into by the state unless: (1) the program is required in the approved state implementation plan, and (2) after January 3, 2006, the United States Environmental Protection Agency has expressly notified the Director in writing that the failure to operate the program in a specific area will result in the imposition of sanctions under the Federal Clean Air Act.

- Extends from June 30, 2008, to June 30, 2010, the expiration date of the existing state fees on the disposal of solid wastes that are used to fund the Environmental Protection Agency's solid, infectious, and hazardous waste and construction and demolition debris management programs and to pay the Agency's costs associated with administering and enforcing environmental protection programs.

- 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;

  --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

  --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.

- Authorizes the Director of Environmental Protection to provide for the renewal of laboratory certifications under the Voluntary Action Program in addition to the issuance, denial, suspension, and revocation of those certifications provided for in current law.

- Specifies that in lieu of publishing such an action regarding a laboratory certification in a newspaper of general circulation as required under current law, such an action 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 and not later than 30 days prior to a hearing or public meeting concerning the action.

- Creates the Water Quality Protection Fund consisting of federal grants, including those made pursuant to the Federal Water Pollution Control Act, and contributions, and requires the Director of Environmental Protection to use the money in the Fund for water quality protection and restoration.

Air pollution control operating permits--period of validity

(R.C. 3704.03(G))

Current law authorizes the Director of Environmental Protection to issue air pollution control operating permits with periods of validity of up to five years. The bill authorizes the Director to issue such permits with periods of validity of up to ten years.

E-Check extension

(R.C. 3704.14 and 4503.10)

Current law requires the Director of Environmental Protection to implement an enhanced motor vehicle inspection and maintenance program (E-Check) in counties in which a motor vehicle inspection and maintenance program is federally mandated. The enhanced program is required to last for a two-year period beginning on January 1, 2006. The program that is implemented by the Director must be substantially similar to the enhanced program implemented in those counties under a contract that expired on December 31, 2005. The enhanced program, as implemented by the Director, must provide for the extension of a contract for a period of two years, beginning on January 1, 2006, and ending on

December 31, 2007, with the contractor who conducted the enhanced motor vehicle inspection and maintenance program in those federally mandated counties pursuant to a contract entered into under former law. Current law prohibits the Director from implementing a motor vehicle inspection and maintenance program in any county other than a county in which the program is federally mandated. Further, current law specifically states that the enhanced program expires on December 31, 2007, and cannot be continued beyond that date unless otherwise federally mandated.

The bill makes several changes in the statute governing E-Check. First, it extends the sunset of the operation of the enhanced motor vehicle inspection and maintenance program from December 31, 2007 to December 31, 2009, in those counties where the program was in operation on January 3, 2006, pursuant to a contract entered into with the state. It also specifically provides for a two-year extension of a contract beginning January 1, 2008, and ending December 31, 2009.

In addition, the bill removes language prohibiting the Director from implementing a motor vehicle inspection and maintenance program in any county other than a county in which such a program is federally mandated. Instead, the bill specifies that the Director must not implement or operate an enhanced motor vehicle inspection and maintenance program in an area of the state where such a program was not operating on January 3, 2006, pursuant to a contract entered into by Ohio unless: (1) the program is required in the approved state implementation plan, and (2) after January 3, 2006, the United States Environmental Protection Agency has expressly notified the Director in writing that the failure to operate the program in a specific area will result in the imposition of sanctions under the Federal Clean Air Act. The bill then states that the General Assembly declares that the above new provisions governing the implementation of the program in certain areas of the state represent a codification of the intended meaning of the law related to motor vehicle inspections as it existed after its re-enactment by Am. Sub. H.B. 66 of the 126th General Assembly.

State solid waste disposal fees

(R.C. 3734.57)

Current law levies three state fees 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 deposited in the state treasury to the credit of the Solid Waste Fund and used to fund the EPA's solid and infectious waste and construction and demolition

debris management programs. The third fee is an additional $1.50 per-ton fee the proceeds of which must be deposited in the state treasury to the credit of the Environmental Protection Fund, which is used to pay the EPA's costs associated with administering and enforcing environmental protection programs. The solid waste disposal fees are collected by the owners and operators of solid waste disposal and transfer facilities as trustees for the state. The bill extends from June 30, 2008, to June 30, 2010, the expiration date of the three state fees levied on the disposal of solid wastes.

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, 2008. The bill extends the fee through June 30, 2010.

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, 2008, 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, 2008. Under the bill, the first tier fee is extended through June 30, 2010, and the second tier applies to applications submitted on or after July 1, 2010.

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, 2006, and January 30, 2007. The bill extends payment of the fees and the fee schedules to January 30, 2008, and January 30, 2009.

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, 2006, and January 30, 2007. The bill continues the surcharge and requires it to be paid annually by January 30, 2008, and January 30, 2009.

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. Under current law, the fee is due annually not later than January 30, 2006, and January 30, 2007. The bill continues the fee and requires it to be paid annually by January 30, 2008, and January 30, 2009.

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 continuing law. The fee for initial licenses and license renewals is required in statute through June 30, 2008, and has to be paid annually prior to January 31, 2008. The bill extends the initial license and license renewal fee through June 30, 2010, and requires the fee to be paid annually prior to January 31, 2010.

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. Ongoing law establishes a fee for such plan approval of $150 plus 0.35 of 1% of the estimated project cost. Under current law, the fee cannot exceed $20,000 through June 30, 2008, and $15,000 on and after July 1, 2008. The bill specifies that the $20,000 limit applies to persons applying for plan approval through June 30, 2010, and the $15,000 limit applies to persons applying for plan approval on and after July 1, 2010.

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, 2008, and a schedule with lower fees is applicable on and after July 1, 2008. The bill continues the higher fee schedule through June 30, 2010, and applies the lower fee schedule to evaluations conducted on or after July 1, 2010. The bill continues through June 30, 2010, 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 $45 application fee to take the examination for certification as an operator of a water supply system or a wastewater system through November 30, 2008, and a $25 application fee on and after December 1, 2008. The bill continues the higher application fee through November 30, 2010, and applies the lower fee on and after December 1, 2010. Under existing 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 statutory schedule. A higher schedule is established through November 30, 2008, and a lower schedule applies on and after December 1, 2008. The bill extends the higher fee schedule through November 30, 2010, and applies the lower fee schedule beginning December 1, 2010.

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, 2008, and a nonrefundable fee of $15 if the application is submitted on or after July 1, 2008. The bill extends the $100 fee through June 30, 2010, and applies the $15 fee on and after July 1, 2010.

Similarly, under existing law, a person applying for an NPDES permit through June 30, 2008, must pay a nonrefundable fee of $200 at the time of application. On and after July 1, 2008, the nonrefundable application fee is $15. The bill extends the $200 fee through June 30, 2010, and applies the $15 fee on and after July 1, 2010.

Voluntary Action Program--certification of laboratories

(R.C. 3746.04)

Current law requires the Director of Environmental Protection to adopt rules under the Voluntary Action Program Law that establish criteria and procedures for the certification of laboratories that perform analysis under that

Law. Currently, the rules govern the issuance, denial, suspension, and revocation of those certifications. The bill also authorizes the Director to provide for the renewal of certifications. Under current law, the Director must take such an action as a final action that is subject to procedures regarding notification and public meetings that are established under current law. The bill states that in lieu of publishing an action regarding a certification in a newspaper of general circulation as required in existing law, such an action regarding laboratory certification 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 prior to a hearing or public meeting concerning the action.

Water Quality Protection Fund

(R.C. 6111.0381)

The bill creates in the state treasury the Water Quality Protection Fund consisting of federal grants, including grants made pursuant to the Federal Water Pollution Control Act, and contributions made to the Environmental Protection Agency for water quality protection and restoration. The Director of Environmental Protection must use money in the Fund for water quality protection and restoration.

OFFICE OF THE GOVERNOR (GOV)

- Provides that the Governor's Residence Advisory Commission's powers and duties relating to the Governor's Residence do not affect the obligation of the Department of Administrative Services to provide for and adopt policies and procedures regarding the use, general maintenance, and operating expenses of the Residence.

- Authorizes the Commission to accept any payment for use of the Governor's Residence.

Use and operation of Governor's Residence

(R.C. 107.40)

Existing law (1) requires the Governor's Residence Advisory Commission to provide for the preservation, restoration, acquisition, and conservation of all

decorations, objects of art, chandeliers, china, silver, statues, paintings, furnishings, accouterments, and other aesthetic materials that have been acquired, donated, loaned, or otherwise obtained by the state for the Governor's Residence and (2) makes the Commission responsible for the care, provision, repair, and placement of furnishings and other objects and accessories of the grounds and public areas of the first story of the Governor's Residence and for the care and placement of plants on the grounds (R.C. 107.40(A) and (B).)

Existing law provides, however, that the Commission's duties described above do not affect the obligation of the Department of Administrative Services to provide for the general maintenance and operating expenses of the Governor's Residence. (R.C. 107.40(B).) The bill modifies this rule to provide that the Commission's duties described above do not affect the obligation of the Department of Administrative Services to provide for *and adopt policies and procedures regarding the use*, general maintenance, and operating expenses of the Governor's Residence.

Turning to another power of the Commission, existing law authorizes the Commission to accept any donation, gift, bequest, or devise for the Governor's Residence or as an endowment for the maintenance and care of the garden on the grounds of the Governor's Residence. The bill also allows the Commission to accept payment for the use of the Governor's Residence. Any revenue the Commission receives from these payments must be deposited into the Governor's Residence Fund. (R.C. 107.40(I) and Section 503.27)

DEPARTMENT OF HEALTH (DOH)

- Extends, until June 30, 2009, the scheduled termination of the moratorium on review of applications for approval of long-term care beds under the Certificate of Need (CON) Program.

- Permits approval of a CON application to relocate long-term care beds to an existing facility within the same county when the facility has life safety code deficiencies, state fire code violations, or state building code violations, if the project identified in the application proposes to correct the facility's deficiencies or violations.

- Clarifies that the CON moratorium provisions are applicable under all of the statutes governing the CON Program.

- Modifies the procedures to be used by the Director of Health in reviewing CON applications and granting or denying CONs by (1) specifying that a proposed project must meet all applicable CON criteria for approval, (2) increasing to 30 (from 15) the number of days within which the Director must initially respond to a CON application, (3) reducing to 60 (from 90) the number of days within which the Director must grant or deny a CON when no objections to a project have been received, and (4) specifying that the Director may grant a CON with conditions that must be met by the holder.

- Allows the Certificate of Need Fund, which consists of CON application fees, to be used not only for paying the costs of administering the CON Program, but also for paying the costs of administering Department of Health programs for the following: (1) monitoring providers of certain health care services for compliance with safety and quality-of-care standards and (2) licensing ambulatory surgical facilities and other freestanding health care facilities.

- Allows the Office of Vital Statistics to support its operations through fees.

Certificate of Need moratorium on long-term care activities

(R.C. 3702.59)

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. With respect to the recategorization of hospital beds as skilled nursing beds, the Director is prohibited from accepting CON applications to engage in the activity. Until July 1, 2007, existing law also prohibits the Director from accepting CON applications to engage in certain other long-term care activities.

The bill continues, until July 1, 2009, the provisions scheduled to expire that prohibit 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.

Continued review of CON applications during the moratorium

(R.C. 3702.59(C)(2)(a)(i))

Existing law establishes exceptions to the moratorium on the Director's acceptance of CON applications for projects that would result in an increase in the number of long-term care beds. One of these exceptions applies in the case of a proposed increase that is attributable solely to a replacement or relocation of existing beds in the same county.

The bill modifies one of the conditions that must be met to obtain the Director's approval of a CON application to add long-term care beds by relocation. Specifically, the bill permits the approval of a CON for relocation of beds to an existing facility that has waivers for life safety code deficiencies or violations of the state fire code or state building code, if the project identified in the CON application proposes to correct the deficiencies or violations.

Applicability of the moratorium within other CON statutes

(R.C. 3702.5211, 3702.5212, 3702.5213, 3702.59, 3702.591, and 3702.68; Section 105.03)

By relocating the existing laws related to the CON moratorium on long-term care beds, the bill clarifies that the laws governing the moratorium are included within the general administration of the CON program. The bill also relocates other related CON statutes.

With respect to the continuation of the moratorium on recategorization of hospital beds after the other provisions of the moratorium expire June 30, 2009, the bill expresses the continuation as part of the existing moratorium statute. The bill eliminates the future version of the statute that would have expressed the same continuation.

Procedures and criteria used in granting CONs

(R.C. 3702.52(C) (primary); 3702.5211, 3702.5212, 3702.5213, 3702.57, 3702.59, 3702.591, and 3702.68)

Existing law establishes procedures to be followed by the Director of Health in granting or denying a CON application. The bill makes the following changes in these procedures:

(1) Specifies that a proposed project must meet all applicable CON approval criteria as a condition of receiving a CON for the project;

(2) Increases to 30 (from 15) the number of days within which the Director must mail a written notice responding to a CON application;

(3) Reduces to 60 (from 90) the number of days within which the Director must grant or deny a CON when the Director has not received any written objections to the CON application;

(4) Specifies that the Director is permitted to grant the CON with conditions that must be met by the holder of the CON;

(5) Eliminates provisions that describe the manner in which certain CON applications were to be handled in 1995, when Am. Sub. S.B. 50 of the 121st General Assembly began the process of phasing-out the CON requirements for most services other than long-term care.

Use of CON application fees

(R.C. 3702.52(B))

Current law requires CON applicants to pay an application fee established in rules adopted by the Public Health Council. Unless the rules establish a different amount, the fee for a project not involving a capital expenditure is $3,000; for a project involving a capital expenditure, the fee is 9/10 of 1% of the proposed expenditure, subject to a minimum of $3,000 and a maximum of $20,000. The application fees are deposited in the Certificate of Need Fund, which is to be used to pay the costs of administering the CON Program.

In addition to the Fund's current uses, the bill allows moneys in the Fund to be used to pay the costs of administering two other Department of Health programs: (1) a program for monitoring providers of certain health care services[42]

[42] The safety and quality-of-care standards apply to the following: solid organ and bone marrow transplantation, stem cell harvesting and reinfusion, cardiac catheterization,

for compliance with safety and quality-of-care standards and (2) a program for licensing ambulatory surgical facilities and certain other health care facilities.[43]

Office of Vital Statistics

Fees collected by the Office of Vital Statistics

(R.C. 3705.24)

Existing law authorizes the Office of Vital Statistics to use fees charged for each certified copy of a vital statistic and each certification of birth to be used solely toward the modernization and automation of the system of vital records in Ohio. The bill authorizes the Office of Vital Statistics to also use these fees to support the operations of the vital records program in Ohio.

DEPARTMENT OF INSURANCE (INS)

- Reapportions specified fees collected by the Department of Insurance by reducing from three-fourths to three-fifths the funds paid to the state treasury to the credit of the Department of Insurance Operating Fund and increasing from one-fourth to two-fifths the funds credited to the General Revenue Fund.

- Reduces from 20% to 10% the amount apportioned to the State Fire Marshal's Fund from the retaliatory tax collected from foreign insurers that sell fire insurance to residents of Ohio.

open-heart surgery, obstetric and newborn care, pediatric intensive care, operation of linear accelerators, operation of cobalt radiation therapy units, and operation of gamma knives (R.C. 3702.11).

[43] In addition to licensing ambulatory surgical centers under this program, the Department of Health licenses freestanding dialysis centers, freestanding inpatient rehabilitation facilities, freestanding birthing centers, freestanding radiation therapy centers, and freestanding or mobile diagnostic imaging centers (R.C. 3701.30).

Department of Insurance fees

(R.C. 3901.021, 3905.10, and 3905.20)

Under existing law, the Department of Insurance collects fees for the appointment of solicitors and insurance agents. Existing law does not specify the amount of the fee collected for the appointment of a solicitor, but the fee for the appointment of an insurance agent as an agent of an insurer is twenty dollars annually for each appointment. Three-fourths of those fees collected are paid to the state treasury to the credit of the Department of Insurance Operating Fund, and the remaining one-fourth is credited to the General Revenue Fund.

The bill reapportions these fees, increasing the amount credited to the General Revenue Fund. Under the bill, three-fifths of the fees collected are paid to the state treasury to the credit of the Department of Insurance Operating Fund, and the remaining two-fifths are credited to the General Revenue Fund.

Retaliatory tax from foreign insurers

(R.C. 3901.86)

Under existing law, when the laws of any other state, district, territory, or nation impose any taxes, fines, penalties, license fees, deposits of money, securities, or other obligations or prohibitions on insurance companies of Ohio doing business in that state, district, territory, or nation, or upon their agents, the same obligations and prohibitions must be imposed upon insurance companies of the other state, district, or nation doing business in Ohio, and upon their agents.

Similarly, under existing law, when the laws of any other state, district, territory, or nation impose a requirement for countersignature and payment of a fee or commission upon agents of Ohio for placing any coverage in that state, district, territory, or nation, then the same requirements of countersignature and fee or commission must be imposed upon agents of that state, district, territory, or nation for placing any coverage in Ohio.

Existing law requires that 20% of the retaliatory tax collected from foreign insurance companies that sell fire insurance to residents of Ohio must be paid into the State Fire Marshal's Fund. The bill changes the amount taken for this purpose, from foreign insurance companies that sell fire insurance to residents of Ohio, from 20% to 10% of the retaliatory tax.

DEPARTMENT OF JOB AND FAMILY SERVICES (JFS)

I. General

Grant agreements

- Requires boards of county commissioners to enter into grant agreements with the Director of Job and Family Services, rather than permitting the boards to enter into fiscal agreements with the Director.

- Prohibits, effective July 1, 2008, the Director from making a grant of federal financial assistance regarding family services duties (i.e., services performed by a county department of job and family services, public children services agency (PCSA), or child support enforcement agency (CSEA)) through any means other than a grant agreement, rather than permitting a board of county commissioners to select which family services duties to include in a fiscal agreement.

- Requires a county children services board and a county elected official performing the duties of a CSEA to jointly enter into a grant agreement with the board of county commissioners and Director, rather than requiring a children services board or county elected official to jointly enter into a fiscal agreement only if the fiscal agreement includes family services duties of a PCSA or CSEA.

- Provides that the Ohio Department of Job and Family Services (ODJFS) may take specified actions directly against a PCSA regarding certain problems with family services duties only if a children services board serves as the PCSA and may take such actions directly against a CSEA only if a county elected official performs the duties of the CSEA; otherwise the Department is to take the action against the board of county commissioners.

- Provides that the Department may no longer take specified actions directly against a county department of job and family services regarding certain problems with family services duties but must instead take the action against the board of county commissioners.

Individual Development Account program

- Increases income eligibility for the Individual Development Account program.

- Increases the amount fiduciary organizations may deposit into Individual Development Accounts.

Voter registration

- Eliminates the requirement that the Department of Job and Family Services limit its voter registration activities to those prescribed by the Secretary of State and the requirements of state and federal law.

Food Stamp Program Fund

- Creates the Food Stamp Program Fund.

Military Injury Relief Fund

- Authorizes incentive grants that have been authorized by the federal "Jobs for Veterans Act," to be contributed to the Military Injury Relief Fund.

- Specifies that an individual diagnosed with post-traumatic stress disorder, who has served in Operation Iraqi Freedom or Operation Enduring Freedom, is eligible for a grant from the Military Injury Relief Fund.

Disability Medical Assistance Program

- Permits the Director of Job and Family Services to adopt rules that establish or specify limits on the number and types of providers eligible to be reimbursed for services provided to individuals enrolled in the Disability Medical Assistance Program.

Kinship Permanency Incentive Program

- Increases to 300% (from 200%) of the federal poverty guidelines the income eligibility limit for participation in the Kinship Permanency Incentive Program.

- Removes a special needs determination requirement for the Program and makes changes to eligibility based on custody or guardianship.

II. Child Care and Child Support Enforcement

- Requires the Director of Job and Family Services to adopt rules to implement a program to collect child support arrearages from insurance claims, settlements, awards, and payments.

- Specifies that any insurer providing information under the program to collect child support arrearages from insurance claims, settlements, awards, and payments is immune from any civil liability for providing that information.

- Requires ODJFS to claim $25 from the current processing charge imposed on an obligor in certain Title IV-D child support cases beginning not later than March 31, 2008.

- Requires the Director of Job and Family Services to adopt rules to implement collection of the annual fee.

- Alters how a court or child support enforcement agency makes health care determinations with respect to child support orders.

- Makes conforming changes to the child support computation worksheets.

- Requires the Ohio Department of Job and Family Services to use a portion of the federal Child Care and Development Block Grant Act to establish a voluntary child day-care center quality-rating program and requires the Director to adopt rules to implement the program.

- Permits child day-care centers participating in the quality-rating program to be eligible for grants, technical assistance, training, or other assistance; if the day-care center maintains a quality rating, permits the center to be eligible for unrestricted monetary awards.

III. Unemployment Compensation

- Eliminates the Trade Benefit Account under the Unemployment Compensation Law and requires the Director of Job and Family Services to deposit the federal funds currently deposited into that account into the Trade Act Training and Administration Account under the Unemployment Compensation Law.

- Specifies that the State Treasurer, under the direction of the Director, may transfer funds from the Trade Act Training and Administration Account to the Unemployment Compensation Benefit Account for the purpose of making specified payments directly to claimants in accordance with specified federal acts.

IV. Ohio Works First

- Requires that the maximum amount of cash assistance an assistance group may receive under the Ohio Works First program be increased on January 1, 2009, and the first day of each January thereafter by the cost-of-living adjustment made for Social Security benefits.

- Eliminates the provisions of current law governing the Ohio Works First program's work requirements that regard work activities, developmental activities, and alternative work activities, including provisions regarding the number of hours individuals are to participate in the activities.

- Requires the Director of Job and Family Services to establish work participation activities in rules for the Ohio Works First program.

- Requires the Director to adopt rules governing county department of job and family services' assigning work-eligible individuals to work participation activities.

- Conditions a work-eligible individual being assigned to a work participation activity under which the individual volunteers at or works in a school in which the individual's child is enrolled or a work participation activity under which the individual serves as an Ohio Works First ombudsperson on the rules that establish the work participation activities permitting such service to be performed under the activities.

- Eliminates a requirement that state and local agencies cooperate with county departments to the maximum extent possible in the implementation of Ohio Works First's work requirements.

- Requires that county departments meet the federal minimum work participation rates rather than exceed, on a statewide average basis, the rates by not less than five percentage points.

- Requires the Ohio Department of Job and Family Services to ensure that county departments require work-eligible individuals to participate in

work participation activities regardless of whether the United States Secretary of Health and Human Services informs the Department that implementation of state law governing Ohio Works First's work requirements jeopardizes federal funding.

- Eliminates law stipulating that the General Assembly recognizes some provisions of the Ohio Works First program operated pursuant to federal waivers are inconsistent with federal law governing the Temporary Assistance for Needy Families block grant but that it is the General Assembly's intent to rely on federal waivers.

- Implements a federal requirement that non-recipient parents considered to be work-eligible individuals participate in work participation activities and requires the non-recipient parents to enter into a self-sufficiency contract with a county department of job and family services.

- Stipulates that Ohio Works First's sanctions apply when a non-parent recipient considered to be a work-eligible individual violates, without good cause, a provision of a self-sufficiency contract.

- Permits a county department to conduct assessments of a non-recipient parent considered to be a work-eligible individual to determine whether the parent is in need of other assistance or services provided by the county department or other private or government entity.

- Eliminates a requirement that an Ohio Works First application include, if there are at least two telephone numbers available for contacting members of an assistance group, at least those two telephone numbers.

- Provides that the first step in determining whether an assistance group meets the income eligibility requirements for the Ohio Works First program is to determine whether the assistance group's gross income, less certain disregards, exceeds 50% of the federal poverty guidelines rather than the higher of 50% of the guidelines and the gross income maximum for initial eligibility as in effect on September 28, 2005.

- Prohibits a county department of job and family services from delaying an eligibility determination for Ohio Works First on the basis that a self-sufficiency contract has not been completed.

- Provides for an Ohio Works First sanction to last one month, three months, or six months (depending on the number of previous violations) rather than the longer of that period of time or when the violation ceases.

- Requires the Director of Job and Family Services to establish standards for the determination of good cause for a violation of a self-sufficiency contract rather than having each county department of job and family services establish such standards.

- Eliminates a requirement that good cause for a violation regarding work requirements include specific statutorily-prescribed situations, such as a county department's failure to place an individual in an activity.

- Stipulates that a minor head of household's participation in the LEAP program counts in determining whether a county department of job and family services is complying with requirements regarding work participation rates.

- Exempts a minor head of household participating in the LEAP program from the requirement to enter into a self-sufficiency contract and prohibits a self-sufficiency contract from including provisions regarding the LEAP program.

- Provides that a county department is not to appraise a minor head of household participating in the LEAP program for the purpose of work participation activities or assign such a minor head of household to a work participation activity.

- Provides that a fugitive felon and an individual violating a condition of probation, a community control sanction, parole, or a post-release control sanction is ineligible for assistance under Ohio Works First rather than ineligible to participate in Ohio Works First.

V. Medicaid

- Authorizes expressly the adoption of rules for the use of Medicaid provider agreements that are time-limited.

- Eliminates the five-year limit for termination of a provider agreement based on an action brought by the Attorney General.

- Authorizes the denial or termination of a provider agreement for any reason permitted or required by federal law.

- Requires the suspension of a provider agreement held by a noninstitutional health care provider based on an indictment.

- Authorizes the exclusion of an individual, provider, or entity from participation in the Medicaid program for any reason permitted or required by federal law.

- Modifies the circumstances under which the Ohio Department of Job and Family Services (ODJFS) is not required to conduct an adjudication when imposing sanctions relative to a provider agreement, including sanctions imposed for failing to obtain or maintain a required certification.

- Permits ODJFS to require that Medicaid providers and provider applicants submit to criminal records checks as a condition of obtaining or retaining a provider agreement.

- Permits ODJFS to require, through a Medicaid provider, that a person submit to a criminal records check as a condition of becoming or continuing to be employed with the provider or becoming or continuing to be an owner, officer, or board member of the provider.

- Specifies the offenses that disqualify a person from being a Medicaid provider or an employee, owner, officer, or board member of a provider.

- Prohibits a Medicaid provider from employing a person who has been excluded from participation in Medicaid, Medicare, or any other federal health care program.

- Modifies the procedures used to obtain the criminal records checks required as a condition of (1) employment in a position that involves providing home and community-based services through a Medicaid waiver program to a person with disabilities and (2) receiving a Medicaid provider agreement as an independent provider of such services.

- Increases the number of disqualifying offenses, including such offenses as soliciting, identity fraud, disorderly conduct, falsification, and engaging in a pattern of corrupt activity.

- Prohibits a person from being employed or receiving a Medicaid provider agreement if the person has been found eligible for intervention in lieu of conviction for any of the disqualifying offenses.

- Requires a health care provider or medical records company to provide one free copy of a patient's medical record to a county department of job and family services.

- Eliminates the scheduled reduction (to $1) in the nursing home and hospital franchise permit fee, thereby retaining the current $6.25 per bed per day fee.

- Provides for the Nursing Facility Stabilization Fund to continue to get 84% of the money generated by the nursing home and hospital franchise permit fee in fiscal year 2008 and thereafter.

- Authorizes ODJFS, when a nursing facility, hospital, or intermediate care facility for the mentally retarded (ICF/MR) fails to pay the full amount of a franchise permit fee installment when due, to offset from a Medicaid payment due the facility or hospital an amount less than or equal to the installment and a penalty assessed because of the failure, rather than withhold an amount equal to the installment and penalty until the installment and penalty is paid.

- Authorizes ODJFS to both make the offset and terminate the Medicaid provider agreement of the nursing facility, hospital, or ICF/MR or take just one of those actions.

- Provides that the definition of "date of licensure" in current law governing Medicaid reimbursement rates for nursing facilities and ICFs/MR applies in determinations of Medicaid rates for nursing facilities and ICFs/MR but does not apply in determining their franchise permit fees.

- Makes changes to current law required by the federal Deficit Reduction Act of 2005 by clarifying the specific entities that are considered "third parties" against which ODJFS can assert its right to recover the cost of medical assistance paid on behalf of public assistance recipients or participants, requiring third parties to cooperate with ODJFS and accept its right of recovery and assignment of public assistance recipients' and participants' rights, and imposing certain requirements on third parties

with respect to providing ODJFS with coverage, eligibility, and claims data needed to identify liable third parties.

- In accordance with a U.S. Supreme Court holding issued in May 2006, repeals the law that specifies that the *entire amount* of a payment, settlement, or compromise of a tort action or claim against a third party is subject to ODJFS's or a county department of job and family services' right of recovery and replaces it with a provision that "any payment, settlement, or compromise of an action or claim, or any court award or judgment," is subject to the right of recovery.

- Requires disclosure of the identity of any third party against whom a public assistance recipient or participant has or may have a right of recovery to be in writing and to include the address of the third party.

- Extends the liability to reimburse ODJFS and the appropriate county department in current law that applies when appropriate disclosure is not given to a recipient's or participant's attorney, if there is one.

- Enacts into Ohio law provisions of federal Medicaid law that prohibit a third party from taking an individual's Medicaid status into account in enrollment or payment decisions.

- Requires a governmental entity that is responsible for issuing a license, certificate of authority, registration, or approval that authorizes the third party to do business in Ohio to, in accordance with the Ohio Administrative Procedure Act, deny, revoke, or terminate, as determined appropriate by the governmental entity, the third party's license, certificate, registration, or approval if the third party fails to comply with the requirements imposed on third parties by the bill with respect to providing ODJFS with certain data or the prohibition on taking an individual's Medicaid status into account in enrollment or payment decisions. Also permits the Attorney General to petition a court of common pleas to enjoin the violation.

- Requires ODJFS to adopt rules to specify certain matters with respect to changes made by the bill to ODJFS' right of recovery and assignment of rights.

- Authorizes the Children's Health Insurance Program to include persons under age 19 with family incomes up to 300% of the federal poverty guidelines starting not earlier than January 1, 2008.

- Provides that, to the extent of federal approval, Medicaid eligibility may be expanded to include persons under age 19 with family incomes not exceeding 500% of the federal poverty guidelines.

- Creates the Nonfederal Medical Assistance Program.

- Includes in the determination of each county's share of public assistance expenditures 25% of the cost of the Nonfederal Medical Assistance Program for the county, but continues current law under which the county's share cannot exceed 110% of its county share for the preceding fiscal year.

- Requires that the Director of Job and Family Services submit an amendment to the state Medicaid plan to increase to 200% (from 150%) of the federal poverty guidelines the family income a pregnant woman may have and remain eligible for Medicaid.

- Specifies that the expansion of Medicaid eligibility for pregnant women is to begin not earlier than January 1, 2008.

- Requires ODJFS to adopt rules establishing methods designed to provide information about the Healthcheck program.

- Requires that the Director of Job and Family Services seek an amendment to the state Medicaid plan to increase to 100% (from 90%) of the federal poverty guidelines the family income parents of children under age 19 may have and remain eligible for Medicaid.

- Eliminates the two-year limit on parents' Medicaid eligibility.

- Authorizes the Director of Job and Family Services to submit an amendment to the state's Medicaid plan to create a Medicaid Buy-In Program.

- Authorizes the Director to submit an amendment to the state's Medicaid waiver components to make changes so that the components contain one or more features of the Medicaid Buy-In Program.

- Authorizes the Director to submit an amendment to the state's Medicaid waiver components to permit a Medicaid recipient to both receive waiver services and participate in the Medicaid Buy-In Program.

- Eliminates a provision specifying the number of hours mental health services can be provided daily under Medicaid partial hospitalization provisions for community mental health facilities.

- Authorizes the Director of ODJFS to expand Medicaid cost-sharing requirements.

- Revises current law requiring providers of Medicaid services to provide information about the prevention and detection of fraud, waste, and abuse in federal health care programs to their employees, contractors, and agents.

- Prohibits a provision of Ohio law that incorporates a provision of federal Medicaid law, or requires state compliance with the federal provision, from being construed as creating a cause of action to enforce the Ohio law that differs from the causes of action available under the federal law.

- Repeals law establishing the Medicaid Care Management Working Group.

- Eliminates a requirement that performance-based financial incentives be implemented in Medicaid managed care contracts.

- Requires health care providers that do not participate in Medicaid to accept the Medicaid fee-for-service payment rate for emergency services furnished to a Medicaid recipient enrolled in a Medicaid managed care organization, in the same manner that the fee-for-service payment rate applies to Medicaid-participating providers that are not under contract with the managed care organization.

- Adds offsite day programming to the costs included in the direct care costs of intermediate care facilities for the mentally retarded (ICFs/MR) for the purpose of Medicaid reimbursement.

- Requires ODJFS to reduce the fiscal year 2008 Medicaid rates for ICFs/MR if the mean total per diem rate for all ICFs/MR weighted by

May 2007 Medicaid days and calculated as of July 1, 2007, exceeds $266.14.

- Requires ODJFS to reduce the fiscal year 2009 Medicaid rates for ICFs/MR if the mean total per diem rate for all ICFs/MR weighted by May 2008 Medicaid days and calculated as of July 1, 2008, exceeds $271.46.

- Prohibits, for the remainder of a fiscal year, further adjustments otherwise authorized by law governing Medicaid payments to ICFs/MR following a reduction in the Medicaid rates for ICFs/MR.

- Requires ODJFS to use money credited to the Medicaid Revenue Collections Fund for administration of the Medicaid Program (as opposed to only contracts) in addition to payment for Medicaid services.

- Provides for the Home First Program under which an individual admitted to a nursing facility while on a waiting list for the PASSPORT Program is to be placed in PASSPORT if the PASSPORT is appropriate for the individual and the individual would rather be in PASSPORT than a nursing facility.

- Authorizes the Director of Budget and Management to create new funds, transfer funds among affected agencies, and take other actions in support of any home and community-based services waiver program.

- Requires the Rehabilitation Services Commission and ODJFS to work together to reduce duplication of activities performed by each agency regarding mutual clients.

- Adjusts the formula used to calculate nursing facilities' Medicaid reimbursement rates for fiscal year 2008 by (1) increasing the cost per case mix-unit, rate for ancillary and support costs, rate for capital costs, and rate for tax costs as calculated under the formula by 2%, then by another 2%, and then by 1%, (2) increasing the mean payment used in the calculation of the quality incentive payment to $3.03 per Medicaid day, (3) limiting the total rate to not more than 101.75% and not less than 98.25% of a nursing facility's fiscal year 2007 total rate, and (4) reducing, if the federal government requires that the nursing facility franchise permit fee be reduced or eliminated, the payments as necessary to reflect

the loss of revenue and federal financial participation generated by the fee.

- Adjusts the formula used to calculate nursing facilities' Medicaid reimbursement rates for fiscal year 2009 by (1) increasing the cost per case mix-unit, rate for ancillary and support costs, rate for capital costs, and rate for tax costs as calculated under the formula by 2%, then by another 2%, then by 1%, and then by 0.5%, (2) increasing the mean payment used in the calculation of the quality incentive payment to $3.05 per Medicaid day, (3) limiting the total rate to not more than 101.5% and not less than 98.5% of a nursing facility's fiscal year 2007 total rate, and (4) reducing, if the federal government requires that the nursing facility franchise permit fee be reduced or eliminated, the payments as necessary to reflect the loss of revenue and federal financial participation generated by the fee.

- Requires the Medicaid Program to cover chiropractic services for adult Medicaid recipients for fiscal years 2008 and 2009.

VI. Hospital Care Assurance Program

- Delays the termination of the Hospital Care Assurance Program to October 16, 2009.

I. General

Grant agreements

(R.C. 307.98, 307.981, 329.04, 329.05, 3125.12, 5101.162, 5101.21, 5101.211, 5101.212, 5101.213, 5101.24, 5101.242, and 5101.244)

Current law permits the Director of Job and Family Services to enter into one or more written fiscal agreements with a board of county commissioners under which financial assistance is awarded for duties of a county family services agency (county department of job and family services, child support enforcement agency (CSEA), or public children services agency (PCSA)) included in the agreements. The board of county commissioners is to select which, if any, duties of county family services agencies are to be included in a fiscal agreement. If a board of county commissioners elects to include in a fiscal agreement the duties of a PCSA and a county children services board serves as the county's PCSA, the board of county commissioners and county children services board are to enter into the

fiscal agreement with the Director jointly. If a board of county commissioners elects to include the duties of a CSEA in a fiscal agreement and an elected official of the county performs the duties of the CSEA, the board of county commissioners and county elected official are to enter into the fiscal agreement with the Director jointly.

If a board of county commissioners does not enter into a fiscal agreement with the Director, the Ohio Department of Job and Family Services (ODJFS) is to award to the county the board serves financial assistance for the county family services agencies' duties in accordance with a methodology for determining the amount of the award the Director must establish in rules. The financial assistance may be provided in the form of allocations, cash draws, reimbursements, and property but may not be made in the form of a consolidated funding allocation.

The bill replaces fiscal agreements with grant agreements. Boards of county commissioners are required, rather than permitted, to enter into one or more written grant agreements with the Director. If a county's PCSA is a county children services board, the county children services board must jointly enter into the grant agreement with the Director and board of county commissioners. If a county elected official performs the duties of a CSEA, the county elected official must also jointly enter into the grant agreement.

The initial grant agreement must be entered into not later than January 21, 2008, and must be in effect for fiscal year 2009. Except as provided in rules the Director is to adopt,[44] subsequent grant agreements must be entered into before the first day of each successive biennial period (a period of time that begins on the first day of July of an odd-numbered year and ends on the last day of June of the next odd-numbered year). A subsequent grant agreement is to be in effect for the fiscal biennial period for which it is entered, unless it is entered into after the start of the fiscal biennial period. Even if a grant agreement is entered into after the start of a fiscal biennial period, however, the Director is permitted to provide for the agreement to have a retroactive effective date of the first day of July of an odd-numbered year if (1) the agreement is entered into before the last day of that July and (2) the board of county commissioners requests the retroactive effective date and provides the Director good cause satisfactory to the Director for the reason the agreement was not entered into on or before the first day of that July.

The alternative system in current law for ODJFS awarding financial assistance for county family services agencies' duties in accordance with a methodology established in rules may not be used after July 1, 2008. On and after

[44] The Director must adopt rules establishing terms and conditions under which a grant agreement may be entered into after the first day of a fiscal biennial period.

that date, the Director is prohibited from awarding grants to counties through any means other than a grant agreement.

The bill defines "grant" as an award for one or more family services duties (the duties of county family services agencies) of federal financial assistance that a federal agency provides in the form of money, or property in lieu of money, to ODJFS and that ODJFS awards to a county grantee. State funds ODJFS awards to a county grantee to match the federal financial assistance may be included in a grant. But, neither of the following are to be considered a grant: technical assistance that provides services instead of money and other assistance provided in the form of revenue sharing, loans, loan guarantees, interest subsidies, or insurance. A county grantee is a board of county commissioners, a county children services board, or a county elected official who performs the duties of a CSEA.

The bill requires that a grant agreement comply with all of the conditions, requirements, and restrictions applicable to the family services duties for which the grants included in the agreement are awarded, including the conditions, requirements, and restrictions established by ODJFS, federal or state law, state plans for receipt of federal financial participation, agreements between ODJFS and a federal agency, and executive orders issued by the Governor. A grant agreement must establish terms and conditions governing the accountability for and use of the grants included in the agreement and ensure that any matching funds, regardless of the source, that the county grantee manages are clearly identified and used in accordance with federal and state laws and the agreement. A grant agreement must include a requirement for the county grantees to do all of the following with regard to a subgrant of any grant included in the agreement that a county grantee awards to another entity: (1) award the subgrant through a written subgrant agreement that requires the entity awarded the subgrant to comply with all conditions, requirements, and restrictions applicable to the county grantee regarding the grant, (2) monitor the entity to ensure that it uses the subgrant in accordance with conditions, requirements, and restrictions applicable to the family services duties for which the subgrant is awarded, and (3) take action to recover subgrants that are not used in accordance with the applicable conditions, requirements, and restrictions.

Current law governing fiscal agreements permits ODJFS to provide financial assistance awarded under an agreement in the form of an allocation, cash draw, reimbursement, property, or, to the extent authorized by an appropriation made by the General Assembly and to the extent practicable and not in conflict with federal or state law, a consolidated funding allocation for two or more family services duties included in the agreement. The bill permits ODJFS to provide a grant included in a grant agreement in the form of a cash draw, reimbursement,

property, advance, working capital advance, or other form specified in rules the Director is to adopt.

The bill makes applicable to grant agreements certain provisions currently applicable to fiscal agreements. For example, a grant agreement must (1) provide for ODJFS to award the grants included in the agreement in accordance with a methodology for determining the amount of the award established in rules the Director is to adopt, (2) specify annual financial, administrative, or other awards, if any, to be provided to county family services agencies, and (3) provide that the grants are subject to the availability of federal funds and appropriations made by the General Assembly.

The bill stipulates that a grant agreement does not have to be amended for a county grantee to be required to comply with a new or amended condition, requirement, or restriction for a family services duty established by federal or state law, state plan for receipt of federal financial participation, agreement between ODJFS and a federal agency, or executive order issued by the Governor.

As under current law governing fiscal agreements, the Director is required to adopt rules governing grant agreements. The rules may govern the award of grants included in grant agreements. Also as under current law governing fiscal agreements, a requirement of a grant agreement established by a rule adopted by the Director is applicable to a grant agreement without having to be restated in the grant agreement. The bill expressly provides that a requirement established by a grant agreement is applicable to the grant agreement without having to be restated in a rule.

Current law provides that if a county family services agency submits an expenditure report to ODJFS and ODJFS subsequently determines that an allocation, advance, or reimbursement ODJFS makes to the agency, or a cash draw the agency makes, for an expenditure exceeds the allowable amount, ODJFS may adjust, offset, withhold, or reduce an allocation, cash draw, advance, reimbursement, or other financial assistance to the agency as necessary to recover the excess amount. The bill provides instead that if ODJFS determines that a grant awarded to a county grantee in a grant agreement, an allocation, advance, or reimbursement ODJFS makes to a county family services agency, or a cash draw a county family services agency makes exceeds the allowable amount, ODJFS may adjust, offset, withhold, or reduce an allocation, cash draw, advance, reimbursement, or other financial assistance to the county grantee or county family services agency as necessary to recover the excess amount.

Action against a county regarding family services duties

(R.C. 5101.24, 5101.242, and 5111.10)

ODJFS is authorized by current law to take certain actions against a board of county commissioners or a county family services agency, whichever ODJFS determines is appropriate to take action against, if ODJFS determines certain problems regarding a family services duty exist. ODJFS may take action if it determines any of the following are the case:

- A requirement of a fiscal agreement that includes the family services duty is not complied with.

- A county family services agency fails to develop, submit to ODJFS, or comply with a corrective action plan or ODJFS disapproves the corrective action plan.

- A requirement for the family services duty established by ODJFS, federal or state law, state plan for receipt of federal financial participation, agreement between ODJFS and a federal agency, or executive order issued by the Governor is not complied with.

- The board of county commissioners or county family services agency, whichever ODJFS determines is responsible, 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 family services duty.

The actions ODJFS may take including requiring the responsible entity to comply with a corrective action plan, requiring the responsible entity to share with ODJFS a final disallowance of federal financial participation, imposing an administrative sanction, and performing, contracting with another entity to perform, the family services duty until ODJFS is satisfied that the responsible entity ensures that the duty will be performed satisfactorily. ODJFS may also request that the Attorney General bring mandamus proceedings to compel the responsible entity to take or cease the action that leads ODJFS to take action.[45]

The bill provides that ODJFS may take action against whichever county grantee it determines is appropriate to take the action against. This means that ODJFS may still take action against a board of county commissioners but may take action against a public children services agency only if a county children

[45] Mandamus is an action seeking a court order requiring a public entity or official to act (or cease acting) in accordance with the order.

services board serves as the PCSA and may take action against a CSEA only if a county elected official performs the duties of the CSEA. Otherwise, ODJFS must take the action against the board of county commissioners rather than the PCSA or CSEA. ODJFS must take the action against the board of county commissioners rather than the county department of job and family services. Before taking action regarding a family services duty, however, ODJFS must notify the director of the appropriate county family services agency, even if ODJFS must take the action against the board of county commissioners rather than the county family services agency.

Continuing law permits ODJFS to conduct reviews of the Medicaid program. If it determines pursuant to a review that a person or government entity has violated a rule governing the Medicaid program, ODJFS may establish a corrective action plan for the violator and impose fiscal, administrative, or both types of sanctions on the violator in accordance with rules governing the Medicaid program. The bill eliminates a provision of current law that stipulates such action to be taken against a board of county commissioners or county department of job and family services is to be taken in accordance with state law governing the actions that ODJFS may take regarding a family services duty against a board of county commissioners or county family services agency.

Individual Development Account program

(R.C. 329.14)

Current law permits a county department of job and family services (CDJFS) to establish an individual development account (IDA) program for residents of the county whose household income does not exceed 150% of the federal poverty guidelines. A CDJFS that chooses to establish a program is required to select a nonprofit fundraising organization exempt from federal income taxation ("fiduciary organization") to administer the program.

Under a program, the fiduciary organization may deposit into a trust created or organized in the United States (IDA) an amount not exceeding twice the amount of earned income the program participant deposits into the account, provided the account does not have more than $10,000 in it at any time. A fiduciary organization may establish an IDA only in a financial institution insured by the Federal Deposit Insurance Corporation or by an insurer qualified under Ohio law to write insurance for a credit union.

An individual for whom an IDA is established may use the money in the account only for the following purposes and only with the approval of the fiduciary organization:

(1) Eligible postsecondary educational expenses paid directly from the account to an eligible educational institution or vendor.

(2) Qualified acquisition costs of a principal residence paid directly from the account to the person or government entity to which the expenses are due.

(3) Qualified business capitalization expenses made in accordance with a qualified business plan that has been approved by a financial institution or by a nonprofit microenterprise program having demonstrated business expertise and paid directly from the account to the person to whom the expenses are due.

(4) Personal emergencies of the participant or a member of the participant's family or household. Withdrawal of money from an IDA for this purpose results in the loss of matching funds in the amount of the withdrawal.

The bill increases income eligibility for participation in the program to 200% of the federal poverty guidelines (from 150%).[46] The bill also increases the amount a fiduciary organization may deposit into the account to four times the amount the program participant deposits into the account. The current limit is two times that amount.

Voter registration activities of the Department of Job and Family Services

(R.C. 3503.10)

Continuing federal and state laws requires designated agencies, including the Ohio Department of Job and Family Services (ODJFS), to conduct various voter registration activities, such as providing voter registration applications in its offices and assisting persons who are registering to vote. The Secretary of State must prescribe the general program for registering voters and updating voter registration information at the designated agencies.

Current state law requires ODJFS, and its departments, divisions, and programs to limit administration of the voter registration program to the requirements prescribed by the Secretary of State and the requirements of state and federal law. The bill eliminates this restriction. Thus, under the bill, ODJFS may provide voter registration services beyond those required by the Secretary of State and state and federal law.

[46] The 2007 federal poverty guideline for a family of four is an annual income of $20,650 (http://aspe.hhs.gov/poverty/07povertylevel.shtml, last visited March 13, 2007).

Food Stamp Program Fund

(R.C. 5101.541)

The bill creates the Food Stamp Program Fund consisting of federal reimbursement for food stamp program administrative expenses and other food stamp program expenses. ODJFS must use the money credited to the fund to pay for food stamp program administrative expenses and other food stamp program expenses.

Military Injury Relief Fund

(R.C. 5101.98; Section 309.70.10)

Under current Ohio law, the Military Injury Relief Fund consists of contributions made directly to it and money designated by taxpayers who have elected to donate a portion of their income tax return to the Fund. The Director of Job and Family Services grants money in the Fund to individuals injured while in active service as a member of the armed forces of the United States while serving under Operation Iraqi Freedom or Operation Enduring Freedom. The bill authorizes incentive grants that have been authorized by the "Jobs for Veterans Act," 116 Stat. 2033 (2002), to also be contributed to the Fund. Also, the bill specifies that an individual diagnosed with post-traumatic stress disorder, who has served in Operation Iraqi Freedom or Operation Enduring Freedom, is eligible for a grant from the Fund. The bill prohibits a person from appealing under the Administrative Procedure Act or R.C. 5101.35 any grant decision made by the Director of Job and Family Services, and instead authorizes the Director to adopt rules establishing the process for appealing eligibility determinations for these grants.

Disability Medical Assistance Program

Background

(R.C. 5115.10 through 5115.14 (not all in the bill))

ODJFS operates the Disability Medical Assistance Program. To be eligible for the Program, a person must be "medication dependent"[47] and ineligible for any

[47] An individual is "medication dependent" if a physician has certified that the individual is under ongoing treatment for a chronic medical condition requiring continuous prescription medication for a long-term, indefinite period of time and for whom the loss of such medication would result in a significant risk of a medical emergency and loss of employability which will last at least nine months. Ohio Administrative Code (O.A.C.) 5101:1-42-01.

category of Medicaid, and meet other requirements. A person eligible for the Program may receive "covered services."[48]

Rulemaking authority

(R.C. 5115.12)

Under current law, the Director of Job and Family Services must adopt rules governing the Disability Medical Assistance Program. The Director is permitted, but not required, to adopt rules that establish or specify any or all of the following:

(1) Income, resource, citizenship, age, residence, living arrangement, and other eligibility requirements;

(2) Health services to be included in the Program;

(3) The maximum authorized amount, scope, duration, or limit of payment for services;

(4) Limits on the length of time an individual may receive disability medical assistance;

(5) Limits on the total number of individuals in the state who may receive disability medical assistance.

The bill permits the Director of Job and Family Services to also adopt rules that establish or specify limits on the number and types of providers who are eligible to be reimbursed for services provided to individuals enrolled in the Program.

Kinship Permanency Incentive Program

The main operating budget of the 126th General Assembly (Am. Sub. H.B. 66) created the Kinship Permanency Incentive Program. Under the Program, an initial one-time incentive payment is to be given to a kinship caregiver[49] to

[48] "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. O.A.C. 5101:3-23-01(B).

[49] A kinship caregiver is a person 18 years of age or older who is 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

defray the costs of initial placement of a minor child in the kinship caregiver's home. Additional assistance may be provided for no longer than 36 months.

To be eligible to participate in the program, existing law requires that all of the following requirements be met:

(1) The child the kinship caregiver is caring for is a child with special needs as determined under existing Ohio Department of Job and Family Services (ODJFS) rules;

(2) A juvenile court has adjudicated that the child is an abused, neglected, dependent, or unruly child and determined that it is in the child's best interest to be in the legal custody of the kinship caregiver, or a probate court has determined that it is in the child's best interest to be in the guardianship of the kinship caregiver;

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

(4) The child resides with the kinship caregiver pursuant to a placement approval process to be established by ODJFS in rules;

(5) The gross income of the kinship caregiver's family does not exceed 200% of the federal poverty guidelines for a family of the same size.[50]

The bill

(R.C. 5101.802)

The bill changes the program's eligibility requirements. It eliminates the requirement that the child be a child with special needs and raises the maximum income eligibility of a participant to 300% of the federal poverty guidelines. The Director of Job and Family Services must adopt rules to determine income calculation. The bill eliminates a requirement that the Director adopt other rules necessary to implement the program.

The bill changes the custody requirement so that, on or after July 1, 2005, a juvenile court must have issued an order of legal custody to the kinship caregiver, or a probate court must have granted guardianship to the kinship caregiver. The bill eliminates the requirement that a juvenile court have determined the child

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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).

[50] The 2007 poverty guideline for a family of four is an annual income of $20,650. (http://aspe.hhs.gov/poverty/07poverty/shtml, last visited March 13, 2007.)

abused, neglected, dependent, or unruly, or a probate court to have determined that it is in the best interest of the child to be in the guardianship. The bill provides that a temporary court order is not sufficient to fulfill the custody requirement.

The bill maintains the requirements that the kinship caregiver reside with the child and be the child's legal custodian or legal guardian. The bill states that current participants of the program are not made ineligible by the changes made by the bill.

ODJFS reports

The bill requires ODJFS to prepare reports concerning both of the following:

(1) Stability and permanency outcomes for children for whom incentive payments are made under the Kinship Permanency Incentive Program;

(2) The total amount of payments made under the Program, patterns of expenditures made per child under the Program, and cost savings realized through the Program from placement with kinship caregivers rather than other out-of-home placements.

ODJFS must submit a report to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate not later than December 31, 2008, and December 31, 2010.

II. Child Care and Child Support Enforcement

Collection of child support arrearages from insurance claims and payments

(R.C. 3123.23)

Under continuing law, a court or child support enforcement agency that issued or modified a child support order is required to take specified actions if the person obligated to pay child support falls into arrears in making payments. For example, the court or agency may order the arrearage to be deducted from that person's wages or order a financial institution to deduct the support amount from amounts the person has on deposit at that institution. The bill retains each of these existing processes for collecting the arrearage and creates a new process for collecting the arrearage from insurance claims and payments.

The bill requires the Director of Job and Family Services to adopt rules under the Administrative Procedure Act to implement a program to collect child support arrearages owed under child support orders from insurance claims, settlements, awards, and payments based on information obtained under the child

support enforcement provisions of the Social Security Act. Any insurer and any director, agent, or employee authorized to act on behalf of an insurer, that releases information or makes a disclosure in accordance with those rules will be immune from liability in a civil action for harm resulting from the disclosure.

Processing charge claim for certain Title IV-D child support cases

(R.C. 3119.27)

Currently, the court or a child support enforcement agency (CSEA), when issuing or modifying a child support order, must charge an obligor a processing charge that is the greater of either (1) 2% of the support payment to be collected under the child support order, or (2) $1 per month.

The bill, in accordance with the Deficit Reduction Act of 2005 (P.L. 109-171), requires ODJFS to claim $25 from the processing charge, for federal reporting purposes, in all Title IV-D child support cases wherein (1) the obligee has never received Title IV-A (TANF) assistance,[51] and (2) ODJFS has collected at least $500 of child support for the obligee. The Director of Job and Family Services must adopt rules in accordance with the Administrative Procedure Act to implement the annual fee, and the bill requires this provision to be implemented no later than March 31, 2008.

Health insurance coverage for children who are the subject of a child support order

(R.C. 3119.022, 3119.023, 3119.29, and 3119.30)

Current law

Whenever a court or CSEA either issues or modifies a child support order, the court or CSEA must determine which party subject of the child support proceeding is responsible for the health care of the children subject of the order and include such information in the order. The parties must provide the court or CSEA with a list of any group health insurance policies, contracts, or plans available to the parties, and once the court or CSEA reviews the information provided, the court or CSEA must require one of the following:

[51] The "obligee" is the person to whom child support is paid (R.C. 3119.01(B)).

(1) The obligor[52] provide health insurance coverage if available at a reasonable cost through the obligor's employer or through another plan available at a more reasonable cost than a plan available to the obligee;

(2) The obligee provide health insurance coverage if available through the obligee's employer or through another plan available to the obligee and is available at a more reasonable cost than coverage is available to the obligor;

(3) The obligor and obligee share liability for health insurance coverage if coverage is not available at a reasonable cost to the obligor or obligee, pursuant to a formula created by the court or CSEA, and that the obligor or obligee notify the court or CSEA if health insurance becomes available at a reasonable cost after the child support order is issued or modified;

(4) The obligor and obligee both obtain health insurance coverage if coverage is available at a reasonable cost to both parties and there is no unnecessary duplication of coverage.

The cost of the provision of health insurance is included in the child support computation worksheets (as an income adjustment) when the court or CSEA determines the final actual amount of child support to be paid.

The bill

Generally, the bill changes how a court or CSEA makes health care determinations with respect to child support orders.

Definitions. Under the bill:

- "Health care" means such medical support that includes coverage under a health insurance plan, payment of costs of premiums, co-payments, and deductibles, or payment for medical expenses incurred on behalf of the child.

- "Health insurance coverage" means accessible health insurance that provides primary care services within either 30 miles or 30 minutes driving time from the residence of the child subject to the child support order. However, the court or CSEA may determine and include in an order that longer travel times are permissible if residents in part or all of the service area customarily travel distances farther than 30 miles or 30 minutes driving time or that primary care services are accessible only by public transportation.

[52] The "obligor" is the person responsible for paying child support (R.C. 3119.01(B)).

- "Reasonable cost" means the cost of private family health insurance that does not exceed an amount equal to 5% of the annual gross income of the person responsible for the health care of the children subject to the child support order. However, if the U.S. Secretary of Health and Human Services issues a regulation defining "reasonable cost" or a similar term or phrase relevant to the provisions in child support orders relating to the provision of health care for children subject to the orders, and if that definition is substantively different from the meaning of "reasonable cost" described in the preceding sentence, "reasonable cost" will have the meaning as defined by the U.S. Secretary of Health and Human Services.

Health care determinations. The bill also requires the court or CSEA to make health care determinations in a specific order that is based on whether health insurance coverage is available at a reasonable cost to the parties. If health insurance is available at a reasonable cost to the obligor, the obligor is the first to be the person responsible for health care of the children. However, if coverage is available to the obligee at a more reasonable cost than to the obligor, the obligee must obtain the coverage.

If health insurance is not available at a reasonable cost to either the obligor or obligee, the following apply:

(1) If the gross income of the obligor is over 150% of the federal poverty line, the court or CSEA must require the obligor to pay cash medical support[53] that is 5% of the obligor's annual gross income either to the Office of Child Support in ODJFS to defray the cost of Medicaid expenditures for the health care of the children or to the obligee if the children are not receiving Medicaid assistance.

(2) The court or CSEA must require the obligor and obligee to share the liability for the cost of health care, pursuant to the formula created by the court or CSEA, with offset for any cash medical payments made under the preceding paragraph, and require the parties to notify the court or CSEA if coverage becomes available at a reasonable cost.

The bill does not revise the final option: both parties must obtain coverage if coverage is available to both parties at a reasonable cost without duplication of coverage.

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[53] "Cash medical support" means an amount ordered to be paid in a child support order toward the cost of health insurance provided by a public entity, another parent, or person with whom the child resides, through employment or otherwise, or for other medical cost not covered by insurance.

Miscellaneous. The bill makes conforming changes to the child support computation worksheets regarding the provision of health care. Also, the changes made to the preceding health care provisions take effect on February 1, 2008, or on the effective date of regulations defining "reasonable cost" issued by the U.S. Secretary of Health and Human Services, whichever is later.

Voluntary child day-care center quality-rating program

(R.C. 5104.30)

Current law designates Ohio Department of Job and Family Services (ODJFS) as the entity that distributes the federal funds available under the Child Care Block Grant Act. ODJFS is required to allocate and use at least 4% of these funds for specific activities.

The bill adds that ODJFS must use a portion of these funds to establish a voluntary child day-care center quality-rating program and requires the Director of Job and Family Services to adopt rules in accordance with the Administrative Procedure Act to implement the program. If a child day-care center participates in the program, that center may be eligible for grants, technical assistance, training, or other assistance. Additionally, if the center maintains a quality rating, that center may be eligible for unrestricted monetary awards.

III. Unemployment Compensation

Elimination of the Trade Act Benefit Account under the Unemployment Compensation Law

(R.C. 4141.09)

Current law

The Unemployment Compensation Benefit Account is one of the three accounts included in the Unemployment Compensation Fund under continuing law. The Benefit Account consists of all moneys requisitioned from Ohio's account in the federal Unemployment Trust Fund. Federal funds the Director of Job and Family Services receives for payment of federal benefits, except for funds the Director receives for specified federal programs listed below, may be deposited into the Benefit Account solely for payment of benefits under a federal program administered by Ohio.

Current law requires the Treasurer of State, under the direction of the Director, to deposit federal funds received by the Director for the payment of benefits, job search, relocation, transportation, and subsistence allowances pursuant to the "Trade Act of 1974," 19 U.S.C.A. 2101, as amended; the "North

American Free Trade Implementation Act of 1993," 19 U.S.C.A. 3301, as amended; and the "Trade Act of 2002," 19 U.S.C.A. 3801, as amended, into the Trade Act Benefit Account, which is created for the purpose of making payments specified under those federal acts. Additionally, current law requires the Treasurer of State, under the direction of the Director, to deposit federal funds received by the Director for training and administration pursuant to those federal acts into the Trade Act Training and Administration Account, which is created for the purpose of making payments specified under those federal acts.

The bill

The bill eliminates the Trade Benefit Account and requires the Director to deposit the funds the Director receives for the payment of benefits, job search, relocation, transportation, and subsistence allowances pursuant to the federal acts listed above into the Trade Act Training and Administration Account. The bill allows the Treasurer of State, under the direction of the Director, to transfer funds from the Trade Act Training and Administration Account to the Benefit Account for the purpose of making any payments directly to claimants for benefits, job search, relocation, transportation, and subsistence allowances, as specified by those federal acts.

IV. Ohio Works First

Background

Title IV-A of the Social Security Act authorizes the 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.

Ohio Works First is one of Ohio's programs that is funded in part with federal TANF funds. Participants of OWF receive TANF-funded assistance and are therefore subject to the federal TANF requirements applicable to assistance such as time limits and work requirements.

Ohio Works First cash assistance payments

(R.C. 5107.03, 5107.04, and 5107.05)

Current law requires the Director of Job and Family Services to adopt rules establishing the method of determining the amount of cash assistance an assistance group receives under Ohio Works First. The maximum amount of cash assistance paid for with state and federal funds cannot exceed the payment standard, which is also established in rules.

The bill requires the Ohio Department of Job and Family Services (ODJFS) to increase the payment standard on January 1, 2009, and the first day of each January thereafter by the cost-of-living adjustment the United States Commissioner of Social Security makes for benefits provided under Title II of the Social Security Act (Social Security retirement benefits) in the immediately preceding December. Increasing the payment standard increases the maximum amount of cash assistance funded with state and federal funds that an assistance group may receive under Ohio Works First. The bill maintains a provision of current law that permits a county department of job and family services to use county funds to increase the amount of cash assistance an assistance group receives under Ohio Works First.

Ohio Works First work requirements

(R.C. 5107.40 (new), 176.05, 2951.02, 3317.14, 3319.089, 4115.04, 4117.01, 4723.651, 5101.54, 5101.97, 5104.30, 5107.01, 5107.05, 5107.10, 5107.14, 5107.16, 5107.161, 5107.162, 5107.17, 5107.30, 5107.40 (repealed), 5107.41, 5107.42, 5107.43 (repealed), 5107.44 (5107.60), 5107.45, 5107.50 (repealed), 5107.52 (5107.46), 5107.52 (new), 5107.54 (5107.58), 5107.541 (5107.47), 5107.58 (repealed), 5107.60 (repealed), 5107.61 (5107.48), 5107.62

(repealed), 5107.64 (repealed), 5107.65 (5107.50), 5107.66 (5107.44), 5107.67 (5107.54), 5107.68 (5107.56), 5107.69 (5107.61), 5107.70, and 5111.01)

Current law governing Ohio Works First subjects a member of an assistance group who is an adult[54] or a minor head of household[55] to work requirements. As soon as possible after an assistance group applies for Ohio Works First, a county department of job and family services must schedule and conduct an appraisal of each member who is an adult or minor head of household. At the appraisal, the county department must develop with the adult or minor head of household a plan for the assistance group to achieve the goal of self sufficiency and personal responsibility through unsubsidized employment within the time limit for participating in Ohio Works First. Under current law, the plan must include assignments to one or more work activities, developmental activities, or alternative work activities. The bill revises the law governing the work requirements under Ohio Works First.

Individuals subject to work requirements. Included in the revisions to Ohio Works First's work requirements is a change in who is subject to the work requirements. The bill applies work requirements to work-eligible individuals in accordance with revisions the United States Department of Health and Human Services made in 2006 to federal regulations governing the TANF block grant.[56] As defined in the federal regulations, both of the following are work-eligible individuals:

(1) Adults and minor heads of household receiving assistance under TANF or a separate state program;[57]

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[54] An adult is an individual who is not a minor child. A minor child is either an individual who has not attained age 18 or an individual who has not attained age 19 and is a full-time student in a secondary school or in the equivalent level of vocational or technical training. (R.C. 5107.02.)

[55] A minor head of household is a minor child who is either (1) married, at least six months pregnant, and a member of an assistance group that does not include an adult or (2) married and a parent of a child included in the same assistance group that does not include an adult. (R.C. 5107.02.)

[56] The revisions to the federal regulations were made due to changes in federal law governing the TANF block grant included in the Deficit Reduction Act of 2005 (Public Law 109-171).

[57] A separate state program is a program operated outside of TANF in which the expenditures of state funds may count toward the state's maintenance of effort requirement. (45 C.F.R. 260.30.) Under the maintenance of effort requirement, a state

(2) Non-recipient parents living with a child receiving TANF assistance, except for such parents who are a minor parent and not the head of household or spouse of the head of household, an alien who is ineligible to receive TANF assistance due to immigration status, or, at the state's option and on a case-by-case basis, a recipient of Supplemental Security Income benefits.

A parent providing care for a disabled family member living in the home who does not attend school on a full-time basis is not a work-eligible individual if the need for the care is supported by medical documentation.[58]

The bill also eliminates current law that expressly permits a county department to exempt an adult or minor head of household who is unmarried and caring for a minor child under 12 months of age from work requirements for not more than 12 months. The Director of Job and Family Services is required to adopt rules specifying circumstances under which a work-eligible individual may be exempt from assignment to work participation activities.

Work participation activities. Current law establishes a number of activities that are considered work activities. For example, a Job Search and Readiness Program is established to provide adults and minor heads of household training in strategies and skills in obtaining employment and the opportunity to engage in self-directed job-search activities.

Current law also requires county departments to establish and administer developmental activities and alternative work activities. Developmental activities may be identical or similar to, or different from, work activities and alternative work activities. Examples of alternative work activities are parenting classes and life-skills training, participation in an alcohol or drug addiction program, and English as a second language courses.

The bill eliminates the law governing work activities, developmental activities, and alternative work activities. Instead, it requires the Director of Job and Family Services to adopt rules establishing work participation activities to which work-eligible individuals are to be assigned under the Ohio Works First program.

Current law establishes the Subsidized Employment Program as an Ohio Works First work activity under which private and government employers receive payments from appropriations to the Department for a portion of the costs of

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must spend a certain amount of state funds to qualify for its full federal TANF block grant. (42 U.S.C. 609(a)(7).)

[58] 45 C.F.R. 261.2.

salaries, wages, and benefits such employers pay to or on behalf of employees who are participants in the Subsidized Employment Program at the time of employment. Although the bill eliminates the law establishing the program in statute, it requires the Director to include, in the rules establishing work participation activities, a Subsidized Employment Program. The bill maintains current law that permits a state agency or political subdivision to create or fill vacant full-time and part-time positions for or with participants of the Subsidized Employment Program.

The Work Experience Program is one of the programs current law establishes as an Ohio Works First work activity. The program is to provide adults and minor heads of household work experience from private and government entities. Current law permits a county department to contract with the chief administrator of a nonpublic school or a school district board of education to provide for a participant of the Work Experience Program who has a minor child enrolled in the nonpublic school or a public school in the district to be assigned under the Work Experience Program to volunteer or work for compensation at the school. The bill permits a county department to enter into such a contract to provide for a work-eligible individual who has a minor child enrolled in the school to be assigned under any work participation activity if the rules governing the activity permit such service to be performed under the activity.

A private or government entity with which an Ohio Works First participant is placed in the Work Experience Program is required by current law to pay premiums to the Bureau of Workers' Compensation on account of the participant unless a county department pays the premiums. The bill requires a private or government entity with which a work-eligible individual is placed under a work participation activity for which workers' compensation law applies to pay the premiums unless a county department pays them.

County departments must have at least one Ohio Works First ombudsperson to help Ohio Works First applicants and participants resolve complaints they have about the program's administration. Current law permits a county department to assign an adult or minor head of household to serve as an Ohio Works First ombudsperson under the Work Experience Program or other work activity the county department establishes. The bill permits a county department to assign a work-eligible individual to serve as an Ohio Works First ombudsperson under a work participation activity if the rules governing the activity permit such service to be performed under the activity.

Current law provides that Ohio Works First participants assigned to the Work Experience Program are not employees of ODJFS or a county department and that the operation of the Work Experience Program does not constitute the operation of an employment agency by ODJFS or a county department. The bill

provides instead that work eligible individuals assigned to work participation activities are not employees of ODJFS or a county department except as otherwise provided by federal or state law. And, the operation of any work participation activity does not constitute the operation of an employment agency by ODJFS or a county department.

To the maximum extent practicable, necessary support services that are to be provided to participants of work activities, developmental activities, and alternative work activities may be performed by participants of the activities. The bill provides that work-eligible individuals may provide the support services to the maximum extent practicable and consistent with rules governing work participation activities.

The bill eliminates a requirement that state and local agencies cooperate with county departments to the maximum extent possible in the implementation of Ohio Works First's work requirements.

Hours of work participation activities. In general, an adult in an assistance group that includes only one adult, or a minor head of household, must participate in the assigned work activities and developmental activities for at least 30 hours each week. In the case of an assistance group with two adults, the adults must participate in the assigned work activities and developmental activities for at least 35 hours each week between the two.[59]

The bill eliminates these provisions and instead requires the Director of Job and Family Services to adopt rules specifying the number of hours a work-eligible individual must participate in a work participation activity. The rules must also specify methods for reporting hours of participation and the type and frequency of documentation needed to verify reported hours of participation.

Restrictions on work participation activities. Current law establishes restrictions on county departments assigning adults and minor heads of household to work activities, developmental activities, and alternative work activities. The following are among the restrictions:

- Of the number of hours an adult or minor head of household must participate in a work activity or developmental activity per week, at

[59] The Director of Job and Family Services is required to adopt rules specifying circumstances under which a county department may exempt an adult or minor head of household from participating in a work activity or developmental activity for all or some of the weekly hours otherwise required. The circumstances must include that a school or place of work is closed due to a holiday or emergency and that an employer grants the adult or minor head of household leave for illness or earned vacation.

least 20 must be spent in a work activity and up to ten may be spent in a developmental activity.

- A county department that assigns an adult or minor head of household to a work activity under which the adult or minor head of household provides child-care services to another Ohio Works First participant who is assigned to a community service activity or other work activity is required to make reasonable efforts to assign the adult or minor head of household to at least one other work activity at the same time.

- A county department that assigns an adult or minor head of household to an education program under which the adult or minor head of household is enrolled full-time in post-secondary education leading to vocation must assign the adult or minor head of household to at least one other work activity at the same time and an adult or minor head of household may not participate in the education program for more than five hours a week once the adult or minor head of household has participated in the program for 1,040 hours.

- A county department may not assign an adult or minor head of household to vocational educational training activities for more than 12 months.

- An adult or minor head of household may be assigned to one or more alternative work activities rather than work activities and developmental activities if a county department determines that the adult or minor head of household has a temporary or permanent barrier to participation in a work activity but a county department may not assign more than 20% of adults and minor heads of household to an alternative work activity.

The bill eliminates the statutory restrictions on county departments' assignments to work activities, developmental activities, and alternative work activities and instead requires the Director of Job and Family Services to adopt rules governing county departments assigning work-eligible individuals to work participation activities.

Counties meeting federal requirements. A state that receives federal TANF funds is required to meet minimum work participation rates.[60] Federal TANF law establishes two minimum work participation rates: one for two-parent families that receive assistance under a state program funded with federal TANF funds and another for all families that receive such assistance. The basic

[60] 42 U.S.C. 607.

minimum work participation rate, before reductions are applied, is 90% for two-parent families and 50% for all families. This means that to meet the basic minimum work participation rate Ohio must have at least 90% of two-parent families and at least 50% of all families receiving assistance under Ohio Works First participating in federally qualifying work activities for a certain number of hours each week.

Current law requires that county departments, on a statewide average basis, exceed the federal minimum work participation rates by not less than five percentage points. The bill eliminates the requirement for county departments to exceed the federal minimum work participation rates and instead just requires them to meet the requirements each federal fiscal year.

ODJFS is required to ensure that county departments require adults and minor heads of household participating in Ohio Works First to participate in work activities, developmental activities, and alternative work activities in a manner consistent with federal law if the United States Secretary of Health and Human Services informs ODJFS that implementation of state law governing the work requirements jeopardizes federal funding for Ohio Works First. The bill does not condition the requirement that ODJFS ensure that county departments require work-eligible individuals to participate in work participation activities in a manner consistent with federal law on being informed that implementation of the work requirements jeopardizes federal funding.

Reliance on federal waivers. Federal law governing the TANF block grant generally permits a state that was granted a federal waiver for its former Aid to Dependent Children program[61] to apply the terms of the waiver to its TANF program until the waiver expires.[62] Current law governing the Ohio Works First program includes a statement that the General Assembly recognizes that some provisions of the program as operated pursuant to federal waivers granted pursuant to requests made under former law concerning the former Aid to Dependent Children program are inconsistent with federal law governing the TANF block grant. The General Assembly has stated its intent to rely on the federal waivers for authority to conduct the Ohio Works First program in the manner specified in state law to ensure the work readiness of participants by requiring (1) at least 20 hours of weekly participation in work activities, including, with certain limitations, a work activity under which an adult or minor head of household is

[61] The Ohio Works First program replaced the Aid to Dependent Children program as a result of the 1996 federal welfare reform law called the Personal Responsibility and Work Opportunity and Reconciliation Act.

[62] 42 U.S.C. 615.

enrolled full-time in post-secondary education leading to vocation, and (2) no more than ten hours of weekly participation in developmental activities.

The bill eliminates these intent statements. An official with ODJFS has stated that the waiver for the former Aid to Dependent Children program has expired.

Non-recipient parents who are work-eligible individuals

(R.C. 5107.02, 176.05, 2951.02, 4115.04, 4117.01, 5104.30, 5107.05, 5107.10, 5107.14, 5107.16, 5107.161, 5107.162, 5107.17, 5107.41, 5107.42, 5107.541 (5107.47), 5107.61 (5107.48), 5107.65 (5107.50), 5107.67 (5107.54), 5107.68 (5107.56), 5107.69 (5107.61), and 5107.70)

As discussed above,[63] revisions to federal regulations governing the TANF block grant generally subject non-recipient parents who are work-eligible individuals to the TANF work requirements. In addition to subjecting non-recipient parents who are work-eligible individuals to work requirements, the bill also includes the following provisions regarding such non-recipient parents:

- Requires each of an assistance group's work-eligible individuals,[64] including the non-recipient parents, to enter into a written self-sufficiency contract with a county department that sets forth the rights and responsibilities of the assistance group as applicants for and participants of Ohio Works First and the rights and responsibilities of the work-eligible individuals.

- Requires a county department to sanction an assistance group and the group's work-eligible individuals, including non-recipient parents, if a member or work-eligible individual fails or refuses, without good cause, to comply in full with a provision of a self-sufficiency contract.

- Requires ODJFS to provide a non-recipient parent, on the basis of being a work-eligible individual, written notice of a sanction and an opportunity for a hearing, before a county department implements the sanction.

- Permits a county department to conduct assessments of a non-recipient parent, as a work-eligible individual, to determine whether the non-

[63] See "***Individuals subject to work requirements***" above.

[64] See "***LEAP program***" below for an exception to the requirement for all work-eligible individuals to enter into a self-sufficiency contract.

recipient parent is in need of other assistance and services provided by the county department or other private or government entities.

- Makes a non-recipient parent who is a work-eligible individual assigned to a work participation activity eligible for publicly funded child care and continues the eligibility during a sanction if the non-recipient continues to participate in a work participation activity.

Ohio Works First applications

(R.C. 5107.05)

The Director of Job and Family Services is required to adopt rules establishing application and verification procedures for Ohio Works First, including the minimum information an application must contain. If there are at least two telephone numbers available that a county department can call to contact members of an assistance group, which may include the telephone number of an individual who can contact the assistance group for the county department, the minimum information must include at least those two telephone numbers. The bill eliminates the requirement that the application include the two telephone numbers when available.

Income eligibility limit

(R.C. 5107.10)

There are a number of eligibility requirements that an assistance group must meet to qualify to participate in Ohio Works First. One of the requirements is an income eligibility requirement. The income eligibility requirement has two steps.

Am. Sub. H.B. 66 of the 126th General Assembly, the biennial budget act, modified the first step. That act eliminated specific dollar amounts that an assistance group's gross income, less disregards, could not exceed for the assistance group to meet the first step of the income eligibility requirement. For example, prior law specified that an assistance group with three members could not have gross monthly income, less amounts disregarded, exceeding $630.

In place of the specific dollar amounts, H.B. 66 provides that an assistance group's gross income, less amounts disregarded, cannot exceed the higher of (1) 50% of the federal poverty guidelines or (2) the dollar amount specified in the prior state law.

The bill further modifies the first step in the income eligibility requirement by providing that an assistance group's income, less disregards, cannot exceed

50% of the federal poverty guidelines rather than the higher of that amount or the dollar amount specified in prior law. Because of increases in the federal poverty guidelines, 50% of the federal poverty guidelines is now always higher than the dollar amounts specified in prior law.

Delays of eligibility determinations

(R.C. 5107.12)

A county department is required, when it receives an application for Ohio Works First, to promptly make an investigation and record of the applicant's circumstances and obtain such other information as may be required. On completion of the investigation, the county department must determine whether the assistance group is eligible for Ohio Works First, the amount of cash assistance the applicant should receive, and the approximate date when participation shall begin. The bill requires the county department to make these determinations *as soon as possible*. It also prohibits the county department from delaying making the determination of whether the applicant is eligible for Ohio Works First on the basis that the individuals required to enter into a self-sufficiency contract with the county department have not yet done that.[65]

Ohio Works First sanctions

(R.C. 5107.16 and 5107.05)

Current law requires a county department to sanction an assistance group if a member fails or refuses, without good cause, to comply in full with a provision of the assistance group's self-sufficiency contract. As discussed above, the bill requires a county department to sanction an assistance group and the group's work-eligible individuals, including a non-recipient parent who is not a member of the assistance group, if a member or work-eligible individual does not comply with the self-sufficiency contract.[66]

The sanctions for not complying with a self-sufficiency contract are tiered. For a first failure or refusal to comply, a county department must deny or terminate the assistance group's eligibility to participate in Ohio Works First for

[65] The following must enter into a self-sufficiency contract: each adult member of an assistance group, an assistance group's minor head of household unless the minor head of household is participating in the LEAP program, and each of the assistance group's work-eligible individuals other than a work-eligible individual who is a minor head of household participating in the LEAP program.

[66] See "***Non-recipient parents who are work-eligible individuals***" above.

one payment month or until the failure or refusal ceases, whichever is longer. A second failure or refusal results in ineligibility for three payment months or until the failure or refusal ceases, whichever is longer. A third or subsequent failure or refusal results in ineligibility for the longer of six payment months or until the failure or refusal ceases. The bill modifies the duration of the sanctions by providing that they last one payment month, three payment months, or six payment months (depending on whether it is the first, second, or subsequent sanction) rather than the longer of that period of time or until the failure or refusal ceases.

Current law requires each county department to establish standards for the determination of good cause for failure or refusal to comply in full with a provision of a self-sufficiency contract. Current law also specifies circumstances that county departments are to include in their standards in cases dealing with a failure or refusal to comply with a work requirement included in a self-sufficiency contract. For example, a county department must provide that good cause exists for a failure or refusal to participate in a work activity, developmental activity, or alternative work activity if appropriate child care within a reasonable distance from a parent's work site is unavailable. The bill eliminates the authority for county departments to establish their own standards for good cause and the examples of circumstances to be included in the standards. In its place, the bill requires the Director of Job and Family Services to establish the good cause standards in rules. The bill eliminates a corresponding provision that requires a hearing officer and the Director to base the decision of a state hearing or administrative appeal regarding an Ohio Works First sanction on a county department's good cause standards if the county department provides the hearing officer or Director with a copy of the county department's good cause standards.

A county department is required to continue to work with an assistance group after sanctioning the assistance group to provide the member who caused the sanction an opportunity to demonstrate to the county department a willingness to cease the failure or refusal to comply with the self-sufficiency contract. The bill applies this requirement to non-parent recipients who are work-eligible individuals and eliminates the reason for continuing to work with the assistance group and work-eligible individual as being to provide the member who caused the sanction an opportunity to demonstrate willingness to cease the failure or refusal to comply with the self-sufficiency contract.

LEAP program

(R.C. 5107.30, 5107.02, 5107.14, 5107.281, 5107.41, and 5107.42)

The Learning, Earning, and Parenting (LEAP) program is a component of Ohio Works First under which participating teens must attend an educational

program that is designed to lead to the attainment of a high school diploma or its equivalent. The LEAP program is available to an Ohio Works First participant who is under age 18, or age 18 and in school, and a parent or pregnant. ODJFS is required to provide an incentive payment to teens who satisfy the LEAP program's education requirements and reduce a teen's Ohio Works First cash assistance payment for failure or refusal, without good cause, to meet the requirements. ODJFS is permitted to provide other incentives to teens who satisfy the LEAP program's education requirements.

Current law provides that a minor head of household who is participating in the LEAP program is to be considered to be participating in a work activity for the purpose of Ohio Works First's work requirements. However, the minor head of household is not subject to the requirements or sanctions of the work requirements. The bill provides instead that a minor head of household's participation in the LEAP program is to be counted in determining whether a county department meets federal TANF work participation rates.

The bill also does the following regarding the LEAP program:

- Provides that a LEAP participant is not required to enter into a self-sufficiency contract with a county department and that no self-sufficiency contract is to include provisions regarding the LEAP program.

- Provides that a county department is not to conduct an appraisal of a work-eligible individual for purposes of Ohio Works First's work requirements if the work-eligible individual is participating in the LEAP program.

- Provides that a county department is not to assign a work-eligible individual who is participating in the LEAP program to a work participation activity.

Fugitive felons and probation violators

(R.C. 5107.36)

Current law provides that the following are ineligible to participate in Ohio Works First:

- Fugitive felons.

- Individuals violating a condition of probation, a community control sanction, parole, or a post-release control sanction imposed under federal or state law.

The bill provides that these individuals are ineligible for assistance under Ohio Works First rather than ineligible to participate in Ohio Works First. This means that such individuals may be subject to work requirements even though ineligible for cash or other assistance under Ohio Works First.

V. Medicaid

Medicaid provider agreements--overview

(R.C. 109.572, 5111.028, 5111.03, 5111.031 to 5111.034, and 5111.06)

To participate in the Medicaid program, a health care provider must enter into an agreement with the Ohio Department of Job and Family Services (ODJFS). This agreement, known as a provider agreement, serves as a contract between ODJFS and the provider. By signing the agreement, the provider agrees to comply with the terms of the agreement and all applicable state and federal laws. Medicaid reimbursement for providing health care services is contingent on a valid provider agreement being in effect when the services were provided.[67]

The bill makes the following changes relative to Medicaid provider agreements:

(1) Expressly authorizes the use of time-limited provider agreements;

(2) Eliminates the five-year limit for termination of a provider agreement based on an action brought by the Attorney General;

(3) Authorizes the denial or termination of a provider agreement for any reason permitted or required by federal law;

(4) Requires the suspension of a provider agreement held by a noninstitutional health care provider based on an indictment of the provider or its owner, officer, authorized agent, associate, manager, or employee;

(5) Authorizes the exclusion of an individual, provider, or entity from participation in Medicaid for any reason permitted or required by federal law;

[67] Ohio Administrative Code 5101:3-1-17 and 5101:3-1-172.

(6) Modifies the circumstances under which ODJFS is not required to conduct an adjudication when imposing sanctions relative to a provider agreement, including sanctions imposed against a provider for failing to obtain or maintain a required certification;

(7) Permits ODJFS to require criminal records checks as a condition of becoming or continuing to be a Medicaid provider or an employee, owner, officer, or board member of a provider;

(8) Modifies the procedures used to obtain the criminal records checks required in the provision of home and community-based services through a Medicaid waiver program to a person with disabilities.

Time-limited provider agreements

(R.C. 5111.028)

Under current ODJFS rules, Medicaid provider agreements are generally of two types: open-end and closed-end. An open-end agreement does not expire and continues to be in force as long as agreeable to ODJFS and the provider. A closed-end agreement expires on a designated date, cannot be in effect for more than 12 months, and may be renewed.[68]

The bill expressly provides that the Director of Job and Family Services is authorized to adopt rules establishing the use of time-limited provider agreements. Pursuant to the Director's existing rule-making authority regarding Medicaid, the rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

The bill specifies that the use of time-limited provider agreements must include a process for re-enrollment of providers. In addition, all of the following apply to any use of time-limited provider agreements:

(1) ODJFS is authorized to convert a provider agreement without a time-limit to one that is time-limited.[69]

[68] O.A.C. 5101:3-1-174.

[69] Current administrative rules provide for the transfer of an open-end provider agreement to a closed-end agreement whenever such a transfer is in the best interests of the consumers or the state (O.A.C. 5101:3-1-17(C)).

(2) ODJFS can terminate a time-limited provider agreement or deny re-enrollment when a provider fails to file an application for re-enrollment within the time and in the manner required under the re-enrollment process.

(3) If a provider files a re-enrollment application appropriately, but the agreement expires before ODJFS acts on the application or before the effective date of ODJFS's decision on the application, the provider is permitted to continue operating under the terms of the expired agreement until the effective date of ODJFS's decision.

(4) ODJFS's decision to approve an application for re-enrollment becomes effective on the date of the decision. A decision to deny re-enrollment cannot take effect sooner than 30 days after the ODJFS mails written notice of the decision to the provider. ODJFS must specify in the notice the date on which the provider is required to cease operating under the provider agreement.

Termination of provider agreements based on Attorney General actions

(R.C. 5111.03(C))

Under current law, the Director of Job and Family Services is required to terminate a Medicaid provider agreement and stop reimbursement for services rendered when an action brought by the Attorney General results in the conviction of, or the entry of a judgment in either a criminal or civil action against, a Medicaid provider or its owner, officer, authorized agent, associate, manager, or employee. The termination must be imposed for a period of up to five years from the date of conviction or entry of judgment.

The bill eliminates provisions that limit the length of the termination to a period of up to five years. References to the period of termination are also eliminated.

As part of the current termination statute, "owner" is defined as any person having at least a five per cent ownership in the Medicaid provider. The bill clarifies that the definition applies only to the termination statute, and not to other provisions of Medicaid law that use the same term.

Termination and denial of provider agreements based on federal law

(R.C. 5111.03(D))

The bill authorizes the Director of Job and Family Services to deny or terminate a provider agreement for any reason permitted or required by federal law. With regard to the provider, the bill specifies that this authority does not

limit the applicability of the current laws governing the administrative procedures ODJFS must follow in taking actions relative to a Medicaid provider agreement.

Suspension of provider agreements based on indictments

(R.C. 5101.031)

The bill establishes a process for suspending the Medicaid provider agreement held by a noninstitutional Medicaid provider based on an indictment. The process applies to any person or entity with a Medicaid provider agreement other than a hospital, nursing facility, or intermediate care facility for the mentally retarded. Regardless of any other state Medicaid statute to the contrary, ODJFS is required to use the suspension process to take action against a noninstitutional Medicaid provider or its owner, officer, authorized agent, associate, manager, or employee. An owner is subject to the process if the owner is a person with at least a 5% ownership in the noninstitutional provider.

Qualifying indictments

The indictments that result in application of the suspension process are differentiated according to the type of noninstitutional provider. Specifically, the bill provides the following:

--In the case of a provider that is not an independent provider of home and community-based services for persons with disabilities, the suspension process applies when the indictment charges a person with committing an act that would be a felony or misdemeanor under Ohio law and the act relates to or results from either (1) furnishing or billing for medical care, services, or supplies under Medicaid or (2) participating in the performance of management or administrative services relating to furnishing medical care, services, or supplies under Medicaid.

--In the case of an independent provider of home and community based services for persons with disabilities, the suspension process applies when the indictment charges the independent provider with committing an act that would constitute one of the offenses that disqualify the provider from participating in Medicaid.

Process of suspension

On receiving notice and a copy of an indictment that is issued on or after the bill's effective date and charges a noninstitutional Medicaid provider or its owner, officer, authorized agent, associate, manager, or employee with committing one of the offenses described above, ODJFS is required by the bill to suspend the provider's Medicaid provider agreement. In addition, ODJFS must terminate Medicaid reimbursement to the provider for services rendered.

The suspension is to continue in effect until the proceedings in the criminal case are completed through conviction, dismissal of the indictment, plea, or finding of not guilty. If ODJFS commences a process to terminate the provider agreement, the suspension is to continue in effect until the termination process is concluded.

A provider, owner, officer, authorized agent, associate, manager, or employee subject to a suspension based on indictment cannot own or provide services to any other Medicaid provider or risk contractor or arrange for, render, or order services for Medicaid recipients during the period of suspension. Such persons cannot receive reimbursement in the form of direct payments from ODJFS or indirect payments of Medicaid funds in the form of salary, shared fees, contracts, kickbacks, or rebates from or through any participating provider or risk contractor.

Exceptions

Under the bill, ODJFS cannot suspend a provider agreement or terminate Medicaid reimbursement if the provider or owner can demonstrate that the provider or owner did not directly or indirectly sanction the action of its authorized agent, associate, manager, or employee that resulted in the indictment. Additionally, the bill permits ODJFS to adopt rules specifying circumstances under which a provider agreement will not be suspended.

Effect on payment

The bill specifies that the termination of Medicaid reimbursement applies only to payments for Medicaid services rendered subsequent to the date on which ODJFS provides notice of the termination. Claims for reimbursement for services rendered prior to the notice may be subject to prepayment review procedures whereby ODJFS reviews claims to determine whether they are supported by sufficient documentation, are in compliance with state and federal statutes and rules, and are otherwise complete.

Notice

Not later than five days after suspending a provider agreement based on an indictment, ODJFS must send notice of the suspension to the affected provider or owner. In providing the notice, ODJFS must do all of the following:

(1) Describe the indictment that was the cause of the suspension, without necessarily disclosing specific information concerning any ongoing civil or criminal investigation;

(2) State that the suspension will continue in effect until the proceedings in the criminal case are completed and, if the department commences a process to terminate the provider agreement, until the termination process is concluded;

(3) Inform the provider or owner of the opportunity to submit a request for a reconsideration.

Reconsideration

A provider or owner subject to suspension based on an indictment is permitted by the bill to request a reconsideration. The request must be made not later than 30 days after receipt of the suspension notice from ODJFS. The bill specifies that the reconsideration is not subject to an adjudication hearing pursuant to the Administrative Procedure Act (R.C. Chapter 119.).

In requesting a reconsideration, the provider or owner must submit written information and documents to ODJFS. The information and documents may pertain to any of the following issues:

(1) Whether the determination to suspend the provider agreement was based on a mistake of fact, other than the validity of the indictment;

(2) Whether any offense charged in the indictment resulted from an offense for which the suspension may be made under the bill;

(3) Whether the provider or owner can demonstrate that the provider or owner did not directly or indirectly sanction the action of its authorized agent, associate, manager, or employee that resulted in the indictment.

The bill requires ODJFS to review the submitted information and documents. After the review, the suspension can be affirmed, reversed, or modified, in whole or in part. ODJFS must notify the affected provider or owner of the results of the review. The review and notification of its results must be completed not later than 45 days after receiving the information and documents submitted in the request for reconsideration.

Rules

The bill permits ODJFS to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement the bill's process for suspending Medicaid provider agreements based on indictment.

Exclusion from Medicaid participation

(R.C. 5111.03(D))

The bill authorizes the Director of Job and Family Services to exclude an individual, provider of services or goods, or other entity from participation in the Medicaid program. The exclusion may occur for any reason permitted or required by federal law. With regard to the provider, the bill specifies that the Director's exclusion authority does not limit the applicability of the current laws governing the administrative procedures ODJFS must follow in taking actions relative to a Medicaid provider agreement.

When excluded from Medicaid participation under the bill, an individual, provider, or entity cannot own or provide services to any other Medicaid provider or risk contractor or arrange for, render, or order services for Medicaid recipients during the period of exclusion. Additionally, during the exclusion period, the individual, provider, or entity cannot receive reimbursement in the form of direct payments from ODJFS or indirect payments of Medicaid funds in the form of salary, shared fees, contracts, kickbacks, or rebates from or through any participating provider or risk contractor.

The bill specifies that an individual, provider, or entity excluded from Medicaid participation may request a reconsideration of the exclusion. The Director is required to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) governing the process for requesting a reconsideration.

Administrative actions relative to provider agreements

(R.C. 5111.06 (primary); R.C. 5111.023(C) and 5111.031(C))

Under current law, ODJFS is generally required to issue orders pursuant to an adjudication conducted in accordance with the Administrative Procedure Act when it enters into a Medicaid provider agreement or imposes sanctions relative to the agreement. Exceptions apply in specified circumstances, including actions taken by ODJFS because a Medicaid provider's license has been denied or revoked.

The bill modifies the exceptions that apply to ODJFS's duty to issue orders pursuant to an adjudication. Specifically, the bill provides that adjudication requirement does not apply when any of the following occur:

(1) The terms of a provider agreement require the provider to hold a license, permit, or certificate, and the provider's license, permit, or certificate is

not renewed or is suspended or otherwise limited, or the provider has not obtained the required license, permit, or certificate.

(2) The terms of a provider agreement require the provider to maintain certification and the certification is denied, revoked, not renewed, suspended, or otherwise limited, or the provider has not obtained the required certification.

(3) The provider agreement is denied, terminated, or not renewed based on an action taken in Ohio against the provider's license, permit, certificate, or certification, notwithstanding the fact that the provider may hold a license, permit, certificate, or certification from another state.

(4) The provider agreement is suspended under the bill's provisions authorizing suspension based on an indictment.

(5) The provider agreement is denied, terminated, or not renewed because the provider has been convicted of one of the offenses that caused the provider agreement to be suspended based on an indictment.

(6) The provider agreement is converted under the bill from a provider agreement without a time limit to a provider agreement that is time-limited.

(7) A time-limited provider agreement is terminated or an application for re-enrollment is denied because the provider has failed to comply with the re-enrollment procedures.

Criminal records checks of Medicaid providers

(R.C. 5111.032 (primary); R.C. 109.572)

The bill authorizes ODJFS to require that persons submit to a criminal records check as a condition of obtaining a Medicaid provider agreement, continuing to hold a provider agreement, being employed by a provider, having an ownership interest in a provider, or being an officer or board member of a provider. The bill requires ODJFS to designate the categories of persons who are subject to the criminal records check requirement and requires ODJFS to designate the times at which the criminal records checks must be conducted.

Applicability of the requirement

The bill specifies that its provisions do not apply to persons who are subject to criminal records checks under current law as a condition of being a Medicaid provider or employee with respect to a home and community-based services waiver program for persons with disabilities.

For purposes of the criminal records check requirement, "provider" is defined as any person, institution, or entity that has a Medicaid provider agreement with ODJFS pursuant to federal Medicaid law. An "owner" is a person who has an ownership interest in a Medicaid provider in an amount designated by ODJFS in rules adopted under the bill. The bill specifies that references to ODJFS include a designee of ODJFS.

Informing persons of the requirement

The bill requires ODJFS to inform each provider or provider applicant whether the provider or applicant is subject to a criminal records check. For providers, the information must be given at times designated in the rules ODJFS is permitted to adopt under the bill. For provider applicants, the information must be given at the time of initial application. When the information is given, ODJFS must specify which of the provider's or applicant's employees or prospective employees, owners or prospective owners, officers or prospective officers, or board members or prospective board members are subject to the criminal records check requirement.

A provider that is subject to the criminal records check requirement must inform each person specified by ODJFS that the person is required to submit to a criminal records check for final consideration for employment in a full-time, part-time, or temporary position; as a condition of continued employment; or as a condition of becoming or continuing to be an owner, officer, or board member of a provider. The information must be given at times designated in the rules ODJFS is permitted to adopt under the bill.

Initiating the criminal records check

If a provider or provider applicant is subject to a criminal records check under the bill, ODJFS must require the conduct of a criminal records check by the Superintendent of the Bureau of Criminal Identification and Investigation. If the provider or applicant does not present proof of having been an Ohio resident for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the Superintendent has requested information about the individual from the Federal Bureau of Investigation (FBI) in a criminal records check, ODJFS must require the provider or applicant to request that the Superintendent obtain information from the FBI as part of the criminal records check of the provider or applicant. Even if the provider or applicant presents proof of having been an Ohio resident for the five-year period, ODJFS may require that the provider or applicant request that the Superintendent obtain information from the FBI and include it in the criminal records check.

In turn, the provider must require the conduct of a criminal records check by the Superintendent with respect to each of the persons ODJFS specifies as being subject to the criminal records check requirement. These persons are subject to the same provisions that apply to the provider with regard to the need to request that the Superintendent obtain information from the FBI.

ODJFS must give each provider or provider applicant information about accessing and completing the form and fingerprint impression sheets necessary for the Superintendent to conduct the criminal records check. The provider, likewise, must give the information to each person for whom the provider is responsible. In both cases, the persons subject to the requirement must submit the forms and fingerprint impressions to the Superintendent and pay all applicable fees.

The Superintendent must conduct the criminal records check in accordance with procedures established under current law for criminal records checks. When the criminal records check pertains to a provider or provider applicant, the Superintendent must be instructed to submit the report directly to the Director of Job and Family Services. When the criminal records check pertains to a person required by a provider to submit to a records check, the Superintendent must be instructed to submit the report directly to the provider. The bill permits ODJFS to require that the provider submit the person's report to ODJFS.

If a provider or provider applicant is given the information about obtaining a criminal records check but fails to obtain the check, ODJFS is required by the bill to terminate the provider agreement or deny the application to be a provider. Similarly, if a provider gives a person the information about obtaining a criminal records check but the person fails to obtain the check, the provider is prohibited from allowing the person to serve as an employee, owner, officer, or board member of the provider.

Disqualifying offenses

Except in circumstances specified in rules ODJFS is permitted to adopt under the bill, the bill requires ODJFS to terminate a provider agreement or deny issuance of a provider agreement if the provider or applicant is subject to a criminal records check and has been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of a specified list of offenses. Similarly, a provider is prohibited from allowing a person to be an employee, owner, officer, or board member of the provider if the person is subject to a criminal records check under the bill and has been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of the same offenses. Under the bill, all of the following are disqualifying offenses:

(1) Aggravated murder; murder; voluntary manslaughter; involuntary manslaughter; reckless homicide; felonious assault; aggravated assault; assault; failing to provide for a functionally impaired person; aggravated menacing; patient abuse; gross patient neglect; patient neglect; kidnapping; abduction; criminal child enticement; extortion; coercion; rape; sexual battery; unlawful sexual conduct with a minor; gross sexual imposition; sexual imposition; importuning; voyeurism; public indecency; compelling prostitution; promoting prostitution; procuring; soliciting; prostitution; engaging in prostitution after a positive HIV test; disseminating matter harmful to juveniles; pandering obscenity; pandering obscenity involving a minor; pandering sexually oriented matter involving a minor, illegal use of minor in nudity-oriented material or performance; aggravated robbery; robbery; aggravated burglary; burglary; breaking and entering; any theft offense; unauthorized use of a vehicle; unauthorized use of property; unauthorized use of computer, cable, or telecommunications property; passing bad checks; misuse of credit cards; forgery; forging identification cards or selling or distributing forged identification cards; Medicaid fraud; securing writings by deception; insurance fraud; Workers' Compensation fraud; identity fraud; receiving stolen property; disorderly conduct; unlawful abortion; endangering children; contributing to the unruliness or delinquency of a child; domestic violence; falsification; illegal conveyance of weapons onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of intoxicating liquor onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of cash onto the grounds of a detention facility; attempt to commit an offense; carrying concealed weapons; having weapons while under disability; improperly discharging a firearm at or into a habitation, in a school safety zone, or with intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function; engaging in a pattern of corrupt activity; corrupting another with drugs; any trafficking in drugs offense; illegal manufacture of drugs or cultivation of marihuana; funding of drug or marihuana trafficking; illegal administration of distribution of anabolic steroids; any drug possession offense; permitting drug abuse; offenses related to drug paraphernalia; deception to obtain a dangerous drug; illegal processing of drug documents; placing a harmful or hazardous object or substance in any food or confection; felonious sexual penetration in violation of former state law; a violation of the offense of child stealing as it existed prior to July 1, 1996; a violation of the prohibition against interference with custody that would have been a violation of the offense of child stealing as it existed prior to July 1, 1996, had the violation been committed prior to that date;

(2) An existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in the preceding paragraph.

Medicaid or Medicare exclusion

In addition to prohibiting the employment of a person based on a disqualifying offense, the bill prohibits a Medicaid provider from employing a person who has been excluded from participation in Medicaid, Medicare, or any other federal health care program.

Conditional employment

The bill allows a Medicaid provider to employ a person prior to obtaining the results of a criminal records check, but only if the person submits a request for a criminal records check not later than five business days after beginning the conditional employment. The provider must terminate the person's employment if the results of the criminal records check are not obtained within 60 days after the request is made. Regardless of when the results are obtained, if the results indicate that the individual has been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of the disqualifying offenses, the provider must terminate the person's employment. The employer, however, may choose to retain the individual if ODJFS adopts rules specifying circumstances when such a person may be employed.

Confidentiality

The report of the criminal records check is not a public record for purposes of Ohio's public records law and must not be made available to any person other than the following:

(1) The person who is the subject of the criminal records check or the person's representative;

(2) The Director of Job and Family Services and the staff of ODJFS in the administration of the Medicaid program;

(3) A court, hearing officer, or other necessary individual involved in a case dealing with the denial or termination of a provider agreement;

(4) A court, hearing officer, or other necessary individual involved in a case dealing with a person's denial of employment, termination of employment, or employment or unemployment benefits.

Rules

The bill authorizes ODJFS to adopt rules in accordance with the Administrative Procedure Act to implement the bill's criminal records check provisions. The rules may specify circumstances under which ODJFS may continue a provider agreement or issue a provider agreement when the provider or applicant has a record of a disqualifying offense. Similarly, the rules may specify circumstances under which a provider may permit a person to be an employee, owner, officer, or board member of the provider when the person has a record of a disqualifying offense.

Criminal records checks of home and community-based service providers

(R.C. 5111.033 and 5111.034 (primary); R.C. 109.572)

Current law requires criminal records checks to be conducted as a condition of employment in a position that involves providing home and community-based services through a Medicaid waiver program to a person with disabilities. Current law also requires criminal records checks to be conducted as a condition of receiving a Medicaid provider agreement as an independent provider of such home and community-based services. A person is disqualified from being employed in the position or from being a Medicaid provider if the person has been convicted of or pleaded guilty to any of the offenses specified in current law.

The bill modifies the process that must be followed in obtaining the criminal records checks and includes additional disqualifying offenses. Specifically, the bill does the following:

(1) Requires the person who is subject to the criminal records check to obtain the criminal records check, in place of the duty that currently applies to the chief administrator of the agency in which the person will be employed, or in the case of a provider agreement, the duty that applies to ODJFS;

(2) Requires that the person be given information about accessing, completing, and forwarding to the Superintendent of the Bureau of Criminal Identification and Investigation the forms and fingerprint impression sheets necessary to obtain the criminal records check;

(3) Requires that the person be given written notice to instruct the Superintendent to forward the completed criminal records check report directly to the chief administrator of the agency or, in the case of a provider agreement, directly to ODJFS;

(4) Adds the following as disqualifying offenses: soliciting, Workers' Compensation fraud, identity fraud, disorderly conduct, endangering children,

falsification, attempt to commit an offense, engaging in pattern of corrupt activity, and offenses related to drug paraphernalia;

(5) Disqualifies a person from employment or from receiving a provider agreement if the person has been found eligible for intervention in lieu of conviction for any of the offenses that would disqualify the person on conviction;

(6) Continues ODJFS's duty to adopt rules specifying circumstances under which a person convicted of one of the disqualifying offenses may be employed or be a Medicaid provider, but eliminates the provision requiring that the person meet personal character standards set by ODJFS;

(7) Specifies, in the case of an employee or potential employee, that the report of the person's criminal records check can be made available to an administrator at ODJFS.

Copies of medical records

(R.C. 3701.741)

Under current law, a health care provider or medical records company is required to provide one free copy of a patient's medical record to the following persons or entities:

(1) Ohio Bureau of Workers' Compensation;

(2) Ohio Industrial Commission;

(3) ODJFS;

(4) Ohio Attorney General;

(5) A patient or patient's personal representative if the medical record is necessary to support a Social Security disability claim or an application for Supplemental Security Income.

ODJFS may obtain its free copy in accordance with Chapter 5101. of the Revised Code, the general governing statutes for the Department.

The bill adds county departments of job and family services to the entities entitled to obtain a free copy of a patient's medical record. The bill also provides that ODJFS and county departments may obtain the free copy of a patient's medical record in accordance with Chapter 5111. of the Revised Code, the statutes governing Ohio's Medicaid program.

Nursing home and ICF/MR franchise permit fees

(R.C. 3721.541 and 5112.341)

Nursing homes; hospitals with skilled nursing facility, long-term care, or nursing home beds; and intermediate care facilities for the mentally retarded (ICFs/MR) are required to pay an annual franchise permit fee.

The money generated by the franchise permit fee on nursing homes and hospitals has been required to be deposited into two funds. One fund, the Home and Community-Based Services for the Aged Fund, gets 16% of all franchise permit fees and related penalties paid by nursing homes and hospitals for fiscal years 2006 and 2007. (Sixteen per cent represents the first $1 of the franchise permit fee.) Current law requires that all nursing home and hospital franchise permit fees and related penalties for fiscal year 2008 and thereafter be deposited into this fund. ODJFS and the Department of Aging are required to use the money in the fund for the Medicaid program, including the PASSPORT component of the Medicaid program, and the Residential State Supplement program.[70]

The other fund into which money generated by the nursing home and hospital franchise permit fee goes is the Nursing Facility Stabilization Fund. It is to receive all such franchise permit fees and related penalties that are not deposited into the Home and Community-Based Services for the Aged Fund. Because current law requires that all such fees and penalties be deposited into the Home and Community-Based Services for the Aged Fund beginning in fiscal year 2008, no future money, other than any interest or other investment proceeds earned on money previously credited to the fund, is to go into the Nursing Facility Stabilization Fund beginning in fiscal year 2008. The Department of Job and Family Services is required to use money in the Nursing Facility Stabilization Fund to make Medicaid payments to nursing facilities.[71]

All money generated by the ICF/MR franchise permit fee and related penalties is required to be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund. The Departments of Job and Family Services and Mental Retardation and Developmental Disabilities are required to use money in that fund for the Medicaid program and home and community-based services to persons with mental retardation or a developmental disability.

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[70] R.C. 3721.56.

[71] R.C. 3721.561.

Nursing home and hospital fee not to decrease

(R.C. 3721.51 and 3721.56)

The franchise permit fee for nursing homes and hospitals is set at $6.25 per bed per day for fiscal years 2006 and 2007. Under current law, the fee is scheduled to decrease to $1 per bed per day. The bill eliminates the scheduled reduction, thereby maintaining the fee at $6.25 per bed per day. The bill also provides for the Nursing Facility Stabilization Fund to continue to receive 84% of the money generated by the fee.

The bill does not change the amount of the ICF/MR franchise permit fee. That fee is $9.63 per bed per day, plus an annual composite inflation factor adjustment.

Sanctions for failure to pay franchise permit fee

(R.C. 3721.541 and 5112.341)

ODJFS is permitted to assess a five per cent penalty on the amount due for each month or fraction thereof that a nursing home, hospital, or ICF/MR fails to pay its franchise permit fee in full when due.[72] In addition to assessing the penalty, current law permits ODJFS to do either of the following:

(1) Withhold an amount equal to the franchise permit fee and penalty from a Medicaid payment due to the nursing facility, hospital, or ICF/MR until the fee and penalty are paid.

(2) Terminate the Medicaid provider agreement of the nursing facility, hospital, or ICF/MR.

The bill permits ODJFS to offset an amount less than or equal to the franchise permit fee and penalty from a Medicaid payment, rather than withhold an amount equal to the fee and penalty from a Medicaid payment until the fee and penalty are paid. ODJFS is also permitted to both impose the offset and terminate the Medicaid provider agreement, rather than just taking one of those actions. As under current law regarding withholdings, ODJFS may make the offset without providing notice or conducting an adjudication under the Administrative Procedure Act (R.C. Chapter 119.).

[72] R.C. 3721.54 and 5112.34.

Application of definition of "date of licensure"

(R.C. 5111.20)

Current law governing Medicaid rates for nursing facilities and ICFs/MR uses the term "date of licensure" in the context of facilities' capital rates and for the purpose of determining a facility's initial rate. The bill does not change the definition. Instead it provides that the definition applies in determinations of Medicaid rates for nursing facilities and ICFs/MR but does not apply in determinations of the franchise permit fee for a nursing facility or ICF/MR.

Third party liability for Medicaid claims

(R.C. 5101.571, 5101.572, 5101.573, 5101.574, 5101.575, 5101.58, 5101.59, and 5101.591)

Background--federal regulations and the Deficit Reduction Act of 2005

Congress intended that Medicaid be the payer of last resort; that is, if a Medicaid recipient has another source of payment for health services, that source is to pay instead of Medicaid.[73] Consistent with federal law that reflects this intent, the U.S. Secretary of Health and Human Services has promulgated regulations[74] that require states to have plans to do all of the following: (1) identify Medicaid recipients' other sources of health coverage, (2) determine the extent of the liability of third parties, (3) avoid payment of third party claims ("cost avoidance"), and (4) pay claims and later recover reimbursement from third parties if the state can reasonably expect to recover more than it spends in seeking reimbursement ("pay and chase").

For obvious reasons, cost avoidance is preferred over pay and chase; however, there are circumstances for which the federal regulations prohibit cost avoidance or situations where the state Medicaid agency is hindered in its efforts to verify Medicaid recipients' private health coverage.[75]

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[73] U.S. Government Accountability Office. *Medicaid Third Party Liability: Federal Guidance Needed to Help States Address Continuing Problems* (Sept. 2006) (last visited Feb. 20, 2007), available at <http://www.gao.gov/new.items/d06862.pdf>, at p. 1.

[74] 42 C.F.R. Part 433, subpart D (2005).

[75] Exceptions to this requirement are for prenatal care services, preventative pediatric services, and services provided to a minor for whom the state is enforcing a child-support order against a noncustodial parent. 42 C.F.R. 433.139(b)(3). The U.S. Government Accountability Office report referenced above describes the ways in which state

To enhance states' ability to identify and obtain payments from liable third parties, the Deficit Reduction Act of 2005[76] made several changes to the third party liability provisions of federal Medicaid law.[77] Specifically, section 6035 of the Deficit Reduction Act amended federal Medicaid law (section 1902(a)(25) of the Social Security Act[78]) to do both of the following:[79]

(1) Clarify the specific entities that are considered "third parties" that may be liable for payment and cannot discriminate against individuals on the basis of Medicaid eligibility.

(2) Require states to enact laws requiring health insurers to do all of the following:

(a) Provide the state with coverage, eligibility, and claims data needed by the state to identify potentially liable third parties;

(b) Honor the assignment to the state of a Medicaid recipient's right to payment by the insurers for health care items or services;

(c) Not deny assignment or refuse to pay claims submitted by Medicaid based on procedural reasons (*e.g.*, the failure of the recipient to present an insurance card at the point of sale, or the state's failure to submit an electronic, as opposed to a paper, claim).

Medicaid agencies have been hindered in their efforts to verify Medicaid recipients' private health coverage.

[76] Pub. L. 109-171.

[77] Letter from Dennis G. Smith, Director, Center for Medicaid and State Operations, Centers for Medicare & Medicaid Services, U.S. Department of Health & Human Services, to State Medicaid Directors (SMD #06-026) (dated Dec. 15, 2006), available at <http://www.cms.hhs.gov/smdl/downloads/SMD121506.pdf>.

[78] 42 U.S.C. 1396a(a)(25).

[79] Letter from Dennis G. Smith, supra.

ODJFS' right of recovery

(R.C. 5101.571, 5101.572, and 5101.58 (current law); R.C. 5101.571, 5101.572, and 5101.573(A)(1), and 5101.58 (the bill))

Current law. Current law (R.C. 5101.572), consistent with the federal regulations described above, requires a third party[80] to cooperate with ODJFS in identifying individuals for the purposes of establishing third party liability under federal Medicaid law. Current law (R.C. 5101.58) also specifies that the acceptance of public assistance by an individual gives ODJFS a "right of recovery"[81] against the liability of a third party for the cost of medical services and care arising out of injury, disease, or disability. The law provides that this right of recovery is for the *entire amount* of any settlement or compromise of an action or claim brought by a public assistance recipient, or any court award or judgment given to the recipient. Prior to initiating a recovery action, a public assistance recipient must disclose to ODJFS the identity of any third party against whom the recipient has or may have a right of recovery.

The bill. In general, the bill makes the changes to current law required by the Deficit Reduction Act. It also adds other provisions that, in part, appear to address the May 2006 decision of the U.S. Supreme Court in *Arkansas Department of Health and Human Services v. Ahlborn*,[82] which held that the

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[80] Current law (R.C. 5101.571(B)) defines a "third party" as any health insurer (as defined in R.C. 3924.41), individual, entity, or public or private program, that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient. "Third party" includes any such insurer, individual, entity, or program that would have been obligated to pay for the service, even when such third party limits or excludes payments in the case of an individual who is eligible for Medicaid. "Third party" does not include the program for medically handicapped children established under R.C. 3701.023 (commonly referred to as the Bureau for Children with Medical Handicaps (BCMH)).

[81] Under former law that was effective until September 29, 1997, ODJFS had a more limited right of subrogation that allowed it to substitute itself in the shoes of the recipient, subject to all of the limits the recipients had when bringing an action or claim against a liable third party. The right of recovery ODJFS has under current law is broader in that it allows ODJFS and county departments of job and family services to seek reimbursement for health care claims paid by Medicaid independent of the recipient and any limits the recipient has when seeking payment from a liable third party. Final Analysis for Am. Sub. H.B. 215 of the 122nd General Assembly (available on the LSC web site: www.lsc.state.oh.us).

[82] 547 U.S. 268.

federal Medicaid statute permits a state to recover its payments for medical assistance only from the portion of a tort liability settlement attributable to medical items and services (rather than from the entire amount of the settlement).

One set of changes to address the Deficit Reduction Act provisions is discussed in this section of the analysis; another set is discussed under "***Assignment of rights to ODJFS***," below. The remainder of changes made by the bill, including those that appear to address the *Ahlborn* decision (see "***Right of recovery from third parties in tort liability judgments and settlements***," below), are discussed following the assignment of rights discussion.

First, consistent with the Deficit Reduction Act's clarification of the specific entities that are considered "third parties" and "health insurers" that may be liable for payment and cannot discriminate against individuals on the basis of Medicaid eligibility (see (1), above), the bill clarifies the definition of "third party." It defines this term to include not only a person authorized to engage in the business of sickness and accident insurance or a health insuring corporation, but also a person or governmental entity providing coverage for medical services or items to individuals on a self-insurance basis, a group health plan as defined in federal law,[83] a service benefit plan referenced in the Deficit Reduction Act,[84] a managed care organization, a pharmacy benefit manager, a third party administrator, and any other person or governmental entity that is, by law, contract, or agreement, responsible for the payment or processing of a claim for a medical item or service for a public assistance[85] recipient or participant. The bill also specifies that except when otherwise provided by law governing Medicare's status as a secondary payer,[86] a person or governmental entity mentioned above is a third party even if the person or governmental entity limits or excludes payments for a medical item or service in the case of a public assistance recipient.

Second, in accordance with the Deficit Reduction Act's requirement that states enact laws to require third parties to provide states with coverage, eligibility, and claims data needed by the states to identify potentially liable third parties (see (2)(a), above), the bill requires a third party to (i) cooperate with ODJFS and accept ODJFS' right of recovery under R.C. 5101.58, (ii) respond to an inquiry made by ODJFS regarding a claim for payment of a medical item or service that

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[83] 29 U.S.C. 1167.

[84] 42 U.S.C. 1396a(a)(25).

[85] The bill defines "public assistance" as medical assistance (see footnote below) or assistance under the Ohio Works First Program.

[86] 42 U.S.C. 1395y(b).

was submitted to the third party not later than six years after the date of the provision of the medical item or service, (iii) pay a claim described in (ii), (iv) not deny a claim submitted by ODJFS solely on the basis of the date of submission of the claim, type, or format of the claim form, or a failure by the medical assistance[87] recipient who is the subject of the claim to present proper documentation of coverage at the time of service if certain conditions are met, and (v) provide, as ODJFS so chooses, information or access to information, or both, in the third party's electronic data system on ODJFS' request.

With respect to this latter requirement (in (v), above), if ODJFS chooses to receive information directly, the bill requires the third party to provide the information (i) in a medium, format, and manner prescribed by the Director of Job and Family Services in rules, (ii) free of charge, and (iii) not later than the end of the 30th day after ODJFS makes its request, unless a different time is agreed to by the Director in writing.

If ODJFS chooses to receive *access to information* (rather than, or in addition to, information directly from the third party), the bill requires the third party to provide access by a method prescribed by the Director in rules. The bill specifies that in facilitating access, ODJFS may enter into a trading partner agreement with the third party to permit the exchange of information via "ASC X 12N 270/271 Health Care Eligibility Benefit Inquiry and Response" transactions.[88]

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[87] The bill defines "medical assistance" as medical items or services provided under any of the following: (1) the Medicaid program, (2) CHIP Parts I and II, (3) the Disability Medical Assistance Program, and (4) the nonfederal medical assistance program established by the bill in R.C. Chapter 5114.

[88] "ASC X 12N 270/271 Health Care Eligibility Benefit Inquiry and Response" refers to an electronic transaction standard required by the Transactions and Code Set Rules promulgated by the U.S. Secretary of Health & Human Services under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). It is one of several standards that facilitate the electronic transfer of information ("electronic data interchange" or "EDI") between trading partners. TriWest Healthcare Alliance. Policies, procedures, and guidance for TRICARE providers (last visited Mar. 12, 2007), at p. 11, available at <https://www.triwest.com/triwest/unauth/content/provider/handbook/02_important.pdf> and Health Insurance Reform: Modifications to Electronic Data Transaction Standards and Code Sets, 68 Fed. Reg. 8381 (Feb. 20, 2003) (codified at 45 C.F.R. Part 162).

The bill also specifies that information provided by a third party to ODJFS is confidential and not a public record under the Ohio Public Records Law (R.C. 149.43).[89]

Assignment of rights to ODJFS

(R.C. 5101.59 (current law); R.C. 5101.573 and 5101.59 (the bill))

Current law. Current law (R.C. 5101.59) further provides that the application for, or acceptance of, public assistance[90] constitutes an automatic assignment to ODJFS of certain rights the applicant, recipient, or participant has--including any rights to medical support under an order of a court or administrative agency and any rights to payments by a liable third party for the cost of medical care and services arising out of injury, disease, or disability of the applicant, recipient, participant, or other members of the assistance group.

The bill. In accordance with the Deficit Reduction Act's requirements that states enact laws to honor the assignment to the state of a Medicaid recipient's right to payment by an insurer for health care items or services, the bill requires a third party to accept the assignment of rights to ODJFS.

The bill also requires a third party to treat a managed care organization as ODJFS for a claim in which (i) the individual who is the subject of the claim received a medical item or service through a managed care organization that has entered into a contract with ODJFS under law governing Medicaid managed care (R.C. 5111.16), and (ii) ODJFS has assigned its right of recovery for the claim to the managed care organization.

[89] This specification is in addition to ones in current law that provide that (1) the release of information to ODJFS is not to be considered a violation of any right of confidentiality or contract that the third party may have with covered persons, and (2) immunity to the third party from any liability that it may otherwise incur through its release of information to ODJFS.

[90] Under current law (R.C. 5101.58), "public assistance" means aid provided under the Medicaid Program (R.C. Chapter 5111.) or the Disability Medical Assistance Program (R.C. Chapter 5115.) and participation in the Ohio Works First Program.

Right of recovery from third parties in tort liability judgments and settlements

(R.C. 5101.58 (current law and the bill))

Background. As mentioned above, the U.S. Supreme Court held in *Arkansas Department of Health and Human Services v. Ahlborn* that federal Medicaid law permits a state to recover its payments for medical assistance only from the portion of a tort liability settlement attributable to medical items and services. Some states' right of recovery laws, like Ohio's law (R.C. 5101.58), give the state's Medicaid agency a right of recovery against the *entire amount* of a settlement or compromise of an action or claim, or court award or judgment.[91]

In response to *Ahlborn*, the Chicago Regional Office of the Centers for Medicare & Medicaid Services (CMS) sent a letter in July 2006 to state Medicaid directors in its jurisdiction for the purpose of clarifying third party recovery rules and options for states in the context of this U.S. Supreme Court decision. CMS points out in the letter that while the Court rejected CMS's prior interpretation of federal Medicaid law to authorize states to enact laws permitting full recovery of Medicaid assistance payments from third party liability settlements, regardless of how the parties allocated the settlement, the Court also strongly noted that states should become involved in underlying tort litigation for purposes of influencing the amount that is allocated in a settlement to medical items and services. In addition, a fact sheet accompanying the letter outlines three options states are permitted, but not required, to use to potentially encourage Medicaid recipients who are tort settlement or judgment beneficiaries to cooperate in state Medicaid agency recovery actions where they will not receive a share of the settlement or judgment:[92]

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[91] Ohio's law, does however, specify that the right of recovery does not apply to that portion of any judgment, award, settlement, or compromise of a claim to the extent of attorneys' fees, costs, or other expenses incurred by a recipient or participant in securing the judgment, award, settlement, or compromise, or to the extent of medical, surgical, and hospital expenses paid by such recipient or participant from the recipient's or participant's own resources (R.C. 5101.58). This provision is retained in the bill (see R.C. 5101.58(G)(1)).

[92] Letter from Ruth A. Hughes, Acting Associate Regional Administrator, Division of Medicaid and Children's Health, Chicago Regional Office, Centers for Medicare & Medicaid Services. State Options for Recovery Against Liability Settlement in Light of U.S. Supreme Court Decision in Arkansas Department of Human Services v. Ahlborn (July 2006) (on file with LSC staff).

(1) In accordance with federal Medicaid law (section 1902(a)(25)(B)) of the Social Security Act), a state may determine that it is more cost-effective to pursue a lesser amount from a tort settlement or judgment than the Medicaid recipient's full cost of care in order to avoid either full litigation or the state pursuing the claim itself.

(2) A state may deduct attorney fees and litigation costs from the settlement or judgment amount prior to seeking reimbursement for the Medicaid program.

(3) A state may compromise the state share of the settlement or judgment amount (to the extent the state wishes to give part or all of its portion of the Medicaid recovery to the recipient) as long as the compromise does not impinge on the federal share of the amount recovered by Medicaid.

The bill. The bill repeals the law that specifies that the *entire amount* of a payment, settlement, or compromise of an action or claim against a third party is subject to ODJFS's or a county department of job and family services' right of recovery. Instead, the bill excludes a reference to the amount subject to recovery by merely specifying that "any payment, settlement, or compromise of an action or claim, or any court award or judgment," is subject to the right of recovery. The bill also requires that a payment, settlement, compromise, judgment, or award that excludes the cost of medical assistance paid for by ODJFS not preclude a department from enforcing its right of recovery. And, it permits a right of recovery to be enforced separately or jointly by ODJFS or the appropriate county of job and family services.

The bill further appears to require the implementation of the second option proposed by CMS (see (2), above) by requiring that reasonable attorneys' fees, not to exceed one-third of the total judgment, award, settlement, or compromise, plus costs and other expenses incurred by the recipient or participant in securing the judgment, award, settlement, or compromise, first be deducted from the total judgment, award, settlement, or compromise. It also requires that ODJFS, or the appropriate county department of job and family services, receive no less than the lesser of (i) one-half of the amount remaining after fees, costs, and other expenses are deducted, or (ii) the actual amount of medical assistance paid. Additionally, it prohibits a public assistance recipient from assessing attorney fees, costs, or other expenses against ODJFS or a county department of job and family services when the applicable department enforces its right of recovery.

Disclosure requirements applicable to third parties

(R.C. 5101.58 (current law); R.C. 5101.58(C), (D), and (E))

Current law. Under current law, a public assistance recipient or participant must, prior to initiating any recovery action, disclose the identity of any third party against whom the recipient or participant has or may have a right of recovery. When medical expenses have been paid by Medicaid, the disclosure must be made only to ODJFS; when expenses have been paid by the Disability Medical Assistance Program, the disclosure must be made to both ODJFS and the appropriate county department of job and family services.

Current law also prohibits a settlement, compromise, judgment, or award or any recovery in any action or claim by a recipient or participant from being made final where ODJFS or a county department of job and family services has a right of recovery and appropriate notice and a reasonable opportunity to perfect the right of recovery has not been given. The law specifies that if the departments are not given appropriate notice, the recipient or participant is liable to reimburse the departments for the recovery received to the extent of medical payments made by the departments. The departments are permitted to enforce their recovery rights against the third party even though they accepted prior payments in discharge of their rights if, at the time the departments received the payments, they were not aware that additional medical expenses had been incurred but not yet paid by the departments. Further, the law provides that the third party becomes liable to ODJFS or the county department as soon as the third party is notified in writing of the valid claims for recovery.

The bill. The bill adds to the requirement in current law that a recipient or participant disclose to ODJFS, the county department, or both, the identity of any third party, by requiring that the notice be in writing and that it include the address of the third party. For purposes of disclosures for the nonfederal medical assistance program created by the bill in R.C. Chapter 5114., the bill requires that disclosure be made to both ODJFS and the appropriate county department of job and family services.

The bill also extends the liability to reimburse ODJFS and the appropriate county department in current law that applies when appropriate disclosure is not given to a recipient's or participant's attorney, if there is one.

Consideration of Medicaid eligibility for policy attainment or plan enrollment

(R.C. 5101.574 (the bill))

Federal Medicaid law[93] currently prohibits a third party from taking an individual's Medicaid status into account in enrollment or payment decisions. The bill enacts these prohibitions in Ohio law by prohibiting a third party from considering whether an individual is eligible for or receives medical assistance when (i) the individual seeks to obtain a policy or enroll in a plan or program operated or administered by the third party, or (ii) the individual, or a person or governmental entity on the individual's behalf, seeks payment for a medical item or service provided to the individual.

Denial, revocation, or termination of licensure or other approval for violation of provisions on ODJFS' right of recovery; injunction authority

(R.C. 5101.575 (the bill))

The bill requires a governmental entity that is responsible for issuing a license, certificate of authority, registration, or approval that authorizes the third party to do business in Ohio to, in accordance with the Ohio Administrative Procedure Act deny, revoke, or terminate, as determined to be appropriate by the governmental entity, the license, certificate, registration, or approval of the third party.

In addition, the bill permits the attorney general to petition a court of common pleas to enjoin the violation.

Rulemaking authority

(R.C. 5101.59(C) (current law); R.C. 5101.591 (the bill))

Current law. Under current law, the Director of Job and Family Services is permitted to adopt rules in accordance with the Ohio Administrative Procedure Act (R.C. Chapter 119.) to implement the law governing the assignment of public assistance recipients' rights to ODJFS (R.C. 5101.59), including rules that specify what constitutes cooperating with efforts to obtain medical support and payments and when the cooperation requirement may be waived.

The bill. The bill retains the permissive authority that ODJFS has in current law to adopt the rules described above, but also requires ODJFS to adopt

[93] Section 1902(a)(25)(G) of the Social Security Act (42 U.S.C. 1396a(a)(25)(G)).

rules to specify (i) additional data that should be included in the definition of "information" that ODJFS is permitted to obtain under the bill, (ii) the medium, format, and manner in which a third party must provide information directly to ODJFS, and (iii) the method by which a third party must provide ODJFS with access to information.

Medicaid and CHIP eligibility for persons under age 19

(R.C. 5101.51 and 5111.01)

Current law authorizes ODJFS to provide health assistance through the Children's Health Insurance Program (CHIP) for individuals under age 19 who are in low-income families but are not otherwise eligible for Medicaid. CHIP I provides assistance for individuals in families with income not exceeding 150% of the federal poverty guidelines. CHIP II is for individuals with family incomes above 150% but not exceeding 200% of the poverty guidelines. Both CHIP I and CHIP II are funded with federal and state funds. The bill authorizes the Director of Job and Family Services to submit a plan to the U.S. Secretary of Health and Human Services under which individuals under age 19 may participate in CHIP if they have family incomes not exceeding 300% of the federal poverty guidelines. The expansion is not to start before January 1, 2008.

Under current law, ODJFS may expand Medicaid eligibility to include individuals under age 19 with family incomes not exceeding 150% of the federal poverty guidelines. The bill authorizes expansion of eligibility for individuals under age 19 with family incomes not exceeding 500% of the federal poverty guidelines. The eligibility expansion must be implemented in the manner and to the extent that ODJFS receives approval from the federal government.

Medicaid authorization

(R.C. 5111.01)

Current law states that Medicaid means the program authorized by statute. The bill provides that Medicaid also means the program authorized by executive order of the Governor. The significance of this change is not apparent from the bill.

Nonfederal Medical Assistance Program

(R.C. 5114.01 to 5114.05)

The bill requires the Director of ODJFS to establish the Nonfederal Medical Assistance Program.

Eligibility requirements are to be established by rule, but the bill does provide that an individual who is eligible for Medicaid is not eligible to receive assistance under the Program. Also, an individual who is ineligible for the Medicaid expansion described above is eligible to participate in this Program only if the ineligibility is based solely on income.

Suspension of applications

(R.C. 5114.04)

The bill permits the Director of ODJFS to suspend acceptance of applications for the Program for purposes of limiting the cost of the Program. The suspension may be implemented without adoption of rules.

Program administration

(R.C. 5114.05)

The bill requires ODJFS to supervise and administer the Program except as follows:

(1) ODJFS may require county departments of job and family services to perform any administrative function specified in rules adopted by the Director of ODJFS;

(2) ODJFS may contract with any private or public entity in this state to perform any administrative function specified in rules.

If ODJFS delegates performance of administrative functions to the county departments or a contract entity, the Director must conduct investigations to determine whether the Program is being administered in accordance with the statutes and rules governing the Program or the terms of the contract, in the case of a contract entity.

Rulemaking

(R.C. 5114.02 and 5114.05)

The Director is required to adopt rules implementing the Program that specify or establish any or all of the following:[94]

(1) Eligibility requirements;[95]

[94] The rules must be adopted in accordance with R.C. 111.15, which does not require public hearings.

(2) A requirement that an individual first seek medical benefits authorized under other state or federal programs, including the Medicaid expansion described above;

(3) Medical services to be covered;

(4) The maximum authorized amount, scope, duration, or limit of payment for services;

(5) Limits on the length of time an individual may receive assistance;

(6) Limits on the total number of individuals in this state who may receive assistance;

(7) Application, verification, and reapplication procedures;

(8) Performance of administrative functions, if ODJFS requires county departments of job and family services or a contract entity to perform administrative functions of the Program;

(9) Any other requirements the Director considers necessary for implementation of the Program.

County share of expenses

(R.C. 5101.16)

Current law requires that each county pay a percentage of the costs of certain public assistance programs, including Medicaid. However, with limited exceptions, the amount that a board of county commissioners must pay for a state fiscal year cannot exceed 110% of the county's share for such costs for the immediately preceding state fiscal year. The exceptions have to do with the failure of a county to comply with federal requirements for the Temporary Assistance to Needy Families Program.

The bill includes in each county's county share determination an amount equal to 25% of the expenditures for the Nonfederal Medical Assistance Program in the county. The bill does not change the 110% county share limit.

[95] The eligibility requirements are subject to the Director's authority to suspend acceptance of applications.

Program participation by Physician Loan Repayment Program recipients

(R.C. 3702.74)

Under current law, to participate in the Physician Loan Repayment Program a physician must agree to provide primary care and to meet the conditions required to participate in the Medicaid program as a physician provider. The bill requires participants to also agree to meet the conditions established by ODJFS for physician participation in the Nonfederal Medical Assistance Program.

Cross references

(R.C. 9.24, 127.16, 329.04, 329.051, 1751.60, 2151.43, 2151.49, 2305.234, 2744.05, 3111.04, 3113.06, 3113.07, 3119.54, 4123.27, 4731.65, 4731.71, 5101.17, 5101.181, 5101.182, 5101.184, 5101.26, 5101.28, 5101.31, 5101.35, 5101.36, 5101.58, 5112.03, 5112.08, 5117.10, and 5747.122)

The bill adds cross references to the Program to a number of statutes so that the Program is treated similarly to the Disability Medical Assistance Program in the Revised Code.

Eligibility of pregnant women for Medicaid

(R.C. 5111.014; Section 309.30.90)

Federal Medicaid law requires states participating in Medicaid to cover certain groups of persons and types of benefits and gives states the option of covering other groups of persons and types of benefits. One group the state is required to cover as categorically needy is pregnant women.[96] However, the state is provided flexibility to determine income eligibility requirements. Current Ohio law provides that a pregnant woman who meets other requirements is eligible for Medicaid if her family income is 150% or less of the federal poverty guidelines.

The bill requires the Director of Job and Family Services to submit an amendment to the state Medicaid plan to the United States Secretary of Health and Human Services to raise the income eligibility limit for pregnant women to family income of 200% (from 150%) of the federal poverty guidelines. The Department must submit the amendment not later than 90 days after the effective date of the bill. The increase is to be implemented not earlier than January 1, 2008.

[96] 42 Code of Federal Regulations, 35 et seq.

Healthcheck information

(R.C. 5111.016)

Under current law, ODJFS must establish a combination of written and oral methods designed to provide information about the Healthcheck program[97] to all persons eligible for the program and their parents or guardians. Each county department of job and family services or other entity that distributes or accepts applications for Medicaid must display the following message in a conspicuous place:

> Under state and federal law, if you are a Medicaid recipient, your child is entitled to a thorough medical examination provided through Healthcheck. Once this examination is completed, your child is entitled to receive, at no cost to you, any service determined to be medically necessary.

The bill requires ODJFS to adopt rules establishing methods to provide information about the Healthcheck program. The rules must be established in accordance with federal law and Ohio's Administrative Procedure Act (Revised Code Chapter 119.). The bill also eliminates the requirement that the language quoted above be displayed and instead requires that each county department or other entity display a notice complying with the rules adopted by ODJFS.

Medicaid eligibility for parents of children under age 19

(R.C. 5111.019; Section 309.30.80)

As noted above, federal Medicaid law requires participating states to cover certain groups of persons and types of benefits and gives states the option of covering other groups of persons and types of benefits. A group the state is required to cover is families with dependent children.[98] However, the state is provided flexibility to determine income eligibility requirements for participation. In addition to other eligibility requirements, current law provides that a parent of a child under age 19 is eligible for Medicaid if the income of the family is 90% or less of the federal poverty guidelines.

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[97] "Healthcheck" is the Early and Periodic Screening, Diagnosis, and Treatment component of the Medicaid program under which services are provided to children (R.C. 3313.714).

[98] 42 Code of Federal Regulations, 35 et seq.

The bill requires the Director of Job and Family Services to submit an amendment to the state Medicaid plan to the United States Secretary of Health and Human Services to increase the amount of income an individual may have and still qualify for Medicaid as a parent of a child under age 19. The increase is to 100% (from 90%) of the federal poverty guidelines.[99] ODJFS must submit the amendment not later than 90 days after the bill's effective date. The bill requires that the increase be implemented not earlier than 90 days after the amendment takes effect.

The bill eliminates a two-year limitation on a parent's eligibility for Medicaid under this provision.

Medicaid Buy-In Program and waiver components

Background

To qualify for federal financial participation, a state's Medicaid program must cover certain populations. Federal law permits, but does not require, that a state's Medicaid program cover additional populations.

The Ticket to Work and Work Incentives Improvement Act of 1999 established two new populations that a state's Medicaid program may cover. However, a state may cover the second population only if it also covers the first. These two optional eligibility expansions are popularly known as the Medicaid buy-in.

The first population consists of individuals who, but for earnings in excess of a limit established under federal law, would be considered to be receiving Supplemental Security Income,[100] are at least age 16 but less than age 65, and have assets, resources, and income not exceeding such limitations, if any, as the state may establish.[101] The second population consists of employed individuals with a medically improved disability who have assets, resources, and income not

[99] The poverty guidelines are revised annually by the U.S. Department of Health and Human Services for 2007, the guidelines for one person is an annual income of $10,210. For a family of four, it is $20,650. (http://aspe.hhs.gov/poverty/07poverty.shtml, last visited March 13, 2007.

[100] Supplemental Security Income (SSI) is a federal program under which monthly payments of up to $623 are made to qualified disabled individuals who do not have sufficient work history to qualify for disability payments under the Social Security program.

[101] 42 U.S.C. 1396a(a)(10)(A)(ii)(XV).

exceeding such limitations, if any, as the state may establish.[102] An "employed individual with a medically improved disability" is defined as an individual who (1) is at least age 16 but less than age 65, (2) is earning at least the applicable minimum wage requirement specified in federal law and working at least 40 hours per month or is engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, (3) ceases to be eligible for Medicaid under the first population described above because the individual, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer meet federal definitions of disability, and (4) continues to have a severe medically determinable impairment as determined under federal regulations.[103]

Medicaid Buy-In Program

(R.C. 5111.0119)

The bill authorizes the Director of Job and Family Services to submit an amendment to the state's Medicaid plan to establish the Medicaid Buy-In Program. The Director is permitted to establish rules to implement the program.

Waiver components

(R.C. 5111.861)

Current law provides for a number of Medicaid waiver components that permit a person to receive home and community-based services as an alternative to care in a nursing facility or intermediate care facility for the mentally retarded. These components include the Pre-Admission Screening System Providing Options and Resources Today (PASSPORT),[104] the Assisted Living Program,[105] a nursing home transition waiver,[106] the Ohio Home Care Program,[107] and waivers for individuals with mental retardation or mental disabilities.[108]

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[102] 42 U.S.C. 1396a(a)(10)(A)(ii)(XVI).

[103] 42 U.S.C. 1396d(v).

[104] R.C. 173.401.

[105] R.C. 5111.89.

[106] R.C. 5111.97.

[107] R.C. 5111.86.

[108] R.C. 5111.87 and 5111.88.

The bill authorizes the Director to submit a request to the United States Secretary of Health and Human Services for an amendment to the state's Medicaid home and community waiver components that would allow: (1) a participant receiving services under a component to retain eligibility while participating in the Medicaid Buy-In Program, or (2) changes to one or more components so that the components contain one or more features of the Medicaid Buy-In Program.

Mental health partial hospitalization services

(R.C. 5111.023)

Current law requires the state Medicaid plan to provide for community mental health facilities to include partial-hospitalization mental health services of three to fourteen hours per service day to mentally ill patients. The bill removes the provision specifying the number of hours mental health services can be provided.

Medicaid cost-sharing program

(R.C. 5111.0112)

Current law requires ODJFS to establish a co-payment program under which a Medicaid recipient is charged a co-payment for certain services. Co-payments may be charged only for dental services, vision services, nonemergency emergency department services, and prescription drugs other than generic drugs, to the extent permitted by federal law.

The bill requires ODJFS to institute a cost-sharing program (instead of a co-payment program) for at least the services listed above and provides that ODJFS may establish requirements regarding premiums, enrollment fees, deductions, and similar charges in compliance with federal law. ODJFS is authorized by the bill to work with other state agencies administering components of the Medicaid program to apply aspects of the cost-sharing program to the components administered by those agencies.

Fraud, Waste, and Abuse Prevention and Detection

(R.C. 5111.101)

Current law requires a person or government entity that receives or makes payments under the Medicaid Program that, during a calendar year, total $5 million to provide to employees, contractors, and agents detailed, written information about the role of the following in preventing and detecting fraud, waste, and abuse in federal health care programs: (1) federal false claims law, (2) federal administrative remedies for false claims and statements, (3) Ohio and other

state law regarding civil and criminal penalties for false claims and statements, and (4) whistleblower protections. The information must include detailed information about the person or government entity's policies and procedures for preventing and detecting fraud, waste, and abuse. The person or government entity is also required to include this information in its employee handbook.

The bill requires an "entity," rather than a "person or government entity," to comply with its requirements[109] if the entity receives or makes in a federal fiscal year payments under the Medicaid program, either through the state Medicaid plan or a federal Medicaid waiver, totaling at least $5 million. Not later than the first day of the succeeding calendar year, the entity must establish written policies, rather than written information, for its employees,[110] contractors, and agents[111] about the role of the federal and state laws and programs listed above in preventing and detecting fraud, waste, and abuse in federal health care programs.

The policies must include detailed provisions regarding the entity's policies and procedures for preventing and detecting fraud, waste, and abuse. The entity must disseminate the written policies to its employees, contractors, and agents in paper or electronic form and make the policies readily available, as well as include them in its employee handbook if it has one.

The bill adds a requirement that an entity providing items or services at multiple locations or under multiple contractual or other payment arrangements comply with the bill's requirements if it receives Medicaid payments totaling at least $5 million in a federal fiscal year. It specifies that this requirement applies regardless of whether the entity submits claims for Medicaid payments using multiple provider identification or tax identification numbers.

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[109] "Entity" is defined as "a governmental entity or an organization, unit, corporation, partnership, or other business arrangement, including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists, whether for profit or not-for-profit." "Entity" does not include "a government entity that administers one or more components of the Medicaid Program, unless the government entity receives Medicaid payments for providing items or services."

[110] The bill adds a definition of "employee," which "includes any officer or employee (including management employees) of an entity."

[111] The bill specifies that "contractor" and "agent" "include any agent, contractor, subcontractor, or other person who, on behalf of an entity, furnishes or authorizes the furnishing of health care items or services under the Medicaid Program, performs billing *or coding functions, or is involved in monitoring of health care that an entity provides."*

Private causes of action to enforce state Medicaid laws

(R.C. 5111.102)

The bill prohibits any provision of state public welfare law (Title 51 of the Revised Code), or any other state law, that incorporates a provision of federal Medicaid law[112] or may be construed as requiring the state, a state agency, or any state official or employee to comply with that federal provision, from being construed as creating a cause of action[113] to enforce the state law that differs from the causes of action available under federal law.

Medicaid Care Management Working Group

(R.C. 5111.161, repealed)

The main operating budget bill of the 126th General Assembly (Am. Sub. H.B. 66) created the Medicaid Care Management Working Group. The group was to develop guidelines for the Department of Job and Family Services to consider when entering into contracts with managed care organizations for purposes of the Medicaid care management system. The act required the Working Group to prepare an annual report on its activities. The report was to include any findings and recommendations the Working Group considered relevant to its duties.

The bill repeals the law authorizing creation of the Working Group.

Performance-based financial incentives in managed care contracts

The main operating budget bill also required ODJFS to develop and implement a financial incentive program to improve and reward positive health outcomes through the Medicaid contracts entered into with managed care organizations. ODJFS could take into consideration the recommendations made by the Medicaid Care Management Working Group.

The bill eliminates ODJFS's specific authority to include performance-based financial incentives in managed care contracts.

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[112] Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.

[113] "Cause of action" is not defined in the bill, but is defined in a legal dictionary as "the right which a party has to institute a judicial proceeding." (BLACK'S LAW DICTIONARY 221 (6th ed. 1990).

Medicaid managed care payment rate for non-contracting providers of emergency services

(R.C. 5111.163)

In accordance with a Medicaid provision of the federal Deficit Reduction Act of 2005, current law provides that when an Ohio Medicaid recipient is enrolled in a managed care organization and receives emergency services from a health care provider that is not under contract with the organization, the provider must accept from the organization, as payment in full, not more than the amounts (less any payments for costs of medical education) that the provider could collect if the Medicaid recipient were not enrolled in a managed care organization. In effect, the provider is required to accept the Medicaid fee-for-service payment rate. "Emergency services," as defined in federal law, "are covered inpatient and outpatient services that are furnished by a qualified provider and are needed to evaluate or stabilize an emergency medical condition."

The existing requirement that the Medicaid fee-for-service payment rate be accepted applies only to Medicaid-participating providers. The bill extends the requirement to any person, institution, or entity that furnishes emergency services to a Medicaid recipient enrolled in a managed care organization, regardless of whether the health care provider has a Medicaid provider agreement.

Medicaid rates for intermediate care facilities for the mentally retarded

As with nursing facilities, current law establishes the formula for determining the rate intermediate care facilities for the mentally retarded (ICFs/MR) are to be paid under the Medicaid program for providing Medicaid-covered services to Medicaid recipients eligible for the services. The formula for ICFs/MR is similar to the formula for nursing facilities in that it too is divided into several price centers. One of the price centers for ICFs/MR is direct care costs which includes costs for nurses, direct care staff, medical directors, respiratory therapists, quality assurance, program directors, social services staff, activities staff, and other costs.

Offsite day programming part of ICFs/MR's direct care costs

(R.C. 5111.20)

The bill adds offsite day programming to the costs included in ICFs/MR's direct care costs. According to an official with ODJFS, this is related to the repeal by Am. Sub. H.B. 66 of the 126th General Assembly (the biennial budget act) of a requirement that the Medicaid program cover habilitation center services. The system by which the Medicaid program paid for habilitation center services was

often referred to as the community alternative funding system (CAFS). H.B. 66 permitted the Department to increase the Medicaid rate paid to an ICF/MR for fiscal years 2006 and 2007 by an amount specified in rules to reimburse the ICF/MR for active treatment day programming because of the termination of CAFS.[114] Rather than repeating such authority for fiscal years 2008 and 2009, the bill adds offsite day programming to ICFs/MR's direct care costs.

FYs 2008 and 2009 Medicaid rates for ICFs/MR

(Section 309.30.40)

The bill establishes limitations on the fiscal years 2008 and 2009 Medicaid rates for ICFs/MR. Medicaid rates paid to ICFs/MR are to be subject to the following caps:

(1) For fiscal year 2008, the mean total per diem rate for all ICFs/MR as calculated under codified sections of state law governing Medicaid payments to ICFs/MR is not to exceed $266.14 as weighted by Medicaid days[115] and calculated as of July 1, 2007.

(2) For fiscal year 2009, the mean total per diem rate for all ICFs/MR as so calculated is not to exceed $271.46 as weighted by Medicaid days and calculated as of July 1, 2008.

If the mean total per diem rate for all ICFs/MR for fiscal year 2008 or 2009, weighted by Medicaid days and calculated as of the first day of July of the calendar year in which the fiscal year begins, exceeds the cap, the Department is required to reduce the total per diem rate for each ICF/MR by a percentage that is equal to the percentage by which the mean total per diem rate exceeds the cap. Subsequent to any reduction required because of the caps, an ICF/MR's Medicaid rate is not to be subject to any adjustments authorized by codified law governing Medicaid payments to ICFs/MR during the remainder of the year.

[114] Section 206.66.27 of Am. Sub. H.B. 66 of the 126th General Assembly.

[115] "Medicaid days" is defined as all days during which a resident who is a Medicaid recipient occupies a bed in an ICF/MR 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 ICF/MR's per resident per day rate paid for those days.

Medicaid revenue and collections fund

(R.C. 5111.941)

H.B. 530 of the 126th General Assembly created the Medicaid Revenue and Collections Fund in the State Treasury and required, except as otherwise provided by statute or as authorized by the Controlling Board, that the nonfederal share of all Medicaid-related revenues, collections, and recoveries be credited to that fund. Under current law, ODJFS is required to use money credited to the fund to pay for Medicaid services and contracts.

The bill retains the requirement in current law that ODJFS use money in the fund to pay for Medicaid services, but requires ODJFS to also use the money to pay for Medicaid program administration, rather than only for contracts.

Home First Program

(Section 206.66.64)

The bill continues a provision of uncodified law from Am. Sub. H.B. 66 of the 126th General Assembly providing that on a monthly basis, each area agency on aging must determine whether individuals who reside in the area served by the agency are on a waiting list for the PASSPORT Program and were admitted to a nursing facility during the previous month. If the area agency determines that any individual meets both criteria, it must contact the Long-Term Care Consultation Program administrator for that area.

The bill then requires the administrator to determine whether PASSPORT is appropriate for the individual and whether the individual would rather receive PASSPORT services than continue to reside in a nursing facility. If the administrator determines that the PASSPORT services are appropriate and the individual would prefer to receive them, the administrator is required to contact the Ohio Department of Aging (ODA). On receipt of notice from the administrator, ODA is to approve the enrollment of the individual in the PASSPORT Program regardless of that individual's place on the PASSPORT waiting list.

Money follows the person

(Section 309.30.70)

The bill authorizes the Director of Budget and Management to do any of the following in support of any home and community-based services waiver program:

(1) Create new funds and account appropriation items to support and track funds associated with a unified long-term care budget;

(2) Transfer funds among affected agencies and adjust corresponding appropriation levels;

(3) Develop a reporting mechanism to show clearly how the funds are being transferred and expended.

Disability determination process

(Section 309.32.50)

The bill requires the Rehabilitation Services Commission (RSC) and ODJFS to work together to reduce the duplication of activities performed by each agency and develop a systems interface so that medical information for mutual clients may be transferred between the agencies. RSC and ODJFS are to rely on the recommendations of the Disability Determination Consolidation Study Council.[116]

Medicaid rates for nursing facilities

Current law establishes the formula for determining the rate nursing facilities are to be paid under the Medicaid program for providing Medicaid-covered services to Medicaid recipients eligible for the services. The formula is divided into several parts sometimes referred to as cost centers or price centers. The price centers in the nursing facility reimbursement formula are direct care costs, ancillary and support costs, tax costs, capital costs, and franchise permit fees.[117] A nursing facility is paid a rate for each price center, there is a separate formula for determining each rate. There is also a quality incentive payment included in the formula. A nursing facility's total rate is the sum of all of the rates and quality incentive payment.

Direct care costs include costs for nurses, direct care staff, medical directors, respiratory therapists, quality assurance, employee benefits, and other

[116] The Disability Determination Study Council was created in Am. Sub. H.B. 66 of the 126th General Assembly, the biennial budget bill. The Council was to study the issues surrounding disability determinations and the feasibility of combining the responsibility for performing such determinations into a single agency.

[117] See "***Nursing home and ICF/MR franchise permit fees***," above.

costs. A nursing facility's rate for direct care costs is determined in part by calculating a cost per case mix-unit for the nursing facility's peer group.[118]

Ancillary and support costs include costs for activities, social services, pharmacy consultants, habilitation supervisors, incontinence supplies, food, laundry, security, travel, dues, subscriptions, and other costs not included with direct care costs or capital costs.[119]

Tax costs are costs for real estate taxes, personal property taxes, corporate franchise taxes, and commercial activity taxes.[120]

Capital costs means a nursing facility's costs of ownership, which is the actual expense incurred for (1) depreciation and interest on capital assets costing $500 or more per item, (2) amortization and interest on land improvements and leasehold improvements, (3) amortization of financing costs, and (4) lease and rent of land, building, and equipment.[121]

The quality incentive payment is based on the number of points a nursing facility earns for such factors as having no health deficiencies on its most recent standard survey and a resident satisfaction above the statewide average. The mean quality incentive payment for fiscal year 2007, weighted by Medicaid days,[122] must be $3 per Medicaid day.[123]

Current law requires the Department of Job and Family Services to adjust the rates determined under the formulas for direct care costs, ancillary and support

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[118] Nursing facilities are placed in one of three peer groups as part of the process of determining their rate for direct care costs. Which peer group a nursing facility is placed in depends on the county in which it is located. For example, the first peer group consists of nursing facilities located in Brown, Butler, Clermont, Clinton, Hamilton, or Warren county. (R.C. 5111.20 and 5111.231.)

[119] R.C. 5111.20 and 5111.24.

[120] R.C. 5111.242.

[121] R.C. 5111.20 and 5111.251.

[122] "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. (R.C. 5111.20.)

[123] R.C. 5111.244.

costs, tax costs, and capital costs as directed by the General Assembly through the enactment of law governing Medicaid payments to nursing facilities.[124] The Department must also annually adjust the mean quality incentive payment starting in fiscal year 2008 by the same adjustment factors.[125]

FY 2008 Medicaid Reimbursement Rate for Nursing Facilities

(Section 309.30.20)

The bill establishes adjustments to the fiscal year 2008 Medicaid rates for nursing facilities that have a valid Medicaid provider agreement on June 30, 2007, and a valid Medicaid provider agreement during fiscal year 2008. The cost per case mix-unit calculated as part of direct care costs, rate for ancillary and support costs, rate for capital costs, and rate for tax costs are to be adjusted as follows:

(1) Increase the cost and rates by 2%.

(2) Increase the amount calculated above by another 2%.

(3) Increase the amount calculated above by 1%.

Instead of adjusting the mean quality incentive payment by the same adjustment factors, the bill stipulates that the mean payment for fiscal year 2008 is to be $3.03 per Medicaid day and weighted by Medicaid days.

In addition to establishing the adjustments, the bill provides that if a nursing facility's rate for fiscal year 2008 as determined using the adjustments is more than 101.75% of the rate the provider is paid for nursing facility services the facility provides at the end of fiscal year 2007, the Department must reduce the facility's fiscal year 2008 rate so that it is not more than 101.75% of its rate for the end of fiscal year 2007. If the rate determined using the adjustments is less than 98.25% of the rate the nursing facility is paid at the end of fiscal year 2007, the Department must increase its rate for fiscal year 2008 so that it is not less than 98.25% of its rate for the end of fiscal year 2007.

If the United States Centers for Medicare and Medicaid Services requires that the franchise permit fee for nursing facilities be reduced or eliminated, the Department is required to reduce the amount it pays nursing facilities for fiscal year 2008 as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

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[124] R.C. 5111.222.

[125] R.C. 5111.244.

The bill requires that the Department implement these requirements in determining nursing facilities' fiscal year 2008 Medicaid rates notwithstanding anything to the contrary in the Revised Code governing nursing facilities' Medicaid rates.

FY 2009 Medicaid Reimbursement Rate for Nursing Facilities

(Section 309.30.30)

The bill establishes similar adjustments for nursing facilities' fiscal year 2009 Medicaid rates. The cost per case mix-unit calculated as part of direct care costs, rate for ancillary and support costs, rate for capital costs, and rate for tax costs for nursing facilities that have a valid Medicaid provider agreement on June 30, 2008, and a valid Medicaid provider agreement during fiscal year 2008 are to be adjusted as follows:

(1) Increase the cost and rates by 2%.

(2) Increase the amount calculated above by another 2%.

(3) Increase the amount calculated above by 1%.

(4) Increase the amount calculated above by .5%.

The mean quality incentive payment for fiscal year 2009 is to be $3.05 per Medicaid day and weighted by Medicaid days.

If the adjusted rate for a nursing facility is more than 101.5% of the Medicaid rate paid the nursing facility for the end of fiscal year 2008, its fiscal year 2009 rate is to be reduced so that it is not more than 101.5% of its rate for the end of fiscal year 2008. If the adjusted rate is less than 98.5% of the nursing facility's Medicaid rate for the end of fiscal year 2008, its fiscal year 2009 rate is to be increased so that it is not less than 98.5% of its rate for the end of fiscal year 2008.

As in fiscal year 2008, the Department must reduce nursing facilities' fiscal year 2009 rate as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee if the United States Centers for Medicare and Medicaid Services requires that the franchise permit fee be reduced or eliminated. And, the Department is to implement the adjustment requirements notwithstanding anything to the contrary in codified law governing nursing facilities' Medicaid rates.

Medicaid Coverage of Chiropractic Services for Adults

(Section 309.30.60)

For fiscal years 2008 and 2009, the bill requires the Medicaid Program to cover chiropractic services for Medicaid recipients age 22 or older in an amount, duration, and scope the Director of Job and Family Services is to specify in rules. However, coverage is limited to 15 visits per recipient per fiscal year, and the total cost for all eligible recipients may not exceed $5 million per fiscal year.

VI. Hospital Care Assurance Program

Delay of Termination of Hospital Care Assurance Program

(Sections 621.05 and 621.06)

Under the Hospital Care Assurance Program (HCAP), (1) hospitals are annually assessed an amount based on their total facility costs and (2) government hospitals make annual intergovernmental transfers to ODJFS. 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 will terminate on October 16, 2007. The bill delays the termination date of the program until October 16, 2009.

LEGAL RIGHTS SERVICE (LRS)

- Creates the Program Income Fund in the state treasury for the support of Legal Rights Service programs.

Program Income Fund for Legal Rights Service programs

(R.C. 5123.605)

The bill creates the Program Income Fund in the state treasury. Revenue generated from settlements, gifts, donations, and other sources of Legal Rights Service program income must be credited to the Fund. The Fund must be used to

support Legal Rights Service programs for purposes from which the income was derived or for the general support of Legal Rights Service programs.

LOCAL GOVERNMENT (LOC)

- Authorizes counties with a population greater than 400,000 but less than 500,000 to establish and provide local funding options for constructing and equipping a convention center that are in addition to funding authority granted under current law to counties to construct and equip a convention center.

- Increases from three to five the number of board members of a regional arts and cultural district created by the exclusive action of a county with a population of 500,000 or more.

- Continues to make implementation of the requirement that all Ohio public school employees use medical insurance plans designed by the School Employees Health Care Board contingent on the enactment of future confirmatory legislation.

Additional authority for certain counties to establish and provide local funding options for constructing and equipping a convention center

(R.C. 307.695)

Current law authorizes a board of county commissioners to enter into an agreement with a convention and visitors' bureau in the county under which the bureau agrees to construct and equip a convention center in the county with revenue from the lodging tax the board levies and that the bureau receives for this purpose. If the agreement's terms so provide, the board of county commissioners may acquire and lease real property to the bureau as the site of the convention center. (R.C. 307.695(A) and (D).)

Existing law also authorizes a board of county commissioners in a county with population exceeding 1.2 million to establish and provide local funding options in addition to that described above for constructing and equipping a convention center. The bill extends this additional authority to a board of county commissioners in a county with a population greater than 400,000 but less than 500,000. (R.C. 307.695(F).)

Membership of board of trustees of a regional arts and cultural district created by exclusive action of a county with a population of 500,000 or more

(R.C. 3381.04)

Under current law, a regional arts and cultural district is a political subdivision that may be created by one county, or by two or more counties, municipal corporations, or townships, or by any combination of counties, townships, and municipal corporations. A district may be created by one of two alternative procedures in R.C. 3381.03 (not in the bill) and R.C. 3381.04. The latter provision applies only to counties with a population of 500,000 or more. Under that large county alternative, the board of county commissioners appoints a three-member board of trustees to serve as the district's governing board. The bill increases, from three to five, the number of board members to be appointed by the board of county commissioners under the large county alternative.

Implementation of requirement that all public school employees use medical insurance plans designed by the School Employees Health Care Board remains contingent

(Section ____)

The previous operating budget act for fiscal years 2006 and 2007, H.B. 66 of the 126th General Assembly, created the School Employees Health Care Board to design medical insurance plans to be used by all persons who are employed by Ohio's public schools. However, H.B. 66's requirement that all Ohio public school employees use board-designed medical insurance plans, and its grant of authority to the board to administer the plans, were made contingent on the General Assembly enacting future legislation to confirm these provisions and order their implementation. The contemplated future legislation has not been enacted, so neither the requirement that all Ohio public school employees use board-designed medical insurance plans nor the accompanying administrative system has taken effect. The bill amends the section of law that imposes the contingency, but only so that the contingency section will reflect amendments that are being made elsewhere in the act to a section (_____) the contingency section makes contingent in part. Implementation of the requirement that all Ohio public school employees use medical insurance plans designed by the School Employees Health Care Board and the accompanying administrative system therefore remains contingent, until future legislation confirms these provisions and orders their implementation.

LOTTERY COMMISSION (LOT)

- Allows the State Lottery Commission to adopt rules governing the display of advertising and celebrity images on lottery tickets and on other items used in the conduct of, or to promote, the statewide lottery and statewide joint lottery games.

- Eliminates the requirement that OBM transfer to the School Building Program Bond Service Fund the first $10 million of any money transferred to the Lottery Profits Education Fund from the State Lottery Fund in a fiscal year.

- Requires the State Treasurer, within 60 days after each fiscal year, to certify to OBM whether the actuarial amount of the Deferred Prizes Trust Fund is sufficient for continued funding, throughout the fund's life, of all remaining annuity prize liabilities.

State Lottery Commission rules for the display of advertising and celebrity images on lottery tickets and other lottery items

(R.C. 3770.03)

Current law requires the State Lottery Commission to adopt rules, generally in accordance with the Administrative Procedure Act, under which a statewide lottery and statewide joint lottery games may be conducted. Subjects covered in these rules include, but are not limited to, the following: (1) the type of statewide lottery to be conducted, (2) the prices of lottery tickets for the statewide lottery, (3) the number, nature, and value of prize awards, the manner and frequency of prize drawings, and the manner in which prizes must be awarded to holders of winning tickets in the statewide lottery, (4) the locations at which and manner in which lottery tickets are sold in the statewide lottery and statewide joint lottery games, (5) the manner of collecting lottery sales revenue in the statewide lottery and statewide joint lottery games, (6) substantive criteria for the licensing of lottery sales agents, procedures for the suspension or revocation of their licenses, and the amount of compensation these agents must be paid, and (7) special game rules to implement any agreements that the Commission's Director enters into with other jurisdictions to conduct statewide joint lottery games.

The bill explicitly authorizes the Commission to adopt rules, in addition to those described above, that establish standards governing the display of

advertising and celebrity images on lottery tickets and on other items that are used in the conduct of, or to promote, the statewide lottery or joint statewide lottery games. Any revenue derived from the sale of advertising displayed on lottery tickets and on those other items is to be considered, for purposes of the payment of moneys into the State Lottery Gross Revenue Fund, to be "related proceeds" in connection with the statewide lottery or "gross proceeds" from statewide joint lottery games, as the case may be.

Lottery funds

(R.C. 3770.06)

The bill removes a requirement for a funds transfer to the School Building Program Bond Service Fund: specifically, the current requirement for a transfer of the first $10 million of any money transferred in a fiscal year from the State Lottery Fund to the Lottery Profits Education Fund.

Regarding a separate Deferred Prizes Trust Fund, continuing law requires that its investment earnings be credited to the fund, and, within 60 days after the end of each fiscal year, OBM certify the amount of investment earnings that need to be so credited to provide continued funding of deferred lottery prizes (any excess earnings are then credited to the Lottery Profits Education Fund). The bill newly requires the State Treasurer to certify annually to OBM, within the same 60 days, whether the actuarial amount of the Deferred Prizes Trust Fund is sufficient for continued funding, throughout the fund's life, of all remaining annuity prize liabilities.

MEDICAL TRANSPORTATION BOARD (AMB)

- Eliminates the Ohio Medical Transportation Fund.

Ohio Medical Transportation Trust Fund; Occupational Licensing and Regulatory Fund

(R.C. 4513.263, 4743.05, and 4766.05)

Numerous state licensing boards deposit funds and fees received into the same fund, the Occupational Licensing and Regulatory Fund (Fund 4K9), to accommodate cash flow needs for the various boards. Under current law, the Ohio Medical Transportation Board deposits its fees and other moneys into the Ohio Medical Transportation Trust Fund. The bill eliminates the Ohio Medical

Transportation Trust Fund and authorizes fees and moneys collected by the Ohio Medical Transportation Board to be deposited into the Occupational Licensing and Regulatory Fund.

DEPARTMENT OF MENTAL HEALTH (DMH)

Funding and certification of community mental health services

- Provides that community mental health services for any of the following may not be certified by the Director of Health or provided with state and federal funds through the Department of Mental Health, even if the condition appears as a mental disorder in the Diagnostic and Statistical Manual of Mental Disorders: a substance use disorder, substance-induced disorder, chronic dementing organic mental disorder, mental retardation, or developmental disability.

- Requires the Director of Mental Health to assemble a study group to review the current provider rate structure for mental health services and make recommendations.

Funding and certification of community mental health services

(R.C. 340.03 and 5111.611)

Under current law, a board of alcohol, drug addiction, and mental health services (ADAMHS board) is permitted to contract with a community mental health agency only if the agency's services have been certified by the Director of Mental Health. The board's eligibility for financial support from the Department of Mental Health is contingent on the Department's approval of the board's mental health plan. Beginning July 1, 2007, community mental health services may be certified and state and federal funding may be provided only for services that are for a mental disorder according to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. Certification or funding cannot be provided for services that are solely for a substance use disorder, substance-induced disorder, chronic dementing organic mental disorder, mental retardation, or developmental disability. Services for individuals with co-occurring conditions may be certified and funded.

The bill specifies that community mental health services for any of the following may not be certified or funded, even if it appears as a mental disorder in

the Diagnostic and Statistical Manual of Mental Disorders: a substance use disorder, substance-induced disorder, chronic dementing organic mental disorder, mental retardation, or developmental disability. In the case of an individual who requires services that may be certified and funded and services that may not be certified and funded, the bill specifies that the certification and funding may be provided only for the permissible portion of the services.

The bill specifies that the Director of Mental Health provides certification of prevention services, as well as treatment services.

Rate Structure Study Group

(Section 335.40.40)

The Director of Mental Health is required by the bill to assemble a study group comprised of state and county representatives and members of the provider communities to review the current provider rate structure for mental health services and make recommendations.

DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES (DMR)

Home and community-based services

- Provides that a person or government entity must be certified to provide supported living or licensed as a residential facility, rather than certified to provide home and community-based services or licensed as a residential facility, to be eligible to receive payment for providing home and community-based services.

- Eliminates current law governing certification of home and community-based services providers.

- Establishes a new certification process for supported living.

Residential facility licensure

- Requires that the Director of MR/DD send a copy of a letter regarding the initiation of license revocation proceedings against a residential facility to the county MR/DD board and that the county MR/DD board send a copy of the letter to each resident who receives services from the residential facility.

- Requires a hearing examiner to file a report and recommendations regarding the revocation of a residential facility license not later than ten days after the last of (1) the close of the hearing, (2) if a transcript of the proceedings is ordered, the hearing examiner receives the transcript, or (3) if post-hearing briefs are timely filed, the hearing examiner receives the briefs.

Waiting period for certificate and license holders

- Provides that an applicant for a supported living certificate or residential facility license, certificate holder, or license holder, and a related party of the applicant, certificate holder, or license holder must wait one year after the date the Director of MR/DD refuses to issue or renew the certificate or license.

- Places a five-year suspension on any supported living certificate holder or residential facility license holder whose certificate or license is revoked, or a related party of the certificate holder or license holder, from re-applying for a certificate or license.

Program fee fund

- Provides for the fees that the Department of Mental Retardation and Developmental Disabilities collects in certifying providers of supported living, licensing residential facilities, and certifying and registering employees of county boards of mental retardation and developmental disabilities to be deposited into a new fund called the Program Fee Fund.

Notice of disciplinary action

- Specifies when certain individuals and entities are deemed to have received notice of disciplinary action the Department of MR/DD intends to take.

Notice of change of address

- Requires that individuals seeking or holding certain licenses, certificates, or evidences of registration from the Department of MR/DD notify the Department of a change of address.

Residential and Respite Care

- Eliminates the authority of the Department of MR/DD to enter into a contract to (1) provide residential services in an intermediate care facility for the mentally retarded (ICF/MR) to an individual who meets the criteria for admission to such a facility but is ineligible for Medicaid due to unliquidated assets subject to final probation, (2) provide respite care services in an ICF/MR, (3) provide residential services in a facility that has applied for, but not received, certification as an ICF/MR if a good faith effort is being made to bring the facility into compliance with the certification requirements, or (4) reimburse an ICF/MR for costs not otherwise reimbursed under the Medicaid program for clothing for individuals with MR/DD.

County MR/DD board subsidies

- Removes the requirement that the Department of Mental Retardation and Developmental Disabilities (MR/DD) make a general purpose subsidy and subsidies for family support services, service and support administration, and supported living to county boards of mental retardation and developmental disabilities (county MR/DD boards) in ongoing law.

- Includes an earmark for fiscal years 2008 and 2009 that requires the Department to use certain funds appropriated to the Department to pay each county MR/DD board an amount that is equal to the amount the boards received in fiscal year 2007 under the general purpose, family support services, service and support administration, and supported living subsidies.

County MR/DD boards arranging supported living

- Requires the Director of MR/DD to adopt rules that establish the extent to which a county MR/DD board may provide supported living.

County MR/DD board service contracts

- Repeals law governing service contracts between a county board of mental retardation and developmental disabilities (county MR/DD board) and a service provider, including the law governing mediation and arbitration procedures regarding service contracts.

- Eliminates a county board's authority to contract with providers of Medicaid home and community-based services.

Priority waiting lists for home and community-based services

- 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, 2009, 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.

County MR/DD board reporting requirements

- Changes the date a county MR/DD board must submit an itemized report of income and operating expenditures to April 13 (from March 13).

- Eliminates a county MR/DD board requirement to submit a report on the total annual cost per enrollee for operation of programs and services operated by the county in the preceding year.

Targeted case management services

- Requires county MR/DD boards to pay the nonfederal portion of targeted case management costs to the Department of MR/DD.

- Permits the Departments of MR/DD and Job and Family Services to enter into an interagency agreement requiring the Department of MR/DD to pay the Department of Job and Family Services the nonfederal portion of the cost of targeted case management services paid by county MR/DD boards and the Department of Job and Family Services to pay the total cost of targeted case management claims.

Home and community-based services

(R.C. 5123.16 (repealed) and 5123.045)

Under existing law, the Department of MR/DD administers Medicaid waiver programs under which home and community-based services waivers are provided to individuals with mental retardation or a developmental disability (individuals with MR/DD). Current law prohibits a person or government entity from receiving payment for providing home and community-based services under such a Medicaid waiver program unless the person or government entity is certified to provide such services or licensed as a residential facility. The bill provides instead that a person or government entity must be certified to provide supported living[126] or licensed as a residential facility. Current law authorizing the Director of MR/DD to certify providers of home and community-based services is repealed and new law is enacted replacing law governing the certification of supported living.

Supported living certificate

(R.C. 5123.16 (new), 5123.16 (repealed), 5123.161, 5123.163, 5123.165, 5123.167, 5123.168, 5123.169, 5123.211, 5126.431, and 5126.45)

Certificate procedure. Under the new certification process for supported living, the Director of MR/DD is to issue an applicant a supported living certificate if the applicant follows the application process, meets the certification standards, and pays the certification fee. The Director is to adopt rules establishing the application process, certification standards, and fee.

The bill permits the Director to conduct surveys of persons and government entities that seek a supported living certificate to determine whether they meet the certification standards. The Director is also permitted to conduct surveys of persons and government entities holding a supported living certificate (i.e., providers) to determine whether they continue to meet the certification standards.

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[126] "Supported living" is defined under as services provided for as long as 24 hours a day to an individual with MR/DD through any public or private resources, including moneys from the individual, that enhance the individual's reputation in community life and advance the individual's quality of life by: (1) providing the support necessary to enable an individual to live in a residence of the individual's choice, with any number of individuals who are not disabled, or with not more than three individuals with MR/DD unless the individuals are related by blood or marriage, (2) encouraging the individual's participation in the community, (3) promoting the individual's rights and autonomy, (4) assisting the individual in acquiring, retaining, and improving the skills and competence necessary to live successfully in the individual's residence. (R.C. 5126.01.)

The Director must conduct surveys in accordance with rules the Director is required to adopt. The bill stipulates that the records of surveys are public records and must be made available on request.

The Director is to determine by rules the period of time a supported living certificate is valid. The certificate remains valid for the determined period unless the Director terminates the certificate or the certificate holder voluntarily surrenders the certificate.

Unless there is good cause for refusal to renew a supported living certificate,[127] the Director is to renew the certificate if the certificate holder follows the renewal process, continues to meet the applicable certification standards, and pays the renewal fee. The Director is required to adopt rules establishing the renewal process and renewal fee.

Restrictions on providing supported living and residence. The bill generally prohibits any person or government entity from providing supported living services to an individual with MR/DD if the person, government entity, or a related party[128] of the person or government entity, also provides a residence to the individual with MR/DD.

The bill defines "related party" as:

(1) In the case of an individual, the provider's spouse, parent, stepparent, child, sibling, half sibling, stepsibling, grandparent, grandchild, employee or employer of the provider or the provider's spouse;

(2) In the case of a person other than an individual, the employee, officer, or board of directors or trustees of the provider, a person owning a financial interest of 5% or more or corporation that has a subsidiary relationship with the provider, a person or government entity that has control over the provider's day-to-day operation, or a person over which the provider has control of day-to-day operation; or

(3) In the case of a government entity, an employee, officer, member of the provider's governing board, government entity that has control over the provider's day-to-day operation, or person or government entity over which the provider has control of day-to-day operation

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[127] See "***Actions against a certificate holder***" below.

[128] The bill defines "related party."

The bill provides that the residency prohibition does not apply to a person to whom either of the following applies:

- The person also resides with the resident and does not provide at any time supported living to more than a total of three individuals with MR/DD who reside in that residence.

- The person is an association of family members related to two or more of the individuals with MR/DD who reside in the residence and who does not provide at any one time supported living to more than a total of four individuals with MR/DD who reside in that residence.

Actions against a certificate holder. The bill permits the Director of MR/DD, under good cause as specified in rules adopted by the Director, to issue an adjudication order to refuse to issue or renew, or revoke a supported living certificate. Another adjudication order the Director may issue is to suspend a certificate holder's authority to (1) continue to provide supported living to one or more individuals from one or more counties, (2) begin to provide supported living to one or more individuals from one or more counties, or (3) continue and begin to provide supported living to one or more individuals from one or more counties. The bill provides that the following are good cause to take such actions against a certificate holder:

- An applicant or certificate holder fails to meet or continue to meet certification standards;

- The certificate holder violates residency prohibitions;[129]

- The certificate holder fails to comply with state law governing criminal background checks and the registry of MR/DD employees;

- Misfeasance;

- Malfeasance;

- Nonfeasance;

- Confirmed abuse or neglect;

- Financial irresponsibility;

[129] See "***Restrictions on providing supported living and residence***," above.

- Other conduct determined by the Director as injurious to individuals with MR/DD.

The bill requires that the Director follow the Administrative Procedure Act (R.C. Chapter 119.) when issuing an adjudication order regarding a supported living certificate. The Administrative Procedure Act generally requires that an agency provide an opportunity for a hearing before issuing an adjudication order. An exception to this requirement applies to an adjudication order to suspend a certificate where a statute specifically permits the suspension without a hearing. The bill specifically permits the Director to issue an adjudication order to suspend a certificate holder's authority to continue or begin (or both) to provide supported living to one or more individuals from one or more counties before providing an opportunity for a hearing if all of the following are the case:

- The Director determines such action is warranted by the certificate holder's failure to continue to meet the applicable certification standards.

- The Director determines that the failure either represents a pattern of serious noncompliance or creates a substantial risk to the health or safety of an individual who receives or would receive supported living from the certificate holder.

- If the order will suspend the certificate holder's authority to continue to provide supported living to an individual, (1) the Director makes the individual, or the individual's guardian, aware of the Director's determination regarding a pattern of serious noncompliance or a substantial risk to health or safety and the individual or guardian does not select another certificate holder and (2) a county MR/DD board has filed a complaint with a probate court[130] and the probate court does not issue an order authorizing the county MR/DD board to arrange services for the individual pursuant to an individualized service plan.

The Director may also issue an adjudication order to terminate a certificate if the certificate holder has not, for 12 consecutive months, billed for supported living.

[130] The complaint must include facts describing the nature of abuse or neglect that the individual suffered due to the certificate holder's actions that are the basis for the Director making the determination regarding a pattern of serious noncompliance or a substantial risk to health or safety.

If the Director issues such a suspension order before providing an opportunity for a hearing, the Director is required to send a notice to the certificate holder within 24 hours after issuing the order. The Director must also notify the certificate holder of the reasons for the order. The certificate holder may, within ten days of receiving the notice, request a hearing on the order. The request must include the certificate holder's current address. A hearing must take place within 30 days of the certificate holder's request.

The hearing must be conducted in accordance with the Administrative Procedure Act's provisions regarding adjudication hearings except that:

- The hearing must continue uninterrupted, other than weekends, legal holidays, or other interruptions the certificate holder and Director agree to.

- If the Director appoints a referee or examiner to conduct the hearing, the referee or examiner must submit to the Director a written report of the findings of fact and conclusions of law and a recommendation of action the Director should take.

- The certificate holder may submit objections to the referee or examiner's report and recommendation.

- The Director must approve, modify, or disapprove the referee or examiner's report and recommendation between six and fifteen days after the Director sends a copy of the report and recommendation to the certificate holder, certificate holder's certificate, or other representative of record.

The Director may lift an immediate suspension order even though a hearing regarding the order is occurring or pending if the Director determines the certificate holder has taken action to eliminate the cause of the order. The Director must lift the order if the certificate holder provides a compliance plan acceptable to the Director and the Director determines the certificate holder implements the plan correctly.

Residential facility licensure

(R.C. 5123.19)

No person or government entity may operate a residential facility without a valid license issued by the Director of Mental Retardation and Developmental Disabilities. Generally, a residential facility is a home or facility in which an individual with MR/DD resides. However, none of the following are considered

to be a residential facility: the home of a relative or legal guardian in which an individual with MR/DD resides, a certified respite care home, a county home or district home, and a dwelling in which the only individuals with MR/DD are in an independent living arrangement or are being provided supported living.

The Director is authorized to take certain actions against a residential facility if it is determined that an applicant for or holder of a residential facility license is not in compliance with state law or rules regarding residential facilities. For example, the Director may deny or refuse to renew a license or place a monitor in a residential facility.

Another action the Director may take is to revoke a license. Current law requires the Director, when license revocation proceedings are initiated, to notify each affected resident, the resident's guardian if the resident is an adult for whom a guardian has been appointed, the resident's parent or guardian if the resident is a minor, and the county MR/DD board. The bill requires instead that the Director send a copy of a letter regarding the initiation of license revocation proceedings to the county MR/DD board and that the county MR/DD board send a copy of the letter to each resident who receives services from the residential facility, the guardian of each resident who receives services from the residential facility if the resident has a guardian, and the parent or guardian of each resident who receives services from the residential facility if the resident is a minor.

Issuing an order suspending admissions to a residential facility is another action the Director may take. Current law includes special provisions regarding such an order that is issued before the Director provides the residential facility an opportunity for an adjudication. In such a case, the license holder may request a hearing not later than ten days after receiving a notice required by the Administrative Procedure Act (R.C. Chapter 119.). Current law requires that the hearing commence not later than 30 days after the Department receives a request for the hearing if a timely request for a hearing is made. The bill stipulates that the 30-day deadline does not apply if the request for the hearing fails to include the license holder's current address.

Current law requires a hearing examiner to file a report and recommendations not later than ten days after the close of the hearing. The bill instead requires the hearing examiner to file the report and recommendations not later than ten days after the last of the following:

- The close of the hearing.
- If a transcript of the proceedings is ordered, the hearing examiner receives the transcript.

- If post-hearing briefs are timely filed, the hearing examiner receives the briefs.

The bill requires that a copy of the written report and recommendation of the hearing examiner to be sent, by certified mail, to the license holder and the license holder's attorney, if applicable, not later than five days after the report is filed.

Waiting period for certificate and license holders

(R.C. 5123.167 and 5123.19)

Current law does not provide for a period of time in which an applicant for a supported living certificate or residential facility license, supported living certificate holder, or residential facility license holder who is denied a new or renewed license must wait to reapply. The bill provides that an applicant, certificate holder, or license holder and a related party[131] of the applicant, certificate holder, or license holder must wait one year after the date of denial to re-apply for the certificate or license.

The bill also places a five-year suspension on any certificate holder or license holder whose certificate or license is revoked, or related party of the certificate or license holder, from re-applying for a certificate or license.

Program fee fund

(R.C. 5123.033, 5123.169, and 5123.19)

Continuing law requires the Director of Mental Retardation and Developmental Disabilities to adopt rules establishing uniform standards and procedures for the certification of persons for employment with county MR/DD boards as superintendents, management employees, and professional employees and uniform standards and procedures for the registration of persons for employment by county MR/DD boards as registered service employees. Current law requires that all the certification and registration fees be deposited into the Employee Certification and Registration Fund. Money in the fund is to be used solely for the operation of the certification and registration program and for providing continuing training to county MR/DD board employees.

The Director is required to adopt rules establishing fees for issuing and renewing residential facility licenses. Current law does not specify which fund the fees are to be deposited into.

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[131] See "***Restrictions on providing supported living and residence***," above.

As discussed above, the bill establishes a new certification process for supported living. The Director is required to adopt rules establishing the fee for issuing and renewing a supported living certificate.

The bill eliminates the Employee Certification and Registration Fund and creates the Program Fee Fund in the state treasury. All fees collected for certifying and registering county MR/DD board employees, licensing residential facilities, and certifying supported living providers is to be credited to the fund. Money credited to the fund is to be used solely for the Department's duties regarding certifying and registering county MR/DD board employees, licensing residential facilities, certifying supported living providers, and providing continuing education and professional training to county MR/DD board employees and other providers of services to individuals with MR/DD. If money credited to the fund is inadequate to pay all of such costs, the Department is permitted to use other available funds appropriated to the Department to pay the remaining costs.

Notice of disciplinary action

(R.C. 5123.0414 and 5123.51)

Current law and the bill authorize the Director of Mental Retardation and Developmental Disabilities to do all of the following:

- Issue certificates and evidences of registration to employees of the Department of Mental Retardation and Developmental Disabilities and employees of entities that contract with the Department or a county MR/DD board.
- Certify supported living providers.
- License residential facilities.
- Certify MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings.
- Certify registered nurses to provide MR/DD personnel training.
- Certify and register employees of county MR/DD boards.
- Establish a registry for MR/DD employees who abuse, neglect, or misappropriate property (ODMR/DD Abuser Registry).

As part of the Director's authority to perform these tasks, the Director may take certain actions, such as refusing or revoking a license or certificate or placing an MR/DD employee on the ODMR/DD Abuser Registry. Generally, the Director

is required to take such actions in accordance with the Administrative Procedure Act (R.C. Chapter 119.). Part of the procedures of the Administrative Procedure Act include giving a party notice informing the party of the right to a hearing. The notice must be given by registered mail, return receipt requested.

Under the bill, when the Director sends a party a notice by registered mail, return receipt requested, that the Director intends to take action against the party authorized by state law governing any of the above mentioned duties and the notice is returned to the Director with an endorsement indicating that the notice was refused or unclaimed, the Director must resend the notice by ordinary mail to the party.

If the original notice was refused, the notice is to be deemed to have been received as of the date the Director resends the notice.

If the original notice was unclaimed, the notice is to be deemed received as of the date the Director resends the notice unless, not later than 30 days after the date the Director sent the original notice, the resent notice is returned to the Director for failure of delivery.

If the notice concerns placing an MR/DD employee on the ODMR/DD Abuser Registry and the resent notice is returned to the Director for failure of delivery not later than 30 days after the date the Director sent the original notice, the Director is required by the bill to cause the notice to be published in a newspaper of general circulation in the county of the party's last known residence or business and to mail a dated copy of the published notice to the party at the last known address. The notice is to be deemed received as of the date of the publication.

If the notice concerns any of the action duties mentioned above and the resent notice is retuned to the Director for failure of delivery not later than 30 days after the date the Director sent the original notice, the Director must resend the notice to the party a second time. The notice is to be deemed received as of the date the Director resends the notice the second time.

Notice of change of address

(R.C. 5123.0415)

The bill requires each person and government entity that applies for or holds any of the following to notify the Director of Mental Retardation and Developmental Disabilities of any change of address:

- Certificate or evidence of registration as an employee of the Department of Mental Retardation and Developmental Disabilities or an employee

of an entity that contracts with the Department or a county MR/DD board.

- Supported living certificate.
- Residential facility license.
- MR/DD personnel certificate to administer prescribed medications, perform health-related activities, and perform tube feedings.
- Registered nurse certificate to provide MR/DD personnel training.
- Certificate or registration as a county MR/DD board employee.

Residential and Respite Care

(R.C. 5123.199 (repealed); 127.16, and 5123.051)

The bill eliminates the authority of the Department of Mental Retardation and Developmental Disabilities to enter into a contract to do any of the following:

- Provide residential services in an intermediate care facility for the mentally retarded (ICF/MR) to an individual who meets the criteria for admission to such a facility but is ineligible for Medicaid due to unliquidated assets subject to final probation.
- Provide respite care services in an ICF/MR.[132]
- Provide residential services in a facility for which the person or government agency with whom the Department is to contract has applied for, but has not received, certification and payment as an ICF/MR if the person or government agency is making a good faith effort to bring the facility into compliance with the certification requirements.
- Reimburse an ICF/MR for costs not otherwise reimbursed under the Medicaid program for clothing for individuals with MR/DD.

[132] Respite care is appropriate, short-term, temporary care provided to an individual with MR/DD to sustain the family structure or to meet planned or emergency needs of the family. (R.C. 5123.171.)

County MR/DD board subsidies

Elimination of county MR/DD board subsidies

(R.C. 5126.11, 5126.12, 5126.15, and 5125.44; 5126.057)

Current law requires the Department of Mental Retardation and Developmental Disabilities (MR/DD) to make subsidy payments to county boards of mental retardation and developmental disabilities (county MR/DD boards). Subsidies, and payment schedules of subsidies, are provided in ongoing law in the Revised Code. The bill removes the requirement that the Department make a general purpose subsidy and subsidies for family support services,[133] service and support administration,[134] and supported living[135] to county MR/DD boards in ongoing Revised Code law.

However, the bill includes an earmark for fiscal years 2008 and 2009 that requires the Department to use certain funds appropriated to the Department to pay each county MR/DD board an amount that is equal to the amount the boards received in fiscal year 2007 under the general purpose, family support services, service and support administration, and supported living subsidies.

A county MR/DD board with Medicaid local administrative authority for home and community-based services provided under a Medicaid waiver administered by the Department of Mental Retardation and Developmental Disabilities is generally required to pay the nonfederal share of Medicaid expenditures for the services provided to an individual with MR/DD who the county MR/DD board determines is eligible for county MR/DD board services.[136]

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[133] County boards of MR/DD are required to establish a family support services program under which the board makes payments to an individual with MR/DD or the family of an individual who desire to remain and be supported in the family home (R.C. 5126.11).

[134] Subject to available funds, the Department of MR/DD is required to pay county boards of MR/DD an annual subsidy for service and support administration. General subsidy and service and support administration funds are reduced under current law in instances of county boards of MR/DD whose effective tax rate is less than one and one-half mills for general operations of the board (R.C. 5126.15).

[135] The Department of MR/DD is required under current law to make allocations to county boards of MR/DD to be used for planning, development, contracting for, and providing supported living (R.C. 5126.44).

[136] The Department of Mental Retardation and Developmental Disabilities is required to pay the nonfederal share for home and community-based services provided under a Medicaid waiver program the Department administers, rather than a county MR/DD board, if (1) the services are provided to an individual with MR/DD given priority for the

A county MR/DD board must also pay the nonfederal share of Medicaid expenditures for Medicaid case management services provided to an individual with MR/DD who the county MR/DD board determines is eligible for county MR/DD board services.

Current law specifies sources of money that a county MR/DD board may use to pay the nonfederal share of these Medicaid expenditures. Included are funds a county MR/DD board receives from the Department under the general purpose, family support services, service and support administration, and supported living subsidies. The bill removes specific mention of these subsidies as an allowable source of funds to pay the nonfederal share consistent with the bill's removal of the subsidies from ongoing law. Instead, the bill includes a general provision that permits a county MR/DD board to use any subsidy payments it receives from the Department.

Tax equity payments

(R.C. 5126.18)

The Department is required under current law to provide for payment to each county MR/DD board the amount by which the statewide yield per enrollee exceeds the county yield per enrollee multiplied by the adult services enrollment provided to individuals with MR/DD who are at least 22 years of age, subject to certain reductions. The bill does not change the payment, but does refer to services provided to an individual with MR/DD who is "eligible" rather than to an individual "who is at least 22 years of age."

County MR/DD boards arranging supported living

(R.C. 5126.40, 5123.16 (new), 5123.169, 5123.182 (repealed), 5126.41, 5126.42, 5126.43, 5126.431 (repealed), 5126.45, 5126.451 (repealed), and 5126.47)

As discussed above, the bill removes from the Revised Code supported living subsidies that the Department of MR/DD provides to county MR/DD boards. In a related change, the bill provides that after receiving notice from the Department of MR/DD of the amount of state funds to be distributed to it for planning, developing, contracting for, and providing supported living (rather than after receiving notice of the amount to be distributed under the supported living subsidy), a county MR/DD board must arrange for supported living on behalf of

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services due in part to the Department determining that the individual is capable of residing in a setting outside an intermediate care facility for the mentally retarded or nursing facility or (2) an agreement between the Department and county MR/DD board requires that the Department pay the nonfederal share.

and with the consent of individuals with MR/DD based on the individual's service plans.

Continuing law requires a county MR/DD board to arrange for supported living in one or more methods using state funds and other money that the county MR/DD board designates for supported living. One of the methods is to contract with providers selected by the individuals to be served. The other two methods are to enter into shared funding agreements with state agencies, local public agencies, or political subdivisions or to provide direct payment or vouchers to be used to purchase supported living. The bill provides that county MR/DD boards' system of arranging supported living does not apply to Medicaid-funded supported living. This means, for example, that a county MR/DD board cannot enter into contracts for Medicaid-funded supported living. Federal law prohibits an agency that is not the single state agency from contracting with providers for services eligible for funding through Medicaid.

Current law prohibits a county MR/DD board from contracting with a provider to provide both residence and supported living services to an individual with MR/DD. This prohibition does not apply if:

- The provider is under contract with the county MR/DD board for both residence and services on July 17, 1990, and the contract is renewed.

- The provider has a pre-1995 contract being transferred from the state to the county, and the contract is being renewed.[137]

- The provider lives in the residence and provides services to three or fewer individuals who reside in the residence at any one time.

- The provider is an association of family members related to two or more persons residing in the residence and provides services to four or fewer individuals who reside in the residence at any one time.

The bill eliminates these provisions. Instead, new residence restrictions are added to the qualifications for supported living certification discussed previously.

As discussed previously, county MR/DD boards may use certain methods provided for in statute to arrange for supported living. Current law provides a

[137] Prior to July 1, 1995, county MR/DD boards could elect to enter into contracts with providers to provide supported living services to individuals with MR/DD or have the Department of MR/DD enter into such contracts for the county. Beginning July 1, 1995, county boards were required to assume administration of the contracts the Department of MR/DD had entered into.

process by which a county MR/DD board may develop a supported living service plan arranged by those methods. Current law does not require the Director of MR/DD to determine the extent to which a county board may provide supported living under these arrangements. The bill requires the Director of MR/DD to adopt rules that establish the extent to which a county MR/DD board may provide supported living.

County MR/DD board service contracts

(R.C. 5126.035 (repealed), 5126.036 (repealed), 5123.043, 5126.038, 5126.055, and 5126.06)

Current law establishes requirements for a contract 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 Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) or Medicaid case management services.

Current law also requires that each service contract between a county MR/DD board and a provider of services provide for the parties to follow certain mediation and arbitration procedures if a party takes or does not take an action under the contract that causes the aggrieved party to be aggrieved or if the provider is aggrieved by the board's termination of the contract. The mediation and arbitration procedures also apply if a provider is aggrieved by a board's refusal to enter into a service contract.

The bill repeals the law governing service contracts between county boards of mental retardation and developmental disabilities and providers of services, including the law governing mediation and arbitration procedures regarding service contracts.

Current law provides that a county board has local administrative authority to contract with a person or entity chosen by a person receiving services if the person or entity chosen is qualified and agrees to provide the services. The bill eliminates this authority.

Priority waiting lists for home and community-based services

(R.C. 5126.042)

Current law requires a 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 ODMR/DD-administered home and community-based services 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.

The bill extends for two more years, fiscal years 2008 and 2009, a limitation that no more than 400 individuals may receive such priority.

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. ODMR/DD is required to adopt rules establishing the criteria to be used by county MR/DD boards. These provisions are scheduled to expire December 31, 2007. The bill extends these provisions through December 31, 2009.

County MR/DD board reporting requirements

(R.C. 5126.12)

Current law requires a county MR/DD board to submit an itemized report of income and operating expenditures for the preceding calendar year to the Director of MR/DD by March 13. The bill changes the due date to April 13.

Current law requires a county MR/DD board to report to the Director the total annual cost per enrollee for operation of programs and services operated by the county in the preceding calendar year. The report must include a grand total of all programs operated, the cost of the individual programs, and the sources of funds applied to each program. The bill eliminates this reporting requirement.

Targeted case management services

(Section 337.30.60)

County MR/DD boards are required to pay the nonfederal portion of targeted case management costs to the Department of MR/DD. The Director of MR/DD is required to withhold any amount owed to the Department from subsequent disbursements from any appropriation item or money otherwise due to a nonpaying county.

The bill permits the Departments of MR/DD and Job and Family Services to enter into an interagency agreement requiring the Department of MR/DD to pay the Department of Job and Family Services the nonfederal portion of the cost of targeted case management services paid by county MR/DD boards and the Department of Job and Family Services to pay the total cost of targeted case management claims.

MOTOR VEHICLE COLLISION REPAIR REGISTRATION BOARD (CRB)

- Eliminates the Motor Vehicle Collision Repair Registration Fund.

Motor Vehicle Collision Repair Registration Fund; Occupational Licensing and Regulatory Fund

(R.C. 4743.05 and 4775.08)

Numerous state licensing boards deposit funds and fees received into the same fund, the Occupational Licensing and Regulatory Fund, (Fund 4K9), to accommodate cash flow needs for the various boards. Under current law, fees and fines collected under Motor Vehicle Repair Operators Licensing Law (R.C. Chapter 4775.) are deposited into the Motor Vehicle Collision Repair Registration Fund. The bill eliminates this fund, and authorizes the fees and fines collected to be deposited instead into the Occupational Licensing and Regulatory Fund.

DEPARTMENT OF NATURAL RESOURCES (DNR)

- Requires all moneys that the Division of Forestry receives from federal grants, payments, and reimbursements to be credited to the existing State Forest Fund.

- Bans the taking or removal of oil or natural gas from and under Lake Erie.

- Requires the Director of Natural Resources, rather than the Chief of the Division of Water in the Department of Natural Resources, to administer the law governing coastal erosion and to issue permits for the construction of shore structures.

- Eliminates the requirements that the Division of Real Estate and Land Management in the Department of Natural Resources administer the coastal management program, lakefront property lease program, and submerged lands preserves program, thus providing for the Director's direct administration of those programs.

- Decreases the maximum amount of the fine imposed for a violation of the law governing coastal erosion from $1,000 to $500 for each offense, and retains the stipulation that each day of violation constitutes a separate offense.

- Relocates certain statutes governing coastal erosion and makes related technical changes.

- Authorizes the Chief of the Division of Wildlife, with the approval of the Director of Natural Resources, to engage in campaigns and special events that promote wildlife conservation by selling or donating wildlife-related materials, memberships, and other items of promotional value.

- Authorizes not more than $200,000 of the annual expenditures from the existing Wildlife Boater Angler Fund to be used to pay for equipment and personnel costs involved with boating access construction, improvements, and maintenance on lakes on which the operation of gasoline-powered watercraft is permissible.

- Exempts the Division of Forestry, Division of Natural Areas and Preserves, Division of Wildlife, and Division of Parks and Recreation from CAUV recoupment charges when CAUV land is acquired for a public purpose use leaving the land principally undeveloped.

Crediting of federal moneys to State Forest Fund

(R.C. 1503.05)

Current law creates the State Forest Fund, establishes purposes related to state forests for which it must be used, and specifies sources of funding for it. The bill adds that all moneys received by the Division of Forestry from federal grants, payments, and reimbursements must be paid into the state treasury to the credit of the State Forest Fund.

Ban on taking or removal of oil or natural gas from and under Lake Erie

(R.C. 1505.07)

Current law authorizes the Director of Natural Resources, with the approval of the Director of Environmental Protection, the Attorney General, and the Governor, and subject to certain requirements, to issue permits and make leases to parties applying for permission to take and remove sand, gravel, stone, and other minerals or substances from and under the bed of Lake Erie, either on a rental or royalty basis, as the Director of Natural Resources determines to be best for the state. The bill creates an exception to that authority by prohibiting the Director of Natural Resources from issuing any permit or making any lease to take or remove oil or natural gas from and under the bed of Lake Erie.

Coastal erosion control and coastal management

Transfer of Chief of Division of Water's coastal erosion authority to Director of Natural Resources

(R.C. 1506.38, 1506.39, 1506.40, 1506.42, 1506.43, 1506.46, and 1506.47)

Current law requires the Chief of the Division of Water in the Department of Natural Resources to act as the erosion agent of the state for the purpose of cooperating with the Secretary of the Army, acting through the Chief of Engineers of the United States Army Corps of Engineers. The Chief of the Division of Water must cooperate with the Secretary in carrying out, and may conduct, investigations and studies concerning the prevention, correction, and control of shore erosion along Lake Erie and damage from it and the control of inundation of improved property along the Lake Erie shoreline. The bill instead requires the Director to act as the erosion agent of the state for those purposes.

Under current law, the Chief, in the discharge of his duties under the law governing coastal erosion, may call to his assistance, temporarily, any engineers or other employees in any state department, or in The Ohio State University or other state-financed educational institutions, for the purpose of devising the most effective and economical methods of controlling shore erosion and damage from it and controlling the inundation of improved property by the waters of Lake Erie. The bill authorizes the Director, rather than the Chief, to call for such assistance.

Current law authorizes the state, acting through the Chief, to enter into agreements with counties, townships, municipal corporations, park boards, conservancy districts, other political subdivisions, or any state departments or divisions for the purpose of constructing and maintaining projects to control erosion along the Ohio shoreline and islands of Lake Erie and in any rivers and bays that are connected with Lake Erie and any watercourses that flow into it. Also, under current law, the Chief may enter into a contract with any county, township, municipal corporation, conservancy district, or park board that has such an agreement with the state for the construction of a shore erosion project. The bill authorizes the Director, rather than the Chief, to enter into such agreements and contracts.

Current law states that any action taken by the Chief under the law governing coastal erosion cannot be deemed in conflict with certain powers and duties conferred upon and delegated to federal agencies and to municipal corporations under the Ohio Constitution or as provided by the law governing the use and control of Lake Erie water and soils by municipal corporations. The bill replaces the reference to the Chief with a reference to the Director.

Current law authorizes the Chief, in cooperation with the Division of Geological Survey, to prepare a plan for the management of shore erosion in the state along Lake Erie, its bays, and associated inlets, revise the plan whenever it can be made more effective, and make the plan available for public inspection. The bill authorizes the Director, rather than the Chief, to prepare the plan and states that the plan may be prepared in cooperation with appropriate offices and divisions, including the Division of Geological Survey. Also, under current law, the Chief may establish a program to provide technical assistance on shore erosion control measures to municipal corporations, counties, townships, conservancy districts, park boards, and shoreline property owners. The bill authorizes the Director, rather than the Chief, to establish the program.

Shore structure permits

(R.C. 1506.40)

Current law prohibits a person from constructing a beach, groin, or other structure to control erosion, wave action, or inundation along or near the Ohio shoreline of Lake Erie, including related islands, bays, and inlets, without first obtaining a shore structure permit from the Chief of the Division of Water. A temporary shore structure permit may be issued by the Chief or his authorized representative if it is determined necessary to safeguard life, health, or property.

Under current law, an applicant must provide appropriate evidence of compliance with any applicable provisions of the Coastal Management Law, the Division of Geological Survey Law, and the Division of Water Law as determined by the Chief. Each application or reapplication for a permit must be accompanied by a non-refundable fee prescribed by the Chief by rule.

Current law requires the Chief, if the application is approved, to issue a permit to the applicant authorizing construction of the project. In addition, existing law requires the Chief to conduct an adjudication hearing when an applicant requests such a hearing in writing within 30 days after the issuance of a notice of disapproval of the application. Finally, the Chief must limit the period during which a construction permit is valid and establish reapplication requirements governing a construction permit that expires before construction is completed.

The bill requires the Director of Natural Resources, rather than the Chief, to perform all of the above activities.

Elimination of Division of Real Estate and Land Management's coastal management authority

(R.C. 1504.02)

Current law requires the Division of Real Estate and Land Management in the Department of Natural Resources, on behalf of the Director, to administer the coastal management program and to consult with and provide coordination among state agencies, political subdivisions, the United States and agencies of it, and interstate, regional, and areawide agencies to assist the Director in executing his duties and responsibilities under that program and to assist the Department as the lead agency for the development and implementation of the program. Current law also requires the Division, again on behalf of the Director, to administer the lakefront property lease program and the submerged lands preserves program. The bill eliminates these requirements, thus providing for the Director's direct administration of those programs.

Penalties

(R.C. 1506.99)

Under current law, the penalty for violating the law governing coastal erosion is a fine of not less than $100 nor more than $1,000 for each offense. Each day of violation constitutes a separate offense. The bill decreases the amount of the maximum fine to $500, and retains the stipulation that each day of violation constitutes a separate offense.

Technical changes

(R.C. 317.08, 1506.01, 1506.41, 1506.44, 1506.45, 1506.48, 1521.01, 1521.99, and 6121.04)

The bill relocates certain sections of the Revised Code and makes related technical changes to reflect the changes in the Director's authority that are discussed above.

Wildlife conservation promotions

(R.C. 1531.06)

Current law authorizes the Chief of the Division of Wildlife to sell or donate conservation-related items or items that promote wildlife conservation. The bill adds that the Chief, with the approval of the Director of Natural Resources, also may engage in campaigns and special events that promote wildlife

conservation by selling or donating wildlife-related materials, memberships, and other items of promotional value.

Uses of Wildlife Boater Angler Fund

(R.C. 1531.35)

Current law creates the Wildlife Boater Angler Fund and requires it to be used for boating access construction, improvements, and maintenance on lakes on which the operation of gasoline-powered watercraft is permissible. The bill adds that not more than $200,000 of the annual expenditures from the Fund may be used to pay for equipment and personnel costs involved with those activities.

CAUV recoupment charge exemption for the Department of Natural Resources

(R.C. 5713.34)

Under current law, land devoted exclusively to agricultural use may be taxed at its current agricultural use value (CAUV), instead of its true value. Generally, the CAUV exemption reduces the taxable value of land, resulting in the property owner owing less in real property taxes. When CAUV land is converted to another use, a recoupment charge is levied on it in the amount of the tax savings on the land during the three years preceding the year in which it was converted.

The bill provides that the recoupment charge does not apply to the conversion of CAUV land acquired by the Department of Natural Resources if it is not acquired by eminent domain, if the land is thereafter used exclusively for a public purpose that leaves the land principally undeveloped, and if the land is acquired on behalf of and converted by the Division of Forestry, Division of Natural Areas and Preserves, Division of Wildlife, or Division of Parks and Recreation.

OHIO BOARD OF NURSING (NUR)

- Extends the date by which the Board of Nursing must issue a report on its evaluation of the Medication Aide Pilot Program to a date that is not later than the 181st day after the Board issues its 75th medication aide certificate.

- Extends the date on which the pilot program ends, which is also the date on which any nursing home or residential care facility is authorized to

use certified medication aides to the 31st day after the Board issues its report evaluating the pilot program.

- Requires the Board to request from each nursing home and residential care facility participating in the pilot program, on the 91st day after the day the Board issues a medication aide certificate to the 75th individual, the data the Board requires participating homes and facilities to report under rules. Also requires that homes and facilities comply with this request not later than the 31st day after the day the Board makes its request.

- Requires the Board to notify legislative leaders of the Senate and House of Representatives when the Board denies an application from a nursing home or residential care facility for participation in the pilot program and the reasons for the denial.

- Provides that a nursing home is eligible to participate in the pilot program if it has been found free from deficiencies in medication administration in its most recent Department of Health survey or inspection, rather than in its two most recent surveys or inspections.

- Requires an individual seeking to be certified as a medication aide to ask that information from the Federal Bureau of Investigation be included as part of the individual's criminal records check only if the individual has not lived in Ohio for at least five years.

Medication Aide Pilot Program

(R.C. 4723.621, 4723.63, 4723.64, 4723.65, and 4723.66)

Until July 1, 2007, current law requires the Board of Nursing to conduct a pilot program on the use of medication aides in 80 nursing homes and 40 residential care facilities. The Board must conduct an evaluation of the pilot program and prepare a report of its findings and recommendations by March 1, 2007. At the conclusion of the pilot program, medication aides certified by the Board may be used in any nursing home or residential care facility.

The bill makes the following changes in the laws governing the medication aide pilot program and the subsequent authority to use medication aides in any nursing home or residential care facility:

(1) The Board must issue its report evaluating the pilot program not later than the 181st day after the Board issues a medication aide certificate to the 75th individual.

(2) The pilot program is to end on the 31st day after the report is issued.

(3) On the day the Board issues its 75th medication aide certificate, the Board must post a notice on its web site indicating the date on which any nursing home or residential care facility may use medication aides.

(4) On the 91st day after the Board issues its 75th medication aide certificate, the Board must request from each participating facility the data the Board requires to be reported in conducting its evaluation of the pilot program. The participating facilities must submit the requested data not later than the 31st day after the Board's request is made.

(5) A nursing home is eligible to be selected for participation if it was found to be free from deficiencies related to the administration of medication in its most recent survey or inspection by the Department of Health, as opposed to having to meet the existing requirement of being free from such deficiencies in its two most recent surveys or inspections.

(6) When the Board denies an application for participation by a nursing home or residential care facility, the Board must notify, in writing, the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives. The notice must specify the reasons for the denial.

(7) An applicant for certification as a medication aide is required to ask the Bureau of Criminal Identification and Investigation to also request that the Federal Bureau of Investigation provide information on the applicant only if the applicant has not lived in Ohio for at least five years.

OCCUPATIONAL THERAPY, PHYSICAL THERAPY, & ATHLETIC TRAINERS BOARD (PYT)

- Requires that all fines collected by the appropriate section of the Ohio Occupational Therapist, Physical Therapist, and Athletic Trainers Board except for those collected for specified violations of the law be deposited in the Occupational Licensing and Regulatory Fund.

Deposit of fines collected under the Occupational Therapist, Physical Therapist, and Athletic Trainer Law

(R.C. 4755.09)

Current law requires that all fees collected and assessed under the Occupational Therapist, Physical Therapist, and Athletic Trainer Law (R.C. Chapter 4755.) by the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board be deposited into the state treasury to the credit of the Occupational Licensing and Regulatory Fund. Continuing law also specifies that one-half of the fines collected for violations of the prohibitions against practicing or holding oneself out as an occupational therapist, an occupational therapy assistant, a physical therapist, or an athletic trainer without the appropriate license or permit must be distributed to the appropriate section of the Board (Occupational Therapist Section, Physical Therapist Section, or Athletic Trainer Section) and then paid into the state treasury to the credit of the Occupational Licensing and Regulatory Fund. The other halves of these fines collected must be distributed to the treasury of the municipal corporation in which the offense was committed or, if the offense was committed outside the limits of a municipal corporation, to the treasury of the county in which the offense occurred.

The bill adds that except for a fine collected for a violation of the prohibitions described immediately above, all fines collected and assessed by the appropriate section of the Board also must be deposited in the Occupational Licensing and Regulatory Fund.

PUBLIC DEFENDER COMMISSION (PUB)

- Requires the county auditor to report periodically to the State Public Defender (instead of the Ohio Public Defender Commission) the amounts paid out to appointed counsel for indigent persons.

- Allows the county auditor, with permission from and notice to the board of county commissioners, to certify the county auditor's report to the State Public Defender for reimbursement of the amounts paid out to appointed counsel for indigent persons.

- Provides that the State Public Defender is not prohibited from paying the requested reimbursement if it is not accompanied by a financial disclosure form and affidavit of indigency if instead a court has certified by electronic signature that a financial disclosure form and affidavit of

indigency has been completed by the indigent person and are available for inspection.

Amounts paid out to appointed counsel for indigent persons

(R.C. 120.33)

Under current law, the county auditor is required to report periodically, but not less than annually, to the board of county commissioners and to the Ohio Public Defender Commission the amounts paid out to counsel for indigent persons pursuant to the approval of the court. The board of county commissioners, after review and approval of the auditor's report, may then certify it to the State Public Defender for reimbursement. Under the bill, the county auditor reports to the board of county commissioners and to the *State Public Defender* the amounts paid out to counsel for indigent defendants pursuant to the approval of the court. The bill also allows the county auditor, *with permission from and notice to the board of county commissioners*, to certify the auditor's report to the State Public Defender for reimbursement.

Current law provides that if a request for reimbursement is not accompanied by a financial disclosure form and an affidavit of indigency completed by the indigent person on forms prescribed by the State Public Defender, the State Public Defender is prohibited from paying the requested reimbursement. The bill provides that the State Public Defender is not prohibited from paying the requested reimbursement if the court certifies by electronic signature as prescribed by the State Public Defender that a financial disclosure form and affidavit of indigency have been completed by the indigent person and are available for inspection.

DEPARTMENT OF PUBLIC SAFETY (DHS)

- Allows the use of license plates that do not designate a vehicle as state owned (known as "cover plates") when a motor vehicle is used to assist a crime victim and a state agency determines that the situation warrants the use of cover plates.

State Vehicle Identification Exemption for Vehicles Transporting Crime Victims

(R.C. 4503.35)

In general, current law requires vehicles owned or leased by the state to bear license plates with a color other than that used for license plates on private vehicles, a special serial number, and the words "Ohio State Car" (R.C. 4503.23, not in the bill). Current law grants exceptions to this general requirement for all of the following: (1) vehicles furnished by the state for use by elective state officials, (2) vehicles owned and operated by political subdivisions of the state, (3) vehicles operated by state highway patrol troopers, and (4) vehicles operated by or on behalf of any person involved in authorized civil or criminal investigations requiring that the presence and identity of the vehicle occupants be undisclosed. The license plates used on these vehicles are commonly known as "cover plates."

The bill creates another exception to the general requirement that state vehicles be identified by the license plate as state-owned and allows the use of cover plates when a motor vehicle is used to assist a crime victim and a state agency determines that the situation warrants the use of cover plates.

PUBLIC UTILITIES COMMISSION (PUC)

- Authorizes the Public Utilities Commission to adopt rules providing for the enforcement of federal consumer protection provisions related to the delivery and transportation of household goods in interstate commerce.
- Codifies the Commercial Vehicle Information Systems and Networks Fund and renames it the "Federal Commercial Vehicle Transportation Systems Fund."

Enforcement of federal laws with respect to transportation of household goods in interstate commerce

(R.C. 4921.40)

The bill authorizes the Public Utilities Commission to adopt rules providing for the enforcement of the consumer protection provisions of Title 49 of the United States Code related to the delivery and transportation of household goods in interstate commerce. (Federal law expressly permits state enforcement of these

provisions. *See* 49 U.S.C. 14710.) Any fine or penalty imposed as a result of this enforcement must be deposited into the state treasury to the credit of the GRF.

Federal Commercial Vehicle Transportation Systems Fund

(R.C. 4923.26; Section 369.10)

The bill codifies the Commercial Vehicle Information Systems and Networks Fund, which consists of money received from the U.S. Department of Transportation's Commercial Vehicle Intelligent Transportation Systems Infrastructure Deployment Program. Money in the fund is used by the Public Utilities Commission to deploy the Ohio Commercial Vehicle Information Systems Networks Project and to improve the safety of motor carrier operations through electronic exchange of data by means of on-highway electronic systems. The bill also renames the fund the "Federal Commercial Vehicle Transportation Systems Fund."

PUBLIC WORKS COMMISSION (PWC)

- Implements the provisions of Section 2p(B)(1), Article VIII of the Ohio Constitution regarding the issuance of general obligation bonds for local government capital improvement projects.

Issuance of bonds for public infrastructure capital improvements

(R.C. 151.08, 164.03, and 164.08)

Section 2p(B)(1), Article VIII of the Ohio Constitution (effective November 8, 2005) authorizes the issuance of general obligation bonds and other obligations of the state to finance or assist in the financing of capital improvement projects of local subdivisions. The bill implements this provision by authorizing the Ohio Public Facilities Commission to issue not more than $120 million in principal amount of obligations in any of the first five fiscal years of issuance and not more than $150 million in principal amount of obligations in any of the next five fiscal years.[138] The bill limits the total amount of obligations that can be issued pursuant to Section 2p(B)(1), Article VIII of the Ohio Constitution to not

[138] The bill also authorizes, in each case, the issuance of the principal amount of obligations that in any prior fiscal year could have been but were not issued within these fiscal year limits (R.C. 151.08(B)(2)).

more than $1,350,000,000. None of these obligations can be issued, however, until at least $1,199,500,000 aggregate principal amount of infrastructure obligations have been issued pursuant to Section 2m, Article VIII of the Ohio Constitution. The Public Works Commission allocates these bond proceeds among the state's district public works integrating committees.

RACING COMMISSION (RAC)

- Requires the entire ½ of 1% of all moneys wagered on wagering pools other than win, place, and show that is retained by horse-racing permit holders to be paid as a tax to the Tax Commissioner and deposited into the State Racing Commission Operating Fund.

Deposit of entire ½ of 1% of all amounts wagered on exotic wagering into the State Racing Commission Operating Fund

(R.C. 3769.087)

Continuing law requires horse-racing permit holders to retain an additional ½ of 1% of all moneys wagered each racing day on wagering pools other than win, place, and show. Of this additional amount, ¼ of 1% must be paid as a tax to the Tax Commissioner, who in turn must pay this percentage into the State Racing Commission Operating Fund. The remaining ¼ of 1% is retained by the permit holder, who must use ½ of it for purse money.

Temporary law enacted by H.B. 530 of the 126th General Assembly carved an exception to these provisions by requiring, from July 1, 2006 through June 30, 2007, that the entire ½ of 1% of all moneys wagered each racing day on wagering pools other than win, place, and show that was retained by horse-racing permit holders be paid as a tax to the Tax Commissioner, who in turn had to pay the amount into the State Racing Commission Operating Fund. The bill makes this provision permanent.

BOARD OF REGENTS (BOR)

- Disqualifies from Ohio College Opportunity Grants (1) students entering most for-profit proprietary schools after the 2007-2008 academic year and (2) students entering two-year education programs after 2007-2008

the sponsors of which do not have certificates of authorization from the Board of Regents.

- Narrows eligibility for Student Choice Grants to students who qualify for the need-based Ohio College Opportunity Grants.

- Eliminates the Student Workforce Development Grant.

- Beginning in the 2008-2009 academic year, requires each state university, community college, state community college, university branch, and technical college to provide students with an itemized list of fees and charges owed by the student.

- Requires the Board of Regents to develop a critical needs rapid response system to address critical workforce shortages in emerging growth industries identified by the Director of Development.

- Strikes references that the State Architect's certification of a state university or state community college to administer its own capital projects certifies its employees' "satisfactory level of knowledge" and "competency" to administer projects "successfully and in accordance with all provisions of the Revised Code."

- Permits the Director of Administrative Services, upon request, to contract for analyses and recommendations pertaining to energy conservation measures for buildings owned by state institutions of higher education.

Ohio College Opportunity Grants

(R.C. 3333.122)

The Ohio College Opportunity Grant program (OCOG), which is being phased in to replace Ohio Instructional Grants, provides need-based tuition assistance to Ohio students from low- to moderate-income families. Under current law, eligible students are Ohio residents who first enroll in an undergraduate program in the 2006-2007 academic year or thereafter and attend either (1) a state-assisted institution of higher education, (2) a private nonprofit institution certified by the Board of Regents, (3) a for-profit proprietary school certified by the State Board of Career Colleges and Schools with program authorization to award an associate or bachelor's degree, or (4) a for-profit proprietary school that offers bachelor's and master's degrees, has a certificate issued by the Board of Regents, is

accredited by appropriate regional and professional accrediting associations, and is not subject to regulation by the State Board of Career Colleges and Schools. Students of for-profit proprietary schools described in (3) must be enrolled in a program leading to an associate's or bachelor's degree. Students who enroll in two-year technical education programs sponsored by private institutions of higher education, regardless of whether the sponsoring institution has a certificate of authorization from the Board of Regents, are also eligible for the grant.

The bill disqualifies students from receiving the OCOG who first enroll after the 2007-2008 academic year in proprietary schools certified by the State Board of Career Colleges and Schools. The bill also disqualifies students from receiving the OCOG who first enroll after 2007-2008 in two-year education programs sponsored by private institutions of higher education, if the sponsors do not have certificates of authorization from the Board of Regents. Eligible students who enrolled in these institutions or programs in 2006-2007 or 2007-2008 may continue to apply for the OCOG.

Student Choice Grants

(R.C. 3333.27)

Under current law, a student is eligible for a Student Choice Grant if the student is an Ohio resident, is enrolled as a full-time student in a bachelor's degree program at a private nonprofit Ohio institution of higher education, and maintains an academic record that meets or exceeds the standards established by the Board of Regents. (The grant is limited to the lesser of actual tuition or one-fourth of the per-pupil state subsidy to public four-year universities during the second year of the prior fiscal biennium.) The bill adds the requirement that a student must also qualify for the need-based Ohio College Opportunity Grant in order to qualify for the Student Choice Grant.[139]

Student Workforce Development Grant

(Repealed R.C. 3333.29; R.C. 3333.04 and 3333.38)

The Student Workforce Development Grant provides tuition assistance to students enrolled full-time in Ohio proprietary schools who are pursuing an associate's or bachelor's degree. The bill eliminates this grant. According to the Board of Regents, the grant was $300 for the 2006-2007 academic year.

[139] Ohio College Opportunity Grants are limited to students who first enrolled in undergraduate programs in 2006-2007 or thereafter (R.C. 3333.122). It is not clear whether the bill has the additional effect of disqualifying students who enrolled before 2006-2007 from receiving Student Choice Grants.

Itemized higher education charges

(R.C. 3345.02)

Beginning in the 2008-2009 academic year, the bill requires each state university, community college, state community college, university branch, and technical college to provide an itemized list of instructional fees, general fees, special purpose fees, service charges, fines, and any other fees or surcharges applicable to the student in each statement of estimated or actual charges owed by a student enrolled in the institution.

Critical needs rapid response system

(R.C. 122.014 and 3333.50)

The bill requires the Board of Regents, in consultation with the Governor and the Department of Development, to "develop a critical needs rapid response system to respond quickly to critical workforce shortages in the state identified by the Director of Development." Within 90 days of the Director's notification to the Chancellor of the Board of Regents of a critical workforce shortage in an emerging growth industry in the state, the Chancellor must submit to the Governor a proposal for addressing the shortage through initiatives of the Board or institutions of higher education.

Local administration of capital projects by institutions of higher education

(R.C. 123.10, 123.17, and 3345.51)

Continuing law requires the State Architect to create a local administration certification program to certify state universities and state community colleges to administer capital facilities projects without oversight from the Department of Administrative Services (DAS). To be certified, 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. Currently, in awarding a certificate to administer projects locally, the State Architect is required to certify the "competency" of an institution's staff to undertake the project.

The bill removes references in law that the State Architect certifies the institution's employees' "satisfactory level of knowledge" and "competency" to administer projects "successfully and in accordance with all provisions of the Revised Code." Thus, it appears that the certification is limited to more objective

measures of an institution's ability to administer projects locally. Those measures are:

(1) The institution has applied for certification in the manner prescribed by the State Architect;

(2) The State Architect has determined that a "sufficient number" of the institution's employees has completed the certification program;

(3) The institution's board has provided written assurance that the institution will enroll additional employees in the certification program as needed to compensate for employee turnover;

(4) The institution's board has provided written assurance that the institution will conduct biennial audits of its administration of capital projects;

(5) The institution's board has agreed 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

(6) The institution has paid the program fee as set by the State Architect and approved by the Director of Budget and Management.

Energy conservation studies at state institutions of higher education

(R.C. 156.02)

Current law, not changed by the bill, authorizes the Director of Administrative Services to engage companies or persons experienced in the design and implementation of "energy conservation measures" to make recommendations for energy conservation measures that would significantly reduce energy consumption and operating costs in buildings owned by the state. The recommendations must include cost estimates (including the costs of design, engineering, installation, maintenance, repairs, and debt service) as well as estimates of savings in energy consumption and operating costs. Boards of trustees of state institutions of higher education are authorized to do the same for the buildings under their control.[140]

The bill adds authorization for the Director to contract for energy conservation studies at any state institution of higher education, upon request of the institution's board.

[140] See R.C. 3345.61 to 3345.66, not in the bill.

Background--energy conservation measures

For the purpose of one of these studies, continuing law defines an "energy conservation measure" as "an installation or modification of an installation in, or a remodeling of, an existing building in order to reduce energy consumption and operating costs." The statute further states that an energy conservation measure includes (among others) insulation; storm windows and doors; automatic energy control systems; replacement or modification of heating, ventilating, or air conditioning systems; caulking and weather stripping; "cogeneration systems"; or "any other modification, installation, or remodeling approved by the Director of Administrative Services as an energy conservation measure."[141]

DEPARTMENT OF REHABILITATION AND CORRECTION (DRC)

- Authorizes the Director of Rehabilitation and Correction to contract for the private operation and management of a Department of Rehabilitation and Correction facility and eliminates a requirement that the Director contract for the private operation of two or more Department facilities.

- Requires the Director of Rehabilitation and Correction to obtain an executive order and the approval of the Governor in order to change the purpose for which a Department of Rehabilitation and Correction facility is being used.

Department of Rehabilitation and Correction facilities

(R.C. 5120.03)

Current law requires the Director of Rehabilitation and Correction to contract for the private operation and management of not less than two facilities under the control of the Department of Rehabilitation and Correction, unless the contractor managing and operating a facility is not in substantial compliance with the material terms and conditions of its contract and no other person or entity is willing and able to satisfy the obligations of the contract. The bill eliminates this requirement. The bill authorizes, but does not require, the Director to contract for the private operation and management of a facility under the control of the Department.

[141] R.C. 156.01, not in the bill.

Current law authorizes the Director of Rehabilitation and Correction to change the purpose for which any institution or place under the control of the Department of Rehabilitation and Correction is being used. The bill requires the Director to use an executive order and to obtain the approval of the Governor in order to change the purpose for which a Department facility is being used.

SCHOOL FACILITIES COMMISSION (SFC)

- Eliminates the Career-Technical School Building Loan Program.
- Requires that existing money in the repealed Career-Technical School Building Assistance Fund be transferred into the Public School Building Fund (school facilities cash fund) and that remaining loan repayments under the repealed loan program be deposited into the Public School Building Fund.

Career-technical school building assistance loan program

(R.C. 3318.15; new R.C. 3318.47; repealed R.C. 3318.47, 3318.48, and 3318.49; Section 391.50)

In 2005, the Ohio School Facilities Commission took over from the Department of Education a program to provide 15-year, 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. Among other criteria, to be eligible a district must meet a needs test and must not have received assistance under one of the Commission's other programs or likely be eligible for assistance under one of those programs within three years of the district's loan application.

The bill eliminates this loan program. (It does not affect the Vocational School Facilities Assistance Program, under which joint vocational school districts may receive state money on a cost-sharing basis for a district-wide project.)

The bill also provides that any amounts received from school districts in repayment of outstanding loans under the repealed program must be deposited into the Public School Building Fund, which is a fund containing mostly General Revenue Fund appropriations for the Commission to pay the state shares of school district projects under its programs. The bill further requires the Director of Budget and Management to transfer to the Public School Building Fund any

existing money in the repealed Career-Technical School Building Assistance Fund.

Finally, if a district that has an outstanding loan under the repealed program is more than 60 days overdue on its service payment, an uncodified provision in the bill requires the Department of Education, upon request of the Executive Director of the School Facilities Commission, to deduct from the district's foundation and other state education funding payments the amount of the district's overdue service payment. That amount then is to be paid into the Public School Building Fund. This is similar to a codified provision of the repealed loan program.

DEPARTMENT OF TAXATION (TAX)

- Replaces the Local Government Fund (LGF) and Local Government Revenue Assistance Fund (LGRAF) with the Local Communities Fund (LCF), and the Library and Local Government Support Fund (LLGSF) with the Local Libraries Fund (LLF), effective January 1, 2008.

- Requires that tax revenues currently credited to the LGF, LGRAF, and LLGSF instead be credited to the General Revenue Fund.

- Requires the Director of Budget and Management to transfer 3.65% of GRF tax revenue to the LCF and 2.2% of GRF tax revenue to the LLF for distribution to local governments.

- Requires LLF moneys to be distributed to local governments in accordance with the formula prescribed under current law for LLGSF money.

- Distributes LCF money among counties, and municipalities levying an income tax, on the basis of each county's or municipality's 2007 LGF and LGRAF distributions, up to the total 2007 LGF and LGRAF distributions for all counties and municipalities.

- Distributes any additional moneys available in the LCF be among counties on the basis of their respective populations.

- Requires LCF moneys to be distributed to county LCFs and disbursed therefrom to local governments in each county in accordance with the current alternative or statutory formulas.

- Requires that, in the final six months of calendar year 2007, the LGF, LGRAF, and the LLGSF be credited amounts equal to the amount each fund was credited in the same month in 2006.

- Requires that monthly distributions from those funds to the respective county funds and to municipalities for each month in the second half of 2007 be based upon each county's or municipality's share of the total amount of distribution received in the same month in 2006.

- Requires pass-through entities desiring pass-through treatment of job creation and job retention tax credits to specifically elect that treatment.

- Expands eligibility for the homestead exemption by making it available to elderly or disabled homeowners regardless of income.

- Increases the taxable value reduction but computes the tax bill reduction on the basis of effective tax rates rather than voted tax rates.

- Prevents new homestead exemption computation from reducing the tax reduction of current recipients.

- Reimburses taxing districts for the resulting property tax revenue loss.

- Beginning August 1, 2007, increases the sales and use tax permanent vendor discount percentage from 0.75% to 1%, capping the maximum discount at $30 per return and extends the current 0.9% discount for one month, through July 2007.

- Denies the discount to a vendor using a certified service provider that receives a monetary allowance for performing the vendor's sales and use tax functions in Ohio.

- Requires motor vehicle dealers and vendors or dealers of other titled property to claim their discounts on their sales tax returns instead of withholding and keeping the discount when applying for the certificate of title.

- Imposes the sales tax on motor vehicle purchases by a nonresident from a dealer unless the purchaser's home state has no similar tax or does not provide a credit against its tax for taxes paid to Ohio.

- Rate equals the state rate (5.5%) plus the lesser of 0.5% or the lowest of all local rates levied in the state.

- Distributes the portion of the rate above 5.5% among all counties (but not transit authorities) in proportion to county motor vehicle registrations.

- Raises the fee collected by the state for administration of taxes on public utility personal property and tangible personal property.

- Modifies the definition of "authorized recipient of tobacco products" for purposes of the prohibition against shipping cigarettes to any person other than an "authorized recipient of tobacco products."

- Repeals the $300 per year exemption from the cigarette excise tax and the use tax for cigarettes brought into Ohio for personal consumption.

- Clarifies that "other tobacco product" has the same meaning as "tobacco product" under the cigarette tax law.

- Authorizes public disclosure of the list of cigarette manufacturers and importers, licensed cigarette wholesalers, and registered manufacturers, importers, and brokers of other tobacco products.

- Authorizes school boards to levy a dual-purpose income tax.

- Authorizes school boards to reduce income taxes in 0.25% increments without voter approval.

- Requires the Department of Education to consult with the Office of Budget and Management in determining the state education aid offset against property tax replacement payments, and for both to agree on the determination.

- Accelerates the deadline for determining the state education aid offset by 16 days.

- Expressly requires that if, after direct replacement payments to school districts are made, there is not enough CAT revenue left to also compensate the GRF for state education aid offsets, the shortfall must be made up by later transfers to the GRF.

- Extends from 2008 to 2009 the time during which a new school district created between 2000 and 2004 will receive 100% of its utility property tax replacement payments for current fixed-rate levy losses.

- Provides that the Director of Budget and Management may, but does not have to, transfer excess School District Property Tax Replacement Fund balances to the Half-Mill Equalization Fund, and authorizes the Director to transfer those balances to the General Revenue Fund.

- Prevents compensation for public utility property tax-related administrative fees from exceeding the compensation paid in 2006.

- Corrects a reference to the term "consumer" by changing it to "customer" in the law regarding municipal income tax on electric companies.

- Requires the Tax Commissioner to notify a municipal corporation if the reapportionment of an electric or telephone company's income affects the tax owed to the municipal corporation by more than $500.

- Requires the state to reimburse municipal corporations for the 1.5% fee charged for administration of the municipal tax on electric and telephone companies if a refund is owed to the taxpayer.

- Continues expiring law requiring telecommunications property to be listed and assessed in the same manner as business tangible personal property but to continue to be apportioned among taxing units.

- Authorizes the Department of Administrative Services to acquire for the Department of Taxation the State Taxation Revenue and Accounting System (STARS), an integrated tax collection and audit system that will administer all of the state's taxes.

Local Government Funds

(R.C. 113.51, 5727.45, 5727.84, 5733.12, 5739.21, 5741.03, 5747.03, 5747.46, 5747.47, 5747.48, 5747.50, 5747.501, 5747.51, 5747.52, and 5747.53; Sections 757.03, 757.04, and 815.09)

Overview

The bill replaces Ohio's state and local revenue sharing funds--the Local Government Fund (LGF), Local Government Revenue Assistance Fund (LGRAF), and Local Library Government Support Fund (LLGSF)--with two new revenue sharing funds: the Local Communities Fund (LCF) and the Local Libraries Fund (LLF). The bill also changes the amount of state tax revenue credited to the state and local revenue sharing funds, and thus the amount of revenue available for distribution to counties, municipalities, townships, public library systems, and other special-purpose political subdivisions receiving revenue sharing payments.

Under permanent law provisions that have been suspended since the beginning of fiscal year 2002 (July 1, 2001), each of the funds was credited with a percentage of the state's major tax revenue sources: 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 receive 4.2% of revenue from those taxes (except the kWh tax) and the LGRAF would receive 0.6%; the LLGSF would receive 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.

Permanent law distributes LGF money among counties, townships, municipal corporations (cities and villages), and some other special-purpose subdivisions (e.g., park districts) under a three-stage system. 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.

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). 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.

Freeze on distributions continued through 2007

For the last six months of 2007 (first six months of fiscal year 2008), the act freezes at 2006 levels the distributions from the LGF, LGRAF, and LLGSF to each county's undivided local government fund, undivided local government

revenue assistance fund, and undivided local library government support fund. To that end, the act provides for distributions to be made from the LGF, LGRAF, and LLGSF each month as follows:

- Each county undivided local government fund will receive the same percentage of the total LGF distribution that it received for each respective month of August 2006 to December 2006.

- Each municipality receiving direct distributions from the LGF will receive the same percentage of the total LGF distribution that it received for each respective month of August 2006 to December 2006.

- Each county undivided local government revenue assistance fund will receive the same percentage of the total LGRAF distribution that it received for each respective month of August 2006 to December 2006.

The bill does not expressly provide for distributions to the various local governments of the amounts in the county undivided funds for the second half of calendar year 2007. In light of the silence, it appears that permanent codified law governing that distribution would continue to apply.

LLGSF

For the second half of calendar year 2007, monthly deposits to the LLGSF are equal to the previously frozen amounts for the corresponding month in the second half of calendar year 2006. In each month from August 2007 to December 2007, each county undivided fund will receive the same percentage of the LLGSF as it received in the respective month of August 2006 through December 2006. The bill requires that each county's total LLGSF distribution for 2007 be used to compute each county's 2008 guaranteed distribution.

Monthly distributions from the GRF to the LLC and LLF

Under the bill, all tax revenues previously credited to the LGF, LGRAF, and LLGSF will instead be credited to the GRF. Beginning in January 2008, the Director of Budget and Management is required to make monthly distributions from the GRF to the new LCF and LLF created in the bill for distribution to local governments. Each month, the Director must credit 3.65% of the preceding month's total GRF tax revenues to the LCF and 2.2% of those total GRF revenues to the LLF. The bill requires that the Director develop a schedule that identifies the specific tax revenue sources that will be used to make the transfers. The Director may revise that schedule from time to time as the Commissioner considers necessary.

Monthly distributions from the LCF

Each month beginning in 2008, the Tax Commissioner is required to distribute moneys credited to the LCF to counties for further distribution to local governments located within their respective boundaries. The amount of distribution to each county is based on the amount distributed to the county in 2007. The amount distributed to a county during any given month will be equal to the county's proportionate share of the total calendar year 2007 LGF distributions to all counties multiplied by the total amount of LCF available for distribution in the current month.

To the extent there is money left over in the LCF after counties have received those proportionate shares and municipal corporations have been paid their respective shares as described below, the balance in the LCF is distributed to counties on a per capita basis.

Counties disburse their LCF distributions to local governments located within their territorial boundaries in accordance with existing procedures.

Each month, the Tax Commissioner will distribute a portion of the LCF to municipalities that received direct distributions from the LGF in calendar year 2007. The portion of the LCF distributed to those municipalities will equal the percentage of total LGF and LGRAF moneys distributed directly to municipalities during calendar year 2007. Each municipality will receive a percentage of the LCF municipal earmark that is equal to their portion of the total 2007 LGF and LGRAF distributions. The total amount distributed to municipalities from the LCF during any calendar year will not exceed the total amount of the LGF distributed to municipalities during calendar year 2007. If that maximum amount is reached during any month of the calendar year, the municipalities will receive their full LCF distribution for that month, but will not receive any further LCF distributions during the calendar year.

If the Tax Commissioner is informed that a municipality receiving LCF distributions has dissolved, the Tax Commissioner must cease providing payments to that municipality. The LCF distribution that was previously provided to the dissolved municipality is divided among the remaining municipalities that receive distributions on a pro rata basis.

Monthly distributions from the LLF

Each month, after the Director makes the monthly distribution from the GRF to LLF, the Tax Commissioner is required to distribute money credited to the LLF to counties. Over the course of a year, counties will be distributed the same

percentage of the LLF as they received from the LLGSF under the permanent law provisions that were suspended in 2002 (see above).

Estimated LCF payments certified to county auditors

Every year, on or before July 25, the Tax Commissioner will be required to certify to each county auditor the amount expected to be distributed to each county from the LCF during the following calendar year under the distribution formula described above. The estimate is based on each county's 2007 distributions and what is expected to be available in the LCF during the following year.

The estimate for each county will be made by adding the separate products computed under (1) and (2), below:

(1) The product obtained by multiplying the following:

- Each county's proportionate share of the total amount distributed to counties from the LGF and the LGRAF during calendar year 2007; and

- The total amount distributed to counties from the LGF and LGRAF during calendar year 2007 adjusted downward to the extent that total LCF distributions to counties for the following year are expected to be less than was distributed to counties from the LGF and LGRAF in 2007.

(2) The product obtained by multiplying:

- Each county's proportionate share of the state's population; and

- The amount by which total estimated distributions from the LCF during the following year, less the total estimated amount to be distributed from the fund to municipalities during the following year, exceed the total amount distributed to counties from the LGF and LGRAF in 2007.

Job creation, retention tax credit pass-through

(R.C. 122.17(J) and 122.171(I))

Current law authorizes tax credits for businesses that formally agree to increase employment in Ohio or retain employment levels in Ohio. The credits may be claimed against the commercial activity tax (CAT), the corporation franchise tax, the insurance company gross premiums taxes, or the income tax. (In the case of the income tax, the credit is available to owners of pass-through

entities--e.g., partnerships, S corporations, most limited liability companies--that increase or retain employment levels.) When a credit is granted to a pass-through entity, current law requires the credits to be passed through and apportioned among the entity's owners in the same proportions that the entity's net income is apportioned.

The bill requires pass-through entities desiring pass-through treatment of the credit to entity owners to elect that treatment. The election must be made on a report that credit recipients currently are required to submit to the Department of Development each year. The election is irrevocable for the credit covered by that report. The provision recognizes that under the CAT, the entity itself, and not its constituent owners, is subject to the tax, and therefore the credit could be applied by the entity against its own CAT liability instead of against the owners' individual income tax liabilities.

The provision takes immediate effect.

Homestead exemption eligibility and computation changed

(R.C. 133.01, 323.151, 323.152, 323.153, 323.154, 4503.064, 4503.065, 4503.066, and 4503.067)

Current law

The homestead exemption is available for residences (including manufactured and mobile homes) that are owned and occupied by persons who are elderly or disabled and who have limited incomes. To be eligible for the homestead exemption, a household must have income (after certain adjustments) of $27,000 or less, and the owner or the owner's spouse must be either (1) disabled, (2) at least 65 years of age, or (3) at least 60 years of age and the surviving spouse of a person who received the exemption at the time of death. The exemption is in the form of a reduction in the taxable value of the residence, which translates into a reduction in the tax bill. The extent of the reduction in taxable value depends on a person's income, with greater reductions afforded to those with relatively lower incomes, as follows:

Income	Reduction in Taxable Value

$0 to $13,800	$5,700 or 75% (lesser of the two)[142]
$13,801 to $20,300	$3,500 or 60% (lesser of the two)
$20,301 to $27,000	$1,130 or 25% (lesser of the two)

The Tax Commissioner indexes the foregoing income limits and taxable value reduction amounts annually to account for increases in general price inflation.

Under current law, a person's actual homestead reduction is calculated by multiplying the reduction in taxable value by the voted tax rate in effect in the taxing district in which the home is located (i.e., by the tax rate before it is effectively reduced by application of the H.B. 920 tax reduction factor law, as described below).

Income limits repealed and reduction computation changed

The bill removes the existing income eligibility criteria and makes the homestead exemption available to any homeowner who satisfies the age or disability criteria described above, regardless of income. The bill also changes the manner in which the homestead tax reduction is computed. Under the bill, a homeowner is entitled to a tax reduction each year equal to the greater of:

- The homestead tax reduction, if any, the person received for tax year 2006; or

- The amount of taxes charged from tax levies for current expenses against $25,000 of the home's market value (the home's "true value in money"). This is equivalent to multiplying $8,750 in taxable value by the "effective tax rate" of current expense levies that applies to residential property.[143] The $8,750 results from multiplying $25,000 by

[142] The lesser of the two is usually the dollar amount. In order for a residence to receive a 60% reduction in taxable value, for example, it would have to have a taxable value of $5,833 or less, which equates to an appraised market value of only $16,666.

[143] The bill's definition of "effective tax rate" is identical to the definition used in the computation of the tax reduction factor 20-mill floor (R.C. 319.301(B)(3)), which refers only to taxes levied for current expenses. The effective rate so defined will be less than the total effective rate charged against the home, which includes not only the rate of current expense levies but also the rates for improvement, bonds, and other levies. In turn, the proposed reduction will be less than if the effective rate of all levies were used. The administration may have intended to refer to the more comprehensive definition of effective tax rate in R.C. 323.08.

the 35% assessment rate to derive the taxable value that the effective rate applies to.[144] Finally, by using the effective tax rate, the bill's computation incorporates the 10% and 2-1/2% tax reductions, so that the bill's reduction is computed on the basis of the taxes actually due rather than the gross tax bill before those reductions.

Effect on qualifying homeowners' tax bills compared to current exemption

The general effect of the bill is to increase the amount of the tax reduction for many, but not necessarily all, homeowners as compared to the tax reduction that would be computed into the future under current law. Homeowners who qualified for the homestead exemption for 2006 would be held harmless in the sense that they would continue to receive a tax reduction at least as great as the reduction received for 2006. Other homeowners who qualify after 2006 but who would not qualify for the homestead exemption as it is currently computed because their income is too high will receive a tax reduction that they are not currently entitled to.

For homeowners who would qualify after 2006 for the homestead exemption as it is currently computed because their income is within the eligibility range, the tax reduction may be more or less than they would receive under current law. Whether their tax reduction will be more or less depends primarily on the difference between the local voted tax rate and the effective tax rate used to compute the bill's reduction. Since the bill's exempted taxable value of $8,750 is 53% greater than the current maximum exemption of $5,700, the homeowner's tax reduction under the bill would be less as compared to current law only if the voted tax rate is at least 53% more than the effective tax rate used in the bill. For homeowners who would qualify for the lower exemption amounts of $3,500 or $1,130 of current law, the voted tax rate would have to be even greater as a percentage of the effective tax rate. In general, the difference between voted and effective rates varies among communities and depends on such factors as how long levies have been in effect and how rapidly property values have appreciated since the various levies took effect, with the difference increasing with the age of levies and rate of appreciation.

The bill's taxable value exemption of $8,750 is not indexed to general price inflation, as the current exemption amounts are.

[144] Although the assessment rate currently is 35% and has been for decades, the Tax Commissioner is authorized to fix a lower assessment percentage.

Manufactured homes

The bill's new reduction computation and eligibility expansion apply to manufactured homes and mobile homes regardless of whether they are taxed as real property or are taxed under the alternative tax specifically for manufactured and mobile homes. (R.C. 4503.06.) In either case, the bill's tax reduction is computed in the same manner as for those taxed as real property.[145]

Reimbursement of taxing district and county auditors

(R.C. 319.54(B))

As with the current homestead exemption, the bill provides for semiannual payments to taxing units from the General Revenue Fund to reimburse them for the tax reduction. The reimbursement is provided for under current law that will incorporate the reimbursement without necessity of amendment. (See R.C. 323.156 and 4503.068.)

The bill also compensates county auditors for the increased number of homestead applications that will be filed with county auditors because of the expanded eligibility. The compensation equals 1% of the additional property tax reductions resulting from the bill. The bill does not state specifically how the amount of compensation would be determined. The compensation is payable from the General Revenue Fund.

The bill's 1% compensation to county auditors is in addition to the compensation counties receive from the current homestead exemption. The current compensation equals 2% of the homestead tax reduction; it is credited to the county general fund for payment to the county auditor and county treasurer. To the extent the bill increases the amount of the homestead tax reduction, it increases the current 2% compensation proportionately, in addition to the bill's 1% compensation for the increased reduction.

Application date

The changes made by the bill to the homestead exemption first apply with respect to real property taxes levied for tax year 2007 and collected in 2008, and

[145] It is not clear what effect the computation would have on homes taxed under the manufactured home tax because the statute governing the taxation of these homes taxes them on the basis of "assessable value" rather than "true value in money." Assessable value equals 40% of a home's cost or market value at the time of purchase, depreciated according to statutory schedules. See R.C. 4503.06(D)(1). The bill does not provide for how true value is to be derived.

manufactured homes taxes levied and collected in 2007. Homeowners who become eligible for the exemption because of the bill's changes have 120 days after the provision takes effect to apply for the exemption for 2007.

Sales and use tax vendor discount

(R.C. 1548.06(D), 4505.06(B)(1), 4519.55, and 5739.12(B))

The bill revises the vendor's discount for prompt remittance of sales and use taxes collected from consumers as follows:

- The permanent law discount percentage is increased from 0.75% to 1% of tax remittances, but the maximum discount allowed is set at $30 per return (beginning August 2007).

- The current 0.9% discount is extended for one month, through July 2007.

- The discount is denied to any vendor using a certified service provider that receives a monetary allowance for performing the vendor's sales and use tax functions in Ohio.

- Motor vehicle dealers, dealers of off-highway motorcycles or all-purpose vehicles, and vendors of watercraft or outboard motors, all of which are titled under continuing law, must claim the discount on their sales tax returns, as do other vendors under current law, instead of deducting it from the tax paid to the clerk of the court when the dealer applies for the certificate of title. If the discount exceeds the tax due from the dealer for any reporting period, the dealer or vendor may file a refund claim for the unused discount, provided that a refund may not be claimed more frequently than twice per year.

Sales tax on motor vehicles purchased by nonresidents

General rule, exceptions, and procedure

(R.C. 4505.06(F)(6), 5739.02(B)(23), 5739.029, 5739.033(C), 5739.213; Section 803.09)

Under current law, sales of motor vehicles by a dealer to a nonresident are not subject to the state sales tax or any local use tax if the consumer executes and delivers to the dealer an affidavit affirming the consumer's nonresidency and intent to remove the vehicle out of Ohio immediately and title or register it in another state.

The bill narrows this exemption. Under the bill, sales of motor vehicles to nonresidents are subject to the Ohio sales tax (5.5%) plus a local tax equal to 0.5% or the lowest local use tax rate in the state, whichever is less. The local portion of the tax is not paid to any particular county or transit authority. Instead, it is distributed among all counties in proportion to motor vehicle registrations, as described below.

There are two exceptions to this general rule. A nonresident will owe no tax if the state to which the nonresident will remove the vehicle does not impose a use tax or similar excise tax on the ownership or use of motor vehicles, or if the state imposes such a tax but does not grant a credit against it for sales or use tax paid to Ohio.

Even when these exceptions apply, if the nonresident consumer intends to remove the vehicle out of Ohio immediately and title or register it in another state, the consumer still must execute and deliver to the dealer an affidavit affirming those intentions and the consumer's status as a nonresident.

If the dealer has accepted the affidavit in good faith, the dealer may rely on the representations made in the affidavit. The dealer must keep a copy of the affidavit and send the original and one copy to the clerk of courts along with the application for certificate of title and the sales tax due, if any. The clerk of courts must forward the tax collected and the original affidavit to the tax commissioner. If sales tax is owed and has been paid, or if no sales tax is owed, the clerk of courts may issue the certificate of title.

Distribution of local portion of tax

(R.C. 5739.213)

The tax collected from the sale relating to the "local portion" of the tax rate is distributed among counties annually in proportion to the number of motor vehicle registrations in the county compared to the total number of registrations in all counties in the preceding calendar year. The distribution amount must be determined before May 1 of each year and applies to all revenue collected from sales occurring between March 1 through the end of February of the following year. The amount distributed to each county is credited to the appropriate county sales tax funds identified in R.C. 5739.211(A) and (B) in proportion to the rates of taxes apportioned to each fund from the county levies under R.C. 5739.021 or 5739.026. Transit authorities levying a sales tax do not receive any part of the distribution.

Corporate residency

If the purchaser is a closely held corporation that does not engage in any business but is formed as an owner of a motor vehicle or other titled tangible personal property, the residency of the corporation for the purposes of the tax is the state of residence of the corporation's principal shareholder. (Under current law, the sales and use taxes apply to sales of shares in such a corporation because the shares represent ownership of the vehicle or property.)

Effective date

(Section 803.09)

The amendments affected by the bill apply to sales occurring on or after August 1, 2007.

Property tax administration fund

(R.C. 5703.80)

Under current law, the state collects a fee for administration of property taxes. The fee is excised from property tax distributions to local taxing units. It is based upon two percentages: a percentage of the total tax reduction due to the 10% rollback for real property for the previous year, and a percentage of the taxes charged against public utility personal property and business personal property for the previous tax year. Under current law, the percentage of public utility and business personal property taxes excised for the administration fund is scheduled to rise from 0.56% (for 2007) to 0.6% (for 2008 and thereafter).

The bill further raises the percentage for personal property for year 2009 and thereafter to 0.725%.

Prohibition against shipping cigarettes to any person other than an authorized recipient

(R.C. 2927.023)

Continuing law prohibits a person from causing to be shipped any cigarettes to any person who is not an "authorized recipient of tobacco products." Additionally, continuing law prohibits any common carrier, contract carrier, or other person from knowingly transporting cigarettes to any person in Ohio who the carrier or other person reasonably believes is not an "authorized recipient of tobacco products." Under current law, one of the classes of persons considered authorized recipients of tobacco products are persons licensed as distributors of

tobacco products under the statues imposing the 17% excise tax on tobacco products other than cigarettes (e.g., cigars, pipe tobacco, chewing tobacco).

The bill removes distributors of tobacco products from the list of authorized recipients of tobacco products and instead includes persons licensed as retail dealers purchasing cigarettes with the appropriate tax stamp.

The bill makes no change to the other classes of persons considered authorized recipients of tobacco products: (1) licensed cigarette wholesale dealers, (2) export warehouse proprietors as defined in the Internal Revenue Code, (3) operators of a customs bonded warehouse under federal law, (4) officers, employees, or agents of the state or federal government acting in an official capacity, (5) departments, agencies, instrumentalities, or political subdivisions of the state or federal government, and (6) persons having a consent for consumer shipment issued by the Tax Commissioner under the law allowing individuals to obtain cigarettes that are not reasonably available from Ohio retail dealers.

$300 cigarette excise and use tax exemption repealed

(R.C. 5741.02 and 5743.331)

Current law provides an exemption from the cigarette excise tax and the use tax for cigarettes brought into Ohio for some purpose other than resale--presumably for personal consumption. The exemption available each year is limited to a quantity of cigarettes having a wholesale value of $300 or less.

The bill eliminates this exemption, effective immediately.

Definition of "other tobacco product"

(R.C. 5743.01(J))

The bill clarifies that "other tobacco product" has the same meaning as "tobacco product" under the cigarette excise tax law. "Tobacco product" is defined for the purpose of the 17% tax on the wholesale price of products made from tobacco and used for smoking or chewing, or as snuff, such as cigars, pipe tobacco, and chewing tobacco, but not cigarettes, which are subject to the separate cigarette excise tax. "Other tobacco product" appears in one Revised Code section authorizing the Tax Commissioner and the Commissioner's agents to enter and inspect the facilities and records of persons selling, and authorizing peace officers to stop and inspect vehicles believed to be transporting cigarettes or "other tobacco products." The provision takes immediate effect.

Public disclosure of cigarette and other tobacco product entities

(R.C. 5743.20)

Current law authorizes the Tax Commissioner to disclose on the Commissioner's website only licensed "distributors" of cigarette or other tobacco products, which may include some manufacturers, wholesale dealers, and retail dealers. The purpose of the list is to assist retailers in complying with the existing prohibition against their purchase of cigarettes or other tobacco products from unauthorized persons.

The bill expressly authorizes the Commissioner also to disclose cigarette manufacturers and importers, licensed cigarette wholesalers, and registered manufacturers, importers, and brokers of other tobacco products. The provision takes immediate effect.

School district income tax

Dual-purpose levies

(R.C. 5748.01(I) and 5748.02(B)(1); Sections ___ and ___)

Under current law, school district income taxes may be levied for "any of" the purposes a school property tax may be levied--presumably only a single purpose, such as to pay for current expenses. The bill authorizes school boards to levy a dual-purpose income tax for both current expenses and permanent improvements. The school board must apportion the tax between the two purposes. The apportionment may be different from year to year but may not change during a year.

The dual-purpose levy must be approved by voters. The procedure for levying a dual-purpose tax is the same as that for levying a single-purpose tax under current law, except that the resolution levying the tax must state how the tax is to be apportioned among the two purposes.

Rate reduction

(R.C. 5748.022)

Under current law, once a school district income tax is levied it exists as enacted until it is repealed by the district's voters or its term expires.

The bill authorizes a school board to adopt a resolution reducing the rate of a school district income tax in increments of 0.25%. No voter approval is required. The resolution must set forth the current rate of the tax, the reduced rate

after adoption of the resolution, the purpose of the tax, the remaining number of years the tax will be levied or that it is levied for a continuing period of time, and the date the reduced tax rate will take effect. This date must be the ensuing first day of January occurring at least 60 days after a copy of the resolution is certified to the Tax Commissioner.

School district business personal property tax replacement payments

School district state aid offset determination and GRF transfers

(R.C. 5751.21(A) and (E))

Under current law, taxation of business personal property is phased out through 2008. School districts and other local taxing units receive "replacement" payments to compensate them for the resulting reduction in locally generated property taxes.[146] After 2011, compensation begins to be phased down through 2018. The compensation is payable from revenue generated by the commercial activity tax (CAT). In the case of school districts, their direct compensation from CAT revenue is offset to account for the fact that the school funding formula produces increased state funding as taxable property values decline. This offset is called the "state education aid offset." Currently, it must be computed by the Department of Education by July 31 each year, and the Department must certify it to the Director of Budget and Management by August 5. Because state school funding is paid from the General Revenue Fund, fund transfers are made from the replacement fund (from CAT revenue) to the GRF to compensate the GRF for the increased state funding payments. The transfers are made once per calendar quarter.

The bill requires the Department of Education to "consult with" the Director of Budget and Management in determining each school district's state education aid offset and the net replacement payment due after subtracting the offset. The Department and the Director must agree upon the offset determinations by July 20, which is 16 days earlier than the current requirement for the Department to certify offsets to the Director.

The bill also provides that if there is not enough CAT revenue in the replacement fund to make the entire quarterly transfer to the GRF, the Director of Budget and Management must transfer as much revenue as is available when the transfer is required, and make up for any shortfall at later dates determined by the Director. Under current law, no provision is made for making up any shortfall;

[146] Compensation also is payable for the phase-out of telecommunications personal property, which is phased out through 2010.

instead, the Director must transfer the amount of revenue available, without being expressly required to later transfer the shortfall.

Utility property tax replacement payments for new school districts

(R.C. 5727.85(H) and (J)(3))

Under continuing law, school districts receive property tax replacement payments from a portion of the kilowatt-hour and natural gas (Mcf) tax revenues to offset the fixed-rate and fixed-sum levy losses that occurred when the assessment rate on the tangible personal property of electric companies and natural gas companies were reduced.

The bill extends from 2008 to 2009 the time during which a new school district created between 2000 and 2004 will receive 100% of its utility property tax replacement payments for current fixed-rate levy losses. Currently, the payments are scheduled to begin phasing out in 2009 (at 75%); under the bill the phase-out resumes in 2010 as currently scheduled (i.e., 70% in 2010 and 2011, and declining in steps thereafter).

Current law requires the Director of Budget and Management to transfer excess School District Property Tax Replacement Fund balances to the Half-Mill Equalization Fund. The Half-Mill Equalization Fund is used to supplement the local contribution to a district's School Facilities Commission-assisted building project if the district has below-average per-pupil property valuation.

The bill authorizes, but does not require, transfers to the Half-Mill Equalization Fund, and authorizes the Director to also transfer those balances to the General Revenue Fund.

Utility property tax administrative fee compensation

(R.C. 5727.87)

Current law compensates counties for property tax-related administrative fees that are no longer received by counties because of previously legislated reductions in public utility property taxes. The administrative fees are used to support counties' property tax assessment and collection duties. The fees are computed as a percentage of property tax collections, so the reductions in public utility property assessment rates from prior legislation caused a reduction in the administrative fees, even though county assessment and collection duties remained largely the same as under pre-existing law. Currently, compensation in and after 2007 equals the amount by which a county's 1999 administrative fees exceeded the current year's administrative fees. Compensation is excised from the property tax

replacement payments paid to taxing units; compensation for administrative fees ends after 2011.

The bill prevents annual compensation paid to a county in and after 2007 from exceeding the compensation paid in 2006.

Technical correction in the municipal income tax for electric light companies

(R.C. 5745.02(C)(3))

The bill corrects the reference to the term "consumer" in the law governing municipal income taxes on electric companies, by changing the term to "customer" to conform the term to the cross-referenced term in R.C. 5733.059. In determining the municipal sales factor for purposes of calculating the municipal income tax for electric light companies and telephone companies, sales of electricity directly to a "consumer" is a sale of tangible personal property that is apportioned to the municipal corporation where the electricity was received by the purchaser. But the term "consumer" is not used in R.C. 5733.059--"customer" is the correct term.

Municipal tax on electric and telephone companies

(R.C. 5745.13)

Municipal income taxes charged against telephone companies and electric companies are reported and paid to the state under uniform laws (R.C. Chapter 5745.). The Tax Commissioner administers collection of such taxes and distributes the revenue among the appropriate cities and villages where a company operates and owes tax.

Current law can be read to require the Tax Commissioner to notify a municipal corporation if an electric or telephone company's income has been reapportioned among municipal corporations, the company's total tax liability has increased or decreased by more than $500, and the tax owed to the municipal corporation has increased or decreased.

The bill forecloses this possible reading by requiring the Tax Commissioner to notify a municipal corporation only if the reapportionment of the company's income affects the tax owed to that municipal corporation by more than $500.

Refunds of municipal tax on electric and telephone companies

(R.C. 5745.05(B))

Under current law, the state collects a fee for administering municipal income taxes on electric and telephone companies. The fee is 1.5% of the

revenues collected, and it is excised from the collections. The state forwards the remaining 98.5% to the appropriate municipal corporation.

If a taxpayer has overpaid tax and the overpayment is greater than the taxes the taxpayer is estimated to pay over the next 12 months, the taxpayer may request a refund equal to the overpayment. The taxpayer will receive the refund directly from the municipal corporation. When the municipal corporation refunds the overpayment, it refunds both the 98.5% it received from the state plus the state's 1.5% administrative fee.

Under the bill, when a municipal corporation pays a refund, the state is required to reimburse the municipal corporation for the administrative fee portion of the refund. This amount is included in the quarterly computation of the tax revenues the state must forward to the municipal corporation.

Telecommunications property tax phase-out

(Section 757.07)

The tax on tangible personal property of telephone companies, telegraph companies, and interexchange telecommunications companies is currently being phased out through 2010. In 2007, all such property is being taxed on 20% of its true value, 15% in 2008, 10% in 2009, and 5% in 2010. The property will be exempted from taxation in 2011 and thereafter.

A temporary provision of law enacted in Am. Sub. H.B. 66 of the 126th General Assembly (the main operating operations act for FY 2006 and FY 2007) requires that, during this phase-out period, telecommunications property must be listed and assessed in the same manner as business personal property instead of as public utility property, except that the value of a company's property will continue to be apportioned among taxing units as it was before the phase-out was enacted--i.e., according to wire-miles or the cost of property located in each taxing unit. This temporary provision of law will expire at the end of the current fiscal biennium.

The bill renews the temporary provision of law enacted in Am. Sub. H.B. 66 for the fiscal biennium beginning July 1, 2007.

State Taxation Revenue and Accounting System (STARS)

(Section 757.10)

The bill authorizes the Department of Administrative Services (DAS), in conjunction with the Department of Taxation, to acquire the State Taxation Revenue and Accounting System ("STARS"), including the application software

and installation and implementation of it, for use by the Department of Taxation pursuant to DAS's statutory authority to purchase supplies and services for state agencies. The bill describes STARS as an integrated tax collection and audit system to replace all of the state's existing separate tax software and administration systems for the various taxes collected by the state. Any lease-purchase arrangement used by DAS to acquire STARS, including any fractionalized interests in the arrangement (e.g., participations, certificates of participation, shares, or other instruments or agreements) must provide that at the end of the lease period, STARS becomes the property of the state.

DEPARTMENT OF TRANSPORTATION (DOT)

- Authorizes the Director of Transportation to conduct a 12-month pilot project for energy price risk management by entering into a contract with a qualified provider for services that may include rate analysis, negotiation services, market and regulatory analysis, budget and financial analysis, and mitigation strategies for volatile energy sources, but not energy procurement.

Department of Transportation Energy Risk Management Pilot Program

(Section 755.03)

The bill authorizes the Director of Transportation to conduct a 12-month pilot project to be completed not later than June 30, 2009, for energy price risk management by entering into a contract with a qualified provider of energy risk management services. The bill specifies that the contract may include rate analysis, negotiation services, market and regulatory analysis, budget and financial analysis, and mitigation strategies for volatile energy sources, including natural gas, gasoline, oil, and diesel fuel. However, the contract may not include energy procurement and also may not subject more than 30% of the Department's annual energy needs to the risk management services. The bill also requires the contract to specify that the Department may share the analysis and services of the energy risk management services provider with all state agencies and operations.

The Director is required to select the energy risk management services provider through a qualifications-based selection process, subject to Controlling Board approval. The bill allows the Director to use revenues from the state motor vehicle fuel tax or other funds appropriated by the General Assembly for the pilot

project to pay amounts due under the contract and requires the Director to deposit any amounts received under the contract into the Highway Operating Fund.

VETERANS HOME (OVH)

- Creates the Medicare Services Fund to support the operations of veterans' homes.

The bill creates the Medicare Services Fund in the state treasury to receive revenue resulting from federal reimbursement of Medicare services provided at state veterans' homes. Money in the fund is to be used to pay the operating costs of state veterans' homes. (R.C. 5907.16.) The bill removes Medicare reimbursements from the Ohio Veterans' Homes Rental, Service, and Medicare Reimbursement Fund (R.C. 5907.15), and thus renames the fund as the Ohio Veterans' Home Rental and Service Fund.

DEPARTMENT OF YOUTH SERVICES (DYS)

- Limits the balance in a county's Felony Delinquent Care and Custody Fund at the end of each fiscal year, beginning in FY 2008, and authorizes the Department of Youth Services to withhold and reallocate excess funds.

Balance in County Felony Delinquent Care and Custody Fund

(R.C. 5139.43)

The bill limits the balance in a county's Felony Delinquent Care and Custody Fund at the end of each fiscal year, beginning June 30, 2008, to the total moneys allocated to the county for the care and custody of felony delinquents during the previous fiscal year, unless the county has applied for and been granted an exemption by the Director of Youth Services. The Department of Youth Services must withhold an amount equal to any money in the county's Felony Delinquent Care and Custody Fund that exceeds the limit at the end of each fiscal year from future payments to the county and reallocate the amount withheld. The bill requires the Department to adopt rules for the withholding and reallocation of

the excess funds and for the criteria and process for a county to obtain an exemption from the withholding requirement.

MISCELLANEOUS

- Repeals (1) the Tobacco Master Settlement Agreement Fund and the schedule for transferring moneys in the fund to various other trust funds, (2) the Education Facilities Endowment Fund, and (3) the section that creates a legislative committee to periodically reexamine the use of tobacco master settlement agreement money.

- Removes a prohibition on the appropriation or transfer of GRF money for use by the Southern Ohio Agricultural and Community Development Foundation.

- Permits the state to assign and sell to the Ohio Tobacco Settlement Financing Authority all or a portion of the amounts to be received by the state under the Tobacco Master Settlement Agreement.

- Creates the Ohio Tobacco Settlement Financing Authority for the purpose of purchasing and receiving any assignment of the tobacco settlement receipts and issuing obligations that are not general obligations of the state.

- Specifies that these obligations are to be issued to pay the costs of capital facilities for: (1) housing branches and agencies of state government, including facilities for housing state agencies, for a system of common schools throughout the state, and for use as state correctional facilities or local jail facilities or workhouses, (2) state-supported or state-assisted institutions of higher education, (3) mental hygiene and retardation, and (4) parks and recreation.

- Regarding trust agreements between Ohio and a corporate trustee to secure obligations for various state-issued bonds, replaces the requirement that the trustee's principal place of business be in Ohio with a requirement that the trustee have a place of business in Ohio.

- Requires administrative agencies to send secondary notices in Administrative Procedure Act adjudications by ordinary mail after a

notice that was sent by certified or registered mail is returned because of a failure of delivery.

- Provides that any public contract in which a public official, a member of the public official's family, or any of the public official's business associates has an interest in violation of any of the prohibitions constituting the offense of having an unlawful interest in a public contract, or any contract securing the investment of public funds in which a public official, a member of the public official's family, or any of the public official's business associates has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees and that was entered into in violation of the prohibition against having an unlawful interest in a public contract, is void and unenforceable.

- Provides that any contract let by a regional airport authority in which a member of the authority's board of trustees is directly or indirectly interested is void and unenforceable.

Distribution under the Tobacco Master Settlement Agreement

Background

In November 1998 the Ohio Attorney General, along with the attorneys general of 45 other states, five U.S. territories, and the District of Columbia, entered into the Tobacco Master Settlement Agreement with the major American tobacco manufacturers to settle state lawsuits against the industry. Under the Agreement, Ohio receives settlement payments from the industry each year in perpetuity. In April 2006, the state received $291.1 million, with another $40.2 million placed in an escrow account pursuant to legal proceedings under the agreement.[147]

Tobacco Master Settlement Agreement Fund

(R.C. 183.01, 183.02, 183.021, 183.17, 183.33, 183.34, and 183.35)

Current law provides that Ohio must deposit all payments it receives under the Tobacco Master Settlement Agreement into the state treasury to the credit of

[147] Executive Budget for Tobacco Revenue for Fiscal Years 2007 and 2008 (May 2006), pp. 5 and 6.

the Tobacco Master Settlement Agreement Fund. Through 2025, the law provides for the transfer of the money in the Fund into the following trust funds following an established formula: the Tobacco Use Prevention and Cessation Trust Fund, the Southern Ohio Agricultural and Community Development Trust Fund, Ohio's Public Health Priorities Trust Fund, the Biomedical Research and Technology Transfer Trust Fund, the Education Facilities Trust Fund, the Education Facilities Endowment Fund, and the Education Technology Trust Fund. Also, the Director of Budget and Management must transfer to the Tobacco Settlement Oversight, Administration, and Enforcement Fund and the Tobacco Settlement Enforcement Fund necessary amounts to cover enforcement costs incurred by the Attorney General and the Tax Commissioner, respectively.

The bill repeals the section that creates the Tobacco Master Settlement Agreement Fund and the schedule for transferring moneys in the fund to the various other trust funds. The bill also modifies current law to reflect this repeal by changing several references to the fund in related sections.

Southern Ohio Agricultural and Community Development Foundation

(R.C. 183.17 and 183.33)

Additionally, the bill removes the authority of the Southern Ohio Agricultural and Community Development Foundation to request additional payments from the Tobacco Master Settlement Agreement Fund if the Foundation concludes that additional funding needs exist after its last scheduled allocation in 2011. The bill further removes a prohibition on the appropriation or transfer of GRF money for the Foundation's use.

Education Facilities Endowment Fund

(R.C. 183.27 and 183.33)

Current law creates the Education Facilities Endowment Fund in the state treasury as a source of revenue for constructing, renovating, or repairing primary and secondary schools in Ohio. The bill repeals the section that creates the fund and makes related changes to references to the fund.

Committee to reexamine use of Tobacco Master Settlement Agreement money

(R.C. 183.32)

Currently, Ohio law requires that in January every six years beginning in 2012, the Senate President appoint three senators and the Speaker of the House of Representatives appoint three house members to a committee to reexamine the use

of Tobacco Master Settlement Agreement funds. The committee is to determine if the Tobacco Master Settlement Agreement's distribution and uses of revenue reflect Ohio's priorities and report to the General Assembly any recommended changes. The bill repeals the section that creates this committee.

Securitization of Tobacco Master Settlement Agreement payments

Overview

(R.C. 183.51 and 183.52)

The bill permits the state to assign and sell to the Ohio Tobacco Settlement Financing Authority all or a portion of the amounts to be received by the state under the Tobacco Master Settlement Agreement ("TMSA"). It permits the Authority to accept and purchase those amounts, and to issue and sell obligations, as provided by the bill. These obligations are *not* to be general obligations of the state, but rather revenue bonds the debt service of which is to be paid by the tobacco settlement receipts received by the Authority.[148]

Creation of the Ohio Tobacco Settlement Financing Authority

(R.C. 183.52)

The bill creates the Ohio Tobacco Settlement Financing Authority "for the sole purpose of purchasing and receiving any assignment of the tobacco settlement receipts and issuing obligations . . . to provide financing of essential functions and facilities."[149] The Authority consists of the Governor, the Director of Budget and Management, the Tax Commissioner, the Treasurer of State, the Attorney General, and the Auditor of State.[150] The Governor is to serve as the chair of the Authority and the Director of Budget and Management as its secretary. The Authority may have other officers who need not be members of the Authority. Four members of the Authority constitute a quorum and the affirmative vote of four members is necessary for any action taken by vote of the Authority. Members of the

[148] Consequently, the full faith and credit, revenue, and taxing power of the state cannot be pledged to the payment of debt service on the obligations (R.C. 183.51(Q)).

[149] The bill states that the Authority is "a body, both corporate and politic, constituting an agency and instrumentality of this state and performing essential functions of the state" (R.C. 183.52(A)).

[150] Each member may designate an employee or officer of their office to attend meetings. The designee, when present, is to be counted in determining whether a quorum is present, and may vote and participate in all proceedings and actions of the Authority. (R.C. 183.52(B).)

Authority are to receive no added compensation for their services as such members, but may be reimbursed for their necessary and actual expenses incurred in the conduct of the Authority's business. The bill requires the Office of Budget and Management to provide staff support to the Authority.

The Authority is to be treated and accounted for "as a separate and independent legal entity" with its separate purposes, as set forth in the bill, despite the existence of "common management." The assets, liabilities, and funds of the Authority cannot be commingled with those of the state, and contracts entered into by the Authority must be entered into in the name of the Authority and not in the name of the state.

Terms of the assignment and sale

(R.C. 183.51(A)(7) and (B))

Any assignment and sale under the bill is irrevocable in accordance with its terms during the period any obligations secured by amounts so assigned and sold are outstanding under the applicable bond proceedings, and is to constitute a contractual obligation to the holders or owners of those obligations. Any such assignment and sale is to be treated as "an absolute transfer and true sale for all purposes," and not as a pledge or other security interest. Once the assignment and sale occur, all of the following apply:

(1) The state does not have any right, title, or interest in the portion of the receipts under the TMSA so assigned and sold, other than any residual interest that may be described in the bond proceedings for those obligations;

(2) That portion, if any, (a) is the property of the Authority and not of the state, (b) must be paid directly to the Authority, and (c) is to be owned, received, held, and disbursed by the Authority and not by the state;

(3) The state (a) cannot agree to any amendment of the TMSA that "materially and adversely affects" the Authority's ability to receive the portion of the receipts assigned and sold to the Authority, (b) must enforce by the Attorney General the rights of the Authority to receive the receipts to the full extent permitted by the TMSA, (c) cannot limit or alter the rights of the Authority to fulfill the terms of its agreements with the holders or owners of obligations outstanding under the bond proceedings, (d) cannot in any way impair the rights and remedies of the holders or owners of obligations outstanding under the bond proceedings or the security for those obligations, and (e) cannot fail to enforce

R.C. Chapter 1346. (regarding escrow accounts for those tobacco product manufacturers that are not "participating manufacturers" under the TMSA).[151]

The Governor and the Director of Budget and Management, in consultation with the Attorney General (on behalf of the state), and any member or officer of the Authority as authorized by the Authority (on behalf of the Authority), may take any action and execute any documents necessary to effect the assignment and sale and the acceptance of the assignment and title to the receipts.

Purpose of the obligations

(R.C. 183.51(A)(10) and (D))

Under the bill, "**obligations**" means bonds, notes, or other evidences of obligation of the Authority that are issued by the Authority under the bill and Section 2i, Article VIII of the Ohio Constitution, for the purpose of providing funds to the state--in exchange for the assignment and sale described above--to pay costs of capital facilities for:

(1) Housing branches and agencies of state government, including facilities for housing state agencies, for a system of common schools throughout the state, and for use as state correctional facilities or county, multicounty, municipal-county, and multicounty-municipal jail facilities or workhouses;

(2) State-supported or state-assisted institutions of higher education;

(3) Mental hygiene and retardation; and

(4) Parks and recreation.

Issuance and sale of obligations

(R.C. 183.51(C) to (E) and (G))

Each issue of obligations must be authorized by resolution or order of the Authority. The aggregate principal amount of obligations issued under the bill cannot exceed $6 billion, exclusive of obligations issued to refund, renew, or advance refund other obligations issued or incurred. At least 75% of the aggregate net proceeds of the obligations issued (exclusive of those issued to refund, renew, or advance refund other obligations) must be paid to the state for deposit into the

[151] The bill states that it is not to be construed as precluding the state from regulating or permitting the regulation of smoking or from taxing and regulating the sale of cigarettes or other tobacco products (R.C. 183.51(B)).

School Building Program Assistance Fund created under current law.[152] Unless otherwise provided by law, the latest principal maturity may not be later than the earlier of (1) December 31 of the 50th calendar year after the year of issuance of the particular obligations or (2) the 50th calendar year after the year in which the original obligation to pay was issued or entered into.

The bill permits the Authority--without the need for any other approval--to appoint paying agents, bond registrars, securities depositories, credit enhancement providers or counterparties, clearing corporations, and transfer agents, and to retain the services of attorneys, underwriters, investment bankers, financial advisers, accounting experts, marketing, remarketing, indexing, and administrative agents, other consultants, and independent contractors as are necessary in the Authority's judgment. Financing costs are payable, as may be provided in the bond proceedings, from the proceeds of the obligations, from special funds, or from other moneys available for the purpose.

The Authority may covenant in the bond proceedings that (1) the state and applicable officers and state agencies, including the General Assembly--so long as any obligations issued under the bill are outstanding--must maintain statutory authority for and cause to be collected and paid directly to the Authority the pledged receipts for the payment of debt service on the obligations and for the establishment and maintenance of any reserves and other requirements provided for in the bond proceedings, (2) the state must enforce by the Attorney General the provisions of the TMSA that require payment of amounts to the state that have been assigned and sold to the Authority, and (3) the state must not fail to enforce R.C. Chapter 1346.

Dissolution of the Authority

(R.C. 183.51(B))

The bill provides that--no later than two years following the date on which there are no longer any obligations outstanding under the bond proceedings--all assets of the Authority are to vest in the state, the Authority is to execute any necessary assignments or instruments, including any assignment of any right, title, or ownership to the state for receipt of amounts under the TMSA, and the Authority is to be dissolved.

[152] See R.C. 3318.25.

Bond trustee's principal place of business

(R.C. 151.40, 164.09, 166.08, 1555.08, 1557.03, 3318.26, 5528.54, and 5531.10)

Current law expressly provides that certain state bonds and other obligations may be secured by a trust agreement between the state and a corporate trustee. The trustee may be any trust company or bank having *its principal place* of business in Ohio. The bill instead requires that the corporate trustee have *a place* of business in Ohio. This change applies to the following categories of bonds:

--Obligations issued by the Treasurer of State for school building program assistance before December 1, 1999, for the Public Works Commission's local government infrastructure program before September 30, 2000, and for the Clean Ohio Revitalization Program, the Department of Development's Facilities Establishment Fund and related economic development assistance programs, and the Department of Transportation's State Infrastructure Bank.

--Obligations issued by the Commissioners of the Sinking Fund before September 30, 2000, for coal research and development, parks and natural resources, and highway capital improvements.

Ordinary mail notice in adjudications under the Administrative Procedure Act

(R.C. 119.07)

Under the Administrative Procedure Act, administrative agencies conduct adjudications and issue orders pertaining to the legal rights and obligations of parties who are subject to the authority of the agency. For example, a licensing board will conduct an adjudication when considering disciplinary action against a licensee. An adjudication order generally is not valid unless the party who is the subject of the order has been afforded an opportunity for a hearing. Similarly, if the notice provisions are not followed as provided by law, any order entered in an adjudication is invalid. Accordingly, administrative agencies generally are required to send notices in adjudications to parties by registered or certified mail. When those notices are returned for a failure of delivery, the agency must either serve the party by personal service or publish notice in a newspaper of general circulation once a week for three consecutive weeks in the county of the party's last known place of residence or business.

The bill provides a less costly means of serving notice after a primary notice sent by registered or certified mail is returned because of a failure of delivery. Under the bill, a secondary notice must be sent by ordinary mail to the party at the party's last known address and the administrative agency sending the

notice must obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained.

If a secondary notice sent by ordinary mail is returned showing failure of delivery, the agency then must notify the attorneys or other representatives of record representing the party of the failure of delivery and serve a copy of the notice upon them by ordinary or registered or certified mail. If ordinary mail is used, the agency must obtain a certificate of mailing. Service is complete when the notice is mailed.

If there are no attorneys or other representatives of record, the agency must accomplish service of notice under the current requirement of either personal service or newspaper publication. When personal service is used, an employee or agent of the agency may make personal service on the party. If newspaper publication is used, only a summary of the substantive provisions of the notice must be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known address of the party is located. And, when notice is given by publication, a proof of publication affidavit, with the first publication of the notice set forth in the affidavit, must be mailed by ordinary mail to the party at the party's last known address; and, as under current law, the notice is deemed received as of the date of the last publication.

The bill authorizes an employee or agent of an agency to make personal delivery of a notice upon a party at any time.

Refusal of delivery by personal service or by mail is not failure of delivery. A failure of delivery occurs only when, with reasonable diligence, a party cannot be found to make personal service of a notice, or if a mailed notice is returned by the postal authorities marked undeliverable, addressee unknown, or forwarding address unknown or expired. A party's last known address is the mailing address of the party appearing in the records of the agency.

Void public contracts in which public official has unlawful interest

(R.C. 2921.42(A))

Having an unlawful interest in a public contract

Existing law. With certain exceptions, current law prohibits any public official from knowingly doing any of the following:

(1) Authorizing, or employing the authority or influence of the public official's office to secure authorization of any public contract in which the official, a member of the official's family, or any of the official's business associates has an interest;

(2) Authorizing, or employing the authority or influence of the public official's office to secure the investment of public funds in any share, bond, mortgage, or other security, with respect to which the official, a member of the official's family, or any of the official's business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees;

(3) During the public official's term of office or within one year thereafter, occupying any position of profit in the prosecution of a public contract authorized by the official or by a legislative body, commission, or board of which the official was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder;

(4) Having an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which the public official is connected;

(5) Having an interest in the profits or benefits of a public contract that is not let by competitive bidding if required by law and that involves more than $150.

A violation of any of the above prohibitions is the offense of having an unlawful interest in a public contract.

In the absence of bribery or a purpose to defraud, a public official, member of the official's family, or any of the official's business associates is not considered as having an interest in a public contract or the investment of public funds, if specified circumstances with respect to the person's ownership of shares of or relationship to the corporation or organization apply. The above prohibition does not apply to: (a) a public contract in which a public official, member of the official's family, or one of the official's business associates has an interest, if the subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved and other specified criteria apply, or (b) a public contract in which a township trustee in a township with a population of 5,000 or less in its unincorporated area, a member of the township trustee's family, or one of the trustee's business associates has an interest, if the subject of the public contract is necessary supplies or services for the township, the amount of the contract is less than $5,000 per year, and other specified criteria apply. (R.C. 2921.42(B), (C), and (F).)

"Public contract" means: (a) the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any of its political subdivisions, or any agency or instrumentality of either, including the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either, or (b) a contract for the

design, construction, alteration, repair, or maintenance of any public property (R.C. 2921.42(G)).

Operation of the bill. The bill provides that any public contract in which a public official, a member of the public official's family, or any of the public official's business associates has an interest in violation of any of the prohibitions described above in "***Existing law***" is void and unenforceable. It further provides that any contract securing the investment of public funds in which a public official, a member of the public official's family, or any of the public official's business associates has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees and that was entered into in violation of existing law's prohibition (see paragraph (2) under "***Existing law***," above) is void and unenforceable. (R.C. 2921.42(H).)

Contract of regional airport authority

Under existing law, the board of trustees for a regional airport authority is appointed as provided in the resolution creating airport authority. Each member of the board of trustees, before entering upon the member's official duties, must take and subscribe to an oath or affirmation that the member will honestly, faithfully, and impartially perform the duties of office, and that the member will not be interested directly or indirectly in any contract let by the regional airport authority.

The bill provides that any contract let by the regional airport authority in which a member of the board of trustees is directly or indirectly interested is void and unenforceable. (R.C. 308.04.)

Supreme Court case

In *Morrow Cty. Airport Authority v. Whetstone Flyers, Ltd.* (2007), 112 Ohio St.3d 419, the Ohio Supreme Court held that in the absence of a statutory provision to the contrary, the contract in question was not void even though it was entered into in violation of R.C. 308.04 and 2921.42(A)(1).

NOTE ON EFFECTIVE DATES

(Sections 809.03 to 821.21)

Section 1d, 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, 2009, unless its context clearly indicates otherwise.

HISTORY

ACTION	DATE
Introduced	03-20-07

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