



**Sub. H.B. 562\***

127th General Assembly

(As Reported by S. Finance & Financial Institutions)

**Reps. Hottinger, Peterson, Skindell, Bacon, Bolon, Boyd, Brown, Budish, Chandler, Evans, Flowers, Garrison, R. Hagan, Hite, Jones, R. McGregor, Patton, Redfern, Schlichter, D. Stewart, J. Stewart, Strahorn, Yates, Adams, Book, Brady, Collier, Combs, Dolan, Domenick, Dyer, Gerberry, Goyal, J. Hagan, Harwood, Hughes, Koziura, Mallory, J. McGregor, Schindel, Setzer, Szollosi, Ujvagi, Webster, White, Widowfield, Beatty, Celeste, Coley, Fende, Heard, Letson, Luckie, Newcomb, Sykes, B. Williams**

This analysis is arranged by state agency, beginning with the Department of Administrative Services and continuing in alphabetical order. Items that do not directly involve an agency are located under the agency that has regulatory authority over the item, or otherwise deals with the subject matter of the item. The analysis includes a Local Government category and concludes with a Miscellaneous category. Within each category, a summary of the items appears first (in the form of dot points), followed by a discussion of their content and operation.

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\* This analysis was prepared before the report of the Senate Finance and Financial Institutions Committee appeared in the Senate Journal. Please note that the list of co-sponsors and legislative history may be incomplete. In addition, this analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Fiscal Note and Capital Bill Analysis for Sub. H.B. 562 for an analysis of such provisions.

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## **DEPARTMENT OF ADMINISTRATIVE SERVICES**

- Applies the state procurement laws to the Adjutant General for non-military supplies and services, the Bureau of Workers' Compensation, and the Department of Rehabilitation and Correction and exempts the judicial branch from the state procurement laws.
- Modifies the state procurement laws administered by the Department of Administrative Services (DAS) by lowering the thresholds under which state agencies may make direct purchases for services from \$50,000 to \$25,000.
- Permits state agencies to make purchases for services and supplies over \$25,000 but under \$50,000 if the purchases are made under the supervision of an agency employee certified by DAS to make purchases,

and requires DAS to establish a program to certify agency employees to make purchases.

- Removes the current law requirement that the Director of DAS adjust the purchasing thresholds for supplies and services with reference to the Consumer Price Index and institutes a process through which the Directors of DAS and Budget and Management review the thresholds and make recommendations regarding adjustments to the General Assembly.
- Permits DAS to enter into cooperative purchasing agreements with the federal government, purchasing consortia, and institutions of higher education.
- Eliminates the requirement that a state agency pay the monthly enrollee premium under Medicare Part B for its state employees and elected state officials.
- Requires the Director of DAS, rather than the Governor, to appoint the State Chief Information Officer.
- Specifies that the State Chief Information Officer, instead of directing the Office of Information Technology (OIT), rather is to supervise the office as an assistant director of DAS.
- Transfers authority for providing information services for state agencies from OIT to DAS.
- Specifies that when a state agency requests to purchase information technology supplies or services, the State Chief Information Officer may review and reject the purchase because it does not comply with information technology direction, plans, policies, standards, or project-alignment criteria.
- Exempts the Adjutant General's Department, the Bureau of Workers' Compensation, and the Industrial Commission from the state agencies that are subject to information technology oversight by OIT.
- Specifies that OIT may establish cooperative agreements for technology projects and services with state and local and federal agencies that are not under the Governor's authority only with the approval of the Director of DAS.

- Authorizes DAS to contract for telephone, other telecommunication, and computer services for state agencies but not to operate and superintend these services.
- Eliminates any duty OIT may have had with regard to maintaining a list of debarred vendors.
- Adds the Director of Development as a member of the Ohio Business Gateway Steering Committee.

### **Contracting for supplies and services**

(R.C. 125.02)

Under current law, the Department of Administrative Services (DAS) possesses general power to purchase supplies and services for use of state agencies, except for the Adjutant General, the Capital Square Review and Advisory Board, the Department of Rehabilitation and Correction, the General Assembly, the Bureau of Workers' Compensation, and institutions administered by boards of trustees. Under the bill, DAS' purchasing authority is modified to enable it to establish contracts for supplies and services for the use of state agencies, or for the use of any political subdivision. The bill also extends this purchase contracting authority to the Adjutant General for non-military supplies and services, the Bureau of Workers' Compensation, and the Department of Rehabilitation and Correction. The bill exempts the judicial branch from the purchase contracting authority.

### **Supplies and services for state agencies**

(R.C. 125.04)

Under continuing law, DAS generally is required to determine the supplies and services that are purchased by or for state agencies. Whenever DAS makes any change or addition to the lists of supplies and services that it determines to purchase for state agencies, it must provide a list to the agencies of the changes or additions and indicate when DAS will be prepared to furnish each item listed. Current law prohibits DAS from including the Bureau of Workers' Compensation in the lists, and specifies further that the authority to determine necessary purchases does not apply to supplies or services required by the legislative or judicial branches, the Capitol Square Review and Advisory Board, or the Adjutant General, to certain supplies or services purchased by a state agency directly, to purchases of supplies or services for the Emergency Management Agency, or to

purchases of supplies or services for the Department of Rehabilitation and Correction in its operation of the program for the employment of prisoners.

The bill applies DAS' authority to determine necessary purchases to the Adjutant General for non-military supplies and services, the Bureau of Workers' Compensation, and the Department of Rehabilitation and Correction.

**State procurement thresholds**

(R.C. 124.04, 125.041, 125.05, 125.051, 125.06, 125.07, and 127.16)

Current law establishes the procedures by which a state agency may purchase supplies and services. In general, supplies or services must be purchased by or on behalf of state agencies via a competitive selection process. Once a state agency's purchases from a particular supplier reach \$50,000, any additional purchase from that supplier must be made by competitive selection or approved by the Controlling Board. Also, a state agency may not make any purchase or lease real estate from a particular supplier in excess of \$75,000, unless the purchase is made by competitive selection or with Controlling Board approval. However, a state agency is not required to purchase services by competitive selection if the cost of the services is less than \$50,000, adjusted according to the Consumer Price Index. A state agency is not required to purchase supplies by competitive selection if the cost is less than \$25,000, adjusted according to the Consumer Price Index. DAS must establish written procedures to assist state agencies when they make direct purchases. If the agency makes the purchase directly, it must make the purchase by a term contract whenever possible.

The bill makes the following changes:

(1) The bill lowers the thresholds under which state agencies can make direct purchases for services from \$50,000 to \$25,000.

(2) The bill removes the Consumer Price Index adjustment to the threshold amounts and instead requires the Directors of DAS and Budget and Management to review and recommend to the General Assembly, if necessary, adjustments to the threshold amounts.

(3) The bill removes the \$75,000 threshold in current law for the Departments of Mental Retardation and Developmental Disabilities, Mental Health, Rehabilitation and Correction, and Youth Services.

(4) Instead of DAS establishing written procedures to assist agencies in making direct purchases, the bill requires an agency to adopt written procedures consistent with DAS' purchasing procedures and to use those procedures when making direct purchases.

(5) Finally, the bill allows a state agency to make purchases of supplies and services that cost more than \$25,000 but less than \$50,000 if the purchases are made under the direction of an employee of the agency who is certified by DAS to make purchases and if the purchases comply with DAS' purchasing procedures. The Director of DAS must adopt rules in accordance with the Administrative Procedure Act governing certification of an employee that provide for the following: (a) requirements for certification, including candidate qualifications and training on how to make purchases in accordance with DAS' purchasing procedures, (b) requirements and procedures for renewal of certification, (c) causes for and procedures governing termination of certification, (d) requirements and procedures for granting provisional certification, (e) the certification effective date, after which purchases shall be made by certified employees, and (f) any other rules necessary to govern certification. Until the certification effective date, state agencies may make purchases of supplies and services that cost more than \$25,000 but less than \$50,000 under the procurement laws as otherwise modified by the bill.

**Cooperative purchasing agreements**

(R.C. 125.022)

Under current law, DAS can enter into cooperative purchasing agreements with one or more other states or groups of states or with any political subdivision of Ohio<sup>1</sup> for the purpose of purchasing services or supplies produced from or containing recycled materials for the use of state agencies. The bill additionally permits DAS to enter into cooperative purchasing agreements with the federal government, purchasing consortia, and institutions of higher education. Also, the bill removes the requirement limiting these cooperative purchasing agreements to the purpose of purchasing services or supplies produced from or containing recycled materials for use by state agencies.

**Elimination of required state agency reimbursement of employees' monthly Medicare Part B premiums**

(R.C. 124.821)

The bill eliminates the requirement of current law that a state agency pay the monthly enrollee premium under Medicare Part B for state employees and

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<sup>1</sup> "Political subdivision" means any county, township, municipal corporation, school district, conservancy district, township park district, county park district, regional transit authority, regional airport authority, regional water and sewer district, port authority, and any other political subdivision described in the statutes that has been approved by the Department to participate in its contracts. (R.C. 125.04)

elected state officials who are employed by or serve in the agency, are paid directly by warrant of the Director of Budget and Management, are 65 years of age or older, and are participating in Medicare.

### **Office of Information Technology**

(R.C. 125.18 and 3353.02)

#### **Duties of Office of Information Technology**

Current law establishes the Office of Information Technology (OIT) within DAS. Generally, OIT can make contracts for, operate, and superintend technology supplies and services for state agencies<sup>2</sup> and can establish cooperative agreements with federal and local government agencies and state agencies that are not under the authority of the Governor for the provision of technology services and the development of technology projects. OIT has the same authority DAS has, under specified purchasing of supplies and services statutes, for the purchasing of information technology supplies and services for state agencies.

The bill removes OIT's authority to make contracts for and superintend technology supplies and its purchasing authority. Thereby, OIT's authority is limited to the operation of technology services. However, with the approval of the Director of DAS, OIT retains the authority to establish cooperative agreements with federal and local government agencies and state agencies that are not under the authority of the Governor for the provision of technology services and the development of technology projects.

#### **State Chief Information Officer**

Currently, OIT is under the supervision of a Chief Information Officer, who serves as the Director of OIT and is appointed by and serves at the pleasure of the Governor. Among the duties of the Director of OIT is advising the Governor regarding the superintendence and implementation of statewide information

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<sup>2</sup> "State agency" currently means every organized body, office, or agency established by Ohio laws for the exercise of any function of state government, other than any state-supported institution of higher education, the office of the Auditor of State, Treasurer of State, Secretary of State, or Attorney General, the Public Employees Retirement System, the Ohio Police and Fire Pension Fund, the State Teachers Retirement System, the School Employees Retirement System, the State Highway Patrol Retirement System, the General Assembly or any legislative agency, or the courts or any judicial agency. The bill adds the Adjutant General's Department, the Bureau of Workers' Compensation, and the Industrial Commission to the state agencies that are exempt from OIT oversight.

technology policy. Additionally, the Director serves on the eTech Ohio Commission as an ex officio voting member.

The bill changes the title of the Chief Information Officer to the State Chief Information Officer who is appointed by and serves at the pleasure of the Director of DAS. The State Chief Information Officer is made an assistant director of administrative services.

The bill generally places the duties of the Director of OIT, including serving on the eTech Ohio Commission, with the State Chief Information Officer, but removes the duty to advise the Governor regarding the superintendence of statewide information technology. Specifically, under the direction of the Director of DAS, the State Chief Information Officer must lead, oversee, and direct state agency activities related to information technology development and use. In that regard, the State Chief Information Officer must do all of the following:

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

Additionally, the bill permits the State Chief Information Officer to review and reject a requested purchase from a state agency for information technology supplies or services for noncompliance with information technology direction, plans, policies, standards, or project-alignment criteria.

### **Authority to contract for telecommunication services**

(R.C. 125.021)

Under current law, OIT may contract for, operate, and superintend telephone, other telecommunication, and computer services for state agencies.<sup>3</sup> Additionally, current law authorizes OIT to enter into a contract to purchase and make bulk long distance telephone services available at cost to members of the immediate family of persons deployed on active duty<sup>4</sup> so that those family members can communicate with the deployed persons. The bill places this authority under DAS and limits OIT's authority to contracting for the telephone, other telecommunication, and computer services by removing the authority to operate and superintend those services.

### **Authority to debar vendor**

(R.C. 125.25)

Under ongoing law, the Director of DAS can debar a vendor from consideration for contract awards upon a finding based upon a reasonable belief that the vendor has engaged in certain behavior. The Director must send the vendor a notice of proposed debarment and determine the length of the debarment period. Current law requires the Director, through OIT and the Office of Procurement Services, to maintain a list of all vendors currently debarred. The bill removes any duty OIT may have had with regard to maintaining the list of debarred vendors.

### **Ohio Business Gateway Steering Committee**

(R.C. 5703.57)

Current law creates the Ohio Business Gateway Steering Committee to direct the continuing development of the Ohio Business Gateway and to oversee its operations. Among other members, the Director of OIT or the Director's designee serves on the Committee.

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<sup>3</sup> OIT does not have this authority for the military department, the General Assembly, the Bureau of Workers' Compensation, the Industrial Commission, and institutions administered by boards of trustees. However, current law states that the Bureau and the Commission may contract with OIT to contract for, operate, or superintend these services.

<sup>4</sup> "Active duty" means active duty pursuant to a presidential order, a Congressional Act, or a gubernatorial order.

The bill specifies that, in place of the Director of OIT, the State Chief Information Officer or the Officer's designee serves on the Committee. The bill also adds the Director of Development or the Director's designee to the Committee.

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## COMMISSION ON AFRICAN-AMERICAN MALES

- Expands the membership of the Commission on African-American Males from 23 to 25 members by adding two members from the private corporate sector, who are appointed by the Ohio State University African American and African Studies Community Extension Center, in consultation with the Governor.

### Membership of the Commission on African-American Males

(R.C. 4112.12)

The Commission on African-American Males is comprised of 23 members and is required, among other duties, to conduct research, hold public hearings, and implement programs to solve problems and advance recommendations exclusively pertinent to black males in the areas of unemployment, criminal justice, education, and health. Among the current 23 members are two members of the private corporate sector, who are appointed by the Ohio State University African American and African Studies Community Extension Center, in consultation with the Governor.

The bill increases the membership of the Commission on African-American males from 23 to 25, by adding two additional members of the private corporate sector. As with the current members of the private corporate sector, the two additional members are appointed by the Ohio State University African American and African Studies Community Extension Center, in consultation with the Governor.

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## DEPARTMENT OF AGRICULTURE

- Limits a nonprofit livestock association from receiving cost assistance in any fiscal year exceeding 50%, rather than 34% as in current law, of the funds available to the Director of Agriculture in a fiscal year for the

purposes of defraying rental costs of the Ohio Expositions Center for conducting a livestock exhibition at the Center.

- Requires that if the Director receives more than one application for financial assistance for rental costs, the Director must consider the cost of and local economic benefit generated by each applicant's exhibition when allocating financial assistance.
- Removes the Director's authority to allocate not more than \$50,000 of the moneys available in a fiscal year to defray an association's costs of premium awards.
- Requires the Director to spend not more than 2%, rather than 4% as in current law, of available moneys in a fiscal year to defray the costs of the Department of Agriculture in administering the financial assistance program.

#### **Financial assistance for livestock exhibitions**

(R.C. 901.42)

Current law authorizes the Director of Agriculture to provide financial assistance to a statewide, multi-state, or national nonprofit livestock association to defray not more than 50% of the rental costs of the Ohio Expositions center for purposes of conducting a livestock species exhibition at the Center. Rental cost assistance must be provided subject to both of the following conditions:

(1) No nonprofit livestock association is allowed to receive in any fiscal year rental cost assistance exceeding 34% of the funds available to the Director in that fiscal year that are designated for the purpose of defraying rental costs for livestock species exhibitions. The bill increases the assistance that an association may receive in a fiscal year from not more than 34% to not more than 50% of the available funds.

(2) The rental cost assistance must be paid by the Director to the Ohio Expositions Commission on behalf of the nonprofit livestock association by means of intrastate transfer voucher. That condition remains unchanged.

Under the bill, if the Director of Agriculture receives more than one application for financial assistance for rental costs, the Director must consider the

cost of and local economic benefit generated by each applicant's exhibition when allocating financial assistance.

Current law requires the Director to allocate not more than \$50,000 of the moneys available in a fiscal year to provide financial assistance to a nonprofit livestock association to defray the costs of premium awards for a national multispecies exhibition held at the Ohio Expositions Center. In order to obtain such financial assistance, a nonprofit livestock association must apply on a form prescribed by the Director. In the manner prescribed in rules adopted by the Director. The bill removes the Director's authority to allocate money for that purpose.

Current law limits the Director from expending more than 4% of the moneys available for the purposes of financial assistance for livestock exhibitions in a fiscal year to defray the costs to the Department of Agriculture for administering the assistance program or assisting in recruiting livestock exhibitions to be held at the Ohio Expositions Center. The bill changes the maximum amount that the Director can expend for those purposes from 4% to 2% of available moneys.

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## ATTORNEY GENERAL'S OFFICE

- Increases from \$75,000 to \$150,000 the threshold amount of net profit that is derived from instant bingo conducted by a veteran's, fraternal, or sporting organization and that is used to determine the amount of net profit these organizations can keep to pay their expenses.

***Increase in the threshold amount of net profit from instant bingo conducted by a veteran's, fraternal, or sporting organization that is used to determine the amount of net profit these organizations can keep to pay their expenses***

(R.C. 2915.101)

Current law requires a veteran's, fraternal, or sporting organization that conducts instant bingo to distribute its net profit from the proceeds of the sale of instant bingo as follows:

First, for the first \$75,000 (or a greater amount prescribed by the Attorney General to adjust for changes in the Consumer Price Index) or less of net profit from the proceeds of instant bingo generated in a calendar year (1) at least 25% must be distributed to a charitable organization described in subsection 501(c)(3)

of the Internal Revenue Code or to a department or agency of the federal government, the state, or a political subdivision and (2) not more than 75% may be deducted and retained by the organization for reimbursement of or for the organization's expenses in conducting the instant bingo game.

Second, for any amount exceeding \$75,000 (or a greater amount prescribed by the Attorney General to adjust for changes in the Consumer Price Index (1) at least 50% must be distributed to a charitable organization described in subsection 501(c)(3) of the Internal Revenue Code or to a department or agency of the federal government, the state, or a political subdivision, (2) 5% may be distributed for the organization's own charitable purposes or to a community action agency, and (3) 45% may be deducted and retained by the organization for reimbursement of or for the organization's expenses in conducting the instant bingo game.

The bill increases from \$75,000 to \$150,00 the threshold amounts described in the preceding paragraphs, and also authorizes the Attorney General to adjust these amounts for "other factors affecting the organization's expenses" in addition to adjusting them to reflect changes in the Consumer Price Index (R.C. 2915.101(A)(1)).

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## AUDITOR OF STATE

- Specifies services that are included in the amount due from a public office if the Auditor of State fails to receive payment from a public office for auditing services performed.
- Permits the Auditor, if the Auditor fails to receive payment for penalties not paid within one year from the required filing date for delinquent financial reports, to recover the penalties by certifying them to the Office of Budget and Management for collection.
- Modifies the method used to biennially adjust the amount that a qualified wrongfully imprisoned individual is entitled to recover for each full year of imprisonment in a state correctional institution.

**Recovering costs of audits by Auditor of State**

(R.C. 117.13)

Current law provides a process by which the costs of audits of state agencies, private institutions receiving public money, and local public offices are to be recovered by the Auditor of State. If the Auditor fails to receive payment, the Auditor can seek payment through the Office of Budget and Management. Upon certification by the Auditor to the Director of Budget and Management of any amount due, the Director must withhold from the public office and promptly pay to the Auditor any amount available from any funds under the Director's control that belong to or are lawfully payable or due to the public office. If the Director determines that no funds due and payable to the public office are available or that insufficient amounts are available, the Director must withhold and pay to the Auditor the amounts available and, in the case of a local public office, certify the remaining amount to the appropriate county auditor. In that case, the county auditor must withhold from the local public office any amount available from any funds under the county auditor's control and belonging to or lawfully payable or due to the local public office. The county auditor must promptly pay any amount withheld to the Auditor of State.

The bill specifies that if the Auditor of State certifies to the Office of Budget and Management for collection, any amount due for which the Auditor has failed to receive payment, the amount due includes fines, fees, and costs, and also includes any amounts due to an independent public accountant with whom the Auditor has contracted to perform services, all costs and fees associated with participation in the Uniform Accounting Network, and all costs associated with the Auditor's provision of local government services.

**Certification of amounts due to Auditor of State**

(R.C. 117.38)

Existing law requires that each public office, other than a state agency, make a financial report for each fiscal year to the Auditor of State within 60 days after the close of the fiscal year, except that if the public office files pursuant to generally accepted accounting principles, the report must be filed within 150 days after the close of the fiscal year. Any public office that does not file a timely financial report must pay a penalty of \$25 to the Auditor for each day the report remains unfiled. However, the penalty payments cannot exceed \$750. The Auditor can waive all or any part of a penalty when the past due report has been filed. Current law permits the Auditor to deduct penalties not paid within one year from the required filing date from any funds under the Auditor's control belonging to the public office. If funds are withheld from a county because of the failure of a

taxing district located in whole or in part within the county to file, the county can deduct the penalty amount from any revenues due the delinquent district.

The bill, instead of allowing the Auditor or a county to deduct penalty amounts due as described above, allows the Auditor to recover the penalties by certifying them to the Office of Budget and Management for collection through that office as described above.

**Formula for calculating changes to the amount recovered by wrongfully imprisoned individuals**

The bill changes the formula used to adjust the amount of money that a wrongfully imprisoned individual is entitled to receive for each full year of imprisonment in a state correctional institution. Under existing law unchanged by the bill, the Auditor of State adjusts the amount received by wrongfully imprisoned individuals in January of each odd-numbered year, based on the yearly average of the previous two years of the consumer price index for all urban consumers or its successive equivalent as determined by the United States Department of Labor, Bureau of Labor Statistics, or its successor in responsibility.

The bill provides that, using the yearly average of the consumer price index, as described in the preceding paragraph, for the immediately preceding even-numbered year as the base year, the Auditor must compare the most current average consumer price index with that determined in the preceding odd-numbered year and determine the percentage increase or decrease in the consumer price index. The Auditor must multiply the percentage increase or decrease either by the actual dollar figure (\$40,330) specified in the Court of Claims Law governing civil actions against the state for wrongful imprisonment (R.C. 2743.48(E)(2)(b)) or the actual dollar figure determined under this provision of the Court of Claims Law for the previous odd-numbered year, and then add the product to or subtract the product from its corresponding actual dollar figure, as applicable, for the previous odd-numbered year. (R.C. 2743.49(A)(1).)

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**CAPITOL SQUARE REVIEW AND ADVISORY BOARD**

- Transfers, from the Ohio Historical Society to the Capitol Square Review and Advisory Board, the responsibility for the planning and development of the visitor center at the State House.
- Requires the Capitol Square Review and Advisory Board to purchase a warehouse in which to store items of the Capitol Collection Trust and, whenever necessary, equipment or other property of the Board.

- Replaces the representative of the Office of State Architect and Engineer on the Capitol Square Review and Advisory Board with the Governor's Chief of Staff.

**Transfer of responsibility for the planning and development of the visitor center at the Capitol Building from the Ohio Historical Society to the Capitol Square Review and Advisory Board**

(R.C. 105.41 and 149.30)

Current law includes, among the functions performed by the Ohio Historical Society, planning and developing a center at the Capitol Building to educate visitors about the history of Ohio, including its political, economic, and social development and the design and erection of the Capitol Building and its grounds. The Society may accept contributions of private money and in-kind services designated for this purpose and may, at the discretion of its Board of Trustees, also apply for personnel and other resources paid in whole or in part by its state subsidy (R.C. 149.03(Q)).

The bill eliminates the provision described in the preceding paragraph and instead requires the Capitol Square Review and Advisory Board to plan and develop the visitor center at the Capitol Building (R.C. 105.41(E)(7)).

**Warehouse for Capitol Collection Trust Items**

(R.C. 105.41; Sections 222.10 and 235.10)

Under existing law, the Capitol Square Review and Advisory Board is required to store in suitable facilities the furniture, antiques, and other items of personal property that make up the Capitol Collection Trust until the items are ready to be placed in the Capitol Square. The bill requires the Board to purchase a warehouse in which to store these items and, whenever necessary, equipment or other property of the Board.<sup>5</sup>

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<sup>5</sup> For information on the capital appropriation associated with this purchase, and the payment of underground parking garage receipts to the Ohio Building Authority for the related debt service, see the Legislative Service Commission's Fiscal Note for Sub. H.B. 562.

**Replacement of the representative of the Office of State Architect and Engineer with the Governor's Chief of Staff on the Capitol Square Review and Advisory Board**

(R.C. 105.41)

Current law creates the 13-member Capitol Square and Advisory Board and gives the Board, among other powers and duties, the sole authority to coordinate and approve any improvements, additions, and renovations that are made to the Capitol Square including, but not limited to, the placement of monuments and sculptures on the Capitol grounds.

One of the Board's members represents the Office of State Architect and Engineer. The bill replaces this representative with the Chief of Staff of the Governor's office, but provides that the Chief of Staff is a Board member only so long as the appointing Governor remains in office. The appointment is subject to the advice and consent of the Senate. (R.C. 105.41(A)(3) and (B).)

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**DEPARTMENT OF COMMERCE**

- Permits a person licensed as a real estate broker or real estate salesperson under the Real Estate Brokers Law to apply to the Superintendent of Real Estate and Professional Licensing to have the licensee's license placed on voluntary hold or a resigned status.
- Defines "voluntary hold" status and "resigned" status for purposes of the bill.
- Permits a licensee whose license is placed on voluntary hold to reactivate the license if the licensee satisfies specified requirements.
- Specifies that if a licensee whose license is placed on voluntary hold fails to apply to reactivate the license or fails to satisfy the requirements during the 12 months after the license is placed on voluntary hold, the license is considered resigned.
- Permits a licensee whose license has been suspended for reasons other than for failing to comply with all requirements contained in a final citation issued by the Superintendent under continuing law or an order from the Ohio Real Estate Commission to apply to place that license on voluntary hold or a resigned status.

- Prohibits the Superintendent from reactivating a resigned license.
- Specifies that a licensee whose license is on a resigned status may obtain a new license by complying with the normal requirements to obtain the license sought.
- Prohibits a business entity from providing services that require a license if the licensee's license is on voluntary hold or a resigned status and from employing a person in specified positions if the person's license is placed on voluntary hold or a resigned status.
- Requires a broker, if placing the broker's license on voluntary hold or a resigned status will result in closure of the broker's brokerage, to notify each salesperson associated with that broker in writing of that fact within three days after applying to the Superintendent to place the license on voluntary hold or a resigned status.
- Allows the Commission to adopt rules to define any additional license status that the Commission determines is necessary and that is not otherwise defined in the Real Estate Broker Law and to establish the process by which a licensee places the licensee's license in a status defined by the Commission in rules.
- Specifies that the Governor has no power to issue any executive order that has previously been issued and that the Federal Trade Commission has opined is anti-competitive and is in violation of anti-trust laws.
- Specifies that "explosives" for the purpose of the law governing weapons control, does not include any material meeting the definition of explosive that is used in an activity specifically exempted from the Fireworks Law prohibitions, if the activity is conducted in accordance with all laws, rules, and regulations.
- Revises the information that must be provided for the purpose of conducting criminal background checks under the Fireworks Law and requires the Fire Marshal to adopt rules regarding identifying information, fees, and procedures for such criminal background checks.
- Revises the continuing education requirements for manufacturers and wholesalers of fireworks, and requires the Fire Marshal to adopt rules

specifying the amount and content of required continuing education and notification requirements for in-service training.

- Permits the Fire Marshal to create additional license categories for fireworks exhibitors, requires the Director of Commerce to appoint a committee to assist the Fire Marshal in developing rules for these additional licenses, and requires initial rules to be adopted by July 1, 2010.
- Revises the requirements for fireworks storage facilities, including provisions for storing fireworks in containers or trailers not subject to the building code and standards for fire walls and fire barrier walls.
- Eliminates as a condition of transferring a fireworks wholesaler license from one location to another the current requirement that the licensee request the transfer because the existing facility poses an immediate hazard to the public.
- Generally requires all retail sales of 1.4G fireworks to occur only from an approved retail sales showroom or a representative sample showroom on a licensed premises, and specifies how such sales must occur on the licensed premises.
- Prohibits a person under 18 years of age from entering a fireworks sales showroom unless the person is accompanied by a parent, legal guardian, or other responsible adult, and prohibits such a person from touching or possessing fireworks on a licensed premises without the licensee's permission.
- Permits a licensee under the Fireworks Law to eject any person from a licensed premises who is in any way disruptive to the premises.
- Permits a person with a shipping permit to ship fireworks into this state to the holder of a valid exhibition permit, if the fireworks shipped are to be used at the specifically permitted exhibition.
- Eliminates the requirement that a fireworks purchaser specify the destination to which the fireworks are being transported and instead requires the purchaser to acknowledge that the purchaser is responsible for any illegal use of the fireworks, including damages caused by improper use.

- Makes the time periods within which an Ohio resident and a nonresident must transport purchased fireworks out of this state uniform by reducing from 72 hours to 48 hours the time in which a nonresident must transport those fireworks out of the state.

**Placing a real estate broker's or salesperson's license on voluntary hold or resigned status**

(R.C. 4735.01, 4735.02, 4735.10, 4735.13, 4735.14, 4735.141, and 4735.142)

The bill permits any person licensed as a real estate broker or real estate salesperson under the Real Estate Brokers Law (R.C. Chapter 4735.), at any time prior to the date the licensee is required to file a notice of renewal under continuing law, to apply to the Superintendent of Real Estate and Professional Licensing to place the licensee's license on voluntary hold or a resigned status. The bill defines "voluntary hold" as the license status in which a license (1) is in the possession of the Division of Real Estate and Professional Licensing for a period of not more than 12 months, (2) is not renewed in accordance with the requirements specified in the Real Estate Brokers Law or rules adopted pursuant to it, and (3) is not associated with a real estate broker. The bill defines "resigned" as the license status in which a license (1) has been voluntarily surrendered to or is otherwise in the possession of the Division, (2) is not renewed in accordance with the requirements specified in the Real Estate Brokers Law or rules adopted pursuant to it, and (3) is not associated with a real estate broker.

The bill prohibits a licensee whose license has been suspended because the licensee failed to comply with all requirements contained in a final citation issued by the Superintendent under continuing law or due to disciplinary action ordered by the Ohio Real Estate Commission from placing the licensee's license on voluntary hold or a resigned status. The bill requires the Commission to adopt reasonable rules to specify the process by which a licensee may place the licensee's license on voluntary hold or a resigned status.

Continuing law prohibits any person, partnership, association, limited liability company, limited liability partnership, or corporation from doing either of the following:

- Providing services that require a license under the Real Estate Brokers Law if the licensee's license is inactive, suspended, or a broker's license on deposit, or if the license has been revoked;

- Employing as an officer, director, manager, or principal employee any person previously holding a license as a real estate broker, real estate salesperson, foreign real estate dealer, or foreign real estate salesperson, whose license has been placed in inactive status, suspended, or revoked and who has not thereafter reactivated the license or received a new license.

The bill also prohibits those entities from providing the services described immediately above or employing a person described immediately above if the licensee's or person's license has been placed on voluntary hold or a resigned status.

Continuing law specifies that a license is valid without further recommendation or examination until it is placed in an inactive status, is suspended or revoked, or expires by operation of law. The bill specifies that a license also is valid until it is placed on voluntary hold or a resigned status. Under continuing law, the license of each real estate salesperson must be mailed to and remain in the possession of the licensed broker with whom the salesperson is or is to be associated until the licensee places the license on inactive status or the salesperson leaves the brokerage or is terminated. The bill adds that such a license must remain with the licensed broker until the salesperson places a license on voluntary hold or a resigned status. A licensee who has placed the licensee's license on voluntary hold or a resigned status is not subject to the requirements specified in continuing law concerning renewal or continuing education.

Under the bill, if the Superintendent has placed a license on voluntary hold pursuant to a request made under the bill, the licensee who made that request may apply to the Superintendent to reactivate that license within 12 months after the date the license is placed on voluntary hold. The Superintendent must reactivate that license if the licensee complies with the requirements for such reactivation that are specified in rules adopted by the Commission and satisfies all of the following requirements:

(1) The licensee complies with the postlicensure education requirements specified in continuing law for real estate brokers and real estate salespersons, as applicable;

(2) The licensee complies with the continuing education requirements specified in continuing law;

(3) The licensee renews the licensee's license in accordance with the requirements specified in continuing law and, if applicable, pays the annual brokerage assessment fee in accordance with the requirements specified in rules adopted by the Commission.

If a licensee does not apply to reactivate a license on voluntary hold under the bill during that 12-month period or does not satisfy the requirements specified immediately above during that 12-month period, the Superintendent must consider that license to be in a resigned status. The Superintendent must not reactivate a resigned license. The resignation of a license is considered to be final without the taking of any action by the Superintendent. If a person whose license is in a resigned status pursuant to this division wishes to obtain an active license, the person must apply for an active license in accordance with the applicable requirements specified in continuing law to obtain the applicable license.

A licensee, at any time during which a license has been suspended by the Superintendent for reasons other than because the licensee failed to comply with all requirements contained in a final citation issued by the Superintendent under continuing law or by order of the Commission for a disciplinary action, may apply to the Superintendent on a form prescribed by the Superintendent to voluntarily resign the licensee's license. The resignation of a license is considered to be final without the taking of any action by the Superintendent. If a person whose license is in a resigned status pursuant to this request wishes to obtain an active or inactive license, the person must apply for such a license in accordance with the normal requirements specified in continuing law or rules adopted by the Commission, as applicable.

If placing a broker's license on voluntary hold or a resigned status will result in the closure of the broker's brokerage, the broker, within three days after applying to the Superintendent to place the license on voluntary hold or a resigned status, must provide to each salesperson associated with that broker a written notice stating that fact.

#### **Additional license statuses**

The bill permits the Commission to adopt reasonable rules in accordance with the Administrative Procedure Act to define any additional license status that the Commission determines is necessary and that is not otherwise defined in the Real Estate Brokers Law and establishing the process by which a licensee places the licensee's license in a status defined by the Commission in the rules the Commission adopts.

#### **Limitation on the Governor's authority to issue executive orders**

(R.C. 107.19)

The bill specifies that the Governor has no power to issue any executive order that has previously been issued and that the Federal Trade Commission, Office of Policy Planning, Bureau of Economics, and Bureau of Competition has

opined is anti-competitive and is in violation of anti-trust laws. Under the bill, any such executive order must be considered invalid and unenforceable.

### **Fireworks regulation**

The Fireworks Law generally regulates the manufacture, sale, and use of fireworks in this state. Among other provisions, it requires the approval of storage facilities, licensure of persons manufacturing or selling fireworks, and restricts who may purchase or possess fireworks. The bill revises numerous provisions throughout the Fireworks Law.

### **Definition of "explosive" for the law governing weapons control**

(R.C. 2923.11)

Continuing law governs various aspects of weapons control. For example, it specifies who may carry concealed weapons, prohibits the possession of firearms in a liquor permit premises, prohibits the illegal manufacture and processing of explosives, and provides for permits for the possession or use of dangerous ordnance. "Dangerous ordnance" includes explosive devices. An "explosive device" is any device designed or specifically adapted to cause physical harm to persons or property by means of an explosion, and consisting of an explosive substance and a means to detonate it. Under existing law, "explosive" includes materials that have been classified as class A, class B, or class C explosives by the United States Department of Transportation, and does not include "fireworks" as defined under the Fireworks Law.

The bill changes the definition of "explosive" for the purpose of the law governing weapons control. The bill replaces the references to class A, class B, and class C explosives under the United States Department of Transportation's former classification system with references to materials classified as division 1.1, division 1.2, division 1.3, or division 1.4 explosives by the United States Department of Transportation under the Department's current system (see. 49 C.F.R. 173.53). Thus, under the bill, materials classified as division 1.1, division 1.2, division 1.3, or division 1.4 explosives are considered explosives for the purposes of weapons control. "Explosive" also does not include fireworks as defined in the Fireworks Law (continuing law) or any substance or material meeting the definition of "explosive" that is manufactured, sold, possessed, transported, stored, or used in certain activities specifically exempted from the Fireworks Law prohibitions, provided the activity is conducted in accordance with all applicable laws, rules, and regulations.

**Background check information for fireworks licensees**

(R.C. 3743.02, 3743.15, 3743.56, and 3743.70)

Any person who wishes to manufacture fireworks or be a wholesaler of fireworks is required, as part of the licensing process, to provide information to the Fire Marshal for the purpose of conducting a background check. Existing law requires such a person to submit a *complete set of the applicant's fingerprints* and a complete set of fingerprints of any individual holding, owning, or controlling a 5% or greater beneficial or equity interest in the applicant for the license.

The bill revises the information that must be provided from such an applicant and also requires each applicant for registration as a fireworks exhibitor to provide background check information. Instead of requiring a complete set of fingerprints, the bill requires an applicant for a license to provide *a set of the applicant's fingerprints or similar identifying information* and a set of fingerprints or similar identifying information from any individual holding, owning, or controlling a 5% or greater beneficial or equity interest in the applicant for the license. An applicant for registration as a fireworks exhibitor must provide fingerprint or similar identifying information.

The Fire Marshal is permitted to adopt rules in accordance with the Administrative Procedure Act specifying the method to be used by the applicant to provide the fingerprint or similar identifying information, fees to be assessed by the Fire Marshal to conduct such background checks, and the procedures to be used by the Fire Marshal to verify compliance with the background check provisions. Such rules may include provisions establishing the frequency that license renewal applicants must update background check information filed by the applicant with previous license applications and provisions describing alternative forms of background check information that may be accepted by the Fire Marshal.

Existing law also prohibits the Fire Marshal from issuing an initial license or permit if the applicant for the license or permit, or any individual holding, owning, or controlling a 5% or greater beneficial or equity interest in the applicant, has been convicted of or pleaded guilty to a felony under the laws of this state, another state, or the United States. The Fire Marshal must revoke or deny renewal of a license or permit issued under the Fireworks Law if the licensee or permit holder has such a conviction or plea of guilty. The bill expands this provision to apply to both initial licenses and permits and renewals of licenses and permits, as well as to registrations under the Fireworks Law.

The Fire Marshal is permitted to adopt rules specifying the method to be used by license, permit, or registration applicants to provide fingerprint or similar identifying information for conducting background checks required to determine

such criminal history, fees to be assessed by the Fire Marshal to conduct such background checks, and the procedures to be used by the Fire Marshal to verify compliance. The rules may include provisions establishing rules for conducting background checks and prohibiting licensure, permitting, or registration under the Fireworks Law for persons convicted of a felony or similar offense in another country, the frequency that license renewal applicants must update background check information filed by the applicant with previous applications, provisions describing alternative forms of background check information that may be accepted by the Fire Marshal to verify compliance, and provisions that permit the Fire Marshal to waive the background check requirements if the applicant produces verified documentation that demonstrates that this state, another state, the United States, or another country has determined that the applicant is appropriate for licensure, permitting, or registration under the Fireworks Law.

**Continuing education for fireworks licensees**

(R.C. 3743.04(F) and 3743.17(K))

Continuing law requires each licensed manufacturer of fireworks who possesses fireworks for sale and sells fireworks (or a designee of the manufacturer) and each licensed wholesaler of fireworks or a designee of the wholesaler to annually attend a continuing education program consisting of not less than eight hours of instruction. The Fire Marshal must develop the program, and the Fire Marshal or a person or public agency approved by the Fire Marshal must conduct it. The licensees (or designees) who attend the required continuing education must conduct in-service training for other employees regarding the information obtained in the program. The licensees must provide the Fire Marshal with notice of the time, date, and place of such in-service training not less than 30 days prior to the training event.

The bill repeals the requirements that the continuing education consist of at least eight hours of instruction and that licensees notify the Fire Marshal of in-service training not less than 30 days before an in-service training event. Instead, the bill requires the Fire Marshal, by rule, to establish the subjects to be taught, the length of classes, the standards for approval, and time periods for notification by the licensee to the Fire Marshal of any in-service training. In addition, the in-service training must be training as approved by the Fire Marshall.

**New licenses and permits for fireworks exhibitors and exhibitions**

(R.C. 3743.54(G))

The bill permits the Fire Marshal to create additional license categories for fireworks exhibitors and to create additional permit requirements for fireworks

exhibitions for the indoor use of fireworks and other uses of pyrotechnics, including the use of pyrotechnic materials that do not meet the definition of fireworks. Such licenses and permits and the fees for those licenses and permits must be described in rules adopted by the Fire Marshal under the Administrative Procedure Act. Those rules may provide for different standards for exhibitor licensure and the permitting and conducting of a fireworks exhibition than the requirements of the Fireworks Law.

Prior to the Fire Marshal's adoption of those rules, the Director of Commerce must appoint a committee consisting of the Fire Marshal or the Fire Marshal's designee, three representatives of the fireworks industry, and three representatives of the fire service to assist the Fire Marshal in adopting the rules. Unless an extension is granted by the Director of Commerce, the Fire Marshal must adopt initial rules not later than July 1, 2010.

### **Fireworks storage facilities**

(R.C. 3743.04(J), 3743.17(H), and 3743.19)

Each licensed manufacturer of fireworks and each licensed wholesaler of fireworks may obtain approval for the use of a fireworks storage location. Existing law permits the packaging, assembling, or storing of fireworks to occur in buildings, structures, or trailers that are approved for such hazardous use by the building code official having jurisdiction for the storage location. Under the bill, packaging, assembling, or storing of fireworks may occur in buildings or structures that are approved for such hazardous use by the building code official having jurisdiction for the storage location or, for 1.4G fireworks,<sup>6</sup> in containers or trailers approved for such hazardous use by the Fire Marshal, if the containers or trailers are not subject to regulation by the building code.

Continuing law requires storage areas for fireworks that are in the same building where fireworks are displayed and sold to the public to be separated from the areas to which the public has access by an appropriately rated fire wall. The bill permits a fire barrier wall to be substituted for a fire wall if the licensee installs and properly maintains an early suppression fast response sprinkler system or equivalent fire suppression system as described in the fire code adopted by the Fire Marshal throughout the structure.

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<sup>6</sup> 1.4G fireworks are consumer fireworks that have a minor explosion hazard largely confined to the package and that contain either (1) a pyrotechnic substance or (2) both an explosive substance and an illuminating, incendiary, tear-producing, or smoke-producing substance (R.C. 3743.01(D)(2) and 49 C.F.R. 173.50(b)(4) and 173.52(b)).

The bill also prohibits a fireworks storage location that is approved under process provided in existing law from being relocated for a minimum period of five years after the Fire Marshal approves the storage location.

**Transfer of location of a fireworks wholesaler license**

(R.C. 3743.17(F))

Continuing law permits, upon application, a licensed fireworks wholesaler to transfer the wholesaler license from one location to another within the same municipal corporation or within the unincorporated area of the same township. Such a transfer may only be made if certain conditions apply. For example, the identity of the license holder must remain the same, and the former location must be closed prior to the opening of the new location. The bill eliminates as a condition for the transfer of the location of a fireworks wholesaler license the requirement that the licensee request the transfer because the existing facility poses an immediate hazard to the public.

**Fireworks sales**

(R.C. 3743.25, 3743.54(A), 3743.65, and 3743.99)

The bill generally requires all retail sales of 1.4G fireworks by a licensed manufacturer or wholesaler to only occur from an approved retail sales showroom on a licensed premises or from a representative sample showroom on a licensed premises. A retail sale includes the transfer of the possession of the 1.4G fireworks from the licensed manufacturer or wholesaler to the purchaser of the fireworks.

Sales of 1.4G fireworks to a licensed exhibitor for a properly permitted exhibition must occur in accordance with the Fireworks Law and the rules adopted by the Fire Marshal. Those rules must specify, at a minimum, that the licensed exhibitor holds a license under the Fireworks Law, that the exhibitor possesses a valid exhibition permit, and that the fireworks shipped are to be used at the specifically permitted exhibition.

All wholesale sales of fireworks by a licensed manufacturer or wholesaler must only occur from a licensed premises to persons who intend to resell the fireworks purchased at wholesale. A wholesale sale by a licensed manufacturer or wholesaler may occur as follows:

- (1) The direct sale and shipment of fireworks to a person outside of this state;
- (2) From an approved retail sales showroom;

(3) From a representative sample showroom;

(4) By delivery of wholesale fireworks to a purchaser at a licensed premises outside of a structure or building on that premises. All other portions of the wholesale sales transaction may occur at any location on a licensed premises;

(5) Any other method as described in rules adopted by the Fire Marshal.

A licensed manufacturer or wholesaler must only sell 1.4G fireworks from a representative sample showroom or a retail sales showroom. Each licensed premises shall only contain one sales structure.

A representative sample showroom consists of a structure constructed and maintained in accordance with the nonresidential building code and the fire code for a use and occupancy group that permits mercantile sales. A representative sample showroom must not contain any pyrotechnics, pyrotechnic materials, fireworks, explosives, explosive materials, or any similar hazardous materials or substances. A representative sample showroom must be used only for the public viewing of fireworks product representations, including paper materials, packaging materials, catalogs, photographs, or other similar product depictions. The delivery of product to a purchaser of fireworks at a licensed premises that has a representative sample structure must not occur inside any structure on a licensed premises. The product delivery must occur on the licensed premises in a manner prescribed by rules adopted by the Fire Marshal.

If a manufacturer or wholesaler elects to conduct sales from a retail sales showroom, the showroom structures, to which the public may have any access and in which employees are required to work, on all licensed premises, generally must comply with the safety requirements established under existing law. The bill eliminates the provision of existing law that required a fireworks showroom structure that existed on June 1, 1998, to be retrofitted with interlinked fire detection, smoke exhaust, and smoke evacuation systems, unless the retrofitting would constitute an extreme financial hardship that would force the licensee to terminate business operations.

Continuing law prohibits any person from selling fireworks of any kind to a person under 18 years of age. The bill also prohibits a person under 18 years of age from entering a fireworks sales showroom unless that person is accompanied by a parent, legal guardian, or other responsible adult. A person under 18 years of age is prohibited from touching or possessing fireworks on a licensed premises without the consent of the licensee. A licensee is permitted to eject any person from a licensed premises that is in any way disruptive to the premises.

Existing law prohibits any person from advertising 1.4G fireworks for sale and prohibits a licensed exhibitor from acquiring 1.4G fireworks for any purpose. The bill eliminates these prohibitions.

**Fireworks shipping permits**

(R.C. 3743.40)

A person who resides in another state and who intends to ship fireworks into this state is required to submit an application for a shipping permit to the Fire Marshal. Existing law requires an application for a shipping permit to be accompanied by *a certified copy* of the applicant's license or permit issued in the applicant's state of residence that authorizes the applicant to engage in the manufacture, wholesale sale, or transportation of fireworks. The bill permits the applicant to submit a certified copy of such a license or permit or *another copy acceptable to the Fire Marshal*.

A shipping permit is valid for one year from the date of issuance. Under existing law, a shipping permit is valid only if the permit holder ships the fireworks directly into this state to a licensed fireworks manufacturer or licensed fireworks wholesaler. The bill also allows a permit holder to ship the fireworks into this state to the holder of a valid exhibition permit, if the fireworks shipped are to be used at the specifically permitted exhibition.

**Information required on a fireworks purchaser form**

(R.C. 3743.44 and 3743.45)

Continuing law requires a licensed manufacturer or licensed wholesaler who is selling fireworks to require the purchaser of the fireworks to complete a purchaser's form. The Fire Marshal is required to prescribe the form, and the manufacturer or wholesaler must furnish the form. The purchaser must provide specified information, including the purchaser's name and address and the date of purchase. Existing law requires the purchaser to identify the destination to which the fireworks will be transported. The bill eliminates this requirement and instead requires the purchaser to include a statement that the purchaser acknowledges that the purchaser is responsible for any illegal use of the fireworks, including any damages caused by improper use.

**Transportation of fireworks outside of this state**

(R.C. 3743.44)

A person who resides in another state and purchases fireworks in this state is required, under existing law, to transport those fireworks out of this state within

72 hours after purchase. An Ohio resident who purchases fireworks in this state must transport those fireworks out of this state within 48 hours. The bill makes these two time periods consistent by changing from 72 hours to 48 hours the period within which an out-of-state resident must transport fireworks purchased in this state out of the state.

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## DEPARTMENT OF DEVELOPMENT

- Authorizes the Department of Administrative Services to contract for reports on energy conservation in state buildings, including buildings of state institutions of higher education, with an energy services company, contractor, architect, professional engineer, or other experienced person rather than with the Office of Energy Efficiency in the Department of Development.

### *Department of Administrative Services' contracts for reports on energy conservation in state buildings*

(R.C. 156.02)

Current law authorizes the Director of Administrative Services to contract with the Office of Energy Efficiency in the Department of Development for a report containing an analysis and recommendations pertaining to the implementation of energy conservation measures that would significantly reduce energy consumption and operating costs in any building owned by the state and, upon request of its board of trustees or managing authority, any building owned by a state institution of higher education.

The bill instead authorizes the Director to contract for these reports with an energy services company, contractor, architect, professional engineer, or other person experienced in the design and implementation of energy conservation measures rather than with the Office of Energy Efficiency. (R.C. 156.02.)

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## DEPARTMENT OF EDUCATION

- Permits chartered nonpublic schools to purchase goods and services through group purchasing contracts negotiated and arranged by the Department of Administrative Services.

- Requires the Department of Education to proportionally distribute to chartered nonpublic schools the unspent amount appropriated in fiscal years 2008 and 2009 for reimbursement of their administrative costs.
- Requires the written consent of 75% of the affected property owners when a school district proposes on its own initiative to transfer five or more acres of its territory to an adjoining school district.
- Permits a school district that has entered into an agreement with one or more other districts for joint or cooperative operation of an educational program to charge fees or tuition to its resident students who participate in the program.
- Permits the Department of Education to have access to student data verification codes to administer the Cleveland Scholarship Program and the Autism Scholarship Program and to verify the accuracy of payments to county boards of mental retardation and developmental disabilities (county MR/DD boards) for special education services, but generally prohibits the Department from releasing the codes to any other party.
- Specifies that documents held by the Department relative to the scholarship programs or county MR/DD board services that contain both a student's name or other personally identifiable information and the student's data verification code are not public records.
- Permits an educational service center to sponsor a conversion community school.
- Allows the governing authority of a start-up community school sponsored by the Big Eight school district in which the school is located to open an additional start-up school in that district serving any of grades K to 5 if (1) the governing authority enters into another contract with the same sponsor and files a copy of the contract with the Superintendent of Public Instruction prior to March 15, 2009, and (2) the current school provided instruction to students for 11 months in the previous school year, has been open for at least two school years, and qualified to be rated continuous improvement or better for its first school year of operation.
- Allows a start-up community school to locate facilities in two separate school districts if (1) at least one of those districts is a "challenged school district," (2) the school operates only one facility in each district and does

not serve the same grades in both facilities, and (3) transportation between the two facilities is no more than 30 minutes by school bus.

- Permits a start-up community school to be located in multiple facilities and to assign students of the same grade to different facilities, if (1) the contract with the school's sponsor was filed with the Superintendent of Public Instruction on or before May 15, 2008, (2) the school was not open prior to July 1, 2008, (3) the school's governing authority has contracted with a nonprofit organization that provides programmatic oversight and support to the school and that retains the right to terminate its affiliation with the school for failure to meet the organization's quality standards, and (4) the school's performance rating does not fall below continuous improvement for two consecutive years.
- Waives hours or days a community school was closed for certain calamities in the 2007-2008 school year, as long as the school provided at least 920 hours of learning opportunities to students.
- Permits the governing authorities of two or more community schools to enter pooling agreements to jointly purchase goods and services, including health insurance for employees or liability insurance for the schools, or to provide student transportation.
- Establishes a five-year demonstration project at the ISUS Institutes of Construction Technology, Manufacturing, and Health Care, beginning in the 2008-2009 school year, to collect and analyze data regarding community schools that operate dropout prevention and recovery programs.
- Requires the Seniors to Sophomores program to permit students of nonpublic high schools, both chartered and nonchartered, to participate.
- Qualifies an educational service center (ESC) to receive per pupil state funds in fiscal year 2009 for services provided to a "city" or "exempted village" school district, if the ESC assumes the obligation to provide services to the district from another ESC that (1) ceased to operate because all of the "local" school districts constituting its territory severed from the ESC and (2) had entered into the original agreement with the district by January 1, 1997.

- Extends by ten years (from June 30, 2009, to June 30, 2019) the deadline for repayment of Head Start start-up grants.
- Requires the Department of Education to adjust a school district's state funding for operations and its facilities assistance rankings for fiscal years 2007 and 2008 to correct certifications of tax-exempt property erroneously treated as taxable property.
- Waives the requirement for a school district to make up days or hours a school was closed during the 2007-2008 school year because of flooding from a burst water pipe, if (1) the flooded school was closed only one day in excess of the five "calamity days" allowed by law, (2) the other district schools did not have any excess calamity days, and (3) the flooded school has a regularly scheduled school day that exceeds the required minimum number of hours by at least one-half hour.
- Permits a school district board that is a partner in proposing a science, technology, engineering, and mathematics (STEM) school to govern the school as one of the schools of its district and, in that case, directs that per pupil funding for the school be calculated in a manner similar to funding of open enrollment students.
- Permits a STEM school to contract with an educational service center (ESC) or joint vocational school district for services.
- Allows an ESC that contracts with a STEM school to receive per-pupil state payments for certain services (in addition to fees paid by the STEM school), to the extent there are available funds remaining after the Department of Education has paid ESCs for students enrolled in the school districts they serve and the community schools they sponsor.
- Specifies that if a person holds multiple educator licenses, the person must undergo a criminal records check only when renewing the license with the longest duration or, if the licenses have the same duration but expire in different years, only when renewing the license designated as the primary license.
- Requires the State Board of Education, prior to renewing the non-primary license or the license with a shorter duration, to determine if the Department of Education has received notification from the Bureau of

Criminal Identification and Investigation (BCII) of the person's arrest or criminal conviction.

**Chartered nonpublic schools purchases through state contracts**

(R.C. 125.04)

DAS negotiates contracts for the purchase of goods and services for state agencies. Political subdivisions (including school districts), county boards of elections, private fire companies, and private emergency medical organizations are also permitted to make purchases through these state contracts. DAS may charge a reasonable fee to cover the administrative costs of including these other entities in the state contracts.

The bill adds chartered nonpublic schools to the list of other entities that may make purchases through the contracts negotiated by DAS.

**Chartered nonpublic schools administrative cost reimbursement**

(Section 269.30.30 of Am. Sub. H.B. 119 of the 127th General Assembly, amended in Sections 610.40 and 610.41)

The Department of Education is required to reimburse chartered nonpublic schools for their clerical and administrative costs incurred as a result of state or local requirements. Costs that may be reimbursed include (among others) the costs of clerical and administrative services relating to state chartering; student attendance, health and health testing, or transportation; federally funded education programs; academic assessments; educator licensure; and unemployment and workers' compensation. Current law caps the amount that each school may be reimbursed at \$300 times the number of students enrolled in the school.

The bill temporarily permits a school to receive more than \$300 per student. Under the bill, in fiscal years 2008 and 2009, the Department must distribute any unspent and unencumbered funds remaining from the amount appropriated for administrative cost reimbursement, after all other obligations of the appropriation have been met, to each chartered nonpublic school in proportion to the school's share of the total reimbursement up to that point. In other words, after all eligible schools have been reimbursed for their costs up to the \$300 per-student limit, any remaining funds must be proportionally distributed.

### **Transfer of school district territory**

(R.C. 3311.24)

Under current law, a city, exempted village, or local school district may transfer part of its territory to an adjoining city, exempted village, or local school district, if the board of education considers the transfer advisable and the State Board of Education approves the transfer. The bill specifies that, if the portion of the territory proposed for transfer is five or more acres, the district must obtain written consent to the transfer from 75% of the property owners within that portion of the district prior to submitting its proposal to the State Board for approval. The county auditor must check the sufficiency of the property owners' signatures. The State Board is prohibited from approving the transfer until it receives evidence of the consent of affected property owners. As in current law, however, the transfer is not complete unless a majority of the full membership of the board of education of the receiving district adopts a resolution accepting the transfer.

### **Tuition for jointly operated educational programs**

(R.C. 3313.842)

Continuing law permits two or more school districts to enter into an agreement to jointly or cooperatively establish and operate an educational program, including any course or program that is part of a district's graded course of study. Districts that are party to the agreement may contribute funds to support the program. The bill further allows a district that is party to the agreement to charge fees or tuition to its resident students who participate in the program.

### **Access to student data verification codes**

(R.C. 3301.0714(D)(2), 3310.42, 3313.978, and 3317.20)

Each school district or community school in which a student initially enrolls must assign that student a unique data verification code for purposes of reporting individual student performance data to the Education Management Information System (EMIS). Currently, except as necessary to assign the data verification code, personally identifiable student information may not be reported to any person, except someone who is employed (1) by a school district, community school, or information technology center and authorized to have

access to that information or (2) by a company hired by the Department of Education to score the achievement tests.<sup>7</sup>

The bill grants the Department of Education access to student data verification codes for the purposes of (1) administering the Pilot Project Scholarship Program (the Cleveland voucher program) and the Autism Scholarship Program<sup>8</sup> and (2) verifying the accuracy of payments to county boards of mental retardation and developmental disabilities (county MR/DD boards) for special education services provided to children. Access to the data verification codes will allow the Department to match a student's name with the student's data verification code. Therefore, these provisions are an exception to the general prohibition in continuing law against the Department having access to information that would enable a data verification code to be matched to personally identifiable student data.

In the case of the two scholarship programs, the Department will have access to data verification codes in the same manner it currently does for the Educational Choice Scholarship Pilot Program.<sup>9</sup> Specifically, the Department may request a scholarship applicant's data verification code from (1) the resident school district, (2) the community school in which the student is enrolled, if applicable, or (3) the independent contractor hired by the Department to create and maintain data verification codes. In the case of county MR/DD boards, the bill requires each county MR/DD board to report to the Department the name of each child for whom the board provides special education services and the child's school district. The Department then may request the child's data verification code from either the child's school district or the contractor that manages the codes.

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<sup>7</sup> R.C. 3301.0714(D). Information technology centers provide administrative computer services, including EMIS data reporting, to school districts and other education entities.

<sup>8</sup> The Pilot Project 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 (R.C. 3313.975, not in the bill). The Autism Scholarship Program provides scholarships for certain autistic children to pay for services at public or nonpublic special education programs that are not operated by or for the child's resident school district (R.C. 3310.41, not in the bill).

<sup>9</sup> The Educational Choice Scholarship Pilot Program provides scholarships to pay tuition at chartered nonpublic schools for students who do not reside in the Cleveland Municipal School District and who are assigned to certain underperforming districts or schools (R.C. 3310.02 and 3310.03, neither section in the bill).

Districts and community schools must provide a student's data verification code to the Department in a manner specified by the Department.<sup>10</sup> If a student has not yet been assigned a data verification code, the resident school district must assign a code to the student prior to submission. If the district does not assign the code by a date specified by the Department, the Department must assign the code. Each year, the Department must provide school districts with the name and data verification code of each scholarship student or MR/DD student living in the district who has been assigned a code by the Department.

The Department may not release a student's data verification code to any person, unless such release is otherwise authorized by law. Furthermore, documents held by the Department relating to the scholarship programs or special education services provided by a county MR/DD board are not public records if they contain both a student's name or other personally identifiable information and the student's data verification code.

## **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. They 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. They 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).<sup>11</sup>

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

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<sup>10</sup> In the case of the scholarship programs, they must also provide the code to the parent of a scholarship applicant, upon request.

<sup>11</sup> R.C. 3314.02(A)(3), not in the bill. The "Big-Eight" districts are Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown.

- (1) The school district in which the school is located;
- (2) A school district located in the same county as the district in which the school is located has a major portion of its territory;
- (3) A joint vocational school district serving the same county as the district in which the school is located has a major portion of its territory;
- (4) An educational service center serving the county in which the school is located or a contiguous county;
- (5) The board of trustees of a state university (or the board's designee) under certain specified conditions; or
- (6) A federally tax-exempt entity under certain specified conditions.<sup>12</sup>

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

**ESC sponsorship of conversion schools**

(R.C. 3314.02 and 3314.03)

As noted above, currently only a school district may sponsor a conversion community school. The bill permits an educational service center (ESC) to sponsor a conversion school as well, by converting all or part of an existing building operated by the ESC into a community school. As with other conversion schools, the sponsorship contract between the ESC and the school must specify any employer duties or responsibilities that the ESC governing board will delegate to the school's governing authority. This delegation is allowed as long as it does not violate any collective bargaining agreement covering the affected employees. Also, the conversion school must submit to the ESC a plan outlining alternative arrangements for teachers who choose not to teach in the ESC building after its conversion.

**Exception to moratorium on new start-up schools**

(R.C. 3314.016)

**Background.** Under continuing law, there has been a moratorium on the establishment of new start-up community schools since June 30, 2007.<sup>13</sup>

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<sup>12</sup> R.C. 3314.015(B)(1) and 3314.02(C)(1)(a) through (f), latter section not in the bill.

<sup>13</sup> There is also a separate moratorium on new Internet- or computer-based community schools (e-schools), which has been in effect since May 1, 2005, and will continue until

However, a start-up community school may still open after that date if it contracts with an eligible operator. 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.<sup>14</sup> To qualify for the exception to the moratorium, the community school must 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.

**Exception for non-operator-managed schools.** The bill creates an exception to the moratorium for certain community schools that are *not* managed by an operator. Under the bill's exception, the governing authority of a start-up community school sponsored by the Big Eight school district in which the school is located may open one additional start-up community school in the 2009-2010 school year, if the following conditions are met:

(1) The governing authority of the current school enters into another contract with the same sponsor and files a copy of the contract with the Superintendent of Public Instruction prior to March 15, 2009;

(2) The new school will be located in the same district and will provide a general educational program to students in any of grades K to 5 to facilitate their transition to the current school; and

(3) The current school (a) provided instruction to students for 11 months in the previous school year, (b) has been in operation for at least two school years, and (c) qualified for a performance rating of continuous improvement or better for its first school year of operation, even though the Department of Education did not issue a report card for the school that year.<sup>15</sup>

### **Location and facilities**

Current law prohibits the establishment of a community school in more than one school district under the same contract with a sponsor. Moreover, a

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the General Assembly enacts standards governing the operation of e-schools (R.C. 3314.013(A)(6), not in the bill).

<sup>14</sup> R.C. 3314.014(A), not in the bill.

<sup>15</sup> Continuing law prohibits the Department from issuing a report card for a community school until the school has been open for two full school years (R.C. 3314.012(E), not in the bill).

community school may not be located in multiple facilities under the same contract, unless space limitations make it impossible to serve all students in a single facility. In that case, the school may not place students of the same grade in different facilities. The bill creates exceptions to these prohibitions.

**Location in separate school districts** (R.C. 3314.02(F) and 3314.05). Under the first exception, a start-up community school may be established in two school districts under the same contract if the following conditions apply:

(1) At least one of the districts where the school is located is a challenged school district (see "**Background**" above);

(2) The school operates no more than one facility in each district and, as currently required, it does not serve students in the same grade in both facilities; and

(3) Transportation between the two facilities requires no more than 30 minutes of direct travel time as measured by school bus.

If only one of the school districts where the school is located is a challenged school district, that district is to be considered the school's primary location. If both districts are challenged school districts, the school's governing authority must designate which of the districts is the school's primary location and notify the Department of Education of that decision.

The school's primary location will affect which students may enroll in the school. Under continuing law, each community school must adopt a policy regarding admission of students who live outside the district where the school is located, which would be the school's primary location under the bill. This policy must either (1) prohibit the enrollment of students who live outside the district, (2) permit the enrollment of students who live in adjacent districts, or (3) permit the enrollment of students who live anywhere in the state.<sup>16</sup> If applicants for admission exceed the number of openings, students must be admitted by lot from among all applicants, except that preference must be given to those students who reside in the district where the school is located.<sup>17</sup>

**Use of multiple facilities** (R.C. 3314.05(B)). The second exception allows a start-up community school to be located in multiple facilities under the same

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<sup>16</sup> R.C. 3314.03(A)(19).

<sup>17</sup> R.C. 3314.06(H). Preference also must be given to students who attended the school the previous year and siblings of those students may be given preference.

contract and to assign students in the same grade to different facilities, if the following conditions are met:

(1) The school's governing authority filed a copy of its contract with the school's sponsor with the Superintendent of Public Instruction on or before May 15, 2008.

(2) The school was not open for operation before July 1, 2008.

(3) The school's governing authority has entered into and maintains a contract with an operator that is a nonprofit organization that provides programmatic oversight and support to the school and that retains the right to terminate its affiliation with the school for failure to meet the organization's quality standards. (The school must have an operator to open outside of the existing moratorium (see above), but the operator also must be the type described to qualify the school to use multiple facilities.)

(4) The school's performance rating does not fall below continuous improvement for two or more consecutive years.

**Excused time for calamities**

(Section 733.20)

The bill waives the number of hours or days a community school was closed for certain calamities during the 2007-2008 school year, as long as the school was open for instruction with students in attendance for the statutory minimum of 920 hours.<sup>18</sup> Under the bill, community schools do not have to make up hours or days they were closed for (1) disease epidemic, (2) hazardous weather conditions, (3) inoperability of school buses or other necessary equipment, (4) damage to the school building, or (5) utility failure.<sup>19</sup> For purposes of funding community schools in the 2007-2008 school year, the Department of Education must treat time a community school was closed for one of these reasons as time the school was open for instruction. Therefore, under the bill, a community school will not lose fiscal year 2008 funding for the time its students missed during the 2007-2008 school year because of a calamity, provided the students received at least 920 total hours of instruction.

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<sup>18</sup> See R.C. 3314.03(A)(11)(a) and 3314.08(L)(3).

<sup>19</sup> These are the same reasons for which school districts receive five excused "calamity days" under continuing law (R.C. 3317.01(B)).

**Community school pooling agreements**

(R.C. 3314.40)

The bill explicitly authorizes the governing authorities of two or more community schools to enter into "pooling agreements," under which the schools may act jointly to do any of the following:

- (1) Purchase health insurance for the schools' employees;
- (2) Secure liability insurance for the schools;
- (3) Purchase goods or services necessary for the schools' operation; or
- (4) Provide transportation to students enrolled in the schools.

**ISUS Institutes demonstration project**

(R.C. 3314.37)

The bill establishes a five-year demonstration project at the three ISUS community schools in Dayton (the ISUS Institutes of Construction Technology, Manufacturing, and Health Care) to operate from the 2008-2009 through 2012-2013 school years. The project is a research and development initiative to do the following: (1) collect and analyze data with which to improve dropout prevention and recovery programs, (2) evaluate various methodologies used by those programs, (3) develop tools and criteria for evaluating community schools that operate dropout prevention and recovery programs, (4) institute stringent accountability measures for those community schools, and (5) direct curricular and programming decisions for those community schools.

The ISUS Institutes must select and fund an independent evaluator, approved by the Department of Education, to create a study plan and collect and analyze data from the institutes. This data must include at least the following:

- (1) Baseline measures of student status at enrollment, including (a) academic level, (b) history of court involvement, drug use, and other behavioral problems, and (c) the circumstances of the students' parenting and living arrangements;
- (2) Student academic progress, which must be measured at regular intervals each school year;

(3) Value-added elements of the institutes' dropout prevention and recovery programs, including industry certifications, college coursework, community service and service learning, apprenticeships, and internships; and

(4) Outcomes in addition to high school graduation, including students' contributions to community service and their transition to employment, post-secondary training, college, or the military.

During the project, the ISUS Institutes must continue to report data to the Department of Education through the Education Management Information System (EMIS).<sup>20</sup> The Department must continue to issue report cards for each institute and to assign the school a performance rating based on student achievement, as required for all public schools.<sup>21</sup> The bill stipulates that the demonstration program does not prevent an ISUS Institute from being required to close or restrict its operations based on academic performance in any school year before or during the project, pursuant to any statute, administrative rule, or policy of the State Board of Education or the Department requiring such action. Moreover, the project does not prevent an institute's sponsor from sanctioning the school by terminating or not renewing its contract, suspending its operations, or placing it in probationary status.<sup>22</sup> Finally, during the project, the ISUS Institutes remain subject to audit by the Auditor of State.

By September 30 after each school year of the project, the independent evaluator must submit its data and data analysis to the ISUS Institutes and the Department of Education. The data analysis also must be provided to the Speaker and Minority Leader of the House, the President and Minority Leader of the Senate, and the chairpersons and ranking minority members of the House and Senate education committees. By December 31, 2013, the evaluator must issue a final report of its findings and recommendations for appropriate accountability measures for community schools that operate dropout prevention and recovery programs. This report must be submitted to the Department and legislative leaders. The Department may conduct its own analysis of any data submitted under the project.

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<sup>20</sup> EMIS is a statewide electronic database of student, building, personnel, and fiscal data about school districts and community schools (R.C. 3301.0714).

<sup>21</sup> The performance ratings are excellent, effective, continuous improvement, academic watch, and academic emergency. They are derived mainly from student performance on the state achievement tests. (See R.C. 3302.03(A) and (B).)

<sup>22</sup> These actions may be taken for (1) failure to meet student performance requirements outlined in the sponsorship contract, (2) fiscal mismanagement, (3) a violation of law or the contract, or (4) other good cause (R.C. 3314.07, 3314.072, and 3314.073).

### **Seniors to Sophomores program**

(R.C. 3365.15)

The bill requires that students of chartered and nonchartered nonpublic high schools be permitted to participate in the Seniors to Sophomores program. The Seniors to Sophomores program is a dual-enrollment program for academically qualified high school seniors to earn a year's worth of high school and college credit simultaneously in one year. Students who successfully complete the program could be qualified to enter into the University System of Ohio as college sophomores. The program is an administrative initiative, operated through the Board of Regents using a fiscal year 2009 earmark from line-item 200-536, Ohio Core Support, providing funds "to public school districts for supplemental post-secondary enrollment option participation." According to the University System of Ohio's web site, 42 school districts have been awarded a total of \$4 million in "early adopter" grants for the 2008-2009 school year.<sup>23</sup>

### **Educational service center payments**

(Section 269.50.30 of Am. Sub. H.B. 119 of the 127th General Assembly, amended in Sections 610.40 and 610.41)

Educational service centers (ESC) provide some oversight and specified services to the "local" school districts that make up its service territory, for which the ESC receives both state and district funds. In addition, an ESC may contract with "city" and "exempted village" school districts, generally with student populations of less than 13,000, to provide similar services and may qualify to receive state and district funding for those services.<sup>24</sup> In each case, the state funding is up to \$37 per pupil for a single county ESC and up to \$40.52 for an ESC made up of the merger of at least three smaller ESCs.<sup>25</sup> However, uncodified law, currently effective for FY 2008 and FY 2009, prohibits an ESC from receiving the per pupil state funds for services to "city" or "exempted village" school districts unless the ESC had entered into an agreement for those services by January 1, 1997.

The bill qualifies an ESC to receive those per pupil state funds in fiscal year 2009 for services provided to a "city" or "exempted village" school district, if that ESC "assumes" the obligation to provide services to the district from another ESC

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<sup>23</sup> <http://universitysystem.ohio.gov/seniorstosophomores/index.php>.

<sup>24</sup> R.C. 3313.843, not in the bill.

<sup>25</sup> R.C. 3317.11(F), not in the bill.

that (1) ceased to operate because all of the "local" school districts constituting its territory severed from the ESC (thus, dissolving its territory) and (2) entered into the original agreement by January 1, 1997. In other words, the bill permits the ESC that takes over those service obligations to receive the state funds even through it did not enter the agreement prior to January 1, 1997, as long as the ESC that is closing did so.

### **Background**

The territory of an ESC, from which its governing board members are elected, is the territory of only the "local" school districts that belong to the ESC and receive statutory services from the ESC. The territory does not include the territory of the other "city" and "exempted village" districts that may receive services from the ESC.<sup>26</sup> A local school district may by resolution, subject to approval of the State Board of Education and referendum by petition of the district's voters, sever from the ESC to which it currently belong and annex to an adjacent ESC.<sup>27</sup> If all of the local school districts that belongs to an ESC sever from it, that ESC is left without any electoral territory and it appears that the ESC likely cannot continue to operate. In that case, the other districts that have received services from the ESC also need to find another provider, which likely may be another ESC.

### **Repayment of Head Start start-up grants**

(Section 269.40.50 of Am. Sub. H.B. 119 of the 127th General Assembly, amended in Sections 610.40 and 610.41)

The bill extends for ten years, until June 30, 2019, the deadline for former providers under the Title IV-A Head Start and Title IV-A Head Start Plus programs to repay the state start-up grants they received in fiscal year 2004 or 2005. Not all such providers have incurred an obligation to repay the grants. But for those that have, the bill allows ten years more for repayment than the law currently provides. It also clarifies that providers that incurred repayment obligations in fiscal year 2006 or 2007 do not have their obligations cancelled if they are now providers under the current Early Learning Initiative. They, too, must repay by June 30, 2019.

Within 90 days after the bill's effective date, the providers and the Department of Education must determine new repayment schedules.

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<sup>26</sup> R.C. 3311.05, not in the bill.

<sup>27</sup> R.C. 3311.059, not in the bill.

## **Background**

In fiscal years 2004 and 2005, the state implemented two early childhood programs known as Title IV-A Head Start and Title IV-A Head Start Plus. Although the programs were financed with federal TANF money, they included start-up grants from the state General Revenue Fund. The budget act for fiscal years 2004 and 2005 stipulated that providers must repay the start-up grants if the programs were terminated or ceased to be financed with federal TANF funds, or if the provider ceased to participate in the programs.<sup>28</sup>

The programs, in fact, were terminated after fiscal year 2005 and were replaced by the Early Learning Initiative. The budget act for fiscal years 2006 and 2007 stipulated that the obligation to repay a start-up grant could be reduced or cancelled if a former Head Start provider became an Early Learning Initiative provider, depending on the number of children the provider served. If the provider served the same number of children as anticipated by the start-up grant, the repayment could be cancelled. If the provider served fewer children, the repayment could be reduced, but not outright cancelled.<sup>29</sup> Subsequently, the budget act for fiscal years 2008 and 2009 gave an extension, until June 30, 2009, for providers to fulfill their repayment obligations.<sup>30</sup>

## **Adjustments in erroneously reported tax value for certain school districts**

(Section 733.10)

A school district's tax valuation is used to determine its share of combined state and district funding for operating the district.<sup>31</sup> It is also used to calculate the district's priority for classroom facilities funding and its share of a state-assisted facilities project. The district's tax valuation is generally the aggregate taxable valuation of the real and tangible personal property in the district. It does not include property that is exempt from taxation. In the case of both operating

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<sup>28</sup> Section 41.06 of Am. Sub. H.B. 95 of the 125th General Assembly.

<sup>29</sup> Section 206.09.54 of Am. Sub. H.B. 66 of the 126th General Assembly.

<sup>30</sup> Section 269.40.50 of Am. Sub. H.B. 119 of the 127th General Assembly.

<sup>31</sup> Continuing law presumes that each city, exempted village, and local school district will levy at least 23 mills against its taxable valuation as its share of base-cost funding for the district. That 23 mills times its valuation, plus a portion of the valuation reflected in payments the district receives in lieu of taxes due to tax abatements, constitutes the district's "charge-off." (R.C. 3317.012, 3317.02, and 3317.022, none in the bill.)

funding and facilities funding, all other things being equal, the higher a district's taxable valuation the less state funding it will receive.

The bill requires the Department of Education to recalculate a district's taxable valuation for purposes of operating funding and facilities funding for fiscal years 2007 and 2008, if the initial valuation calculated for the district for both fiscal years erroneously included at least \$10 million of tax exempt public utility property (both real property or tangible personal property). Including that amount of exempt property by error could have caused the district to receive less state funding than it otherwise was eligible to receive.

For each fiscal year, the Department must recompute each component of operating funding for the district that is affected by the recomputed tax valuation. As part of this recalculation, the Department also must reduce in its calculations the amount of local taxes attributed to the district based on the erroneously reported valuation. For fiscal year 2007, the Department must pay the district the resulting increase in state operating funding within 45 days after the bill's effective date. (The Department must make the fiscal year 2007 payments from money appropriated for school funding for fiscal year 2008.) For fiscal year 2008, the Department must pay the district the increase in equal amounts divided among the remaining payments to be made during the fiscal year after the bill's effective date.

Also, the Department, within 45 days after the bill's effective date, must recertify to the School Facilities Commission a new percentile ranking for the school district that reflects the adjusted tax valuations. If the district is already receiving state funding for a facilities project, the Commission must reduce the district's portion of its project cost to reflect the district's new percentile rank.

### **School district calamity days**

(Section 733.21)

The bill waives the requirement for certain school districts to make up days or hours a school was closed during the 2007-2008 school year due to flooding from a burst water pipe. This waiver applies only if (1) the flooding caused the school to be closed for just one day in excess of the five excused "calamity days" allowed by law (see below), (2) the other district schools did not have any excess calamity days, and (3) the flooded school has a regularly scheduled school day that exceeds the required minimum number of hours by at least one-half hour. The minimum school day for school districts is five hours, excluding a lunch period, in grades 1 to 6 (including two 15-minute recesses) and five and one-half hours, excluding a lunch period, in grades 7 to 12 (R.C. 3313.48, not in the bill). The waiver relieves the district of the responsibility to implement its contingency plan to make up the excess calamity day for the flooded school, as otherwise required

by current law. Each district that qualifies for a waiver is considered to have complied with the minimum school year requirements for the 2007-2008 school year and is eligible for state funding in fiscal year 2009.

### **Background on minimum school year**

Continuing law requires a minimum school year of 182 days for school districts. Toward this minimum, a school may count up to four days when classes are dismissed a half-day early for individual parent-teacher conferences or reporting periods, up to two days for teacher professional meetings, and up to five days for a public calamity, which includes: (1) disease epidemic, (2) hazardous weather conditions, (3) inoperability of school buses or other necessary equipment, (4) damage to a school building, or (5) other temporary circumstances because of a utility failure that renders a building unfit for use. (R.C. 3313.48 and 3317.01(B) (neither section in the bill).)<sup>32</sup>

Each school district must adopt a contingency plan for making up at least five full days in case it is necessary to close schools for more than the five excused calamity days (R.C. 3313.482(A), not in the bill).<sup>33</sup> In addition, continuing law provides a procedure to make up days missed in excess of the total of the five excused calamity days and the days set aside in a district's contingency plan. Under that provision, if a school is closed for more days than the five excused days plus those make-up days prescribed in the contingency plan, the district may add half-hour increments to the remaining days in the school year to make up those excess days (R.C. 3313.482(C), not in the bill).<sup>34</sup> For example, if a district's contingency plan provides for making up 5 days and the district closes for 12 days because of snow, the district could make up 2 of those days by adding time to other school days ( $12 - (\text{the 5 excused calamity days} + \text{the 5 days in the contingency plan}) = 2$ ). A district may start increasing the length of school days prior to actually making up any of the days covered by its contingency plan. Nevertheless, it still must fully implement the contingency plan.

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<sup>32</sup> Nonpublic schools, both chartered and nonchartered, are required to comply with these provisions by rules of the State Board of Education. See rules 3301-35-08 and 3301-35-12 of the Administrative Code. Community ("charter") schools are not subject to the 182-day requirement, but instead must offer learning opportunities to each student for at least 920 hours per year (see R.C. 3314.03(A)(11)(a), not in the bill).

<sup>33</sup> A school day that is reduced by two hours or less due to hazardous weather does not count as a missed calamity day (R.C. 3317.01(B), not in the bill).

<sup>34</sup> This provision became effective March 24, 2008.

## STEM schools

### Background

The STEM Subcommittee of the Partnership for Continued Learning may authorize up to five science, technology, engineering, and math (STEM) schools to open in the 2008-2009 school year. These schools must be selected from proposals submitted by partnerships of public and private entities consisting of at least a school district, higher education institutions, and business organizations. STEM schools may serve any of grades 6 to 12. Each STEM school is a public school under the oversight of a governing body.

### District-operated STEM schools

(R.C. 3326.51)

The bill explicitly permits a school district board of education to govern and control a STEM school as one of the schools of its district, if the district is one of the partners proposing the school, the proposal specifies that arrangement, and the Partnership for Continued Learning approves the proposal.

The school district must maintain its accounting for the school as a separate and distinct operating unit within the district's finances. Instead of the procedure of deducting and transferring a school district's state funds, which is otherwise prescribed by law for STEM school financing, the bill provides the following financing requirements for a district-operated STEM school:

(1) For the district's resident students enrolled in the STEM school, the district must allocate funds at least equal to what would be calculated for the students under the open enrollment laws.

(2) The attendance of students from other districts must be financed as if they were open enrollment students, and the Department of Education must deduct and transfer state funds from the students' resident school districts to the district operating the STEM school using the formulas of the open enrollment laws. The district operating the STEM school must allocate those funds to the STEM school. The districts may enter into agreements to provide funding for the students beyond the amounts calculated under the open enrollment laws.

The Auditor of State must certify, as part of the district's regular audits, whether "funds received by the district for the STEM school were appropriately expended for the STEM school."

The bill specifies that a school district operating a STEM school may assign district employees and other district resources to the STEM school. It states that a

school district treasurer has all of the rights, authority, and duties otherwise conferred by the Revised Code, which presumably indicates intent to allow the district treasurer to serve as the STEM school's treasurer. Finally, the bill also specifies that a district's operation of a STEM school does not limit the district's lawful authority to levy taxes or issue bonds backed by tax revenues.

### **STEM school contracts**

(R.C. 3317.11 and 3326.45; Section 269.50.30 of Am. Sub. H.B. 119 of the 127th General Assembly, amended in Sections 610.40 and 610.41)

The bill permits a STEM school to contract with an educational service center (ESC) or joint vocational school district for the provision of services to the school or its students. Services provided under the contract and the amount to be paid for those services must be mutually agreed to by the parties and specified in the contract. To be valid, the contract must be filed with the Department of Education by the first day of the school year for which the contract is in effect. The Department must deduct the amount specified in the contract from the state funds due to the STEM school and pay that amount to the ESC or joint vocational district providing the services.

**Contracts with ESCs.** A contract with an ESC may require the ESC to provide the STEM school with services similar to those it is required to provide to the "local" school districts in its territory and to its client "city" and "exempted village" districts that elect to receive the services.<sup>35</sup> These services include (1) supervisory teachers, (2) professional development, (3) curriculum services, (4) research and development programs, (5) academic instruction, and (6) special education services. For providing these services, each ESC receives either \$37 or \$40.52 per pupil of direct state funding for each of its local and client districts.<sup>36</sup>

If a STEM school contracts for any of these services, the ESC must provide them in the same manner as it does for its local school districts, unless otherwise specified in the contract. The contract must specify whether the ESC will receive a per-pupil state payment for the services and, if so, the amount of the payment, which may not exceed the \$37 or \$40.52 per pupil the ESC receives for its local and client school districts. The Department must pay the ESC an amount equal to

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<sup>35</sup> A client school district generally may only be a city or exempted village district with a total student population of less than 13,000 students (R.C. 3313.843).

<sup>36</sup> The latter amount is paid to ESCs that have formed as a result of a merger of at least three smaller ESCs (R.C. 3317.11(F)(2)). Each ESC also receives \$6.50 per pupil from each of its local and client school districts for these services (R.C. 3317.11(C)).

the per-pupil amount specified in the contract times the number of students enrolled in the STEM school.

However, this requirement applies only if there are remaining funds earmarked for ESC payments within line item 200-550, Foundation Funding, after the Department has made per-pupil payments to all ESCs for their local and client districts and for students enrolled in community schools sponsored by the ESCs.<sup>37</sup> If there are still funds available, the Department then must pay ESCs for their services to STEM schools. If the remaining funds are insufficient to pay each ESC the total amount due to it, the Department must distribute the remaining funds proportionally, on a per-pupil basis, to all ESCs that have contracts with STEM schools for the covered services. If that proportional per-pupil amount exceeds the per-pupil amount specified in any ESC's contract with a STEM school, the Department must distribute the lowest per-pupil amount specified in all ESC contracts with STEM schools to each ESC and then distribute the remainder proportionally, on a per-pupil basis, to all ESCs with contracts specifying higher per-pupil amounts. But no ESC may receive a higher per-pupil amount than it is entitled to under its contract with a STEM school.

### **Criminal records checks for educator licenses**

(R.C. 3319.291)

Current law requires the State Board of Education, or the Superintendent of Public Instruction on the State Board's behalf, to request a criminal records check of each person who initially applies for an educator license or who renews an existing educator license. The records check must be performed by the Bureau of Criminal Identification and Investigation (BCII) and include checks of both BCII and Federal Bureau of Investigation (FBI) records.<sup>38</sup>

The bill addresses the timing of criminal records checks for individuals who renew multiple educator licenses. Under the bill, if the licenses have different durations, the license holder is subject to a criminal records check only when renewing the license with the longest duration. As long as that license remains valid, the person is not subject to a records check when renewing a license of shorter duration. However, prior to renewing a license of shorter duration, the State Board or state Superintendent must determine whether the Department of

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<sup>37</sup> ESCs do not receive state payments for students enrolled in Internet- or computer-based community schools (e-schools) they sponsor.

<sup>38</sup> The State Board or state Superintendent may choose not to request a criminal records check if the applicant provides proof of having been subject to a records check as a condition of employment within the previous year (R.C. 3319.291(C)).

Education has received notification from BCII of the person's arrest or criminal conviction.<sup>39</sup>

If the person's licenses are of the same duration but expire in different years, the license holder must designate one of the licenses as the person's primary license. As long as the person's primary license remains valid, the person must undergo a criminal records check only when renewing that license. Prior to renewing any other license held by the person, though, the State Board or state Superintendent must determine whether BCII has notified the Department of the person's arrest or conviction. Finally, if the person's licenses are of the same duration and expire in the same year, the person must undergo only one criminal records check upon renewal, as long as the person applies for renewal of the licenses at the same time.

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## ENVIRONMENTAL PROTECTION AGENCY

- Requires at least 65% of the money collected from the levy of a 50¢ per-tire fee on the sale of tires, which is scheduled to sunset on June 30, 2011, to be used for clean-up and removal activities at the Goss tire site in Muskingum County or other tire sites in the state rather than the Kirby tire site in Wyandot County as in current law.

### Use of fee on tire sales

(R.C. 3734.821)

The bill requires that beginning on the effective date of this provision and ending on June 30, 2011, at least 65% of the money collected from the current 50¢ per-tire fee on the sale of tires and credited to the existing Scrap Tire Management Fund must be expended for clean-up and removal activities at the Goss tire site in Muskingum County or other tire sites in the state rather than at the Kirby tire site

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<sup>39</sup> BCII maintains the Retained Applicant Fingerprint Database, which is a database of individuals on whom BCII has conducted criminal records checks for the purpose of determining eligibility for employment with or licensure by a public office. When BCII receives information that an individual in the database has been arrested for or convicted of any offense, it must notify the public office that employs or licenses that individual of the arrest or conviction, if the public office elects to receive those notifications. The public office may use that information solely to determine the individual's eligibility for continued employment or licensure. (R.C. 109.5721, not in the bill.)

in Wyandot County as in current law. The fee on the sale of tires is scheduled to sunset on June 30, 2011 under current law.

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## DEPARTMENT OF HEALTH

- Requires the Department of Health to exclusively oversee the administration of the Physician Loan Repayment Program, rather than participate in a joint effort with the Board of Regents.
- Increases the amount of the repayment from not more than \$20,000 in each of the four years of repayment, to up to \$25,000 in each of the first two years and up to \$35,000 in each of the last two years.
- Includes additional primary care specialties in those that qualify a physician for participation in the Program.
- Makes changes to specific provisions of the application and repayment contract.
- Requires the Department to exclusively oversee the implementation and administration of the Dentist Loan Repayment Program, rather than participate in a joint effort with the Board of Regents.
- Requires the Department to repay all or part of the principal and interest of a government or other educational loan taken by an individual for certain dental college expenses and mail annual statements to the recipient summarizing the principal and interest repaid by the Department in the preceding year.
- Requires the Director of Health to use the Dental Health Resource Shortage Area and Dentist Loan Repayment funds for the implementation and administration of the Dentist Loan Repayment Program.

### **Physician Loan Repayment Program**

(R.C. 3333.04, 3333.044, 3702.71, 3702.72, 3702.73, 3702.74, 3702.75, 3702.78, 3702.79, and 3702.81)

The Physician Loan Repayment Program provides loan repayments, for the principal and interest on a loan, to primary care physicians who meet certain criteria. The Ohio Board of Regents and the Department of Health jointly administer the Program. The bill removes the Board from the law governing the Program, making the Department exclusively responsible for overseeing the administration of the Program. As a result of the change, the Department will be solely responsible for repaying all or part of the principal and interest on the loans.

Generally, a primary care physician who meets certain criteria, which may include being enrolled in the final year of a fellowship program in a primary care specialty, may apply to participate in the Program. The primary care specialties that qualify a physician are general internal medicine, pediatrics, obstetrics and gynecology, psychiatry, and family practice. The bill adds child and adolescent psychiatry, adolescent medicine, geriatric psychiatry, combined internal medicine and pediatrics, and geriatrics as qualifying specialties. The bill also adds a requirement that, if applicable, an applicant include with the information that accompanies the application the facility or institution where the applicant's fellowship was completed or is being performed and date of completion to the information.

If the General Assembly has appropriated funds for the Program and the applicant is eligible, the Director of Health must approve the applicant to participate in the Program. The bill further specifies that approval of an applicant is contingent on whether funds are available in the Physician Loan Repayment Fund (see "**Funds**" below).

Currently, the loan repayment may cover the following expenses: (1) tuition, (2) educational expenses, such as fees, books, and laboratory expenses, for specific purposes and in amounts determined to be reasonable by the Director of Health, and (3) room and board, in an amount determined reasonable by the Director of Health. The loan repayment cannot exceed \$20,000 in any year. The bill specifies that the loan repayment cannot exceed \$25,000 in each of the first and second years and \$35,000 in each of the third and fourth years. The bill requires the Department (rather than the Board) to mail an annual statement to the physician that summarizes the amount repaid by the Department.

### *Loan repayment contract*

Current law allows an applicant to enter into a contract with the Director of Health and the Board for loan repayment once an applicant submits a letter of intent and the Director approves the application based on certain factors. The contract specifies the obligations of both the applicant and the Board.

The contract must include the following obligations:

(1) The primary care physician agrees to provide primary care services in the health resource shortage area identified in the letter of intent for at least two years or one year per \$20,000 of repayment agreed to, whichever is greater;

(2) When providing primary care services in the health resource shortage area, the primary care physician agrees to (a) provide primary care services for a minimum of 40 hours per week, (b) provide primary care services without regard to a patient's ability to pay, (c) meet certain conditions regarding Medicaid and enter into a contract with the Department of Job and Family Services (JFS) to provide primary care services to Medicaid recipients, and (d) meet the conditions established by JFS for participation in the disability medical assistance program and enter into a contract with the JFS to provide primary care services to recipients of disability medical assistance;

(3) The Board agrees, to repay, so long as the primary care physician performs the service obligation, all or part of the principal and interest of a government or other educational loan;

(4) The primary care physician agrees to pay the Board the following as damages if the physician fails to complete the service obligation if (a) the failure occurs during the first two years of the service obligation, three times the total amount the Board has agreed to repay, or (b) the failure occurs after the first two years of the service obligation, three times the amount the Board is still obligated to repay.

The contract may include any other terms agreed upon by the parties, including an assignment to the Board of the physician's duty to pay the principal and interest of a government or other educational loan taken by the physician for medical school expenses. If the Board assumes the physician's duty to pay a loan, the contract shall set forth the total amount of principal and interest to be paid, an amortization schedule, and the amount of each payment to be made under the schedule.

The bill makes the following changes to the contract: (1) generally removes reference to the Board in the contract, including the assignment to the

Board of the duty to repay the loan, (2) removes the requirement to provide primary care services for one year per \$20,000 of repayment agreed to, whichever is greater, (3) provides that at least 21 of the 40 hours of primary care services must be in an outpatient or ambulatory setting, and (4) removes the damages specified under (4) above and instead requires the Department of Health to adopt rules specifying damages.

### **Physician Loan Repayment Advisory Board**

(R.C. 3702.81)

Current law requires that the Director of Health and Ohio Board of Regents consult with the Physician Loan Repayment Advisory Board regarding the adoption of any rules needed to implement and administer the Physician Loan Repayment Program. There are ten members on the Advisory Board, one of whom is a representative of the Department of Health, appointed by the Governor. Current law also requires the Governor to designate a Board member as chairperson. The bill instead requires that the Director of Health either be on the Advisory Board or appoint an employee of the Department of Health to be on that Board. Instead of the Governor, the bill requires the Advisory Board to designate a chairperson.

The Governor, Speaker of the House of Representatives, or the President of the Senate may remove a Board member for misfeasance, malfeasance, or willful neglect of duty. The bill adds the Director of Health to the persons who may remove a Board member.

### **Funds**

(R.C. 3702.78)

There are two funds related to the Physician Loan Repayment Program: the Physician Loan Repayment Fund and the Health Resource Shortage Area Fund. The Director of Health and Board of Regents may accept gifts of money from any source, and deposit money into the Funds, for the implementation and administration of the Program. The Director must pay gifts to the Health Resource Shortage Area Fund and the Board of Regents must pay any gifts and damages (for failure to complete a service obligation) into the Physician Loan Repayment Fund.

The bill removes the authority of the Board of Regents regarding the funding of the Physician Loan Repayment Program. The bill requires the Director to use both funds for the administration and implementation of the Physician Loan

Repayment Program and deposit damages for failure to complete a service obligation in the Physician Loan Repayment Fund.

### **Dentist Loan Repayment Program**

(R.C. 3702.85, 3702.86, 3702.91, 3702.93, and 3702.95; 3702.92, not in the bill)

The Dentist Loan Repayment Program provides loan repayments on behalf of individuals who agree to provide dental services in areas designated as dental health resource shortage areas by the Director of Health. The Department of Health is required to administer the Program in cooperation with the Board of Regents and the Dentist Loan Repayment Advisory Board. Under the Program, the Ohio Board of Regents may agree to repay all or part of the principal and interest of a government or other educational loan taken by an individual for tuition, educational expenses, and room and board. These expenses must have been incurred while the individual was enrolled in an accredited dental college or a dental college located outside of the United States that meets the standards set by the State Dental Board and must be determined reasonable by the Director of Health. The Director is required to adopt rules in consultation with the Ohio Board of Regents and the Dentist Loan Repayment Advisory Board to implement the Program.

The bill removes the Ohio Board of Regents from the law governing the Dentist Loan Repayment Program making the Department of Health exclusively responsible for overseeing the administration of the Program. Under law unchanged by the bill, the Department is to administer the Program in cooperation with the Dentist Loan Repayment Advisory Board, the Director must consult with the Advisory Board regarding rules, and one member of the Advisory Board must be a representative from the Board of Regents (appointed by the chancellor).

As a result of the change, the Department will be solely responsible for repaying all or part of the principal and interest on the loans.

### **Dentist Loan Repayment Advisory Board**

The Dentist Loan Repayment Advisory Board is required to determine the loan repayment amounts paid to the Dentist Loan Repayment Program participants. Each participant may receive up to \$20,000 a year; however the Ohio Board of Regents, at the participant's request and the approval of the Director of Health, may reimburse the participant for any tax liability the participant incurs resulting from the loan repayment. The bill instead allows the Department of Health to make this reimbursement.

### *Loan repayment contract*

Current law allows an applicant to enter into a contract with the Director of Health and the Ohio Board of Regents for loan repayment once an applicant submits a letter of intent and the Director approves the application based on certain factors. The contract specifies the obligations of both the applicant and the Ohio Board of Regents. The bill removes reference to the Ohio Board of Regents in the contract and adds the Department of Health.

### *Funds*

There are two funds related to the Dentist Loan Repayment Program: (1) the Dentist Loan Repayment Fund and (2) the Dental Health Resource Shortage Area Fund. The Director of Health may accept gifts of money from any source for the administration of the Program and the Dentist Loan Repayment Advisory Board. Any gifts are to be deposited in the state treasury to the credit of the Dental Health Resource Shortage Area Fund.

The Ohio Board of Regents may accept gifts from any source for administration of the Dentist Loan Repayment Program. These gifts and all damages collected when an individual fails to complete a service obligation are to be deposited in the state treasury to the credit of the Dentist Loan Repayment Fund.

The bill removes the authority of the Ohio Board of Regents regarding the funding of the Dentist Loan Repayment Program (accepting gifts or depositing money into the Dentist Loan Repayment Fund). Instead, the bill requires the Director to deposit the damages for failure to complete a service obligation into the Dentist Loan Repayment Fund. The bill requires the Director to use both funds for the administration and implementation of the Dentist Loan Repayment Program.

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## **COMMISSION ON HISPANIC-LATINO AFFAIRS**

- For the Commission on Hispanic-Latino Affairs, adds to the 11 members currently appointed by the Governor, two nonvoting, ex officio legislative members appointed by the Speaker of the House of Representatives and the President of the Senate, with the initial appointments representing the minority political party in the House and the majority political party in the Senate and with the party affiliation alternating thereafter; and specifies that these members be appointed so that they begin their terms October 7, 2008.

## Commission on Hispanic-Latino Affairs

(R.C. 121.31)

Current law creates the Commission on Hispanic-Latino Affairs and specifies that the Commission consist of 11 voting members appointed by the Governor with the advice and consent of the Senate. Members serve three-year staggered terms. Currently, the Speaker of the House of Representatives and the President of the Senate each make two recommendations to the Governor and the minority leaders of the House and Senate each recommend to the Governor one such person. All members of the Commission must speak Spanish and must be of Spanish-speaking origin. Additionally, members must be American citizens or lawful, permanent, resident aliens. Members must be from urban, suburban, and rural geographical areas representative of Spanish-speaking people with a numerical and geographical balance of the Spanish-speaking population throughout the state.

The bill adds to the 11-member Commission two nonvoting, ex officio legislative members. One ex officio member of the Commission must be a member of the House of Representatives appointed by the Speaker of the House of Representatives and one ex officio member must be a member of the Senate appointed by the President of the Senate. When making their initial appointments (which must be made so that the members begin their terms October 7, 2008), the bill specifies that the Speaker must appoint a member of the House who is affiliated with the minority political party in the House and the President must appoint a member of the Senate who is affiliated with the majority political party in the Senate; in making subsequent appointments the Speaker and the President each must alternate the political party affiliation of the members they appoint to the Commission. Members of the General Assembly who are appointed to the Commission are members of the Commission only so long as they are members of the General Assembly. Under the bill, only the voting members must speak Spanish, be of Spanish-speaking origin, be American citizens or lawful, permanent, resident aliens, and be from urban, suburban, and rural geographical areas representative of Spanish-speaking people with a numerical and geographical balance of the Spanish-speaking population throughout the state.

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### **DEPARTMENT OF INSURANCE**

- Requires each applicant for licensure as an insurance agent to pay a \$10 fee regardless of whether the applicant must pass a licensure examination.

- Exempts from certain investment requirements a domestic insurance company that qualifies as a foreign country branch of a United States company that writes policies exclusively in countries other than the United States.
- Makes changes to the long-term care partnership program training and continuing education requirements for long-term care insurance agents.

### **Insurance agent licensure fee**

(R.C. 3905.40)

Under current law, applicants for licensure as insurance agents must pay a \$10 fee prior to admission into any examination that the Superintendent of Insurance may require the applicant to pass before licensure. The bill requires all individual applicants, except applicants for licensure as limited lines insurance agents or surplus line brokers, to pay that \$10 fee for each line of authority that the applicant requests regardless of whether the applicant must pass a licensure examination. The bill also specifies that the fees collected must be credited to the Department of Insurance Operating Fund.

### **Domestic insurer investment requirements**

(R.C. 3925.101)

Under current law, insurance companies that are formed under the laws of this state for the purpose of insurance other than life insurance are allowed only certain investment opportunities. For instance, no such insurance company can invest its capital in any security that is not specifically authorized by statute (R.C. 3925.06, not in the bill). The same limitation is imposed upon investments and loans made with accumulated funds and surplus money above the capital stock (R.C. 3925.08, not in the bill). With regard to real estate holdings, these insurance companies are also prohibited from purchasing, holding, or conveying real estate except for purposes and in manners specified in the Revised Code (R.C. 3925.20, not in the bill).

With the approval of the Superintendent of Insurance, the bill would exempt a domestic insurance company that qualifies as a foreign country branch of a United States company that writes policies exclusively in countries other than the United States from the investment limitations described above. The exemption would apply only if the foreign country in which the foreign country branch was

doing business had laws pertaining to insurance investments and the foreign country branch is required to comply with those laws.

**Long-term care insurance agent continuing education**

(R.C. 3923.443)

Current law prohibits an agent from selling, soliciting, or negotiating any long-term care insurance without completing an initial eight-hour long-term care partnership program training course and requires licensed agents to complete at least four hours of continuing education every two years. Under current law an agent may complete that training and continuing education by completing partnership program training requirements in any other state, provided that the courses are approved by the Superintendent prior to the agent taking them. The bill specifies that long-term care courses completed by a resident insurance agent must be approved by the Superintendent of Insurance and the courses completed by a nonresident insurance agent must be approved for credit by the insurance department of that state rather than by Ohio's Superintendent of Insurance.

Under current law each insurer must maintain records of the initial training and continuing education completed by agents of that insurer as well as the training completed by the insurer's agents concerning the distribution of the insurer's partnership program policies and make those records available to the Superintendent upon request. The bill additionally specifies that insurers must obtain those records and then maintain them in a manner that will allow the Superintendent to provide assurance to the Director of Job and Family Services that agents have received that training and have demonstrated an understanding of the partnership program policies and those policies' relationship to public and private long-term care, including Medicaid, in Ohio.

Current law requires the Superintendent to certify to the Director of Job and Family Services that the Superintendent has verified that all agents selling, soliciting, or negotiating long-term care insurance in Ohio have completed the required training and continuing education, including training concerning the partnership program policies and their relationship to public and private coverage of long-term care in this state, including Medicaid. The bill removes that requirement and maintains the requirement that the Superintendent also must make the records provided to the Superintendent by the insurers available to the Director. Additionally, the bill authorizes the Superintendent to annually audit insurers' records to verify that they have maintained the required records.

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## DEPARTMENT OF JOB AND FAMILY SERVICES

- Delays the deadlines for the Ohio Department of Job and Family Services (ODJFS) to prepare a report containing information regarding the time limits for participation in Ohio Works First from the first day of each January and July to the last day of those months.
- Requires type A and type B family day-care homes to procure and maintain liability insurance or a signed affidavit from parents of children in the homes acknowledging the lack of liability insurance.
- Permits an owner of real property where a family day-care home is located to be listed as an additional insured party on a liability insurance policy under certain circumstances.
- Changes the minimum income eligibility requirement for the Children's Buy-In Program to an amount that exceeds 250% (rather than exceeds 300%) of the federal poverty guidelines.
- Specifies that countable family income of an individual, rather than just the individual's income, is to be used in determining eligibility requirements and minimum monthly premiums for the Children's Buy-In Program.
- Provides that an individual applying for the Children's Buy-In Program is not required to provide satisfactory evidence of not having had creditable coverage for at least six months before enrolling in the program if the only creditable coverage available to the individual was lost because the individual exhausted a lifetime benefit limitation.
- Specifies that the minimum monthly premium to be charged an individual made eligible for the Children's Buy-In Program by the change to the income eligibility requirement is to be the same minimum to be charged an individual with countable family income exceeding 300% but not exceeding 400% of the federal poverty guidelines.
- Provides for the monthly premiums charged under the Children's Buy-In Program to be credited to the Medicaid Revenue and Collections Fund.

- Permits money credited to the Medicaid Revenue and Collections Fund to be used for the Children's Buy-In Program as well as Medicaid services and contracts.
- Requires, rather than permits, the ODJFS Director to adopt rules establishing co-payment requirements with the result that individuals participating in the Children's Buy-In Program must be charged co-payments.
- Permits the ODJFS Director to adopt rules limiting the number of individuals who may participate in the Children's Buy-In Program at one time.
- Requires that the Children's Buy-In Program be operated as part of Medicaid, the Children's Health Insurance Program (CHIP), or both if the United States Secretary of Health and Human Services approves federal matching funds for the Children's Buy-In Program and operating the Children's Buy-In Program under Medicaid, CHIP, or both is permitted by the terms of the approval.
- Provides for the Children's Buy-In Program to be treated the same as the Medicaid program under numerous provisions of state law.
- Permits information received by ODJFS for the purpose of establishing third party liability under Medicaid to also be used for purposes directly connected to the Department's child support enforcement program.
- Eliminates a requirement that the Ohio Department of Education (ODE) pay ODJFS the nonfederal share of reimbursements made to a school district for Medicaid services provided by the district and deduct the amount of the payment from the district's state aid.
- Requires the Director of ODJFS to seek federal approval to establish the Medicaid School Component of the Medicaid program.
- Permits a qualified Medicaid school provider participating in the Medicaid School Component to submit a claim to ODJFS for federal financial participation for providing, in schools, services covered by the component to Medicaid recipients who are eligible for the services.

- Requires ODJFS to enter into an interagency agreement with ODE that provides for ODE to administer the Medicaid School Component other than aspects of the component assigned to ODJFS.
- Provides for money ODE pays to ODJFS, if any, for the nonfederal share of the administrative expenses ODJFS incurs in performing its duties regarding the Medicaid School Component to be deposited in the Health Care Services Administration Fund.
- Requires ODE to establish a process by which participating qualified Medicaid school providers pay ODE the nonfederal share of ODE's expenses in administering the Medicaid School Component.
- Creates in the state treasury the Medicaid School Program Administrative Fund.
- Provides that the per diem payments for nursing facilities' uncompensated capital costs are for the first three quarters of fiscal year 2008 only, rather than all of fiscal years 2008 and 2009.
- Caps the expenditures for the uncompensated capital costs at \$4.2 million rather than \$7 million.
- Provides that the deadline for qualifying for the payments is March 31, 2008, rather than June 30, 2008.
- Requires that the payments be made not later than June 30, 2008.
- Provides that the ceiling applicable to the fiscal year 2009 Medicaid rate for certain nursing facilities with uncompensated capital costs is to be not more than 102.75%, and the floor is to be not less than 100%, of the sum of the nursing facility's fiscal year 2008 rate and another amount reflecting uncompensated capital costs.
- Provides that the ceiling applicable to the fiscal year 2009 Medicaid rate for certain new nursing facilities with uncompensated capital costs is to be not more than 102.75%, and the floor is to be not less than 98%, of the sum of (1) the rate the provider was paid for nursing facility services that an older nursing facility the new nursing facility replaced provided on July 1, 2005, and (2) the amount of a per diem for uncompensated capital costs for which the new nursing facility qualifies.

- Delays the application of the revised ceiling and floor to the first day of the month following the month in which the nursing facility files a three-month projected capital cost report with the ODJFS Director.
- Creates the Money Follows the Person Enhanced Reimbursement Fund into which the Director of Budget and Management is to transfer the federal grant the state receives under the Money Follows the Person Demonstration Program.
- Revises the law that requires the ODJFS Director to prepare quarterly reports on Medicaid cost containment measures.
- Prohibits, until July 1, 2009, any change in the Medicaid reimbursement rates that apply to durable medical equipment providers and, on or after July 1, 2009, requires that the reimbursement rates be established by using a cost analysis methodology that includes a statically valid sample of all types of durable medical equipment providers.
- Adjusts the formula for child support orders to prevent duplicate inclusion of cash medical support obligations.
- Permits ODJFS to make adoption assistance loans to prospective adoptive parents.
- Makes appropriations for the loan program of \$500,000 for each of fiscal years 2008 and 2009.
- Changes the membership of the Pharmacy and Therapeutics Committee from nine to ten members and require that the additional member be a psychiatrist.

**ODJFS reports on Ohio Works First time limits**

(R.C. 5101.80)

Ohio Works First is a public assistance program that provides time-limited cash assistance to low-income families with children (known as assistance groups). Continuing state law provides, with certain exceptions, that an assistance group is ineligible to participate in Ohio Works First if it includes an individual who has participated in the program for 36 months as an adult head of household, minor head of household, or spouse of an adult head of household or minor head

of household. An assistance group that has ceased to participate for at least 24 months may reapply to participate if good cause exists, such as losing employment. If a county department of job and family services is satisfied that good cause exists, the assistance group may resume participation for up to, with certain exceptions, 24 additional months. A county department may exempt a member of an assistance group from the initial 36-month time limit by issuing a waiver if the county department determines that the member has been subjected to domestic violence and imposing the time limit would make it more difficult for the member to escape domestic violence or unfairly penalize the member. A county department may exempt not more than 20% of the average monthly number of Ohio Works First assistance groups from the initial 36-month and later additional 24-month time limits on the grounds that the county department determines that the time limit is a hardship.

The Department of Job and Family Services (ODJFS) is required to prepare a report containing information on (1) individuals exhausting the time limits for Ohio Works First and (2) individuals who have been exempted from the time limits and the reasons for the exemption. ODJFS must provide copies of the report to the Governor, President and Minority Leader of the Senate, and Speaker and Minority Leader of the House of Representatives. ODJFS must also provide copies of the report to any private or government entity on request.

Current law requires ODJFS to prepare the report not later than the first day of each January and July. The bill delays the deadline to the last day of those months.

### **Liability insurance or alternatives for family day-care homes**

(R.C. 5104.041)

Under current law, type A and type B family day-care homes are not required to procure and maintain liability insurance.<sup>40</sup> The bill requires that all type A and type B family day-care homes procure and maintain either liability insurance or a signed affidavit from parents as described below. The bill requires that this proof be made available for review during inspection or investigation.

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<sup>40</sup> A "type A family day-care home" is defined as a permanent residence of the administrator in which child care or publicly funded child care is provided for seven to twelve children at one time, or a permanent residence of the administrator in which child care is provided for four to twelve children at one time if four or more children at one time are under two years of age. (R.C. 5104.01(RR).) A "type B family day-care home" is defined as a permanent residence of the provider in which child care is provided for one to six children at one time and in which no more than three children are under two years of age at one time. (R.C. 5104.01(SS).)

### **Liability insurance**

The liability insurance must be issued by an insurer authorized to do business in the state and is to insure the home against liability arising out of, or in connection with, the operation of the home. The liability insurance must cover any cause for which the family day-care home would be liable in the amount of at least \$100,000 per occurrence and \$300,000 in the aggregate.

### **Signed affidavit**

The bill allows homes to procure and maintain a signed affidavit as an alternative to liability insurance. The affidavit must be signed by the parent, guardian, or custodian of each child receiving child care from the family day-care home. The affidavit must state the following: (1) the home does not carry liability insurance, and (2) if the licensee of a type A or the provider of a type B family day care home is not the owner of the real property where the home is located, the liability insurance, if any, of the owner of the real property may not provide for coverage of any liability arising out of, or in connection with, the operation of the home.

### **Real property owner on which family home is located to be an insured party**

The bill permits an owner of real property where a type A or type B family day-care home is located to be listed as an additional insured party on a liability insurance policy under certain circumstances. If the licensee of a type A or the provider of a type B family day care home is not the owner of the real property where the home is located, and the home procures liability insurance, the licensee or provider must name the owner of the real property as an additional insured party on the liability insurance, if all of the following apply: (1) the owner of the real property requests the licensee or provider, in writing, to add the owner to the insurance policy as an additional insured party, (2) the addition of the owner does not result in cancellation or nonrenewal of the insurance policy procured by the home, and (3) the owner of the real property pays any additional premium assessed for coverage of the owner.

### **Enforcement**

The bill requires the ODJFS Director to adopt rules to enforce its requirements.

### **Children's Buy-In Program**

(R.C. 5101.5211, 5101.5212, 5101.5213, 5101.5214, 5101.5215, and 5111.941 (primary sections); R.C. 9.231, 9.24, 127.16, 1751.01, 1751.04, 1751.05, 1751.11, 1751.111, 1751.12, 1751.13, 1751.15, 1751.16, 1751.17, 1751.18, 1751.20,

1751.31, 1751.34, 1751.53, 1751.60, 1751.89, 2744.05, 3111.04, 3113.06, 3119.54, 3901.3814, 3923.281, 4731.65, 4731.71, 5101.26, 5101.571, and 5101.58)

Am. Sub. H.B. 119 of the 127th G.A. (the biennial budget act) establishes the Children's Buy-In Program to provide medical assistance to individuals under age 19 who meet specified eligibility requirements.

**Income eligibility requirement**

One of the eligibility requirements is that the individual's countable income exceed 300% of the federal poverty guidelines. The bill reduces the minimum income eligibility requirement to an amount that exceeds 250% of the federal poverty guidelines. An individual's countable family income, rather than just the individual's income, is to be used in determining whether the individual meets the income eligibility requirement.

**No creditable coverage for six months**

Another eligibility requirement for the Children's Buy-In Program is that an individual must not have had creditable coverage for at least six months before enrolling in the program. Creditable coverage is a term used in federal law meaning (1) a group health plan, (2) health insurance coverage, (3) Medicare parts A and B, (4) Medicaid, (5) medical care available through the United States Armed Forces, (6) a medical care program of the Indian Health Service or of a tribal organization, (7) a state health benefits risk pool, (8) health insurance available to federal employees, (9) a public health plan, or (10) a health plan available under the Peace Corps. Creditable coverage has the same meaning in state law governing the Children's Buy-In Program, except that creditable coverage does not include medical assistance available under the Children's Buy-In Program or the Program for Medically Handicapped Children.

The bill provides an exception to the requirement that an individual not have had creditable coverage for at least six months before enrolling in the Children's Buy-In Program. The requirement does not apply if the individual lost the only creditable coverage available because the individual exhausted a lifetime benefit limitation.

**Premiums under the program**

H.B. 119 requires the ODJFS Director to adopt rules requiring a monthly premium for participants in the Children's Buy-In Program. This premium is determined by the individual's countable income. Under the bill, an individual's

countable family income, rather than just the individual's income, is to determine the premium.

The bill specifies that the minimum monthly premium to be charged an individual made eligible for the program by the change to the income eligibility requirement is to be the same as the minimum to be charged an individual with countable family income exceeding 300% but not exceeding 400% of the federal poverty guidelines. This means that the premium for individuals with countable family income exceeding 250% but not exceeding 400% of the federal poverty guidelines is:

(1) If no other member of the individual's family receives medical assistance under the program, \$100;

(2) If one or more members of the individual's family receive medical assistance under the program, \$150.

Current law does not specify where the premiums for the Children's Buy-In Program are to be credited.<sup>41</sup> The bill requires that Children's Buy-In Program premiums be credited to the Medicaid Revenue and Collections Fund. That fund, except as provided in statute or as authorized by the Controlling Board, is the fund in which the non-federal share of Medicaid-related revenues, collections, and recoveries are credited. Continuing law requires that ODJFS use money credited to the fund to pay for Medicaid services and contracts. The bill requires that ODJFS also use money credited to the fund to pay for the Children's Buy-In Program.

#### **Co-payments under the program**

The ODJFS Director is permitted by current law to adopt rules requiring co-payments be charged to participants of the Children's Buy-In Program. The bill requires, rather than permits, the Director to adopt rules establishing co-payment requirements with the result that individuals participating in the program must be charged co-payments.

#### **Limits on the number of participants**

The bill permits the ODJFS Director to adopt rules to limit the number of individuals who may participate in the Children's Buy-In Program at one time. If

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<sup>41</sup> Without a specific designation, the Office of Budget and Management would likely create a separate fund for the premiums, or the premiums would be credited to the General Services Fund or Special Revenue Fund.

adopted, the rules are to be adopted in accordance with the Administrative Procedure Act (Revised Code Chapter 119.).

**Operation under Medicaid or CHIP**

Current law requires the ODJFS Director to submit to the United States Secretary of Health and Human Services an amendment to the state Medicaid plan, an amendment to the State Child Health plan (for the Children's Health Insurance Program (CHIP)), one or more requests for a federal waiver, or such an amendment and waiver requests as necessary to seek federal matching funds for the Children's Buy-In Program. The bill requires the program to be operated as part of Medicaid, CHIP, or both if the United States Secretary approves federal matching funds for the program and operating the program under Medicaid, CHIP, or both is permitted by the terms of the approval.

**Program referenced in state law that references the Medicaid program**

The bill amends numerous Revised Code sections that refer to the Medicaid program for specific reasons to add a reference to the Children's Buy-In Program so that the Children's Buy-In Program is treated the same as the Medicaid program under many provisions of law.

Among these are provisions that exempt the Children's Buy-In Program from the following in the same manner that the Medicaid program is currently exempted:

- General provisions of state law regarding governmental contracts worth \$25,000 or more.
- A prohibition against a state agency or political subdivision awarding a contract for goods, services, or construction to a person against whom there is an unresolved finding for recovery issued by the Auditor of State.
- The requirement that state agencies make purchases by competitive selection or with the approval of the Controlling Board.
- State law governing third-party payers and claims.
- A requirement that policies of sickness and accident insurance provide, under certain circumstances, benefits for the diagnosis and treatment of biologically based mental illness on the same terms and conditions as those provided under the policy for the treatment and diagnosis of all other physical diseases and disorders.

- A prohibition against a health insuring corporation offering coverage for a health care service unless it offers coverage for all basic health care services listed in state law.
- State law concerning health insuring corporations' use of standardized identification cards and electronic technology for submission and routing of prescription drug claims.

The other provisions do the following as current law does for the Medicaid program:

- Provide that a requirement that benefits a claimant against a political subdivision receives for injuries or loss from any source be deducted from any award against the political subdivision recovered by the claimant do not prohibit ODJFS from recovering from the political subdivision the cost of medical assistance benefits provided under the Children's Buy-In Program.
- Prohibit a parent of a child receiving aid under the Children's Buy-In Program from neglecting or refusing to pay a public children services agency the reasonable cost of maintaining the child when the parent is able to do so by reason of property, labor, or earnings.
- Require a party to a child support order to notify a medical provider who provides medical care to a child who is the subject of the child support order of any health insurance covering the child if the child is eligible for the Children's Buy-In Program and require the provider to bill the insurer before billing the Children's Buy-In Program.<sup>42</sup>
- Prohibit a health care provider to whom a physician or podiatrist refers a patient despite the physician or podiatrist having a certain financial

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<sup>42</sup> The bill revises this provision of law. Current law provides that if either party to a child support order is eligible for Medicaid or Disability Medical Assistance and the other party has obtained health insurance coverage, the party eligible for Medicaid or Disability Medical Assistance must notify any provider of medical services for which medical assistance is available of the name and address of the other party's insurer and of the number of the other party's health insurance or health care policy, contract, or plan. The bill provides instead that a party to a child support order must notify a provider of medical services that provides medical services to the child who is the subject of the child support order of the number of any health insurance or health care policy, contract, or plan that covers the child if the child is eligible for Medicaid, Disability Medical Assistance, or the Children's Buy-In Program. The party must include in the notice the name and address of the insurer. (R.C. 3119.54.)

relationship with the health care provider from billing the Children's Buy-In Program for the service provided pursuant to the referral.

- Provide that restrictions on the release of information about recipients of public assistance apply to the Children's Buy-In Program.
- Provide that the Children's Buy-In Program is a public assistance program for the purpose of state law governing third-party liability, right of recovery, and assignment of rights.
- Provide that the Director of Health is not required to review an application for a certificate of authority to establish a health insuring corporation or examine a health insuring corporation, if the health insuring corporation is to cover or covers solely Children's Buy-In Program participants; Children's Buy-In Program participants and Medicaid recipients; or Children's Buy-In Program participants, Medicaid recipients, and Medicare beneficiaries.
- Provide that the Superintendent of Insurance has 135 days to issue or deny a certificate of authority for a health insuring corporation that is to cover solely Children's Buy-In Program participants; Children's Buy-In Program participants and Medicaid recipients; Children's Buy-In Program participants, Medicaid recipients, and Medicare beneficiaries; or Medicaid recipients and Medicare beneficiaries.
- Permit a health insuring corporation to use an evidence of coverage that provides for coverage of Children's Buy-In Program participants if certain requirements are met.
- Permit a health insuring corporation to use a contractual periodic prepayment or premium rate for policies used for the coverage of Children's Buy-In Program participants if certain requirements are met.
- Provide that a health insuring corporation is not required to file an annual certificate with the Superintendent of Insurance certifying that all contracts with health care providers contain certain information related to coverage of Children's Buy-In Program participants.
- Provide that state law governing health insuring corporations' holding open enrollment periods does not apply to a health insuring corporation that offers plans only through the Children's Buy-In Program and has no other commercial enrollment.

- Provide that a health insuring corporation is not to make a contract issued on a direct-payment basis available to an enrollee who is, or is eligible to be, a Children's Buy-In Program participant.
- Provide that state law prohibiting unfair practices by health insuring corporations does not apply to coverage of Children's Buy-In Program participants.
- Permit a health insuring corporation to use a solicitation document in connection with policies used for Children's Buy-In Program participants if certain requirements are met.
- Provide that a health insuring corporation and provider of services under contract with a health insuring corporation may not obtain a waiver of a prohibition against the provider seeking compensation for the services from an enrollee or subscriber (other than for copayments and deductibles) if the enrollees or subscribers are Children's Buy-In Program participants.
- Provide that state law governing health insuring corporations' use of utilization review does not apply to coverage provided to Children's Buy-In Program participants.
- Require the Auditor of State to report to ODJFS the amount of a refund owed to the Children's Buy-In Program due to an illegal referral by a physician or podiatrist.<sup>43</sup>

**Third party information provided to ODJFS**

(R.C. 5101.572)

For the purpose of establishing third party liability under the Medicaid program, current law requires that a third party<sup>44</sup> cooperate with ODJFS in

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<sup>43</sup> Current law requires the Auditor of State to report to the Department of Commerce if a refund is owed to Medicaid or the Disability Medical Assistance Program due to an illegal referral. The bill requires the Auditor to report to ODJFS rather than the Department of Commerce if such a refund is owed to Medicaid, the Disability Medical Assistance Program, or the Children's Buy-In Program.

<sup>44</sup> "Third party" is defined under current law as (1) a person authorized to engage in the business of sickness and accident insurance under Ohio law, (2) a person or governmental entity providing coverage for medical services or items to individuals on a self-insurance basis, (3) a health insuring corporation, (4) a group health plan, (5) a service benefit plan, (6) a managed care organization, (7) a pharmacy benefit manager, (8) a third party

identifying covered individuals. A third party is required to provide information, or access to information, to ODJFS so that ODJFS may determine any period that an individual or individual's spouse or dependent was covered by a third party and the nature of the coverage. This information may be used only for purposes directly connected with the administration of the Medicaid program.

The bill permits information received by ODJFS for the purpose of establishing third party liability under the Medicaid program to also be used for purposes directly connected to the ODJFS's child support enforcement program.<sup>45</sup>

**Medicaid School Component of the Medicaid program**

(R.C. 5111.71 (primary), 3317.023, 3353.25, 5111.711, 5111.712, 5111.713, 5111.714, 5111.715, 5111.94, and 5727.84; Sections 751.23 and 812.20)

Under current law, the Ohio Department of Education (ODE) is required to pay ODJFS the amount, if any, that ODJFS presents to ODE as a payment request for the nonfederal share of reimbursements made to a school district for Medicaid services the school district provides to Medicaid-eligible students. The amount ODE pays ODJFS must be deducted from the school district's state aid. The bill eliminates these provisions and instead provides for a new component of the Medicaid program to be called the Medicaid School Component under which qualified Medicaid school providers are to receive federal financial participation for services covered by the component that the providers provide to Medicaid recipients eligible for the services. The services are to be provided in schools.

"Qualified Medicaid school provider" is defined in the bill as one of the following that holds a valid Medicaid provider agreement and meets all other conditions for participation in the component that the ODJFS Director is to establish in rules: the board of education of a city, local or exempted village school district, the governing authority of a community school, the State School for the Deaf, or the State School for the Blind. Except as otherwise provided by the bill, a qualified Medicaid school provider is subject to all conditions of participation in the Medicaid program that generally apply to providers of goods

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administrator, (9) any other person or governmental entity that is, by law, contract, or agreement, responsible for the payment or processing of a claim for a medical item or service for a public assistance recipient or participant. "Third party" does not include the program for medically handicapped children. (R.C. 5101.571.)

<sup>45</sup> Title IV-D of the Social Security Act (42 U.S.C. §§651 *et. seq.*) provides for enforcing the support obligations owed by noncustodial parents to their children and spouse (or former spouse) with whom the child is living, locating noncustodial parents, establishing paternity, and obtaining child and spousal support.

and services under the Medicaid program, including conditions regarding audits and recovery of overpayments.

The ODJFS Director is required by the bill to submit a state Medicaid plan amendment to the United States Secretary of Health and Human Services to obtain federal approval for the Medicaid School Component. The Director must create the component on receipt of the Secretary's approval.

A qualified Medicaid school provider may not submit a claim to ODJFS for federal financial participation for services provided under the Medicaid School Component before the provider incurs the cost of providing the service. The claim must include certification of the provider's expenditures for the service; the certification must show that the money the provider used for the expenditures was nonfederal money the provider may legally use for providing the service and that the amount of the expenditures was sufficient to pay the full cost of the service.

ODJFS is required to seek federal financial participation for each claim a qualified Medicaid school provider properly submits to ODJFS. ODJFS must disburse the federal financial participation ODJFS receives from the federal government for such a claim to the provider that submitted the claim. ODJFS is prohibited from paying the provider the nonfederal share of the cost of the services for which the claim was submitted.

The bill requires ODJFS to enter into an interagency agreement with ODE that provides for ODE to administer the Medicaid School Component other than the aspects of the component the bill requires ODJFS to administer, such as the requirement that the state Medicaid plan amendment be submitted for federal approval. The interagency agreement may include a provision that provides for ODE to pay to ODJFS the nonfederal share of a portion of the administrative expenses ODJFS incurs in administering the aspects of the component ODJFS administers. The amounts ODE so pays to ODJFS, if any, are to be deposited into the existing Health Care Services Administration Fund.

ODE is required to establish a process by which qualified Medicaid school providers participating in the Medicaid School Component pay ODE the nonfederal share of ODE's expenses incurred in administering the component. The process is to be established in rules adopted under the Administrative Procedure Act (Revised Code Chapter 119.).

The bill creates in the state treasury the Medicaid School Program Administrative Fund. Both of the following are to be deposited into the fund: (1) the federal funds ODE receives for the expenses it incurs in administering the Medicaid School Component and (2) the money ODE collects from qualified Medicaid school providers for ODE's administrative expenses under the

component. No funds are to be deposited in the fund in violation of federal statutes or regulations. ODE is required to use money in the fund to pay expenses ODE incurs in administering the component and paying a provider a refund for any overpayment the provider makes to ODE for ODE's administrative expenses.

The ODJFS Director is required by the bill to adopt rules as necessary to implement the Medicaid School Component. The rules are to be adopted under the Administrative Procedure Act and are to establish or specify (1) conditions for providers to participate in the component, (2) services the component covers, and (3) reimbursement rates for the services the component covers.

**Nursing facilities' uncompensated capital costs**

(Sections 610.40 and 610.41)

**Background**

Current law requires ODJFS to pay certain nursing facilities a quarterly per diem that is in addition to the facilities' regular Medicaid reimbursement rate. The additional per diems are to cease to be paid at the earlier of July 1, 2009, or the date that the total amount of the per diem payments equals \$7 million. Four groups of nursing facilities qualify for the additional per diems.

**First group.** The first qualifying group consists of nursing facilities to which both of the following apply:

(1) The nursing facility, during fiscal year 2006, 2007, or 2008, obtained certification as a nursing facility from the Director of Health and began participating in the Medicaid program.

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

The per diem payments to be made to a nursing facility in the first group of eligible facilities for fiscal year 2008 or 2009 are to equal the difference between the capital costs portion of the nursing facility's Medicaid reimbursement per diem rate for fiscal year 2008 or 2009, depending on when the payments are made, and the lesser of the following:

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

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

**Second group.** The second qualifying group consists of nursing facilities to which all of the following apply:

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

(2) The nursing facility, before June 30, 2008, completes a capital project for which a CON was filed with the Director of Health before June 15, 2005, and for which at least one of the following occurred before July 1, 2005, or, if the capital project is undertaken to comply with rules adopted by the Public Health Council regarding resident room size or occupancy, before June 30, 2007: any materials or equipment for the capital project were delivered; preparations for the physical site of the capital project, including, if applicable, excavation, began; or actual work on the capital project began.

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

(4) The nursing facility files a three-month projected capital cost report with the ODJFS Director not later than 90 days after the later of March 30, 2006 or the date the capital project is completed.

The per diem payments to be paid to a nursing facility in the second eligible group in fiscal year 2008 or 2009 are to equal the difference between the capital costs portion of the nursing facility's Medicaid reimbursement per diem rate for fiscal year 2008 or 2009, depending on when the payments are made, and the lesser of the following:

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

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

**Third group.** The third qualifying group consists of nursing facilities that, before June 30, 2008, complete an activity to which all of the following apply:

(1) A request was filed with the Director of Health before July 1, 2005, for a determination of whether the activity is a reviewable activity and the Director

determined that the activity is not a reviewable activity and, therefore, does not need a CON.

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

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

(4) The nursing facility files a three-month projected capital cost report with the ODJFS Director not later than 90 days after the later of March 30, 2006 or the date the activity is completed.

The per diem payments to be paid to a nursing facility in the third eligible group in fiscal year 2008 or 2009 are to equal the difference between the capital costs portion of the nursing facility's Medicaid reimbursement per diem rate for fiscal year 2008 or 2009, depending on when the payments are made, and the lesser of the following:

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

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

***Fourth group.*** The fourth qualifying group consists of nursing facilities that, before June 30, 2007, completed a renovation to which all of the following apply:

(1) The ODJFS Director approved the renovation before July 1, 2005.

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

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

(4) The facility files a three-month projected capital cost report with the ODJFS Director not later than 90 days after March 30, 2006 or the date the renovation is completed.

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

### **The bill**

The bill revises the law governing the additional per diem payments to be made to nursing facilities for uncompensated capital costs. Whereas current law requires that the quarterly payments cease at the earlier of July 1, 2009, and the date that the total amount of the per diem payments equals \$7 million, the bill provides that the payments are to be made for only the first three quarters of fiscal year 2008 and reduces the total amount that may be spent to \$4.2 million. Current law requires that any per diem payments to be made for a quarter ending before July 2008 be made not later than September 30, 2008.<sup>46</sup> The bill requires that the per diem payments be made not later than June 30, 2008. The ODJFS Director is required by current law to monitor the per diem payments on a quarterly basis to ensure that the expenditures for the payments do not exceed the spending limit. The bill, while maintaining the requirement that the ODJFS Director monitor the expenditures, eliminates the requirement that the expenditures be monitored on a quarterly basis. Current law provides that a change of operator of a nursing facility is not to cause the per diem payments to cease. In contrast, the bill provides that a change of operator is not to cause the per diem payments to not be made.

As discussed in the background above, nursing facilities must have taken certain actions to qualify for the per diem payments for uncompensated capital costs. Certain of the actions must have been taken before the end of fiscal year 2008, which is June 30, 2008. Under the bill, those actions must have been taken before March 31, 2008. The following are the deadline changes:

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<sup>46</sup> A per diem payment for a quarter beginning after June 2008, must be made not later than three months after the last day of the quarter for which the payment is made.

Nursing facilities in the first qualifying group must have, among other things, obtained certification as a nursing facility and begun participation in the Medicaid program during fiscal year 2006, 2007, or 2008. The bill requires that a nursing facility have obtained certification and begun participation during fiscal year 2006, 2007, or the first three quarters of fiscal year 2008, meaning that the deadline is changed to March 31, 2008.<sup>47</sup>

Nursing facilities in the second group must have, among other things, completed a capital project meeting certain requirements before June 30, 2008. The bill sets the deadline for completion of the capital project as March 31, 2008.

Nursing facilities in the third group must have, among other things, completed an activity meeting certain requirements before June 30, 2008. The bill sets a March 31, 2008, deadline for completion of the activity.

Nursing facilities in the fourth group must have, among other things, completed a renovation meeting certain requirements before June 30, 2008. This deadline too is changed to March 31, 2008.

#### **Nursing facilities' fiscal year 2009 Medicaid rates**

(Sections 610.40 and 610.41)

The amount the Medicaid program is to pay a nursing facility for services provided to a Medicaid recipient is largely set by a formula established by state law that is codified in the Revised Code. However, an uncodified section of the biennial budget act for the 127th General Assembly, Am. Sub. H.B. 119, makes adjustments to the formula applicable to fiscal year 2009 and establishes a floor

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<sup>47</sup> The bill corrects a problem with current law governing the calculation of the per diem payment for nursing facilities in the first group. Under current law, a factor in the calculation is the capital costs portion of a qualifying nursing facility's Medicaid rate "determined under Section 309.30.20" of the biennial budget act for the 127th General Assembly, Am. Sub. H.B. 119. Section 309.30.20 governs the fiscal year 2008 Medicaid rate for nursing facilities that participated in the Medicaid program in fiscal year 2007. The problem is that some of the nursing facilities that qualify for the per diem payments for uncompensated capital costs as part of the first group may not have begun participation in the Medicaid program until fiscal year 2008 and therefore are not subject to Section 309.30.20 because they did not participate in the Medicaid program in fiscal year 2007. To correct this problem, the bill provides that the factor in the calculation for the per diem payments for uncompensated capital costs is either the capital costs portion of a qualifying nursing facility's Medicaid rate determined under Section 309.30.20 or, if that section does not apply, the capital costs portion of the nursing facility's initial rate established under state law governing initial rates for new nursing facilities.

and ceiling for the rate to be paid to a nursing facility after the adjustments are made.<sup>48</sup> The floor and ceiling provisions require ODJFS to increase or reduce a nursing facility's Medicaid reimbursement rate for fiscal year 2009 depending on what its rate turns out to be with the adjustments. If the adjusted rate turns out to be more than 102.75% of the rate the nursing facility is paid on the last day of fiscal year 2008 (in other words, 102.75% of the nursing facility's fiscal year 2008 rate), ODJFS must reduce the nursing facility's rate so that the rate is not more than 102.75% of the nursing facility's fiscal year 2008 rate. If the adjusted rate turns out to be less than 100% of the nursing facility's fiscal year 2008 rate, ODJFS must increase the nursing facility's rate so that the rate is not less than 100% of the nursing facility's fiscal year 2008 rate.

The bill increases the floor and ceiling provisions for four groups of nursing facilities. For three of four groups, the bill provides for the ceiling to be 102.75% of the sum of the nursing facility's fiscal year 2008 rate and an amount related to uncompensated capital costs. The floor for those three groups is to be 100% of the sum of the nursing facility's fiscal year 2008 rate and an amount related to uncompensated capital costs.

The first group consists of nursing facilities that receive a per diem payment for uncompensated capital costs during the first three quarters of fiscal year 2008 (other than certain of those nursing facilities that comprise the fourth group). (See "*Nursing facilities' uncompensated capital costs*" above.) The amount added to such a nursing facility's fiscal year 2008 rate for the purpose of determining the floor and ceiling is the amount of the per diem for uncompensated capital costs for which the nursing facility qualifies.

The second group consists of nursing facilities that would have qualified for a per diem payment for uncompensated capital costs during the first three quarters of fiscal year 2008 had they taken certain actions before March 31, 2008, but do not qualify because the action was not taken until June 30, 2008. For example, a nursing facility that completed a capital project meeting certain requirements before March 31, 2008, may qualify for the per diem for uncompensated capital costs but a nursing facility that does not complete the capital project until June 30, 2008, does not qualify for the per diem payments. Such a nursing facility is to have its floor and ceiling increased nonetheless. The amount added to such a nursing facility's fiscal year 2008 rate for the purpose of determining the floor and ceiling is the amount of the per diem for uncompensated capital costs for which the nursing facility would have received had it taken the required action by March 31, 2008.

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<sup>48</sup> Another uncodified section of Am. Sub. H.B 119 includes similar provisions for fiscal year 2008.

The third group consists of nursing facilities that (1) complete, during either the first or second quarter of fiscal year 2009, a capital project for which the Director of Health approved a certificate of need on December 22, 2003, (2) has 192 beds, and (3) files a three-month projected capital cost report for the nursing facility with the ODJFS Director not later than 90 days after the date the capital project is completed. The amount added to such a nursing facility's fiscal year 2008 rate for the purpose of determining the floor and ceiling is the amount that is the difference between the capital costs portion of the nursing facility's fiscal year 2008 rate and the lesser of (1) 88.65% of the nursing facility's projected capital cost report divided by the greater of the number of inpatient days the nursing facility is expected to have during the period covered by the projected capital cost report or the number of inpatient days the nursing facility would have during that period if the nursing facility's occupancy rate was 95% and (2) the maximum capital per diem rate in effect for fiscal year 2005 for nursing facilities.

The fourth group is treated somewhat differently. A nursing facility is in the fourth group if it is a new nursing facility to which all of the following apply: (1) the provider is a nonprofit corporation exempt from federal income taxation, (2) the provider received a certificate of need from the Director of Health before June 15, 2005, to construct the new nursing facility, (3) the new nursing facility began participation in the Medicaid program during fiscal year 2006, (4) the new nursing facility replaced an older nursing facility that provided nursing facility services on the date immediately before the date the new nursing facility began participation in the Medicaid program, and (5) the new nursing facility is located on the same campus as the older nursing facility that the new nursing facility replaced. The ceiling for the fiscal year 2009 Medicaid rate for a nursing facility in the fourth group is 102.75% of the sum of (1) the rate the provider was paid for nursing facility services that the older nursing facility the new nursing facility replaced provided on July 1, 2005, and (2) the amount of the per diem for uncompensated capital costs for which the new nursing facility qualifies. The floor is 98% of that sum.

The bill provides that the increase to the floor and ceiling for each group is not to take effect for a nursing facility until the later of July 1, 2008 and the first day of the month following the month in which the nursing facility files the three-month projected capital cost report for the nursing facility with the ODJFS Director.

The ODJFS Director is required to submit an amendment to the state Medicaid plan to the United States Secretary of Health and Human Services as necessary to implement the floor and ceiling increases. The amendment must be submitted not later than 60 days after the effective date of this provision of the bill. On receipt of federal approval, the ODJFS Director is required to implement the

floor and ceiling increases retroactive to the effective date of the state Medicaid plan amendment.

### **Money Follows the Person Enhanced Reimbursement Fund**

(Section 751.20)

#### **Background**

The Deficit Reduction Act of 2005 authorizes the United States Secretary of Health and Human Services to award grants to states for Money Follows the Person demonstration projects.<sup>49</sup> The projects are to be designed to achieve the following objectives with respect to institutional and home and community-based long-term care services under a state's Medicaid program:

(1) Increase the use of home and community-based, rather than institutional, long-term care services;

(2) Eliminate barriers or mechanisms that prevent or restrict the flexible use of Medicaid funds to enable Medicaid-eligible individuals to receive support for appropriate and necessary long-term services in the settings of their choice;

(3) Increase the ability of a state's Medicaid program to assure continued provision of home and community-based long-term care services to eligible individuals who choose to transition from an institution to a community setting;

(4) Ensure that procedures are in place to provide quality assurance for eligible individuals receiving Medicaid home and community-based services and to provide for continuous quality improvement in such services.

The Deficit Reduction Act includes federal appropriations for the Money Follows the Person grants through federal fiscal year 2011 (ending September 30, 2011). A state seeking a grant is required to apply to the United States Secretary of Health and Human Services. ODJFS submitted an application for a grant in November 2006. Ohio learned in January 2007 that its application was approved.

#### **The bill**

The bill creates the Money Follows the Person Enhanced Reimbursement Fund in the state treasury. The federal payments made to the state under federal law governing Money Follows the Person demonstration projects is to be

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<sup>49</sup> Section 6071 of the Deficit Reduction Act of 2005, Public Law No. 109-171.

deposited into the Fund. ODJFS is required to use the money deposited in the Fund for system reform activities related to the demonstration project.

**Medicaid cost containment reports**

(R.C. 5111.091)

Current law requires the ODJFS Director to submit, every three months, a report to the President and Minority Leader of the Senate and Speaker and Minority Leader of the House of Representatives on the establishment and implementation of programs designed to control the increase of the cost of the Medicaid program. The bill requires that the Director submit the report not later than the first day of each calendar quarter and to submit the report to the chairpersons of the committees of the Senate and House that hear bills making biennial appropriations also. In addition to addressing cost control measures, the report must also address programs designed to increase the Medicaid program's efficiency and promote better health outcomes. The bill requires that the report include information regarding all of the following:

- (1) Provider network management;
- (2) Electronic claims submission and payment systems;
- (3) Limited provider contracts and payments based on performance;
- (4) Efforts to enforce third party liability;
- (5) Implementation of the Medicaid Information Technology System;
- (6) Expansion of the Medicaid Data Warehouse and Decision Support System;
- (7) Development of infrastructure policies for electronic health records and e-prescribing.

**Medicaid reimbursement rate for durable medical equipment**

(R.C. 5111.0210)

Until July 1, 2009, the bill prohibits the ODJFS Director from changing the Medicaid reimbursement rates that apply to providers of durable medical equipment from the rates that are in place on the effective date of the prohibition. On and after July 1, 2009, the bill requires the Director to establish the reimbursement rates by using a cost analysis methodology. The methodology must include a statistically valid sample of all types of durable medical equipment

providers in Ohio, including providers that (1) have a large volume of sales, (2) have a small volume of sales, and (3) operate predominantly in rural, suburban, or metropolitan areas. The statistical mean derived from the cost analysis methodology must be used by the Director to establish the rates.

**Child support order formula**

(R.C. 3119.023)

When parents have split parental rights and responsibilities, the parents' child support obligations are determined using a statutorily established Child Support Computation Worksheet. That worksheet determines the annual income of each of the parents and uses the parents' combined incomes to determine their basic combined child support obligation. The child support obligation is then apportioned between the parents according to their portion of income to the total combined annual income. If the parents do not provide health insurance for the child, a cash medical support obligation is determined for each parent.

Under existing law, when health insurance is not provided, the Final Child Support Figure (Line 26 of the worksheet) includes the amount determined to be the parent's cash medical support obligation (Line 20b). This amount is incorporated into the court's child support decree. The decree also separately contains a Final Cash Medical Support Figure (Line 28) that contains the amount determined to be the parent's cash medical support obligation. Thus, the amount determined to be a parent's cash medical support obligation is included twice in the decree.

The bill revises the worksheet so that a parent's cash medical support obligation is included only once.

**Adoption assistance loans for prospective adoptive parents**

(R.C. 3107.018 and 5101.143)

The bill creates a program under which prospective adoptive parents may apply for, and ODJFS may grant, state adoption assistance loans. The ODJFS Director is required to adopt rules as necessary to implement this program, including rules that establish (1) a loan application form, (2) procedures and standards for reviewing and granting or denying loan applications, (3) conditions on the use of the loan, (4) loan repayment terms, (5) procedures for collection of loan arrearages, and (6) any monetary penalties for loan arrearages or improper use of loan funds. All such rules must be adopted in accordance with R.C. Chapter 119., the Administrative Procedure Act.

These loans are to be made with money in the State Adoption Assistance Loan Fund, which is created by the bill in the state treasury. The Fund is to consist of the following:

--All money appropriated or transferred to it. The bill requires the Director of Commerce to transfer \$500,000 of unclaimed funds to the Fund on July 1, 2008, and on July 1, 2009, irrespective of the allocation of unclaimed funds provided for under current law.

--All loan repayments or other money, such as interest and penalties, derived from the loans;

--All investment earnings of the Fund.

In reviewing a loan application, ODJFS is required to consider the financial need of the prospective adoptive parent. The amount loaned cannot exceed \$3,000 if the child being adopted resides in Ohio, or \$2,000 if the child being adopted does not reside in Ohio. Loan funds can be used only for specified expenses, including physician and hospital expenses incurred on behalf of the birth mother, expenses charged by the attorney or agency arranging the adoption, and expenses related to adopting from the public child welfare system. The bill applies to adoptions arranged by an attorney or by any public or private organization certified, licensed, or otherwise specially empowered by law or rule to place minors for adoption.

### **Pharmacy and Therapeutics Committee**

The bill increases the membership of ODJFS's Pharmacy and Therapeutics Committee from nine to ten members. The current membership includes two medical doctors and two doctors of osteopathic medicine; one of these four members must be a psychiatrist. The bill provides that the tenth member must be a psychiatrist who holds a certificate to practice medicine or osteopathic medicine and specializes in psychiatry.

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## **JUDICIARY/SUPREME COURT**

- Provides that when a court determines in a pending case that the offender cannot reasonably pay the driver's license reinstatement fees that the offender will have to pay at the end of the offender's driver's license suspension periods, the court may order that the offender undertake an installment payment plan or a payment extension plan for payment of those fees.

- Requires the imposition of an additional court cost of \$10 for moving violations to help fund the Drug Law Enforcement Fund, the Indigent Drivers Alcohol Treatment Fund, and the Indigent Defense Support Fund and creates the Drug Law Enforcement Fund to provide grants to local drug task forces.
- Provides for increased penalties if the victim of an aggravated assault is an arson investigator.
- Requires a court to provide parties to certain protection orders with oral or written notice that it may be unlawful for the person to possess or purchase a firearm or ammunition pursuant to federal law, upon issuance of the order.
- Requires a court, prior to accepting a defendant's plea of guilty or no contest to a misdemeanor offense of violence, to inform the defendant orally or in writing that under federal law it may be unlawful for the defendant to ship, transport, purchase, or possess a firearm or ammunition as a result of the conviction.
- Prohibits a peace officer, prosecuting attorney, or other government official or employee from conditioning the investigation, charging, or prosecution of certain sex offenses on the submission of the alleged victim to examination by a polygraph or similar device.
- Prohibits an alleged victim's failure to submit to a polygraph or similar examination in relation to the alleged violation from being commented on at any related court proceeding.

**Payment of driver's license reinstatement fees**

(R.C. 4510.10)

If a person's driver's or commercial driver's license or permit or nonresident operating privilege is suspended, at the end of the suspension period the person must pay a reinstatement fee in order for the license, permit, or privilege to be reinstated and to be issued a new license or permit or to have the person's operating privileges reinstated. While the general reinstatement fee is \$30 (R.C. 4507.45, not in the bill), in certain cases the Revised Code specifies a different reinstatement fee. For example, for violations of the state financial responsibility

law, the reinstatement fee is either \$75, \$250, or \$500 (R.C. 4509.101(A)(5)(a), not in the bill), while the reinstatement fee in OVI cases is \$425 (R.C. 4511.191(F)(2), not in the bill). The Registrar of Motor Vehicles is prohibited from reinstating a person's driver's or commercial driver's license or permit or nonresident operating privilege until the person has paid all reinstatement fees and has complied with all conditions for each suspension, cancellation, or disqualification that the person incurred.

Under current law, an offender who cannot reasonably pay the specified reinstatement fee relative to a suspension that has been imposed on the offender may file a petition in the municipal court, county court, or, if the person is under 18 years of age, the juvenile division of the court of common pleas in whose jurisdiction the person resides or, if the person is not an Ohio resident, in the Franklin County Municipal Court or Juvenile Division of the Franklin County Court of Common Pleas for an order that does either of the following, in order of preference:

(1) Establishes a reasonable payment plan of not less than \$50 per month, to be paid by the offender to the Bureau of Motor Vehicles in all succeeding months until the offender has paid all of the offender's reinstatement fees;

(2) If the offender, but for the payment of the reinstatement fees, otherwise would be entitled to operate a vehicle in Ohio or to obtain reinstatement of the offender's operating privileges, permits the offender to operate a motor vehicle, as authorized by the court, until a future date upon which all reinstatement fees must be paid in full. This payment extension cannot exceed 180 days, and any operating privileges granted during this extension period must be solely for the purpose of permitting the offender occupational or "family necessity" privileges in order to enable the offender reasonably to acquire the delinquent reinstatement fees that are due.

The bill retains these provisions and adds a new repayment provision for pending cases. This provision operates independently of the existing repayment plan provisions. The new provision provides that when a municipal court or county court determines in a pending case that the offender cannot reasonably pay the reinstatement fees that the offender will have to pay relative to one or more suspensions that have been or will be imposed by the BMV or by an Ohio court, the court, by order, may undertake an installment payment plan or a payment extension plan for the payment of reinstatement fees due and owing to the BMV in that pending case. The court must establish a payment installment payment plan or a payment extension plan under this new provision in accordance with the repayment plan requirements of existing law.

### *Additional court cost for alcohol treatment and drug law enforcement funds*

The bill requires that the court impose an additional court cost of \$10 on an offender who is convicted of any moving violation or on a juvenile traffic offender who is found to have committed an act that is a moving violation. Every month the court clerk must transmit 35% of all such costs to the Division of Criminal Justice Services of the Department of Public Safety for deposit into the Drug Law Enforcement Fund, 15% to the state treasury to be credited to the Indigent Drivers Alcohol Treatment Fund for distribution by the Department of Alcohol and Drug Addiction Services, and 50% to the state treasury to be credited to the Indigent Defense Support Fund. The bill requires that when a person who is charged with a moving violation posts bail, \$10 be added to the bail, to be retained by the clerk until the person forfeits the bail or the case is disposed of. If the person charged is found not guilty or the charges are dismissed, the money must be returned. Otherwise, upon conviction or bail forfeiture, the clerk must transmit the money in the same manner as provided for in the case of a conviction. (R.C. 2949.094(A), (B), and (C).)

The bill adds to the sources of funding for the Indigent Defense Support Fund a portion of the additional court costs imposed under R.C. 2949.094 (R.C. 120.08). The bill adds to the sources of funding for a county, county juvenile, or municipal indigent drivers alcohol treatment fund a portion of the additional court costs imposed under R.C. 2949.094. Existing law authorizes a judge to use the money in one of these funds to pay for the continued use of an *electronic continuous alcohol monitoring device* by the offender or juvenile traffic offender in conjunction with a treatment program approved by the Department of Alcohol and Drug Addiction Services if the offender or juvenile traffic offender is unable to pay all or part of the daily monitoring of the device. The bill eliminates the words "electronic continuous," defines "alcohol monitoring device" as a device that provides for continuous alcohol monitoring, any ignition interlock device, any immobilizing or disabling device other than an ignition interlock device that is constantly available to monitor a person's alcohol concentration, or any device that provides for automatic testing and periodic reporting of a person's alcohol consumption and that is used as a court ordered sanction, allows use of the money if the offender or juvenile traffic offender is unable to pay all or part of the daily monitoring *or cost* of the device, and specifies that if the source of money in the fund was a portion of the additional court cost created by the bill, the money may be used to pay for the continued use of an alcohol monitoring device even though the device is not used in conjunction with an approved treatment program. (R.C. 4511.191(H).)

The bill provides that court costs required by R.C. 2949.094 may not be waived unless the offender is indigent and the court waives all court costs and

prohibits placing or holding a person in a detention facility for failing to pay the \$10 court cost or bail (R.C. 2949.092 and 2949.094(A) and (D)).

The bill creates in the state treasury the Drug Law Enforcement Fund to receive 35% of the new court cost imposed by the bill. The money in the fund may be used only to award grants to counties, municipal corporations, townships, township police districts, and joint township police districts to defray the expenses incurred by a local drug task force in connection with the enforcement of state drug laws and other state laws related to illegal drug activity. The fund is administered by the Division of Criminal Justice Services, which must by rule establish procedures by which a drug task force may apply for a grant from the fund. The rules must require an applicant drug task force to specify in its application the amount of money desired, provided that the cumulative amount requested by any task force may not exceed \$250,000 in any calendar year. The rules also must require that a drug task force receive a local match of at least 25% of the task force's operating costs for the period covered by the grant and that the money be awarded first to existing task forces that meet the eligibility criteria and that either received funding through the Division of Criminal Justice Services in calendar year 2007 or are located in a county with a population that exceeds 750,000. Any money left over may then be awarded to eligible task forces that are not in existence on the date of application and to existing task forces that do not meet the criteria set forth in the previous sentence. (R.C. 5502.68.)

**Increased penalties for assault on an arson investigator**

(R.C. 2903.12)

Current law prohibits any person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, from knowingly (1) causing serious physical harm to another or another's unborn or (2) causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance. A violator of this prohibition is guilty of aggravated assault, a fourth degree felony, but if the victim is a peace officer or an investigator of the Bureau of Criminal Identification and Investigation, aggravated assault is a third degree felony. In addition, if the peace officer or investigator suffered serious physical harm, the court must impose as a mandatory prison term one of the prison terms prescribed for a third degree felony. (R.C. 2923.13(A) and (B).)

The bill further provides that if a victim of an aggravated assault is an arson investigator, the aggravated assault is a third degree felony and that if the arson investigator suffered serious physical harm, the court must impose as a mandatory

prison term one of the prison terms prescribed for a third degree felony. (R.C. 2923.13(B).)

**Notice of federal firearms prohibition to persons subject to protection orders or charged with a misdemeanor offense of violence**

(R.C. 2903.213, 2903.214, 2919.26, 2943.033, and 3113.31)

**Temporary protection order issued as a pretrial condition of release**

Under current law, unless the complaint involves a family or household member, a temporary protection order may be issued as a pretrial condition of the release of an alleged offender, upon the filing of a complaint alleging one of the following offenses: felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, aggravated trespass, or a violation of a municipal ordinance substantially similar to assault, aggravated menacing, menacing by stalking, menacing, or aggravated trespass, or the commission of a sexually oriented offense. For the protection order to be issued, the complainant, the alleged victim, or a family or household member of the alleged victim must file a motion that requests the issuance of the protection order.

If the complaint involves a person who is a family or household member, a different provision applies. Under this other provision, a protection order may be issued as a pretrial condition of release of an alleged offender, upon the filing of a complaint alleging one of the following offenses, if the alleged victim of the offense was a family or household member at the time of the commission of the offense: criminal damaging or endangering, criminal mischief, burglary, or aggravated trespass; a violation of a municipal ordinance that is substantially similar to criminal damaging or endangering, criminal mischief, burglary, or aggravated trespass; or any offense of violence or sexually oriented offense. For the protection order to be issued, the complainant, the alleged victim, or a family or household member of an alleged victim must file a motion that requests the issuance of the temporary protection order.<sup>50</sup>

For both types of temporary protection orders, the bill requires that the court provide oral or written notice to the parties to the protection order that if a person was convicted of a misdemeanor crime involving violence in which the person was the spouse, intimate partner, parent, or guardian of the victim or was involved in a similar relationship with the victim, it may be unlawful for the person to possess or purchase a firearm or ammunition pursuant to federal law,

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<sup>50</sup> If in an emergency the alleged victim is unable to file, a person who made an arrest for the alleged violation or offense may file the motion on behalf of the alleged victim.

upon issuance of the order.<sup>51</sup> The notice states that if the person has any questions whether the law makes it illegal for the person to possess or purchase a firearm or ammunition, the person should consult an attorney.

### **Plea of guilty or no contest to a misdemeanor offense of violence**

The bill requires that, prior to accepting a guilty plea or plea of no contest to an indictment, information, or complaint that charges a person with a misdemeanor offense of violence, the court must inform the defendant either personally or in writing that under federal law (18 U.S.C. 922(g)(9)) it may be unlawful for the person to ship, transport, purchase, or possess a firearm or ammunition as a result of any conviction for a misdemeanor offense of violence. This notice must be provided to a defendant when the alleged victim is a spouse, a person living as a spouse,<sup>52</sup> or former spouse of the defendant; a parent or child of the defendant; a parent or child of a spouse, person living as a spouse, or former spouse of the defendant; or the natural parent of any child whom the defendant is the other natural or putative natural parent. The bill does not allow the plea to be vacated based on a failure to inform the person so charged regarding these restrictions.

### **Civil protection orders**

Under current law, a person may file a petition with a court for the person's own sake, and a parent or adult household member may file a petition with a court for the sake of any other family or household member, in order for the court to issue a civil protection order. The petition must contain an allegation that the respondent engaged in menacing by stalking against the person to be protected, or committed a sexual offense against the person to be protected, and must include a description of the nature and extent of the violation. Current law allows a similar petition to be filed containing an allegation that the respondent engaged in domestic violence against a family or household member of the respondent, and must include a description of the nature and extent of the domestic violence, and

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<sup>51</sup> The pertinent provision of federal law is 18 U.S.C. 922(g)(9), which provides that it "shall be unlawful for any person . . . who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

<sup>52</sup> "Person living as a spouse" means a person who is living or has lived with the defendant in a common law marital relationship, who otherwise is cohabitating with the defendant, or who otherwise has cohabitated with the defendant within five years prior to the date of the alleged commission of the act in question.

the relationship of the respondent to the petitioner, and to the victim if other than the petitioner. Upon receiving such a petition regarding menacing by stalking, the committing of a sexual offense, or engagement in domestic violence, the court may then issue the protection order after holding a hearing. In situations involving domestic violence, the court may approve a consent agreement instead of issuing a protection order.

The bill requires that once the court issues such a protection order, or approves a consent agreement in a case of domestic violence, the court must provide oral or written notice to the parties to the protection order that it may be unlawful for a person to possess or purchase a firearm or ammunition pursuant to federal law, upon issuance of the order or approval of the consent agreement.<sup>53</sup> The notice states that if the person has any questions whether the law makes it illegal for the person to possess or purchase a firearm or ammunition, the person should consult an attorney.

### **Polygraph examinations for alleged victims of sex offenses**

(R.C. 2907.10)

The bill prohibits a peace officer, prosecutor, or public official from asking or requiring a victim of an alleged sex offense to submit to a polygraph examination as a condition to the investigation of the alleged sex offense, the filing of criminal charges with respect to the alleged sex offense, or the prosecution of the alleged perpetrator of the alleged sex offense.<sup>54</sup> The bill also

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<sup>53</sup> The pertinent provision of federal law is 18 U.S.C. 922(g)(8), which provides that it "shall be unlawful for any person . . . who is subject to a court order that – (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

<sup>54</sup> "Sex offense" means rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, importuning, voyeurism, and public indecency. "Polygraph examination" means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test, or question an individual for the purpose of determining the individual's truthfulness. "Prosecution" means the prosecution of

prohibits the refusal of the victim of an alleged sex offense to submit to a polygraph examination from being used to prevent the investigation of the alleged sex offense, the filing of criminal charges with respect to the alleged sex offense, or the prosecution of the alleged perpetrator of the alleged sex offense. The bill prohibits the refusal of the victim of an alleged sex offense to submit to a polygraph examination from being commented on at trial or in any court proceeding.

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## **LIQUOR CONTROL COMMISSION**

- Requires the refund of certain wine taxes paid by B-2a and S permit holders during the period beginning on October 1, 2007.
- Creates the A-3a liquor permit to be issued to a distiller that manufactures less than 10,000 gallons of spirituous liquor per year.
- Authorizes an A-3a permit holder to sell spirituous liquor for consumption off the premises where sold by an in-person transaction, but to sell not more than one and one-half liters of spirituous liquor per day from the permit premises to the same personal consumer.

### **Refunds of certain taxes on wine sales paid by B-2a and S permit holders**

(Section 743.10)

The bill states that it is the General Assembly's intent in amending certain sections of the Revised Code to (1) clarify that amendments and enactments made by Am. Sub. H.B. 119 of the 127 General Assembly, the biennial operating budget, were not meant to subject the holders of B-2a and S permits to the tax levied on wine sales under R.C. 4301.43 and (2) provide that the imposition of the tax levied under that section on those permit holders was the result of a technical drafting error that the General Assembly is now correcting. A B-2a permit is authorized to sell and ship wine the permit holder has manufactured to retail permit holders and an S permit holder is authorized to sell and ship wine the permit holder has manufactured to personal consumers.

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criminal charges in a criminal prosecution or the prosecution of a delinquent child complaint in a delinquency proceeding.

The bill requires the Tax Commissioner to determine the amount of tax that has been levied under R.C. 4301.43 on each B-2a holder and each S permit holder and that should not have been collected for the time period beginning on October 1, 2007, and ending on December 31, 2007, or for any period in calendar year 2008 for which a B-2a or S permit holder has already filed a return and paid the tax levied under R.C. 4303.43 prior to the provision's effective date. The Tax Commissioner then must refund the amounts so determined to the applicable B-2a and S permit holders.

**Creation of the A-3a liquor permit**

(R.C. 4301.355, 4301.62, 4303.041, and 4303.182)

The bill creates the A-3a permit and authorizes it to be issued to a distiller<sup>55</sup> that manufactures less than 10,000 gallons of spirituous liquor per year. Not more than one A-3a permit may be issued per county and only in a county with a population exceeding 800,000.

An A-3a permit holder may sell to a personal consumer, in sealed containers for consumption off the premises where manufactured, spirituous liquor the permit holder manufactures, but sales to a personal consumer may occur only by an in-person transaction at the permit premises. An A-3a permit holder cannot (1) ship, send, or use an H permit holder to deliver spirituous liquor to the personal consumer or (2) sell more than one and one-half liters of spirituous liquor per day from the permit premises to the same personal consumer.

An A-3a permit holder makes these sales as an independent contractor under an agreement with the Division of Liquor Control, but is not compensated as an agent that sells spirituous liquor on the Division's behalf in retail establishments as provided by current law. The price at which the spirituous liquor is sold is determined by the Division. Spirituous liquor thus sold on the Division's behalf need not leave the physical possession of the A-3a permit holder and must be maintained in a separate area of the permit premises. Each A-3a permit holder is subject to audit by the Division.

The fee for the A-3a permit is \$3,906 for each plant, but if the production capacity of a plant is less than 500 wine barrels of 50 gallons each annually, the fee is \$2 per barrel.

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<sup>55</sup> A distiller is a person in Ohio who mashes, ferments, distills, and ages spirituous liquor.

The holder of an A-3a permit may also exercise the same privileges as the holder of an A-3 permit, the basic permit issued to a manufacturer of spirituous liquor. (R.C. 4303.041.)

The bill makes conforming changes to reflect the creation of the A-3a permit (R.C. 4301.355(B)(2), 4301.62(C)(1)(a), and 4303.182).

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## LOCAL GOVERNMENT

- Changes from unanimous to majority the vote required of a board of county commissioners or a board of township trustees to deny or modify the zoning amendments recommended by a county or township zoning commission.
- Clarifies that a contract between a board of health of a health district and a board of county commissioners for plumbing inspections can designate that the county department inspect buildings if the department contracts with a certified plumbing inspector to complete the inspection.
- Revises the Sewer Districts Law to authorize the construction and use of prevention or replacement facilities and projects for the prevention of combined sewer overflows, and defines "prevention or replacement facilities" and "combined sewer" for purposes of that Law.
- Authorizes a county to issue revenue bonds under the Uniform Public Securities Law to provide funding for a sewer district for sanitary facilities, drainage facilities, and prevention or replacement facilities.
- Revises the definition of "project" in the Industrial Development Bonds Law to include sanitary facilities, drainage facilities, and prevention or replacement facilities, thus authorizing the issuance of revenue bonds under that Law for those facilities.
- Authorizes a board of county commissioners to adopt rules requiring owners of property in a sewer district whose property is served by the district's sewers to prevent storm water from entering a combined sewer and causing an overflow or an inflow to a sanitary sewer.
- Authorizes a board of county commissioners to provide rate reductions of and credits against charges for the use of sewers to a property owner that

implements a project or program that prevents storm water from entering a combined sewer and causing an overflow.

- Makes other changes to the Sewer Districts Law for purposes of including combined sewer overflow prevention and the use of prevention or replacement facilities in that Law.
- Permits an eligible community development bank to be designated a county depository of active moneys during the four-year period of designation running on the effective date of this provision of the bill.
- For purposes of current law that states that boards of county commissioners, boards of township trustees, and boards of zoning appeals do not have the power to adopt zoning requirements applicable to public utilities, specifies that "public utility" does not include a person that owns or operates a solid waste facility or a solid waste transfer facility, other than a publicly owned solid waste facility or a publicly owned solid waste transfer facility, or a construction and demolition debris facility.
- Authorizes counties, townships, and municipal corporations to issue public obligations to provide, or assist in providing, grants, loans, loan guarantees, or contributions for conservation and revitalization purposes.
- Repeals Section 5 of Am. Sub. H.B. 24 of the 127th General Assembly, which is effective until January 1, 2009, that prohibits the board of directors of a conservancy district that includes all or parts of more than 16 counties from levying or collecting an assessment and prohibits a county treasurer from collecting an assessment levied by that conservancy district.
- Changes, from September 1 to September 15, the date by which the board of directors of a conservancy district may levy a conservancy district maintenance assessment and by which the annual levy of all assessments and interest that become due in the ensuing year is signed and certified by district officers.
- Prohibits a political subdivision that is a public cable service provider requiring from a private person that provides video service within its jurisdiction any direct or in-kind charge or a payment of any kind in exchange for PEG channel programming or other content produced by

the political subdivision or by an entity created or partially supported by the political subdivision.

- Reduces specified county recorder filing fees pertaining to zoning resolutions and zoning amendments.
- Requires the Secretary of State to be reimbursed for costs for advertising statewide ballot issues from appropriations made to the Controlling Board, instead of requiring the Ohio Ballot Board to reimburse those costs to the Secretary of State.

**Majority vote required to deny or modify zoning resolution amendments recommended by zoning commission**

(R.C. 303.12 and 519.12)

Under current law when a township or county zoning commission recommends an amendment to the township or county zoning resolution, the board of township trustees or the board of county commissioners, as the case may be, must hold a public hearing on the proposed amendment. Within 20 days after holding that hearing, the relevant board is required to adopt, deny, or modify the recommended amendments. Although adoption of the recommended amendment requires a majority vote of the board, a denial or modification requires a unanimous vote of the board. The amendment specifies instead that a majority vote is sufficient to deny or modify the recommended zoning amendments.

**Plumbing inspections**

(R.C. 3703.01)

The Division of Industrial Compliance in the Department of Commerce has general authority to inspect plumbing in nonresidential buildings. This authority does not apply in municipal corporations that are certified by the state Board of Building Standards to inspect plumbing or in health districts that employ one or more plumbing inspectors. A board of health of a health district can enter into a contract with a board of county commissioners for the county building department to inspect plumbing in buildings within the health district. The contract can designate that the county building department inspect either residential or nonresidential buildings, or both types of buildings, so long as the department employs a certified plumbing inspector.

The bill clarifies that a contract between a board of health of a health district and a board of county commissioners for the county building department to inspect plumbing in buildings within the health district can designate that the county department inspect buildings if the department employs *or* contracts with a certified plumbing inspector to complete the inspection.

### *Sewer districts*

#### *Introduction*

(R.C. 6117.01)

The existing Sewer Districts Law authorizes a board of county commissioners to establish one or more sewer districts within the county and outside municipal corporations and to acquire, construct, maintain, and operate within a district sanitary or drainage facility that it determines necessary or appropriate for the collection of sewage and other wastes or for the collection, control, or abatement of waters originating in, accumulating in, or flowing in or through the district and other sanitary or drainage facilities that it determines necessary or appropriate to conduct the wastes and waters to a proper outlet and to provide for their proper treatment and disposal.

#### *Combined sewer overflow prevention and prevention or replacement facilities*

(R.C. 6117.01)

The bill retains the authority established in the Sewer Districts Law and adds that for purposes of preventing storm water from entering a combined sewer and causing an overflow or an inflow to a sanitary sewer, a board of county commissioners may acquire, design, construct, operate, repair, maintain, and provide for a project or program that separates storm water from a combined sewer or for a prevention or replacement facility that prevents or minimizes storm water from entering a combined sewer or a sanitary sewer. The bill defines "combined sewer" to mean a sewer system that is designed to collect and convey sewage, including domestic, commercial, and industrial wastewater, and storm water through a single-pipe system to a treatment works or combined sewer overflow outfall approved by the Director of Environmental Protection. "Prevention or replacement facilities" means vegetated swales or median strips, permeable pavement, trees and tree boxes, rain barrels and cisterns, rain gardens and filtration planters, vegetated roofs, wetlands, riparian buffers, and practices and structures that use or mimic natural processes to filter or reuse storm water.

**Revenue bonds issued under Uniform Public Securities Law**

(R.C. 133.07 (not in the bill) and 133.08)

Current law authorizes a county to issue revenue securities to provide funding for established sewer districts for sanitary sewerage systems or facilities, surface and storm water drainage and sewerage systems or facilities, or a combination of those systems or facilities. The bill adds sanitary facilities, drainage facilities, and prevention or replacement facilities as defined in the Sewer Districts Law and the bill. In addition, the bill states that for purposes of the Uniform Public Securities Law, those sanitary facilities, drainage facilities, and prevention or replacement facilities are determined to qualify as facilities described in Article VIII, § 13 of the Ohio Constitution, which grants the state and political subdivisions the authority to issue bonds to acquire, construct, enlarge, improve, or equip facilities.

**Revenue bonds issued under Industrial Development Bonds Law**

(R.C. 165.01, 165.03, and 6117.25)

Current law defines "project" in the Industrial Development Bonds Law to mean real or personal property, or both, including undivided and other interests therein, acquired by gift or purchase, constructed, reconstructed, enlarged, improved, furnished, or equipped, or any combination thereof, by an issuer, or by others in whole or in part from the proceeds of a loan made by an issuer, for industry, commerce, distribution, or research and located within the boundaries of the issuer. The bill adds that "project" includes sanitary facilities, drainage facilities, and prevention or replacement facilities as defined in the Sewer Districts Law and the bill, thus authorizing the issuance of revenue bonds for those facilities under the Industrial Development Bonds Law.<sup>56</sup>

If the issuer is a county or municipal corporation, current law requires the issuing authority to first have received from its designated community improvement corporation a certification that a project to be financed by the issuance of such bonds is in accordance with the plan prepared by the community improvement prior to the delivery of the bonds. The bill adds that no such certification is necessary if the project is a sanitary facility, drainage facility, or prevention or replacement facility as defined in the Sewer Districts Law and the bill.

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<sup>56</sup> The change to the definition of "project" appears generally to assimilate such projects into the existing scheme of the Industrial Development Bonds Law.

In addition, the bill establishes authority in the Sewer Districts Law for a board of county commissioners to issue such bonds to finance the cost of constructing, maintaining, repairing, or operating any improvement provided for in that Law payable solely from revenues generated by the improvements.

**Rules governing property owners**

(R.C. 6117.012)

Current law authorizes a board of county commissioners to adopt rules requiring property owners in a sewer district whose property is served by a connection to sewers maintained and operated by the board or to sewers that are connected to interceptor sewers maintained and operated by the board to do any of the following:

(1) Disconnect storm water inflows to sanitary sewers maintained and operated by the board and not operated as a combined sewer, or to connections with those sewers;

(2) Disconnect non-storm water inflows to storm water sewers maintained and operated by the board and not operated as a combined sewer, or to connections with those storm water sewers;

(3) Reconnect or relocate any such disconnected inflows in compliance with board rules and applicable building codes, health codes, or other relevant codes; and

(4) Prevent sewer back-ups into properties that have experienced one or more overflows of sanitary or combined sewers maintained and operated by the board. The bill replaces overflows of sewers with back-ups of sewers.

In addition to the above authority, the bill authorizes a board to adopt rules requiring property owners to prevent storm water from entering a combined sewer and causing an overflow or an inflow to a sanitary sewer, which prevention may include projects or programs that separate the storm water from a combined sewer or that utilize a prevention or replacement facility to prevent or minimize storm water from entering a combined sewer or a sanitary sewer.

**Rate reductions of and credits against sewer charges**

(R.C. 6117.012)

The bill authorizes a board of county commissioners to provide rate reductions of and credits against charges for the use of sewers to a property owner that implements a project or program that prevents storm water from entering a

combined sewer and causing an overflow. Such a project or program may include the use of a prevention or replacement facility to handle storm water that has been separated from a combined sewer. The revised rates or charges must be collected and paid to the county treasurer in accordance with existing procedures in the Sewer Districts Law.

**Sources of funding that may be used for projects**

(R.C. 6117.012)

Current law authorizes a board of county commissioners to use sewer district funds, county general fund money, and, to the extent permitted by their terms, loans, grants, or other money from appropriate state or federal funds for the cost of disconnections, reconnections, relocations, or sewer back-up prevention required by rules (see above) and payments to the property owner or a contractor hired by the property owner for the cost of any of those projects in accordance with specified procedures. The bill adds that a board also may use the proceeds of bonds issued under the Uniform Public Securities Law or the Industrial Development Bonds Law for those purposes. It adds that a board may use money from all of those funding sources for combined sewer overflow prevention.

**Maximum amount of costs**

(R.C. 6117.012)

Current law authorizes the county to adopt a resolution specifying a maximum amount of the cost of any disconnection, reconnection, relocation, or sewer back-up prevention that may be paid by the county for each affected parcel of property without requiring reimbursement. The bill adds to the list combined sewer overflow prevention.

**Public improvement; competitive bidding**

(R.C. 6117.012)

Current law states that disconnections, reconnections, relocations, or sewer back-up prevention that are required in rules adopted under the Sewer Districts Law and performed by a contractor under contract with the property owner cannot be considered a public improvement and those performed by the county must be considered a public improvement. The bill adds combined sewer overflow prevention to the list of improvements.

In addition, current law states that disconnections, reconnections, relocations, or sewer back-up prevention required in rules adopted under the Sewer Districts Law that are performed by a contractor under contract with the

property owner are not subject to competitive bidding or public bond laws. The bill adds combined sewer overflow prevention to the list of improvements.

**Property owners' responsibility for maintaining improvements or facilities**

(R.C. 6117.012)

Current law requires property owners to be responsible for maintaining any improvements made on private property to reconnect or relocate disconnected inflows or for sewer back-up prevention unless a public easement exists for the county to maintain that improvement. The bill revises that provision by requiring property owners to be responsible for maintaining any improvements made or facilities constructed on private property to reconnect or relocate disconnected inflows, for combined sewer overflow prevention, or for sewer back-up prevention unless a public easement or other agreement exists for the county to maintain that improvement or facility.

**Applicability of statutory changes**

(Section 803.20)

The bill states that its changes to the Sewer Districts Law as discussed above regarding rules governing property owners, rate reductions and credits, sources of funding, costs, public improvements and competitive bidding, and property owners' responsibility apply to any proceedings, covenant, stipulation, obligation, resolution, trust agreement, indenture, loan agreement, lease agreement, agreement, act, or action, or part of it, that is pending on the bill's effective date.

**Miscellaneous provisions for inclusion of prevention or replacement facilities in Sewer Districts Law**

(R.C. 6117.01, 6117.011, 6117.04, 6117.05, 6117.06, 6117.251, 6117.28, 6117.30, 6117.34, 6117.38, 6117.41, 6117.42, 6117.43, 6117.44, 6117.45, and 6117.49)

The bill adds prevention or replacement facilities to the following provisions of the Sewer Districts Law governing sanitary or drainage facilities:

(1) The authority of a board of county commissioners to adopt and enforce rules governing county-owned sanitary and drainage facilities, a preclusion against the construction of a sanitary or drainage facility outside a municipal corporation until plans and specifications have been approved by the board, and the authority

of the county engineer to enter property to survey or inspect sanitary or drainage facilities;

(2) The authority of a board of county commissioners to make surveys of water supply, sanitary facilities, or drainage facilities that may be acquired or constructed;

(3) The authority of a board of county commissioners to acquire, construct, maintain, and operate sanitary or drainage facilities within a municipal corporation or regional water and sewer district subject to specified conditions;

(4) The continuing jurisdiction of a board of county commissioners concerning the acquisition and construction of a sanitary and drainage facility in a portion of a sewer district that is incorporated as or annexed to a municipal corporation, and procedures governing the subsequent conveyance of the facility to the municipal corporation;

(5) The authority of a board of county commissioners to have prepared a general plan of sewerage or drainage of the sewer district if an improvement is to be undertaken;

(6) The authority of the board of county commissioners to determine by resolution that it is necessary to provide sanitary or drainage facility improvements, the authority of the board to levy assessments to pay for a district's general plan of sewerage or drainage and other specified costs, and procedures and requirements governing the levying of the assessments;

(7) Procedures and requirements governing the acquisition or construction of an improvement and the levying of an assessment to pay for it when the owners of lots and lands to be assessed for the improvement have petitioned the board requesting it to acquire, construct, maintain, and operate the improvement and consenting to the assessment;

(8) The requirement that the cost of the acquisition or construction of sanitary or drainage facilities be assessed on all benefited property in the sewer district;

(9) The authority of the Director of Environmental Protection to determine whether sanitary or drainage facilities are necessary and to require a board of county commissioners to acquire or construct such facilities if necessary pursuant to a complaint by the legislative authority or board of health of a municipal corporation, the board of health of a general health district, or a board of township trustees that unsanitary conditions exist in the county;

(10) The authority of a board of county commissioners to require the county sanitary engineer to examine sanitary or drainage facilities that may be acquired for the district;

(11) The authority of a board of county commissioners to enter into a contract with any other public agency to prepare plans and cost estimates and acquire or construct sanitary or drainage facilities that are to be used jointly;

(12) Requirements governing contracts between a board of county commissioners and another public agency regarding jointly used facilities;

(13) The authority of the county or other public agency to levy taxes or special assessments or issue public obligations to pay the agreed compensation for the acquisition or construction of jointly used facilities;

(14) The requirement that a county or other public agency receiving the agreed compensation for the acquisition, construction, or operation and maintenance of jointly used facilities credit the amount to the proper fund;

(15) The prohibition against tampering with or damaging any sanitary or drainage facility acquired or constructed by a county or making unauthorized connections to a facility and the prohibition against refusing to permit the inspection by the county sanitary engineer of any such connection; and

(16) The board of county commissioners to sell or otherwise dispose of sanitary or drainage facilities if the board determines by resolution that it is in the best interests of the county and those served by the facilities and procedures and requirements governing the sale or disposition.

**Applicability of zoning laws to certain waste facilities**

(R.C. 303.211 and 519.211)

The County and Township Zoning Laws currently state that boards of county commissioners, boards of township trustees, and boards of zoning appeals generally do not have power in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad for the operation of its business. The bill specifies that "public utility" does not include a person that owns or operates a solid waste facility or a solid waste transfer facility, other than a publicly owned solid waste facility or a publicly owned solid waste transfer facility, that has been issued a permit under the Solid, Infectious, and Hazardous Waste Law or a construction and demolition debris facility that has been issued a permit under the Construction and Demolition Debris Law, thus

potentially subjecting such a person to county and township zoning and continuing to exempt such publicly owned facilities from county and township zoning.

**Eligible community development banks as county depositories**

(Section 711.10)

Current law requires county commissioners to meet once every four years to designate the county's public depositories of active moneys or the next succeeding four-year period and establishes a time-sensitive application process for designating such depositories.<sup>57</sup> The bill permits a county to designate a community development bank that meets certain requirements as a county depository of active moneys during the county's four-year period that is running on the effective date of this provision of the bill.

The bill defines a "community development bank" as any bank or savings association that provides loans for residential mortgages, home improvement, and community development as well as other financial services to low- and moderate-income persons, nonprofit organizations, and small businesses that are located in qualified distressed communities and that abides by certain federal law requirements regarding its organization. To be eligible for designation under the bill, a community development bank must meet all the following requirements: (1) be located in a county with a population of over 1.3 million people based on the 2000 U.S. Census figures, (2) have previously served as a depository of active moneys for that county, (3) apply to be designated as a depository of that county's active moneys, and (4) be an institution eligible to receive that county's active moneys.<sup>58</sup>

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<sup>57</sup> Current law defines "active moneys" as the public money in public depositories determined to be necessary to meet current demands upon the county treasury and deposited in certain types of accounts. "Public moneys" is in turn defined as all money in a county's treasury or coming lawfully into the possession or custody of its treasurer.

<sup>58</sup> The only county in Ohio with a population of over 1.3 million people based on the 2000 U.S. Census figures is Cuyahoga County. See U.S. Census Bureau, "Table 1: Annual Estimates of the Population of Counties of Ohio: April 1, 2000 to July 1, 2004," <<http://www.census.gov/popest/counties/tables/CO-EST2004-01-39.xls>>.

**Public obligations of local governments for purposes of conservation and revitalization**

(R.C. 133.52)

The bill authorizes a county, municipal corporation, or township to issue or incur public obligations, including general obligations, to provide, or assist in providing, grants, loans, loan guarantees, or contributions for conservation<sup>59</sup> and revitalization purposes<sup>60</sup> pursuant to Section 2o of Article VIII of the Ohio Constitution.

Section 2o of Article VIII specifies that environmental and related conservation, preservation, and revitalization purposes are proper public purposes of the state and local governmental entities. The state may undertake its own projects and may participate or assist in financing projects undertaken by local government entities or others, including nonprofit organizations. Obligations of local government entities issued for the designated public purposes, and provisions for payment of debt service on them, and the purposes and uses to which the proceeds of those obligations, or moneys from other sources, may be applied, are not subject to the Lending Aid and Credit provisions of the Ohio Constitution.

**Repeal of prohibition on levying or collection of assessment by certain conservancy districts**

(Section 620.20)

Section 5 of Am. Sub. H.B. 24 of the 127th General Assembly, which is effective until January 1, 2009, prohibits the board of directors of a conservancy district that includes all or parts of more than 16 counties from levying or

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<sup>59</sup> Conservation purposes means conservation and preservation of natural areas, open spaces, and farmlands and other lands devoted to agriculture, including by acquisition of land or interests in land; provision of state and local park and recreation facilities, and other actions that permit and enhance the availability, public use, and enjoyment of natural areas and open spaces in Ohio; and land, forest, water, and other natural resource management projects.

<sup>60</sup> Revitalization purposes means providing for and enabling the environmentally safe and productive development and use or reuse of publicly and privately owned lands, including those within urban areas, by the remediation or clean up, or planning and assessment for remediation or clean up, of contamination, or addressing, by clearance, land acquisition or assembly, infrastructure, or otherwise, that or other property conditions or circumstances that may be deleterious to the public health and safety and the environment and water and other natural resources, or that preclude or inhibit environmentally sound or economic use or reuse of the property.

collecting an assessment and prohibits a county treasurer from collecting an assessment levied by that conservancy district. The bill repeals that uncodified statute.

### **Conservancy district assessments**

(R.C. 6101.53 and 6101.55)

Under current law, the board of directors of a conservancy district annually, no later than September 1, may levy an assessment known as a conservancy maintenance assessment on each tract or parcel of land and each public corporation within the district. Additionally, current law requires a board to levy an annual levy that includes all assessments and installments of assessments, together with interest, that the board levies under the Conservancy Districts Law and that become due in the ensuing year. The annual levy must be signed and certified by the president of the board and the district secretary by September 1. The bill changes from September 1 to September 15 the date by which the board of directors may levy the maintenance assessment and by which the annual levy must be signed and certified.

### **PEG programming compensation**

(R.C. 1332.04)

Cable parity law (R.C. 1332.01 to 1332.10) governs the provision by a political subdivision of cable service over a cable system, especially as that service might be directly competitive with private provision of cable service. Currently prohibited practices applicable to such a "public cable service provider" include (1) preferring or advantaging any public cable service provider or discriminating against a private provider in any material matter affecting provision of cable service within the political subdivision's jurisdiction, (2) failing to apply a private cable service regulation to any public cable service provider, and (3) failing to pay all applicable fees, including franchise fees, permit fees, or pole attachment fees. The bill adds a fourth prohibition for a public cable service provider: a prohibition against requiring from a (private) person providing video service within the public cable service provider's jurisdiction any direct or in-kind charge for, or a payment of any kind in exchange for, PEG channel programming or other content produced by the political subdivision or by an entity created or partially supported by the political subdivision. (Neither the bill nor current video service authorization law contains such a prohibition for a political subdivision that is *not* a public cable service provider.)

Under the bill, which refers to definitions in video service authorization law, a "PEG channel" is "a channel, for public, educational, and governmental

programming, made available by a video service provider or cable operator for noncommercial use. "Video service" is "the provision of video programming over wires or cables located at least in part in public rights-of-way, regardless of the technology used to deliver that programming, including internet protocol technology or any other technology." It includes cable service, but excludes video programming provided to subscribers of commercial mobile (cellular-type) service; video programming provided solely as part of and via a service that enables users to access content, information, electronic mail, or other services offered over the public internet; and signals distributed by a cable television system to paying subscribers in the unincorporated area of a township prior to October 1, 1979, under a franchise that has not been reissued by the township.

### **Reduction in specified county recorder filing fees**

Current law specifies the fees a county recorder must charge and collect for a variety of recorded documents. The fees generally include a base fee for the recorder's services and a housing trust fund fee. The bill reduces two of the specified fees. For filing zoning resolutions, including text and maps, the recorder currently must collect a base fee of \$50 and a housing trust fund fee of \$50 regardless of the size or length of the resolutions. The bill reduces these fees to \$25 each. (R.C. 317.22(G).) The bill also changes the required filing fees for zoning amendments from the current base fee of \$10 and a housing trust fund fee of \$10 for the first page and a base fee of \$4 and a housing trust fund fee of \$4 for each additional page to a base fee of \$10 and a housing trust fund fee of \$10 regardless of the size or length of the amendments. (R.C. 317.22(H).)

### **Reimbursement of ballot advertising costs**

(R.C. 3501.07)

Under current law, the state must bear the entire cost of advertising in newspapers statewide ballot issues, explanations of those issues, and arguments for or against those issues. This is required by Section 1(g) of Article II and Section 1 of Article XVI of the Ohio Constitution. Under current law, the Secretary of State is reimbursed by the Ohio Ballot Board for all expenses that the Secretary of State incurs for ballot initiative advertising. The bill requires that the Secretary of State be reimbursed for this advertising out of appropriations made to the Controlling Board, rather than by the Ohio Ballot Board.

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## **DEPARTMENT OF MENTAL HEALTH**

- Prohibits the Governor and Department of Mental Health from closing any state mental health facility for six months.



- Establishes an ongoing mechanism for creation of an alcohol, drug addiction, and mental health services board (ADAMH board) in place of a county's community mental health board and alcohol and drug addiction services board.
- Requires all ADAMH boards to have an equal representation of members interested in mental health programs and members interested in alcohol or drug addiction programs.

**Moratorium on closure of any state mental health facility**

(Section 751.30)

Notwithstanding any existing law under which the Department of Mental Health has jurisdiction over a state mental health facility, the bill prohibits both the Governor and the Department of Mental Health from closing any state mental health facility until six months after the effective date of the enactment of this prohibition. For purposes of this provision, the bill defines "state mental health facility" as an institution for the care and treatment of individuals with mental illness that is maintained, operated, managed, and governed by the Department of Mental Health under existing law.

**Boards of alcohol, drug addiction, and mental health services**

(R.C. 340.021)

When boards of alcohol, drug addiction, and mental health services (ADAMH boards) were created in 1989, counties with a population of 250,000 or more were given the option of either (1) creating an ADAMH board or (2) retaining the pre-existing community mental health board and creating an alcohol and drug addiction services board. Since that time, counties that chose to have separate boards have been given two other opportunities to create a combined ADAMH board in place of the separate boards. The first opportunity expired January 1, 2004; the second expired July 1, 2007.<sup>61</sup>

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<sup>61</sup> The authority to create an ADAMH board that expired on January 1, 2004, was included in Am. Sub. H.B. 95 of the 125th General Assembly, the biennial appropriations act for state fiscal years 2004-2005. The authority that expired on July 1, 2007, was included in Am. Sub. H.B. 530 of the 126th General Assembly, the capital reappropriations act for the biennium ending June 30, 2008.

The bill establishes permanent authority to create an ADAMH board in a county with separate boards. To establish an ADAMH board, the board of county commissioners must adopt a resolution providing for the board's establishment. Under the bill, the composition of the ADAMH board, the procedures for appointing members, and all other matters related to the members are subject to the existing laws that apply to all other ADAMH boards, with the following exceptions:

(1) For initial appointments, the county's community mental health board and alcohol and drug addiction services board must jointly recommend members of those board for reappointment and submit the recommendations to the appointing authorities, which consist of the board of county commissioners, the Director of Mental Health, and the Director of Alcohol and Drug Addiction Services.

(2) To the greatest extent possible, the appointing authorities must appoint the initial members from among the members jointly recommended by the community mental health board and alcohol and drug addiction services board.

An ADAMH board established under the bill has the same rights, privileges, immunities, powers, and duties that were possessed by the county's separate boards. When the board is established, all property and obligations of the county's separate boards must be transferred to the ADAMH board.

### **Board membership generally**

(R.C. 340.02; Section 803.50)

Current law provides that each ADAMH board must consist of 18 members. All members must be residents of the district served by the board and the membership must, as nearly as possible, reflect the composition of the district's population with respect to race and gender. The members must be interested in mental health programs and facilities or in alcohol or drug addiction programs.

The bill requires that the areas of interest of an ADAMH board's membership be reflected as follows: nine members interested in mental health programs and facilities and nine members interested in alcohol or drug addiction programs. The bill specifies that this requirement does not affect the terms of the members holding office on the effective date of the bill's requirement.

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## **DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

- Eliminates a requirement that the ODJFS Director seek federal approval to establish the ICF/MR Conversion Pilot Program.
- For the purpose of increasing the number of slots available for home and community-based services provided under a Medicaid waiver program administered by the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD), permits, under certain circumstances, an intermediate care facility for the mentally retarded (ICF/MR) to convert in whole or, if the ICF/MR was acquired pursuant to a request for proposals issued by ODMR/DD, to convert in whole or in part to providing ODMR/DD-administered home and community-based services.
- Permits the ODMR/DD Director to request that the ODJFS Director seek federal approval to increase the number of slots available for ODMR/DD-administered home and community-based services by a number not exceeding the number of beds that were part of the licensed capacity of a residential facility that had its license revoked or surrendered if the residential facility was an ICF/MR at the time of the license revocation or surrender.
- Permits the ODJFS Director to seek federal approval for not more than a total of 100 slots for ODMR/DD-administered home and community-based services for the purposes of the ICF/MR conversions and ODMR/DD Director's request.
- Provides that not more than 100 beds may be converted from providing ICF/MR services to providing ODMR/DD-administered home and community-based services.
- Requires the ODMR/DD Director, each quarter of fiscal year 2009, to certify to the Director of Budget and Management the estimated amount to be transferred from ODJFS to ODMR/DD for the provision of ODMR/DD-administered home and community-based services made available by the ICF/MR conversions and ODMR/DD Director's request.
- Prohibits the reconversion of a bed back to ICF/MR services.

- Eliminates a requirement that an adjudication order be issued before the maximum number of beds for which there may be a residential facility license is reduced following the revocation, termination, renewal denial, or surrender of a residential facility license.
- Eliminates the annual fee ODMR/DD is required to charge county MR/DD boards based on claims for Medicaid case management services.
- Provides that the Gallipolis Developmental Center is to operate an intermediate care facility for the mentally retarded (ICF/MR) with eight beds at a site separate from the grounds of the developmental center under a pilot program rather than provide home and community-based services to not more than ten individuals under the Individual Options Medicaid waiver program.
- Provides that the Gallipolis Developmental Center pilot program is to be established during calendar year 2009 rather than operated during calendar year 2009.
- Eliminates a requirement that the pilot program be operated in a manner consistent with the terms of the consent order filed in the class action case, *Martin v. Strickland*.
- Eliminates a requirement that all expenses the Gallipolis Developmental Center incurs in participating in the pilot program be paid from the Medicaid payments the developmental center receives for providing services under the pilot program.
- Requires ODMR/DD and ODJFS to provide the Gallipolis Developmental Center technical assistance regarding the pilot program rather than technical assistance *the developmental center needs* regarding the pilot program.
- Requires that the report on the pilot program include recommendations regarding its continuation and whether other developmental centers should be permitted to establish and operate ICFs/MR at sites separate from the grounds of the developmental centers.
- Exempts from the public improvements law private nonprofit agencies that receive state funds for construction of single-family homes for persons with mental retardation or a developmental disability.

- Requires the Franklin County Educational Service Center (instead of the Department of Education under current law) to establish the Ohio Center for Autism and Low Incidence (OCALI).
- Requires the Department of Education to contract with an entity to provide services to children and adults with autism and low incidence disabilities and to give "primary consideration" to OCALI to administer those services.
- Requires OCALI to participate as a member of an interagency workgroup on autism, established by ODMR/DD and to provide technical assistance and support to that Department in developing and implementing the initiatives identified by the workgroup.
- Increases the franchise permit fee on intermediate care facilities for the mentally retarded (ICFs/MR) to \$11.98 effective July 1, 2008.
- Creates the Children with Intensive Behavioral Needs Programs Fund into which 9.39% of the ICF/MR franchise permit fee is to be deposited for the purpose of the programs the ODMR/DD Director is to establish for individuals under age 21 who have intensive behavioral needs.
- Requires the ODMR/DD Director, using money available in the Children with Intensive Behavioral Needs Programs Fund, to establish one or more programs for individuals under age 21 who have intensive behavioral needs, including such individuals with a primary diagnosis of autism spectrum disorder.
- Provides that, for fiscal year 2009, the mean total per diem rate for all ICFs/MR under Medicaid, weighted by May 2008 Medicaid days and calculated as of July 1, 2008, is not to exceed \$274.98, rather than \$271.46.

**Conversion of ICF/MR beds**

(Primary R.C. 5111.874; R.C. 5111.31, 5111.875, 5111.876, 5111.877, 5111.878, 5111.879, 5112.31, and 5123.196; Section 751.10; Repeals R.C. 5111.311, 5111.88, 5111.881, 5111.882, 5111.883, 5111.884, 5111.885, 5111.886, 5111.887, 5111.888, 5111.889, 5111.8810, 5111.8811, 5111.8812, 5111.8813, 5111.8814, 5111.8815, 5111.8816, 5111.8817, and 5112.311)

### *ICF/MR Conversion Pilot Program*

*Current law.* The ODJFS Director is required to seek federal approval to establish the ICF/MR Conversion Pilot Program under which intermediate care facilities for the mentally retarded (ICFs/MR) would be permitted to convert in whole or in part from providing ICF/MR services to providing home and community-based services. Under the pilot program, individuals with mental retardation or a developmental disability who are eligible for ICF/MR services could volunteer to receive home and community-based services instead. No more than 200 individuals would be permitted to participate in the pilot program at one time. ODJFS is authorized to administer the pilot program itself or contract with the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) for administration of the pilot program. The pilot program would be operated for not less than three years if approved by the United States Secretary of Health and Human Services. The ODJFS Director is also required to seek federal approval to refuse to enter into or amend a Medicaid provider agreement with the operator of an ICF/MR if the provider agreement or amendment would authorize the operator to receive Medicaid payments for more ICF/MR beds than the operator receives on the first day of the pilot program's implementation, unless the ICF/MR is reconverted back to providing ICF/MR services after the pilot program terminates.<sup>62</sup>

The ICF/MR Conversion Advisory Council has duties regarding the design and evaluation of the ICF/MR Conversion Pilot Program. For example, the ODJFS Director must consult with the advisory council before seeking federal approval for the pilot program. The Council consists of four members of the General Assembly, the ODJFS and ODMR/DD Directors or their designees, and representatives of several organizations that advocate for persons with mental retardation or a developmental disability or providers of services to such persons.

The Centers for Medicaid and Medicaid Services, the agency within the United States Department of Health and Human Services responsible for the Medicaid program on the federal level, has informed ODJFS that the proposed ICF/MR Conversion Pilot Program does not meet federal requirements to provide

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<sup>62</sup> An ICF/MR would not be permitted to reconvert back to providing ICF/MR services after the ICF/MR Conversion Pilot Program terminates if (1) the program is implemented statewide, (2) the ICF/MR no longer meets the requirements for Medicaid certification, or (3) the ICF/MR no longer meets licensure requirements.

home and community-based services under subsection (c) of section 1915 of the Social Security Act.<sup>63</sup> As a result, work to create the pilot program has ceased.

***The bill.*** The bill eliminates the requirement that the ODJFS Director seek federal approval for the ICF/MR Conversion Pilot Program and repeals all provisions in current law regarding the pilot program. The bill also abolishes the ICF/MR Conversion Advisory Council.

### **Conversion of ICF/MR beds**

In place of the ICF/MR Conversion Pilot Program, the bill establishes provisions for increasing the number of slots available under home and community-based services provided under a Medicaid waiver administered by ODMR/DD. The bill limits the number of new slots to 100.

The first provision permits the operator of an ICF/MR that is licensed by ODMR/DD as a residential facility to convert all of the beds in the facility from providing ICF/MR services to providing ODMR/DD-administered home and community-based services if all of the following requirements are met:

(1) The operator provides the Directors of Health, ODJFS, and ODMR/DD a least 90 days' notice of the operator's intent to relinquish the facility's Medicaid certification as an ICF/MR and to begin providing ODMR/DD-administered home and community-based services.

(2) The operator complies with requirements in continuing law regarding ICFs/MR that cease to participate in Medicaid if those requirements are applicable.

(3) The operator notifies each of the facility's residents that the ICF/MR is to cease providing ICF/MR services and inform each resident that the resident may either continue to receive ICF/MR services by transferring to another ICF/MR willing and able to accept the resident if the resident continues to qualify for ICF/MR services or begin to receive ODMR/DD-administered home and community-based services from any provider of the services that is willing and able to provide the services to the resident if the resident is eligible for the services and a slot for the services is available to the resident.

(4) The operator meets the requirements for providing ODMR/DD-administered home and community-based services, including such requirements

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<sup>63</sup> Letter from Verlon Johnson, Associate Regional Administrator of the Division of Medicaid and Children's Health, to Tracy J. Williams, Deputy Director of Job and Family Services, December 11, 2006.

applicable to a residential facility if the operator maintains the residential facility license or such requirements applicable to a facility that is not licensed as a residential facility if the operator surrenders the residential facility license.

(5) The ODMR/DD Director approves the conversion.

The notice to the ODMR/DD Director must specify whether the operator wishes to surrender the facility's residential facility license. The Director of Health, if the ODMR/DD Director approves the conversion, is to terminate the facility's Medicaid certification as an ICF/MR. The Director of Health must notify the ODJFS Director of the termination. On receipt of the termination notice, the ODJFS Director is required to terminate the operator's Medicaid provider agreement for the ICF/MR. The operator is not entitled to notice or a hearing under the Administrative Procedure Act (R.C. Chapter 119.) before the Medicaid provider agreement is terminated.

Under the second provision to make up to 100 new slots available for ODMR/DD-administered home and community-based services, the operator of an ICF/MR that had its license previously revoked or surrendered and that the operator acquired through a request for proposals issued by the ODMR/DD Director is permitted to convert some or all of the facility's beds from providing ICF/MR services to providing ODMR/DD-administered home and community-based services if all of the following requirements are met:

(1) The operator provides the Directors of Health, ODJFS, and ODMR/DD at least 90 days' notice of the operator's intent to make the conversion.

(2) The operator complies with requirements in continuing law regarding ICFs/MR that cease to participate in Medicaid if those requirements are applicable.

(3) If the operator intends to convert all of the facility's beds, the operator notifies each of the residents that the facility is to cease providing ICF/MR services and inform each resident that the resident may either continue to receive ICF/MR services by transferring to another ICF/MR willing and able to accept the resident if the resident continues to qualify for ICF/MR services or begin to receive ODMR/DD-administered home and community-based services from any provider of the services that is willing and able to provide the services to the resident if the resident is eligible for the services and a slot for the services is available to the resident.

(4) If the operator intends to convert some but not all of the beds, the operator notifies each of the residents of the partial conversion and informs each resident that the resident may either continue to receive ICF/MR services from any

provider of ICF/MR services that is willing and able to accept the resident if the resident continues to qualify for ICF/MR services or begin to receive ODMR/DD-administered home and community-based services from any provider of ODMR/DD-administered home and community-based services that is willing and able to provide the services if the resident is eligible for the services and a slot for the services is available to the resident.

(5) The operator meets the requirements for providing ODMR/DD-administered home and community-based services at a residential facility.

The notice provided to the Directors must specify whether some or all of the beds are to be converted. If some but not all of the beds are to be converted, the notice must specify how many of the beds are to be converted and how many are to continue to provide ICF/MR services. On receipt of the notice, the Director of Health must terminate the facility's Medicaid certification as an ICF/MR if the notice specifies that all of the facility's beds are to be converted or reduce the facility's certified capacity by the number of beds being converted if the notice specifies that some but not all of the beds are to be converted. The Director of Health is required to notify the ODJFS Director of the termination or reduction. On receipt of that notice, the ODJFS Director is required to either terminate the operator's Medicaid provider agreement for the ICF/MR or amend the Medicaid provider agreement to reflect the facility's reduced certified capacity, as appropriate. The operator is not entitled to notice or a hearing under the Administrative Procedure Act before the Medicaid provider agreement is terminated or amended.

Under the third provision, the ODMR/DD Director is permitted to request that the ODJFS Director seek federal approval to increase the number of slots available for ODMR/DD-administered home and community-based services by a number not exceeding the number of beds that were part of the licensed capacity of a residential facility that had its license revoked or surrendered if the residential facility was an ICF/MR at the time of the license revocation or surrender. The revocation or surrender may have occurred before, or may occur on or after, the effective date of this provision of the bill. The request may include beds the ODMR/DD Director removed from such a residential facility's licensed capacity before transferring ownership or operation of the residential facility pursuant to a request for proposals.

The bill permits the ODJFS Director to seek approval from the United States Secretary of Health and Human Services for not more than a total of 100 slots for ODMR/DD-administered home and community-based services for the purposes of the ICF/MR conversions and the ODMR/DD Director's requests for additional slots.

The bill provides that a total of not more than 100 beds may be converted from providing ICF/MR services to providing ODMR/DD-administered home and community-based services.

The ODMR/DD Director is required, for each quarter of fiscal year 2009, to certify to the Director of Budget and Management the estimated amount to be transferred from ODJFS to ODMR/DD for the provision of ODMR/DD-administered home and community-based services made available by the ICF/MR conversions and the ODMR/DD Director's request. The Director of Budget and Management is authorized, on receipt of the quarterly certifications, to adjust appropriations in specific line items accordingly to account for the transfer.

No bed that is converted may be reconverted back to providing ICF/MR services, even if the bed is part of the licensed capacity of a residential facility or has been sold, leased, or otherwise transferred to another private or government sector operator.

The ODJFS and ODMR/DD Directors are authorized to adopt rules as necessary to implement these provisions of the bill. The rules are to be adopted in accordance with the Administrative Procedure Act.

**Maximum number of licensed residential facility beds**

(R.C. 5123.196)

No person or government entity may operate a residential facility without a valid license issued by the ODMR/DD Director. Generally, a residential facility is a home or facility in which an individual with MR/DD resides. However, none of the following are considered residential facilities: 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, or a dwelling in which the only individuals with MR/DD are in an independent living arrangement or are being provided supported living.

With certain exceptions, the Director is prohibited from issuing a residential facility license if issuance will result in there being more beds in all licensed residential facilities than a maximum number set by state law.<sup>64</sup> The

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<sup>64</sup> Continuing law permits the Director to issue an interim license to a residential facility if the Director determines (1) that an emergency exists requiring immediate placement of persons in a residential facility, that insufficient beds are available, and that the residential facility is likely to receive a permanent license within 30 days after the interim license is issued or (2) that the issuance of the interim license is necessary to meet a temporary need for a residential facility. The limit on the maximum number of licensed residential facility beds does not apply in either case. The Director is also permitted to

maximum number was originally set at 10,838 but that number is to be reduced, with certain exceptions,<sup>65</sup> by (1) the number of residential facility beds for which the license holder voluntarily converts to use for supported living on or after July 1, 2003, and (2) the number of residential facility beds that cease to be residential facility beds on or after July 1, 2003, because a residential facility license is revoked, terminated, or not renewed for any reason or is surrendered after the issuance of an adjudication order pursuant to the Administrative Procedure Act.

The bill eliminates the requirement that an adjudication order be issued before the maximum number of beds for which there may be a residential facility license is reduced following the revocation, termination, renewal denial, or surrender of a residential facility license.

**Medicaid case management service fee**

(R.C. 5123.0412)

Under current law ODMR/DD is required to charge county MR/DD boards a fee for Medicaid case management services and home and community-based services. The fee equals 1½% of the total value of all Medicaid paid claims for these services provided during the year to an individual eligible for services from the board. ODMR/DD and ODJFS are required to use the funds for the administrative and oversight costs of Medicaid case management services and home and community-based services and to provide technical support to county boards' local administrative authority.

The bill eliminates the annual fee ODMR/DD is required to charge county MR/DD boards that is based on Medicaid paid claims for Medicaid case management services. It does not affect the fee based on home and community-based services.

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issue a waiver allowing a residential facility to admit more residents than the facility is licensed to admit regardless of whether the waiver will result in there being more beds in all licensed residential facilities than is permitted.

<sup>65</sup> The maximum number of licensed residential facility beds is not to be reduced by a bed that ceases to be a residential facility bed if the ODMR/DD Director determines that the bed is needed to provide services to an individual with MR/DD who resided in the residential facility in which the bed was located.

### Gallipolis Developmental Center pilot program

(Sections 610.40 and 610.41)

The biennial budget act for the 127th General Assembly, Am. Sub. H.B. 119, requires the ODMR/DD Director to establish a pilot program under which the Gallipolis Developmental Center provides home and community-based services under the Individual Options Medicaid waiver program to not more than ten individuals at one time. The pilot program is to be operated as part of the Individual Options Medicaid waiver program and be operated during calendar year 2009.

The bill provides for the pilot program to have the Gallipolis Developmental Center operate an ICF/MR with eight beds at a site separate from the grounds of the developmental center rather than provide home and community-based services.<sup>66</sup> The pilot program is not to be operated as part of the Individual Options Medicaid waiver program. And the pilot program must be established, rather than operated, during calendar year 2009, meaning that its operation is not restricted to calendar year 2009.

The bill eliminates a requirement that the pilot program be operated in a manner consistent with the terms of the consent order filed in the class action case, *Martin v. Strickland*. The bill also eliminates a requirement that all expenses the Gallipolis Developmental Center incurs in participating in the pilot program be paid from the Medicaid payments the developmental center receives for providing services under the program.

Current law requires the ODMR/DD Director and the ODJFS Director to provide the Gallipolis Developmental Center technical assistance the developmental center needs regarding the pilot program. The bill requires the Directors to provide the developmental center technical assistance regarding the pilot program rather than technical assistance *the developmental center needs* regarding the pilot program.

The ODMR/DD Director is required to conduct an evaluation of the pilot program and submit a report of the evaluation to the Governor and General Assembly not later than April 1, 2010. Current law requires that the report include recommendations for or against permitting the Gallipolis Developmental Center to continue to provide home and community-based services under the Individual

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<sup>66</sup> The bill notwithstanding state law that prohibits the ODMR/DD Director from issuing a license to a residential facility if the issuance will result in there being more beds in all residential facilities than is permitted by state law. (ICFs/MR are licensed as residential facilities.)

Options Medicaid waiver program and permitting other developmental centers to begin to provide these services. The bill requires instead that the report include recommendations regarding the continuation of the pilot program and whether other developmental centers should be permitted to establish and operate ICFs/MR at sites separate from the grounds of the developmental centers.

**Homes for persons with mental retardation or a developmental disability**

(R.C. 5123.36)

Current law provides that, to the extent funds are available, on application by a county board of mental retardation and developmental disability or private nonprofit agency, the ODMR/DD Director may enter into an agreement with the board or agency for the director to assist the board or agency with a mental retardation or developmental disability construction project. The agreement may provide for the Director to contribute up to 90% of the construction costs, or, with Controlling Board approval, over 90% of the construction costs. Under current law, the construction project is subject to the public improvements law (R.C. Chapter 153.), which includes requirements for competitive bidding, use of separate bids and contracts for different components of a project, and preparation of plans and specifications by the State Architect's Office.

The bill exempts private nonprofit agencies that receive state funds for construction of single-family homes for persons with mental retardation or developmental disability from the public improvements law.

**Ohio Center for Autism and Low Incidence**

(R.C. 3323.30 to 3323.35)

H.B. 66 of the 126th General Assembly (the budget act for the 2005-2007 biennium) established the Ohio Center for Autism and Low Incidence (OCALI) within the Department of Education. The Center is charged with administering programs and coordinating services for infants, preschool and school-age children, and adults with autism and other low incidence disabilities involving hearing, vision, orthopedics, traumatic brain injuries, and general health. The Department set up the Center by subgranting federal funds to the Franklin County Educational Service Center to oversee and provide for the Center's operation.

The bill formally requires the Franklin County Educational Service Center to establish OCALI, with a principal focus on programs and services for persons with autism. It must be under the direction of an executive director, who is appointed by the superintendent of the educational service center, in consultation with an advisory board established under current law to advise the operation of the

OCALI. The advisory board is appointed by the Superintendent of Public Instruction.

The bill also requires the Department to contract with an entity to provide services to administer programs and coordinate services for infants, preschool and school-age children, and adults with autism and low incidence disabilities. That entity must be selected by the Superintendent of Public Instruction, also in consultation with the OCALI advisory board. The bill specifies that the Superintendent and the advisory board, in selecting the entity, must give "primary consideration" to OCALI. In other words, OCALI likely, but not certainly, will be the entity selected to administer the programs.

In addition to its duties to administer programs on behalf of the Department, if selected as the entity to do so, OCALI must participate as a member of an "interagency workgroup on autism," established by ODMR/DD. As part of this responsibility, it must provide technical assistance and support to that Department in developing and implementing the initiatives identified by the workgroup.

### **Background**

The advisory board appointed the Superintendent of Public Instruction to advise the Department of Education and OCALI on services to persons with autism and low incidence disabilities, under both current law and the bill, must consist of individuals who are stakeholders in the service to persons with autism and low incidence disabilities, including the following:

- (1) Persons with autism and low incidence disabilities;
- (2) Parents and family members;
- (3) Educators and other professionals;
- (4) Higher education instructors; and
- (5) Representatives of state agencies.

OCALI, under current law, and the entity selected under the bill, must do all of the following:

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

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

(3) Collaborate with parent and professional organizations;

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

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

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

**ICF/MR franchise permit fee**

(R.C. 5112.31, 5112.37, and 5112.371)

Intermediate care facilities for the mentally retarded (ICFs/MR) are required to pay an annual franchise permit fee. For fiscal year 2008, the ICF/MR franchise permit fee is to equal \$9.63 multiplied by the product of (1) the number of the ICF/MR's Medicaid-certified beds as of the first day of May of the calendar year in which the fee was determined and (2) the number of days in the fiscal year beginning on the first day of July of the same calendar year.

Under current law, all of the money raised by the ICF/MR franchise permit fee is to be deposited in the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund. ODJFS is required to distribute the money in the fund in accordance with rules. ODJFS and ODMR/DD are required to use the money for the Medicaid program and home and community-based services for persons with mental retardation or a developmental disability.

The bill increases the ICF/MR franchise permit fee effective July 1, 2008 (the first day of fiscal year 2009) to \$11.98 per bed per day.<sup>67</sup> Instead of all of the money raised by the franchise permit fee being deposited in the Home and Community-Based Services for the Mentally Retarded and Developmentally

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<sup>67</sup> Current law requires ODJFS to adjust the ICF/MR franchise permit fee beginning July 1, 2007, and the first day of each July thereafter in accordance with a composite inflation factor established in rules. The bill delays the next adjustment to July 1, 2009.

Disabled Fund, 90.61% of the money is to go to that fund. The remainder of the money, 9.39%, is to be deposited in a new fund the bill creates in the state treasury called the Children with Intensive Behavioral Needs Programs Fund. The money in that fund is to be used for programs the ODMR/DD Director is to establish for individuals under 21 years of age who have intensive behavioral needs.<sup>68</sup>

**Programs for individuals with intensive behavioral needs**

(R.C. 5123.0417)

The bill requires the ODMR/DD Director, using funds available in the Children with Intensive Behavioral Needs Programs Fund,<sup>69</sup> to establish one or more programs for individuals age 21 or older who have intensive behavioral needs, including such individuals with a primary diagnosis of autism spectrum disorder. The programs may include one or more Medicaid waiver programs the ODMR/DD Director administers. The programs may do one or more of the following:

(1) Establish models that incorporate elements common to effective intervention programs and evidence-based practices in services for children with intensive behavioral needs;

(2) Design a template for individualized education plans and individual service plans that provide consistent intervention programs and evidence-based practices for the care and treatment of children with intensive behavioral needs;

(3) Disseminate best practice guidelines for use by families of children with intensive behavioral needs and professionals working with such families;

(4) Develop a transition planning model for effectively mainstreaming school-age children with intensive behavioral needs to their public school district;

(5) Contribute to the field of early and effective identification and intervention programs for children with intensive behavioral needs by providing financial support for scholarly research and publication of clinical findings.

The ODMR/DD Director is required to collaborate with the ODJFS Director and consult with the Executive Director of the Ohio Center for Autism and Low Incidence and university-based programs that specialize in services for individuals with developmental disabilities when establishing the programs.

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<sup>68</sup> See "**Programs for individuals with intensive behavioral needs**" below.

<sup>69</sup> See "**ICF/MR franchise permit fee**" above.

### **Fiscal year 2009 Medicaid rate for ICFs/MR**

(Section 309.30.40)

The biennial budget act for the 127th General Assembly, Am. Sub. H.B. 119, established caps on the fiscal year 2009 Medicaid rates for ICFs/MR.<sup>70</sup> Under the cap, the mean total per diem rate for all ICFs/MR is not to exceed \$271.46 as weighted by Medicaid days and calculated as of July 1, 2008.<sup>71</sup> If the mean total per diem rate for all ICFs/MR for fiscal year 2009, weighted by May 2008 Medicaid days and calculated as of July 1, 2008, exceeds the cap, ODJFS 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.

The bill increases the cap by providing that the mean total per diem rate for all ICFs/MR under Medicaid, weighted by May 2008 Medicaid days and calculated as of July 1, 2008, is not to exceed \$274.98.

The ODJFS Director is required by the bill to submit a state Medicaid plan amendment to the federal government not later than September 30, 2008, as necessary to implement the change in the mean total per diem rate. The ODJFS Director is to implement the change retroactive to the effective date of the state Medicaid plan amendment.

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## **DEPARTMENT OF NATURAL RESOURCES**

- Creates the Mine Safety Fund to be used for specified mine safety purposes, and authorizes the Administrator of Workers' Compensation to transfer a portion of the interest money from the Coal-Workers Pneumoconiosis Fund to the Mine Safety Fund.

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<sup>70</sup> Am. Sub. H.B. 119 established a similar cap for the fiscal year 2008 Medicaid rates for ICFs/MR.

<sup>71</sup> "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.

- Requires applicants for examination for certification as mine forepersons or forepersons of gaseous or nongaseous mines to pay a fee established in rules adopted by the Chief of the Division of Mineral Resources Management in the Department of Natural Resources under the bill rather than a \$10 fee established in current law.
- Requires a person who has been certified as a mine foreperson or foreperson of a gaseous mine or nongaseous coal mine and who has not worked in an underground coal mine for more than two years to be recertified, requires such a previously certified person who has not worked in an underground coal mine for at least one year to successfully complete a retraining course, and requires the Chief to adopt rules governing recertification and retraining.
- Generally, establishes immunity for mine rescue crew members, employers of crew members, and employees of the Division of Mineral Resources Management from liability in any civil action that arises for damage or injury caused in the performance of rescue work at an underground coal mine.
- Allows the operator of an underground coal mine to provide a mine medical responder at the mine in order to comply with the existing requirement that an emergency medical technician be on duty at the mine when miners are working, requires the Chief to adopt rules governing mine medical responder training, continuing training, examination, and an examination fee, and defines "mine medical responder" as a person who has satisfied the requirements established in rules.
- Requires the operator of an underground coal mine to provide tag lines or tie-off lines for each miner at the mine, requires mine employees to use tag lines or tie-off lines, and requires the Chief to adopt rules governing tag line and tie-off line use.
- Requires the operator of an underground coal mine to install fire detection devices on each conveyor belt that is used in the mine, and requires the Chief to adopt rules governing the use of such fire detection devices.

### **Mine Safety Fund and Coal-workers Pneumoconiosis Fund**

(R.C. 1561.011, 1561.24, and 4131.03; Section 715.40)

For the purposes of the statutes governing coal mine safety and surface mine safety, the bill creates the Mine Safety Fund in the state treasury. The Fund consists of money transferred to it by the Administrator of Workers' Compensation from the Coal-workers Pneumoconiosis Fund established in current law (see below). All investment earnings of the Mine Safety Fund must be credited to the Fund. The Chief of the Division of Mineral Resources Management in the Department of Natural Resources must use money in the Fund for mine safety and health inspections and audits, the purchase and maintenance of mine rescue and inspection equipment, the purchase or lease of facilities for use as mine rescue stations and for mine rescue and safety training, safety and health training of miners, and certification and recertification of mine officials.

Current law establishes the Coal-workers Pneumoconiosis Fund as a custodial fund consisting of premiums and other payments and requires the Bureau of Workers' Compensation to make disbursements from the Fund to persons who are entitled to payments under federal law. The bill authorizes the Administrator of Workers' Compensation to transfer a portion of the investment earnings credited to the Coal-workers Pneumoconiosis Fund to the Mine Safety Fund created by the bill (see above). The Administrator, with the advice and consent of the Bureau of Workers' Compensation Board of Directors, must adopt rules governing the transfer in order to ensure the solvency of the Coal-workers Pneumoconiosis Fund. For that purpose, the rules may establish tests based on measures of net assets, liabilities, expenses, interest, dividend income, or other factors that the Administrator determines appropriate that may be applied prior to a transfer.

The bill states that it is the intent of the General Assembly that the authorization of a transfer of a portion of the interest money in the Coal-Workers Pneumoconiosis Fund to the Mine Safety Fund in accordance with the bill is not to be a long-term funding source for the Mine Safety Fund. In addition, the General Assembly's authorization of such a transfer does not establish a precedent for the transfer of money from other Bureau funds to other funds. Finally, the Department must examine sources other than the Coal-Workers Pneumoconiosis Fund to provide money for the Mine Safety Fund and report its findings to the Bureau's Board of Directors immediately prior to the five-year review of the rules adopted under the bill governing the transfers.

### *Recertification and retraining of mine forepersons and forepersons*

(R.C. 1561.16, 1561.17, and 1561.23)

Current law establishes requirements for applicants for certificates as mine forepersons or forepersons of gaseous mines and nongaseous mines. Each applicant for examination for certification as a mine foreperson or foreperson must pay a fee of \$10 to the Chief of the Division of Mineral Resources Management on the first day of examination. The bill instead requires an applicant to pay a fee established in rules adopted under the bill (see below).

In addition, the bill requires a person who has been issued a certificate as a mine foreperson or a foreperson of a gaseous mine or nongaseous coal mine and who has not worked in an underground coal mine for a period of more than two calendar years to apply for and obtain recertification from the Chief in accordance with rules adopted under the bill before performing the duties of a mine foreperson or a foreperson of a gaseous mine or nongaseous coal mine, as applicable. An applicant for recertification must pay a fee established in rules adopted under the bill at the time of application for recertification.

The bill also requires a person who has been issued a certificate as a mine foreperson or a foreperson of a gaseous mine or nongaseous coal mine and who has not worked in an underground coal mine for a period of one or more calendar years to successfully complete a retraining course in accordance with rules adopted under the bill before performing the duties of a mine foreperson or a foreperson of a gaseous mine or nongaseous coal mine, as applicable.

Under the bill, the Chief, in consultation with a statewide association representing the coal mining industry and a statewide association representing employees of coal mines, must adopt rules in accordance with the Administrative Procedure Act that do all of the following:

(1) Prescribe requirements, criteria, and procedures for the recertification of a mine foreperson or a foreperson of a gaseous mine or nongaseous coal mine who has not worked in an underground coal mine for a period of more than two calendar years;

(2) Prescribe requirements, criteria, and procedures for the retraining of a mine foreperson or a foreperson of a gaseous mine or nongaseous coal mine who has not worked in an underground coal mine for a period of one or more calendar years;

(3) Establish fees for the examination and recertification of mine forepersons or forepersons of gaseous mines or nongaseous coal mines under the bill; and

(4) Prescribe any other requirements, criteria, and procedures that the Chief determines are necessary to administer the bill's requirements governing recertification and retraining.

Finally, current law requires the Chief to issue certificates to applicants who pass their examination for specified mine positions, including mine forepersons and forepersons of gaseous or nongaseous mines, as applicable. It specifies that any certificate that was issued by the former Mine Examining Board prior to October 29, 1995, remains in effect notwithstanding the classifications of certificates established in current law. The bill specifies that the provision regarding continuation of certificates does not apply to the bill's requirements governing recertification.

**Immunity from civil liability for mine rescue crews and Division of Mineral Resources Management employees**

(R.C. 1561.26, 1561.261, and 1565.15)

Current law requires the Superintendent of Rescue Stations in the Division of Mineral Resources Management to train and employ rescue crews of six members each at the four rescue stations that the Division is required to establish and maintain in the state. The Superintendent must train and employ the number of rescue crews that the Superintendent believes necessary. One member of each crew must be certified as a mine foreperson or fire boss and be designated captain. In addition, one member of each rescue crew must be certified as an EMT-basic, EMT-1, or paramedic. The bill adds mine medical responder to that list and defines "mine medical responder" as a person who has satisfied the requirements established in rules adopted under the bill (see "**Mine medical responders**," below).

The bill then states that no member of a mine rescue crew who performs mine rescue at an underground coal mine and no operator of a mine whose employee participates as a member of such a mine rescue crew is liable in any civil action that arises under Ohio laws for damage or injury caused in the performance of rescue work at an underground coal mine. However, a member of such a mine rescue crew may be liable if the member acted with malicious purpose, in bad faith, or in a wanton or reckless manner. The bill states that the immunity established by the bill does not eliminate, limit, or reduce any immunity from civil liability that is conferred on a member of such a mine rescue crew or an operator by any other Ohio statute or by case law.

Additionally, the bill provides that except for civil actions in which the state is the plaintiff, no employee of the Division who performs rescue work at an underground coal mine is liable in any civil action that arises under Ohio laws for damage or injury caused in the performance of rescue work at an underground coal mine unless the employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner. The bill states that the immunity established by the bill does not eliminate, limit, or reduce any immunity from civil liability that is conferred on an employee of the Division by any other Ohio statute or by case law.

### **Mine medical responders**

(R.C. 1565.15)

Current law requires the operator of an underground coal mine where 20 or more persons are employed on a shift, including all persons working at different locations at the mine within a ten-mile radius, to provide at least one EMT-basic or EMT-I on duty at the mine whenever employees at the mine are actively engaged in the extraction, production, or preparation of coal. The operator must provide EMTs-basic or EMTs-I on duty at the mine at times and in numbers sufficient to ensure that no miner works in a mine location that cannot be reached within a reasonable time by an EMT-basic or an EMT-I. EMTs-basic and EMTs-I must be employed on their regular coal mining duties at locations convenient for quick response to emergencies in order to provide emergency medical services inside the underground coal mine and transportation of injured or sick employees to the entrance of the mine. Current law also requires the operator to make available to EMTs-basic and EMTs-I all of the equipment for first aid and emergency medical services that is necessary for those personnel to function and to comply with the regulations pertaining to first aid and emergency medical services that are adopted under the Federal Mine Safety and Health Act. The operator must install telephone service or equivalent facilities that enable two-way voice communication between the EMTs-basic or EMTs-I in the mine and the emergency medical service organization outside the mine that provides emergency medical services on a regular basis.

The bill adds mine medical responders to all of the above. It then requires the Chief, in consultation with persons certified under the Division of Emergency Medical Services Law to teach in an emergency medical services training program, to adopt rules in accordance with the Administrative Procedure Act that do all of the following:

(1) Prescribe training requirements for a mine medical responder that specifically focus on treating injuries and illnesses associated with underground coal mining;

- (2) Prescribe an examination for a mine medical responder;
- (3) Prescribe continuing training requirements for a mine medical responder;
- (4) Establish the fee for examination for a mine medical responder; and
- (5) Prescribe any other requirements, criteria, and procedures that the Chief determines are necessary regarding the training, examination, and continuing training of mine medical responders.

As indicated above, "mine medical responder" is defined as a person who has satisfied the requirements established in the rules.

The bill also provides that if a person qualifies as a mine medical responder or similar classification in another state, the person may provide emergency medical services as a mine medical responder in Ohio without completing the training or passing the examination that is required in rules adopted under the bill, provided that the Chief determines that the person's qualifications from the other state satisfy all of the applicable requirements that are established in those rules.

**Tag lines and tie-off lines**

(R.C. 1567.64)

The bill requires the operator of an underground coal mine to provide tag lines or tie-off lines for each miner at the mine. The bill defines "tag lines" and "tie-off lines" to have the same meanings as in rules adopted under the bill as discussed below. The operator must provide and employees of the mine must use tag lines or tie-off lines in accordance with requirements and procedures established in those rules. The Chief, in consultation with a statewide association representing the coal mining industry and a statewide association representing employees of coal mines, must adopt rules in accordance with the Administrative Procedure Act concerning the use of tag lines or tie-off lines in an underground coal mine. The rules must include all of the following:

- (1) A definition of "tag line" and of "tie-off line";
- (2) A description or list of acceptable tag lines and tie-off lines;
- (3) Procedures and requirements for the use of tag lines and tie-off lines;
- (4) Procedures for the approval and inspection of the use of tag lines and tie-off lines in a mine; and

(5) Any other requirements concerning tag lines or tie-off lines that the Chief determines are necessary.

The bill prohibits an operator of a mine from refusing or neglecting to comply with the bill's provisions discussed above or rules adopted under them. Violation is a minor misdemeanor.

### **Fire detection devices**

(R.C. 1567.681)

The bill requires the operator of an underground coal mine that uses conveyor belts in the operation of the mine to install fire detection devices on each conveyor belt that is used in the mine. The fire detection devices must be of a design and type established in rules adopted under the bill as discussed below. The Chief must inspect the fire detection devices after the operator of the mine has installed them on the conveyor belts that are used in the operation of the mine. The Chief must approve or disapprove the installation of the fire detection devices and must notify the operator of the Chief's decision.

The bill requires the Chief, in consultation with a statewide association representing the coal mining industry and a statewide association representing employees of coal mines, to adopt rules in accordance with the Administrative Procedure Act concerning the installation and use of fire detection devices on conveyor belts that are used in an underground coal mine. The rules must include all of the following:

(1) The design and types of fire detection devices that must be used on a conveyor belt in order to provide for the earliest possible detection of a fire;

(2) The number of fire detection devices that are required on a conveyor belt;

(3) A procedure for the notification of the Chief after the operator of a mine has installed the fire detection devices;

(4) A procedure for the inspection of fire detection devices installed on a conveyor belt; and

(5) Any other requirements that the Chief determines are necessary.

The bill prohibits an operator of a mine from refusing or neglecting to comply with the bill's provisions discussed above or rules adopted under them. Violation is a minor misdemeanor.

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## DEPARTMENT OF PUBLIC SAFETY

- Requires the Department of Natural Resources and the Department of Public Safety to seek all available federal money to assist the City of Findlay in rebuilding infrastructure or building preventative infrastructure with respect to flood mitigation and preparation.

### Federal money to assist Findlay with flood mitigation and preparation infrastructure

(Section 715.10)

The bill requires the Department of Natural Resources and the Department of Public Safety to seek all available federal money to assist the City of Findlay in rebuilding infrastructure or building preventative infrastructure with respect to flood mitigation and preparation.

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## PUBLIC EMPLOYEES RETIREMENT SYSTEM

- Revises the penalties assessed against employers who fail to timely transmit to the Public Employees Retirement System (PERS) employee retirement contributions or required reports of those contributions.
- Requires that PERS recalculate any penalty an employer incurred during the period beginning April 1, 2006, and ending immediately prior to the effective date of the amendment of existing law for a late payment or report of employee contributions, if PERS receives the recalculated amount not later than 30 days after the effective date of the amendment of existing law.

### PERS late penalties

(R.C. 145.47; Section 701.10)

Each public employee is required to contribute a percentage of the employee's salary to PERS. Each employer of a covered employee is required to deduct that contribution from the employee's salary and transmit a warrant or check for the total amount to PERS. The employer is also required to submit a

report of the contributions to PERS. The bill revises the penalties PERS is required to impose on an employer who fails to timely transmit a report or employee contributions.

Under current law, PERS is required to impose a penalty of 5% of the total amount due in a reporting period if the report or employee contributions are received later than 30 days after the end of the reporting period. Interest is to be charged on the penalty if it is not paid within three months.

Under the bill, unless the PERS Board adopts a rule establishing a different penalty, penalties for failing to transmit a report or contributions when due are as follows:

- (1) At least one but not more than ten days past due, an amount equal to 1% of the total amount due during the payment period;
- (2) At least 11 but not more than 30 days past due, an amount equal to 2.5% of the total amount due;
- (3) 31 or more days past due, an amount equal to 5% of the total amount.

The bill authorizes the Board to adopt rules to establish penalties in amounts that do not exceed the statutory limits. The bill continues current law that permits PERS to set the interest rate on penalties that are not timely paid, but requires that the interest on the penalty be charged if the penalty is not paid within 30 days (rather than three months under current law). The bill also permits an employer to make an electronic payment for the contributions, in addition to a warrant or check for the contributions.

The bill requires PERS to recalculate any penalty an employer incurred during the period beginning April 1, 2006, and ending immediately prior to the effective date of the amendment of existing law for a late payment or report, if PERS receives the recalculated amount not later than 30 days after the effective date of the amendment of existing law. Penalties are to be recalculated in accordance with the revised penalty schedule described above. If an employer fails to pay the recalculated penalty, PERS is to reinstate the original penalty. If an employer fails to pay the reinstated penalty, that amount is to be withheld from the employer on certification by the PERS Board to the Director of Budget and Management or the county auditor.

The bill provides that if an employer, prior to the effective date of the amendment of existing law, paid the full penalty, PERS is to credit the difference between the penalty amount paid and the recalculated penalty to reduce amounts

owed by the employer under existing law. PERS is required to complete the credit not later than six months after the effective date of the amendment of existing law.

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## PUBLIC UTILITIES COMMISSION OF OHIO

- Requires the Public Utilities Commission (PUCO), no earlier than January 1, 2009, to assess service providers for the cost of providing telecommunications relay service (TRS) provided through a TRS provider to the hearing and speech impaired in Ohio, but limits the aggregate assessment from all service providers to the total TRS costs.
- Permits service providers to recover the TRS assessment from their customers and provides for annual reconciliation regarding the assessment.
- Requires the PUCO to protect the confidentiality of information provided by service providers under the TRS assessment requirements of the bill.
- Imposes a forfeiture on service providers that fail to comply with the bill's requirements.
- Grants the PUCO jurisdiction and authority to administer and enforce the bill's requirements and requires the PUCO to adopt rules under Chapter 119. of the Revised Code to establish the assessment amounts and procedures.
- Adds regional transit authorities to the list of political subdivisions that may enter into energy price risk management contracts, defines such a contract as intending to mitigate, rather than mitigating, energy price volatility, and expressly states that such a contract is not an investment under the public depository law governing investment of political subdivision interim moneys.
- Alters the competitively bid standard service offer load "ramp up" percentages applicable to the first five years of the first market rate offer filed by any electric distribution utility that owns Ohio generating assets as of July 1, 2008.
- Authorizes the Power Siting Board to certificate and regulate a wind farm with an aggregate capacity of five or more but less than 50 megawatts, and prohibits local limitations on such wind farms.

- Authorizes counties and townships to zone a wind farm with an aggregate capacity of less than five megawatts, and conforms municipal zoning statute to county and township statutory authority to zone such wind farms.
- Changes the basis for a PUCO determination of the portion of a rate or price phase-in surcharge that customers of a governmental electric aggregation must pay to an electric distribution utility with a market rate offer or electric security plan, from the benefits that the customers as an aggregated group receive, to the benefits that the electric load centers within the jurisdiction of the governmental aggregation receive as a group.
- Changes the prohibition that a utility not collect a charge for standby service refused by such an aggregation, so that, instead of the utility being prohibited from collecting a charge from customers in the aggregation "to whom electricity is delivered," it is prohibited from collecting from customers in the aggregation "to whom competitive retail electric generation service is provided by another supplier."

### **Telecommunications relay service requirement--background and current law**

Federal law requires telecommunications services to be available to the hearing-impaired and speech-impaired throughout the country. It ensures such services are available by requiring each common carrier to provide telecommunications relay service (TRS) throughout the area in which it offers telephone voice transmission services.<sup>72</sup> A TRS operates by allowing people with hearing and speech impairments to place and receive telephone calls, without a per use charge, through the use of communications assistants who facilitate these calls.<sup>73</sup> The actual service may be provided by the common carrier individually,

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<sup>72</sup> Under federal law, a "common carrier" is any common carrier engaged in interstate or intrastate communication by wire or radio. "Telecommunications relay service" is telephone transmission service that allows an individual with a hearing or speech impairment to communicate by wire or radio with a hearing individual in a manner functionally equivalent to the ability of an individual with no such impairments to communicate using voice communication by wire or radio. (47 U.S.C. 225.)

<sup>73</sup> Federal Communications Commission, "FCC Consumer Facts: Telecommunications Relay Service," <<http://www.fcc.gov/cgb/consumerfacts/trs.html>>.

through designees, through a competitively selected vendor, or in concert with other carriers.

Although federal law mandates both interstate and intrastate TRS, common carriers providing intrastate TRS in compliance with a certified state program are deemed in compliance with the federal requirement. Ohio has such a certified state program for providing intrastate TRS. Sprint Nextel, a competitively selected vendor, currently provides Ohio's intrastate TRS.<sup>74</sup>

### **The bill**

(R.C. 4905.84)

Generally, the bill permits the Public Utilities Commission (PUCO) to administer an assessment on service providers to fund the intrastate TRS and provides mechanisms to do so. It also gives the PUCO the jurisdiction necessary to enforce and administer the TRS requirement.

### **Assessment**

The bill requires the PUCO, not earlier than January 1, 2009, to impose on and collect from each service provider required to provide customer access to TRS under federal law an annual assessment to pay the costs incurred by the TRS provider for providing such service in Ohio. Although the bill does not expressly define the term "service provider," it specifies that the PUCO must determine the appropriate service providers that will be required to pay the assessment and specifically includes, as service providers, telephone companies, commercial mobile radio service providers, and providers of advanced services or internet protocol-enabled services that are competitive with or functionally equivalent to basic local exchange service.<sup>75</sup> Furthermore, the bill does not define "federal law," although it probably refers to the provisions of the Americans with Disabilities Act that impose a TRS requirement on common carriers engaged in wire or radio

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<sup>74</sup> In the matter of the Commission Investigation Into Continuation of the Ohio Telecommunications Relay service, Case No. 01-2945-TP-COI (October 24, 2007). See also Federal Communications Commission, "Ohio TRS Page," <[http://www.fcc.gov/cgb/dro/trs\\_ohio.html](http://www.fcc.gov/cgb/dro/trs_ohio.html)>. Additional information on Ohio's TRS provider can be found at <<http://www.ohiorelay.com>> and select "Relay Ohio."

<sup>75</sup> A "telephone company" is a person or entity engaged in the business of transmitting telephonic messages to, from, through, or in Ohio, and as such is a common carrier. (R.C. 4905.03(A)(2).)

communication.<sup>76</sup> The bill defines "TRS provider" as an entity selected by the PUCO as the TRS provider for Ohio as part of the PUCO's intrastate TRS certified program.

Under the bill, the PUCO must allocate the TRS assessment proportionately among the appropriate service providers using a competitively neutral formula based on the number of retail intrastate customer access lines or their equivalent. The bill limits the total amount assessed from all service providers to the total TRS costs. The PUCO must deposit the money it collects pursuant to the assessment into the telecommunications relay service fund, which the bill creates in the state treasury, and this money may be used only to compensate the TRS provider. When issuing the assessment, the PUCO must annually reconcile the amounts collected from the assessment with the actual costs of providing TRS and must recover assessment underpayments and reimburse overpayments through a proportionate charge on, or credit to, the service providers. Furthermore, the bill permits each service provider paying the assessment to recover the assessment through any recovery method, including a customer billing surcharge.

### **Forfeiture**

The bill authorizes the PUCO to assess a forfeiture of not more than \$1,000 on any service provider failing to comply with the bill's requirements, with each day's continuance of the failure constituting a separate offense. The bill requires the forfeiture to be recovered in accordance with current law governing the recovery of PUCO forfeitures.

### **Confidentiality**

The bill authorizes the PUCO to take measures it considers necessary to protect the confidentiality of the information provided to it by service providers required to pay the assessment.

### **Jurisdiction and authority**

The bill grants the PUCO jurisdiction and authority limited to the administration and enforcement of the bill's requirements. To this end, the bill authorizes the PUCO to adopt any necessary rules. The bill also requires the PUCO to adopt rules under Chapter 119. of the Revised Code to establish assessment amounts and procedures.

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<sup>76</sup> 47 U.S.C. 225. The bill also uses the definition used in federal law for "telecommunication relay service," but with some alteration.

### **Energy price risk management contracts**

(R.C. 9.835)

Recently enacted Am. Sub. S.B. 221 of the 127th General Assembly (regarding state energy policy) authorizes the state and counties, cities, villages, townships, park districts, and school districts to enter into energy price risk managements contracts to mitigate the price volatility of energy sources, including natural gas, gasoline, oil, and diesel fuel. The bill adds regional transit authorities. It also describes such a contract as *intending to* mitigate such price volatility. In addition, the bill expressly states that "[a]n energy price risk management contract is not an investment" for purposes of public depository law (R.C. 135.14, not in the bill) governing investment of political subdivision interim moneys.

### **Electric distribution utility five-year ramp-up to market**

(R.C. 4928.142)

Am. Sub. S.B. 221 of the 127th General Assembly authorizes electric distribution utilities to choose between pricing its retail generation service under a PUCO-approved electric security plan or a PUCO-approved, competitively bid market rate offer (MRO). However, an electric distribution utility that files for an MRO and that, on the act's effective date (July 31, 2008), directly owns operating generating facilities that had been used and useful in Ohio is limited regarding how much of its standard service load it can bid out in the first five years of its first MRO and, during those five years, must provide generation service to its standard service offer customers at a blended market/regulated price. The act states the respective percentages for each of the five years and requires the PUCO to determine the actual percentage in each year "consistent with those percentages." It provides that the first year percentage is fixed at 10% and that the remaining percentages of 20%, 30%, 40%, and 50% are minimum percentages. The effect is that the first year percentage must be 10%, but the percentages in each of the following years can be at some percentage above the respective minimum as the PUCO so determines.

The bill makes the percentages in years 1, 3, 4, and 5, a fixed 10%, 30%, 40%, and 50%, respectively, and the percentage for year 2 a maximum percentage of 20%. Thus, the PUCO'S discretion to determine the actual percentage appears to apply only in year 2, within the 20% maximum.

### **Wind farm siting and other regulation**

(R.C. 303.213, 519.213, 718.081, 4906.13, 4906.20, and 4906.98)

The bill addresses state and local siting and other regulation of wind farms. These wind farm provisions take immediate effect upon the bill's passage. Generally under the bill, a "wind farm" refers to wind turbines and associated facilities with a single interconnection to the electrical grid.

### **Power Siting Board (PSB) regulation**

Under continuing law, the PSB is responsible for certificating for siting purposes any electric generating facility designed for, or capable of, operation at a capacity of 50 megawatts or more, which authority applies to a wind farm of that size. The bill extends that PSB authority to a wind farm that is designed for or is capable of an aggregate capacity of five or more but less than 50 megawatts (expressly excluding such wind farms in operation on the bill's effective date). It designates a wind farm in that size range as an "economically significant wind farm." Initial rules governing such wind farm certifications must be adopted within 120 days. The rules must provide for an application process and a reasonable application fee structure that are modeled on the process and fee structure that applies to large facilities.

The bill authorizes the PSB to approve, or modify and approve, a certification application if it finds that the construction, operation, and maintenance of the wind farm will comply with the rules adopted under the bill, as described below. The certificate must be conditioned on the wind farm also complying with rules adopted under continuing law by the Ohio Department of Transportation regarding the height and location of structures near airports (R.C. 4561.32, not in the bill). Identical for large facilities under continuing PSB law, the bill permits a certificate for an economically significant wind farm to be transferred, subject to PSB approval, to any person that agrees to comply with the certificate's terms, conditions, and modifications.

Also identical as to large facilities, the bill provides a fine of \$1,000 to \$10,000/day/violation, or imprisonment for up to one year, or both for any person that constructs an economically significant wind farm without obtaining a PSB certificate, constructs, operates, or maintains such a wind farm other than in compliance with its certificate, or fails to comply with any PSB order or with a PSB suspension of facility activity order.

Board rules under the bill also must prescribe reasonable regulations regarding any wind turbines and associated facilities of an economically significant wind farm, including, but not limited to, their location, erection,

construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement and including erosion control, aesthetics, recreational land use, wildlife protection, interconnection with regional transmission organizations, independent transmission system operators, or similar organizations, ice throw, sound and noise levels, blade shear, shadow flicker, decommissioning, and necessary cooperation for site visits and for PSB enforcement investigations.

The rules also must prescribe a minimum setback for any wind turbine of an economically significant wind farm. That minimum must be equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to 1.1 times the total height of the turbine structure as measured from its base to the tip of its highest blade and must be at least 750 feet in horizontal distance from the tip of the turbine's nearest blade at 90 degrees to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property at the time of the certification application.

The bill provides that the setback applies in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property pursuant to a procedure the PSB must establish by rule or in which, in a particular case, the PSB determines that a setback greater than the statutory minimum is necessary.

### **Local regulation**

Continuing PSB law prohibits a public agency or political subdivision requiring any approval, consent, permit, certificate, or other condition for the construction or initial operation of a PSB-certificated large facility, with the exception of (1) state laws for the protection of employees constructing the facility and (2) municipal regulations that do not pertain to the location or design of, or pollution control and abatement standards for, a large, certificated facility. The bill extends this prohibition and the exceptions to certificated economically significant wind farms.

Additionally, the bill affects local zoning by expanding county and township authority and prescribing municipal authority. Under continuing law, counties and townships cannot zone a "public utility" (which arguably would include a wind farm), although zoning of certain telecommunications towers can be triggered pursuant to continuing law provisions. Statute does not restrict municipal zoning of utilities, however, and municipal zoning is a Home Rule authority granted pursuant to Section 3, Article XVIII of the Ohio Constitution, which confers on municipalities "the powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

The bill authorizes county and township zoning of "small wind farms" and prescribes municipal zoning of such wind farms. As defined, a "small wind farm" is a wind farm designed for or capable of operation at an aggregate capacity of less than five megawatts.

Under the bill, county, township, and municipal zoning can address the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of a small wind farm and can be stricter than any such regulations prescribed in PSB rules governing economically significant wind farms.

The bill's local zoning provisions also state that the designation of a small wind farm as a public utility under local zoning statutes does not affect such a farm's classification for purposes of state or local taxation.

### **Governmental electric aggregation**

(R.C. 4928.20)

Am. Sub. S.B. 221 of the 127th General Assembly authorizes the PUCO to order a just and reasonable phase-in of any generation rate or price of an electric distribution utility under an electric security plan or market rate offer the PUCO approves under that act and authorizes PUCO approval of a nonbypassable, customer surcharge covering any regulatory asset deferrals arising under such phase-in. It additionally provides, however, that customers of a governmental electric aggregation are responsible only for a portion of the surcharge that is proportionate to the benefits, as determined by the PUCO, "that the governmental aggregation's customers as an aggregated group receive." The bill changes this provision so that the portion of the surcharge must be proportionate to the PUCO-determined benefits "that electric load centers within the jurisdiction of the governmental aggregation as a group receive."

In addition, under S.B. 221, the utility is prohibited from charging customers in the aggregation "to whom electricity is delivered" for standby service the aggregation has refused. The bill changes this prohibition so that it prohibits charging customers in the aggregation "to whom competitive retail electric generation service is provided by another supplier."

The bill also corrects the cross reference to the provision of S.B. 221 (R.C. 4928.143(B)(2)(d)) in which the concept of "standby service" appears. Neither that act nor the bill define "standby service," except that standby service is expressly distinguished in R.C. 4928.143(B)(2)(d) from default service, back-up service, and supplemental power service.

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## BOARD OF REGENTS

- Qualifies students enrolled in a nursing diploma program approved by the Ohio Board of Nursing for the Ohio College Opportunity Grant (OCOG).
- Qualifies for OCOG students who first enroll in 2008-2009 in privately sponsored programs that do not have certificates of authorization from the Board of Regents, but only if the sponsor has an application for a certificate of authorization pending as of July 1, 2008.
- Changes the measure the Chancellor must use to adjust the bidding threshold for capital improvements for community colleges, university branches, and technical colleges.
- Transfers the Distance Learning Clearinghouse from the eTech Ohio Commission to the Chancellor of the Board of Regents, expands access to the clearinghouse to include public and private colleges and universities and other nonprofit and for-profit course providers (in addition to school districts, community schools, and STEM schools as under current law), and authorizes the Chancellor to contract with another entity to operate the clearinghouse.
- Specifies that the Chancellor of the Board of Regents may restructure previously existing higher education consortia.
- Allows the treasurer of the Ohio State University, Bowling Green State University, Kent State University, Central State University, Cleveland State University, Wright State University, Youngstown State University, University of Akron, University of Cincinnati, and University of Toledo to be insured, rather than bonded.
- Removes the requirement that the Attorney General approve the bond amount for treasurers of certain state universities.
- Eliminates the requirement that the bond (or insurance) for the Ohio State University treasurer cover the probable amount that will be under the treasurer's control in any one year.
- Adds Cleveland State University as one of the collaborative institutions of the Northeastern Ohio Universities College of Medicine (NEOUCOM).

- Changes the membership of the board of trustees of NEOUCOM from a nine-member board consisting of presidents, board members, and appointees of each of the collaborative universities to an eleven-member board appointed by the Governor, with the advice and consent of the Senate, including two nonvoting student members.
- Requires the Governor to consult with the Speaker of the House and the Senate President prior to making initial appointments to the new NEOUCOM board.
- Codifies the Ohio Appalachian Center for Higher Education at Shawnee State University.

### **OCOG grants**

#### **Nursing students**

(R.C. 3333.122)

The bill qualifies for the Ohio College Opportunity Grant (OCOG) nursing students who are enrolled in a prelicensure nursing education diploma program that is approved by the Ohio Board of Nursing and meets the requirements of Title VI of the Civil Rights Act of 1964.

#### **Privately sponsored programs**

(Section 733.50)

Under current law, students who first enroll after the 2007-2008 academic year in a privately sponsored education program that is at least two years long qualify for OCOG *only* if the sponsor has a certificate of authorization from the Board of Regents. The bill qualifies students who first enroll in the 2008-2009 academic year in privately sponsored education programs that do not have certificates of authorization, if the sponsor has an application for a certificate of authorization pending as of July 1, 2008.

### **Contract bidding thresholds for two-year colleges**

(R.C. 3354.16, 3355.12, and 3357.16)

Under current law, every even-numbered year, the Chancellor of the Board of Regents must adjust the statutory \$50,000 threshold requiring competitive

bidding for capital improvements at community colleges, state community colleges, university branches, and technical colleges. Currently, the Chancellor must do so according to the average increase or decrease for the preceding two years in the U.S. Department of Commerce, Bureau of the Census, "Implicit Price Deflator for Construction," provided that no increase or decrease can exceed 3% of the threshold at the time of the adjustment. That metric is now defunct, and the bill changes the measure to the U.S. Department of Commerce, Bureau of Economic Analysis, "Implicit Price Deflator for Gross Domestic Product, Nonresidential Structures," or an alternative (presumably chosen by the Chancellor) if the federal government ceases to publish that metric.

### **Distance learning clearinghouse**

(R.C. 3333.81 to 3333.88 and Section 733.30; conforming changes in R.C. 3317.023 and repealed R.C. 3314.086, 3317.161, 3353.23, 3353.24, 3353.25, and 3353.30)

### **Background**

Am. Sub. H.B. 119 of the 127th General Assembly required the eTech Ohio Commission to establish a clearinghouse of interactive and other distance learning courses delivered by a computer-based method that are offered by school districts to students of other school districts and community schools for a statutorily prescribed fee.<sup>77</sup> The Department of Education is required to deduct the fee for each course taken from the school district or community school in which the student is enrolled and pay that amount to the district delivering the course.

The Commission has begun developing the clearinghouse but has not yet completed that work. At the present time, the Commission expects to have the clearinghouse ready for students to enroll in courses in the fall of 2008 and to begin participating in those courses in the spring of 2009.

### **The bill**

The bill transfers the clearinghouse to the Chancellor of the Board of Regents and expands its scope. Under the bill, school districts, community schools, STEM schools, state institutions of higher education, private colleges and universities, and other nonprofit and for-profit course providers may offer courses through the clearinghouse for sharing with other school districts, community schools, STEM schools, state institutions of higher education, private colleges and universities, and individuals. The Chancellor must develop and administer a

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<sup>77</sup> The prescribed fee amount is \$175 for one-half unit (60 hours) of classroom instruction, unless a different amount is set by rule of the eTech Ohio Commission.

"common statewide platform" to support the delivery of courses, but, just as is specified under current law, the provider is solely responsible for the course content. Under the bill, a common statewide platform is a "software program that facilitates the delivery of courses via computers from multiple course providers to multiple end users, tracks the progress of the end user, and includes an integrated searchable database of standards-based course content."

Unlike under current law, the bill specifies that the fee for each course is prescribed by the course provider, who is also responsible for paying the cost of installing the course into the common statewide platform. Also, the Chancellor is required to determine how the course fees are collected or deducted from the school district, school, college or university, or individual subscribing to the courses and how the fees are paid to the course providers. Under the bill, the Department of Education will not be required to deduct or pay any amounts for courses taken by students in public schools. In addition, the Chancellor is permitted to retain a percentage of the fees charged to offset the cost of maintaining and operating the clearinghouse.

Moreover, the Chancellor may contract with another entity to perform any or all of the Chancellor's duties related to the clearinghouse. The Chancellor may use some or all of the amount of the course fee retained by the Chancellor to pay the contractor.

### **Board of Regents consortia**

(R.C. 3333.04(V))

The Chancellor of the Board of Regents under current law is authorized to appoint consortia to "participate" in the development and operation of statewide collaborative efforts, including (presumably among others) the Ohio Supercomputer Center, the Ohio Academic Resources Network, OhioLink, and the Ohio Learning Network.

The bill specifically permits the Chancellor to restructure existing consortia in accordance with existing general procedures adopted by the Chancellor for actions taken by the Chancellor.<sup>78</sup> It also specifies that a consortium may be asked to "advise" as well as participate in statewide collaborative efforts. Most of the existing consortia likely were established by the Board of Regents under law in

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<sup>78</sup> The procedures referred to include provisions relating to public notice of the action, opportunity for public comment, and timelines for the action to be completed (R.C. 3333.04(O)).

effect prior to May 15, 2007, when the Chancellor took over most of the Board's duties.<sup>79</sup>

**Insurance for treasurers of state universities**

(R.C. 3335.05, 3341.03, 3343.08, 3344.02, 3352.02, 3356.02, 3359.02, 3361.02, and 3364.02)

Current law requires the treasurer of the Ohio State University, Bowling Green State University, Kent State University, Central State University, Cleveland State University, Wright State University, Youngstown State University, University of Akron, University of Cincinnati, and University of Toledo to post bond for an amount at least equal to the estimated amount of money which may come into the treasurer's control at any time. Current law also requires that the bond be approved by the Attorney General.

The bill allows each treasurer to be insured, rather than bonded, for the amount of money in the treasurer's sole control, minus "a reasonable deductible." The bill also eliminates the necessity for the Attorney General to approve the bond. Further, the bill removes the requirement that the bond (or insurance) for the treasurer of the Ohio State University cover the probable amount that will be under the treasurer's control in any one year.

The bill does not affect the treasurer of Ohio University or Miami University, neither of whom current law requires to be bonded. Moreover, current law already provides the insurance option for the treasurer of Shawnee State University.

**Northeastern Ohio Universities College of Medicine**

(R.C. 3333.045, 3345.34, 3350.10; Section 733.60)

The University of Akron, Kent State University, and Youngstown State University are all collaborative universities of the Northeastern Ohio Universities College of Medicine (NEOUCOM). Under current law, the nine-member board of trustees of NEOUCOM consists of the presidents of each of those collaborative universities; a member of each board of trustees of those universities, whose terms of office are for six years; and one member appointed by each board of trustees, whose terms of office are for nine years.

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<sup>79</sup> Sub. H.B. 2 of the 127th General Assembly, effective May 15, 2007, transferred most of the Board's powers to the Chancellor.

The bill adds Cleveland State University as one of the collaborative institutions of NEOUCOM. In addition, effective 90 days after the effective date of the section (that is, 180 days after the bill becomes law), the bill changes the membership of NEOUCOM's board of trustees to 11 members, all appointed by the Governor with the advice and consent of the Senate. Two members of the board are nonvoting student members, whose terms of office are for two years (after the expiration of the initial appointee's terms). Student members are not counted in determining a quorum, nor are they entitled to attend executive sessions of the board.

All other members' terms of office are for nine years after the expiration of initial board members' staggered terms. Nine members must be appointed initially, with one term expiring annually and a successor named to a nine-year term. As with the membership of the boards of state universities, a trustee who has served six or more years of a nine-year term cannot be reappointed for at least four years after the member's term ends. As under current law for NEOUCOM, board members must serve without compensation, except for reasonable expenses incurred in discharging official duties.

The bill requires that the Governor consult with the Speaker of the House and the President of the Senate prior to making initial appointments to the board.

**Ohio Appalachian Center for Higher Education (OACHE)**

(R.C. 3333.58)

The bill codifies the creation of the Ohio Appalachian Center for Higher Education at Shawnee State University, its board of directors consisting of the presidents of Shawnee State University, Belmont Technical College, Hocking College, Jefferson Community College, Zane State College, Rio Grande Community College, Southern State Community College, Central Ohio Technical College (Coshocton campus), and Washington State Community College; the president of Ohio University, or the president's designee; the dean of either the Salem, Tuscarawas, or East Liverpool regional campus of Kent State University, as selected by the president of Kent State; and a representative of the Chancellor of the Board of Regents as designated by the Chancellor. The purpose of the center is "to increase the educational attainment of residents of Ohio's Appalachian region."

Past biennial budget acts, since at least 1997, have recognized the Center in temporary budget language, most recently in earmarks for fiscal years 2008 and 2009 from appropriation item 235-434, College Readiness and Access.<sup>80</sup>

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## **RESPIRATORY CARE BOARD**

### **Licensing of providers of home medical equipment services**

(R.C. 4752.05 and 4752.12; Section 737.10)

The Ohio Respiratory Care Board regulates providers of home medical equipment services. Licenses are issued to applicants that meet requirements established by the Board; certificates of registration are issued to applicants that have been accredited by the Joint Commission or another national accrediting body recognized by the Board. The Board issues or renews a license or certificate for a two-year period valid from July 1 of the first year through June 30 of the second year. Licenses or certificates are granted or renewed in even and odd-numbered years according to the initial issuance dates.

The bill establishes that a license or certificate will expire biennially only in even-numbered years. For licenses and certificates that are currently scheduled for renewal in an odd-numbered year, the bill requires the Board to renew the licenses and certificates in the next even-numbered year that occurs after the bill's effective date with a proportionate reduction in the renewal fee.

### **Waiving of the initial license fee**

(R.C. 4752.04 and 4752.11)

Currently, a provider of home medical equipment services must pay the full fee for an initial license or certificate regardless of when it is issued. The bill authorizes the Board to waive all or part of the fee if it determines that the license or certificate will be issued within the last six months of the biennial licensing or registration period.

### **Waiving of continuing education requirements**

(R.C. 4752.07)

Under current law, the holder of a license must require home medical equipment services providers in its employ or under its control to successfully

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<sup>80</sup> Section 375.20.50 of Am. Sub. H.B. 119 of the 127th General Assembly.

complete continuing education programs in home medical equipment services that meet the standards established by the Board.

The bill authorizes the Board to waive all or part of the continuing education requirements needed for the first renewal of a license that was issued in the last six months of the biennial licensing period.

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## SCHOOL FACILITIES COMMISSION

- Requires the calculation of an alternate ranking of school districts for FY 2008, based on open enrollment net gain for the previous year, for purposes of determining school districts' eligibility for assistance under the Classroom Facilities Assistance Program (CFAP) and their local shares in FY 2009.
- Requires the recalculation of the local share of a current project under CFAP for certain districts that had a net gain in open enrollment when they became eligible for assistance under the program.
- Requires the calculation of an alternative ranking, based on a one-year adjusted valuation per pupil, for FY 2009 funding under CFAP and the Exceptional Needs School Facilities Assistance Program for certain districts with large one-year reductions in tax valuation.
- Specifies the local share of new CFAP projects for school districts that previously received assistance under CFAP or the Exceptional Needs Program within the prior 20-year period.
- Increases from 2% to 3% the percentage of classroom facilities appropriations in FY 2008 that may be used for assistance to joint vocational school districts.
- Permits any school district participating in CFAP on or after the bill's effective date, to divide its entire facilities needs into segments, with each segment to proceed sequentially as a separate smaller project, and with the School Facilities Commission and the Controlling Board approving only one segment at a time.

**Background: school facilities assistance 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),<sup>81</sup> 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 (its "local share") 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.

A school district's priority for state assistance under CFAP is based on the district's three-year average "adjusted valuation per pupil," as calculated by the Department of Education. Under that calculation, the district's taxable "valuation per pupil" is modified by a factor of the income of the district's taxpayers. All districts annually are ranked from lowest to highest average adjusted valuation per pupil and placed in percentiles. A district's percentile ranking determines when the district will be served by CFAP. Also, for most districts, the portion of the basic project cost paid by the district is equal to its percentile ranking. For example, a district ranked in the 20th percentile would pay 20% of the cost of the project and the state would pay the remaining 80%. For some districts, the district portion of the project cost is calculated under an alternative formula based on the district's existing permanent improvement debt where relative wealth is also a factor. (See "**Local share of new projects for districts that previously received assistance**" below.)<sup>82</sup>

Other programs have been established to address the particular needs of certain types of districts. One of those programs is the Exceptional Needs School Facilities Assistance Program, which 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.<sup>83</sup>

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<sup>81</sup> R.C. 3318.01 to 3318.20.

<sup>82</sup> R.C. 3318.032. This alternative formula most likely would apply to a district with a small project cost and a relatively small amount of existing debt, other than debt from a prior state-assisted school facilities project. No district must pay more than 95% of the cost of its state-assisted project.

<sup>83</sup> R.C. 3318.37, not in the bill.

Another program is the Vocational Facilities Assistance Program, which is similar to CFAP but provides assistance specifically for joint vocational school districts. Again, priority for assistance and a district's local share are based on the district's relative wealth. But unlike CFAP, a joint vocational district's valuation per pupil is not adjusted for the income of taxpayers in the district.<sup>84</sup>

**Alternative ranking for FY 2009 funding based on open enrollment net gain**

(Section 733.13)

**Background: open enrollment net gain**

Prior to Am. Sub. H.B. 119 of the 127th General Assembly, effective September 29, 2007, "valuation per pupil" for purposes of calculating a district's percentile rank was defined as the district's average taxable value divided by its formula ADM (average daily membership) for the previous fiscal year. H.B. 119 added students who are enrolled in a school district under an interdistrict open enrollment policy to the district's formula ADM for purposes of calculating the district's "valuation per pupil," *if* the district's net gain in open enrollment students is at least 10% of its formula ADM. A district's net gain in open enrollment students is the difference between (1) the number of students who are enrolled in the district under the district's open enrollment policy but are entitled to attend school elsewhere and (2) the number of the district's native students who are enrolled in another district under that district's open enrollment policy.<sup>85</sup> Therefore, a district that has a sizable proportion of students come from outside the district through open enrollment may count some of those students in its "valuation per pupil."

This change has the effect of lowering the district's "valuation per pupil" and potentially placing it in a lower percentile in the eligibility rankings. As a result, the district could qualify for CFAP assistance earlier than under the law as it existed prior to H.B. 119, *and* it could pay a smaller local share of the basic project cost. This policy change, however, was not effective in time to affect the

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<sup>84</sup> R.C. 3318.40 to 3318.45, none in the bill. An income factor is not applied to joint vocational school districts mainly because they have significantly larger property valuations and more varied demographics than city, exempted village, or local school districts.

<sup>85</sup> R.C. 3318.011, as amended by Am. Sub. H.B. 119 of the 127th General Assembly. Each school district must have a policy on interdistrict open enrollment under which it either (1) permits enrollment of students from adjacent districts only, (2) permits enrollment of students from all other districts, or (3) prohibits interdistrict open enrollment altogether (R.C. 3313.98, not in the bill).

percentile ranking certified on September 5, 2007 (FY 2008), which is used to determine facilities funding in FY 2009. Under current law, that change will not affect funding determinations until FY 2010.

### **The bill**

The bill effectively accelerates by one year the policy of including open enrollment net gain in calculating a district's percentile ranking. Under the bill, the Department of Education must calculate and certify to the School Facilities Commission an alternative ranking to be used to determine school facilities funding for only FY 2009. The bill specifies that, when recalculating the alternative percentile rankings, the Department must use the same values for the other variables in the formula that it used in calculating the original ranking for FY 2008. (That is, updated values *cannot* be used for "average taxable value," "formula ADM," and "income factor.")

The School Facilities Commission is required by the bill to use the alternate ranking to determine the priority for CFAP assistance in FY 2009 for each school district that had not previously been offered funding under CFAP. The alternate ranking cannot affect any school district's eligibility for the Exceptional Needs Program, which continues to be based on actual need for a facility for health and safety reasons, compared with that of other districts.

For each school district that receives conditional approval of the district's project under CFAP or the Exceptional Needs Program in FY 2009, the district's portion of the basic project cost is to be the *lesser* of the following:

- (1) The amount required if the formula is calculated using the percentile in which the district ranks on the alternate ranking; or
- (2) The amount required if the formula is calculated using the percentile in which the district ranks on the original ranking for FY 2008.

### **Revised "look back" ranking based on open enrollment net gain for districts already receiving state assistance**

(R.C. 3318.033)

In addition to accelerating the effect of H.B. 119's change for districts awaiting state assistance, the bill permits certain districts that already are receiving state funding under CFAP to have the state and district shares of their projects recalculated to reflect their open enrollment net gain. This "look back" provision applies only if all of the following conditions are met:

(1) The School Facilities Commission approved the district's project after July 1, 2006, and prior to September 29, 2007;

(2) The project was not complete by September 29, 2007;

(3) The district's voters approved financing for the district share of the project cost; and

(4) In the fiscal year prior to the fiscal year in which the district's project was approved, the district had an open enrollment net gain of at least 10% of its formula ADM.

Under the bill, the Department of Education must recalculate the percentile ranking of every school district for the affected fiscal years by including the open enrollment net gain in the "valuation per pupil," and report that new ranking to the Commission. In turn, the Commission must use the recalculated percentile of any district that meets all of the prescribed conditions to recalculate the district's share of its project cost and, accordingly, must revise the Commission's agreement with the district to reflect the recalculated state and district shares.

**Alternative ranking for FY 2009 funding based on single-year adjusted valuation per pupil**

(Section 733.10)

The bill requires the Department of Education to calculate and certify to the School Facilities Commission another alternative ranking to be used to determine project funding for FY 2009 based on a one-year adjusted valuation per pupil, instead of a three-year average. That alternative equity list is based on the district's taxable valuation in tax year 2006 (ended December 31, 2006), the district's formula ADM for FY 2007 (ended June 30, 2007), and the district's income factor for FY 2007. The Commission must compare the alternative ranking to the original ranking certified on September 5, 2007. For any district ranked at least 15 percentiles lower on the alternative list than its rank on the original list, the Commission must use the alternative ranking to determine the district's share and priority for funding under CFAP and the district's share under the Exceptional Needs Program. In other words, a district with a large reduction in tax valuation in tax year 2006 may have a reduction in facilities project cost under the bill.

As in the case of the alternative ranking for FY 2009 to reflect open enrollment (as described above), the one-year adjusted valuation per pupil ranking does not affect a district's *eligibility* under the Exceptional Needs Program, only its

local share if it qualifies. The alternative list also does not affect any other district's priority for funding or share of its project cost.

**Local share of new projects for districts that previously received assistance**

(R.C. 3318.032)

**Background**

Current law specifies that a school district's share of a classroom facilities project is the *greater* of the following:

(1) The district's percentile ranking; or

(2) An amount that would raise the district's net bonded indebtedness to within \$5,000 of its "required level of indebtedness." The required level of indebtedness for districts in the first percentile is 5% of the district's valuation. For districts in subsequent percentiles, the required level of indebtedness is calculated under the following formula:

5% of the district's valuation + .0002 (the district's percentile ranking – 1).<sup>86</sup>

A district's net bonded indebtedness is the difference between the district's existing debt and the amount held in the sinking fund and other debt retirement funds of the district. The value of voter-approved bonds used to pay a portion of the district's share of a prior state-assisted facilities project is not included in calculating the district's existing debt.<sup>87</sup>

**The bill**

The bill specifies the district's share of a new CFAP project for districts that previously received assistance under CFAP or the Exceptional Needs Program within the 20-year period prior to the date on which the Controlling Board approves the new project. Under the bill, the district's share of a second project is the *lesser* of the following:

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<sup>86</sup> R.C. 3318.01(J), not in the bill. No district's share of a project, however, may exceed 95% of the basic project cost (R.C. 3318.032(C)). A district's valuation is the total value of all property in the district as assessed for tax purposes (R.C. 3318.01(P), not in the bill).

<sup>87</sup> R.C. 3318.01(F), not in the bill. Notes issued for school buses, notes issued in anticipation of the collection of current revenues, bonds issued to pay final judgments, and debt arising from the acquisition of a site for a classroom facilities project also are not included in a district's net bonded indebtedness.

- (1) The amount determined by the current formula described above; or
- (2) The *greater* of (a) the district's percentile ranking at the time of the second project or (b) the district's percentage share of the first project.

As noted above, under current law, if a district participates in a second classroom facilities project, debt incurred from the first project will not count toward the district's existing debt. Consequently, it would take a larger amount of new debt to increase the district's net bonded indebtedness to within \$5,000 of its required level of indebtedness, which would increase the district's share of the second project under the net bonded indebtedness calculation, even though it has already incurred debt from its first project.

But, the bill has the effect of lowering the district share of a second project for certain districts that would be subject to the net bonded indebtedness calculation under current law. It specifically benefits districts in which, under the existing formula, the district's share of the second project, as determined based on the district's net bonded indebtedness, is higher than both the district's percentile ranking at the time of the second project and the district's percentage share of its previous project. In that case, the bill removes net bonded indebtedness from the calculation and makes the district's share the higher of the district's percentile ranking or its previous share.

### **Temporary increase in set-aside for assistance to joint vocational school districts**

(Section 733.15)

Under current law, the School Facilities Commission annually may set aside up to 2% of the aggregate amount appropriated for classroom facilities assistance projects to provide assistance to joint vocational school districts participating in the Vocational School Facilities Assistance Program. The bill permits the Commission to increase this set-aside to 3% of total appropriations in FY 2008 only.

### **Segmenting projects**

(R.C. 3318.01, 3318.03, 3318.032, 3318.034, and 3318.04)

Ordinarily, when a school district undertakes a project under the main CFAP, the project will complete all of the district's facilities needs at once. On the other hand, the six urban districts participating in the Accelerated Urban School Building Assistance Program may divide their projects into segments and may complete each segment separately. However, the School Facilities Commission

and the Controlling Board must approve the entire project at the beginning of the first segment.

The bill permits other districts to segment their CFAP projects in a manner similar to, but slightly different from, that provided for the Accelerated Urban districts. Under the bill, a district that is eligible for CFAP assistance on or after the bill's effective date may opt to divide its entire classroom facilities needs, as determined jointly by the Commission staff and the district, into discrete segments. Unlike the Accelerated Urban Program, each of these segments will proceed as a separate project and each one will be approved separately by the voting members of the Commission and the Controlling Board. Each project agreement, however, must acknowledge that the project is only part of the district's needs. The district may proceed with future segments at a later time, as long as the district's wealth percentile at that time is eligible for assistance.

The proportionate state and district shares of each segment must be determined using the district's current percentile. Those percentages will not be locked in for future segments as they are under the Accelerated Urban program. Also, the maintenance levy requirement, for its entire facilities needs, runs only for 23 years from the date the *first* segment is begun.

### *Segment size*

(R.C. 3318.034(B))

To qualify for the new segmenting provision, each segment must meet all of the following conditions:

(1) The segment must consist of the new construction of one or more entire buildings or the complete renovation of one or more entire existing buildings, including any necessary additions to that building.

(2) The segment must not include any construction of or renovation or repair to any building that does not complete the needs of the district with respect to that particular building. A district may not receive assistance for additional work to that building for 20 years, unless the district demonstrates to the Commission's satisfaction that the district has experienced an "exceptional increase" in the student enrollment in that building since the segment was completed.

(3) Finally, the segment must consist of new construction, renovations, additions, reconstruction, or repair of classroom facilities to the extent that the school district share of the cost of the segment is not less than the amount that

would be generated by a 3-mill property tax of the district's taxable valuation for 23 years.<sup>88</sup>

**District portion of the cost of each segment**

(R.C. 3318.032)

Under the alternative method of calculating a district's portion of its project cost, a district's share must be at least enough to raise its net indebtedness to within \$5,000 of its "required level of indebtedness," the latter of which is partially based on the district's wealth percentile. The bill takes into account the fact that any one segment will not meet the entire facilities needs of the district. Therefore, the bill revises the alternative calculation to recognize the fraction of the district's needs addressed by each segment.

Under the bill, the district's portion of the cost of a segment is the *greater* of (1) the district's percentile rank or (2) the amount necessary to raise the district's net indebtedness to within \$5,000 of the district's required level of indebtedness X the fraction that the segment is of the total facilities needs of the district.

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**DEPARTMENT OF TAXATION**

- Requires vendors, sellers, and some consumers to file sales and use tax returns and pay the taxes electronically.
- Requires tax return preparers that file more than 75 original income tax returns or other tax payment documents in a calendar year to file them electronically.
- Classifies as a charitable institution eligible for real and tangible personal property tax exemption certain nonprofit organizations that assist in the development and revitalization of downtown urban areas, and applies the classification to pending property tax exemption applications.
- Exempts from the income tax grants received from the Military Injury Relief Fund.

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<sup>88</sup> The amount of the district's portion may be smaller than the 3-mill, 23-year standard, if the district previously undertook a segment and its portion of the estimated basic project cost of the remainder of its entire classroom facilities needs is less than the amount generated by a 3-mill, 23-year tax.

- Exempts from the income tax retired military personnel payments made to a surviving spouse or former spouse under the Survivor Benefit Plan.
- Changes the length of time a business must maintain operations to obtain a job retention tax credit (generally reducing the time), and reduces the associated "clawback."
- Exempts from the sales and use tax sales of machinery, equipment, and software to a "qualified direct selling entity" for use in a warehouse or distribution center primarily to store, transport, or handle inventory that is held for sale to independent salespersons who operate as direct sellers and that is held primarily for distribution outside Ohio; the qualified direct selling entity must have entered into jobs creation tax credit agreement on or after January 1, 2007, to be eligible for the exemption.
- Exempts from sales and use taxation sales of some aircraft and avionics repair and replacement parts and services.
- Exempts from sales and use taxation sales of full flight simulators and sales of repair parts and services for full flight simulators.
- Modifies the calculation of utility deregulation-related property tax replacement payments to school districts by neutralizing the state school funding effects of the phase-out of business tangible personal property taxes, delaying the eventual termination of those replacement payments.
- Shortens the timeline for the earliest effective date of a school district income tax rate reduction by specifying that the reduction takes effect January 1, if that date is at least 45 days after a copy of the resolution reducing the rate is certified to the Tax Commissioner, rather than the current 60 days.
- Requires the school district business personal property tax reimbursement calculation to be reconciled at the end and in the middle of each fiscal year.
- Specifies that school district levies enacted under R.C. 5705.213 are to be reimbursed through at least 2010, and thereafter until all renewals or successors to such a levy expire, until 2017.

- Extends the date by which the Department of Education and the Director of Budget and Management must annually consult to determine the state education aid offset used to compute school district tax losses from the business personal property phase-out.
- Authorizes a county or municipal corporation to extend the duration of a community reinvestment area tax exemption up to an additional ten years for an owner of certain residential real property of historical or architectural significance.
- Permanently authorizes a county with a population exceeding 400,000 to use up to \$3 million in its delinquent tax and assessment collection fund for foreclosure prevention and abating nuisances in the form of deteriorated residential buildings in foreclosure and temporarily authorizes a county to use up to the surplus amount in that fund for those purposes.
- Prohibits some counties and any convention facilities authority from imposing future excise taxes on cigarettes or alcoholic beverages (or both) to finance major league sports facilities.
- Prohibits any future county cigarette excise tax to fund a regional arts and cultural district's operations and facilities.
- Temporarily authorizes a board of township trustees of a township with a population exceeding 55,000 to adopt a tax increment financing (TIF) resolution by majority vote instead of unanimous vote.
- Includes the sale of "guaranteed auto protection" as a taxable sale.
- Includes any province of Canada as a "state" to which a nonresident of Ohio may remove and title a vehicle for purposes of qualifying for the nonresident motor vehicle sales tax exemption.
- Rephrases language governing the distribution of nonresident motor vehicle sales tax revenue to counties, potentially reducing county distributions.
- Limits to nonresident trusts the trusts that may claim an income tax credit for taxes paid to another state on their accumulated nonbusiness income.

- Clarifies that interest earnings from money in the Municipal Income Tax Fund is credited to the fund.
- Adds a reference to the Commercial Activity Tax (CAT) law as the appropriate law under which the Tax Commissioner may assess penalties against CAT taxpayers if they refuse to comply with the Commissioner's demand to inspect the taxpayer's books and other records or to examine under oath the taxpayer's employees, officers, or agents.
- Expressly authorizes the Department of Taxation to disclose information to the Department of Natural Resources that is needed to verify compliance with the coal severance tax.
- Expressly prohibits the Department of Natural Resources from publicly disclosing information received from the Department of Taxation for purposes of enforcing the coal severance tax.
- Requires the Department of Taxation, by April 1, 2009, to contract for and implement a "tax discovery data system" that consolidates tax data from various mainframe systems to assist in revenue analysis, discover noncompliant taxpayers, and collect taxes from them.
- Corrects a cross-reference error in a cigarette sales-related statute governing confidentiality of information obtained by the Tax Commissioner and provided to the Attorney General.
- Corrects a cross-reference in a criminal penalties statute prohibiting a consumer of cigarettes from knowingly providing false information to the Tax Commissioner on the consumer's application to receive a shipment of cigarettes from out of state.
- Modifies one of the alternative laws for creating joint economic development districts (JEDDs) to allow new residents to live in the JEDD after it is created, to permit residential zoning in the JEDD, and to provide that new residents will not pay the JEDD income tax unless they also work within the JEDD.
- Lengthens the maximum allowable life of school district "emergency" property tax levies from five years to ten years.

- Authorizes a school district, with voter approval, to "substitute" a levy for one or more existing emergency property tax levies for up to ten years, or for a continuing period of time; revenue from the substitute levy increases with the addition of taxable property to the tax list.
- Extends the authority to conduct delinquent property tax certificate sales to county treasurers of counties with a population of less than 200,000.
- Prohibits the sale of certificates relating to property owned by members of the National Guard or a reserve component of the armed forces called to active duty, their spouses, or their dependent parents.
- Authorizes the owner of a certificate purchased at a private sale to request that the prosecuting attorney file a foreclosure suit.
- Makes various procedural, clarifying, and technical changes to the law governing delinquent property tax certificates.
- Authorizes certain counties and municipal corporations currently permitted to use lodging tax revenue for convention center construction, operation, and promotion, to amend the resolution levying the tax to use the existing revenue for more than one convention center.

### **Sales and use taxes**

#### **Electronic filing of tax returns and payments**

(R.C. 113.061, 5739.12, 5739.122, 5739.124, 5741.04, 5741.12, 5741.121, and 5741.122)

Under current law, most vendors and sellers, and some consumers, must file sales or use tax returns monthly with the Tax Commissioner, along with tax payments. Some are permitted to file and pay at less frequent intervals. And some business consumers making high volumes of taxable purchases pay the tax directly to the state instead of to the seller. Such direct pay permit holders are required to make tax payments by electronic funds transfer, and, if required by the Commissioner, must file returns and reports electronically in a manner prescribed by the Commissioner. All returns must be signed by the vendor or seller, or the vendor's or seller's agent.

Current law requires those whose tax liability for any calendar year exceeds \$75,000 to pay the taxes to the Treasurer of State twice per month by electronic funds transfer (EFT), pursuant to rules adopted by the Treasurer. A person may be excused from this requirement by the Treasurer. The Treasurer must notify the Tax Commissioner if taxes are not paid in this manner and failure was not due to reasonable cause or was due to willful neglect, and the Commissioner may impose an additional charge for failure to pay by electronic funds transfer.

The bill requires vendors and sellers to file sales and use tax returns and reconciliation returns electronically using the Ohio Business Gateway, Ohio Telefile System, or any other electronic means prescribed by the Commissioner. Tax payments also must be made electronically in a manner approved by the Commissioner. Any person required to file returns and make payments electronically in this manner may apply to the Commissioner to be excused from the requirement, and the Commissioner may excuse the person for good cause. The manner in which consumers file use tax returns with the Commissioner remains unchanged, unless the consumer meets the \$75,000 threshold; in that case, the consumer must file all returns and reports electronically.

For vendors and sellers, the bill eliminates the requirements that payment must be made to the Treasurer and returns must be signed by the vendor or seller or its agent. As under current law, direct pay permit holders must continue to make payments by EFT and file returns and reports electronically if required by the Commissioner.

Under the bill, vendors, sellers, and some consumers that meet the \$75,000 threshold and that therefore must remit sales and use tax payments electronically on the accelerated basis required by current law would continue to be required to pay on the accelerated schedule. But payments are to be submitted to the Commissioner, rather than the Treasurer, in a manner approved by the Commissioner. Vendors, sellers, and some consumers must apply to the Commissioner to be excused from this payment requirement. The bill eliminates the additional charge provision and the requirement that the Treasurer notify the Commissioner of failure to pay on an accelerated basis, because the Treasurer is no longer part of the initial payment stream.

### **Electronic filing of income tax returns**

(R.C. 5747.082)

The bill requires a tax return preparer that files more than 75 "original" income tax returns, reports, or other tax payment documents in a calendar year that begins on or after January 1, 2008, to file them electronically. The requirement applies to filings beginning in 2010, but only if the Commissioner, by December

31, 2009, publishes on the Department of Taxation's web site at least one acceptable electronic filing method. An "original tax return" is any report, return, or other tax document required to be filed under the income tax law for the purpose of reporting income taxes due and employer withholdings, but excludes amended returns or declarations of estimated tax.

Under the bill, a "tax return preparer" is any person that operates a business that prepares, or directly or indirectly employs another person to prepare, an original tax return for a taxpayer, in exchange for compensation or remuneration from the taxpayer or the taxpayer's related member.<sup>89</sup> "Tax return preparer" excludes an individual who performs any of the following activities:

- (1) Furnishes typing, reproducing, or other mechanical assistance;
- (2) Prepares an application for refund or a return on behalf of an employer by whom the individual is regularly and continuously employed, or on behalf of an officer or employee of that employer;
- (3) Prepares as a fiduciary an application for refund or a return;
- (4) Prepares an application for refund or a return for a taxpayer in response to a notice of deficiency issued to, or in response to a waiver of restriction after the commencement of an audit of, the taxpayer or the taxpayer's related member.

Once the tax return preparer meets the 75-return threshold, the preparer must continue to submit all original tax returns electronically each year (but not before 2010), unless the preparer, during the previous calendar year, prepared no more than 25 original tax returns.

If a tax return preparer is required to submit original tax returns electronically, but files an original tax return by some means other than by electronic technology, the Commissioner must impose a \$50 penalty for each return in excess of 75 that is not filed by electronic technology. Upon good cause shown by the tax return preparer, the Commissioner may waive or, if the penalty has been paid, refund, all or any portion of the penalty.

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<sup>89</sup> Generally, a "related member" is a business entity (corporate or noncorporate) that substantially owns, or is substantially owned by, a taxpayer, either through direct ownership or through a chain of other business entities (R.C. 5733.042).

**Property tax exemption for nonprofit, urban development and revitalization institutions**

(R.C. 5709.121; Section 757.10)

Continuing law provides that property belonging to a charitable or educational institution is considered to be used exclusively for charitable or public purposes by the institution, and thus exempt from property taxes, if it is: (1) used as a public community center or for other charitable, educational, or public purpose, (2) made available for use in furtherance of its charitable, educational, or public purposes and not with the view to profit, or (3) used by a private corporation to encourage the advancement of science or promotion of scientific research.

The bill classifies as a charitable institution whose property is eligible for property tax exemption any nonprofit organization that is exempt from federal income taxation if the majority of its board of directors are appointed by the mayor or legislative authority of a municipal corporation or a board of county commissioners, or a combination thereof, and the nonprofit organization's primary purpose is to assist in the development and revitalization of downtown urban areas. The bill provides that this classification applies to any application for exemption, or the property that is the subject of the application, pending before the Tax Commissioner on the bill's effective date or filed thereafter.

**Income tax exemption for Military Injury Relief grants**

(R.C. 5747.01(A)(26))

The bill exempts from the income tax any grant amount an individual receives from the Military Injury Relief Fund. The Military Injury Relief Fund is funded by an income tax refund "check-off" permitting taxpayers to contribute income tax refunds to the fund, and by separate donations. Grants from the fund are available for Ohio residents who were members of the armed services and who were injured while serving on active duty in Operation Iraqi Freedom or Operation Enduring Freedom and while receiving hazardous, combat, or hostile fire pay. (Service-connected disability qualifies as injury for grant eligibility purposes.) Grants are made to the extent funds are available. Grant eligibility criteria and other administrative provisions are set forth in R.C. 5101.98 and Ohio Admin. Code Ch. 5101:10-2.

The current tax treatment of grants from the Military Injury Relief Fund is not clearly expressed in law. Generally, under federal and Ohio income tax law, any form of income is taxable unless it is specifically exempted under federal or Ohio law. However, payments an individual receives are not taxable income if

they are in the nature of a public welfare benefit based upon need. Whether Military Injury Relief grants are in the nature of need-based public welfare benefits is not clear, because the eligibility requirements appear to be based solely on injury, but the source of the funds are private donations rather than public funds. The bill expressly exempts the grants by permitting them to be deducted to the extent the grants are treated as taxable income.

**Retired military pay income tax exemption for surviving spouse**

(R.C. 5747.01(A)(26))

Continuing law exempts from the income tax retirement payments made to a taxpayer for service in the United States armed forces, National Guard, or reserves. The bill exempts from the income tax retirement payments made to a surviving spouse or former spouse of a taxpayer who served in the United States armed forces, National Guard, or reserves, under the Survivor Benefit Plan.

The Survivor Benefit Plan is an insurance policy that provides for continued annuity payments to a designated beneficiary after the insured military retiree dies. The retiree makes monthly premium payments during the retiree's life. Upon the retiree's death, payments are made to the spouse, child, or other beneficiary of the retiree. Without the Survivor Benefit Plan, retirement payments stop upon the retiree's death.

**Job retention tax credit**

(R.C. 122.171; Section 812.10)

Under continuing law, businesses that have entered into an agreement with Ohio's Tax Credit Authority are entitled to claim a credit for up to 15 years against the corporation franchise, income, or commercial activity tax for fostering job retention in Ohio. To be eligible for the job retention tax credit, a business must meet certain criteria, including undertaking a capital investment project of at least \$200 million (or \$100 million if the average wage of all full-time employees at the site is greater than 400% of the federal minimum wage), maintaining operations at the project site for at least twice the term of the tax credit, and retaining at least 1,000 full-time employees at the project site during the entire term of the tax credit agreement.

The credit equals a percentage, up to 75%, of the Ohio income tax withheld from full-time employees. Existing law requires a taxpayer receiving the credit to repay the state the amount of tax credits previously received if the taxpayer does not maintain operations at the project site for at least the term of the tax credit. Partial repayment is required if operations are maintained for no longer than 150%

of the credit term (50% repayment), or for more than 150% but less than twice the credit term (25%).

The bill changes (and generally reduces) the number of years a business must maintain operations at its project site. A business must maintain operations for at least seven years or for the term of the tax credit plus three years, whichever is longer, instead of twice the term of the credit. Generally, this means the bill reduces the maintenance-of-operations requirement for any credit with a term of more than three years.

The bill reduces the associated credit repayment requirement when a business does not maintain operations for the required period of time. If operations are maintained for at least the term of the credit, but for less than the bill's seven-year or term-plus-three-year requirement (whichever is longer), the credit repayment is limited to 50% of the credit. The bill eliminates the 25% repayment requirement for businesses maintaining operations for at least 150% of the credit term but less than twice the credit term.

**Sales and use tax exemption for certain inventory control property**

(R.C. 5739.02(B)(48); Section 812.30)

The bill exempts from the sales and use tax sales of machinery, equipment, and software to a "qualified direct selling entity" for use in a warehouse or distribution center primarily to store, transport, or handle inventory that is held for sale to independent salespersons who operate as "direct sellers" and that is held primarily for distribution outside Ohio. As used in the bill, a "qualified direct selling entity" is an entity selling to direct sellers at the time the entity enters into a jobs creation tax credit agreement on or after January 1, 2007, with the Tax Credit Authority.<sup>90</sup> The bill defines a "direct seller" as a person selling consumer products to individuals for personal or household use and not from a fixed retail location, including selling such products at in-home product demonstrations, parties, and other one-on-one selling.

The sales and use tax exemption is limited to machinery, equipment, and software first stored, used, or consumed in Ohio within the five-year period commencing with the bill's effective date.

The bill provides that "neither contingencies relevant to the granting of, nor later developments with respect to, the jobs creation tax credit" impairs the status

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<sup>90</sup> The jobs creation tax credit, which is a refundable credit for fostering new job creation in Ohio, may be claimed against the domestic or foreign insurance company franchise tax, corporation franchise tax, income tax, or commercial activity tax.

of the qualified direct selling entity's eligibility to the exemption after execution of the job creation credit.

The exemption takes effect immediately under the bill.

**Sales and use tax exemption: aircraft and flight simulators**

(R.C. 5739.02(B)(49) and (50); Sections 803.06 and 812.30)

Under continuing law, sales of repair services and parts for aircraft used primarily in a fractional aircraft ownership program are exempt from sales and use tax.

The bill provides a similar exemption for repairs and maintenance services and parts for aircraft of more than 6,000 pounds maximum certified takeoff weight or aircraft used only in general aviation. Specifically, the bill exempts materials, parts, equipment, or engines used in the repair or maintenance of aircraft or avionics systems of aircraft; and exempts maintenance and repair services for aircraft or an aircraft's avionics, engine, or component materials or parts if the services are performed at a Federal Aviation Administration certified repair station.

The bill also exempts sales of repair services and repair and replacement parts for full-flight simulators used for pilot or flight-crew training. The bill defines a full-flight simulator as a replica of a specific type, or make, model, and series of aircraft cockpit, and includes equipment and computer programs necessary to represent aircraft operations in ground and flight conditions, a visual system providing an out-of-the-cockpit view, and has the full range of capabilities of the full flight simulators governed by the Code of Federal Regulations.

The exemptions would begin August 1, 2008.

**Utility property tax replacement payments for schools**

(R.C. 5727.85)

School districts receive property tax replacement payments under continuing law from a portion of the kilowatt-hour and natural gas tax revenues to offset the fixed-rate and fixed-sum levy losses the districts incurred when the assessment rates on the tangible personal property of electric companies and natural gas companies were reduced as part of deregulation of those industries. The deregulation-related replacement payment scheme terminates replacement payments for a school district's fixed-rate levy losses once the increase in the district's post-deregulation state funding matches the inflation-adjusted tax loss from those levies.

Continuing law also phases out the taxation of all tangible personal property used in business, which generally increases a school district's state funding (because funding is inversely related to taxable property value). This phase-out can accelerate the time when a school district's state funding increase from deregulation matches its deregulation-related inflation-adjusted tax loss, resulting in an acceleration of the date when the district no longer receives replacement payments for utility deregulation-related property tax losses.

The bill modifies the calculation of utility deregulation-related property tax replacement payments to school districts by neutralizing the state school funding effects of the phase-out of business personal property taxes. The apparent effect of the modification is to delay the eventual termination of deregulation-related replacement payments to any school district whose increase in state funding resulting from deregulation-related tax losses equals those tax losses indexed for inflation since 2002.

### **Timeline for school district income tax rate reductions**

(R.C. 5748.022)

Continuing law authorizes a board of education to reduce its school district's income tax rate by adopting a resolution. Among other facts, the board must designate in the resolution the date on which the reduced tax rate takes effect, which, under current law, is the upcoming January 1 that occurs at least 60 days after a copy of the resolution is certified to the Tax Commissioner.

The bill shortens the timeline for the earliest effective date of the rate reduction to the first day of January if that date is at least 45 days after the copy of the resolution is certified to the Commissioner.

### **School district personal property tax reimbursement**

(R.C. 5751.20 and 5751.21(B))

School districts currently are compensated with state funds for some of the tax revenue losses resulting from the phase-out of taxes on business personal property. Compensation is made in two forms: direct compensation comprised of thrice-annual payments; and indirect compensation from increases in state funds arising from formulas that provide funding in inverse proportion to taxable property values (i.e., more funding for lower property value). The compensation continues through fiscal year 2018 (except for debt levies, which are compensated until expiration). Beginning in fiscal year 2012, the payment amounts are gradually reduced and phased out.

The indirect, formula-driven compensation (called the "state education aid offset") currently is computed as of July 15 of each fiscal year; the Department of Education and the Director of Budget and Management must consult with each other to determine the offset and must agree on the amount by July 20.

The bill requires the Department of Education to recompute the offset by the last day of each fiscal year (i.e., by June 30), presumably to correct for any adjustments to state funding occurring during the fiscal year. Subsequent reimbursement payments would be adjusted to account for any under- or overpayment. The bill also requires a second offset recomputation by the mid-point of the following fiscal year (December 31) and requires subsequent reimbursement payments to be adjusted accordingly. (The second recomputation must be done in consultation with the Director of Budget and Management.) The recomputations begin with payments made in fiscal year 2008.

The bill also requires the state education aid offset to be computed so as to account for any state funding component that is based on the amount of property taxes charged, rather than directly on the basis of taxable value. The bill also delays by one month the third and final reimbursement payment made to school districts in each fiscal year. Currently, three payments are made in each fiscal year: on the last days of August, October, and May. The May 31 payment is replaced by a June 30 payment, beginning in 2008.

The changes take immediate effect.

### **Calculating school district fixed-sum levy loss for reimbursements**

(R.C. 5751.20(E))

Currently, school districts are compensated for tax losses resulting from a phase-out of business personal property taxes. For the purpose of this compensation, a distinction is made between two types of levies: fixed-sum levies and fixed-millage levies. Fixed-sum levies include school district "emergency" levies (imposed under R.C. 5705.194), which are currently reimbursed through 2010, and thereafter reimbursed until they expire or, if they are renewed or otherwise succeeded by an emergency levy, until the successor expires, until 2017. Another kind of fixed-sum school district levy, which is levied for successively greater (but pre-determined) amounts over a stated period of time (under R.C. 5705.213), is reimbursed only until it expires; they are not reimbursed through 2010 if they expire before then, and renewals are not reimbursed.

The bill treats levies imposed under R.C. 5705.213 in the same manner as emergency levies by reimbursing the loss from the phase-out of the business personal property tax through 2010, and after 2010 for as long as the levies are

renewed or otherwise succeeded by the same kind of levy, until 2017, when compensation ends.

The change takes immediate effect.

**State education aid offset: extend time for determination**

(R.C. 5751.21(A))

Currently, the Department of Education and Director of Budget and Management must consult with each other by July 15 each year and compute the state education aid offset amount by July 20. (The offset amount reduces direct reimbursement for business personal property tax losses because the school funding formula indirectly reimburses school districts for tax value losses by increasing state funding.)

Under the bill, the deadlines for the Department of Education and Director of Budget and Management to consult and determine the state education aid offset is extended from July 20 to July 30. Presently, the calculation is made based on information as of July 15, but under the bill information as of July 30 of each year will be used.

The change takes immediate effect.

**Community reinvestment area tax exemption**

(R.C. 3735.67(D))

Under current law, newly constructed or remodeled structures located in a community reinvestment area (CRA) may qualify for an exemption from real property taxation. A CRA is an area in which housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged. The designation of an area as a CRA is made by a resolution adopted by the legislative authority of the municipality or county in which the area is located.

An exemption from real property taxation can be granted on a continuing basis for a period of time specified by the legislative authority. The maximum period of exemption is between ten and 15 years depending upon the type of structure exempted.

The bill authorizes a legislative authority to extend an exemption for a dwelling for up to an additional ten years if the dwelling meets each of the following criteria:

(1) The dwelling is a structure of historical or architectural significance, meaning the dwelling has been designated as such by a legislative authority due to the dwelling's age, rarity, architectural quality, or due to a previous designation by a historical society, association, or agency;

(2) The dwelling is a certified historic structure (i.e., it is a structure listed in the National Register or located in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district), and expenditures to rehabilitate the dwelling qualified for the federal rehabilitation tax credit under Section 47 of the Internal Revenue Code;

(3) The dwelling is a certified historic structure, and an owner donating the dwelling was permitted a charitable deduction for such donation under Section 170(h) of the Internal Revenue Code; and

(4) Units within the dwelling have been leased to individual tenants for five consecutive years.

### **Foreclosure prevention and nuisance abatement**

(R.C. 321.261; Section 703.20)

Continuing law requires 5% of all delinquent real property, personal property, and manufactured and mobile home taxes and assessments to be deposited in a county's delinquent tax and assessment collection (DTAC) fund to be used solely in connection with the collection of those taxes and assessments.

Section 757.30 of H.B. 119 temporarily permits the board of county commissioners of a county with a population exceeding 1.2 million (i.e., Cuyahoga County) to authorize up to \$3 million in the DTAC fund to be used to prevent residential mortgage foreclosures in the county and for nuisance abatement of foreclosed dwellings. The funds must be used to provide financial assistance in the form of loans to borrowers in default on their home mortgages, including to pay late fees, clear arrearage balances, and augment monies used in the county's "foreclosure prevention program." The funds also must be used to assist municipal corporations in the county in the nuisance abatement of deteriorated residential buildings in foreclosure, including paying the costs of boarding up buildings and lot maintenance and demolition costs. The temporary authority is scheduled to terminate June 30, 2008.

The bill enacts Section 757.30's provisions into permanent law but lowers the county population threshold to county populations exceeding 400,000.

Notwithstanding the previously described permanent law provision, the bill temporarily permits more than \$3 million to be used for nuisance abatement and

foreclosure prevention and specifies how those funds must be used. Upon certification by the county treasurer and the prosecuting attorney that surplus funds exist in the DTAC fund, a board of county commissioners of a county with a population of more than 400,000 is permitted, by resolution, to authorize the use of up to the amount in that fund certified as surplus by the county treasurer and prosecuting attorney to do both of the following:

- (1) Prevent residential mortgage foreclosures in the county;
- (2) Assist municipal corporations located in the county in the nuisance abatement of deteriorated residential buildings.

The board of county commissioners is required to appropriate moneys to the county treasurer or the prosecuting attorney for use in the prevention of residential mortgage foreclosures in the county; to fund grants to nonprofit corporations that are housing counseling agencies; to fund service contracts with nonprofit corporations that are housing counseling agencies and that, in furtherance of foreclosure prevention activities, provide financial assistance in the form of grants or loans to borrowers in default on their home mortgages, including for the payment of late fees, to clear arrearage balances; and to augment moneys used in the county's Foreclosure Prevention and Homebuyer Education Programs. The board of county commissioners also must appropriate moneys to the county treasurer or the prosecuting attorney for use, upon application from a political subdivision, in the nuisance abatement of deteriorated residential buildings, including paying the costs of boarding up and securing those buildings and lot maintenance and demolition costs.

**County cigarette and alcohol excise taxes: prohibit future imposition**

(R.C. 307.697, 351.26, 4301.421, 4301.424, 5743.021, 5743.024, 5743.321, and 5743.323)

Currently, some counties, and any convention facilities authority, are authorized, with voter approval, to impose excise taxes on cigarettes or alcoholic beverages (or both) to finance the construction or renovation of a major league sports facility and, in the case of counties, for "related economic development or redevelopment" projects. To levy such a tax, a county must have an agreement in place with a "host" municipal corporation providing for the use of the tax revenue and other matters prescribed by law. Also under current law, one county (Cuyahoga) is authorized (with voter approval) to levy an excise tax on cigarettes to fund the facilities and operations of a regional arts and cultural district created by the county.

The bill prohibits the future imposition of those excise taxes for those purposes. The bill does not prohibit the continuing collection of revenue from such taxes that are levied before the amendment's effective date, so long as the existing tax remains in effect.

**Temporary township TIF authority**

(Section 705.10)

Under current law, a board of township trustees is authorized to establish a tax increment financing (TIF) area in which property taxes on the increased assessed value of real property are permitted to be used to finance public infrastructure improvements. A township TIF area can consist of a single parcel (a "parcel" or "project" TIF) or a group of contiguous parcels (an "incentive district"). To create either TIF, the board of township trustees must adopt a resolution by unanimous vote.

The bill authorizes a board of trustees of a township with a population exceeding 55,000 according to the most recent federal decennial census to adopt a resolution creating either kind of TIF on or before December 31, 2008, by majority vote. In the case of an incentive district, continuing law conditions must be satisfied.

**Sales and use tax: guaranteed auto protection**

(R.C. 5739.01(B)(10))

Current law does not levy a sales and use tax specifically on a transaction in which guaranteed auto protection is provided. Guaranteed auto protection is an insurance-like product whereby a financial institution or other entity promises to pay a motor vehicle owner or lessee the difference between the amount received from motor vehicle insurance and the amount owed to a creditor holding title to or a lien on the motor vehicle in the event the motor vehicle suffers a total loss under the terms of the motor vehicle insurance policy, or is stolen and not recovered.

The bill includes the sale of guaranteed auto protection as a taxable sale if the protection is sold as part of a motor vehicle purchase or lease transaction. A transaction in which guaranteed auto protection is the only item sold is not subject to sales and use taxation.

### **Nonresident motor vehicle sales to Canadians**

(R.C. 5739.029)

Under continuing sales tax law, motor vehicle sales to nonresidents of Ohio are exempt from the tax if the nonresident affirms the intention to immediately remove the motor vehicle to another state, to title or register the vehicle in another state, and to use the vehicle in a state other than Ohio, and if any one of the following apply: (1) the state in which the consumer intends to title or register the vehicle provides a similar exemption to residents of Ohio, (2) the state does not provide a credit against its sales or use tax for sales or use tax paid to Ohio, or (3) the state does not levy a sales, use, or similar tax on the sale, ownership, or use of motor vehicles. Current law defines "state" as "any state, district, commonwealth, or territory of the United States." Thus, a nonresident of Ohio would not appear to be eligible for the exemption if the nonresident intended to remove the vehicle to a foreign country.

The bill adds "any province of Canada" to the list of places to which a nonresident may remove and title a vehicle and potentially qualify for the sales tax exemption.

### **Nonresident motor vehicle sales tax distribution**

(R.C. 5739.21 and 5739.213 (repealed); Section 757.40 of H.B. 119)

Under continuing sales tax law, the rate applicable to a taxable motor vehicle sale to a nonresident equals the lesser of 6% or the rate the nonresident would pay in the state where the nonresident intends to title the vehicle. Current law requires a portion of the tax revenue from such a sale to be distributed to the county in which the sale is deemed to occur under origin-based sourcing rules. The required distribution equals one-twelfth of the tax collected until July 1, 2008; from that date, the county share equals 0.5% of the price paid.

The bill rephrases the distribution calculation. Under the bill, the required distribution equals 8.33% (about one-twelfth) of the sales tax collected. Under this calculation, the sales tax revenue distributed to a county beginning July 1, 2008, will be less than provided under current law if the sales tax applicable to a sale is less than 6%. For example, in a taxable nonresident motor vehicle sale on or after July 1, 2008, wherein the price is \$25,000 and the applicable tax rate is 4%, under current law the revenue to be distributed equals \$125 [ $\$25,000 * 0.5\%$ ]. Under the bill, the revenue distribution will equal \$83.30 [ $\$25,000 * 4\% * 8.33\%$ ].

The bill moves the rephrased calculation to R.C. 5739.21, which governs the distribution of county and transit authority sales tax revenue.

**Nonresident trust income tax credit**

(R.C. 5747.02(D)(2))

Current law authorizes a trust to claim an income tax credit for taxes paid to another state on the trust's accumulated nonbusiness income; the credit cannot exceed the amount of Ohio tax that would be imposed on that income. The credit is applied before any other credits.

The bill limits the income tax credit to "nonresident trusts"--i.e., presumably a trust, or part of a trust, that is not a resident trust under applicable law (R.C. 5747.01(I)(3)).

**Municipal Income Tax Fund: interest earnings**

(R.C. 5745.05(A))

Generally, interest on money in the state treasury must be credited to the General Revenue Fund unless the law provides otherwise. (R.C. 113.09.) Current law implies that interest earnings from money in the Municipal Income Tax Fund are to be credited to the fund by requiring the interest to be apportioned among municipal corporations levying an income tax. The amendment clarifies that the interest earnings from deposits in the Municipal Income Tax Fund are to be credited to that fund.

The change takes immediate effect.

**Assessment of penalty for refusing record inspection or examination demand**

(R.C. 5703.19(B))

Continuing law authorizes the Tax Commissioner or the Commissioner's employees to examine a person's books, accounts, and other records and to examine under oath any officer, agent, or employee for the purposes of the tax laws. If the person receives at least ten days' written notice of the examination demand and refuses to comply with the demand, a \$500 penalty is imposed for each day the refusal continues.

The bill adds a reference to the commercial activity tax law (Chapter 5751.) as another law under which the Commissioner may assess the penalty against CAT taxpayers for refusing to comply with a demand. The bill eliminates reference to the soft drink tax law, which no longer exists.

### *Disclosure of coal severance tax information*

(R.C. 5703.21 and 5749.17)

The bill expressly authorizes the Department of Taxation to disclose to the Department of Natural Resources information about transactions, property, or business of any person that is needed to verify compliance with the coal severance tax. Continuing law generally prohibits the Department of Taxation, and its employees and agents, from disclosing taxpayer information, but there are several exceptions, most of which involve inter-governmental exchanges of information.

The bill prohibits the Department of Natural Resources from publicly disclosing information it receives from the Department of Taxation, except for disclosures to the Attorney General for purposes of enforcing the law.

### *Tax discovery data system*

(R.C. 5703.82; Sections 405.10 and 812.20)

The bill requires the Department of Taxation to implement a "tax discovery data system" to increase tax collection efficiency. The Department must contract for the necessary hardware, software, and services to establish and implement the system by April 1, 2009. The system must be "fully integrated" and "pre-staged" to assist in revenue analysis, discover noncompliant taxpayers, and collect taxes from those taxpayers. The system must consolidate tax data from various mainframe systems and operate as a single system.

The bill creates in the state treasury the Discovery Project Fund to be used to pay the costs of implementing and operating the tax discovery data system and to defray the costs incurred by the Department in administering the system. The bill makes an appropriation of \$2 million in FY 2009 from the General Revenue Fund to the Discovery Project Fund to pay those costs. If, at any time during that fiscal year, the Tax Commissioner determines that additional cash transfers are necessary to pay the actual costs of the system and other expenses the Department incurs attributable to the system, the Commissioner may request that the Director of Budget and Management increase such amounts.

The bill also requires the Commissioner to request funds quarterly to pay the costs of operating and administering the tax discovery data system. Beginning July 1, 2009, on or before the first day of January, April, July, and October of each calendar year, the Commissioner must determine and certify to the Director of Budget and Management the amount needed to pay the costs of operating the system in the previous calendar quarter and the costs incurred in the previous calendar quarter in administering the system. The Director must provide for

payment from the General Revenue Fund to the Discovery Project Fund of the amount so certified.

**Confidentiality: non-participating cigarette manufactures**

(R.C. 1346.03)

Continuing law requires cigarette manufacturers not participating in the Tobacco Master Settlement Agreement to deposit certain amounts into a qualified escrow account. The amount is based upon the number of individual cigarettes the manufacturer sells in the state. The manufacturer must disclose this information to the Tax Commissioner, who shares it with the Attorney General for compliance purposes. R.C. 1346.03 prohibits the Attorney General from publicly disclosing the information the Attorney General receives from the Tax Commissioner, unless it is necessary to facilitate compliance.

The bill corrects a cross-reference error regarding the type of information that may not be disclosed. The referenced division does not exist.

**Consent for consumer cigarette shipment: false information**

(R.C. 2921.13(A)(16))

Under continuing law, a consumer may apply to the Tax Commissioner for consent to receive an out-of-state shipment of cigarettes so long as the cigarettes may be lawfully sold in the state and are not reasonably available to the consumer at a retail location. The application for consent must disclose the consumer's age and any other information required by the Commissioner. A criminal penalties statute prohibits a consumer from providing knowingly false information on the application. The statute, however, references a section of the Revised Code that does not exist.

The bill inserts the correct cross-reference.

**Joint economic development districts**

**Residential development**

(R.C. 715.73)

Joint economic development districts (JEDDs) are special-purpose districts created by a combination of municipal corporations and townships. The districts are created for the purpose of "facilitating economic development to create or preserve jobs and employment opportunities and to improve the economic welfare" of people in Ohio and in the townships and municipal corporations

creating the districts. JEDDs may be formed under three different procedures, one of which is an "alternative" procedure for operating a JEDD that applies to townships and municipal corporations located throughout the state (R.C. 715.72 to 715.81).

Current law establishes three criteria for including an area in a JEDD, one of which provides that no electors may reside within an area included in the JEDD and no part of the area may be zoned for residential use. The bill eliminates the criterion that no part of the area may be zoned for residential use, and provides that no electors may be residing in the area on the effective date of the contract creating the JEDD. In other words, residential development will be allowed in the JEDD and residents may move into the JEDD after the JEDD is established.

### **Income taxes levied by a JEDD**

(R.C. 715.74(C))

A JEDD is governed by a board of directors, and the board's powers and duties, as well as the rights and duties of participating townships and municipal corporations, are established pursuant to a contract among the parties creating the JEDD. The contract may grant to the board the power to adopt a resolution levying an income tax on income earned by persons working within, and businesses located in, the JEDD. Revenue from the tax may be used for the purposes of the JEDD and for the participating subdivisions. The tax rate cannot be higher than the highest income tax rate levied by the municipal corporations participating in the JEDD.

The bill provides that the income of an individual who resides in the JEDD is not subject to the JEDD income tax unless the income is received for personal services performed in the JEDD. This would allow individuals to move into new residential development in the JEDD without subjecting their earnings to the JEDD's income tax unless they also work within the JEDD.

### **School district emergency property tax levy**

(R.C. 5705.194)

### **Current law**

School boards (including joint vocational boards) are authorized, with voter approval, to levy "emergency" property tax levies, and to renew one or more existing emergency levies the board already levies. The stated purpose of emergency levies is either "to avoid an operating deficit" or "to provide for the emergency requirements" of the school district.

Emergency levies are a form of "fixed-sum" levies, in the sense that they are designed to raise a fixed, pre-specified amount of revenue each year. The revenue does not change if property is added to or removed from the tax list, and does not change in response to property inflation or deflation. Instead, the rate of the levy is adjusted each year to raise the specified amount. Because emergency levies raise a fixed sum of money, they are exempted from the "H.B. 920" property tax revenue limitation, which prevents property tax revenue from increasing in response to property value inflation.<sup>91</sup>

Emergency levies also have a special status under the "20-mill floor" law (R.C. 319.302(E)). The 20-mill floor law shields school districts from H.B. 920 revenue reductions once the reductions diminish a district's effective operating millage to 2% of its taxable real property valuation (i.e., 20 mills per dollar of value). Once a district's effective operating millage is reduced to 20 mills, the H.B. 920 limitation is suspended; once it is suspended, revenue from the 20 mills increases in proportion with real property value inflation. Emergency millage does not count as 20-mill floor millage. Therefore, a school district that is at the 20-mill floor, and that levies any emergency millage, is effectively receiving 20 mills in operating millage that is exempted from the H.B. 920 limit, and receives an additional, fixed amount of money from its emergency millage.

Emergency millage also receives somewhat different treatment than most levies under the law requiring school districts to be partly compensated for the phase-out of taxes on business personal property. Generally, all levies are at least partly reimbursed until they expire or until the end of fiscal year 2018, whichever comes first. Emergency levies are at least partly reimbursed until they expire (after not more than five years); but if they are renewed with a new emergency levy of a nearly equivalent amount (net of any associated reimbursement in 2006), the renewal levy also qualifies for reimbursement. (R.C. 5751.20(E).)

### **Extend maximum levy life**

The bill lengthens the maximum permissible term of emergency levies from five years to ten years. The change applies only to newly imposed or newly renewed levies, not to existing levies currently being imposed.

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<sup>91</sup> Under the current version of the "H.B. 920" limitation as authorized by the Ohio Constitution, the General Assembly may exempt only the following described levies from the limitation: levies imposed "at whatever rate is required to produce a specified amount of tax money"; debt payment levies; constitutionally authorized unvoted or "inside" millage; and municipal charter millage. Otherwise, the constitutional provision applies "[w]ith respect to each voted tax authorized to be levied ...." (Art. XII, Sec. 2a(C)(2).)

**Substitute levy for a school district emergency property tax levy**

(R.C. 319.301(A)(1), 3311.21(A), 5705.199, 5705.214, and 5705.29)

**Computation of levy.** The bill authorizes school boards that levy an emergency levy (currently or in the future) to "substitute" a new kind of levy for one or more emergency levies. Unlike an emergency levy, the new substitute levy would be permitted to yield increasingly more revenue as new real property is added to the tax list. In its first year, the levy would yield a stated, pre-specified amount. In subsequent years, the revenue would be determined by increases in the net taxable value of new real property added to the tax list (commonly referred to as "new construction"). The revenue yield would not increase in response to appreciation in existing property values. The revenue yield in any year after the first year would be computed as the sum of (1) the preceding year's revenue, plus (2) an additional amount representing the yield from imposing the preceding year's millage rate on the current year's taxable real property valuation.<sup>92</sup> The bill states that substitute levies are not subject to the "H.B. 920" tax reduction factor law (R.C. 319.301), but the computation of the levies' revenue yield mimics the tax reduction factor law, with one exception: under the tax reduction law, a separate computation is made for each of two constitutionally specified classes of real property--(1) residential and agricultural and (2) "all other" real property, comprised of commercial, industrial, and mineral property--whereas the bill's computation for substitute levies applies uniformly to all property.

**Treatment under 20-mill floor, phase-out reimbursement.** The substitute levies are excluded from the 20-mill floor, as are emergency levies currently, with the same implications explained above in regard to emergency levies and the 20-mill floor. For the purposes of reimbursement for the phase-out of business personal property taxes, substitute levies are given the same treatment as emergency levies: i.e., a substitute levy, like a renewal of an emergency levy, is treated as the continuation of the original emergency levy, and so reimbursement continues for as long as a substitute levy is in place (or until reimbursement terminates at the end of FY 2018).

The bill specifies the language that must be in the board of education's resolution proposing the substitute levy and in the notice of election, the process

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<sup>92</sup> The revenue yield after the first year is referred to in the bill as "a specified amount of money." As such, the substitute levies are exempted from the H.B. 920 limitation (see R.C. 319.301(A)(1) in the bill). Presumably, the grounds for the H.B. 920 exemption is that the constitutional authorization for the current H.B. 920 limitation permits an exemption for taxes "levied at whatever rate is required to produce a specified amount of tax money" (see preceding footnote).

for certifying the resolution to the board of elections, and the form of the ballot. Among other items, the ballot must specify the revenue to be raised in the initial year, the life of the levy, and that revenue from the tax will increase only if and as new land or real property improvements not previously taxed by the school district are added to its tax list. Submission of a substitute levy question to the electors is limited to not more than three elections during a calendar year, as are most other school levies. A substitute levy imposed for a continuing period of time may be decreased by voter initiative as are other continuing levies under existing law.

Substitute levies may themselves be substituted.

**Anticipation notes; reserve accounts.** The bill authorizes a school board levying a substitute levy to issue anticipation notes in a principal amount not exceeding 50% of the total estimated proceeds of the levy to be collected during the first year of the levy. The notes must be issued in accordance with existing law for a period not to exceed five years.

The bill authorizes school boards levying a substitute levy to establish a budget reserve fund to cover unanticipated revenue shortfalls and other emergencies as the board may do for other tax levies specified in continuing law.

**School district fiscal watches or emergencies.** Under continuing law, the Auditor of State is required to declare that a school district is in a state of fiscal watch or of fiscal emergency if certain conditions occur, one of which is that district voters have not passed certain emergency or special school district levies or a school district income tax. The bill adds to this list of levies the new substitute levy. Likewise, the bill adds the substitute levy to the list of levies a board of education must consider levying to prevent an operating deficit that could place a school district in a state of fiscal watch or fiscal emergency. (R.C. 3316.03, 3316.06(A)(4), and 3316.08.)

Continuing law provides that a school district that is in a state of fiscal watch may restructure or refinance loans, or if it is in a state of fiscal emergency, restructure or refinance outstanding debt obligations, if a number of requirements are fulfilled, one of which is that school district voters have approved certain tax levies, including a school district emergency property tax levy. The bill includes the new substitute levy as one of the levies the approval of which fulfills one of the requirements for allowing the school district to restructure or refinance loans or outstanding debt obligations. (R.C. 3316.041.)

**Tax certificate sales: apply to all counties**

(R.C. 5721.30(L) and 5721.31(A))

Current law authorizes county treasurers of counties with a population of at least 200,000 to sell delinquent real estate tax "certificates," which represent a legal claim on delinquent taxes owed on real estate. This authority enables taxing authorities to recover unpaid taxes before the ordinary tax foreclosure proceedings are concluded. The lien for the taxes is essentially transferred to private persons, who then may initiate foreclosure proceedings or request the county treasurer to initiate proceedings on the certificate owner's behalf.

The bill extends this authority to treasurers of all counties.

**Property exempt from tax certificate sales**

(R.C. 5721.31(B))

Tax certificate sales may occur only after the treasurer has received from the county auditor a copy of the delinquent land list, which the auditor prepares in August of each year. From this list, the county treasurer may select properties for which a certificate is to be sold. Current law forbids the treasurer from selecting properties if a delinquent tax contract (i.e., a payment plan) is in effect or if all taxes, penalties, interest, and other charges have been paid.

The bill adds three more classes of property for which tax certificates may not be sold:

- Property owned by a member of the National Guard or Armed Forces Reserves, by the member's spouse, owned jointly with the spouse or a dependent parent, or owned by a member's dependent parent if the member died during or as a result of active duty, so long as there is a tax payment extension agreement in effect under existing law;
- Property that has unpaid taxes as a result of being omitted from a prior tax list, so long as a tax payment contract is in effect;
- Property that is property of a bankruptcy estate under federal bankruptcy law.

In addition, the bill requires the treasurer to remove from the list of selected properties any property to which any of the foregoing exceptions applies.

### **Advertisement of sale**

(R.C. 5721.31(C))

Under current law, a tax certificate may be sold in a public auction or in a private sale. When the sale is by public auction, the treasurer must publish notice of the sale by placing an advertisement in a newspaper once a week for two consecutive weeks. The advertisement must include the date, time, and place of the auction; descriptions of the properties; and the names of the property owners of record.

The bill modifies and adds required advertisement information. The bill requires the inclusion of the tax certificate purchase prices or, if the tax certificates are sold in blocks, the price of each block. The bill also requires only an "abbreviated legal description" of each property.

### **Public auction sales**

(R.C. 5721.32)

When tax certificates are sold at public auction, bidders bid on the rate of interest that will accrue while the certificate is pending. The interest rate may not exceed 18% simple interest annually. The bill changes or clarifies several aspects of the law governing certificates sold at public auction, as explained below.

#### **Ties or contested bids**

The bill specifies that, in the event of a bidding tie, or if a person contests the lowest bid, the treasurer must decide which person is the winning bidder, and the decision is not appealable.

#### **Interest period**

Currently, interest accrues from the date the certificate is sold in the case of a public auction, or the date the certificate is delivered to the purchaser in the case of a private sale, until one of the following dates: the date the property owner redeems the property, or the date the certificate holder makes the payment to the county treasurer required to initiate foreclosure proceedings. The bill ends interest accrual upon redemption of the parcel or of the certificate, or upon making the required payment and filing a request for foreclosure or a notice of intent to foreclose with the treasurer.

### **Deposit**

Current law requires the winning bidder to pay the treasurer a deposit of at least 10% of the certificate purchase price by the close of business on the day of the sale. Within five business days the winning bidder must tender the remaining amount due, plus a "reasonable" administrative fee to cover the treasurer's costs. If the bidder fails to do so, the bidder forfeits the deposit.

The bill modifies this forfeiture. The bill provides that, at the request of a winning bidder, the county treasurer may release the bidder from the bidder's purchase obligation and may, but is not required to, retain some or all of the deposit. The treasurer may then award the tax certificate to the second lowest bidder.

### **Tax certificate register; notice of sale to owner**

Under current law, once a tax certificate has been paid for, the treasurer must deliver the tax certificate to the purchaser and record the sale in a register. The treasurer must record the certificate price, the rate of interest, the date of sale, the name and address of the purchaser and, upon the purchaser's request, the name and address of any party having a security interest in the certificate; that information also must be marked on the certificate. The treasurer must also send written notice of the sale to the owner of the property at the owner's last known tax-mailing address.

Under the bill, the treasurer is no longer required to mark that information on the certificate. Also, if previous attempts to notify the property owner have been returned by the postal service as undeliverable, the treasurer need not send notice of the sale. Finally, the bill authorizes the treasurer to keep the register in hard copy or electronic format.

The bill's provisions relating to registering certificates and notifying property owners also apply to private certificate sales.

### **Private sales**

(R.C. 5721.33)

Current law authorizes the county treasurer to sell tax certificates through private negotiations with one or more persons instead of by public auction. The treasurer may negotiate the certificate price and any other terms of sale the county treasurer determines necessary or appropriate.

The bill expressly authorizes the treasurer also to negotiate different time frames under which the certificate holder may initiate a foreclosure action than are

otherwise allowed by statute (i.e., between one and six years after the certificate is sold, with extensions allowed some circumstances). The negotiated time frame, however, may not extend beyond six years after the date the tax certificate is sold. The treasurer also may negotiate the amount to be paid in private attorney's fees for prosecuting any foreclosure action.

Under current law, the proceeds from a private sale must be deposited to the county's general revenue fund and credited to the same account to which real property taxes are credited. From that account, the proceeds must be distributed to the appropriate taxing jurisdictions in accordance with their respective shares of the preceding year's taxes or their share of special assessments.

The bill permits any premium that was paid for the tax certificate to be deposited in any "authorized" county fund, at the discretion of the treasurer.

### **Purchase of subsequent tax certificates**

(R.C. 5721.42)

Current law authorizes the holder of the most recently issued tax certificate to pay all delinquent taxes, assessments, penalties, interest, and charges on the related parcel, the lien against which has not been transferred by the sale of a tax certificate. The holder must make payment not earlier than 60 days nor later than 90 days after the due date for payment of the second installment of current taxes (usually the first Monday in June). If the certificate holder makes the payment, the treasurer must issue an additional tax certificate to the certificate holder, which represents an additional lien on the property.

The bill changes the notification period by providing that the notice may be made any time after the settlement of the second installment is completed (the settlement must occur by August 10). The certificate holder has 30 days after receiving the notice to make payment.

### **Void certificate sales**

(R.C. 5721.34)

Under current law, if a tax certificate is sold, but all amounts due have been paid or a valid contract establishing a payment plan for the delinquent taxes is in effect, the certificate is void. If a certificate is void the purchaser is entitled to a refund of the certificate purchase price and any fee. If the certificate is discovered to be void more than 60 days after the sale, the purchaser is entitled to interest from the date of the sale at the rate of 5% per year. In lieu of refunding the purchase price, the treasurer may issue a substitute tax certificate of equal value if the purchaser consents.

The bill specifies that if a sale is void for any reason the purchaser is entitled to a refund. The bill extends the 60-day no-interest period to 90 days and specifies that interest accrues from the first day of the month following the month in which the certificate was sold to the first day of the month in which the treasurer determined the sale to be void. The bill also permits a substitute tax certificate to be issued only if the substitute certificate has already been selected and advertised for sale and if the true value of the certificate's property is equivalent to that of the voided certificate's property.

**Deadline to file foreclosure action**

(R.C. 5721.37(A) and 5721.38(D)(2))

Under current law, the certificate holder must file a foreclosure action not earlier than one year after the date the tax certificate was sold and not later than three years after that date if the certificate is sold in a public auction, or not later than six years after the sale date if the certificate is sold in a private sale. The six-year deadline is extended if the certificate holder enters into a payment plan with the property owner or other person entitled to redeem the property. The deadline is also extended if under federal bankruptcy law the property becomes protected by the automatic stay. In the event of a bankruptcy, the deadline to foreclose is the later of three years after the date the certificate was sold or 180 days after the bankruptcy case is closed.

The bill clarifies that interest at the certificate rate of interest continues to accrue during any extension; that the 180-day period begins once the property is no longer property of the bankruptcy estate; that, in the event of a bankruptcy filing, the certificate holder is responsible for filing a proof of claim; and that the deadline to foreclose is the later of three years after the date the certificate was sold or 180 days after the property is no longer property of a bankruptcy estate.

**Foreclosure complaint**

(R.C. 5721.37(B) to (F))

Under current law, the holder of a tax certificate purchased in a public auction may file a foreclosure action through a private attorney after filing with the treasurer a notice of intent to foreclose, or through the county prosecuting attorney after filing a request for foreclosure with the treasurer. A holder of a tax certificate purchased in a private sale must file any foreclosure action through a private attorney. In either case, the foreclosure complaint must include a certification by the county treasurer that the property has not been redeemed.

The bill authorizes the holder of a certificate purchased in a private sale to file a foreclosure action through the prosecuting attorney. The bill also adds two filing requirements. The filing attorney must attach to the foreclosure complaint a copy of the notice of intent to foreclose, or the request for foreclosure, and a certification by the county treasurer that the tax certificate has not been redeemed. The bill also establishes a deadline by which the complaint must be filed if it is filed by a private attorney. The complaint must be filed within 120 days after the filing of the notice of intent to foreclose. If the tax certificate was purchased in a private sale, the purchase contract may specify a different deadline as negotiated.

Under current law, along with the request for foreclosure or notice of intent to foreclose, the tax certificate holder must pay the treasurer four sums: the certificate redemption prices of all other tax certificates respecting the property not owned by the certificate holder seeking to file the foreclosure suit, all past-due taxes due on the property not represented by a tax certificate, the attorney's fees of the county prosecutor if the prosecutor is to file the foreclosure, and, if the foreclosure is to be filed by a private attorney, all other liens with priority over the lien related to the tax certificate.

The bill removes the requirement of paying prior liens, and requires payment of all unpaid, but not yet delinquent, taxes and charges.

Under current law, the certificate holder may join in one action any number of tax certificates relating to the same owner, but only if all parties on each of the tax certificates are identical as to name and priority of interest. The bill removes this condition.

### *Attorney's fees*

(R.C. 5721.371)

The bill limits the amount of attorney's fees that may be charged as costs against the property if the foreclosure action is filed by a private attorney. The limit is \$2,500, unless otherwise authorized by the court. The bill requires attorney's fees to be reasonable and necessary. It also provides that the amount of attorney's fees to be paid may be negotiated by the treasurer in the case of a private sale, subject to the \$2,500 limit.

## **Judgment of foreclosure**

(R.C. 5721.39)

### **Finding**

Current law requires the court, in the judgment of foreclosure, to make specific factual findings regarding the amounts to be paid from the proceeds of the sale of the property.

The bill specifies that the court must determine, as of the date the certificate holder filed the request for foreclosure or notice of intent to foreclose, the certificate redemption prices for all tax certificates sold against the parcel, the amount of delinquent taxes paid by the foreclosing certificate holder upon filing the notice of intent to foreclose or request for foreclosure, additional delinquent taxes that have accrued since the filing of the notice of intent to foreclose or request for foreclosure, and any fees and costs incurred during the foreclosure proceeding, including attorney's fees, plus interest on all of those amounts.

### **Sale price**

Current law provides that the court must order sale of the property for not less than the amount of its finding unless the court finds that the property's value is less than the certificate purchase price, in which case the court may decree the property to be conveyed to the certificate holder bringing the foreclosure action.

The bill specifies that the county auditor, not the court, is to determine the value of the property, that the value at issue is the property's true value in money, and that the true value is to be compared to the certificate redemption price instead of the certificate purchase price (which generally would be less than the redemption price).

### **Disposition of sale proceeds**

Current law specifies the order in which foreclosure sale proceeds are to be distributed. The costs of the action are to be paid first, including any part of the county prosecutor's fee not paid by the certificate holder. Remaining proceeds are to be paid to the certificate holder who brought the action (or requested the prosecutor to bring the action), up to the total certificate redemption price payable to that certificate holder, any premium, amounts paid by the certificate holder for other outstanding certificates, for other unpaid taxes, and for the prosecutor's fee, and interest accruing on those amounts. Any balance remaining is distributed to the purchaser to the extent that there are unpaid taxes against the property not covered by the certificate holder's payment of such amounts. If there is any

remaining balance, it is payable to the property owner if the owner claims the money within six years.

The bill specifies that if the certificate holder engaged an attorney to bring the action, the attorney's fees are among the first priority payments, and limits interest payable on amounts paid by the certificate holder for other unpaid taxes and for the prosecutor's fee to three years, instead of six years, after those amounts were paid if the certificate was purchased at public auction (in accordance with the three-year time limit for bringing foreclosure actions for such certificates).

### **Unsold property**

(R.C. 5721.40)

Under current law, if the property is twice offered for sale and remains unsold, the court must order the property forfeited to the certificate holder prosecuting the foreclosure. The title to the property and all rights and interests are deemed to be vested in the certificate holder.

The bill specifically states that title to the property is incontestable and is free and clear of all liens and encumbrances except for federal tax liens filed before the foreclosure action was filed, and easements and covenants of record running with the land created before the taxes or assessments covered by the certificate became due.

### **Redemption of property by owner or other interested person**

(R.C. 5721.38 and 5721.381)

Under current law, the property owner (or other interested party, such as a lienholder) may redeem the property by paying a certain amount at any time before the foreclosure sale, if any, is confirmed. The amount required to be paid depends on when the redemption occurs. If the redemption occurs before the tax certificate holder files a request for foreclosure or notice of intent to foreclose with the treasurer and makes any required payment to the treasurer, the property owner must pay to the treasurer an amount equal to the total of the certificate redemption prices of all tax certificates for the property.

If the certificate holder has filed its request for foreclosure and paid the treasurer's fee to cover costs of litigation, the owner of the property must pay the certificate purchase prices of all tax certificates for the property plus interest, the prosecutor's fees, and other costs.

Under the bill, if the property owner pays some, but not all, of the total amount due to redeem the property, the amount paid is applied to the tax

certificates in the order of oldest to newest based on the earliest day of attachment of the related liens. The payment must be credited to the tax certificate redemption fund.

The bill specifies that the treasurer may collect the total amount due to redeem the property in the form of "guaranteed funds" acceptable to the treasurer. The bill requires the person redeeming the property also to pay the private attorney's fees if a private foreclosure action is pending, and to pay interest on the prosecuting attorney's fees, if any. The interest accrues at an annual rate of 18% and begins to accrue at the same time as the interest that accrues on the purchase price of the tax certificates. No interest accrues on attorney's fees paid to a private attorney. Finally, in addition to all other amounts to be refunded to the certificate holder for the certificate redemption price, the treasurer must refund to the certificate holder the interest on the amount of unpaid and delinquent taxes not represented by a certificate and on the prosecutor's fees.

### **Redemption of tax certificate**

(R.C. 5721.38(D) and (E))

Under current law, if the property owner has redeemed the property or has paid all amounts due on a particular tax certificate, the treasurer must notify certificate holders, by certified mail, that the tax certificate may be redeemed. If the certificate holder fails to redeem the certificate within five years after service of the notice, an amount equal to the certificate redemption price and any applicable interest on the certificate is deposited to the general revenue fund of the county.

The bill removes this entire five-year limitation.

### **Notice**

Upon the occurrence of various events, the county treasurer must provide notice of the event to some or all certificate holders. Current law generally requires that notice be given by ordinary or certified mail.

The bill authorizes the county treasurer to use electronic means to provide notice, such as by facsimile transmission or e-mail, in the following instances:

- Upon the treasurer's discovery that a tax certificate is void;
- Upon the filing of a bankruptcy petition by the owner of the certificate parcel;

- Upon the filing of an application for exemption due to the certificate parcel's location in a community reinvestment area or for other environmentally related reasons;
- Upon the filing of a notice of intent to foreclose;
- Upon redemption;
- The entry of a redemption payment plan by the owner of the certificate parcel;
- Upon the satisfaction of or termination of a redemption payment plan; and
- Prior to the sale of a tax certificate to inform the certificate holder of the certificate holder's first right of refusal.

**Contacting the property owner**

(R.C. 5721.43)

Current law prohibits a certificate holder, or the holder's agent, from contacting the property owner. The bill permits such contact but only if the contact is authorized in writing by the county treasurer.

**Lodging tax revenue used for convention center purposes**

(R.C. 5739.09(A)(4) and (B)(2))

Continuing law authorizes a county levying an excise tax on hotel-guest transactions as of June 30, 2002, to amend the resolution levying the tax on or before September 30, 2002, to increase the rate by up to 3.5%, and to contribute the revenue from the increased rate to a convention facilities authority to pay the costs of constructing, expanding, maintaining, operating, or promoting a convention center.

Continuing law also authorizes certain municipal corporations levying a lodging tax to amend an ordinance or resolution levying the tax on or before September 30, 2002, to increase the rate by 1%, and to use the revenue from the increased rate as provided above for a county.

The bill permits a county and municipal corporation that timely used that authority in 2002 to further amend the ordinance or resolution to require the revenue from the increased rate to be divided between the convention facilities authority to pay the costs of constructing, expanding, maintaining, or operating

one or more convention centers in the county, and a convention and visitors' bureau to pay the costs of promoting one or more convention centers in the county.

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## DEPARTMENT OF TRANSPORTATION

- Authorizes the Ohio Rail Development Commission to pledge loan repayments and other specified money to secure any obligations that might be issued by the Department of Development to pay costs of qualifying rail service projects.
- Permits bid guaranties for ODOT construction projects to be in the form of wire transfers (not just certified checks, cashiers' checks, or bid bonds), and creates, as a custodial fund of the Treasurer of State, the ODOT Letting Fund for the deposit of bid guaranties other than bid bonds.
- Requires the Director of Transportation to establish a fee for participation in the business logo sign program and to deposit those fees into the Motorist Service Sign Fund, which the bill creates.
- Modifies the definition of "motorcycle" to permit a motorcycle to be equipped with either a seat or a saddle.
- Creates the Office of Maritime Transportation within the Department of Transportation.
- Increases the threshold above which amount regional transit authority contracts for goods and services must be competitively bid from \$25,000 to \$100,000.
- Includes the Ohio Turnpike Commission in a provision of law that currently allows any political subdivision and any state university or college to participate in contracts the Director of Transportation enters into for the purchase of machinery, materials, supplies, or other articles.
- Designates the portion of Interstate 90 located within the municipal corporation of Willoughby Hills in Lake County only as the "Cpl. Joshua Harmon Memorial Highway" and authorizes the Director of Transportation to erect suitable markers along the highway indicating its name.

**Ohio Rail Development Commission pledge to secure certain rail project bonds**

(R.C. 4981.14)

Current law authorizes the Director of Development to make loans for eligible projects, which generally include facilities for industry, commerce, distribution, or research that will create new jobs or preserve existing jobs and employment opportunities and improve the economic welfare of the people of Ohio. The Department may issue bonds to fund the various loan programs. Current law also authorizes the Ohio Rail Development Commission to establish and operate a revolving loan fund to make loans to qualifying subdivisions (a county, township, or municipal corporation that is levying a tax for the purpose of acquiring, rehabilitating, or developing rail service or rail property), local or regional transportation authorities, or other persons for the acquisition, renovation, repair, refunding, or construction of rail service projects (freight, intercity passenger, commuter, and high speed rail transportation service).

Under the bill, if the Department of Development issues bonds to pay the costs of property, facilities, or equipment that qualifies as rail service projects, the Rail Development Commission may pledge money that it receives from the repayment of loans that it made and recoveries from the sale, lease, or other disposition of property acquired or constructed from amounts loaned by the Commission to secure, and be applied to the repayment of, the obligations issued by the Department of Development. The bill also authorizes the Rail Development Commission to enter into agreements with the Treasurer of State or a corporate trustee for such obligations to provide for the deposit and pledge of specified money, to permit the withdrawal of money by the Treasurer of State or a corporate trustee from the account as necessary for application to the payment of debt service on the obligations, and to permit the investment of those amounts pending their application to the payment of debt service; and to enter into agreements with persons to provide for the repayment of any amounts paid from any pledged account in connection with obligations issued by the Department of Development.

**Creation of the ODOT Letting Fund**

(R.C. 5525.01)

When a contractor bids on a highway construction project, the contractor must file with the bid a bid guaranty in the form of a certified check or cashier's check in an amount equal to 5% of the bid (up to \$50,000), or bid bond for 10% of the bid. If the bidder is not awarded the contract, the check or bond is required to

be returned to the bidder. But if the bidder is awarded the contract, the bid guaranty is held until the bidder enters into a contract to construct the project and furnishes two bonds, each in the estimated cost of the project: (1) a contract performance bond that will indemnify the state against failure of the contractor to perform or, in the case of a grade separation project, will indemnify any railroad company against damage that may result from the contractor's negligence and (2) a payment bond conditioned on payment by the contractor and all subcontractors for labor or work performed and materials furnished for the project.

The bill provides that the bid guaranty may also be in the form of an electronic funds transfer to the Treasurer of State that is evidenced by a receipt or by a certification to the Director of Transportation in a form prescribed by the Director that an electronic funds transfer has been made to the Treasurer of State. Whether the bid guaranty is in the form of a certified check, a cashier's check, or a wire transfer, the money is to be credited to the ODOT Letting Fund, which the bill creates as a custodial fund of the Treasurer of State. Custodial funds of the Treasurer of State are not in the state treasury, but money credited to them is kept, invested, and disbursed by the Treasurer of State. Money in a custodial fund is not subject to appropriation but is paid out of the fund on proper order (as from the Department of Transportation).

Bid bonds would continue to be held by the Department of Transportation. However, if the Department determines that a bid guaranty is to be forfeited, the bill requires the amount of the bid guaranty to be transferred to (or, in the case of money paid on a forfeited bond, deposited into the state treasury, to the credit of) the Highway Operating Fund. Any investment earnings of the ODOT Letting Fund are to be distributed as the Treasurer of State considers appropriate.

### **Business logo sign program**

(R.C. 4511.101)

The Director of Transportation is currently required to establish a program for the placement of business logos for identification purposes on state directional signs within rights-of-way of divided, multi-lane, limited access highways. All costs of the program must be paid by the businesses applying for participation in the program. At any interchange where a business logo sign is erected, those costs are to be divided equally among the participating businesses.

The bill requires the Director to establish a fee for participation in the program. Money collected from participating businesses in excess of program costs is to be deposited into the Motorist Service Sign Fund, which the bill creates in the state treasury. The Director is to use the money in the Fund for transportation purposes, including transportation infrastructure.

Additionally, the bill removes the requirement that program costs be divided equally among the participating businesses when a business logo sign is erected at an interchange.

**Definition of "motorcycle"**

(R.C. 4511.01)

Federal law defines a "motorcycle" as a "motor vehicle with motive power having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground" (49 C.F.R. 571.3(b)). The Revised Code defines a motorcycle, in part, as "every motor vehicle, other than a tractor, having a saddle for the use of the operator and designed to travel on not more than three wheels in contact with the ground . . . ."

The bill adds the term "seat" to the definition of motorcycle, thereby making the definition consistent with the federal definition and permitting motorcycles in this state to be equipped with either a seat or a saddle.

**Office of Maritime Transportation**

(R.C. 5501.09)

The bill creates the Office of Maritime Transportation within the Department of Transportation's Division of Multi-Modal Planning and Programs. The Director of Transportation is required to assign to the Office those duties, powers, and functions relating to state maritime transportation issues and activities as the Director determines. In addition, the Office must exercise and perform any other duties, powers, and functions as are assigned to it by law.

**Regional transit authority competitive bidding**

(R.C. 306.43)

Under current law, the board of trustees of a regional transit authority may make any contract for the purchase of goods or services without competitive procedures if the cost of the goods and services does not exceed \$25,000. When an expenditure (with certain exceptions, including the acquisition of real estate) is expected to exceed that amount, the expenditure must be made through full and open competition by the use of the most appropriate competitive procedures, including: (1) competitive sealed bidding, (2) two-step competitive bidding with a technical proposal and a separate sealed bid, (3) procurement by competitive proposal, and (4) procurement of architect or engineer services in the manner prescribed by federal law. If the regional transit authority must use a competitive

procedure, it must publish notice calling for bids and the contracts must be in writing.

The bill increases the threshold above which amount regional transit authority contracts for goods and services must be competitively bid from \$25,000 to \$100,000.

**Turnpike Commission participation in Department of Transportation purchasing**

(R.C. 5513.01)

Current law allows the Director of Transportation to permit any political subdivision and any state university or college to participate in contracts into which the Director has entered for the purchase of machinery, materials, supplies, or other articles. This program is known as the Cooperative Purchasing Program, and one example of its use is in the purchase of salt. To participate in the program, any political subdivision or state university or college must file with the Director a certified copy of the ordinance or resolution of its legislative authority, board of trustees, or other governing board requesting authorization to participate in such contracts and agreeing to be bound by such terms and conditions as the Director prescribes. Cooperative purchases made by political subdivisions or state universities or colleges are exempt from any competitive bidding otherwise required by law for the purchase of machinery, materials, supplies, or other articles, although ODOT must abide by its competitive bidding requirements.

The bill allows the Ohio Turnpike Commission to participate in the Department of Transportation Cooperative Purchasing Program and specifies that the Commission must file a certified copy of its bylaws or rules requesting to participate in the program and agreeing to be bound by the Director's terms and conditions.

**"Cpl. Joshua Harmon Memorial Highway"**

(R.C. 5533.94)

Current law designates Interstate Highway 90 from the Pennsylvania border in Ashtabula County westward to its intersection with the Ohio Turnpike in Lorain County as the "Amvets Highway" (R.C. 5533.35, not in the bill). The bill provides that in addition to this existing designation, the portion of Interstate 90 located within the municipal corporation of Willoughby Hills in Lake County only also is to be known as the "Cpl. Joshua Harmon Memorial Highway." The Director of Transportation is authorized to erect suitable markers along the highway indicating its name.

Army medic Corporal Joshua Harmon was killed in a helicopter crash in Iraq on August 22, 2007.

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## TREASURER OF STATE

- Expands the definition of "financial transaction device" in the law governing the payment of amounts owed the state to include any device or method for making an electronic payment or transfer of funds.
- Requires the Treasurer of State to implement the SaveNOW program to create the availability of higher-rate savings accounts for the purpose of increasing personal savings and promoting financial education among Ohio residents.
- Permits Ohio residents to participate in the SaveNOW program upon agreeing to maintain a SaveNOW savings account with an eligible savings institution and completing the SaveNOW education program established and administered by the Treasurer.
- Requires an eligible savings institution to offer SaveNOW savings accounts on the placement of a SaveNOW linked deposit with the institution.
- Permits the Treasurer to invest in SaveNOW linked deposits, provided that the combined amount of investments of state money in linked deposits of any kind is not more than 12% of the state's average investment portfolio.
- Releases the state and the Treasurer from any liability under any SaveNOW savings account and provides that misuse or misconduct by an eligible institution or eligible resident does not affect the deposit agreement between the institution and Treasurer.
- Requires the Treasurer to issue a report on the SaveNOW program annually to the Governor, Speaker of the House, and Senate President, setting forth the SaveNOW linked deposits made by the Treasurer during the year and including a list of eligible savings institutions and the number of the SaveNOW savings accounts at each of those institutions during the preceding year.

- Revises the determination of interest rates under the Small Business Linked Deposit Program.

**Broadening of definition of "financial transaction device" in the law governing the payment of amounts owed the state**

(R.C. 113.40)

Current law allows the State Board of Deposit to adopt a resolution authorizing the acceptance of payment by financial transaction devices to pay for state expenses. The resolution must (1) designate the state elected officials and state entities that are authorized to accept payments by financial transaction device, (2) list the state expenses that may be paid by use of a financial transaction device, and (3) specifically identify the financial transaction devices that a state elected official or state entity may authorize as acceptable means of payment for state expenses. (R.C. 113.40(B).)

"State expenses" include fees, costs, taxes, assessments, fines, penalties, payments, or any other expenses a person owes to a state office under the authority of a state elected official or state entity. "Financial transaction device" includes a credit card, debit card, charge card, prepaid or stored value card, or automated clearinghouse network credit, debit, or e-check entry that includes, but is not limited to, accounts receivable and internet-initiated, point of purchase, and telephone initiated applications. (R.C. 113.40(A)(1) and (2).)

The bill retains the current definition of "financial transaction device," and includes within the definition any other device or method for making an electronic payment or transfer of funds (R.C. 113.40(A)(1)).

**SaveNOW Linked Deposit Program--introduction**

The bill establishes the SaveNOW program under which the Treasurer of State may place linked deposits of state money with certain financial institutions described in the bill. Those institutions must use a portion of the interest they earn on the SaveNOW linked deposits to provide special savings accounts to Ohio residents that earn higher than normal interest.<sup>93</sup>

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<sup>93</sup> Under the bill, "SaveNOW linked deposit" means a deposit placed by the Treasurer with an eligible savings institution at a rate determined and calculated by the Treasurer.

### *SaveNOW program purpose*

(R.C. 135.102)

The General Assembly finds, as stated in the bill, that the personal savings rate among Ohioans has declined in recent years and that personal savings are important to the future prosperity of Ohio and must be encouraged and assisted. In order to promote increased personal savings and thereby materially contribute to the economic growth of Ohio and the financial security of Ohio residents, the bill creates the SaveNOW program. The bill declares that it is state public policy through the SaveNOW program to create an availability of higher-rate savings accounts for the purpose of increasing personal savings and promoting financial education among Ohio residents.

### *SaveNOW savings accounts*

(R.C. 135.101 and 135.104)

*Participation and account requirements.* Residents of Ohio may participate in the SaveNOW program created by the bill by agreeing to maintain a SaveNOW savings account at an eligible savings institution for the program period and by completing the SaveNOW education program (discussed below). Under the bill, a "SaveNOW savings account" means an interest-bearing account that is opened by an eligible resident at an eligible savings institution and that complies with program requirements. An "eligible savings institution" is a financial institution that offers savings accounts available to residents of Ohio, that is a public depository<sup>94</sup> of public money of the state, and that agrees to participate in the SaveNOW program. A "program period" is the length of time, not to exceed two years, established by the Treasurer that an account is eligible to receive the SaveNOW interest incentive. An "eligible resident" is an individual who is a resident of Ohio and who completes the SaveNOW education program.

Eligible savings institutions must accept applications for a SaveNOW savings account from eligible residents on a first-come, first-serve basis on forms prescribed by the Treasurer. The eligible savings institution must offer those residents a SaveNOW savings account that satisfies all of the following: (1) opening and maintaining the account requires no minimum deposit, (2) no fees are charged for opening or using the account, and (3) all deposits in the account earn at least the premium savings rate. Under the bill "premium savings rate" means

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<sup>94</sup> A public depository is a financial institution that receives or holds public moneys deposited pursuant to Ohio's Uniform Depository Act.

the highest savings rate that is offered by an eligible savings institution for large deposits, as approved by and negotiated with the Treasurer.

**Participation limitation.** The provisions of the SaveNOW program prohibit eligible residents from holding more than one SaveNOW savings account during a program period, and the bill stipulates that an individual who holds an account jointly with another individual is considered to be holding an account. However, under the bill, an individual with joint ownership of an account is not considered to be holding an account if it is opened by a parent, grandparent, or guardian for a minor or for a dependent adult.

**SaveNOW education program.** The bill specifies that the SaveNOW education program Ohio residents must complete in order to open a SaveNOW savings account must include a financial literacy assessment and a financial literacy program established and administered by the Treasurer.

**Interest incentive.** For the purpose of providing an additional incentive for saving, the bill requires a SaveNOW incentive rate of interest to accrue to the average daily balance of deposits in a SaveNOW savings account, up to \$5,000, during the program period at a rate that is equal to up to three percentage points above the premium savings rate. The interest earnings arising from the SaveNOW incentive rate of interest must be credited to the account in a lump sum at the conclusion of the program period. The SaveNOW incentive interest earnings also must be deducted from the interest earned on the state's SaveNOW linked deposit at the end of the eligible program period.

**SaveNOW program administration**

(R.C. 135.105(A) and (B))

The bill requires the Treasurer to take any and all steps necessary to implement the SaveNOW program and monitor the compliance of eligible savings institutions, including the development of guidelines for the program as necessary. The bill also requires eligible savings institutions to offer SaveNOW savings accounts to eligible residents upon placement of SaveNOW linked deposits with those institutions. Each institution is required to have a certificate of compliance with the program in the form and manner prescribed by the Treasurer.

**Investment limitations**

(R.C. 135.103 and 135.63)

The Treasurer is permitted to invest in several linked deposit programs established under current law, provided that at the time of placement of any linked deposit under these programs the combined amount of investments in the linked

deposits is not more than 12% of the state's total average investment portfolio as determined by the Treasurer.<sup>95</sup> The Treasurer must give priority to the investment, liquidity, and cash flow needs of the state when deciding whether to invest in the existing law linked deposits. The bill subjects the SaveNOW program linked deposits to those same current law limitations. In addition, the bill duplicates those provisions in a new section of law (applicable specifically to the investment of state money in SaveNOW linked deposits).

**Exclusion from liability**

(R.C. 135.106)

The bill provides that the state and the Treasurer are not liable to any eligible savings institution or any eligible resident in any manner for the terms associated with SaveNOW savings accounts. Under the bill, any misuse or misconduct on the part of an institution or resident does not in any manner affect the deposit agreement between the institution and the Treasurer.

**Annual report**

(R.C. 135.105(C))

The bill requires the Treasurer to report on the SaveNOW program for the preceding calendar year by the first day of February, annually. The Treasurer is required to make the report to the Governor, the Speaker of the House of Representatives, and the President of the Senate. Under the bill, the Speaker of the House and the President of the Senate must transmit copies of the report to the chairpersons of the standing committees of their respective houses that customarily consider legislation regarding finance. The report must set forth the SaveNOW linked deposits made by the Treasurer under the program during the year and must include a list of eligible savings institutions and the number of SaveNOW savings accounts at each of those institutions during the preceding year.

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<sup>95</sup> Linked deposit programs under current law are the linked deposit program (R.C. 135.61 to 135.67); the agricultural linked deposit program (R.C. 135.71 to 135.76); the housing linked deposit program (R.C. 135.81 to 135.87); and the assistive technology device linked deposit program (R.C. 135.91 to 135.97).

### **Small Business Linked Deposit Program**

(R.C. 135.61, 135.65, and 135.66)

The Small Business Linked Deposit Program, in recognition of economic hardship facing small businesses in Ohio, provides lower interest loans to eligible small businesses. Current law requires the Treasurer of State to place applicable certificates of deposit with eligible institutions at a rate of up to 3% below the current market rate. It also requires eligible lending institutions to provide loans to eligible small businesses at a rate of 3% below the present borrowing rate applicable to each business.

The bill instead requires that the Treasurer of State place the certificates of deposit with eligible institutions at a rate that is below the current market rate. In turn, an eligible lending institution must provide loans to each eligible small business at a rate that reflects a percentage rate reduction below the business's present borrowing rate that is equal to the percentage rate reduction below the market rate at which the linked deposit was placed.

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### **OHIO WATER DEVELOPMENT AUTHORITY**

- Prohibits the Ohio Water Development Authority from charging any fees or fines in excess of the principal amount of a loan made by the Authority.
- Declares that a loan that is currently outstanding and that was granted prior to 1995 by the Ohio Water Development Authority to a regional water and sewer district concerning which the district originally received only an initial advance of less than \$5,000 from an original loan agreement of \$100,000 is void and cannot be collected by the Authority.

### **Limitation on fees and fines related to OWDA loans**

(R.C. 6121.045 and 6123.042)

Under current law, the Ohio Water Development Authority is authorized to make loans for certain waste water facility projects and solid waste projects. The bill prohibits the Authority from charging any fees or fines in excess of the principal amount of a loan made by the Authority.

**Declaring loan from Ohio Water Development Authority void**

(Section 715.20)

The bill declares that a loan that is currently outstanding and that was granted prior to 1995 by the Ohio Water Development Authority to a regional water and sewer district concerning which the district originally received only an initial advance of less than \$5,000 from an original loan agreement of \$100,000 is void and cannot be collected by the Authority.

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**BUREAU OF WORKERS' COMPENSATION**

- Prohibits individuals covered under the federal Longshore and Harbor Workers' Compensation Act (LHWCA) from applying for and receiving benefits under Ohio's Workers' Compensation Law.
- Requires the Administrator of Workers' Compensation to adopt rules regarding the premium calculations applicable to employers who employ employees covered under both the LHWCA and Ohio's Workers' Compensation Law.
- Requires the Administrator to transition from use of the Micro Insurance Reserve Analysis System to a different system, or different version of that system, by July 1, 2008, instead of June 30, 2008, as under current law.

**Claims arising under both Ohio's Workers' Compensation Law and the federal Longshore and Harbor Workers' Compensation Act**

(R.C. 4123.26, 4123.32, 4123.37, and 4123.54; Section 803.40)

**Overview of the Longshore and Harbor Workers' Compensation Act**

The federal Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.; hereafter "LHWCA") provides "compensation for injuries to certain workers engaged in 'maritime employment' that are incurred 'upon the navigable waters of the United States.'"<sup>96</sup> Under the LHWCA, an "employer" employs

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<sup>96</sup> *Chandris, Inc. v. Lastis* (1995), 515 U.S. 347, 360, citing 33 U.S.C. § 903(a). The issue in this case was to determine who was a "seaman," and thus covered by the Jones

employees in maritime employment, in whole or in part, upon the navigable waters of the United States, including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel (33 U.S.C. 902(4)). An "employee" is any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker. However, the LHWCA excludes a master or member of a crew of any vessel or any person engaged by a master to load or unload or repair any small vessel under 18 tons net from the definition of "employee." (33 U.S.C. 902(3).) Government employees and officers are not covered under the LHWCA, and employees of small vessels are not covered except under specified circumstances. (33 U.S.C. 903.) The LHWCA also excludes specified individuals from the definition of "employee" if those individuals are covered under the state's workers' compensation law. (33 U.S.C. 903.)

The Secretary of the United States Department of Labor administers and enforces the LHWCA (33 U.S.C. 939). Except as otherwise specified in the LHWCA, an employee may receive compensation in respect to the employee's disability or death, but only if the disability or death results from an injury occurring upon the navigable waters of the United States. Every employer is liable for and must secure the payment to the employer's employees of the compensation payable under the LHWCA. To satisfy the requirements of the LHWCA, an employer may obtain coverage either through (a) a private insurance company or (b) a person or fund authorized under state or federal law and by the Secretary to insure workers' compensation claims under the LHWCA. An employer also may receive authorization from the Secretary to pay claims directly (33 U.S.C. 932). In Ohio, an employer subject to the LHWCA may obtain coverage through a private insurer or through Ohio's Marine Industry Fund (R.C. 4131.11 to 4131.16), or may pay claims directly if authorized by the Secretary.

According to the United States Supreme Court, the LHWCA does not apply to an employee if compensation and benefits for the employee's disability or death is validly provided pursuant to state law. However, because it is occasionally difficult to determine, in advance of trial, whether an employee's injury, "although maritime in nature, was so 'local' as to allow state compensation laws validly to apply," the Court stated that an employee may elect to recover compensation under either state law or the LHWCA.<sup>97</sup> Additionally, the LHWCA specifies that,

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Act, 46 U.S.C. App. § 688(a), and who was otherwise covered by the LHWCA (*Chandris* at 350).

<sup>97</sup> *Hahn v. Ross Island Sand and Gravel Co.* (1959), 358 U.S. 272, 272-273, citing *Davis v. Department of Labor* (1942), 317 U.S. 249.

notwithstanding any other provision of law, any amounts paid to an employee for the same injury, disability, or death for which benefits are claimed under the LHWCA pursuant to any other workers' compensation law or the Jones Act must be credited against any liability imposed by the LHWCA (33 U.S.C. 903(e)).

**Prohibition against receiving compensation under Ohio law if an employee is covered under the LHWCA**

Under Ohio's Workers' Compensation Law (R.C. Chapters 4121., 4123., 4127., and 4131.), unless an exception applies, every employee who is injured or who contracts an occupational disease, and the dependents of each employee who is killed or dies as the result of an occupational disease, wherever such injury has occurred or occupational disease has been contracted, is entitled to receive, either directly from the employee's self-insuring employer or from the State Insurance Fund, the following:

- Compensation for the loss sustained on account of the injury, occupational disease, or death;
- Medical, nurse, and hospital services and medicines;
- Funeral expenses in case of death, as are provided by the Workers' Compensation Law.

Under the bill, if an employee who is covered under the LHWCA is injured or contracts an occupational disease or dies as a result of an injury or occupational disease, and if that employee's or that employee's dependents' claim for compensation or benefits for that injury, occupational disease, or death is subject to the jurisdiction of the LHWCA, the employee or the employee's dependents are not entitled to apply for and must not receive compensation or benefits under Ohio's Workers' Compensation Law. The bill states that the rights of such an employee and the employee's dependents under the LHWCA are the exclusive remedy against the employer for that injury, occupational disease, or death. The bill states that this provision applies to all claims pursuant to Ohio's Workers' Compensation Law arising on and after the effective date of the provision.

Under continuing law, the Administrator, with the advice and consent of the Bureau of Workers' Compensation Board of Directors, must adopt rules with respect to the collection, maintenance, and disbursements of the State Insurance Fund. The bill requires the Administrator, as a part of these rules, to adopt a rule providing that an employer who employs an employee covered under the LHWCA and Ohio's Workers' Compensation Law must be assessed a premium in accordance with the expenditure of wages, payroll, or both attributable to only labor performed and services provided by such an employee when the employee

performs labor and provides services for which the employee is not eligible to receive compensation and benefits under the LHWCA.

Under continuing law unchanged by the bill, every employer that employs one or more employees must prepare and mail a statement to the Bureau of Workers' Compensation that contains the number of employees employed during the preceding year from January 1 through December 31 and the number of those employees employed at each kind of employment and the aggregate amount of wages paid to such employees. Under the bill, in accordance with the rules adopted by the Administrator as described immediately above, if the employer employs employees who are covered under the LHWCA and under Ohio's Workers' Compensation Law, the employer must include both of the following amounts in that statement:

(1) The amount of wages the employer pays to those employees when the employees perform labor and provide services for which the employees are eligible to receive compensation and benefits under the LHWCA;

(2) The amount of wages the employer pays to those employees when the employees perform labor and provide services for which the employees are eligible to receive compensation and benefits under Ohio's Workers' Compensation Law.

The bill specifies that the allocation of wages identified by the employer under (1) and (2) above must not be presumed to be an indication of the law under which an employee is eligible to receive compensation and benefits.

**Bureau of Workers' Compensation Transition from use of the Micro Insurance Reserve Analysis System**

(Sections 610.30 and 610.31)

Current law, as stated in section 512.70 of Am. Sub. H.B. 100 of the 127th General Assembly, requires the Administrator of Workers' Compensation to transition from the use of Micro Insurance Reserve Analysis System to a different system or different version of that system to determine the reserves for use in establishing premium rates assessed for purposes of the Workers' Compensation Law by June 30, 2008. The bill changes the date by which the transition must occur to July 1, 2008.

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## MISCELLANEOUS

- Prohibits members of a law enforcement security force established and maintained exclusively by a board of county commissioners from striking and instead requires them to enter into binding arbitration to settle unresolved collective bargaining disputes.
- Requires that the Ohio Police and Fire Pension Fund Board file a semi-annual report with the Ohio Retirement Study Council regarding any investments sold, redeemed, divested, or withdrawn due to a company's business ties to Iran or Sudan.

### **Prohibition on strikes by specified county security personnel**

(R.C. 4117.14 and 4117.15; Section 803.31)

#### **Background**

The Public Employees' Collective Bargaining Law (PECBL; R.C. Chapter 4117.) governs collective bargaining between public employees and public employers who are subject to that law. Under the PECBL, all matters pertaining to wages, hours, or terms and other conditions of employment are subject to collective bargaining between a public employer and the "employee organization" (union) that represents the employer's public employees. The PECBL specifies timelines and requirements for negotiating collective bargaining agreements. The law specifies procedures for the parties to follow if the parties reach an impasse during those negotiations, including a requirement to submit any unresolved issues to a fact-finding panel.<sup>98</sup> If the parties are unable to reach agreement within seven days after the publication of findings and recommendations from a fact-finding panel or if any existing collective bargaining agreement has expired, the public employees who are permitted to strike may strike in accordance with statutory procedures. Those public employees who are not permitted to strike (generally public employees employed in areas concerning public safety and welfare) must submit to a final offer settlement procedure, also known as binding arbitration, to settle unresolved collective bargaining disputes with their employers. Under continuing law unchanged by the bill, if public employees governed by the

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<sup>98</sup> Under the PECBL, public employers and unions may submit their disputes to a mutually agreed-upon dispute resolution procedure, which supercedes the requirements and procedures specified in the PECBL (R.C. 4117.14(C) and (E)).

PECBL engage in a strike that is not authorized under the PECBL, those public employees may be subject to discipline in accordance with the procedures specified in the PECBL.

**The bill**

The bill prohibits members of a law enforcement security force that is established and maintained exclusively by a board of county commissioners and whose members are employed by that board from striking. Instead, those members must submit to a final offer settlement procedure to settle unresolved collective bargaining disputes with their employers in accordance with the requirements specified in the PECBL. In the event of a strike by those members, the board of county commissioners may seek an injunction against the strike from the court of common pleas of that county. The bill specifies that this provision applies only to collective bargaining agreements and extensions and renewals of those agreements entered into on or after the effective date of the provision.

**Ohio Police and Fire Pension Fund investments**

(Section 707.10)

The bill requires the Ohio Police and Fire Pension Fund Board to file a semi-annual report with the Ohio Retirement Study Council regarding any investments sold, redeemed, divested, or withdrawn due to a company's business ties to Iran or Sudan.

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**HISTORY**

ACTION	DATE
Introduced	05-19-08
Reported, H. Finance & Appropriations	05-22-08
Passed House (94-2)	05-22-08
Reported, S. Finance & Financial Institutions	---

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