Bill Analysis

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Legislative Service Commission

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127th General Assembly
(As Passed by the House)

Reps. Dolan, Peterson, R. McGregor, Hottinger, Bacon, Evans, Hite, Budish, Strahorn, Yates, Chandler, D. Stewart, Boyd, R. Hagan, Skindell, Brown, Bolon, Adams, Aslanides, Barrett, Beatty, Blessing Bubp, Celeste, Collier, Combs, DeBose, DeGeeter, Domenick, Fende, Flowers, Gibbs, Goodwin, Goyal, J. Hagan, Harwood, Healy, Heard, Jones, Koziura, Letson, Luckie, Mallory, Miller, Otterman, Patton, Redfern, Schindel, Schlichter, Setzer, Szollosi, Uecker, Ujvagi, Wagoner, White, B. Williams, S. Williams, Zehringer

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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 and Comparison Document for H.B. 119 for an analysis of such provisions.

DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS)

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

- Removes the option of the state to self-insure for the purpose of insuring the state through the fidelity bonding of state officers and agents who are required by law to be covered by a fidelity bond.

- 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, but no other state agency, to provide printing or office reproduction services for political subdivisions.

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

- Transfers to the Department 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, eliminates specific authorization to establish and administer a self-insured fidelity bond program, and specifically disclaims that nothing in another existing R.C. section can shall be construed to allow the Department of Administrative Services, through the Office of Risk Management, to administer the state's fidelity bonding program through a program of self-insurance.

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 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.

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

[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; 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.

assigned, with each step providing for a specifically set hourly wage or annual salary.

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.[2]

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.

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.

[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)).

Transfer to the Department 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 Office currently located on Integrity Drive in Columbus becomes part of the Department of Administrative Services (DAS).[3] 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.

[3] 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.

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 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.[4]

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

[4] 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.

the amount certified from the IT Services Delivery Fund or the unexpended appropriations to the State Printing Fund.

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,[5] 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)

- Modifies the duty of the Director of Aging to disseminate Alzheimer's disease training materials for health and social service professionals.
- 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.

[5] 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)

Current law requires the Director of Aging to develop and disseminate new Alzheimer's disease training materials or to disseminate existing training materials for health and social service 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 maintains this requirement, but specifies that the Director must disseminate the Alzheimer's disease training materials through the Department of Aging's internet web site. The bill also gives the Director the option of either developing the training materials or obtaining them from other sources.

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.[6] The bill requires the Director of Aging to adopt rules certifying 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

[6] 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.

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.

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 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.

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 126.21(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.

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.

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

(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. 126.24)

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. 126.24)

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)

- 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 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.

- Specifies that emergency shelter care programs for unaccompanied youth ages 17 and under are eligible to receive housing trust fund grants, loan guarantees, and loan subsidies.

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.

Ohio Housing Trust Fund

(R.C. 174.03)

Under existing law the Department of Development and the Ohio Housing Finance Agency provide grants, loan guarantees, and loan subsidies using Ohio Housing Trust Fund monies for activities relating to housing for low- and moderate-income families and individuals including acquiring, financing, constructing, leasing, rehabilitating, remodeling, improving, and equipping publicly or privately owned housing.

The bill specifies that those activities may include emergency shelter care programs for unaccompanied youth ages 17 and under.

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.
- 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.

- Requires the Department of Education once every two years to prepare an analysis of the special education funding weights.

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.

- Establishes the Biodiesel School Bus Program under which the Department of Development awards grants to offset the incremental costs incurred by school districts using biodiesel instead of petroleum diesel for pupil transportation.

II. Community Schools

Moratorium

- Permits the establishment of a start-up community school after June 30, 2007, only if the school's governing authority contracts with an operator that manages other schools in the United States that perform at a level higher than academic watch.

- Limits an operator to managing one start-up community school established after June 30, 2007, for each school it manages nationwide that performs at a level higher than academic watch.

- Permits the governing authority of a start-up community school that is not managed by an operator to open another community school in the 2007-2008 school year if (1) the governing authority filed a copy of its contract with the new school's sponsor with the Superintendent of Public Instruction prior to March 15, 2006, and (2) the current school has been open for at least four years, is rated excellent or effective, and made adequate yearly progress for the previous school year.

- 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, but allows an ESC that sponsors schools outside of that geographic area on the provision's effective date to continue to sponsor those schools.

- 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 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.

Unauditable community schools

- Requires the Auditor of State to provide notification of a finding that a community school is unauditable to the school, its sponsor, and the Department of Education, and to post the notification on the Auditor of State's web site.

- Prohibits the sponsor of an unauditable community school from entering into contracts with additional community schools until the Auditor of State completes a financial audit of the school.

- Requires the sponsor of an unauditable community school to provide the Auditor of State with a description of (1) the process the sponsor will use to understand the circumstances that led to the school becoming unauditable, (2) a plan for providing the Auditor of State with the necessary documentation to complete financial audits, and (3) the actions the sponsor will take to implement the plan in (2).

- Specifies that if a community school fails to make progress in bringing its records into auditable condition within 90 days after being declared unauditable, the Department of Education must cease all state payments to the school until an audit is completed.

Other provisions

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

- Prohibits the Department of Education from withholding state payments to a community school for a particular student, on the basis of a school

district's challenge, unless the school district provides evidence that the student should not be included in the community school's enrollment.

- Permits a community school student to enroll in a career-technical program offered by the student's resident city, exempted village, or local school district and proportions state funding for that student between the community school and the resident district based on the time the student attends each school.

- 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.

- Requires school districts to offer property suitable for classroom space for sale to start-up community schools in the district if the district has not used at least 75% of the building for academic instruction for at least 75% of a school year and has not adopted a plan to so use at least 75% of that building for at least 75% of the next school year.

III. Other Education Provisions

Existing scholarship programs

- Retains the Educational Choice Scholarship Pilot Program, the Cleveland Scholarship Program, and the Autism Scholarship Program.

Special Education Scholarship Pilot Program

- Creates the Special Education Scholarship Pilot Program to provide scholarships for disabled children in grades K through 12 to attend alternative public or private special education programs in fiscal years 2008 through 2013.

- Requires the Department of Education to develop a document that compares rights under state and federal special education law and rights under the Special Education Scholarship Pilot Program and requires school districts to distribute that document to the parents of all special education students.

- Requires the Department of Education to conduct a "formative evaluation" of the Special Education Scholarship Pilot Program by December 31, 2009.

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.

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, with an exception for community schools operating dropout recovery and prevention programs.

- 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.

- Requires, upon the release of the elementary achievement tests as public records, that the Department of Education inform school districts of the state academic content standard and corresponding benchmark to which each redacted test question relates, except for field test questions.

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, to identify which "adult and career-technical education programs," other than the adult basic and literacy education (ABLE) programs, to move from the Department to the Board of Regents, and to move those programs by July 1, 2008.

- Requires the Superintendent of Public Instruction to appoint a Director of Agricultural Education responsible for disseminating information on agricultural education to school districts.

- Requires the Department of Education to maintain an appropriate number of employees focusing on agricultural education, at least three of whom are program consultants who provide regional assistance to school districts where one may coordinate local Future Farmers of America activities.

- Changes the biology requirement in the Ohio Core curriculum to "life sciences."

- Permits a school district to transport a student who does not reside in the district to a nonpublic school, if (1) the student's resident district is not required to transport the student and (2) the parent agrees to reimburse the nonresident district for costs that exceed the amount the district receives from the state.

- Authorizes the Department of Education to determine that a school district other than the one named in a juvenile court's initial order, when removing a child from the child's home or when placing the child with someone other than the child's parent, is responsible for paying the cost of educating the child (rather than merely to recommend such a change to the juvenile court as under current law).

- Permits real property owners within a portion of a school district in which no voters reside to petition for the State Board of Education to transfer that portion to an adjoining school district.

- Implements, with substantial changes, the provisions in Am. Sub. H.B. 66 (biennial budget act) of the 126th General Assembly relative to health care plans for public school employee personnel.

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. Other school funding background is available online at http://www.lsc.state.oh.us/schoolfunding/index.htm.

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.
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.)
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.

SYNOPSIS OF THE BILL'S SCHOOL FUNDING PROVISIONS	
FUNDING COMPONENT	**SYNOPSIS**
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 is 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.
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.)

SYNOPSIS OF THE BILL'S SCHOOL FUNDING PROVISIONS	
FUNDING COMPONENT	**SYNOPSIS**
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 and 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.) Revises the spending requirements (see "***Poverty-based assistance spending requirements***" below).

SYNOPSIS OF THE BILL'S SCHOOL FUNDING PROVISIONS	
FUNDING COMPONENT	**SYNOPSIS**
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. Requires the Department once every two years to prepare an analysis of the special education weights (see "***Analysis of special education funding weights***" below).
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.[7])

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

[7] 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.

Analysis of special education funding weights

(R.C. 3317.013)

The combined state and local funding for most special education and related services for school districts and community schools is calculated using one of six specific weights that are tied to recognized categories of disabilities. Each weight represents an expression of additional costs attributable to the special circumstances of the students in each category. The weights range from 0.2892 for a speech and language disabled student to 4.7342 for a student who is both visually and hearing disabled, who is autistic, or who suffers from a traumatic brain injury. The weights currently, and under the bill, are phased in at 90% of their stated values.

The bill requires the Department of Education, by January 31 of each odd-numbered year, beginning in 2009, to prepare an analysis of whether the special education funding weights continue to accurately reflect the cost of providing special education and related services to students in each of the respective six categories.

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).[8]

[8] 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

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 made.[9] 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.

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valuation recalculations or its replacement payments due to the phase-out of the tangible personal property tax. See R.C. 5727.84.

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

Biodiesel School Bus Program

(R.C. 3327.17)

The bill creates the Biodiesel School Bus Program. The Department of Development is responsible for administering the program, which provides grants to school districts that use biodiesel instead of 100% petroleum diesel for pupil transportation. The grants are to help offset the incremental costs incurred by school districts that choose to use biodiesel. "Biodiesel" is a type of diesel fuel that is derived from vegetable oils or animal fats.

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 academic emergency, or (3) a school district in the original community school pilot project area (Lucas County).[10]

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;

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

(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.[11]

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

Community school moratorium

(R.C. 3314.016)

The bill places a moratorium on new start-up community schools after June 30, 2007, with two exceptions similar to the exceptions to the current statewide caps on community schools that expire July 1, 2007 (see "***Current law--caps and exceptions***" below). The moratorium does not apply to conversion community schools. Also, the bill does not revise the existing moratorium on new Internet- or computer-based community schools (e-schools), which is in effect until the General Assembly enacts standards governing the operation of e-schools.

Operator exception

(R.C. 3314.016(A))

Under the first exception to the bill's moratorium, a start-up community school may be established after June 30, 2007, if its governing authority enters into a contract with an operator that manages other schools in the United States that perform at a level higher than academic watch, as determined by the Department of Education.[12] An operator is (1) an individual or organization that manages the daily operations of a community school or (2) a nonprofit organization that provides programmatic oversight and support to a community school and that retains the right to terminate its affiliation with the school for failure to meet the organization's quality standards.[13] However, the bill limits the number of community schools that an operator may contract with under this

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

[12] 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 established by the State Board of Education or has a performance index score of 70-79 (R.C. 3302.03(B)).

[13] R.C. 3314.014, not in the bill.

exception to an amount equal to the number of the operator's schools nationwide that perform better than schools in academic watch. An operator, for example, that manages two schools in continuous improvement and one effective school could manage three start-up community schools established after June 30, 2007. If two of those new schools then perform better than academic watch, the operator could manage two additional start-up community schools established after that date.

Exception for non-operator-managed schools

(R.C. 3314.016(B))

The bill creates another exception to the moratorium for certain high performing schools that are *not* managed by operators. It permits the governing authority of a start-up community school that is not sponsored by the school district in which it is located to enter into another contract with the same sponsor, or a different sponsor, to open in the 2007-2008 school year one additional school serving *the same grade levels and providing the same educational program*, if the following conditions are met:

(1) The governing authority and the sponsor entered into their contract and filed a copy with the Superintendent of Public Instruction prior to March 15, 2006;

(2) The governing authority's existing school currently is rated as excellent or effective in the Department of Education's annual rating of school buildings;

(3) The existing school made adequate yearly progress for the previous school year;[14]

(4) The existing school has been in operation for at least four school years; and

(5) The existing school is not managed by an operator.

This exception to the moratorium does not apply to schools sponsored by the school districts in which they are located. Moreover, it does not authorize any new school established under the exception to be sponsored by such a district.

[14] The Department of Education is required under the federal No Child Left Behind Act and conforming state law to determine whether each district or school building, including each community school, has met a particular performance target (called "adequate yearly progress" or "AYP") based on achievement test scores among students in specified subgroups. (20 U.S.C. 6311(b)(2)(E) to (J) and R.C. 3302.03(A).)

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. 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. However, 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 and renew its contract with the school. But the ESC cannot contract with any additional community school that is outside the geographic boundaries set by the bill.

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*.[15]

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;

[15] 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 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).)

(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 will enroll at least the statutory minimum of 25 students in the coming school year;[17]

(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;[18]

(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.

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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. 3314.03(A)(11)(a), not in the bill.

[18] See R.C. 3314.011, not in the bill.

Unauditable community schools

(Section 269.60.60)

Under the bill, if the Auditor of State finds a community school to be unauditable, the Auditor of State must provide written notification of that fact to the school, the school's sponsor, and the Department of Education, and post the notification on the Auditor of State's web site. The school's sponsor is prohibited from entering into contracts with any additional community schools until the Auditor of State is able to complete a financial audit of the school. Also, within 45 days after the notification, the sponsor must send a written response to the Auditor of State describing (1) the process the sponsor will use to review and understand the circumstances that led to the school becoming unauditable, (2) a plan for providing the Auditor of State with the documentation needed to complete an audit and for ensuring that all financial documents are available in the future, and (3) the actions the sponsor will take to ensure that the plan is implemented.

If the community school fails to make reasonable efforts and continuing progress to bring its accounts and records into an auditable condition within 90 days after being found unauditable, the Auditor of State must notify the Department of Education, which must immediately cease all state payments to the school. As under continuing law, the Auditor of State also must request the Attorney General to take necessary legal action to compel the school to bring its financial records into order.[19] If the Auditor of State subsequently is able to complete a financial audit of the school, the Department must release the funds withheld from the school.

All of these provisions are enacted in uncodified law. The bill states that uncodified provisions of the bill have no effect after June 30, 2009, unless their context clearly indicates otherwise.[20] It is not certain, therefore, whether these provisions would expire on that date or could be construed to operate after that date.

[19] The Attorney General may act to prevent the unlawful expenditure of public funds, cancel illegal contracts, enforce liabilities arising from false certifications or failure to furnish financial reports, ensure compliance with requirements or opinions made in an audit report, or enforce the laws relating to public offices and the expenditure of public funds (R.C. 117.41 and 117.42, neither section in the bill).

[20] Section 809.03.

Enrollment challenge by school district

(R.C. 3314.08(O))

The bill establishes a procedure for resolving disputes between a school district and a community school over whether a particular student is enrolled in the community school and, consequently, whether funds should be deducted from the district's state aid account and paid to the school for that student. Under the bill, if a school district challenges a community school's enrollment figures, the Department of Education must require the district to submit evidence of its claims. In addition, the Department must provide the governing authority of the community school with written notice stating the specific grounds for the challenge. The community school must be permitted to submit documentation to confirm or correct its enrollment reports that are the subject of the challenge. The Department must set a reasonable deadline for submission of all evidence by the district and the community school.

In all challenges, the school district bears the burden of proof that the community school should not be paid for a particular student. If the Department finds that the district has submitted evidence by the deadline and met its burden of proof, the Department must withhold payments to the community school for that student. If the community school later submits documentation that the Department finds confirms or corrects the school's earlier reports regarding the student, the Department must resume payments to the school for that student and, if appropriate, release the funds that were formerly withheld. The Department must dismiss any challenge in which the district fails to submit evidence by the deadline or does not meet its burden of proof or in which the community school provides documentation confirming or correcting the disputed reports.

Finally, the bill prohibits the Department from withholding any other payments from a community school without first providing the school's governing authority with written notice of the amount to be withheld, the reasons for the withholding, and offering an opportunity for a hearing on the matter. The appeal process is the same one used in the case of enrollment reviews of community schools initiated by the Department. Specifically, the community school may appeal the Department's decision to the State Board of Education within ten business days after receiving the withholding notice. The State Board must hold an informal hearing within the next 30 days and issue its decision, which is final, within 15 days after the hearing.

Enrollment of community school students in career-technical programs in their resident districts

(R.C. 3314.087)

The bill permits a community school student to enroll in a career-technical program operated by the student's resident city, exempted village, or local school district. When a student is simultaneously enrolled in a community school and a career-technical program under the bill's provisions, the Department of Education must allocate state funding for that student between the community school and the resident district in proportion to the time the student attends each school. As under current law, community school students also may enroll in vocational education programs provided by the joint vocational school district that serves the student's resident school district, if the community school has an agreement with the joint vocational district permitting the enrollment.

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)

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

The bill instead requires the property to be offered for sale when the district has not used at least 75% of the building for academic instruction for at least 75%

of a school year and has not adopted a plan for using at least 75% of the building for that purpose for at least 75% of the next school year. Therefore, under the bill, districts must offer property primarily used for other educational purposes, such as administration, for sale to community schools after one year, unless they plan to begin using the space for academic instruction in the next year.

As under current law, if a community school buys 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

Existing scholarship programs

The bill retains the current laws implementing the Educational Choice Scholarship Pilot Program. The As Introduced version of the bill had proposed to repeal the laws.[21] The bill also retains the Autism Scholarship Program and the Cleveland Scholarship Program.

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 $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.

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.

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[21] 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, none in the bill.

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 authorized since 1995.

Special Education Scholarship Pilot Program

(R.C. 3310.52, 3310.53, and 3310.57)

The bill establishes the Special Education Scholarship Pilot Program to provide scholarships on behalf of disabled children to attend special education programs other than those offered by their school districts. The program applies to any identified disabled child in grades K through 12. A scholarship may be used to pay the expenses of a public or private provider of special education programs for implementation of the child's IEP. While a child is using a scholarship, the school district in which the child would otherwise be enrolled has no obligation to provide the child with a free appropriate public education. But the bill also specifies that if that district has agreed to provide some services for the child, or if the district is required by separate law to provide some services, including transportation services, the district may not discontinue them pending completion of any administrative proceedings regarding those services. (See "***Continuation of some school district services***" below.) The district also has a continuing obligation to develop the child's IEP.

Background

Under the federal Individuals with Disabilities Education Act (IDEA), children identified as disabled are entitled to a "free appropriate public education" that provides special education and related services to enable them to benefit from educational instruction.[22] Under both the IDEA and state law, an "individualized education program" (IEP) must be developed for each child identified as disabled. The IEP specifies the services to which the child is entitled and are therefore guaranteed by law.[23] A child's school district may provide the services specified in

[22] See 20 U.S.C. 1400 et seq. Related services include transportation and support services such as speech-language pathology and audiology services, psychological services, physical and occupational therapy, counseling services, and diagnostic medical services (20 U.S.C. 1401(26)).

[23] See 20 U.S.C. 1414 and R.C. 3323.01 (not in the bill). The IEP is developed by a team including representatives of the child's resident school district (or community school) and the child's parent or the parent's counsel.

the IEP, or it may enter into an agreement with another district or entity to provide those services.

Under Ohio law, school districts and community ("charter") schools receive additional per-pupil funding on top of the base-cost formula amount for each special education student because of the extra expenses associated with providing educational services. Special education students are assigned to one of six possible categories according to the severity of their disabilities. Each category has a corresponding weight, which is expressed as a percentage of the base-cost formula amount. The additional funds generated by the special education weights are shared by the school district and the state in the same percentage as the base-cost funding.[24]

Eligibility

"Qualified special education child" (R.C. 3310.51(I), 3310.61, and 3310.62). Under the bill, a child is eligible, or "qualified," for a special education scholarship if the child's resident school district has identified the child as disabled and developed an IEP for the child. In addition, the child must either (1) have been enrolled in the district in which the child is entitled to attend school in any grade from K through 12 in the school year prior to the year in which the scholarship would first be used or (2) be eligible to enroll for services from that district in the school year in which the scholarship would first be used. The bill explicitly specifies that a child attending a public special education program under an agreement between the child's school district and the program provider or a child attending a community school may apply for a scholarship.[25]

A child is not eligible for a scholarship for the first time while the child's IEP is being developed or while any administrative or judicial proceedings regarding the content of that IEP are pending. On the other hand, the bill also specifies that, in the case of a child for whom a scholarship already has been awarded, development of subsequent IEPs and the prosecuting of administrative or judicial mediation or proceedings with respect to any of those subsequent IEPs do not affect continued eligibility for scholarship payments. In other words, a

[24] See R.C. 3317.022. School districts may receive an additional "catastrophic cost" subsidy for some special education students if the district's costs to serve the students exceed a statutorily specified threshold (R.C. 3317.022(C)(3)).

[25] Under the bill, a community school is not considered a child's school district of residence (R.C. 3310.51(L)). Therefore, any IEP developed by the community school would not qualify the child to receive a scholarship. It is not clear under the bill whether a community school student would need to enroll in a district school to receive a new district-developed IEP prior to receiving a scholarship.

scholarship will not be awarded and paid until the child's IEP is in place and it is clear that there are no challenges to that IEP. But *future* challenges to *subsequent* IEPs will not disqualify the child for a scholarship.

"Eligible applicant" (R.C. 3310.51(D), 3310.52, 3310.53, 3310.57, 3310.61, and 3310.62). The bill permits the following individuals to apply for and accept a scholarship for a qualified special education child:

(1) The child's custodial natural or adoptive parent or parents. The bill specifically excludes a parent whose custodial rights have been terminated.

(2) The child's guardian;

(3) The child's custodian other than the parent;

(4) The child's grandparent if the grandparent is an attorney-in-fact under a power of attorney or if the grandparent has executed a caregiver affidavit (both under continuing law);[26]

(5) The child's "surrogate parent" appointed under state and federal special education law;[27] or

(6) The child, if the child does not have a custodian or guardian and is at least 18 years old.

Annual limit on the number of scholarships

(R.C. 3310.52(B))

The bill limits the number of scholarships that may be awarded each year under the Special Education Scholarship Pilot Program to not more than 3% of the

[26] Current law, not changed by the bill, permits a grandparent to be named the attorney-in-fact in a power of attorney executed by a child's parent or permits a grandparent to execute a caregiver affidavit, if the child's parents cannot be located after reasonable attempts to do so. Either instrument authorizes the grandparent, with whom the child lives, to register the child in school and to seek medical care for the child. (See R.C. 3109.51 to 3109.80, none in the bill.)

[27] Under state and federal law, a public agency responsible for the care of a disabled child must appoint a surrogate parent if it determines that no parent of the child can be found, the child is "a ward of the state," or the child is a "homeless youth." That surrogate parent then is responsible to make decisions regarding the child's education that otherwise would be the responsibility of the child's parent. (See R.C. 3323.05(B) and 3323.051 (neither section in the bill) and 34 C.F.R. 300.519.)

number of identified disabled students residing in the state during the previous fiscal year.

Alternative providers of special education programs

Scholarships may be used to pay for special education programs provided by alternative public providers or by private entities registered with the Superintendent of Public Instruction.

Alternative public providers (R.C. 3310.51(A)). An alternative public provider must be either (1) a school district other than the district obligated to educate the disabled child (or the child's resident school district, if different) or (2) another public entity that agrees to enroll the child and implement the child's IEP. In addition, the alternative public provider must be an entity to which the eligible applicant, rather than a school district or other public entity, owes fees for the services provided to the child. In other words, an eligible applicant cannot use a scholarship to enroll a child in a school district or other public entity to which the child's school district would send the child for special education services because, in that case, the child's district would be required to pay the receiving district or entity for the services provided to the child. Neither may an eligible applicant use a scholarship to enroll the child in a community school because the community school, as a public school, would receive funds to educate the child even without the scholarship. The eligible applicant must use the scholarship to pay for special education and related services provided by a school district or public entity from which the eligible applicant otherwise would not receive those services for the child free of charge.

Registered private providers (R.C. 3310.58 and 3310.59). Nonpublic schools and other private entities may accept scholarship children under the bill, but first they must register with the Superintendent of Public Instruction. To be registered by the Superintendent, the private school or entity must meet the following requirements:

(1) Its special education program meets the minimum education standards established by the State Board of Education;[28]

(2) It does not discriminate on the basis of race, ethnicity, national origin, religion, sex, disability, age, or ancestry;

[28] The State Board must prescribe minimum standards for public and private elementary and secondary schools. These standards cover teacher certification, administrative organization, graduation requirements, curriculum, assessments, health and safety issues, length of the school day, and other topics. (See R.C. 3301.07(D), not in the bill, and Ohio Administrative Code Chapter 3301-35.)

(3) It agrees to conduct criminal records checks of applicants for employment positions that are responsible for the care, custody, or control of a child, if it is not already required to do so pursuant to law;[29]

(4) Its teaching and nonteaching professionals, or those employed by a subcontractor providing special education services on its behalf, hold credentials determined by the State Board to be appropriate for working with the scholarship children enrolled in the program;

(5) It meets applicable health and safety standards for school buildings;

(6) It agrees to retain any documentation required by the Department of Education;

(7) It demonstrates fiscal soundness to the Department's satisfaction; and

(8) It agrees to meet any other requirements for registration specified by the State Board.

If the Superintendent of Public Instruction determines that a private school or entity no longer meets these criteria, the Superintendent must revoke its registration. The school or entity must be allowed a hearing prior to revocation.

Scholarship amount

(R.C. 3310.56)

Each scholarship is worth the *lesser* of (1) the total fees charged by the provider or (2) the amount that otherwise would be calculated for state and local funding for the school district's provision of special education and related services to the child. The latter amount comprises the base-cost (formula amount plus base funding supplements) and special education weighted funding (both state and local shares) that would be calculated for the student under the state formulas.

[29] Under the bill, private entities must conduct criminal records checks in the same manner as must chartered nonpublic schools under continuing law. While the bill requires a private school or entity to conduct criminal records checks of future applicants prior to hiring, it does not mandate that the school or entity request records checks of current employees.

Payment of scholarships

(R.C. 3310.52, 3310.54, 3310.55, 3310.57, and 3317.03(A) and (B))

The Department of Education must make periodic payments throughout the school year directly to an alternative provider on behalf of the eligible applicant for services provided to a qualified special education child, until the full amount of the scholarship has been paid. The amount of the scholarship is deducted from the state aid account of the school district in which the child is entitled to attend school. That district is authorized under the bill to count the child in its formula ADM and special education ADM.

The scholarship may be used only to pay fees charged by the alternative special education program for implementation of the child's IEP. The Department must prorate a child's scholarship amount if the child withdraws from the alternative program before the end of the school year.

Transportation of scholarship children

(R.C. 3310.60)

Under the bill, scholarship children are entitled to transportation to and from the alternative special education programs they attend in the same manner as disabled students attending nonpublic schools.

Continuing law requires school districts to provide transportation to nonpublic school students in grades K to 8 who reside in the district and live more than two miles from the school they attend. Districts may also transport high school students to and from their nonpublic schools. A district, however, is not required to transport students of any age to and from a nonpublic school if the direct travel time by school bus from the district school the student would otherwise attend to the nonpublic school is more than 30 minutes.[30] In the case of some special education students, transportation might be mandated by their IEPs.

[30] R.C. 3327.01, not in the bill. These are the same requirements that apply to the transportation of students to and from public schools. When transportation by the district is impractical, the district may offer payment to a student's parent instead of providing the transportation.

Continuation of some school district services

(R.C. 3310.60 and 3310.62(C))

The bill provides that, if the resident school district of a child awarded a scholarship has agreed to provide some services for the child or, if the district is required by law to provide some services for the child, including transportation services as described above, the district may not discontinue the services pending completion of any administrative proceedings regarding those services. It also specifies that the prosecuting, by the eligible applicant on behalf of the child, of administrative proceedings regarding those services does not affect the applicant's and the child's continued eligibility for scholarship payments.

Written notice of rights and informed consent

(R.C. 3310.53(C) and 3323.052)

The bill requires the Department of Education to develop, and revise as necessary, a document that compares a parent's and child's rights under state and federal special education law with their rights under the Special Education Scholarship Pilot Program. It also requires the Department and each school district to distribute the document to parents of disabled children as a part of, appended to, or in conjunction with the procedural safeguards notice required under federal law. It then specifies that an eligible applicant's receipt of the comparison document, as acknowledged in a format prescribed by the Department, constitutes notice that the eligible applicant has been informed of those rights. It further provides that acceptance of a scholarship constitutes the eligible applicant's informed consent to the provisions of the Special Education Scholarship Pilot Program.

Background. Federal special education law requires that the parents of disabled children be given notice of the procedural safeguards available to them regarding their children's special education and related services. Specifically, both the state and each school district are obligated to provide a "full explanation" of those safeguards "written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner."[31] That document must be provided once each year and upon referral or request for the child's evaluation, upon the first filing of an administrative complaint, or upon parental request.[32] The federal statute and rules provide an extensive list of items that must be included in the document.

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[31] 20 U.S.C. 1415(d) and 34 C.F.R. 300.503 and 300.504.

[32] The statute specifies that the document also may be posted on a district's web site.

In compliance with this federal requirement, the Ohio Department of Education has developed a document entitled "Whose IDEA is This? A Resource Guide to Parents," written in English, Spanish, and French. School districts must distribute it to parents in accordance with the law, and it also is available on the Department's web site.[33]

Effective date of program

(R.C. 3310.63; Section 269.60.40)

The Special Education Scholarship Pilot Program must be operational by July 1, 2007. The State Board of Education must adopt rules in accordance with the Administrative Procedure Act so that they are in effect by that date. Those rules must include application procedures and deadlines and standards and procedures for the registration of private providers of special education programs.

Since the bill likely cannot be effective until shortly before July 1, 2007, at the earliest, it is not possible for the State Board to meet this deadline. Presumably, however, the rules could be in place for implementation of the program sometime in the 2007-2008 school year.

Sunset

(R.C. 3310.52(A))

The bill specifies that scholarships be paid only through fiscal year 2013.

Formative evaluation

(Section 269.60.40)

The bill requires the Department of Education to conduct a "formative evaluation" of the Special Education Scholarship Pilot Program and to report its findings to the General Assembly by December 31, 2009. In doing so, the Department is required to the extent possible to gather comments from parents who have been awarded scholarships under the program, school district officials, and representatives of registered private providers, educators, and representatives of educational organizations. The Department also is required to use quantitative and qualitative analyses in conducting its evaluation.

[33] See http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEDetail.aspx?Page=3&TopicRelationID=1159&Content=16275.

No effect on the Autism Scholarship Program

The Autism Scholarship Program pays scholarships to the parents of certain autistic children in grades *pre-kindergarten* to 12. The bill's proposed Special Education Scholarship Pilot Program contains many of the same concepts of the smaller Autism Scholarship Program and applies those scholarship concepts to children of all categories of disability. It does not, however, apply to pre-kindergarten students.

The bill does not affect the Autism Scholarship Program.

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,[34] 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.[35] 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

[34] 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).)

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

early learning program within 15 days after the CDJFS receives a completed application.

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.[36]

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:

[36] 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.

(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 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;

(e) Caretaker employment eligibility requirements for participation in ELI.

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

The caretaker employment eligibility requirements discussed under (2)(e) above must specify the minimum number of hours that the caretaker of the eligible child must be employed and the time period over which the minimum number of hours is to be measured. The minimum hours may overlap the period during the day or week in which the child participates in the early learning program. The requirements also must allow the child to be determined to be, and remain, an eligible child for up to 30 days if the CDJFS determines that the caretaker is expected to begin engaging in an approved activity within that 30-day period. Also, the rules must require (1) the CDJFS to inform both the early learning agency and ODJFS of this determination, and (2) ODJFS to designate the activities that constitute approved activities for purposes of the requirement and to periodically review the requirement to ensure that it complies with federal law and regulations.

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.[37] Program providers may include school districts and educational 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;[38]

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[37] 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.

[38] 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

(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 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.[39] 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.

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requirements regarding diagnostic assessments would ever apply to an early childhood education program provided by a joint vocational school district or ESC.

[39] 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.

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 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.[40] It also removes the

[40] 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

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.

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.

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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.

Membership appointment and compensation

The bill specifies that the two members appointed by the district board president must be residents of the district. It also adds that the members of the commission serve at the pleasure of their appointing authority during the life of the commission. A vacancy must be filled within 15 days. The 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.

Conflicts of interest

The bill provides that members of an academic distress commission need not 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.[41]

[41] The bill specifies that the temporary and permanent bylaws are not subject to the state Administrative Procedure 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.[42]

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

(5) 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.

(6) Commission meetings are subject to the state Open Meetings Law.

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

[42] Three members constitute a quorum.

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.[43] If

[43] 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.

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:

(1) No higher than "continuous improvement," if 10% to 15% of the students are not tested;

(2) No higher than "academic watch," if more than 15% but not more than 20% of the students are not tested; and

(3) No higher than "academic emergency," if more than 20% of the students are not tested.

However, the bill exempts from these limitations community schools in which a majority of the students are enrolled in a dropout prevention or recovery program.

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.[44]

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.[45] 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

[44] 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.

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

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.[46] Under 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.

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

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.

Redacted achievement test questions

(R.C. 3301.0711(N)(4)(b))

Continuing law prescribes that state achievement tests become public records after their administration, but the Department of Education is permitted to redact from the public record field test questions (used to determine if they are appropriate for future tests) and anchor questions (used to compare different versions of the same test). These questions are not used to compute student scores. Of the elementary achievement tests, the law also specifies that not less than 40% of the questions that are used to compute student scores must be public records. Thus, although a test becomes a public record after administration, a number of questions may be redacted to protect them for future re-use.

For each redacted question from an elementary achievement test *that is not a field test question*, the bill requires the Department to provide each school district with the state academic content standard and corresponding benchmark that relates to that question.

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.[47] The bill requires a 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.

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

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.[48]

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.

[48] 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.)

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, to identify which "adult and career-technical education programs," other than adult basic and literacy education (ABLE) programs, to transfer from the Department to the Board of Regents to better align Ohio workforce education to improve the overall quality of adult education and training offerings. The movement of the selected 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. Adult basic and literacy education (ABLE) programs must remain under the Department of Education.

Agricultural education

(R.C. 3303.23)

The bill requires the Superintendent of Public Education to appoint a Director of Agricultural Education within the Department of Education. The Director is responsible for disseminating information on agricultural education to school districts. In addition, the bill requires the Department to maintain an "appropriate" number of full-time employees focusing on agricultural education. The bill does not specify an exact number of employees, but requires that at least three of those employees be program consultants who provide regional assistance to school districts. One consultant may coordinate local Future Farmers of America activities.

Ohio Core requirements

(R.C. 3313.603)

Under current law, the Ohio Core curriculum requires that a student take three units of science including one unit of biology to graduate. The bill changes that requirement to one unit of "life sciences." "One unit" means a minimum of 120 hours of course instruction, or 150 hours for a laboratory course. The Ohio

Core curriculum first applies to students entering ninth grade on or after July 1, 2010 (*i.e.*, classes graduating in 2014 and thereafter).

Transportation of nonpublic school students

(R.C. 3327.05)

Generally, school districts may not transport students who reside in other districts. However, current law does permit a district to transport another's resident nonpublic *high school* student if the student's resident district does not provide transportation for public school students of the same grade as the student. In that case, the student's parent must agree to reimburse the district for the cost of transporting the student beyond the amount paid by the state.

The bill amends that provision to permit a district to transport another district's resident student of any grade level (not just high school) to the student's nonpublic school if the reason the resident district does not provide transportation is because the travel time is more than 30 minutes. It also provides that, if a district declines a parent's request for transportation, the district must state in writing its reasons for declining the request. If a district agrees to provide transportation, the bill specifically states that the district may count the student in the district's transportation ADM (ridership count) and, therefore, may receive a state payment for transporting the student. It continues to require the student's parent to pay the excess costs, if any, for transporting the student.

Tuition for a child placed by a juvenile court

(R.C. 2151.362, 3313.64, and 3323.01)

Background

Every child is entitled to attend school free of tuition in at least one school district in the state. Generally, any child may attend school free of charge in the school district in which the child's parent lives. A child is entitled to attend school in the district in which the *child* (and not the child's parent) resides if:

(1) The child is in the legal custody of a government agency or some person other than the child's parent;

(2) The child resides in an institution, group home, foster home, or other licensed residential child care facility;

(3) The child requires special education services that are provided by that district; or

(4) The child's parent is institutionalized.[49]

In these cases, another school district or other entity usually must pay tuition on behalf of the child to the school district that is educating the child. Most often, the district in which the child's parent resides (or last resided, if the parent's current whereabouts is unknown) is responsible to pay the cost of educating the child.[50]

Currently, when a juvenile court removes a child from the parent's custody and places that child in the custody of some other person or a government agency, the court is required to determine which school district is responsible for paying the cost of educating that child while in the custody of that person or agency. The court's determination must be based on the parent's residence, as described above. Under law in effect prior to June 30, 2006, the district named in the court's order remained responsible for paying the cost of educating the child for as long as the child was in the custody of the person or government agency also named in the order. But under amendments effective on that date, the juvenile court, upon recommendation from the Department of Education, may change the responsible school district when the residency of the child's parent changes.

The bill

The bill provides, instead, for the juvenile court to make the *initial* determination of which district is responsible to the pay the cost of educating a child placed by the court, as it does under current law, but leaves to the Department of Education to directly determine if a later change in responsible district is warranted. The Department is required to make this new determination if it is satisfied by evidence provided by the district currently named that the residence of the child's parent has changed. As under current law, the bill provides that if the Department cannot determine any Ohio district in which the parent currently resides or has resided, the district designated in the initial court order, or in the Department's most recent determination, must continue to bear the cost of educating the child.

It appears that under the bill the juvenile court does not have to reopen a child's custody case each time the child's parent changes residence, which it might have to do under current law in order to "modify" its order relative to the district responsible for paying. The bill specifies that in its initial order, the court must state that the determination of which district is responsible to bear the cost of

[49] R.C. 3313.64 and 3313.65 (the latter section not in the bill).

[50] R.C. 3313.64(C) and 3313.65(D).

educating the child is subject to "re-determination" by the Department. It is not clear, however, if the Department has the authority to make that re-determination in the instance of an existing order issued prior to the bill's effective date that would not contain that statement.

School district territory transfers

(R.C. 3311.24)

Under current law, the board of education of a city, local, or exempted village school district, at its own initiative, may submit to the State Board of Education a proposal to transfer some of the district's territory to an adjoining school district. Also, if a district board receives a petition proposing a transfer of territory, and the petition is signed by a number of that territory's voters equal to 75% of the territory's residents who voted in the last general election, the district board *must* submit the proposal to the State Board.

The bill allows real property owners likewise to petition for a transfer to an adjoining district if no voters reside in the territory proposed for transfer. The petition must be signed by 75% of the owners of property within the territory. The district board must submit the petition to the county auditor to determine the sufficiency of the signatures. If the signatures are sufficient, the district board must submit the proposal to the State Board. If the State Board approves the transfer, as under current law, the transfer cannot be completed until: (1) the receiving district's board accepts the transfer by passing a resolution, (2) the transferring district board makes "an equitable division of the funds and indebtedness between the districts," and (3) the receiving district files an accurate map of the transferred territory with the county auditor of each affected county.

Implementation of Centralized Public School Employee Health Care Plans

(R.C. 9.833, 9.90, 9.901, 3313.202, 3313.33, 4117.03, and 4117.08; Section 207.10.10; and Section 611.03 of Am. Sub. H.B. 66 of the 126th General Assembly)

Current law, as enacted by Am. Sub. H.B. 66 (biennial budget act) of the 126th General Assembly, established the School Employees Health Care Board to design life and medical insurance plans to be used by all persons employed by Ohio's public schools. However, the effective date of the requirement for public school employees to use Board medical plans and the grant of administrative authority to the Board, including the authority to solicit bids for coverage from private companies and to contract for services with state agencies other than the Department of Administrative Services, was delayed pending future and specific confirmatory action by the General Assembly.

The bill provides for the implementation of the delayed provisions in Am. Sub. H.B. 66 of the 126th General Assembly relative to health care plans for public school employee personnel. In addition to such action, the bill makes substantial changes to the health care plan program.

Function of the School Employees Health Care Board

(R.C. 9.901)

The bill eliminates the requirement that public school districts provide to their employees health care benefits designed by the School Employees Health Care Board. The bill also eliminates the authority of the Board to develop, approve, or implement centralized health care plans and a requirement that the districts pay premiums to the Board and the School Employee Health Care Fund to support such school employee health care benefit coverage.

Instead, the bill requires the Board to adopt a set of standards to be termed "best practices" to which all the employee health care plans of a public school district and any combinations of public school districts must adhere once those standards are released by the Board.

Under the bill, the Board is required to oversee school districts' implementation of each district's health care plans including monitoring the district's adherence to best practices standards, approving health care plans, providing educational outlets and consultation, requiring that the cost and design elements of the plans be transparent and available to the public, and promoting the cooperation of all organizations involved to identify the elements necessary for successful implementation of this program. Any consultants with which the Board contracts would be permitted to analyze current health care plans offered by public school districts and make recommendations rather than as originally required to address certain issues for the purpose of developing mandatory plans.

The bill authorizes the Board, in cases where a health plan sponsor is not adhering to best practices, to request the Attorney General to seek appropriate court orders to enforce compliance, and further, upon notice from the Board, to require the Department of Education to withhold 1% of all financial aid to a school district found not to be in compliance each month until the district is in compliance.

Under the bill, the money appropriated to support the School Employee Health Care Board goes directly to the Board to be spent for all purposes approved under the program and permits the Board to employ staff as necessary.

School Employees Health Care Board

(R.C. 9.901)

The bill expands the membership of the School Employees Health Care Board from nine to twelve members, with the appointment of three additional members who represent nonadministrative employees of a public school district. The Governor, the President of the Senate, and the Speaker of the House of Representatives each appoint one nonadminstrative employee to the Board.

The bill provides for continuation of the terms of the current and new members of the Board until December 31, 2010, and provides for compensation for the members according to the Department of Administrative Services pay ranges for boards pursuant to section 124.15 of the Revised Code. Rather than the current minimum of four meetings per year, the bill requires the Board to meet at least nine times a year. The bill also makes certain additional specifications about the public character of the Board's records and meetings.

New audit duties

(R.C. 9.901)

The bill imposes certain new audit requirements. It specifies that the Auditor of State must audit the Board as well as, upon request, furnish to the Board copies of audits of public school districts and consortia already performed by the Auditor. The Superintendent of Insurance must annually evaluate the performance of the School Employee Health Care Board best practices and submit the results to the Governor and the General Assembly. In addition, the Superintendent must include in the audits of any health care plan of a school district, consortia, or council of governments for which the Superintendent has jurisdiction a determination of the plan's adherence to best practices. Participating health care providers also must submit to the Board any audits the Board requires.

Other changes

(R.C. 9.901)

The bill also makes various definitional and terminology changes that do not appear to have a substantive impact.

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 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.

- 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 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.

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.

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.

eTECH OHIO COMMISSION (ETC)

- Requires the eTech Ohio Commission to establish and maintain a clearinghouse of distance learning courses delivered by school districts via a computer-based method for sharing with other school districts or community schools for a fee.

Distance learning clearinghouse

(R.C. 3353.20 to 3353.30; conforming changes in R.C. 3301.0714(D)(2), 3314.086, 3317.023(P), and 3317.161)

The bill directs the eTech Ohio Commission to establish a clearinghouse of interactive and other distance learning courses delivered via a computer-based method, offered by school districts for use by students of other school districts and community schools for a fee. The Commission is not responsible for the content of the courses offered through the clearinghouse, but the Commission must approve the technical specifications by which the courses are delivered.

Inclusion of courses

The Commission must prescribe the form and manner through which a school district may apply to offer a course through the clearinghouse. The application must describe the course of study, the qualifications and credentials of the teacher, the number of hours of instruction, the technology required to deliver and receive the course, the technical capacity of the school district to deliver the course, the times that the school district plans to deliver the course, and any other information required by the Commission. The bill also requires the State Board of Education to adopt a resolution, within nine months of the bill's effective date, that recommends types of information about a distance-learning course that the Commission might require school districts to include in the application.

After reviewing the technical specifications of an application, and if the Commission determines that the school district can satisfactorily deliver the course through the technology necessary for that delivery, the Commission must approve the course. The Commission may consult with the Department of Education and may request additional information from a school district applicant. The Commission may also negotiate changes in a course proposal if the Commission determines that changes are necessary to approve the course.

The Commission must catalog each approved course through a print or electronic medium that includes (1) information necessary for a student, the student's parent, guardian, or custodian, and the student's school district or community school to decide whether to enroll in the course and (2) instructions for enrolling in that course, including enrollment deadlines.

Enrollment

In order to take a course offered through the clearinghouse, students must be enrolled in a school operated by a school district or a community school (although the bill authorizes the Commission to determine how students of nonpublic schools and home-schooled students may participate). The school in which the student is enrolled must approve the course the student wishes to take, and the school must agree to accept for credit the grade assigned by the district delivering the course.

If a student enrolls in a course, the student's school district or community school must send to the Commission only the student's EMIS data verification code, not the student's name. The Commission must then transmit the data verification code[51] to the school district delivering the course. The district

[51] A student's data verification code is the unique code assigned to each student in this state for purposes of the statewide Education Management Information System (EMIS).

delivering the course may request the student's name and other information from the student's school district or community school, which the school district or community school must supply in accordance with state and federal student privacy laws.[52]

The student's school district or community school determines how and where the student will participate in the course, consistent with technology and connectivity specifications adopted by the Commission. The student's school district or community school also prescribes how and by when a student may withdraw from a course. The grade a student receives for a course is assigned by the school district that delivers the course. The delivering school district must send that grade to the student's school district or community school.

Payment

The Commission must keep a record of each student enrolled in each course in the clearinghouse using the student's data verification code. In addition, the Commission must report the data verification code for each student enrolled in a course, the name of the school district delivering the course, the name of the student's school district or community school, the fee for the course, and the beginning and end dates of the course to the Department of Education. Based on the reported information, the Department must deduct the fee from the student's school district's or community school's state account, and pay that amount to the school district delivering the course. A student who takes a course included in the clearinghouse must be counted in the formula ADM of a school district as if the student were taking the course from the student's school district or community school.

The fee is $175 per student for one-half unit (60 hours) of instruction, unless otherwise set by the Commission by rule. For courses less than or greater than one-half unit, the Commission must set fees proportionally. For example, if a course were for 120 hours of instruction (double the base), presumably the Commission would set the fee at $350. If a student withdraws from a course prior to the end of the course, the Commission must proportionally reduce the fee.

Rules

The Commission must adopt rules in accordance with the Administrative Procedure Act (Chapter 119.) to implement the clearinghouse. In addition, the Commission may determine how a course in the clearinghouse may be offered as a

[52] See R.C. 3319.321 (not in the bill).

dual enrollment program,[53] to students enrolled in nonpublic schools or home-schooled students, or at times outside of the normal school day or school week.

The bill clarifies that the establishment of the distance-learning clearinghouse does not prohibit a school district from offering an interactive distance learning course outside the clearinghouse.

OHIO EXPOSITIONS COMMISSION (EXP)

- Requires the Ohio Expositions Commission to use not less than 35% of the revenue that it receives from events held at the Columbus Crew Stadium for the improvement and maintenance of parking facilities that are used for events at the stadium.

Use of revenue from Columbus Crew Stadium

(R.C. 991.08)

The bill requires the Ohio Expositions Commission to use not less than 35% of the revenue that it receives from lease payments and parking fees related to events held at the Columbus Crew Stadium for the purpose of improving and maintaining parking facilities that are utilized for events at the stadium.

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.

[53] Under R.C. 3313.6013 (not in the bill), a dual enrollment program is defined as a program that enables a student to earn college credit while enrolled in high school or that enables a student to complete coursework in high school that may earn college credit upon the student's attainment of a specified score on an examination covering the coursework.

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

- Prohibits the Commission from accepting any donation, gift, bequest, or devise for the benefit of the Governor's Residence or its garden from a person, individual, or member of an individual's immediate family if the person or individual is receiving payments under a contract with the state or a state agency for the purchase of supplies, services, or equipment, or for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement, excluding payments received under an employment contract or a collective bargaining agreement.

- Provides that no member of the Advisory Board for the Governor's Office of Faith-Based and Community Initiatives, and no organization that a member is affiliated or involved with, is eligible for a grant that the Office administers or assists in administering.

- Requires, by not later than July 1, 2008, that the Governor's Office of Faith-Based and Community Initiatives, with the assistance of the Advisory Board of the Governor's Office of Faith-Based and Community Initiatives, conduct a study of and make and recommendations about the feasibility and advisability of the Office becoming a private nonprofit entity rather than a part of the Governor's office.

Use and operation of Governor's Residence

(R.C. 107.40; Section 503.27)

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.

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. 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.

Prohibition of acceptance of certain gifts for benefit of Governor's Residence

(R.C. 107.40)

Current law authorizes the Governor's Residence Advisory Commission to accept, for deposit into the Governor's Residence Fund, any donation, gift, bequest, or devise for the benefit of the Governor's Residence or its garden. The bill, however, prohibits the Commission from accepting any such donation, gift, bequest, or devise from a person, individual, or member of an individual's immediate family if the person or individual is receiving payments under a contract with the state or a state agency for the purchase of supplies, services, or equipment, or for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement, excluding payments received under an employment contract or a collective bargaining agreement.

Members of Advisory Board for Governor's Office of Faith-Based and Community Initiatives ineligible for grants

(R.C. 107.12)

Continuing law creates an Advisory Board for the Governor's Office of Faith-Based and Community Initiatives. The Board consists of members appointed by the Directors of Aging, Alcohol and Drug Addiction Services, Rehabilitation and Correction, Health, Job and Family Services, Mental Health, and Youth Services; members of the General Assembly appointed by the Speaker of the House of Representatives and the President of the Senate; and representatives of the nonprofit or faith-based community appointed by the

Governor, the Speaker of the House of Representatives, and the President of the Senate. The Board is required to provide direction, guidance, and oversight to the Office, and to publish a report of its activities each year.

The bill provides that no member of the Board, and no organization that a member of the Board is affiliated or involved with, is eligible to receive any grant that the Office administers or assists in administering.

Study of the Governor's Office of Faith-Based and Community Initiatives becoming a private nonprofit entity

(Section 703.10)

Current law creates within the office of the Governor the Governor's Office of Faith-Based and Community Initiatives and requires that the Office do all of the following:

- Serve as a clearinghouse of information on federal, state, and local funding for charitable services performed by organizations that are (1) faith-based or other organizations, (2) exempt from federal taxation under subparagraph 501(c)(3) of the Internal Revenue Code, and (3) provide charitable services to needy Ohio residents.

- Encourage these organizations to seek public funding for their charitable services.

- Act as a liaison between state agencies and these organizations.

- Advise the Governor, General Assembly, and the Advisory Board of the Governor's Office of Faith-Based and Community Initiatives on the barriers that exist to collaboration between these organizations and governmental entities and on ways to remove the barriers. (R.C. 107.12(A) and (B).)

The bill requires that the Governor's Office of Faith-Based and Community Initiatives, with the assistance of the Advisory Board of the Governor's Office of Faith-Based and Community Initiatives, conduct a study of the feasibility and advisability of the Office becoming a private nonprofit entity rather than remain a part of the Governor's office. The study and any resulting recommendations must be submitted, not later than July 1, 2008, to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the Minority Leaders of the House of Representatives and the Senate.

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.

- Requires the Director to conduct a pilot program in fiscal year 2009 for the purpose of awarding grants to up to four institutions of higher education to establish and operate offices that provide support to students who are pregnant or are the parents or legal guardians of one or more minors.

- Establishes in the Department the Autism Diagnosis Education Pilot Program and requires the Director to contract with a public or private entity to conduct or administer the Program.

- Provides that a patient who wishes to examine or obtain a copy of the patient's medical record must submit a written request dated not more than one year, instead of 60 days, before the date the request is submitted to the entity holding the record.

- Repeals the Household and Small Flow On-Site Sewage Treatment Systems Law that was enacted by Sub. H.B. 231 of the 125th General Assembly, and restores the law related to household sewage disposal systems that existed prior to that Law's enactment.

- Requires the Public Health Council to rescind rules related to sewage treatment systems and reinstate the rules related to household sewage disposal systems that were in effect prior to January 1, 2007.

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[54]

[54] The safety and quality-of-care standards apply to the following: solid organ and bone marrow transplantation, stem cell harvesting and reinfusion, cardiac catheterization, open-heart surgery, obstetric and newborn care, pediatric intensive care, operation of linear accelerators, operation of cobalt radiation therapy units, and operation of gamma knives (R.C. 3702.11).

for compliance with safety and quality-of-care standards and (2) a program for licensing ambulatory surgical facilities and certain other health care facilities.[55]

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.

College Pregnancy and Parenting Offices Pilot Program

(Section 293.25)

The bill requires the Director of Health to conduct a pilot program in fiscal year 2009 for the purpose of awarding grants to up to four institutions of higher education[56] to establish and operate offices that provide support to students who are pregnant or are the parents or legal guardians of one or more minors. Although the program must be established and operated during fiscal year 2009 only, the bill requires that planning for the pilot program be commenced in fiscal year 2008.

The bill permits an institution of higher education to apply for a grant by completing and submitting an application form supplied by the Director. The bill permits the Director to require an institution that applies for a grant to submit additional information after the Director has reviewed the application.

Under the bill, the Director must, before awarding a grant, secure a written agreement in which the proposed grantee commits to doing all of the following:

(1) Locating the office that provides support to students who are pregnant or are the parents or legal guardians of minors on the campus of the institution;

[55] 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).

[56] The bill defines "institution of higher education" as a public or private university or college in Ohio, including a community college or state community college.

(2) Assessing the institution's performance in (a) offering health insurance plans to students that include coverage for prenatal and postpartum care and the riders for the coverage of additional family members, and (b) providing services or items that meet the needs of students who are pregnant or who are the parents or legal guardians of one or more minors, including family housing, child care, flexible or alternative academic scheduling, education concerning responsible parenting and healthy marriages, maternity and infant clothing, formula and baby food, and baby furniture;

(3) Identifying and establishing programs with public and private service providers located on campus and in the local community that are qualified to meet the needs described in (2)(b), above;

(4) Assisting students in locating and obtaining the services that meet the needs described in (2)(b), above;

(5) Providing, on the request of an individual student, referrals for prenatal care and delivery, infant or foster care, or adoption. The bill requires an office to make referrals only to persons or governmental entities that primarily serve parents, prospective parents awaiting adoption, pregnant women who plan to parent or place a child for adoption, or married couples or couples that plan on marrying in order to provide a supportive environment for each other and one or more minors.

(6) Providing, by a date determined by the Director, a written report to the Director that itemizes the office's expenditures during the fiscal year and meets the format or form the Director is required to establish under the bill.

(7) Providing, after the Director's review of the report described in (6) above, any additional information requested by the Director.

The bill permits the Director to adopt any rules necessary to implement the law governing the pilot program. These rules must be adopted in accordance with the Ohio Administrative Procedure Act.

Autism Diagnosis Education Pilot Program

(R.C. 3701.135; Sections 269.30.50 and 293.20)

The bill establishes in the Department of Health the Autism Diagnosis Education Pilot Program. The Pilot Program must be administered by a public or private entity pursuant to a contract with the Director of Health. The bill specifies that the Pilot Program has the following goals:

(1) To educate Ohio's health care professionals, teachers and other educational personnel, child care providers, parents, early intervention and developmental disabilities providers, and other community-based services providers regarding the diagnosis of autism spectrum disorders[57] including the range of symptoms that may indicate autism spectrum disorders and screening tools;

(2) To promote appropriate standards for the diagnosis of autism spectrum disorders in children, including screening tools and treatment planning for children diagnosed with autism spectrum disorders;

(3) To encourage physicians and other health care professionals with expertise in screening, diagnosing, and treating autism spectrum disorders to share that information with other health care professionals in Ohio;

(4) To encourage the regional coordination of services to facilitate the effective, timely treatment of children diagnosed with autism spectrum disorders.

Medical records access

(R.C. 3701.74)

Under current law, a patient, patient's personal representative,[58] or authorized person who wishes to examine or obtain a copy of a patient's medical record must submit a signed, written request to a health care provider or medical records company holding the record dated not more than 60 days before the request is submitted. The bill provides that the written request must be dated not more than one year before it is submitted.

[57] According to the National Institute of Mental Health, the term, "autism spectrum disorder," refers to a cluster of disorders characterized by mild to severe degrees of impairment in verbal and nonverbal communication skills, social interactions, and restricted or repetitive patterns of behavior. (National Institute of Mental Health, http://www.nimh.nih.gov/publicat/autism.cfm, April 30, 2007.)

[58] A "patient's personal representative" means a minor patient's parent or other person acting in loco parentis, a court-appointed guardian, a person with durable power of attorney for health care for a patient, the executor or administrator of the patient's estate, or the person responsible for the patient's estate if it is not to be probated. An "authorized person" is a person to whom a patient has given written authorization to act on the patient's behalf regarding the patient's medical records. (R.C. 3701.74.)

Repeal of Household and Small Flow On-Site Sewage Treatment Systems Law

(R.C. 307.37, 319.281, 521.01, 711.05, 711.10, 711.131, 3701.83, 3709.09, 3709.091, 3718.01, 3718.02, 3718.021, 3718.03, 3718.04, 3718.05, 3718.06, 3718.07, 3718.08, 3718.09, 3718.10, 3718.99, 4736.01, 5302.30, 6111.04, 6111.44, and 6111.441; Section 737.10)

Current law

Current law, which was enacted by Sub. H.B. 231 of the 125th General Assembly, establishes a program governing the regulation of sewage treatment systems.[59] The program, as codified in Chapter 3718. of the Revised Code, the Household and Small Flow On-Site Sewage Treatment Systems Law, does the following:

--Requires the Public Health Council to adopt rules requiring a board of health to approve or disapprove the use of a sewage treatment system if it is not connected to a sanitary sewerage system;

--Requires the Council to adopt rules establishing standards for the siting, design, installation, operation, monitoring, maintenance, and abandonment of household sewage treatment systems that may be used in Ohio;

--Requires the Council to adopt rules prescribing criteria and procedures under which boards of health must issue installation and operation permits for sewage treatment systems;

--Requires the Council to adopt rules requiring a board of health to inspect a sewage treatment system not later than 18 months after its installation;

--Requires a board of health to register sewage system installers, service providers, and septage haulers that work in the health district under a regulatory scheme that the Council must establish in rules;

[59] "Sewage treatment system" means a household sewage treatment system, a small flow on-site sewage treatment system, or both, as applicable, "household sewage treatment system" means any sewage treatment system, or part of such a system, that receives sewage from a single-family, two-family, or three-family dwelling, and "small flow on-site sewage treatment system" means a system, other than a household sewage treatment system, that treats not more than 1,000 gallons of sewage per day and that does not require a National Pollutant Discharge Elimination System permit or an injection well drilling or operating permit issued under the Water Pollution Control Law (R.C. 3718.01(D), (M), and (N), repealed by the bill).

--Requires the Council to adopt rules that require a board of health and the manufacturer of a system, when possible, to provide instructions for the operation and maintenance of the system;

--Requires the Council to adopt rules that prescribe standards for the siting, design, installation, operation, monitoring, maintenance, and abandonment of small flow on-site sewage treatment systems that may be used in Ohio;

--Allows a board of health to regulate the siting, design, installation, operation, monitoring, maintenance, and abandonment of small flow on-site sewage treatment systems in accordance with the rules adopted by the Council;

--Authorizes a board of health to adopt rules necessary for public health providing for more stringent standards governing household sewage treatment systems, installers, service providers, or septage haulers than those established in the rules of the Public Health Council;

--Requires a board to first send written notification to the Director of Health and the Director of Environmental Protection if the board chooses to regulate small flow on-site sewage treatment systems;

--Creates the Sewage Treatment System Technical Advisory Committee for the purposes of developing guidelines with the Department of Health for use by the Director of Health in the approval or disapproval of sewage treatment systems for use in Ohio and advising the Director on the approval or disapproval of applications for approval of sewage treatment systems for that use;

--Requires a manufacturer of a sewage treatment system or a system component that differs in design or function from systems or components the use of which is authorized in rules adopted by the Public Health Council or a board of health to apply for approval of the system or component for use in Ohio;

--Provides for the establishment and collection of fees to be charged by local boards of health;

--Establishes judicial and administrative enforcement mechanisms; and

--Exempts sewerage or treatment works for the on-lot disposal of sewage from a small flow on-site sewage treatment system specifically from plan approval and general supervision requirements and generally from the administrative and permitting requirements established under the Water Pollution Control Law as well as from fees levied for those purposes if a board of health has notified the Director of Health and the Director of Environmental Protection that the board has chosen to regulate the system and the board remains in compliance with the rules adopted by the Public Health Council concerning such systems.

After the enactment of Sub. H.B. 231, the Public Health Council undertook the process of adopting the rules necessary to implement its requirements. That process took several years with the rules ultimately taking effect on January 1, 2007. During the rule adoption process, the rules adopted under former law continued in effect, and the Department of Health and local boards of health continued to regulate sewage treatment systems under those rules.

The bill

The bill repeals the Household and Small Flow On-Site Sewage Treatment Systems Law that was enacted by Sub. H.B. 231 of the 125th General Assembly and restores the law related to household sewage disposal systems that existed prior to that Law's enactment. As a result, the bill requires household sewage disposal systems to be regulated under rules adopted by the Public Health Council pursuant to its authority to adopt, amend, or rescind sanitary rules of general application throughout the state (see below).

The bill also requires the Public Health Council to rescind the rules adopted under Sub. H.B. 231 related to sewage treatment systems that took effect on January 1, 2007. At the same time as those rules are rescinded, the Council must adopt rules that are identical to the rules adopted under former law and that were in effect prior to January 1, 2007. The rescission and adoption of rules are not subject to the procedures required for the adoption of rules under the Administrative Procedure Act. However, the Public Health Council must file the rules in accordance with that Act. Upon that filing, the rules take immediate effect.

Under the former rules, persons who proposed to install or alter household sewage systems or to clean sewage tanks had to be registered by the board of health having jurisdiction where the work would be done. Registration requirements were established by the board of health; certificates of registration expired annually and had to be renewed within 30 days before their expiration. If the health commissioner of the health district found that a person registered by the district was engaging or had engaged in practices that violated the district's rules, the terms of a permit to install or repair a household sewage system, or applicable state laws, the board of health was required to notify the person, describe the violation, and provide an opportunity for a hearing prior to revocation or suspension of the person's registration. Council rules also required that a permit be obtained from the board of health having jurisdiction before a household sewage system was installed or altered. A permit was valid until the installation or alteration was completed or for one year after issuance, whichever was earlier. The design, construction, installation, location, maintenance, and operation of household sewage disposal systems had to conform to the Council's rules,

engineering practices acceptable to the Department of Health, and effluent standards of the Environmental Protection Agency.

A board of health was authorized to adopt standards for household sewage systems that were more stringent than those of the Council when local conditions required more stringent standards. A board of health also was authorized to grant a variance from its rules or those of the Council if the variance was not contrary to the public interest and the applicant for the variance showed that strict application of the rules would cause an unusual and unnecessary hardship because of practical difficulties or other special conditions.

DEPARTMENT OF INSURANCE (INS)

- Extends the current exemption from the 5% foreign insurers premium tax to any type of insurance procured by a hospital organized under Ohio law or by an entity in which the majority of its business involves pharmaceutical products.

Foreign insurers tax

(R.C. 3905.36)

Under existing law, with certain exceptions, every insured association, company, corporation, or other person that enters into any agreements, either directly or through a surplus lines broker, with any insurance company, association, individual, firm, underwriter, or Lloyd's, not authorized to do business in this state ("foreign insurer"), to procure, continue, or renew insurance covering subjects resident in Ohio must do both of the following annually: (1) return to the Superintendent of Insurance a form containing certain business activity and premium collections information and (2) pay to the Treasurer of State (for deposit into the GRF) a tax equal to 5% of the gross premium, fee, assessment, dues, or other consideration for the insurance.

The foreign insurers premium tax does not apply currently to professional or medical liability insurance procured by a hospital organized under Ohio law or by an entity in which the majority of its business involves pharmaceutical products. The bill broadens the nonapplicability of the foreign insurers premium tax to any other type of insurance similarly procured.

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 the Ohio Department of Job and Family Services (ODJFS), rather than permitting the boards to enter into fiscal agreements with the Director.

- Prohibits, effective July 1, 2008, the ODJFS 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 ODJFS 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 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 ODJFS is to take the action against the board of county commissioners.

- Provides that ODJFS 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.

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 ODJFS Director 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 ODJFS Director 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 ODJFS Director 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 ODJFS to use a portion of the federal Child Care and Development Block Grant Act to establish a voluntary child care quality-rating program (Step Up to Quality) and requires the ODJFS Director to adopt rules to implement the program.

- Permits child day-care centers, or type A or B family day-care homes, participating in Step Up to Quality to be eligible for grants, technical assistance, training, or other assistance; if the center or home maintains a quality rating, permits the center or home to be eligible for unrestricted monetary awards.

- Specifies that a child day-care center or type A or B family day-care home participating in Step Up to Quality (during FY 2008 and FY 2009) and providing publicly funded child care is eligible to receive a reimbursement rate for the publicly funded child care up to the 65th percentile of the 2006 Ohio Child Care Market Rate Survey if the center or home meets certain requirements.

III. Unemployment Compensation

- Eliminates the Trade Benefit Account under the Unemployment Compensation Law and requires the ODJFS Director 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 ODJFS 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 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 ODJFS Director 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 activity or developmental 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

- Requires that at least one of the doctor members of the Pharmacy and Therapeutics Committee in ODJFS be a psychiatrist.

- Requires that a Medicaid provider agreement expire three years from its effective date, requires the adoption of rules for the use of time-limited provider agreements, and provides for the conversion of existing provider agreements that are not 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 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.

- Requires ODJFS to apply risk-adjusted reimbursement rates to services provided to individuals who receive Medicaid services under the covered families and children eligibility category starting one year after those individuals enroll in Medicaid.

- 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.

- Requires that the ODJFS Director 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.

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

- Requires the ODJFS Director to submit an amendment to the state's Medicaid plan to create a Medicaid Buy-In Program.

- Requires the ODJFS 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.

- Requires the ODJFS 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.

- Provides that a drug used for treatment of a mental illness or disorder may be subjected to a prior authorization requirement, preferred drug list, or therapeutic substitution requirement under the Medicaid program, including its managed care components, only if the drug is a brand name drug with a generic equivalent.

- Requires the Medicaid program to cover occupational therapy services provided by a licensed occupational therapist and permits any licensed occupational therapist to enter into a provider agreement with ODJFS.

- Requires the ODJFS Director 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 ODJFS to use actuarially sound capitation rates, in accordance with federal law, for purposes of its Medicaid managed care contracts with health insuring corporations (HICs).

- Requires, before ODJFS may submit proposed capitation rates for federal approval, that the Superintendent of Insurance review the rates and determine they will not (1) negatively impact the financial solvency of the HIC, (2) cause a change in the HIC's risk based capital levels, or (3) require the HIC's parent company, if applicable, to guarantee that the HIC will maintain Ohio's minimum net worth.

- 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.

- Allows a Medicaid-participating health insuring corporation to implement a pharmacy utilization management program under which a Medicaid recipient must (1) receive prior authorization to obtain a controlled substance and (2) if the person is at high risk for fraud or abuse involving controlled substances, have prescriptions for those drugs filled by a designated pharmacy, medical provider, or health care facility.

- Expands eligibility for the Medicaid Assisted Living Program.

- Prohibits the ODJFS Director from applying for a Section 1115 Medicaid waiver unless the Director provides the Speaker of the House of Representatives and President of the Senate written notice of the waiver request at least ten days before the date the Director submits the request to the federal government.

- 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.

- Provides that the Director of Budget and Management, subject to Controlling Board approval, may 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.

- Requires that ODJFS implement, if federally approved, a program for making supplemental Medicaid payments to children's hospitals for qualifying inpatient services occurring in fiscal years 2008 and 2009.

- 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 2.8%, (2) increasing the mean payment used in the calculation of the quality incentive payment to $3.06 per Medicaid day, (3) limiting the total rate to not more than 103.55% and not less than 100% 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 2.8%, and then by 0.5%, (2) increasing the mean payment used in the calculation of the quality incentive payment to $3.12 per Medicaid day, (3) limiting the total rate to not more or not less than 100% 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.

- 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.

- Increases the Medicaid reimbursement rates for PASSPORT services provided during fiscal year 2008 by 3% and the reimbursement rate for PASSPORT services provided during fiscal year 2009 by another 3%.

- Requires the Medicaid Program to cover chiropractic services for adult Medicaid recipients for the period January 1, 2009 to June 30, 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 the Ohio Department of Job and Family Services (ODJFS) 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 (CDJFS), 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, 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,[60] 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 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

[60] The ODJFS 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.

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.[61]

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 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 CDJFS. 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 CDJFS 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.

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

Individual Development Account program

(R.C. 329.14)

Current law permits a 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%).[62] The bill also increases the amount a fiduciary organization may deposit into the account to four times the

[62] 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).

amount the program participant deposits into the account. The current limit is two times that amount.

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 ODJFS Director 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, 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"[63] and ineligible for any

[63] 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

category of Medicaid, and meet other requirements. A person eligible for the Program may receive "covered services."[64]

Rulemaking authority

(R.C. 5115.12)

Under current law, the ODJFS Director 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 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

Background

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[65] to

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employability which will last at least nine months. Ohio Administrative Code (O.A.C.) 5101:1-42-01.

[64] "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).

[65] 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

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 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.[66]

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 ODJFS Director 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

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relationships: grandparents (including great-, great-great-, or great-great-great), siblings, aunts, uncles, nieces, nephews (including great-, great-great-, or great-great-great), first cousins, first cousins once removed, stepparents, stepsiblings, spouses or former spouses of any of the above, and the legal guardian or custodian of the child (R.C. 5101.85).

[66] 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.)

bill eliminates the requirement that a juvenile court have determined the child 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 ODJFS Director 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 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,[67] and (2) ODJFS has collected at least $500 of child support for the obligee. The ODJFS Director 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:

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

(1) The obligor[68] 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.

[68] 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[69] 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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[69] "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 care quality-rating program (Step Up to Quality)

(R.C. 5104.30; Section 309.50.30)

Establishment

Current law designates 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 (the Step Up to Quality program[70]) and requires the Director of ODJFS to adopt rules in accordance with the Administrative Procedure Act to implement Step Up to Quality. If a child day-care center or type A or B family day-care home participates in Step Up to Quality, that center or home may be eligible for grants, technical assistance, training, or other assistance. Additionally, if the center or home maintains a quality rating, that center or home may be eligible for unrestricted monetary awards.

Child day-care centers and type A or B family day-care homes providing publicly funded child care

Currently, Ohio law requires the ODJFS Director to adopt rules establishing the reimbursement ceilings for publicly funded child care providers. The rules must include lower reimbursement ceilings for type B family day-care homes that have limited certification (either 65% or 75% of the reimbursement ceiling for certified type B day-care homes, depending on certain criteria).

ODJFS rules adopted pursuant to this law specify that each CDJFS must pay a reimbursement rate for publicly funded child care that is the lowest of the following (O.A.C. 5101:2-16-41(B)): (1) the provider's customary charge to the public, (2) a rate negotiated between the CDJFS and the provider, if the negotiated rate is agreeable to the provider and at least 75% of the children served by the

[70] http://jfs.ohio.gov/cdc/docs/GuidanceDoc.pdf.

provider are eligible for publicly funded child care, or (3) a rate that is currently up to the 65th percentile of the 2004 Ohio Child Care Market Rate Survey.[71]

The bill specifies that a child day-care center or type A or B family day-care home participating in Step Up to Quality and providing publicly funded child care is eligible to receive a reimbursement rate for the publicly funded child care up to the 65th percentile of the 2006 Ohio Child Care Market Rate Survey if the center or home participates in the program in FY 2008 and maintains a two-star program rating in FY 2009, according to the program rating system established in rules adopted by the ODJFS Director. However, nothing in current law or rule, or in the bill, prevents the Director from raising or lowering the reimbursement rates for child care providers that do not participate in Step Up to Quality.

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 ODJFS Director 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

[71] Section 206.67.13 of Am. Sub. H.B. 66 of the 126th General Assembly.

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 ODJFS Director 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 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 CDJFS to use county funds to increase the amount of cash assistance an assistance group receives under Ohio Works First.

Ohio Works First applications

(R.C. 5107.05)

The ODJFS Director 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 CDJFS 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 CDJFS 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 CDJFS to make these determinations *as soon as possible*. It also prohibits the CDJFS 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 CDJFS have not yet done that.[72]

Ohio Works First sanctions

(R.C. 5107.16 and 5107.05)

Current law requires a CDJFS 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.

The sanctions for not complying with a self-sufficiency contract are tiered. For a first failure or refusal to comply, a CDJFS must deny or terminate the assistance group's eligibility to participate in Ohio Works First for 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 CDJFS 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 CDJFSs 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 CDJFS 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 CDJFSs 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 ODJFS Director 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 CDJFS's good cause standards if the CDJFS provides the hearing officer or Director with a copy of the CDJFS's good cause standards.

[72] The following must enter into a self-sufficiency contract: each adult member of an assistance group and an assistance group's minor head of household unless the minor head of household is participating in the LEAP program.

A CDJFS 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 CDJFS a willingness to cease the failure or refusal to comply with the self-sufficiency contract. The bill eliminates the reason for continuing to work with the assistance group 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 CDJFS 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 CDJFS and that no self-sufficiency contract is to include provisions regarding the LEAP program.

- Provides that a CDJFS is not to conduct an appraisal of a minor head of household for purposes of Ohio Works First's work requirements if the minor head of household is participating in the LEAP program.

- Provides that a CDJFS is not to assign a minor head of household who is participating in the LEAP program to a work activity or developmental 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

Psychiatrist Member of Pharmacy and Therapeutics Committee

(R.C. 5111.084)

The Pharmacy and Therapeutics Committee is part of ODJFS. Continuing law does not specify any of the Committee's duties. The Committee has nine members, including two doctors of medicine and two doctors of osteopathy.

The bill requires that at least one of the doctor members be a psychiatrist. The bill does not address the issue of whether one of the current doctor members must be replaced by a psychiatrist on the effective date of this provision of the bill, if none of the current doctor members is a psychiatrist, or whether a psychiatrist is to be added the next time one of the doctor members terminates his or her membership on the Committee.

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 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.[73]

The bill makes the following changes relative to Medicaid provider agreements:

(1) Requires 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;

(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; Section 309.80.30)

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

[73] Ohio Administrative Code 5101:3-1-17 and 5101:3-1-172.

closed-end agreement expires on a designated date, cannot be in effect for more than 12 months, and may be renewed.[74]

The bill requires that each Medicaid provider agreement expire three years from the agreement's effective date. In the case of existing open-end provider agreements, the bill requires ODFJS to convert them into time-limited agreements that expire three years from the date of conversion.[75] ODJFS must notify the provider in writing of the conversion, but is not required to issue an order pursuant to an adjudication conducted under the Administrative Procedure Act.

The bill requires the ODJFS Director to adopt rules for 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 rules for use of time-limited provider agreements must include a process for re-enrollment of providers. All of the following apply to the re-enrollment process:

(1) 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.

(2) 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.

(3) 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.

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[74] O.A.C. 5101:3-1-174.

[75] 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)).

Termination of provider agreements based on Attorney General actions

(R.C. 5111.03(C))

Under current law, the ODJFS Director 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 ODJFS Director 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 ODJFS Director 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 terminated or an application for re-enrollment is denied because the provider has failed to comply with the re-enrollment procedures established under the bill's requirements for the use of time-limited provider agreements.

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 ODJFS Director. 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 ODJFS Director 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 ODJFS.

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.[76]

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

[76] R.C. 3721.56.

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. ODJFS is required to use money in the Nursing Facility Stabilization Fund to make Medicaid payments to nursing facilities.[77]

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. ODJFS and the Department of 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.

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 5% penalty on the amount due for each month or fraction thereof that a nursing home, hospital, or ICF/MR fails to pay its

[77] R.C. 3721.561.

franchise permit fee in full when due.[78] In addition to assessing the penalty, current law permits ODJFS to do either of the followi ng:

(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.).

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

[78] R.C. 3721.54 and 5112.34.

is to pay instead of Medicaid.[79] Consistent with federal law that reflects this intent, the U.S. Secretary of Health and Human Services has promulgated regulations[80] 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.[81]

To enhance states' ability to identify and obtain payments from liable third parties, the Deficit Reduction Act of 2005[82] made several changes to the third party liability provisions of federal Medicaid law.[83] Specifically, section 6035 of the Deficit Reduction Act amended federal Medicaid law (section 1902(a)(25) of the Social Security Act[84]) to do both of the following:[85]

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[79] 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.

[80] 42 C.F.R. Part 433, subpart D (2005).

[81] 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 Medicaid agencies have been hindered in their efforts to verify Medicaid recipients' private health coverage.

[82] Pub. L. 109-171.

[83] 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>.

[84] 42 U.S.C. 1396a(a)(25).

[85] Letter from Dennis G. Smith, supra.

(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).

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[86] 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"[87] against the liability of a third party for the cost of medical services and

[86] 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)).

[87] 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

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*,[88] which held that the 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,[89] a service benefit plan referenced in the Deficit Reduction Act,[90] 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

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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).

[88] 547 U.S. 268.

[89] 29 U.S.C. 1167.

[90] 42 U.S.C. 1396a(a)(25).

medical item or service for a public assistance[91] recipient or participant. The bill also specifies that except when otherwise provided by law governing Medicare's status as a secondary payer,[92] 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 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[93] 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

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[91] The bill defines "public assistance" as medical assistance (see footnote below) or assistance under the Ohio Works First Program.

[92] 42 U.S.C. 1395y(b).

[93] 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, and (3) the Disability Medical Assistance Program.

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.[94]

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).[95]

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[96] 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.

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[94] "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/ 02important.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).

[95] 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.

[96] 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.

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.

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.[97]

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

[97] 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)).

agency recovery actions where they will not receive a share of the settlement or judgment:[98]

(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

[98] 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).

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 CDJFS.

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 CDJFS 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 CDJFS 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 CDJFS, 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. The bill also extends the liability to reimburse ODJFS and the appropriate CDJFS 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[99] 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 deny, revoke, or terminate, as determined to be appropriate by the governmental entity, the license, certificate, registration, or approval of the third party 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. The denial, revocation, or termination must be done in accordance with the Ohio Administrative Procedure Act.

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 ODJFS Director 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.

[99] Section 1902(a)(25)(G) of the Social Security Act (42 U.S.C. 1396a(a)(25)(G)).

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 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. 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 ODJFS Director 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.

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.[100] 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 ODJFS Director 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. ODJFS 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.

[100] 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[101] to all persons eligible for the program and their parents or guardians. Each CDJFS 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 CDJFS 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)

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.[102] However, the state is provided flexibility to determine income eligibility requirements for participation and time limits of eligibility. 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. Eligibility for Medicaid under this provision is limited to two years from the date on which

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[101] "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).

[102] 42 Code of Federal Regulations, 35 et seq.

eligibility is established. The bill eliminates the two-year limit 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,[103] 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.[104] The second population consists of employed individuals with a medically improved disability who have assets, resources, and income not exceeding such limitations, if any, as the state may establish.[105] 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

[103] 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.

[104] 42 U.S.C. 1396a(a)(10)(A)(ii)(XV).

[105] 42 U.S.C. 1396a(a)(10)(A)(ii)(XVI).

definitions of disability, and (4) continues to have a severe medically determinable impairment as determined under federal regulations.[106]

Medicaid Buy-In Program

(R.C. 5111.0119)

The bill requires the ODJFS Director to submit an amendment to the state's Medicaid plan to establish the Medicaid Buy-In Program in accordance with federal law. The Director is 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),[107] the Assisted Living Program,[108] a nursing home transition waiver,[109] the Ohio Home Care Program,[110] and waivers for individuals with mental retardation or mental disabilities.[111]

The bill requires 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 and (2) changes to one or more components so that the components contain one or more features of the Medicaid Buy-In Program.

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[106] 42 U.S.C. 1396d(v).

[107] R.C. 173.401.

[108] R.C. 5111.89.

[109] R.C. 5111.97.

[110] R.C. 5111.86.

[111] R.C. 5111.87 and 5111.88.

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.

Mental health drugs

(R.C. 5111.085 and 5111.172(C))

For purposes of the Medicaid program, the bill provides that a mental health drug may be subjected to a prior authorization requirement, preferred drug list, or therapeutic substitution requirement only if the drug is a brand name drug with a generic equivalent. The same limitation applies to the coverage of mental health drugs provided through a Medicaid-participating health insuring corporation. Under the bill, a drug is a mental health drug if one of the following is the case:

(1) The drug is classified as an antianxiety, antidepressant, anticonvulsant, or antipsychotic central nervous system drug in the most recent edition of one of the following publications: (a) *The American Psychiatric Press Textbook of Psychopharmacology*, (b) *Current Clinical Strategies for Psychiatry*, (c) *Drug Facts and Comparisons*, or (d) a publication with a comparable focus and content as determined by the ODJFS Director.

(2) The drug is classified in one of the publications specified above as a central nervous system drug in a category or classification that is created after the bill's effective date.

(3) The drug is classified in one of the publications specified above as a cross-indicated drug for any of the central nervous system drugs described in (1) or (2) above because the drug's use in that capacity is generally held to be reasonable, appropriate, and within the community standards of care even though the use is not included in the U.S. Food and Drug Administration's approved labeling for the drug.

(4) The drug is recommended for the treatment of a mental illness or mental disorder, as those terms are defined in the most recent edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.

Medicaid occupational therapy services

(R.C. 5111.029)

The bill requires the Medicaid program to cover occupational therapy services provided by a licensed occupational therapist.[112] Coverage may not be limited to services provided in a hospital or nursing facility. The bill permits any licensed occupational therapist[113] to enter into a Medicaid provider agreement with ODJFS to provide occupational therapy services under the Medicaid program.

Medicaid cost-sharing program

(R.C. 5111.0112)

Current law requires the ODJFS Director 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 the ODJFS Director to institute a cost-sharing program (instead of a co-payment program) for at least the services listed above and requires the program to 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.

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[112] "Occupational therapy" means the therapeutic use of everyday life activities or occupations with individuals or groups for the purpose of participation in roles and situations in the home, school, workplace, community, and other settings. The practice of occupational therapy includes activities such as interventions and procedures to promote or enhance safety and performance in activities of daily living; consultative services, case management, and education of patients, to promote self-management, home management, and community and work reintegration; designing and instructing in the use of selected orthotic or prosthetic devices and other equipment which assists the individual to adapt to the individual's potential or actual impairment; and administration of topical drugs that have been prescribed by a licensed health professional authorized to prescribe drugs. (R.C. 4755.04, not in the bill.)

[113] Occupational therapists are licensed under R.C. 4755.08.

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[114] 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,[115] contractors, and agents[116] 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

[114] "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."

[115] The bill adds a definition of "employee," which "includes any officer or employee (including management employees) of an entity."

[116] 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."

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.

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[117] 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[118] 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 ODJFS 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.

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[117] Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.

[118] "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).

Performance-based financial incentives in managed care contracts

(R.C. 5111.17)

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.

Actuarially sound Medicaid managed care capitation rates

(R.C. 5111.17)

The bill requires ODJFS to develop, certify, and implement actuarially sound capitation rates[119] for purposes of making payments under Medicaid managed care contracts with health insuring corporations (HICs). In taking these actions, ODJFS is required by the bill to comply with all applicable requirements of federal statutes and regulations.[120]

Before ODJFS is permitted to submit proposed rates for approval by the U.S. Centers for Medicare and Medicaid Services (CMS), the bill requires ODJFS to submit the proposed rates to the Superintendent of Insurance for review. On each submission, the Superintendent must review the proposed rates and provide ODJFS with written notice of the results of the review.

The bill prohibits ODJFS from submitting the proposed rates for CMS approval unless the Superintendent specifies in the results of the review that the proposed rates will do none of the following:

(1) Negatively impact the financial solvency of the HIC;

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[119] As defined in federal regulations, "actuarially sound capitation rates" are rates that (1) have been developed in accordance with generally accepted actuarial principles and practices, (2) are appropriate for the populations to be covered, and the services to be furnished under the contract, and (3) have been certified by actuaries who meet the qualification standards established by the American Academy of Actuaries and follow the practice standards established by the Actuarial Standards Board (42 Code of Federal Regulations 438.6(c)).

[120] 42 C.F.R. 438.6 and 42 United States Code 1396b(m).

(2) Cause a change in the HIC's risk based capital levels;[121]

(3) Require the HIC's parent company, if applicable, to guarantee that the HIC will maintain Ohio's minimum net worth.[122]

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.

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[121] Under current law, each HIC must submit to the Superintendent of Insurance an annual report on its risk based capital (RBC) levels for the preceding calendar year. The RBC levels are calculated according to a formula that takes into account asset risk, credit risk, underwriting risk, and other business risks. If an HIC's total capital level falls below a certain level of risk based capital, the Superintendent is authorized to take regulatory actions. (R.C. 1751.31 to 1751.43; Ohio Department of Insurance News Release: *Legislation Supported to Protect Consumers and Providers; Safeguard HMO Financial Solvency*, September 14, 2000.)

[122] Current law requires each HIC to maintain total admitted assets and a net worth in specified amounts based on the types of services the HIC is authorized to provide. For example, an HIC that is authorized to provide basic health services must maintain total admitted assets equal to at least 110% of the HIC's liabilities, without at any time having a net worth that is less than $1.2 million. (R.C. 1751.28.)

Managed care pharmacy management utilization programs

(R.C. 5111.172(B))

With respect to a Medicaid-participating health insuring corporation (HIC), the bill requires that ODJFS permit the HIC to develop and implement a pharmacy management utilization program. Through the program, the HIC may require that a Medicaid recipient receive prior authorization as a condition of obtaining a controlled substance by prescription.[123] The bill specifies that the program may include processes for requiring Medicaid recipients at high risk for fraud or abuse involving controlled substances to have their prescriptions for those drugs filled by a pharmacy, medical provider, or health care facility designated by the program.

Medicaid risk-adjusted reimbursement

(R.C. 5111.165)

The bill requires ODJFS to develop and implement a reimbursement system for Medicaid providers based on a risk-adjusted rate structure.[124] The new rates must be applied individually, and for each individual, must be applied starting one year after enrollment in the Medicaid program. The risk-adjusted rate structure will apply only to Medicaid recipients who receive Medicaid on the basis of being included in the category identified by ODJFS as Covered Families and Children, which includes children, pregnant women, and low-income families.

[123] Not all prescription drugs are controlled substances. Controlled substances are drugs that have been designated by state and federal law as having a high potential for abuse or addiction. The drugs are identified on lists, or schedules, numbered in descending order of their potential for abuse or addiction: Schedules I, II, III, IV, and V. (*R.C. Chapter 3719. and U.S. Department of Justice Drug Enforcement Administration, "Controlled Substances Security Manual,"* http://www.deadiversion.usdoj.gov/pubs/manuals/sec/security.pdf.)

[124] The bill does not define the term "risk-adjusted." According to a report commissioned by the U.S. Department of Health and Human Services, risk adjustment methods have been "developed to account for differences in patients' health status when determining payment rates in public programs." (*See* Murtaugh, Christopher, et. al, "Alternative Risk-Adjustment Approaches to Assessing the Quality of Home Health Care: Final Report," July 2006, *available at*: http://aspe.hhs.gov/daltcp/reports/2006/qualHH.htm#abstract, last visited May 1, 2007.)

Assisted Living Program eligibility expansion

(R.C. 5111.891)

Am. Sub. H.B. 66 of the 126th General Assembly authorized the Director of Job and Family Services to apply for a federal waiver to provide assisted living services under Medicaid to up to 1,800 individuals.[125] At the time of application for the Assisted Living Program, the individual must need an intermediate level of care as determined under ODJFS rules and either be a nursing home resident who is seeking to move to a residential care facility[126] but will remain in a nursing home if not for the Assisted Living Program or a participant in certain Medicaid waiver components who would move to a nursing facility if not for the Assisted Living Medicaid program.[127] The Medicaid components are PASSPORT, the CHOICES program administered by the Department of Aging, or another Medicaid component administered by ODJFS.

The bill makes a resident of a residential care facility who has resided in a residential care facility for at least six months immediately before the date the individual applies for the Program eligible to participate in the Program.

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[125] "Assisted living services" is defined as home and community-based services providing personal care, homemaking, chores, attendant care, companion, medication oversight, and therapeutic social and recreational programming (R.C. 5111.89).

[126] "Residential care facility" (formerly "rest home") is defined as a home that provides either of the following:

> (1) Accommodations for seventeen or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age, physical, or mental impairment.
>
> (2) Accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age, physical, or mental impairment, and, to at least one individual, skilled nursing services as specified in the Revised Code. (R.C. 3721.01(A)(7) and 3721.011.)

[127] R.C. 5111.891.

Notice of Section 1115 waiver request

(R.C. 5111.94)

Federal law permits the United States Secretary of Health and Human Services to authorize a state to conduct an experimental, pilot, or demonstration project that in the Secretary's judgment is likely to assist in promoting the objectives of certain programs authorized by the Social Security Act, including the Medicaid program. To authorize a project, the Secretary issues a waiver of federal law that would otherwise be violated in implementation of the project. These waivers are often referred to as "Section 1115" waivers because the projects are authorized by Section 1115 of the Social Security Act.

The bill prohibits the ODJFS Director from submitting a request to the United States Secretary of Health and Human Services for a Section 1115 Medicaid waiver unless the Director provides the Speaker of the House of Representatives and President of the Senate written notice of the Director's intent to submit the request at least ten days before the date the Director submits the request to the Secretary. The notice must include a detailed explanation of the Medicaid waiver the Director proposes to seek.

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 Department of Aging. On receipt of notice from the administrator, the Department of Aging 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.

Before any of the actions specified above may be taken, the bill requires the Director of Budget and Management to present the proposed action to the Controlling Board for its review. The bill prohibits the Director from implementing the proposed action unless it is approved by the Controlling Board.

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.[128]

Supplemental payment program for children's hospitals

(Section 309.30.13)

The bill requires ODJFS to create a program under which it makes supplemental Medicaid payments to children's hospitals for inpatient services based on federal upper payment limits. ODJFS must apply for federal approval of

[128] 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.

a state Medicaid plan amendment to implement the program and must implement the program if federal approval is received. Under the program, ODJFS is required to pay children's hospitals the federally allowable supplemental payment for hospital discharges qualifying for the program in fiscal years 2008 and 2009. The amount used for the program cannot exceed $6 million of state funds plus the corresponding federal match, if available.

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.[129] 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 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.[130]

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.[131]

Tax costs are costs for real estate taxes, personal property taxes, corporate franchise taxes, and commercial activity taxes.[132]

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[129] See "***Nursing home and ICF/MR franchise permit fees***," above.

[130] 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.)

[131] R.C. 5111.20 and 5111.24.

[132] R.C. 5111.242.

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.[133]

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,[134] must be $3 per Medicaid day.[135]

Current law requires ODJFS to adjust the rates determined under the formulas for direct care costs, ancillary and support costs, tax costs, and capital costs as directed by the General Assembly through the enactment of law governing Medicaid payments to nursing facilities.[136] ODJFS must also annually adjust the mean quality incentive payment starting in fiscal year 2008 by the same adjustment factors.[137]

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%.

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[133] R.C. 5111.20 and 5111.251.

[134] "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.)

[135] R.C. 5111.244.

[136] R.C. 5111.222.

[137] R.C. 5111.244.

(2) Increase the amount calculated above by another 2%.

(3) Increase the amount calculated above by 2.8%.

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 $3.06 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 103.55% of the rate the provider is paid for nursing facility services the facility provides at the end of fiscal year 2007, ODJFS must reduce the facility's fiscal year 2008 rate so that it is not more than 103.55% of its rate for the end of fiscal year 2007. If the rate determined using the adjustments is less than 100% of the rate the nursing facility is paid at the end of fiscal year 2007, ODJFS must increase its rate for fiscal year 2008 so that it is not less than 100% 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, ODJFS 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.

The bill requires that ODJFS 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 2.8%.

(4) Increase the amount calculated above by .5%.

The mean quality incentive payment for fiscal year 2009 is to be $3.12 per Medicaid day and weighted by Medicaid days.

If the adjusted rate for a nursing facility is more than 100% 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 100% of its rate for the end of fiscal year 2008. If the adjusted rate is less than 100% 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 100% of its rate for the end of fiscal year 2008.

As in fiscal year 2008, ODJFS 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, ODJFS is to implement the adjustment requirements notwithstanding anything to the contrary in codified law governing nursing facilities' Medicaid rates.

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.[138] 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[139] 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.

Increase in Medicaid rates for PASSPORT services

(Section 309.30.45)

The PASSPORT program is a Medicaid-funded waiver program under which home and community-based services are provided to individuals age 60 or

[138] Section 206.66.27 of Am. Sub. H.B. 66 of the 126th General Assembly.

[139] "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.

older who would otherwise need nursing facility services. The Department of Aging administers the program through an interagency agreement with ODJFS. The ODJFS Director has adopted rules governing the rates paid to providers who provide home and community-based services under the PASSPORT program.

The bill requires the ODJFS Director to amend the rules governing PASSPORT reimbursement rates as necessary to accomplish the following:

(1) Increase, for fiscal year 2008, the Medicaid reimbursement rates for services provided under the PASSPORT program to rates that result in an amount that is 3% higher than the amount resulting from the rates in effect June 30, 2007.

(2) Increase, for fiscal year 2009, the Medicaid reimbursement rates for services provided under the PASSPORT program to rates that result in an amount that is 3% higher than the amount resulting from the rates in effect June 30, 2008.

Medicaid coverage of chiropractic services for adults

(Section 309.30.60)

For the period January 1, 2009 to June 30, 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 ODJFS Director 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)

- Removes specific provisions in statute regarding the access of the Legal Rights Service to the records of providers of services to mentally ill, mentally retarded, and developmentally disabled persons and instead requires access to those records to be in accordance with federal law.

- Removes a requirement that LRS determine who is a "mentally retarded person" or "developmentally disabled person" for purposes of the law governing LRS and instead creates a statutory definition of "mentally ill person" and applies existing definitions of "mentally retarded person" and "developmentally disabled person" to the law governing LRS.

- Requires LRS to maintain information confidentially in accordance with the law that applies to that information.

- Removes a requirement that the Department of Mental Health notify the LRS ombudsperson of major unusual incidents or life threatening situations involving mentally ill persons and instead requires the Department to notify the ombudsperson of reportable incidents.

- Provides that individuals represented by LRS are its clients.

- Creates the Program Income Fund in the state treasury for the support of Legal Rights Service programs.

Background

The Ohio Legal Rights Service (OLRS) is Ohio's designated protection and advocacy system and client assistance program for children and adults with mental disabilities. OLRS is authorized and funded through federal law. For Ohio to receive any federal funds for services to the mentally disabled, it is required by federal law to have a protection and advocacy system. Ohio created the Legal Rights Service as the state's protections and advocacy system.[140]

[140] 42 U.S.C. 10801 et seq. and 42 U.S.C. 15041 et seq.; R.C. 5123.60.

Records and Information Available to the Legal Rights Service

(R.C. 5123.60 and 5123.602)

Federal and state law require that a state's advocacy system have access to certain records maintained by providers of services to a mentally ill person, mentally retarded person, or developmentally disabled person. Existing law provides that the OLRS administrator, staff, and attorneys designated by the administrator have ready access to the following provider resources or individuals:

(1) During normal business hours and other reasonable times, all provider records relating to expenditures of state and federal funds or to the commitment, care, treatment, and habilitation of a mentally ill person, mentally retarded person, or developmentally disabled person represented by OLRS, and all service records maintained by state departments; institutions; hospitals; community residential facilities; boards of alcohol, drug addiction, and mental health services; county boards of MR/DD; contract agencies of those boards; or any other entity or person providing services to a mentally ill person, mentally retarded person, or developmentally disabled person.

(2) Any provider records maintained in computerized data banks of any entity providing services to a mentally ill person, mentally retarded person, or developmentally disabled person.

(3) During normal working hours, personnel of the departments, facilities, boards, agencies, institutions, hospitals, or other entity providing services to a mentally ill person, mentally retarded person, or developmentally disabled person.

(4) At any time, any mentally ill person, mentally retarded person, or developmentally disabled person who is detained, hospitalized, or institutionalized.

The bill eliminates specific resources and individuals that designated OLRS representatives have ready access to. Instead, the bill requires that OLRS have access to records of mentally ill persons, mentally retarded persons, and developmentally disabled persons in accordance with federal law.[141] It is unclear

[141] 42 U.S.C. 10805 and 15043. These provisions of federal law differ from state law in the access to information and individuals provided to the state advocacy system. Federal law requires that the advocacy system have access to certain information to investigate incidents of abuse or neglect of individuals with mental illness if the incidents are reported or if the system has probable cause to believe an incident has occurred. Federal law also requires the advocacy group to have access if the legal representative,

whether this change would prohibit an attorney designated by the administrator of OLRS from having access to this information.

An additional change is made to the sections providing the ombudsperson with access to resources or individuals. The bill eliminates the access of the ombudsperson to make necessary inquiries and obtain information it considers necessary. Current law provides that such access includes the premises and records of all providers of services to mentally retarded, developmentally disabled, or mentally ill persons. Instead, as part of OLRS, the ombudsperson is required to have access to information as provided under federal law.

Current law gives the ombudsperson the right to communicate in a private and confidential setting with any mentally retarded, developmentally disabled, or mentally ill person, with their parents, guardians, or advocates, or with employees of any provider. The bill maintains these provisions except to eliminate access to the employees of any provider.

The bill requires that any information obtained by OLRS in the completion of its duties be maintained confidentially in accordance with the law applicable to the source of the information. The bill requires that OLRS disclose information in accordance with the law applicable to the source of the information.

Definition of Status as Mentally Retarded, Developmentally Disabled, or Mentally Ill Person

(R.C. 5123.60)

Current law provides that OLRS determines who is a mentally retarded or developmentally disabled person for purposes of meeting the obligations of OLRS. The bill removes the authority of OLRS to determine who is mentally retarded or developmentally disabled. It provides that the Department of Mental Retardation and Developmental Disabilities (MR/DD) statutory definitions for mentally retarded and developmentally disabled persons apply to OLRS.

Current law does not provide a definition of "mentally ill person." The bill adds a definition that matches federal law.[142] The bill defines "mentally ill person" as a person to whom both (1) and (2) below apply:

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conservator, or guardian of the individual provides permission to the group to have that access. Current state law does not require prior authorization or probable cause of an incident for the advocacy agency to have access to information or individuals.

[142] 42 U.S.C. 10802(4).

(1) The person has a significant mental illness or emotional impairment, as determined by a mental health professional qualified under Ohio's laws and rules.

(2) One of the following applies to the person:

(a) The person is an inpatient or resident in a facility rendering care or treatment, even if the whereabouts of the person are unknown;

(b) The person is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility;

(c) The person is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction of or plea of guilty to a criminal offense;

(d) The person lives in a community setting, including the person's own home.

Ombudsperson notification

(R.C. 5123.604)

Current law requires the Department of MR/DD and Department of Mental Health to notify the ombudsperson of OLRS of major unusual incidents or life-threatening situations, as defined in rules adopted by each of the departments.

The bill requires that the Department of Mental Health notify the ombudsperson of all reportable incidents, as defined in rules adopted by the Department. The effect of the provision is unclear. The bill does not change this provision for the Department of MR/DD.

Client status

(R.C. 5123.60)

The bill adds a provision specifying that any mentally retarded person, mentally disabled person, mentally ill person, or any person that the OLRS ombudsperson determines is eligible for OLRS services, if formally represented by OLRS, is a client of OLRS. The bill does not indicate what the effect of considering such individuals clients of OLRS will be.

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.

LEGISLATIVE SERVICE COMMISSION (LSC)

- Requires the staff of the Legislative Service Commission to study the feasibility and potential results of establishing state incentives for local entities to assume control of state historical sites and to report the findings to the Commission not later than six months after the provision's effective date.

Study of state incentives for local entities to assume control of state historical sites

(Section 753.20)

The bill requires the staff of the Legislative Service Commission to study the feasibility and potential results of the state's offering incentives for local entities, including municipal corporations, counties, townships, local historical societies, and regional authorities, to assume control of state historical sites. The incentives to be studied must include the establishment of tax credits, the contribution of capital dollars, and the creation of an endowment-matching program. The study must focus on the cost and funding aspects of the incentives that are studied. In addition, the study must attempt to determine the potential results of providing each incentive at varying levels. Not later than six months after the effective date of the provision, the staff must report its findings to the Commission.

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 the threshold for expenditures of a joint fire and ambulance district (other than for employee salaries) above which competitive bidding procedures apply from $25,000 to $50,000.

- Permits townships to use the proceeds from selling cemetery lots to maintain and beautify cemetery grounds.

- Authorizes the Greene County Board of County Commissioners to provide for the prosecution of all violations of state law arising within the jurisdiction of any municipal court located in Greene County.

- Clarifies that law enforcement officers from one jurisdiction may enforce state traffic laws on all portions of a street that is located in an adjoining jurisdiction when the street is located immediately adjacent to the boundaries of the two jurisdictions, and provides that all fines collected from persons who are charged by law enforcement officers from the adjoining jurisdiction with violations of state traffic laws on such a street are to be paid to the adjoining jurisdiction.

- 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.

- Includes in the list of expenses to be divided between subdivisions conducting elections the costs for additional election expenses, including expenses for intermittent election employees, supplies for printing voter verified paper audit trails, and voting machine contractors, and defines a "subdivision" that must be charged for the costs of conducting an election as any board of county commissioners, board of township trustees, legislative authority of a municipal corporation, board of education, or any other board, commission, district, or authority that is empowered to levy taxes or permitted to receive a tax levy's proceeds.

- Allows a parent who is subject to an order allocating parental rights and responsibilities, or in relation to whom an action to allocate parental rights and responsibilities is pending, to apply to the court for a hearing

to expedite an allocation or modification proceeding if either parent is ordered to active military service in the uniformed services.

- Authorizes a board of county commissioners to decide by resolution whether the Landlord Registration Act will apply in the county; stops current application of the act until such a resolution has been adopted.

- Increases the maximum repayment period from 10 to 30 semiannual installments that a board of county commissioners may allow landowners for payment of an assessment under the Single County Ditch Law, and increases the maximum repayment period from 16 to 30 semiannual installments for bonds that are sold for an improvement under that Law.

- Requires notification of the maintenance assessment of the Muskingum Watershed Conservancy District that is scheduled to begin collection in 2008 to be provided to persons who are subject to the assessment either in a person's tax bill or by mail, and precludes the board of directors of the District from collecting the maintenance assessment if the board fails to comply with the notification requirement.

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.

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.

Bid threshold for a joint fire and ambulance district

(R.C. 505.376)

Current law provides that when any expenditure of a joint fire and ambulance district, other than for employee salaries, exceeds $25,000, the contract must be in writing and be the subject of prescribed competitive bidding procedures. The bill increases this threshold from $25,000 to $50,000.

Township cemetery lot proceeds useable for cemetery maintenance and beautification

(R.C. 517.08)

Under current law, a board of township trustees is required to use the proceeds arising from the sale of township cemetery lots to improve and embellish the cemetery. The bill adds maintenance and beautification to the purposes for which the proceeds can be used.

Prosecutions for violations of state law in Greene County

(R.C. 1901.34)

Under current law, the Greene County prosecuting attorney may, with the concurrence of the Greene County board of county commissioners, prosecute in the Fairborn Municipal Court all violations of state law arising within the unincorporated areas of Bath and Beavercreek Townships in Greene County and prosecute in the Xenia Municipal Court all violations of state law arising within the unincorporated areas of Ceasarcreek, Cedarville, Jefferson, Miami, New Jasper, Ross, Silvercreek, Spring Valley, Sugarcreek, and Xenia townships in Greene County. The bill authorizes the Greene County board of county commissioners to provide for the prosecution of all violations of state law arising within the territorial jurisdiction of any municipal court located in Greene County.

Existing law authorizes the prosecuting attorney of most counties, including Greene County, to enter into an agreement with any municipal corporation in the county in which the prosecuting attorney serves pursuant to which the prosecuting attorney prosecutes all criminal cases brought before the municipal court that has territorial jurisdiction over that municipal corporation for criminal offenses occurring within the municipal corporation. The bill provides that any such agreement entered into by the Greene County prosecuting attorney is subject to the authority of the Greene County board of county commissioners to provide for the prosecution of violations of state law in municipal courts located in Greene County.

Enforcement of traffic laws on streets located immediately adjacent to political subdivision boundaries and distribution of fine money

(R.C. 2935.03 and 4513.35)

Current law permits a police officer or village marshal appointed, elected, or employed by a municipal corporation to arrest and detain, until a warrant can be obtained, any person found violating any of a number of specified Revised Code sections or chapters, including R.C. Chapters 4511. (motor vehicle traffic laws) and 4513. (motor vehicle equipment laws) on the portion of any street or highway that is located immediately adjacent to the boundaries of the municipal corporation in which the police officer or village marshal is appointed, elected, or employed. The bill provides that a "portion of any street or highway" means "all lanes of the street or highway irrespective of direction of travel, including designated turn lanes, and any berm, median, or shoulder."

The language that specifies the violations that a law enforcement officer from an adjoining jurisdiction may enforce on such a street or highway does not include any reference to "municipal ordinances that are substantially equivalent to any of those Revised Code provisions or chapters" or other words of similar import. Therefore, a law enforcement officer from an adjoining jurisdiction may enforce only the specified Revised Code provisions on the street or highway that is located on the boundary and not any municipal ordinance. Generally, all fines collected for violations of Chapters. 4511. and 4513. are paid into the county treasury to the credit of the county's general highway maintenance and repair fund. A later provision of that section attempts to direct the fines collected from tickets issued under R.C. 2935.03(E)(3) to the adjoining jurisdiction, but it refers to "violations of municipal ordinances." The bill corrects this inconsistency by providing that the adjoining jurisdiction is to receive fines collected not only for violations of municipal ordinances but also "for violations of one of the sections or one of the provisions of one of the chapters of the Revised Code listed . . . ." The result is that if a law enforcement officer from an adjoining jurisdiction issues a ticket to a person who commits a violation on a street or highway that is located in another jurisdiction and that forms the boundary between the two jurisdictions, charging the person with a violation of the Revised Code, the fine money is deemed to be collected and to arise from an arrest made within the adjoining jurisdiction and is to be distributed to the adjoining jurisdiction.

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.

Apportionment of election expenses

(R.C. 3501.17)

Existing law requires certain election-related expenses to be paid in the same manner as other county expenses are paid. Some of the expenses that must be paid in this manner include the compensation of board of elections members and employees; expenditures for the rental, furnishing, and equipping of the board's office; and the costs of tally sheets, maps, flags, ballot boxes, and all other permanent election records and equipment.

Other election expenses must be charged to the subdivisions in and for which the elections are held. The expenses that must be charged to the subdivision conducting the election include the compensation of judges and clerks of elections; the cost of renting, moving, heating, and lighting polling places and of placing and removing ballot boxes and other equipment; the cost of printing and delivering ballots, cards of instructions, and other election supplies; and all other expenses of conducting primaries and elections in odd-numbered years. The bill expands the list of election expenses that must be charged to the subdivision conducting the election. The bill specifies that the cost of equipment includes the cost of voting machines, marking devices, and automatic tabulating equipment and that the cost of other election supplies includes the supplies required to print voter verified paper audit trails for electronic voting machines. Under the bill, all of the following expenses also must be charged to the subdivision conducting the election:

- The compensation of intermittent employees in the board's offices;

- The cost of precinct registration lists;

- The cost of contractors engaged by the board to prepare, program, test, and operate voting machines, marking devices, and automatic tabulating equipment.

Existing law does not specify what types of "subdivisions" may be charged for the costs of conducting an election. The bill defines a "subdivision" for this purpose as a board of county commissioners, board of township trustees, legislative authority of a municipal corporation, board of education, or any other board, commission, district, or authority that is empowered to levy taxes or permitted to receive the proceeds of a tax levy, regardless of whether the entity receives tax settlement moneys.

Child custody and military service

(R.C. 3109.04 and 3109.041)

Under current law, in any divorce, legal separation, or annulment proceeding, or in any proceeding regarding the allocation of parental rights and responsibilities (e.g. when the parents of a child are not married),[143] the court is required to allocate parental rights and responsibilities either through a sole or shared parenting order. Once the court establishes a sole or shared parenting order, that order may be modified by (1) the court, if the court determines that a change in circumstances of the child or either of the parents has occurred and modification is in the best interest of the child, or (2) the parents, under certain circumstances.

The bill requires a parent who is subject to an order allocating parental rights and responsibilities, or in relation to whom an action to allocate parental rights and responsibilities is pending, and who is ordered to active military service in the uniformed services[144] to notify the other parent who is subject to the order, or in relation to whom the case is pending, of the order to active military service. The bill then allows either parent to apply to the court for a hearing to expedite the allocation or modification proceeding. The application must include the date on which the active military service begins. The court must then schedule a hearing upon receipt of the application and hold the hearing not later than 30 days after

[143] In Ohio, "allocation of parental rights and responsibilities" is commonly referred to as "custody."

[144] "Uniformed services" means (1) the United States armed forces, (2) the Army National Guard and Air National Guard when engaged in active duty for training, or (3) the commissioned corps of the United States Public Health Service (R.C. 3109.04(J)(5)).

receipt of the application. However, the court must give the case calendar priority and handle the case expeditiously if exigent circumstances exist in the case.

The bill also prohibits the court from modifying a prior decree allocating parental rights and responsibilities unless the court determines by clear and convincing evidence that there has been a change in circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that modification is necessary to serve the best interest of the child. The court cannot consider active military service in the uniformed services in determining whether a change in circumstances exists under Child Custody Law. Additionally, the court may issue a temporary order for the duration of the parent's active military service.

Optional application of landlord registration law

(R.C. 5323.011; Section 753.10)

Background

Current law requires owners of residential rental properties to file identifying information with the county auditor and, if out of state, to appoint an agent for service of process (R.C. 5323.01 through 5323.004--not in the bill). A failure to file or update the required information is a minor misdemeanor (R.C. 5323.99--not in the bill).

Optional application

The bill specifies that the landlord registration requirements apply only if the board of county commissioners adopts a resolution declaring that the requirements apply in the county. In order to adopt such a resolution, the board must find that the benefit from compliance with the requirements will exceed the cost to the county and its people and to persons traveling, working, or doing business in the county. The board may not declare that any fewer than all the requirements (R.C. 5323.01 through 5323.04 and R.C. 5323.99) apply in the county.

An owner of residential rental property in a county is not required to comply with, and the auditor in a county is not required to accept compliance with, the landlord registration requirements unless the board of county commissioners has adopted such a resolution. In a similar vein, the currently effective duties of an owner to register and of the county auditor to accept compliance are tolled under the bill until a board of county commissioners adopts such a resolution to have them apply in that county.

A board of county commissioners is authorized to repeal a resolution under the bill if it finds that the cost of continued compliance with the landlord registration requirements exceeds the benefit to the county and its people and to persons traveling, working, or doing business in the county. The repeal tolls the duties of an owner to file and of the county auditor to accept compliance with the requirements.

Maximum payment period for single county ditch assessments and bonds sold for single county ditch improvements

(R.C. 6131.23)

Current law requires a board of county commissioners to determine the number of semiannual installments in which landowners must pay an assessment for an improvement under the Single County Ditch Law, but at least two semiannual installments generally must be allowed. If the cost of an improvement is more than $500, the board may allow landowners to pay the assessment in more than two installments. When assessments are payable in installments and county general funds are used to pay for the improvement, the assessment cannot exceed 10 semiannual installments. The bill increases the maximum payment period to 30 semiannual installments.

Under current law, when assessments are levied and bonds are issued to finance the construction of an improvement under the Single County Ditch Law, the bonds may have a repayment period (i.e. maturity) of up to eight years, which corresponds with 16 semiannual installment payments. The bill increases the maximum repayment period to 30 semiannual installments for bonds that are sold for such an improvement.

Muskingum Watershed Conservancy District: notification of maintenance assessments

(Section 757.20)

The bill requires the board of directors of the Muskingum Watershed Conservancy District to prepare a written notification of the maintenance assessment to be levied by the District under current law that is scheduled to begin collection in calendar year 2008. The notification must be included in the 2007 second half property tax bill of each person on the tax duplicate whose property is located in the District and subject to the maintenance assessment. The county auditor of each county that is included in whole or in part in the District must include with the second half property tax bill the notification prepared by the board. For each person receiving a second half tax bill in 2007 and required to receive the notification under the bill, the notification must include a statement

that the District intends to levy the maintenance assessment and must include an indication of the amount of the assessment that is applicable to that person. The board of directors must take whatever actions are necessary and work with each applicable county auditor to ensure that the notifications are included with the second half tax bills as required by the bill. The notification must be included with the second half tax bill notwithstanding a provision in current law prohibiting the inclusion of non-property tax related materials in a property tax bill.

With respect to persons that will be subject to the maintenance assessment to be levied by the Muskingum Watershed Conservancy District that is scheduled to begin collection in calendar year 2008, but that do not receive a second half property tax bill in 2007 or that do not otherwise receive the notification that is required to be included in the tax bill, the board of directors of the District must cause to be sent by United States mail a notification of the assessment. The contents of the notification must be the same as those that are specified for the notification that is required to be included with the 2007 second half property tax bill. The notification must be sent not later than 120 days prior to the date on which the maintenance assessment is effective.

The bill specifies that if the board of directors of the Muskingum Watershed Conservancy District fails to comply with the bill's notification requirements, the maintenance assessment that is scheduled to begin collection in calendar year 2008 must not be collected. However, the board of directors subsequently may collect the maintenance assessment if the board gives notification of the maintenance assessment to every person that is required to receive the notification under the bill. The notification must include the same information as the notification that is required to be included with the 2007 second half property tax bill as specified above.

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.

- Prohibits Commission rules from authorizing Sunday drawings on any lottery game unless the rule is approved by an executive order of the Governor.

- 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.

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.

No Sunday lottery drawings on certain games

(R.C. 3770.03)

Current law requires that the State Lottery Commission adopt rules, generally in accordance with the Administrative Procedure Act, under which a statewide lottery and statewide joint lottery games may be conducted. Subjects to be included in these rules are the manner and frequency of prize drawings. The bill prohibits Commission rules from authorizing Sunday drawings on any lottery game unless the rule is approved by an executive order of the Governor.

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.

STATE MEDICAL BOARD (MED)

- Authorizes the State Medical Board to adopt rules specifying an acceptable examination and establishing the minimum score on that examination that demonstrates proficiency in spoken English for foreign medical graduates wishing to receive a certificate to practice medicine and surgery or osteopathic medicine and surgery in Ohio.

- Increases the time in which the Board must issue a final adjudicative order regarding a summary suspension from 60 to 75 days after the completion of its hearing.

Examination of proficiency in spoken English

(R.C. 4731.142)

Existing law generally requires an individual to demonstrate proficiency in spoken English in order to receive a certificate to practice medicine and surgery or osteopathic medicine and surgery, if the individual's eligibility for the certificate is based in part on certification from the Educational Commission for Foreign Medical Graduates and fulfillment of undergraduate requirements at an institution outside the United States. The individual may demonstrate such proficiency by obtaining a score of 40 or higher on the test of spoken English conducted by the Educational Testing Service.

The bill instead authorizes the State Medical Board to adopt rules specifying an acceptable examination and establishing the minimum score on that examination that demonstrates proficiency in spoken English for foreign medical graduates wishing to receive a certificate to practice medicine and surgery or osteopathic medicine and surgery in Ohio.

Final adjudicative orders regarding summary suspension

(R.C. 4731.22)

Under certain circumstances, existing law permits the State Medical Board to suspend without a hearing a person's certificate to practice medicine and surgery or osteopathic medicine and surgery. The person subject to the suspension may request an adjudicatory hearing, which generally must be held within 7 to 15 days of the request. The Board must issue a final adjudicative order within 60 days after completion of the hearing.

The bill increases the time in which the State Medical Board must issue such a final adjudicative order from 60 to 75 days after the completion of its hearing.

MEDICAL TRANSPORTATION BOARD (AMB)

- Eliminates the Ohio Medical Transportation Fund.
- Requires the Ohio Medical Transportation Board to submit an annual report to the Governor and the General Assembly that provides information on the Board's operations for that fiscal year, including the number of licenses and permits issued and renewed, fees collected, complaints received, and investigations conducted.

- Requires the Board to post the report on its web site and make it available to the public on request.

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.

Annual Report

(R.C. 4766.22)

The bill creates a new requirement that the Ohio Medical Transportation Board, not later than 45 days after the end of each fiscal year, submit a report to the Governor and General Assembly that provides all of the following information for that fiscal year:

(1) The number of licenses and permits issued and renewed and the amount of fees collected for them;

(2) The number of complaints submitted and investigations conducted;

(3) The number of adjudication hearings held and their outcomes;

(4) The amount of penalties imposed and collected;

(5) Other information the Board determines reflects its operations.

The Board must post the report on its web site and make it available to the public on request.

DEPARTMENT OF MENTAL HEALTH (DMH)

- Removes provisions effective July 1, 2007 permitting the Department of Mental Health to certify community mental health services only for services for disorders that are mental disorder according to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

Funding and certification of community mental health services

(R.C. 340.03 and 5119.611)

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. Under current law, beginning July 1, 2007, community mental health services may be certified and state and federal funding may be provided only if the services are for individuals whose focus of treatment is 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. The bill eliminates this provision.

DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES (DMR)

Responsibility for nonfederal share of Medicaid expenditures

- Revises the law governing when a county board of mental retardation and developmental disabilities (county MR/DD board) and the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) are required to pay the nonfederal share of Medicaid expenditures for home and community-based services provided under an ODMR/DD-administered Medicaid waiver program.

- Revises the law governing the funds that a county MR/DD board may use to pay the nonfederal share of such Medicaid expenditures.

- Specifies a minimum amount of funds that ODMR/DD must expend, subject to available appropriations, in fiscal year 2009 and thereafter to (1) pay for the nonfederal share of such Medicaid expenditures that ODMR/DD is required to pay and (2) assist county MR/DD boards in paying the nonfederal share of such expenditures that the county MR/DD boards are required to pay.

- Specifies a minimum amount of funds that ODMR/DD must expend, subject to available appropriations, in fiscal year 2009 and thereafter to (1) pay for the nonfederal share of such Medicaid expenditures that ODMR/DD is required to pay and (2) assist county MR/DD boards in paying the nonfederal share of such expenditures that the county MR/DD boards are required to pay.

Minimum county enrollment in waiver services

- Specifies the minimum number of persons that county MR/DD boards must ensure are enrolled in ODMR/DD-administered Medicaid waiver programs.

Appropriation item for Martin settlement

- Requires that funds appropriated for purposes of fulfilling the state's obligations under the *Martin* settlement be in an appropriation item that authorizes expenditures only for purposes of fulfilling those state obligations.

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 ODMR/DD collects in certifying providers of supported living, licensing residential facilities, and certifying and registering employees of county MR/DD boards 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 ODMR/DD intends to take.

Notice of change of address

- Requires that individuals seeking or holding certain licenses, certificates, or evidences of registration from ODMR/DD notify ODMR/DD of a change of address.

Residential and Respite Care

- Eliminates ODMR/DD's authority 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 ODMR/DD make a general purpose subsidy and subsidies for family support services, service and support administration, and supported living to county MR/DD boards in ongoing law.

- Includes an earmark for fiscal years 2008 and 2009 that requires ODMR/DD to use certain funds appropriated to ODMR/DD 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 MR/DD board and a service provider, including the law governing mediation and arbitration procedures regarding service contracts.

- Eliminates a county MR/DD 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 ODMR/DD.

- Permits ODMR/DD and the Job and Family Services to enter into an interagency agreement requiring ODMR/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.

MR/DD Futures Study Committee

- Creates the MR/DD Futures Study Committee and requires the Committee, not later than March 30, 2008, to submit a report to the Governor and General Assembly on the Committee's recommendations regarding the funding design of services provided by county MR/DD boards.

Responsibility for nonfederal share of Medicaid expenditures

(R.C. 5123.047, 5123.048, 5123.049, 5123.0411, 5123.0416, 5126.046, 5126.054, 5126.056, 5126.059, 5126.0510, 5126.0511, 5126.18, and 5705.44)

Background

The Department of Job and Family Services is permitted to seek federal approval for one or more Medicaid waivers under which home and community-based services are provided to individuals with mental retardation or a developmental disability (MR/DD) as an alternative to placement in an intermediate care facility for the mentally retarded.[145] The Department is required to enter into an interagency agreement with the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) to have the Department of MR/DD administer one or more of the waiver programs authorized by such a Medicaid waiver.[146]

Current law specifies when a county board of mental retardation and developmental disabilities (county MR/DD board) or ODMR/DD is responsible for the nonfederal share of Medicaid expenditures for ODMR/DD-administered home and community-based services.

Current law also specifies when a county MR/DD board or ODMR/DD is required to pay the nonfederal share of Medicaid expenditures for Medicaid case management services. Medicaid case management services are case management services provided to an individual with MR/DD that the state Medicaid plan requires.

The bill revises when a county MR/DD board or ODMR/DD is responsible for the nonfederal share of Medicaid expenditures for ODMR/DD-administered

[145] R.C. 5111.87.

[146] R.C. 5111.871.

home and community-based services. The bill does not revise current law governing when a county MR/DD board is responsible for the nonfederal share of Medicaid expenditures for Medicaid case management services.[147]

Responsibility for home and community-based services

A county MR/DD board that has Medicaid local administrative authority for ODMR/DD-administered home and community-based services must pay the nonfederal share of Medicaid expenditures for such services provided to an individual with MR/DD who the county MR/DD board determines is eligible for county MR/DD board services unless ODMR/DD is required to pay the nonfederal share. ODMR/DD is required to pay the nonfederal share if (1) the services are provided to an individual with MR/DD who a county MR/DD board has determined is not eligible for county MR/DD board services, (2) the services are provided to an individual with MR/DD given priority for the services under state law governing waiting lists for county MR/DD board services, or (3) ODMR/DD enters into an agreement with a county MR/DD board under which ODMR/DD is to pay the nonfederal share.

Under the bill, and except as otherwise provided by an agreement between a county MR/DD board and ODMR/DD, a county MR/DD board is responsible for the nonfederal share of Medicaid expenditures for ODMR/DD-administered home and community-based services under four circumstances. ODMR/DD is responsible for the nonfederal share of Medicaid expenditures for home and community-based services for which no county MR/DD board is required to pay.

(1) Services the county MR/DD board provides. A county MR/DD board is responsible for such services the county MR/DD board provides to an individual the county MR/DD board determines is eligible for county MR/DD board services.

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[147] Although the bill does not change when a county MR/DD board is responsible for the nonfederal share of Medicaid expenditures for Medicaid case management services, when ODMR/DD must pay the nonfederal share is changed. A county MR/DD board is required to pay the nonfederal share of Medicaid expenditures for Medicaid case management services the county MR/DD board provides to an individual who the county MR/DD board has determined is eligible for county MR/DD board services. Current law requires ODMR/DD to pay the nonfederal share if the services are provided to an individual who a county MR/DD board *has* determined is *not* eligible for county MR/DD board services. In contrast, the bill requires ODMR/DD to pay the nonfederal share if no county MR/DD board is responsible. This means ODMR/DD is responsible for the nonfederal share of Medicaid expenditures for such services no county MR/DD board provides regardless of whether there has been a determination of whether the recipient is eligible for county MR/DD board services.

(2) Services to an individual enrolled as of June 30, 2007. A county MR/DD board is responsible for such services another provider provides to an individual who the county MR/DD board determines is eligible for county MR/DD board services and is enrolled as of June 30, 2007, in the Medicaid wavier program under which the services are provided. However, in the case of such services provided during fiscal year 2008 under the Individual Options Medicaid waiver program, a county MR/DD board is not required to pay more than the sum of (1) the total amount the county MR/DD board pays as the nonfederal share for home and community-based services provided in fiscal year 2007 under the Individual Options Medicaid waiver program and (2) an amount equal to 1% of the total amount ODMR/DD and the county MR/DD board pay as the nonfederal share for home and community-based services provided in fiscal year 2007 under the Individual Options Medicaid waiver program to individuals the county MR/DD board determines are eligible for county MR/DD board services. Also, a county MR/DD board is required to pay, for such services provided under the Individual Options Medicaid waiver program during fiscal year 2008, no less than the total amount the county MR/DD board pays as the nonfederal share for home and community-based services provided in fiscal year 2007 under the Individual Options Medicaid waiver program. A county MR/DD board is not required to pay the nonfederal share of Medicaid expenditures for such services provided after June 30, 2008, if ODMR/DD fails to comply with the bill's requirement to expend at least a certain amount of funds on the nonfederal share of Medicaid expenditures in fiscal year 2009 and thereafter.[148]

(3) Services to an individual enrolled after June 30, 2007. A county MR/DD board is responsible for such services another provider provides to an individual who the county MR/DD board determines is eligible for county MR/DD board services and, pursuant to a request the county MR/DD board makes, enrolls after June 30, 2007, in the Medicaid waiver program under which the services are provided. However, a county MR/DD board is not required to pay the nonfederal share of Medicaid expenditures for such services if (1) the services are provided to an individual who enrolls in the Medicaid waiver program under which the services are provided as the result of an order issued following a state hearing, administrative appeal, or appeal to a court of common pleas regarding the Medicaid program and (2) there are more individuals who are eligible for county MR/DD board services from the county MR/DD board enrolled in the Medicaid waiver program than is required under the bill's provision regarding minimum county MR/DD board enrollment in waiver services.[149]

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[148] See "***Minimum amount of funds to be expended on Medicaid expenditures***" below.

[149] See "***Minimum county MR/DD board enrollment in waiver services***" below.

(4) Services for which a county MR/DD board agrees to pay. A county MR/DD board may enter into an agreement with ODMR/DD under which the county MR/DD board agrees to pay the nonfederal share of Medicaid expenditures for one or more ODMR/DD-administered home and community-based services that the county MR/DD board is not otherwise responsible to pay and are provided to an individual who the county MR/DD board determines is eligible for county MR/DD board services. The agreement must specify which home and community-based services the agreement covers and the county MR/DD board must pay the nonfederal share of Medicaid expenditures for the services the agreement covers as long as the agreement is in effect.

Agreement for ODMR/DD to pay the nonfederal share of waiver services

Current law permits ODMR/DD to enter into an agreement with a county MR/DD board under which ODMR/DD is to pay the nonfederal share of Medicaid expenditures for home and community-based services provided to individuals with MR/DD residing in the county served by the county MR/DD board. The bill provides instead, that ODMR/DD may enter into an agreement with a county MR/DD board under which ODMR/DD is to pay the nonfederal share of Medicaid expenditures for one or more home and community-based services that the county MR/DD board would, if not for the agreement, be required to pay. The bill requires that the agreement specify which home and community-based services the agreement covers and that ODMR/DD pay the nonfederal share of Medicaid expenditures for the services that the agreement covers as long as the agreement is in effect.

Minimum amount of funds to be expended on Medicaid expenditures

The bill requires ODMR/DD to expend in fiscal year 2009 and each fiscal year thereafter, not less than the amount appropriated in appropriation item 322-416, Medicaid waiver--state match, in fiscal year 2008 to (1) pay the nonfederal share of Medicaid expenditures for home and community-based services that the bill requires ODMR/DD to pay and (2) assist county MR/DD boards in paying the nonfederal share of Medicaid expenditures for home and community-based services that the bill requires county MR/DD boards pay. (The bill appropriates $113,692,413 in appropriation item 322-416 for fiscal year 2008.) This requirement is subject to the availability of funds appropriated to ODMR/DD for Medicaid waiver state match.

ODMR/DD is permitted to make the expenditures to assist county MR/DD boards in paying their responsibility for nonfederal share in the form of allocations to county MR/DD boards or by other means. If ODMR/DD makes the expenditures in the form of allocations, the process for making the allocations

must conform to a process ODMR/DD is to establish after consulting with representatives of county MR/DD boards.

Funds a county MR/DD board may use to pay nonfederal share

Current law specifies funds that a county MR/DD board may use to pay the nonfederal share of Medicaid expenditures for Medicaid case management services and ODMR/DD-administered home and community-based services. For example, a county MR/DD board may use earned federal revenue funds the county MR/DD board receives for Medicaid services the county MR/DD board provides.[150]

To the extent consistent with the levy that generates the taxes, a county MR/DD board may use county levy money that the board of county commissioners allocates to the county MR/DD board. The bill eliminates a restriction that the board of county commissioners must have allocated the levy money to the county MR/DD board specifically to pay the nonfederal share of the Medicaid services.

The bill adds to the list of funds a county MR/DD board may use to pay the nonfederal share of Medicaid expenditure for home and community-based services funds that ODMR/DD allocates or otherwise makes available to the county MR/DD board pursuant to the bill's requirement that ODMR/DD expend at least a certain amount of funds to so assist county MR/DD boards.[151]

Minimum county enrollment in waiver services

(R.C. 5126.0512)

The bill requires that each county MR/DD board ensure, for each ODMR/DD-administered Medicaid waiver program, that the number of individuals eligible for county MR/DD board services who are enrolled in such a Medicaid waiver program is no less than the sum of (1) the number of individuals eligible for services from the county MR/DD board who are enrolled in the Medicaid waiver program on June 30, 2007, and (2) the number of Medicaid waiver program slots that the county MR/DD board requested before July 1, 2007, were assigned to the county MR/DD board before that date, but in which no individual was enrolled before that date. However, an individual enrolled in an ODMR/DD-administered Medicaid waiver program after March 1, 2007, due to an

[150] See "***Elimination of county MR/DD board subsidies***" below for further discussion of funds a county MR/DD board may use to pay the nonfederal share.

[151] See "***Minimum amount of funds to be expended on Medicaid expenditures***" above.

emergency reserve capacity waiver assignment is not to be counted in determining a county MR/DD board's minimum enrollment requirement. Also, an individual who is enrolled in a Medicaid waiver program to comply with the terms of the consent order filed March 5, 2007, to settle the federal class action case *Martin v. Strickland*,[152] is to be excluded in determining whether a county MR/DD board has complied with the minimum enrollment requirement.[153]

A county MR/DD board is required to make as many requests for individuals to be enrolled in an ODMR/DD-administered Medicaid waiver program as necessary for the county MR/DD board to comply with the minimum enrollment requirement.

Appropriation item for Martin settlement

(R.C. 126.04)

In March of 2007, a federal judge signed a consent order for the settlement of the federal class action case *Martin v. Strickland*. That case originated in 1989, as *Martin v. Celeste*, and was litigated for 18 years. The case was brought by persons seeking to give individuals with mental retardation or a developmental disability the ability to choose community-based, integrated residential services over placement in institutional care, such as a nursing facility. Included in the settlement is a requirement that ODMR/DD and Department of Job and Family Services request funding for an additional 1,500 slots for the Individual Options Medicaid waiver program in the state budget for fiscal years 2008 and 2009. Another requirement is that ODMR/DD conduct surveys of residents of state-run developmental centers and private and county-owned intermediate care facilities for the mentally retarded to determine which residents would rather receive home and community-based services, if available.

The bill requires that funds appropriated for purposes of fulfilling the state's obligations under the *Martin* consent order be in an appropriation item that authorizes expenditures only for purposes of fulfilling the state's obligations under the consent order.

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[152] *Martin v. Strickland*, Case No. 89-CV-00362, United States District Court for the Southern District of Ohio, Eastern Division.

[153] See "***Appropriation item for Martin settlement***" below.

Home and community-based services

(R.C. 5123.16 (repealed) and 5123.045)

Current law prohibits a person or government entity from receiving payment for providing home and community-based services under a Medicaid waiver program ODMR/DD administers 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[154] 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. The Director must conduct surveys in accordance with rules the Director is

[154] "Supported living" is defined under current law 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.)

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,[155] 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[156] 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

The bill provides that the residency prohibition does not apply to a person to whom either of the following applies:

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[155] See "***Actions against a certificate holder***" below.

[156] The bill defines "related party."

- 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;[157]

- 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;

- Other conduct determined by the Director as injurious to individuals with MR/DD.

[157] See "***Restrictions on providing supported living and residence***," above.

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[158] 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.

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

[158] 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.

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 MR/DD. 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[159] 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 MR/DD 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.

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.

[159] See "***Restrictions on providing supported living and residence***," above.

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 ODMR/DD'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, ODMR/DD is permitted to use other available funds appropriated to ODMR/DD 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 MR/DD to do all of the following:

- Issue certificates and evidences of registration to ODMR/DD employees and employees of entities that contract with ODMR/DD 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 MR/DD of any change of address:

- Certificate or evidence of registration as an ODMR/DD employee or an employee of an entity that contracts with ODMR/DD 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 ODMR/DD's authority 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.[160]

- Provide residential services in a facility for which the person or government agency with whom ODMR/DD 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.

County MR/DD board subsidies

Elimination of county MR/DD board subsidies

(R.C. 5126.11, 5126.12, 5126.15, and 5125.44; 5126.0511)

Current law requires ODMR/DD to make subsidy payments to 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 ODMR/DD make a general purpose subsidy and subsidies for family support

[160] 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.)

services,[161] service and support administration,[162] and supported living[163] to county MR/DD boards in ongoing Revised Code law.

However, the bill includes an earmark for fiscal years 2008 and 2009 that requires ODMR/DD to use certain funds appropriated to ODMR/DD 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.

As discussed above, a county MR/DD board is required under certain circumstances to pay the nonfederal share of Medicaid expenditures for Medicaid case management services and ODMR/DD-administered home and community-based services.[164] 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 ODMR/DD 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 ODMR/DD.

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 ODMR/DD provides to county MR/DD boards. In a related

[161] 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).

[162] Subject to available funds, ODMR/DD is required to pay county MR/DD boards 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 MR/DD boards whose effective tax rate is less than one and one-half mills for general operations of the board (R.C. 5126.15).

[163] ODMR/DD is required under current law to make allocations to county MR/DD boards to be used for planning, development, contracting for, and providing supported living (R.C. 5126.44).

[164] See "***Responsibility for nonfederal share of Medicaid expenditures***" above.

change, the bill provides that after receiving notice from ODMR/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 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.[165]

- 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.

[165] 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 ODMR/DD enter into such contracts for the county. Beginning July 1, 1995, county boards were required to assume administration of the contracts ODMR/DD had entered into.

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 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 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 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 MR/DD boards and providers of services, including the law governing mediation and arbitration procedures regarding service contracts.

Current law provides that a county MR/DD 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 ODMR/DD. The Director of MR/DD is required to withhold any amount owed to ODMR/DD from subsequent disbursements from any appropriation item or money otherwise due to a nonpaying county.

The bill permits ODMR/DD and the Department of Job and Family Services to enter into an interagency agreement requiring ODMR/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.

MR/DD Futures Study Committee

(Section 337.20.20)

The bill creates the MR/DD Futures Study Committee to prepare a report by March 30, 2008, regarding the funding design of county MR/DD board services and other related matters the Committee is charged to study. On submission of the report, the Committee ceases to exist.

The Committee members are to be appointed not later than 30 days after the bill's effective date. The bill specifies the membership and appointing authorities as follows:

(1) One member who is an individual eligible to receive services from a county MR/DD board, appointed by the Governor, but who is not a state employee, employee or member of a county MR/DD board, or employee or governing board member of an MR/DD service provider;

(2) One member who is an immediate family member of an individual eligible to receive services from a county MR/DD board, appointed by the Governor, but who is not a state employee, employee or member of a county MR/DD board, or employee or governing board member of an MR/DD service provider;

(3) Two members who are members of the House of Representatives, appointed by the Speaker of the House of Representatives, with one from the majority party and one from the minority party;

(4) Two members of the Senate, appointed by the President of the Senate, with one from the majority party and one from the minority party;

(5) Four members of statewide advocacy organizations for individuals with MR/DD, appointed as follows: (a) one by the Board of Trustees of the Arc of Ohio, (b) one by the Board of Directors of the Ohio League for the Mentally Retarded, (c) one by the Board of People First of Ohio, (d) one by the governing board of an organization designated by the Director of MR/DD;

(6) One member appointed by the Board of Directors of the Ohio Self-Determination Association;

(7) One member appointed by the governing authority of the Ohio Superintendents of County Boards of Mental Retardation and Developmental Disabilities Association;

(8) Two members appointed by the Board of Trustees of the Ohio Association of County Boards of Mental Retardation and Developmental Disabilities;

(9) One member appointed by the Board of Trustees of the County Commissioners' Association of Ohio;

(10) Two members appointed by the Board of Trustees of the Ohio Provider Resource Association;

(11) One member appointed by the Board of Directors of the Ohio Health Care Association;

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

(13) Two members appointed by the Governor who are representatives of statewide labor organizations representing public employees;

(14) The Director of MR/DD.

The Director of the MR/DD is required to serve as the chairperson of the Committee. A majority of the Committee constitutes a quorum, which is required for the transaction of any business.

Members are to serve without compensation except as their service is considered a part of their regular employment duties. The Director of MR/DD is authorized to provide reasonable reimbursement of travel expenses to Committee members.

The bill requires the Committee to meet at times and locations determined by the chairperson to do all of the following:

(1) Review the effectiveness, efficiency, and sustainability of current uses of funding for the state's MR/DD system;

(2) Propose alternatives for effectively funding the nonfederal share of Medicaid expenditures for home and community-based services for individuals with MR/DD, including the bill's amendments to those provisions;

(3) Identify the potential for reducing administrative costs in the state's MR/DD system;

(4) Propose alternatives for effectively balancing revenues available to the state and the county MR/DD boards to fulfill their responsibilities for funding, planning, and monitoring the delivery of MR/DD services;

(5) Examine the efficiency and effectiveness of the current system of separate and concurrent MR/DD accreditation, licensure, certification, quality assurance, and quality improvement activities and propose changes to improve that system;

(6) Recommend steps necessary to assure the long term financial sustainability of MR/DD services to meet current and future needs while affording counties the ability to make local decisions about the priority uses of local tax levy funding;

(7) Determine the feasibility and potential benefits of regional planning approaches to meet specialized and intensive service needs;

(8) Propose improvements needed and action steps to fully realize the principle of self-determination by individuals with MR/DD;

(9) Evaluate the effectiveness and equity of the state's MR/DD systems' uses of waiting and service substitution lists, priority populations, and having separate acuity instruments that vary by service setting;

(10) Review other matters the Director of MR/DD considers appropriate for evaluations.

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.

- 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 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, 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.

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.

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.

STATE DENTAL BOARD (DEN)

- Requires the State Dental Board, not later than 180 days after the bill's effective date, to determine whether basic life-support training certified by the American Safety and Health Institute meets national standards.
- Requires the Board to accept training certified by the American Safety and Health Institute as meeting requirements for training of dental hygienists if the Board determines that the Institute meets national standards and is equivalent to the training certified by the American Red Cross and the American Heart Association.

Dental Hygienist CPR Training Study

(R.C. 4715.251)

Current law requires that dental hygienists complete a basic life-support training course certified by the American Red Cross or the American Heart Association.

The bill adds the requirement that the State Dental Board, not later than 180 days after the bill's effective date, determine whether basic life-support training certified by the American Safety and Health Institute meets national standards. The Board must compare the training certified by the Institute with the training certified by the American Red Cross and the American Heart Association.

The bill requires the Board to accept training certified by the American Safety and Health Institute if the Board determines that the Institute meets national

standards and is equivalent to the training certified by the American Red Cross and the American Heart Association.

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)

- Requires the Registrar of Motor Vehicles, not later than December 31, 2007, to adopt rules to implement a program permitting payment in person at a deputy registrar's office of motor vehicle registration taxes and fees, driver's license and commercial driver's license fees, and any other taxes, fees, penalties, or charges imposed or levied by the state by means of a financial transaction device, which includes a credit card and debit card, and provides that a deputy registrar may choose, but in no case is required, to participate in the program.

- 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.

Deputy registrars may accept credit and debit cards for in-person transactions

(R.C. 4503.102)

Currently, the Registrar of Motor Vehicles is authorized to implement a program permitting the payment of motor vehicle registration taxes and fees, driver's license and commercial driver's license fees, and any other taxes, fees, penalties, or charges imposed or levied by the state by means of a financial transaction device, which includes credit cards and debit cards. The Registrar has not acted on this authority.

The bill requires the Registrar, not later than December 31, 2007, to adopt rules to implement a program permitting payment in person at a deputy registrar's office of all these taxes, fees, penalties, and charges by means of a financial transaction device. A deputy registrar may choose, but in no case is required, to participate in the program.

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.[166] 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

[166] 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 education programs after 2007-2008 the

sponsors of which do not have certificates of authorization from the Board of Regents.

- Requires the Board of Regents to review applications from proprietary schools for certificates of authorization within 22 weeks.

- Narrows eligibility for Student Choice Grants to students with a family income of $95,000 or less in the 2007-2009 biennium only.

- 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.

- Directs the Board of Regents to design and implement a three-year pilot project in the vicinity of Clark, Greene, and Montgomery counties to test how a public-private collaborative may enhance P-16 education and workforce development in the field of health information and imaging technology.

- Allows technical colleges that are co-located with other state institutions of higher education to offer baccalaureate-oriented programs.

- 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.

- Creates the Commission on the Future of Health Care Education and Physician Retention in NW OH.

Ohio College Opportunity Grants

(R.C. 3333.122)

The bill disqualifies students from receiving an Ohio College Opportunity Grant (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.

Background

The OCOG program, 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.

Certificates of authorization for proprietary schools

(R.C. 1713.031)

Under the bill, in order for students who first enroll after 2007-2008 in two-year education programs sponsored by for-profit proprietary schools to qualify for an Ohio College Opportunity Grant (OCOG), the school must have a certificate of authorization from the Board of Regents.[167] The bill requires that the Board of

[167] See "***Ohio College Opportunity Grants***" above.

Regents review applications from for-profit proprietary schools for certificates of authorization within 22 weeks.

Student Choice Grants

(Section 375.50.50)

For the 2007-2009 biennium, the bill adds the requirement that a student must have a family income of $95,000 or less to qualify for a Student Choice Grant.

Under current permanent law not changed by the bill, a student is eligible for a Student Choice Grant if the student is an Ohio resident, is enrolled full-time 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.[168]

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 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.

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.

[168] R.C. 3333.27, not in the bill.

Critical needs rapid response system

(R.C. 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." Within 90 days of an identification 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. The bill does not specify an official or agency whose identification of a shortage triggers the proposal.

Health technology workforce development pilot project

(R.C. 3333.55)

The bill establishes the Health Information and Imaging Technology Workforce Development Pilot Project, to be developed and implemented by the Board of Regents, to test how a P-16 public-private collaborative project can enhance P-16 education and workforce development in the field of health information and imaging technology. The pilot project will operate in fiscal years 2008 through 2010 in the vicinity of Clark, Greene, and Montgomery counties. In designing the pilot project, the Board of Regents may address the following goals stated by the bill:

(1) Increase the number of students taking and mastering high-level science, technology, engineering, or mathematics courses and pursuing careers in those subjects;

(2) Increase the number of students pursuing professional careers in health information and imaging technology upon receiving related technical education and professional experience; and

(3) Unify efforts among schools, career centers, post-secondary programs, and employers in a region for career and workforce development, preservation, and public education.

The bill specifies that the project participants include the Clark-Shawnee Local School District, the Springfield City School District, the Greene County Career Center,[169] Clark State Community College, Central State University, Wright State University, Cedarville University, Wittenberg University, the

[169] Greene County Career Center is a joint vocational school district.

University of Dayton, and private employers in the health information and imaging technology industry in the vicinity of Clark, Greene, and Montgomery counties selected by the Board of Regents. For the third year of the project, the Board of Regents may add the Dayton City School District and the Xenia City School District. Wittenberg University must be the lead coordinating agent, and Clark State Community College must be the fiscal agent for the pilot project.

The project may engage in such activities as increased academic intervention in related areas of study, after-school and summer intervention programs, tutoring, career and job fairs and other promotional and recruitment activities, externships, professional development, field trips, academic competitions, development of related specialized study modules, development of honors programs, and development and enhancement of dual high school and college enrollment programs. Presumably, it may include other activities as well. The Board of Regents also must create an "advisory council," made up of representatives of the participating entities, to coordinate, monitor, and evaluate the project and to submit an annual activity report. The report must be submitted to the Board of Regents by a date specified by the Board.

Technical colleges

(R.C. 3357.01 and 3357.13)

The bill explicitly allows technical colleges that are co-located with other colleges or universities to offer "baccalaureate-oriented programs." It defines baccalaureate-oriented programs as curricular programs of not more than two years that (1) grant academic credit for courses comparable to first- and second-year courses offered by other accredited colleges and universities and (2) enable students either to transfer to colleges and universities and earn baccalaureate degrees or to terminate academic study after two years with a proportionate recognition of academic achievement through receipt of an associate degree.

All but one of the eight technical colleges in Ohio are co-located with a branch campus of a state university.[170] Co-located campuses are partnerships that share buildings, resources, and location.

[170] Belmont Technical College with OU-Belmont; Central Ohio Technical College with OSU-Newark; James A. Rhodes State College with OSU-Lima; Marion Technical College with OSU-Marion; North Central State College with OSU-Mansfield; Stark State College of Technology with Kent State-Stark; and Zane State College with OU-Zanesville.

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 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.[171]

The bill authorizes the Director to contract for energy conservation studies at any state institution of higher education, upon request of the institution's board. The institution of higher education must pay for the cost of the report.

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."[172]

Commission on the Future of Health Care Education and Physician Retention in NW OH

(Section 263.30.30)

The bill creates the Commission on the Future of Health Care Education and Physician Retention in NW Ohio to prepare a report that examines and makes recommendations regarding the graduate medical education system in northwest Ohio. The Commission is to be composed of the following members:

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[171] See R.C. 3345.61 to 3345.66, not in the bill.

[172] R.C. 156.01, not in the bill.

(1) Six representatives of health care providers in northwest Ohio, none of whom is from the same organization;

(2) Six representatives of the health care profession in northwest Ohio, composed of the following individuals:

--One from the College of Medicine at the University of Toledo;

--One from the northwest Ohio chapter of the Ohio Nurses Association;

--One from the Academy of Medicine of Toledo and Lucas County;

--One from the Northwest Ohio Pediatric Society;

--One geriatric medicine physician affiliated with Ohio University College of Osteopathic Medicine;

--One osteopathic physician affiliated with Ohio University College of Osteopathic Medicine.

(3) Three representatives from northwest Ohio business and labor organizations, composed of the following individuals:

--One from the Toledo Area Regional Chamber of Commerce;

--One from the labor community of northwest Ohio;

--One from the health insurance industry.

(4) Three representatives of health care consumers in northwest Ohio, none of whom may be currently employed or affiliated with a health system or health insurer;

(5) Nine representatives of state and local government, composed of the following individuals:

--Two members of the Ohio House of Representatives, one from the minority party and one from the majority party;

--Two members of the Ohio Senate, one from the minority party and one from the majority party;

--One township trustee of northwest Ohio;

--Two representatives of northwest Ohio municipal corporations, only one of whom may be from the City of Toledo;

--Two representatives of county commissioners, only one of whom may be from Lucas County.

The Governor, Speaker of the House of Representatives, and President of the Senate are required to appoint an equal number of Commission members under each category of Commission members described above.[173] The members must be appointed not later than 30 days after the bill's effective date.

The Commission must first meet not later than 30 days after all appointments are made. The chairperson and vice-chairperson are to be elected from the Senate and House of Representatives members. A majority constitutes a quorum for the transaction of business.

Members are to serve without compensation, but may solicit public and private funds to defray any costs of the Commission. The Toledo Community Foundation or a similar organization is to provide meeting space and administrative support, and the Ohio Board of Regents is required to serve as a resource to the Commission.

Not later than nine months after the bill's effective date, the Commission is to submit its report to the Governor and General Assembly, at which time the Commission ceases to exist. Topics to be addressed in the report include the following:

(1) Ways to increase the number and retention of medical graduates in northwest Ohio;

(2) The status of the health care workforce in northwest Ohio;

(3) The role of the University of Toledo in the health care education of the surrounding region;

(4) Potential changes in federal and state statutes and rules regarding Medicaid support of graduate medical education;

(5) Policy initiatives that the Governor and General Assembly may consider to strengthen graduate medical education opportunities and physician retention in northwest Ohio.

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[173] The bill does not specify the appointing authority for specific members of the Commission. If the Governor, Speaker, and President each attempt to appoint the representative of the Toledo Area Regional Chamber of Commerce, for example, there is no mechanism in the bill to resolve any dispute.

DEPARTMENT OF REHABILITATION AND CORRECTION (DRC)

- Creates a Blue Ribbon Commission to complete a comprehensive review of Ohio's correctional facilities and inmate population.

Blue Ribbon Commission

(Section 377.20)

The bill creates the Blue Ribbon Commission of the Department of Rehabilitation and Correction. The Blue Ribbon Commission will conduct a comprehensive review of county, multicounty, municipal, municipal-county, and multicounty-municipal jails and workhouses, prisons, community-based correctional institutions, and other correctional institutions within the state, and of the offenders confined at these facilities. The review must include, but is not limited to, a review of staffing levels at these facilities, projected needs and costs related to the operation of these facilities, the health and safety of the staff and inmates, and per diem costs of incarceration at each type of facility. The Blue Ribbon Commission must develop recommendations based on its review, which recommendations must include, but are not limited to, recommendations for sentencing reform, costs savings, and a means of better anticipating the fiscal and security impacts of sentencing legislation.

The Blue Ribbon Commission is composed of 11 members, including, the Director of Rehabilitation and Correction or the Director's designee, two individuals appointed by the President of the Senate, two individuals appointed by the Speaker of the House of Representatives, and six members appointed by the Governor. The Governor must appoint the following members to the Commission: one member of the Criminal Sentencing Commission, one representative of the Ohio Civil Service Employees' Association, one county sheriff, one retired judge, one individual with expertise in corrections from an accredited college or university, and one individual representing community corrections facilities. Vacancies are to be filled in the same manner as for original members. Members will serve without compensation. The members of the Blue Ribbon Commission must elect a chairperson and vice-chairperson at the first meeting of the Commission. Meetings of the Blue Ribbon Commission will be open to the public, and public testimony will be accepted at the meetings. The Blue Ribbon Commission will meet as often as necessary and must submit its final report and recommendations by January 1, 2009, to the Governor and the Director of Rehabilitation and Correction, after which the Commission shall cease to exist.

- Permits a school district undertaking a state-funded school facilities project to use the interest earned on district moneys in the project construction fund (not the interest earned on the state moneys in the fund) to pay the cost of facilities not included in the project.

- Permits a school district, at the end of its state-funded school facilities project, to transfer interest earned on district moneys remaining in the project construction fund to the district's permanent improvement fund or to leave that interest in the project construction fund (as alternatives to transferring it to the district's maintenance fund, as otherwise required under current law).

- 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.

Background to school facilities programs

The Ohio School Facilities Commission administers several programs that provide state assistance to school districts and community schools in the acquisition of classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. The poorest districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served. Joint vocational school districts are served by the Vocational School Facilities Assistance Program, which is similar to CFAP.

Other programs have been established to address the particular needs of certain types of districts. The Exceptional Needs School Facilities Assistance Program provides low-wealth districts and "large land area" districts with funding in advance of their district-wide CFAP projects to construct single buildings in

order to address acute health and safety issues. The Expedited Local Partnership Program permits most school districts that have not been served under CFAP to apply the advance expenditure of *district* money on approved parts of their district-wide needs toward their shares of their CFAP projects when they become eligible for that program. The Accelerated Urban School Building Assistance Program allows Big-Eight school districts that are not yet eligible for assistance under CFAP to receive that assistance earlier than otherwise permitted.

Use of interest on school district moneys

(R.C. 3318.12)

During the project

In all of the Commission's state-assisted programs, both the state and school district shares of the district's project cost must be deposited into a "project construction fund" from which the school district treasurer, upon approval of the Commission, is required to pay obligations related to the project when they become due. Generally, the state money in the fund must be spent first. (For Accelerated Urban projects, the state and district shares must be spent simultaneously.) Any interest earned on moneys in the fund is credited to the fund and, therefore, is available to be spent on the project.

The bill permits a school district board to use all or part of the interest attributable to the district's share of moneys in the fund to the pay the cost of facilities that are not included in the state-assisted project but that are related to it. That is, the district may use the interest to pay for items that do not qualify for state funding and for which the district is entirely responsible. These items are often referred to as "locally funded initiatives" (or "LFIs"). If a district board chooses to use some or all of the interest attributable to its share of the fund for LFIs and, later, the cost of its state-assisted project exceeds the amount in the fund, the district must re-pay all of the interest used for LFIs before further state funds will be released for the project.

After the project is completed

Continuing law specifies that, at the end of a district's state-assisted project, principal remaining in the project construction fund must be returned to the state and the district in proportion to their respective contributions to the fund. Any interest attributable to the state's share must be returned to the state. However, current law also specifies that interest attributable to the district's share must be transferred to the district's project maintenance fund for use in maintaining the facilities acquired under the project. (Generally, under a state-assisted school facilities project, each district must levy for 23 years, or otherwise set aside in

each of 23 years, an amount equal to one-half mill of the district's valuation for the maintenance of the acquired facilities. Joint Vocational School Districts must set aside in each of 23 years an amount equal to 1.5% of the insurance value of the acquired facilities.)

The bill permits a school district board at its option, instead, to transfer the interest attributable to its share to its permanent improvement fund (where presumably it could be spent on any permanent improvement) or to leave that interest in the project construction fund to pay the cost of future projects. A district board also may choose to transfer the interest to the district's maintenance 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 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 3.68% of GRF tax revenue to the LCF and 2.22% 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 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.

- Changes the statutory criteria governing which counties may undertake, finance, operate, and maintain, and issue securities to pay the costs of, an arena or convention center supported by lodging taxes.

- 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 July 1, 2008, reduces the kilowatt-hour tax rate levied on the total price of electricity received by a self-assessing commercial or industrial electricity purchaser, from 4% to 3.5%.

- Requires the Tax Commissioner to review that total price tax rate every biennium during budget deliberations and to consider electricity price fluctuations over the most recent two fiscal years and other factors influencing Ohio's economy.

- Denies the sales tax vendor 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.

- Narrows the nonresident vehicle sales tax exemption to those sales where the nonresident's state provides a similar exemption to Ohio residents.

- Exempts from the sales tax the sale of a motor vehicle to a nonresident if the nonresident's state does not provide a credit for sales or use tax paid to Ohio or if it does not impose a sales, use, or similar excise tax on the ownership or use of motor vehicles.

- For taxable motor vehicles sales to nonresidents, the tax due equals the lesser of the amount that would be collected under Ohio law if the total rate were 6% or the tax that would be due to the nonresident's state if the sale occurred there.

- Distributes the portion of the rate above 5.5% among all counties (but not transit authorities) in proportion to county motor vehicle registrations.

- Removes the six-day limit on sales-tax-exempt sales made by school- or student-related organizations.

- 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."

- Narrows the $300 per year exemption from the cigarette excise tax and the use tax for cigarettes brought into Ohio so it applies only in counties bordering low-tax states.

- Clarifies that "other tobacco product" has the same meaning as "tobacco product" under the tobacco 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.

- In 2008 and 2009, authorizes nonrefundable corporation franchise tax and income tax credits for retail service station dealers that sell and dispense E85 blend fuel and blended biodiesel through metered pumps, at the rate of 15¢ per gallon in 2008 and 13¢ per gallon in 2009.

- Authorizes school boards to levy a dual-purpose income tax.

- Permits school boards to levy income taxes in rate increments of 0.1% instead of 0.25%.

- Authorizes school boards to reduce income taxes in 0.1% 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 business 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.

- Requires excess public utility property tax replacement funds not needed to make tax replacement payments and not needed to assist school districts with maintenance of School Facility Commission-subsidized building projects to be transferred 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.

- Expressly authorizes municipal corporations to permit their tax administrators to publish income tax-related statistics in a manner that does not disclose information about particular taxpayers.

- 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.

- Expresses the General Assembly's intent to consider expanding eligibility for tax credits that allow corporations to partially recover the financial effects of unused net operating loss deductions caused by the elimination of the corporation franchise tax for most corporations.

- 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.

- Authorizes a board of township trustees of a limited home rule township to adopt a resolution declaring prior resolutions relating to tax increment financing to have had an immediate effective date.

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 3.68% of the preceding month's total GRF tax revenues to the LCF and 2.22% 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.

Issuing debt for an arena or a convention center supported by lodging taxes

(R.C. 307.695)

Am. Sub. H.B. 699 of the 126th General Assembly authorized the board of county commissioners of a county having a population of at least 400,000, but not more than 800,000, and that directly borders another state, to enact or increase the lodging tax to undertake, finance, operate, or maintain a "project." A project is an arena, a convention center, or a combination of both. Such a board also was authorized to issue securities to pay the costs of the project, to be secured by lodging tax revenues. Under H.B. 699, the resolution enacting or increasing the lodging tax must be adopted between January 15, 2007, and January 15, 2008.

The bill changes the statutory criteria governing which counties may undertake, finance, operate, and maintain, and issue securities to pay the costs of, a project, by eliminating the upper population threshold (800,000) and the state border requirement. The bill retains the lower population threshold of 400,000, so that only boards of county commissioners of counties with a population of 400,000 or more may undertake, finance, operate, and maintain a project, and issue securities to pay the costs of it.

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)[174]
$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 net amount of taxes due on $25,000 in appraised market value of a homestead. The tax reduction is computed on the basis of the local effective tax rate. It reflects the net taxes actually charged after the existing 10% and 2.5% reductions are applied.

The bill's $25,000 exemption amount is not indexed to general price inflation, as the current exemption amounts are.

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

[174] 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.

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.[175]

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

(Section 803.06)

The changes made by the bill to the homestead exemption first apply to real property taxes levied for the tax year that includes the day the Director of Budget and Management certifies that sufficient revenue exists in one or more state treasury funds (or is currently in the process of collection) to pay the additional tax reimbursement to taxing units required by the bill when those payments are due,

[175] 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.

and that the revenue is not otherwise appropriated or encumbered. The bill's homestead changes first apply to manufactured home taxes in the following tax year. The certification must be made to the Governor and to the leaders of each of the four legislative caucuses.

Kilowatt-hour tax: self-assessor rate reduction

(R.C. 5727.81(C)(2); Section 757.01)

Continuing law authorizes commercial or industrial purchasers of large quantities of electricity to self-assess the kilowatt-hour tax. A self-assessing purchaser must pay the tax at the rate of $.00075 per kilowatt hour on the first 504,000,000 kilowatt hours distributed through the purchaser's meter or to a single location, and 4% of the total price of all electricity distributed to that meter or location.

The bill reduces the tax rate a self-assessing purchaser owes on the total price of all electricity distributed to the purchaser's meter or to a single location, from 4% to 3.5%, beginning July 1, 2008. The $.00075 rate on the first 504,000,000 kilowatt hours distributed to the self-assessing purchaser remains the same.

The bill requires that the Tax Commissioner review the percentage rate for the total price of electricity every two years during biennial budget deliberations. The review must consider electricity price fluctuations that have occurred in the most recent two fiscal years and other factors influencing Ohio's economy.

Sales and use tax vendor discount

(R.C. 1548.06(D), 4505.06(B)(1), 4519.55, and 5739.12(B))

Continuing sales tax law authorizes vendors who collect sales and use taxes to retain a percentage of the tax collections if they report and remit the tax to the state by the deadline. The "discount" percentage is 0.9% through June 30, 2007, and is scheduled to be reduced to 0.75% on and after July 1, 2007.

The bill does not change the discount percentage or amount, but it changes the discount in two respects, as follows:

- 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. A certified service provider is a person that acts as a vendor's agent to collect and remit, and otherwise perform a vendor's sales and use tax function in a state, on behalf of the vendor; providers primarily assist out-of-state vendors with compliance with a

state's sales and use tax laws under the Streamlined Sales and Use Tax Agreement.

- 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 and provides two additional circumstances under which motor vehicle sales to nonresidents are exempted. The existing nonresident exemption is narrowed to apply only if the state where the nonresident takes the vehicle or titles or registers it provides a similar exemption to residents of Ohio. 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. The clerk of courts must forward the original affidavit to the tax commissioner.

Even if the nonresident's state does not provide a similar nonresident exception, the sale is exempt if the state where the nonresident takes the vehicle or titles or registers it either does not provide a credit for sales or use tax paid to Ohio, or does not impose a sales, use, or similar excise tax on the ownership or use of motor vehicles. In either case, the bill does not require the nonresident to execute an affidavit affirming the nonresident's intention to title or register in, or remove the vehicle to, another state.

The bill specifies that any other Ohio sales or use tax exemption continues to apply (e.g., an exemption for government purchases).

If the sale of a motor vehicle to a nonresident is taxable because none of the exemptions applies, a modified tax is imposed in lieu of the rate or rates charged under current law. The tax due equals the lesser of the amount that would be collected under Ohio law if the total tax rate were 6%, or the amount of tax that would be owed to the state where the nonresident takes the vehicle or titles or registers it. In computing the tax that would be due to the other state, all credits and exemptions the other state provides must be considered.

The exemptions and modified tax rate do not apply to vehicle leases.

Distribution of tax

(R.C. 5739.213)

Of the tax revenue collected on a taxable nonresident motor vehicle sale, an amount equal to the tax collected at a rate of 0.5% is distributed to the county where the sale is deemed to have occurred using origin-based situsing rules (i.e., generally where the sale occurs). The remainder is credited to the state's general revenue fund.

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 bill's nonresident vehicle sale provisions apply to sales occurring on or after August 1, 2007.

Sales tax exemption for school fundraising sales

(R.C. 5739.02(B)(9))

Current law grants a sales tax exemption for sales made by school- and student-related nonprofit organizations (and by churches and other nonprofit or

tax-exempt organizations), but only for six days in a year. All subsequent sales that year are taxable, and the organization must collect the tax and remit it to the state as does any vendor. Each different organization or group affiliated with a particular primary or secondary school is allowed a separate six-day exemption.

The bill removes the six-day limit on the exemption for primary and secondary school- and student-related sales, so that such sales are tax-exempt no matter how many days sales are conducted.

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 law 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

(R.C. 5741.02 and 5743.331; Section 818.03)

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 narrows this exemption so that it applies only to cigarettes brought into (or consumed or stored in) a county bordering a state imposing a tax on cigarettes that is at least 90¢ per pack lower than Ohio's rate--i.e., imposing a rate no more than 35¢ (Ohio's rate per 20-pack is $1.25). Kentucky, with a rate of 30¢, is the only state currently levying a rate that much lower than Ohio's rate.

The provision takes effect 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.

Alternative fuel corporation franchise and income tax credits

(R.C. 5733.01(G)(2), 5733.48, 5733.98, 5747.77, and 5747.98)

The bill creates a nonrefundable tax credit against the corporation franchise or income tax for a retail dealer that owns or operates a retail service station located in Ohio, from which "alternative fuel" is sold to the general public and dispensed through a metered pump. Under the bill, "alternative fuel" is E85 blend fuel, which must contain at least 85% ethanol derived from agricultural products, forest products, or other renewable resources,[176] and blended biodiesel, which must contain not less than 20% biodiesel derived from vegetable oils or animal fats. Both E85 blend fuel and blended biodiesel must meet American Society for Testing and Materials (ASTM) specifications.

As applied against corporation franchise tax liability, the tax credit may be claimed for tax years 2008 and 2009. For tax year 2008, the credit is 15¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2007 that is included in the retail dealer's taxable year ending in 2007. For tax year 2009, the credit is 15¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2007 that is included in the dealer's taxable year ending in 2008, plus 13¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2008 that is included in that taxable year.

As applied against income tax liability, the tax credit may be claimed for taxable years ending in 2008 or 2009. For a retail dealer's taxable year ending in 2008, the credit is 15¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2007 or 2008 included in that taxable year. For a taxable year ending in 2009, the credit is 15¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2008 included in that taxable year, plus 13¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2009 included in that taxable year.[177]

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[176] E85 fuel may contain between 70% and 85% ethanol if the United States Department of Energy determines, by rule, that the lower percentage is necessary to provide for the requirements of cold start, safety, or other vehicle functions.

[177] The bill's schedule for claiming the tax credit accounts for the fact that some retail dealers may not pay corporation franchise or income taxes on a calendar year basis. A retail dealer's tax year under the franchise tax, or taxable year under the income tax, may fall within two calendar years; i.e., with a tax or taxable year beginning, for example, September 1, 2007, and ending August 31, 2008, the taxpayer would be selling alternative fuel during two calendar years for one tax or taxable year.

The tax credit must be calculated separately for each retail service station owned or operated by a retail dealer, and must be claimed in the order prescribed by continuing law. The credit cannot exceed the amount of corporation franchise or income taxes due after deducting all other credits the dealer may claim in that order.

The bill provides that under the income tax, pass-through treatment of the tax credit is allowed if the retail dealer is a pass-through entity. An equity owner of a pass-through entity may claim the owner's distributive or proportionate share of the credit for the equity owner's taxable year that includes the last day of the entity's taxable year.

School district income tax

Dual-purpose levies

(R.C. 5748.01(I) and 5748.02(B)(1); Section 818.03)

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 increments

(R.C. 5748.02, 5748.021, 5748.04, and 5748.08; Section 818.03)

Under current law, school district income taxes are required to be levied in increments of 0.25%.

The bill reduces the required increment to 0.10%.

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 0.10%. 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.[178] 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

[178] Compensation also is payable for the phase-out of telecommunications personal property, which is phased out through 2010.

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; 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(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).

Utility property tax replacement funds: use of excess

(R.C. 5727.85(H))

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. Payments to a school district are to be used for maintenance of new or renovated buildings. Any unused balance in the Half-Mill Equalization Fund may be transferred to the School Building Trust Fund upon the request of the Ohio School Facilities Commission and with the approval of the Controlling Board.

The bill continues to authorize excess money in the Replacement Fund to be transferred to the Half-Mill Equalization Fund and used to supplement local

school building maintenance funds, but any balances in the Half-Mill Equalization Fund not needed for that purpose must be transferred 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.

Municipal income tax information disclosure

(R.C. 718.13)

The bill expressly permits a municipal corporation to authorize its municipal tax administrator to publish statistics in a form that does not disclose information with respect to particular taxpayers. The authorization must be enacted by ordinance or resolution.

Current law generally prohibits the disclosure of income tax information gained from tax returns, investigations, and other sources unless disclosure is

required by a judicial order; or unless the disclosure is in connection with the performance of a person's official duties or with the official business of the municipal corporation, and then only if authorized by Ohio or municipal law.

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.

Eligibility to claim credits for unused net operating loss deductions

(Section 757.03)

The bill states the General Assembly's intent to consider modifying eligibility for commercial activity tax credits allowing corporations to partially offset losses from the inability to claim net operating loss deductions under the corporation franchise tax. The bill recites the General Assembly's recognition that some taxpayers are not authorized to claim the credits under current law, and that eligibility currently depends on whether the taxpayer was able to book the financial effects of the unused deductions and to file for the credit by the June 30, 2006, deadline. It also recites the General Assembly's recognition that the CAT credits may not be claimed until 2010. On the basis of those considerations, the General Assembly is to consider whether eligibility should be extended to taxpayers not currently eligible. In considering whether to modify eligibility, the General Assembly must consult with the Governor. The bill does not change eligibility to claim the credit.

The elimination of the corporation franchise tax for nonbank and nonfinancial corporations by 2009 caused some corporations to book current financial losses because the elimination of the tax denied them the ability to claim future tax deductions for accumulated net operating losses or to claim other deferred tax assets. Under current law, corporations with large unused net operating loss deductions (i.e., more than $50 million) are permitted to claim a CAT credit to partially offset the current financial loss caused by booking the unused deductions. The credit is first allowed in 2010. But to claim the credit, a corporation was required to file a report with the Tax Commissioner by June 30, 2006, showing the basis on which the taxpayer would claim the credit. (See R.C. 5751.53.)

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.

Township TIF resolutions

(Section 757.08)

The bill authorizes a board of township trustees of a limited home rule township to adopt a resolution by unanimous vote declaring tax increment financing (TIF) resolutions adopted by the board in December 2005, to have had an immediate effective date.

Under Ohio law as it existed in 2005, emergency township resolutions became effective ten days after the resolution was filed with the township clerk. Ohio law also provides that a property tax exemption granted as a result of a township TIF resolution begins in the tax year beginning after the resolution takes effect. Accordingly, an emergency township TIF resolution adopted in late

December 2005 may not have taken effect until 2006, which would delay the TIF tax exemption and the associated payments in lieu of taxes.

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.

- Designates a portion of State Route 44 within Lake County as the "LCpl Andy Nowacki Memorial Highway."

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.

"LCpl Andy Nowacki Memorial Highway"

(R.C. 5533.91)

The bill designates the portion of State Route 44 that is located within Lake County and that commences at the intersection of that state route and State Route 2 and extends in a northerly direction and ends at Headlands Beach State Park as the "LCpl Andy Nowacki Memorial Highway." The Director of Transportation is authorized to erect suitable markers along the highway indicating its name.

OHIO TURNPIKE COMMISSION (TPC)

- Authorizes the Turnpike Commission to participate in a multi-jurisdiction electronic toll collection agreement, including collecting and remitting revenue between other participating entities and agencies and setting fees or charges by rule; allows the Commission to adopt rules establishing owner or operator civil liability for failure to comply with toll collection rules; and allows the Commission to retain revenue from a civil violation of toll collection rules.

Electronic toll collection on the Ohio Turnpike

(R.C. 5537.04, 5537.16, and 5537.99)

The Ohio Turnpike Commission has general authority to make contracts, enter into agreements as are necessary or incidental to the performance of its duties, and adopt rules. Current law also authorizes the Ohio Turnpike Commission to adopt rules as it considers advisable for the control and regulation of traffic on any turnpike project. The rules of the Commission with respect to speed, axle loads, vehicle loads, and vehicle dimensions apply notwithstanding such violations established under general traffic law provisions; violations of these rules are a minor misdemeanor on a first offense, and subsequent offenses are a fourth degree misdemeanor.

The bill grants the Turnpike Commission express authority in regard to a multi-jurisdiction electronic toll collection agreement. (An example is the multi-jurisdictional electronic toll collection system known by the trade name E-ZPass, which is a system under which drivers prepay tolls and attach a small electronic device to their vehicles; tolls are automatically calculated and deducted from

prepaid accounts as customers pass through designated toll lanes, thereby taking cash, coins, and toll tickets out of the toll collection process.)

Specifically, the bill authorizes the Commission to (1) participate in a multi-jurisdiction electronic toll collection agreement and collect or remit tolls, fees, or other charges to or from entities or agencies that also participate in such an agreement, (2) fix and revise by rule, from time to time, such permit fees, processing fees, or administrative charges for the prepayment, deferred payment, or nonpayment of tolls and use of electronic tolling equipment or other Commission property, and (3) adopt rules for the purpose of establishing owner or operator liability for failure to comply with toll collection rules. Under the bill, failure to comply with toll collection rules may be a civil violation and whoever violates such rules when the offense is a civil violation is subject to a fee or charge established by the Commission by rule.

The bill further specifies that all fees or charges assessed by the Commission against an owner or operator of a vehicle as a civil violation for failure to comply with toll collection rules are revenues of the Commission. This differs from fines for violations of Commission rules that are misdemeanor offenses, which are distributed in accordance with the provisions governing the distribution of fines collected from persons apprehended or arrested by the State Highway Patrol, with a portion credited to the General Revenue Fund (after sufficient revenue is credited to the Security, Investigations, and Policing Fund to support specific activities of the Patrol), a small portion credited to the Trauma and Emergency Medical Services Grants Fund, and the remainder distributed based on the court that imposes the fine (R.C. 4501.11 and 5503.04, not in the bill).

VETERANS HOME (OVH)

- Creates the Medicare Services Fund to support the operations of veterans' homes.

Medicare Services Fund

(R.C. 5907.15 and 5907.16)

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. The bill removes Medicare reimbursements from the Ohio Veterans' Homes Rental, Service, and Medicare Reimbursement Fund, 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.

- Provides that bonds that are not issued due to capital improvements being paid for with the proceeds of the tobacco securitization are still to be considered as issued for purposes of calculating the 5% cap on the issuance of state bonds.

- 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.[179]

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 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.

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[179] Executive Budget for Tobacco Revenue for Fiscal Years 2007 and 2008 (May 2006), pp. 5 and 6.

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.[180]

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."[181] The Authority consists of the Governor, the Director of Budget and Management, the Tax Commissioner, the Treasurer of State, and the Auditor of State.[182] 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 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.

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[180] 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(P)).

[181] 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)).

[182] 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).)

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(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) The assigned and sold portion (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 may covenant in the bond proceedings, with and for the benefit of the Authority, the holders and owners of obligations, and providers of any credit enhancement facilities, that it will (a) maintain statutory authority for, and cause to be collected and paid directly to the Authority or its assignee, the pledged receipts, (b) enforce the rights of the Authority to receive the receipts under the TMSA assigned and sold to the Authority, (c) not 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) not in any way impair the rights and remedies of the holders or owners of obligations outstanding under the bond proceedings or impair the security for those obligations, and (e) enforce Chapter 1346. of the Revised Code (regarding escrow accounts for those tobacco product manufacturers that are not "participating manufacturers" under the

TMSA), the TMSA, and the consent decree to effectuate the collection of the pledged tobacco settlement receipts.[183]

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.

Lastly, nothing in the bill or the bond proceedings can be construed to preclude or limit the state from (1) regulating, or authorizing or permitting the regulation of, smoking, (2) taxing and regulating the sale of cigarettes or other tobacco products, or (3) defending or prosecuting cases or other actions relating to the sale or use of cigarettes or other tobacco products.

Purpose of the obligations

(R.C. 183.51(A)(11) 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.

[183] The expenses of this enforcement activity of the Attorney General must be paid from the TMSA amounts assigned and sold to the Authority or from the proceeds of obligations. Payment may be by both annual payments and a special fund providing reserve amounts. (R.C. 183.51(H).)

Issuance and sale of obligations

(R.C. 183.51(C) to (E))

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 School Building Program Assistance Fund created under current law.[184] 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 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. The Attorney General--as counsel to the Authority--is required to represent the Authority in the execution of its powers and duties and to institute and prosecute all actions on its behalf. After receiving recommendations from the Authority, the Attorney General is to appoint counsel for the purposes of carrying out the functions specified by the bill. 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.

State debt limitation

(R.C. 126.16)

Article VIII, Section 17 of the Ohio Constitution imposes a "5% cap" that limits the amount of new debt the state can take on in a fiscal year. Under that provision, state bonds or other obligations cannot be issued if the total amount of debt service payments (that is, principal and interest) that must be made in any future fiscal year from the GRF and net state lottery proceeds would exceed 5% of the total estimated GRF and net state lottery proceeds revenue during the fiscal

[184] See R.C. 3318.25.

year of issuance. Current law sets forth the manner in which debt service is to be calculated for purposes of implementing this constitutional limitation.

The bill adds that, when computing this limitation, any avoided obligations are to be considered as having been issued. "**Avoided obligations**" are the direct obligations of the state that are *not* issued because the capital facilities they would have financed are instead paid for with the proceeds of obligations issued by the Authority in accordance with the bill. The fiscal year amounts that would have been required to be applied or set aside for payment of debt service over the maximum period of maturity of the avoided obligations had those obligations been issued are to be included in the computations.

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 to receive, title to, or ownership of amounts under the TMSA, and the Authority is to be dissolved.

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

Having an unlawful interest in a public contract

(R.C. 2921.42)

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.

"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.

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.

Contract of regional airport authority

(R.C. 308.04)

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.

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
Reported, H. Finance & Appropriations	05-01-07
Passed House (97-0)	05-01-07

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