# Ohio Legislative Service Commission

## Final Analysis

Jennifer A. Parker,
Megan Cummiskey,
and other LSC staff

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(As Passed by the General Assembly)

**Reps.** Sykes, Chandler, Brown, Bolon, Book, Celeste, DeBose, DeGeeter, Domenick, Dyer, Hagan, Harris, Harwood, Heard, Koziura, Letson, Luckie, Mallory, Pryor, Stewart, Szollosi, Ujvagi, Weddington, B. Williams, S. Williams, Winburn, Yates, Yuko

**Sens.** Carey, Goodman, Harris, Niehaus

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

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## ADJUTANT GENERAL (ADJ)

- Requires proceeds from the sale or lease of vacated armories and other facilities and land owned by the Adjutant General to be deposited into the Armory Improvements Fund and used to support Ohio Army National Guard facility and maintenance expenses as the Adjutant General directs.

- Requires Controlling Board approval for any Armory Improvements Fund expenditure related to the construction, acquisition, lease, or financing of a capital asset.

- Creates in the state treasury the Community Match Armories Fund to consist of all amounts received as revenue from contributions from local entities for construction and maintenance of Ohio Army National Guard readiness and community centers and facilities.

- Requires the moneys in the Community Match Armories Fund to be used to support the acquisition and maintenance costs of centers and facilities representing the local entity's share of costs, including the local entity's share of utility costs.

- Creates in the state treasury the Camp Perry/Buckeye Inn Operations Fund that consists of all amounts received as revenue from the rental of the Camp Perry and Buckeye Inn facilities and from the use of the Camp Perry facility.

- Requires the Camp Perry/Buckeye Inn Operations Fund to be used to support the facility operations of the Camp Perry Clubhouse and the Buckeye Inn.

- Creates the National Guard Service Medal Fund in the state treasury to consist of all amounts received from the purchase of Ohio National Guard service medals for eligible National Guard service members as authorized by the General Assembly, and requires moneys in the fund to be used to purchase additional medals.

- Creates in the state treasury the Ohio National Guard Facility Maintenance Fund consisting of all amounts received from leases of sites, including towers and wells, and from other revenue from reimbursements for services related to Ohio National Guard programs.

- Requires Ohio National Guard Facility Maintenance Fund moneys to be used for service, maintenance, and repair expenses, and for equipment purchases for programs and facilities of the Adjutant General.

- Permits the Adjutant General to appoint an assistant Adjutant General-Army and an assistant Adjutant General-Air Force who must meet the qualifications established by the Department of Defense for general officer qualification.

- Increases the number of participants in the Ohio National Guard Scholarship Program for the 2009 summer term from the equivalent of 800 full-time participants to the equivalent of 1,200 full-time participants.

- Repeals a provision that, upon receipt of a certification from the Administrator of the Bureau of Workers' Compensation, requires the Adjutant General to request the amount certified from the Controlling Board and to request the Director of Budget and Management to provide for payment to the State Insurance Fund of a sum equal to the amount transferred by the Controlling Board.

## Ohio Army National Guard facility and maintenance expenses

(R.C. 5911.10)

If any armory erected or purchased by the state becomes vacant because of deactivation, the Governor and the Adjutant General can lease it for periods not to exceed one year; or, when authorized by an act of the General Assembly, can sell or lease it for a period of years. The proceeds from the sale or lease of the armory must be credited to the Armory Improvements Fund, which is in the state treasury. The act

specifies that the proceeds from the sale or lease of other facilities and land owned by the Adjutant General also must be credited to the Armory Improvements Fund.

The act specifies further that moneys in the Armory Improvements Fund must be used to support Ohio Army National Guard facility and maintenance expenses as the Adjutant General directs. Any fund expenditure related to the construction, acquisition, lease, or financing of a capital asset is subject to Controlling Board approval. Investment earnings of the fund are credited to the General Revenue Fund.

## Community Match Armories Fund

(R.C. 5911.11)

The act creates the Community Match Armories Fund in the state treasury. The fund consists of all amounts received as revenue from contributions from local entities for the construction and maintenance of Ohio Army National Guard readiness and community centers and facilities. The moneys in the fund must be used to support the acquisition and maintenance costs of centers and facilities representing the local entity's share of costs, including the local entity's share of utility costs. Investment earnings of the fund are credited to the fund.

## Camp Perry/Buckeye Inn Operations Fund

(R.C. 5913.09)

The Adjutant General is the custodian of all military and other Adjutant General's Department property, both real and personal, belonging to the state. Generally, all income from any military or other Adjutant General's Department property, not made a portion of the company, troop, battery, detachment, squadron, or other organization funds by regulations, must be credited to the funds for the operation and maintenance of the Ohio organized militia, as the Adjutant General directs, in accordance with applicable laws, regulations, and agreements.

The act creates in the state treasury the Camp Perry/Buckeye Inn Operations Fund. The fund consists of all amounts received as revenue from the rental of facilities located at the Camp Perry training site in Ottawa County and the Buckeye Inn at Rickenbacker Air National Guard base in Franklin County, and all amounts received from the use of the Camp Perry training site and its facilities, including shooting ranges. The moneys in the fund are used to support the facility operations of the Camp Perry Clubhouse and the Buckeye Inn. Investment earnings of the fund are credited to the General Revenue Fund.

### National Guard Service Medal Fund

(R.C. 5919.20)

The act creates the National Guard Service Medal Fund in the state treasury. The fund consists of all amounts received from the purchase of Ohio National Guard service medals for eligible National Guard service members as authorized by the General Assembly. The moneys in the fund must be used to purchase additional medals. Investment earnings of the fund are credited to the fund.

### Ohio National Guard Facility Maintenance Fund

(R.C. 5919.36)

The act creates in the state treasury the Ohio National Guard Facility Maintenance Fund. The fund consists of all amounts received from revenue from leases of sites, including towers and wells, and other revenue received from reimbursements for services related to Ohio National Guard programs. The moneys in the fund must be used for service, maintenance, and repair expenses, and for equipment purchases for programs and facilities of the Adjutant General. Investment earnings of the fund are credited to the General Revenue Fund.

### Assistant Adjutant General-Army and Air Force

(R.C. 5913.051)

To supplement the military staff of the Governor, the Adjutant General can appoint an assistant to the state area commander for readiness and training for Army. The assistant ranks as a brigadier general and is to aid the Adjutant General by performing assigned duties in the areas of readiness, training, and mobilization. The assistant is not a full-time state employee, but only serves in that capacity during federally recognized training, special duty periods, or mobilization periods. The assistant must at the time of appointment be in the rank of colonel or above and otherwise meet other relevant qualifications.

Under the act, the Adjutant General can appoint two assistant Adjutant Generals: an assistant Adjutant General-Army and an assistant Adjutant General-Air Force. The assistants rank as brigadier generals and are to aid the Adjutant General by performing assigned duties that include the areas of readiness, mobilization, and homeland defense preparedness. The assistants are not full-time state employees or members of the Governor's military staff, but only serve in that capacity during federally recognized training, special duty periods, mobilization periods, or state active duty. The assistants must at the time of appointment be in the rank of colonel or above but otherwise meet

the qualifications established by the Department of Defense/Army or Department of Defense/Air Force, as the case may be, for general officer qualification.

### Ohio National Guard Scholarship Program

(R.C. 5919.34, not in the act; Section 759.10)

Continuing law creates the Ohio National Guard Scholarship Program, which provides financial assistance to eligible Ohio National Guard members to attend institutions of higher education. That law generally limits the number of participants in the Program for the summer academic term to the equivalent of 800 full-time participants.

The act carves out, in a special law, an exception to that limitation by increasing, for the summer academic term in 2009, the limit on the number of participants to the equivalent of 1,200 full-time participants.

### Payment of Adjutant General's workers' compensation costs

(R.C. 5923.141)

Under former law, upon receipt of a certification from the Administrator of the Bureau of Workers' Compensation, the Adjutant General was required (1) to request the amount certified from the Controlling Board and (2) to request the Director of Budget and Management to provide for payment to the State Insurance Fund of a sum equal to the amount transferred by the Controlling Board. The act repeals this provision.

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## DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS)

- Expands the powers of the Department of Administrative Services by authorizing the Department to lease any space, not just office space, for use by a state agency.
- Requires the Director of Administrative Services to administer a state equal employment opportunity program.
- Specifies that the Director's authority to enter into agreements with political subdivisions to furnish the Department's services and facilities in the administration of a merit program and other functions related to human resources includes counties and also includes, but is not limited to, administering competitive examinations for persons in the classified civil service.

- Requires counties that do not have a county personnel department and that use county job classification plans established by the Director to pay a usage fee in an amount the Director determines, with these fees being paid into the Human Resources Fund.

- Limits the Department's supervision of county personnel departments.

- Makes the Department generally responsible for administering civil service examinations only for positions in the classified civil service of the state.

- Changes effective August 30, 2009, the amount of service required of the following state employees before they accrue specific amounts of vacation leave: (1) exempt employees, (2) legislative employees, (3) Supreme Court employees, (4) certain employees in the office of the Governor, Secretary of State, Auditor of State, Treasurer of State, and Attorney General, and (5) employees in any position for which authority to determine compensation is given by law to an individual or entity other than the Director of Administrative Services.

- Provides that employees may begin using their vacation leave upon completing their initial probationary period.

- Prohibits during fiscal years 2010 and 2011, and limits to 80 hours beginning in fiscal year 2012, payments made for accrued vacation leave in the situation where a state employee has been denied vacation leave and is at the maximum amount of vacation leave that the employee may accrue.

- Grants in July 2011 to a state employee who is paid by warrant of the Director of Budget and Management a one-time credit of additional sick leave equal to (1) 16 hours if the employee is a part-time employee or (2) if the employee is a full-time employee, the lesser of either 32 hours or one-half of the personal leave hours the employee lost as a result of the moratoria on the crediting and annual payment of personal leave in effect from December 2009 until December 2011 under either the applicable Revised Code section or a rule of the Director of Administrative Services.

- Does not grant the sick leave credit described above to employees of the Supreme Court, General Assembly, Legislative Service Commission, Secretary of State, Auditor of State, Treasurer of State, or Attorney General unless these employees were subject to the moratoria on the accrual and annual payment of personal leave in effect from December 2009 until December 2011.

- Imposes moratoria, from December 2009 through December 2011, on (1) the accrual of personal leave by certain state employees and (2) the annual conversion of accrued but unused personal leave by these employees.

- Provides that the moratoria on personal leave described above (1) apply to employees of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides to exempt the officer's employees and so notifies the Director of Administrative Services in writing on or before November 1, 2009, and (2) do not apply to employees of the Supreme Court, General Assembly, and Legislative Service Commission unless the Supreme Court, General Assembly, or Legislative Service Commission decides to include those employees in the moratoria and so notifies the Director in writing on or before November 1, 2009.

- Grants in August 2011 to a state employee who is eligible to receive personal leave a one-time pay supplement (1) equivalent to 16 hours of personal leave if the employee is a part-time employee or (2) if the employee is a full-time employee, the lesser of either a one-time pay supplement equivalent to 32 hours of personal leave or one-half the hours of personal leave the employee lost as a result of the moratoria on the crediting and annual payment of personal leave that was in effect from December 2009 until December 2011 under either the applicable Revised Code section or a rule of the Director of Administrative Services.

- Does not grant the pay supplement described above to employees of the Supreme Court, General Assembly, Legislative Service Commission, Secretary of State, Auditor of State, Treasurer of State, or Attorney General unless these employees were subject to the moratoria on the accrual and annual payment of personal leave in effect from December 2009 until December 2011 and the Supreme Court, General Assembly, Legislative Service Commission, Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides to participate in the pay supplement.

- Allows an employee paid by warrant of the Director of Budget and Management to use available compensatory leave balances to supplement disability leave payments.[1]

- Requires that when a state employee is on approved disability leave, the employee must pay the employee's share of retirement contributions instead of the state paying the employee's share after the first three months of disability as required by prior law.

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[1] The authorization for employees to use compensatory time to supplement disability payments was previously enacted by H.B. 16 of the 128th General Assembly, an interim budget measure. This is the case, not only with regard to the law explained in the dot point accompanying this footnote, but also with regard to the law explained in other, subsequent dot points. The relationship between H.B. 1 and H.B. 16 is explained more completely in the text reflected in the dot points.

- Creates for employees in state service salary continuation not to exceed 480 hours at their total rate of pay for injuries incurred during the performance of, and arising out of, state employment after an implementation date determined by rule of the Director of Administrative Services.

- Modifies the occupational injury leave program.

- Eliminates pay supplements and probationary periods for intermittent employees.[2]

- Specifies that rules of the Department governing employee layoffs apply to only employees in the service of the state.

- Eliminates the requirement that appointing authorities of employees not paid by warrant of the Director of Budget and Management file a statement of rationale and supporting documentation with the Director of Administrative Services before sending a layoff notice.

- Requires the Director to verify the calculation of layoff retention points for only employees in the service of the state.

- Provides that the Director's rules governing layoff displacement rights apply to only employees in the service of the state.

- Requires the Director to verify retention points to reflect the length of continuous service and efficiency in service for only those employees who are laid off from positions in the service of the state.

- Requires, during fiscal years 2010 and 2011, that all full-time exempt state employees participate in a total of 80 hours of mandatory cost savings through a loss of pay or holiday pay and that all part-time employees not receive holiday pay.[3]

- Requires participation in the cost savings program described above by all employees of the Secretary of State, Auditor of State, Treasurer of State, or Attorney General unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney

[2] The elimination of pay supplements for intermittent employees mentioned in this dot point was previously enacted by H.B. 16 of the 128th General Assembly. See footnote 1.

[3] The law described in this dot point was previously enacted in H.B. 16 of the 128th General Assembly. See footnote 1.

General chooses to exempt the office's employees and so notifies the Director of Administrative Services in writing on or before July 1, 2009.[4]

- Specifies that if the Secretary of State, Auditor of State, Treasurer of State, or Attorney General did not opt to participate in the mandatory cost savings program by July 1, 2009, the Secretary of State, Auditor of State, Treasurer of State, or Attorney General may begin participating in the program for 80 hours or less by notifying the Director of Administrative Services in writing.

- Authorizes the Director of Administrative Services, after June 30, 2011, to implement mandatory cost savings days for exempt employees in the event of a fiscal emergency.[5]

- Requires participation in mandatory cost savings days by all employees of the Secretary of State, Auditor of State, Treasurer of State, or Attorney General unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General chooses to exempt the office's employees and notifies the Director of Administrative Services in the manner the Director prescribes by rule.[6]

- Specifies that reductions in pay made as the result of mandatory cost savings days are not modifications or reductions in pay that an employee in the classified civil service can appeal to the State Personnel Board of Review under the Civil Service Law.[7]

- Authorizes the Governor to declare a fiscal emergency if the Governor determines that the available revenue receipts and balances for any fund or across any funds will likely be less than the appropriations for the year, and to issue such orders as necessary to the Director of Budget and Management to reduce expenditures, or to the Director of Administrative Services to implement personnel actions consistent therewith, including, but not limited to, mandatory cost savings days.[8]

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[4] The law described in this dot point was previously enacted in H.B. 16 of the 128th General Assembly. See footnote 1.

[5] The law described in this dot point was previously enacted in H.B. 16 of the 128th General Assembly. See footnote 1.

[6] The law described in this dot point was previously enacted by H.B. 16 of the 128th General Assembly. See footnote 1.

[7] The law described in this dot point was previously enacted in H.B. 16 of the 128th General Assembly. See footnote 1.

[8] The law described in this dot point was previously enacted in H.B. 16 of the 128th General Assembly. See footnote 1.

- Creates the Cost Savings Fund and allocates to the Fund savings accrued through employee participation in the mandatory cost savings program and in mandatory cost savings days.[9]

- Requires that an applicant for a civil service examination be a United States citizen or have a valid permanent resident card, rather than be a United States citizen or have declared the intention of becoming a United States citizen, as required under prior law.

- Requires that certain disciplinary actions under prior law tied to 24 or 40 or more hours of work or pay instead be tied to more than 24 or 40 hours of work or pay.

- Specifies that employee absences due to cost savings day provided by law or under a collective bargaining agreement must not be a factor in determining unemployment compensation eligibility or payment amount.

- Requires a 2% pay reduction beginning in July 2009 for exempt employees of the Auditor of State paid in accordance with Schedule E-1 or Schedule E-1 for Step 7.

- Creates the Health Care Spending Account Fund in the state treasury and requires the Director of Administrative Services to use the money in the fund to make payments with regard to the participation of state employees in flexible spending accounts for certain nonreimbursed medical and dental expenses under section 125 of the Internal Revenue Code.

- Creates the Dependent Care Spending Account Fund in the state treasury and requires the Director to use money in the fund to make payments with regard to the participation of state employees in flexible spending accounts for work-related dependent care expenses under section 125 of the Internal Revenue Code.

- Authorizes the Department to establish and obtain OBM approval of charges to cover state administrative costs for employee educational development programs undertaken pursuant to specific collective bargaining agreements identified in uncodified law and to request that OBM approve additional amounts for this purpose if it becomes necessary.

- Requires the Department of Administrative Services to collect user fees from participants in the multi-agency radio communications system (MARCS).

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[9] The law described in this dot point was previously enacted in H.B. 16 of the 128th General Assembly. See footnote 1.

- Creates the MARCS Administration Fund in the state treasury and requires all moneys from user fees to be deposited in the fund.

- Authorizes the Office of Collective Bargaining in the Department of Administrative Services to negotiate with the respective state collective bargaining units various payroll reduction strategies through the collective bargaining process prior to July 1, 2009, including, but not limited to, reductions in pay for fiscal years 2010 and 2011 and an increase in a state employee's share of dental, vision, and life insurance benefits during those fiscal years, to achieve savings of between $170 and $200 million for each fiscal year.

- Authorizes the Director of Budget and Management to transfer cash from non-General Revenue Fund funds to the General Revenue Fund to carry out the provisions described in the preceding dot point.

- States the General Assembly's intent that all funds appropriated or otherwise made available by the state for fiscal stabilization or recovery purposes or by the American Recovery and Reinvestment Act of 2009 are to be used, to the extent possible, in accordance with the preferences established in the state's Buy Ohio Law to purchase products made and services performed in the United States and Ohio.

- Would have required at least four, instead of at least two, bids that offer products produced or mined in Ohio in order to be considered sufficient competition to prevent excessive price or inferior products when giving preference to Ohio-produced or mined products (VETOED).

- Requires contractors for specified projects funded with at least $100,000 from a political subdivision to comply with regulations or ordinances of the political subdivision that are in effect before July 1, 2009, that specifically relate to the employment of residents and local businesses of the political subdivision in the performance of the work of the project.

- Would, if left intact, have required the Director of Administrative Services to establish a single electronic Internet web site through which the following can be accessed: a database containing each state employee's year-to-date gross pay and pay from the most recent pay period, a database containing agency expenditures for goods and services, and a database containing tax credits granted to business entities (PARTIALLY VETOED).

- Would have required each database to contain searchable fields through which details about the subject of the database can be accessed (VETOED).

- Requires the Department of Administrative Services to obtain group life insurance coverage for all municipal and county court judges.

- Specifies that on and after the effective date of the life insurance coverage for municipal and county court judges, these judges are ineligible for life insurance coverage from any county or other political subdivision.

- Removes obsolete pay tables prescribing pay for exempt employees.

- Requires a state agency, by November 1, 2009, to prepare a spending plan outlining a 30% reduction in spending on supplies and services for fiscal years 2010 and 2011.

- Requires a state agency, by February 1 of each odd-numbered year beginning in 2011, to prepare a spending plan for purchasing supplies and services for the following two fiscal years.

- Requires state agencies to observe travel expense controls, overhead cost controls, furniture and equipment purchasing controls, and information technology controls.

- Requires the State Chief Information Officer to establish policies and standards for consolidating information technology, for extending the service life of information technology systems, for the purchase and use of handheld computing and telecommunications devices by state agency employees, converting print to electronic records, and reducing energy consumption.

- Requires the Director of Administrative Services to establish a State Information Technology Investment Board to identify and recommend to the State Chief Information Officer opportunities for consolidation and cost-saving measures relating to information technology.

- Requires state agencies, state universities, and the Ohio Housing Finance Agency, the Third Frontier Commission, the Clean Ohio Council, and the Ohio School Facilities Commission to comply with a new uncodified statute modeled on Executive Order 2008-13S when complying with the minority set aside purchasing requirements of the Minority Business Enterprise Set Aside Act or with the procurement goals of the EDGE Business Enterprise Act.

- Requires state agencies, including state universities, and the Ohio Housing Finance Agency, the Third Frontier Commission, the Clean Ohio Council, and the Ohio School Facilities Commission, that have failed to comply with the minority set aside purchasing requirements of the Minority Business Enterprise Set Aside Act, or with the procurement goals established under the EDGE Business Enterprise Act, to establish, by December 31, 2009, a long-term plan for compliance.

- Explicitly requires that the Ohio School Facilities Commission, the Ohio Housing Finance Agency, the Third Frontier Commission, the Clean Ohio Council, and state universities purchase goods and services as required by the Minority Business Enterprise Set Aside Act and that the Ohio Housing Agency, the Third Frontier Commission, and the Clean Ohio Council comply with agency procurement goals for contracting with EDGE Business Enterprises.

- Specifies that the rules of the Minority Business Bonding Program must provide for a retainage of money paid to a participating minority business or EDGE business enterprise of 15% for a contract valued at more than $50,000 and for a retainage of 12% for contracts valued at $50,000 or less.

- Permits a minority business or EDGE business enterprise to bid or enter into a contract with the state, an instrumentality of the state, a political subdivision, or an instrumentality of a political subdivision without being required to provide a bond under specified circumstances.

- Would have required the Department of Administrative Services to conduct a two-year pilot project in which a total of 10% of state-owned, gasoline-powered passenger cars, sport utility vehicles, and light-duty pickup trucks used by the Department of Natural Resources, Public Safety, and Transportation were to be converted to a propane fuel system, to assess all aspects of the use of propane-powered vehicles during the pilot project, and to submit a final report to the Governor and the General Assembly (VETOED).

## Leasing space by Department of Administrative Services

(R.C. 123.01)

Under ongoing law, among the powers of the Department of Administrative Services, is the power to lease office space in buildings for the use of a state agency. The act expands this power by authorizing the Department to lease any space, not just office space in buildings, for use by a state agency.

## State Equal Employment Opportunity Program

(R.C. 124.04)

The act requires the Director of Administrative Services to administer a state equal employment opportunity program.

### Department's agreements with political subdivisions to provide personnel services

(R.C. 124.07)

The Director of Administrative Services may enter into an agreement with any municipal corporation or other political subdivision to furnish services and facilities of the Department of Administrative Services in the administration of a merit program or other functions related to human resources. The act specifies that the Director's authority to enter into these agreements explicitly includes counties and also includes, but is not limited to, providing competitive examinations for persons in the classified civil service.

All money the Department receives as a reimbursement for payroll, merit program, or other human resource services performed and facilities furnished to political subdivisions is paid into the state treasury to the credit of the Human Resources Services Fund. The act removes the reference to payroll services and inserts a reference to the administration of competitive examinations as an example of human resource services performed.

### Department's receipt of reimbursement for the use of its county job classification plans

(R.C. 124.14)

Under prior law, the Director of Administrative Services was required, in accordance with rules adopted under the Administrative Procedure Act, to establish a classification plan for county agencies that do not use the services and facilities of a county personnel department. The act instead merely authorizes the Director to do so and authorizes the Director to assess a county agency that chooses to use the Director's classification plan a usage fee the Director determines. All usage fees must be paid into the state treasury to the credit of the Human Resources Fund.

### Department's supervision of county personnel departments

(R.C. 124.14)

Each board of county commissioners is authorized to establish a county personnel department and vest administration of the Civil Service Law in the department, in place of administration of the county civil service by the Department of Administrative Services. The act eliminates a requirement that the county personnel department's exercise of this power only begins upon the receipt by the Director of

Administrative Services of a copy of the board of county commissioners' resolution vesting this power in the county personnel department.

After a county personnel department has been vested with the power to administer the Civil Service Law, any county elected official, board, agency, or other appointing authority, upon written notification to the Director, may elect to use the services and facilities of the county personnel department. The act provides that upon the county personnel department's receipt of this notification, rather than upon the Director's receipt, the county personnel department must begin to administer the Civil Service Law with respect to that county agency.

After at least two years have passed since the creation of a county personnel department, the board of county commissioners may disband the county personnel department. The act eliminates (1) the requirement for the county personnel department to have existed for at least two years before it can be disbanded and (2) the return of administration of the Civil Service Law to the Department of Administrative Services if the county personnel department is disbanded.

A county agency, when at least two years have passed since it elected to use the services and facilities of a county personnel department, may return to the Department of Administrative Services for administration of the Civil Service Law. The act instead (1) provides that a county agency may end its involvement with a county personnel department at any time upon the county personnel department's actual receipt of a certified copy of the agency's notification of the agency's decision to no longer participate and (2) eliminates the return of administration of the Civil Service Law to the Department of Administrative Services with respect to that county agency.

The act authorizes, rather than requires as under prior law, the Director of Administrative Services to adopt rules in accordance with the Administrative Procedure Act that (1) require each county personnel department to adhere to merit system principles with regard to employees of the county departments of job and family services, child support enforcement agencies, and public child welfare agencies so that there is no threatened loss of federal funding for these agencies and to be financially liable to the state for any loss of federal funds due to the action or inaction of the county personnel department and (2) authorize the Director of Administrative Services to conduct periodic audits and reviews of county personnel departments to guarantee uniform application of the Civil Service Law. Under the act, the costs of audits and reviews conducted to monitor the county personnel department's administration of the Civil Service Law are to be reimbursed to the Department of Administrative Services as determined by the Director, rather than be borne equally between the Department and the county personnel department as required by prior

law. All money the Department receives for these audits must be paid into the state treasury to the credit of the Human Resources Fund.

The net effect of these changes is that county agencies themselves, or the county personnel department to the extent that county agencies come under its jurisdiction, are primarily responsible for administration of the Civil Service Law in the county, subject to oversight by the Department of Administrative Services to ensure that (1) the Civil Service Law is being uniformly administered and (2) merit system standards are being properly followed to avoid the loss of federal funds for certain federally funded county agencies.

### Department's responsibility for administering examinations for positions in the service of the state

(R.C. 124.23)

Any civil service examination must be public and open to all United States citizens and persons who have legally declared their intentions of becoming citizens, within certain limitations to be determined by the Director of Administrative Services as to citizenship, age, experience, health, habit, and moral character. The act specifies that the Director may determine these limitations only for examinations that are to be administered for positions in the service of the state, which are positions in the government of the state not including positions of employment with state-supported colleges and universities, counties, cities, city health districts, city school districts, general health districts, and civil service townships.

Under prior law, the Director had control of all civil service examinations. The act specifies instead that the Director has control over all examinations administered for positions in the service of the state and all other examinations the Director administers under contract with political subdivisions.

Prior law also generally required the Director to give reasonable notice of the time, place, and general scope of every competitive examination for appointment to a position in the civil service. The act limits this notice to examinations the Director conducts for positions in the service of the state.

### Changes in amount of annual vacation leave accrued by certain state employees

(R.C. 124.134; Sections 803.30 and 812.20)

The act, effective August 30, 2009, changes the amount of service required of the following state employees before they accrue specific amounts of vacation leave with

full pay: (1) exempt employees, (2) legislative employees, (3) Supreme Court employees, (4) certain employees in the office of the Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General, and (5) employees in any position for which authority to determine compensation is given by law to an individual or entity other than the Director of Administrative Services. These employees will accrue 120, 160, 180, 200, or 240 hours of vacation each year if they have accrued 4, 9, 14, 19, or 24 years of service respectively, rather than 5, 10, 15, 20, or 25 years of service as required by prior law. Employees with less than four years of service will accrue 80 hours of leave per year, but may begin using their accrued leave upon completion of their initial probation period. However, a probationary period that follows a separation from service that is less than 31 days is not considered an initial probationary period. The act provides that 52 weeks equal one year of service, rather than 26 biweekly pay periods as under prior law. These changes take effect on August 30, 2009.

The act requires the Director of Administrative Services to determine an additional prorated amount of vacation leave for employees who are in their 4th, 9th, 14th, 19th, or 24th year of service to receive as a result of the transition occurring on August 30, 2009. This additional, prorated amount must be such that the affected employees are not harmed as a result of the transition, and must be added to the vacation leave balances of the affected employees on that date.

### Payment for denied vacation leave

(R.C. 124.134)

Those state employees described in the immediately preceding section of this analysis can be paid for their accrued vacation leave if they have been denied vacation leave during the immediately preceding 12 months and their vacation leave is at, or will reach in the immediately following pay period, the maximum amount that they may accrue, which is three times the amount of vacation leave they accrue per year based on their length of service. The act prohibits these payments from being made during fiscal years 2010 and 2011, but allows them to be made up to a maximum of 80 hours per fiscal year beginning in fiscal year 2012.

The act also authorizes the Supreme Court, General Assembly, Secretary of State, Auditor of State, Treasurer of State, and Attorney General to establish by policy an alternative payment structure for their employees whose vacation leave credit is at, or will reach in the immediately following pay period, the maximum accrual of three years and who have been denied the use of vacation leave.

## Grant of additional sick leave credit to state employees in July 2011

(R.C. 124.382)

The act grants to state employees who are paid by warrant of the Director of Budget and Management and who are in active payroll status on June 18, 2011, a one-time credit of additional sick leave in the pay period that begins on July 1, 2011. Part-time employees receive a one-time sick leave credit equal to 16 hours of additional sick leave. Full-time employees receive the lesser of either a one-time sick leave credit of 32 hours of additional sick leave or a one-time credit of additional sick leave equivalent to one-half of the personal leave hours the employee lost as a result of the moratoria on the crediting and annual payment of personal leave in effect from December 2009 until December 2011 under either the applicable Revised Code section or a rule of the Director of Administrative Services.

Employees who are not in active payroll status due to military leave or absence taken in accordance with the federal Family and Medical Leave Act are eligible to receive the additional one-time sick leave credit. "Active payroll" status means conditions under which an employee is in active pay status or is eligible to receive pay for an approved leave of absence including, but not limited to, occupational injury leave, disability leave, or workers' compensation.

The act does not grant the additional one-time sick leave credit to employees of the Supreme Court, General Assembly, Legislative Service Commission, Secretary of State, Auditor of State, Treasurer of State, or Attorney General unless these employees were subject to the moratoria on the accrual and annual payment of personal leave in effect from December 2009 until December 2011 and the Supreme Court, General Assembly, Legislative Service Commission, Secretary of State, Auditor of State, Treasurer of State, or Attorney General notifies the Director of Administrative Services in writing on or before June 1, 2011, of the decision to participate in the one-time additional sick leave credit. Written notice must be signed by the appointing authority for employees of the Supreme Court, General Assembly, or Legislative Service Commission, as the case may be.

## Moratoria on the accrual and annual payment of personal leave

(R.C. 124.386)

Continuing law provides 32 hours of personal leave each year to the following state employees: (1) exempt employees, (2) legislative employees, (3) Supreme Court employees, (4) certain employees in the office of the Governor, Secretary of State, Auditor of State, Treasurer of State, and Attorney General, and (5) employees in any position for which authority to determine compensation is given by law to another

individual or entity. Employees who receive personal leave are allowed to (1) carry forward their balance to the next year, (2) convert the balance to sick leave, or (3) be paid for the value of their balance. The act imposes moratoria, from December 2009 until December 2011, on the accrual of personal leave by these employees and on the annual conversion of their accrued but unused personal leave. The act provides that personal leave accrual will resume with employees receiving credit in December 2011, but with no retroactive grant of credit for the period the moratoria were in effect.

The act further provides that the moratoria described above apply to employees of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides to exempt the office's employees and so notifies the Director of Administrative Services in writing on or before November 1, 2009. The moratoria described above do not apply to employees of the Supreme Court, General Assembly, and Legislative Service Commission unless the Supreme Court, General Assembly, or Legislative Service Commission decides to include their employees in the moratoria and so notify the Director of Administrative Services in writing on or before November 1, 2009. The written notice must be signed by the appointing authority for employees of the Supreme Court, General Assembly, or Legislative Service Commission.

### One-time pay supplement in August 2011 to state employees paid by warrant of the Director of Budget and Management

(R.C. 124.183)

The act grants to those state employees who are eligible to receive personal leave and who are in active payroll status on July 30, 2011, a one-time pay supplement in the earnings statements they receive on August 26, 2011. Part-time employees receive a one-time pay supplement equivalent to 16 hours of personal leave. Full-time employees receive the lesser of either a one-time pay supplement equivalent to 32 hours of personal leave or a one-time pay supplement of one-half the hours of personal leave hours the employee lost as a result of the moratoria on the crediting and annual payment of personal leave that was in effect from December 2009 until December 2011 under either the applicable Revised Code section or a rule of the Director of Administrative Services.

Employees who are not in active payroll status on July 30, 2011, due to military leave or absence taken in accordance with the federal Family and Medical Leave Act are eligible to receive this additional one-time pay supplement. "Active payroll" status means conditions under which an employee is in active pay status or is eligible to receive pay for an approved leave of absence including, but not limited to, occupational injury leave, disability leave, or workers' compensation.

The act does not grant the additional one-time pay supplement described above to employees of the Supreme Court, General Assembly, Legislative Service Commission, Secretary of State, Auditor of State, Treasurer of State, or Attorney General unless these employees were subject to the moratoria on the accrual and annual payment of personal leave that was in effect from December 2009 until December 2011 and the Supreme Court, General Assembly, Legislative Service Commission, Secretary of State, Auditor of State, Treasurer of State, or Attorney General notifies the Director of Administrative Services in writing before June 1, 2011, of the decision to participate in the one-time pay supplement. Written notice must be signed by the appointing authority for employees of the Supreme Court, General Assembly, or Legislative Service Commission, as the case may be.

### Use of compensatory time balance to supplement disability leave payments

(R.C. 124.385)

Continuing law provides disability leave to employees who are paid by warrant of the Director of Budget and Management and meet certain qualifications. Continuing law allows employees to use available sick leave, personal leave, or vacation leave to supplement their disability leave payments to reach up to 100% of their base rate of pay. H.B. 16 of the 128th General Assembly allows employees also to use available compensatory time balances to supplement their disability leave payments to reach up to 100% of their base rate of pay. The act makes an identical amendment.

### Payment of employee share of various benefits when employee is on disability leave

(R.C. 124.385)

The act requires that when a state employee is on approved disability leave, the employee must pay the employee's share of retirement contributions through the disability period, instead of the state paying the employee's share after the first three months of disability as prior law required. The act also removes the former statutory requirement that the state pay the employee's share of health, life, and other insurance benefits during the disability period.

### Salary continuation program for service-connected injuries and changes to occupational injury leave program

(R.C. 124.381)

Continuing law provides occupational injury leave to each employee of the Departments of Rehabilitation and Correction, Mental Health, Developmental

Disabilities, Veteran Services,[10] and Youth Services, and to each employee of the School for the Deaf and the School for the Blind, who suffers bodily injury inflicted by an inmate, patient, client, youth, or student in the facilities of these agencies during the time the employee is lawfully carrying out the assigned duties of the employee's position. Occupational injury leave is paid at the employee's total rate of pay during the period the employee is disabled as a result of the injury, but cannot exceed 120 work days. Occupational injury leave is in lieu of workers' compensation.

Under the act, an employee of the agencies described in the preceding paragraph qualifies for occupational injury leave if the employee sustains a qualifying physical condition inflicted by a ward of these agencies during the time the employee is lawfully carrying out the assigned duties of the employee's position, and the duration of the leave is changed to 960 hours rather than 120 work days. If such an employee's disability as a result of a qualifying physical condition extends beyond 960 hours, the employee immediately becomes subject to sick leave and disability leave benefits.

The act further provides, to employees in the service of the state, salary continuation not to exceed 480 hours at their total rate of pay for absence as a result of injuries incurred during the performance of, and arising out of, state employment after the implementation date the Director of Administrative Services establishes by rule. If such an employee's absence as the result of such an injury extends beyond 480 hours, the employee immediately becomes subject to sick leave and disability leave benefits.

Employees of the Secretary of State, Auditor of State, Treasurer of State, Attorney General, Supreme Court, General Assembly, or Legislative Service Commission are not eligible for salary continuation unless the relevant appointing authority notifies the Director of Administrative Services in writing of the intent to have all of the appointing authority's employees participate in salary continuation. The relevant appointing authority also may discontinue salary continuation for all of its employees by providing written notice of the discontinuation to the Director.

Participation in salary continuation is subject to rules adopted by the Director.

Under the act, an employee who is participating in the modified occupational injury leave program or the new salary continuation program is ineligible for other paid leave, including holiday pay, and does not accrue vacation leave credit, but does accrue sick leave credit and personal leave credit.

[10] Prior law referred, not to the Department of Veterans Services, but to the Ohio Veterans Home Agency (OVHA). The OVHA now is part of the Department of Veterans Services, however, and the act substitutes a reference to the Department for the reference in prior law to the OVHA.

The act authorizes the Director of Administrative Services to adopt rules for the administration of both the modified occupational injury leave program and the new salary continuation program and for the payment of health benefits while an employee is on workers' compensation leave. The rules are to include provisions for determining a disability, for filing a claim for leave, and for allowing or denying claims for leave. And, by explicit implication from the act, the rules are to define the implementation date for the new salary continuation program.

Finally, the act clarifies that an appointing authority may apply to the Director of Administrative Services to grant both the new salary continuation and the modified occupational injury leave to law enforcement personnel employed by the appointing authority.

## Elimination of probationary periods for intermittent employees

(R.C. 124.181 and 124.27)

Ongoing law provides pay supplements for exempt state employees who are paid in accordance with Salary Schedule E-1. These pay supplements are for items such as service longevity, hazardous duty, call-back, shift differentials, professional achievement, and educational achievement. H.B. 16 of the 128th General Assembly specifies that intermittent employees are not eligible for these pay supplements. The act makes an identical amendment.

Continuing law generally requires that all original and promotional appointments in the classified civil service be for a probationary period of not less than 60 days or more than one year, as fixed by rule of the Director of Administrative Services. The act excludes intermittent appointments from this requirement.

A rule of the Department of Administrative Services defines an "intermittent employee" as one who works an irregular schedule that (1) is determined by the fluctuating demands of the work, (2) is not predictable, and (3) is generally characterized as requiring less than 1,000 hours of work per fiscal year.

## Elimination of involvement of the Department in layoffs not affecting employees paid by warrant of the Director of Budget and Management

(R.C. 124.321)

Continuing law requires that whenever it becomes necessary for an appointing authority to reduce its work force, the appointing authority must lay off its employees in the classified service or abolish their positions in accordance with the Civil Service Law and the rules of the Director of Administrative Services. The act specifies that

these rules, the rules of the Director that determine whether a lack of work exists, and the rules of the Director that govern the abolishment of positions apply to only employees in the service of the state, which are positions in the government of the state not including positions of employment with state-supported colleges and universities, counties, cities, city health districts, city school districts, general health districts, and civil service townships.

Employees in the classified civil service to be laid off for a lack of funds or lack of work within an appointing authority. Appointing authorities that employ persons whose salary or wage is paid by other than by warrant of the Director of Budget and Management themselves determine whether a lack of funds or lack of work exists, and must file a statement of rationale and supporting documentation with the Director of Administrative Services before sending the layoff notices. The act eliminates for these appointing authorities the requirement that they file this statement and documentation with the Director.

### Department's responsibility for the administration of layoff displacement rights

(R.C. 124.324)

Continuing law grants to a laid-off employee in the classified civil service the right to displace employees with fewer retention points than the laid-off employee. Retention points reflect an employee's length of continuous service and efficiency in service.

Prior law required the Director of Administrative Services to verify the calculation of the retention points of all employees. The act requires the verification of this calculation for only employees in positions in the service of the state, which are positions in the government of the state that not including positions of employment with state-supported colleges and universities, counties, cities, city health districts, city school districts, general health districts, and civil service townships.

The act further provides that the Director's duty to adopt rules under the Administrative Procedure Act to implement layoff displacement rights apply to only employees in the service of the state.

### Calculation of retention points for state employees affected by a layoff

(R.C. 124.325)

Prior law required the Director of Administrative Services to verify, for all employees in the classified civil service affected by a layoff, their length of continuous

service and efficiency in service. The act instead requires that the Director verify retention points only for employees laid off from positions in the service of the state, which are positions in the government of the state not including positions of employment with state-supported colleges and universities, counties, cities, city health districts, city school districts, general health districts, and civil service townships.

The act further provides that the Director's duty to adopt rules in accordance with the Administrative Procedure Act to (1) establish a system for the assignment of retention points for each employee in a job classification affected by a layoff and (2) for determining, in those instances where employees have identical retention points, which employee must be laid off first, applies only to employees in the service of the state.

## Mandatory cost savings days for exempt state employees

(R.C. 124.34, 124.392, and 126.05)

Continuing law (1) authorizes the Director of Administrative Services to establish a voluntary cost savings program for certain employees who are paid by warrant of the Director of Budget and Management and who are exempt from the Public Employee Collective Bargaining Law and whose position is included in the Job Classification Plan the Director establishes and (2) requires the Director to adopt rules under the Administrative Procedure Act to administer the program.

In addition to the provisions described in the preceding paragraph, H.B. 16 of the 128th General Assembly requires the Director of Administrative Services to establish a mandatory cost savings program applicable to the employees described in that paragraph. The program may include, but is not limited to, a loss of pay or loss of holiday pay as determined by the Director. The program may be administered differently among exempt employees based on their job classifications, appointment categories, appointing authorities, or other relevant distinctions. The Director is required to adopt rules under the Administrative Procedure Act to provide for administration of the mandatory cost savings program and days.

Under H.B. 16, each full-time exempt employee is required to participate in the mandatory cost savings program for a total of 80 hours of mandatory cost savings during both fiscal years 2010 and 2011. Similarly, each part-time employee is required to participate in the mandatory cost savings program by not receiving holiday pay during both fiscal years 2010 and 2011. Participation in the cost savings program described above is required for all employees of the Secretary of State, Auditor of State, Treasurer of State, or Attorney General unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides to exempt the office's employees and so notifies the Director of Administrative Services in writing on or before July 1, 2009.

After June 30, 2011, H.B. 16 authorizes the Director of Administrative Services, in consultation with the Director of Budget and Management, to implement mandatory cost savings days for exempt employees in the event of a fiscal emergency. Each employee of the Secretary of State, Auditor of State, Treasurer of State, or Attorney General must participate in these mandatory cost savings days unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General chooses to exempt the office's employees and so notifies the Director of Administrative Services in the manner the Director of Administrative Services prescribes by rule.

H.B. 16 authorizes the Governor to declare a fiscal emergency if the Governor determines that the available revenue receipts and balances for any fund or across any funds will likely be less than the appropriations for the year, and to issue orders as necessary to the Director of Budget and Management to reduce expenditures, or to the Director of Administrative Services to implement personnel actions consistent therewith, including, but not limited to, the mandatory cost savings days described above.

H.B. 16 specifies that modifications or reductions in pay made as the result of voluntary or mandatory cost savings days are not modifications or reductions in pay that an employee in the classified civil service can appeal to the State Personnel Board of Review under the Civil Service Law.

Continuing law prohibits an employee whose salary or wage is paid in whole or in part by the state from being paid for a state holiday unless the employee was in active pay status on the scheduled work day immediately preceding the holiday. H.B. 16 provides that such an employee need not be in active pay status on that work day in order to be paid for the holiday if the employee is participating in a voluntary or mandatory cost savings day on that work day.

The act enacts provisions identical to those above, but makes three modifications in them:

(1) Under the act, if the Secretary of State, Auditor of State, Treasurer of State, or Attorney General did not exercise the option to participate in the mandatory cost savings program by July 1, 2009, the Secretary of State, Auditor of State, Treasurer of State, or Attorney General may decide to begin participation in the mandatory cost savings program for 80 hours or less and must notify the Director of Administrative Services in writing. The Secretary of State, Auditor of State, Treasurer of State, or Attorney General and the director must mutually agree upon an implementation date for this participation.

(2) The act specifies that cost savings days, whether under H.B. 16 or a labor-management contract, are considered to be remuneration for purposes of the provisions of the Unemployment Compensation Act specifying that weekly benefits are to be reduced by the amount of remuneration or other payments a claimant receives with respect to that week.

(3) The act clarifies that the Director's duty to adopt rules applies to both the mandatory cost savings program and the voluntary cost savings program.

### Creation of the Cost Savings Fund to account for savings from employee participation in the mandatory cost savings program and cost savings days

(R.C. 124.392)

H.B. 16 of the 128th General Assembly creates the Cost Savings Fund in the state treasury. Savings accrued through employee participation in the mandatory cost savings program and in mandatory cost savings days are to be allocated to the Fund. The Fund may be used to pay employees who participated in the program or in these days. Any investments earnings of the fund must be credited to the Fund. The act also creates the Cost Savings Fund.

### Miscellaneous civil service changes

(R.C. 124.22 and 124.34)

Prior law required an applicant to take an examination for a position in the classified civil service to be a United States citizen or to have legally declared the intention of becoming a United States citizen. The act instead requires that such an applicant be a United States citizen or have a valid permanent resident card.

Prior law required that an appointing authority serve an employee in the classified civil service with a copy of an order of suspension or fine in the case of (1) a suspension of 40 or more work hours if the employee is exempt from the payment of overtime compensation, (2) a suspension of 24 or more work hours if the employee is required to be paid overtime compensation, (3) a fine of 40 or more hours pay if the employee is exempt from the payment of overtime compensation, and (4) a fine of 24 or more hours' pay if the employee is required to be paid overtime compensation.

The act instead requires an appointing authority to serve an employee in the classified civil service with a copy of an order of suspension or fine in the case of (1) a suspension of more than 40 work hours if the employee is exempt from the payment of overtime compensation, (2) a suspension of more than 24 work hours if the employee is required to be paid overtime compensation, (3) a fine of more than 40 hours' pay if the

employee is exempt from the payment of overtime compensation, and (4) a fine of more than 24 hours' pay if the employee is required to be paid overtime compensation.

### Pay reduction for exempt employees of the Auditor of State

(R.C. 124.181 and 124.34)

The act requires a 2% pay reduction beginning with the pay period that immediately follows July 1, 2009, for exempt employees of the Auditor of State who are paid in accordance with Schedule E-1 or Schedule E-1 for Step 7. This pay reduction is not to be considered a modification or reduction in pay that an employee in the classified civil service can appeal to the State Personnel Board of Review.

### Health Care Spending Account Fund

(R.C. 124.821)

The act creates the Health Care Spending Account Fund in the state treasury. The Director of Administrative Services is required to use the money in the fund to make payments with regard to the participation of state employees in flexible spending accounts for certain nonreimbursed medical and dental expenses under section 125 of the Internal Revenue Code. All investment earnings on money in the fund must be credited to the fund.

### Dependent Care Spending Account Fund

(R.C. 124.822)

The act creates the Dependent Care Spending Account Fund in the state treasury. The Director of Administrative Services is required to use money in the fund to make payments with regard to the participation of state employees in flexible spending accounts for work-related dependent care expenses under section 125 of the Internal Revenue Code. All investment earnings on money in the fund must be credited to the fund.

### State Employee Educational Development Fund

(R.C. 124.86; Section 207.30.50)

The act requires the Director of Administrative Services to establish and obtain the Director of Budget and Management's approval of charges for employee educational development programs undertaken pursuant to specific collective bargaining agreements identified in uncodified law. In the act, the agreements are those for District 1199, the Health Care and Social Service Union; State Council of

Professional Educators; Ohio Education Association and National Education Association; the Fraternal Order of Police Ohio Labor Council, Unit 2; and the Ohio State Troopers Association, Units 1 and 15. The charges must be sufficient to cover only state administrative costs for the employee educational development programs. Money collected from the charges, and interest earned on that money, must be deposited into the new Employee Educational Development Fund, which the act creates in the state treasury. The Director of DAS must administer the fund in accordance with the applicable collective bargaining agreements and may adopt rules for the purpose of administering the fund. If the Director of DAS determines that additional amounts are necessary, the Director may request the Director of Budget and Management to approve additional amounts, which the act appropriates.

### MARCS Administration Fund

(R.C. 4501.29)

The act requires the Department of Administrative Services to collect user fees from participants in the multi-agency radio communications system (MARCS). The Director of Administrative Services, with the advice of the MARCS Steering Committee and the consent of the Director of Budget and Management, must determine the amount of the user fees and the manner by which the fees are to be collected. All moneys from user fees must be deposited in the MARCS Administration Fund, which the act creates in the state treasury. All investment earnings on moneys in the fund are to be credited to the fund.

### State employee payroll reduction strategies

(Section 741.10)

The act authorizes the Office of Collective Bargaining in the Department of Administrative Services to negotiate with the respective state collective bargaining units various payroll reduction strategies through the collective bargaining process prior to July 1, 2009, including, but not limited to, reductions in pay for fiscal years 2010 and 2011 and an increase in a state employee's share of dental, vision, and life insurance benefits during those fiscal years. If the Office successfully negotiates or reaches alternative payroll reduction strategies through the collective bargaining process, those payroll reduction strategies must be implemented. The total amount of state employee payroll reduction strategy savings to be negotiated or implemented for each of fiscal years 2010 and 2011 is to be between $170 and $200 million, unless otherwise agreed to by the Office of Collective Bargaining and the Director of Budget and Management. The Director of Budget and Management is authorized to transfer cash from non-

General Revenue Fund funds to the General Revenue Fund to carry out these provisions.

### Preference for purchasing products made and services performed in the United States and Ohio with funds made available for fiscal stabilization and recovery purposes

(Section 701.40)

The act states that the General Assembly intends that all funds appropriated or otherwise made available by the state for fiscal stabilization or recovery purposes, or by the American Recovery and Reinvestment Act of 2009, are to be used, to the extent possible, in accordance with the preferences established in the Buy Ohio Act to purchase products made and services performed in the United States and in Ohio. The act states that the General Assembly further recognizes that a preference for buying goods and materials that are produced, and services that are performed, in the United States for projects is important for maximizing the creation of American jobs and restoring economic growth and opportunity.

If any person requests or obtains a waiver of the preferences described above, the Director of Administrative Services must publish information identifying the person and the product or service with regard to which the waiver was requested or obtained. The act states that the purpose of publishing this information is to enhance opportunities for producers, service providers, and workers to identify and provide products made and services performed in the United States and Ohio, and thereby maximize the success of the fiscal stabilization and economic recovery program. The Director must publish the identifying information on an Internet web site maintained by the Department of Administrative Services.

### Sufficient competition for purchase of Ohio-produced or mined products (VETOED)

(R.C. 125.11)

Before awarding a contract for the purchase of products, the Department of Administrative Services or a state agency responsible for evaluating such a contract must evaluate the bids received according to criteria and procedures for determining if a product is produced or mined in the United States or in Ohio. The Department or the other state agency must first remove bids that offer products that have not been or that will not be produced or mined in the United States. From among the remaining bids, the Department or the other state agency must select the lowest responsive and responsible bid from among the bids that offer products that have been produced or mined in Ohio where sufficient competition can be generated within Ohio to ensure

that compliance with the preference for Ohio products will not result in an excessive price for the product or acquiring a disproportionately inferior product. If there are two or more qualified bids that offer products that have been produced or mined in Ohio, it is deemed that there is sufficient competition to prevent an excessive price for the product or acquiring a disproportionately inferior product. The Governor vetoed an amendment that would have increased the number of these bids from two to four.

### Contractor compliance with local regulations or ordinances that relate to the employment of residents and local businesses

(R.C. 153.013 and 5525.26)

If a project for the construction, alteration, or other improvement of a building or structure is administered by the Director of Administrative Services or by another state agency authorized to administer a project under the Public Improvements Law (R.C. Chapter 153.), or similarly, if a project for the construction, reconstruction, or other improvement to a road or highway is administered by the Department of Transportation or any local public authority authorized to administer such a project, if the project is located in a municipal corporation with a population of at least 400,000 that is in a county with a population of at least 1.2 million, and if a political subdivision contributes at least $100,000 to the project, the act requires a contractor for the project to comply with regulations or ordinances of the political subdivision that are in effect before July 1, 2009, and that specifically relate to the employment of residents and local businesses of the political subdivision in the performance of the work of the project, and such ordinances are required under the act to be included by reference unambiguously in the contract between the administering state agency, department, or local public authority, and the contractor for the project.

### Databases of state employee pay, agency expenses, and tax credit issuances published on one Internet web site (PARTIALLY VETOED)

(R.C. 125.20)

The act requires, within 180 days after the provision's effective date, that the Director of Administrative Services establish a single electronic site accessible through the Internet on which, had the provision been left intact without vetoes, three databases would have been published. Two databases remain in part as a result of the vetoes.

The first database, which remains in part, contains each state employee's gross pay from the most recent pay period, including the name of the agency, the employee's position title, and the employee's name. The Governor vetoed provisions that would have required this database to contain an employee's year-to-date gross pay and searchable fields.

The second database, which the Governor vetoed in its entirety, would have contained agency expenditures for goods and services and searchable fields, including the name of the agency, expenditure amount, category of good or service for which an expenditure was made, and the name of the contractor or vendor.

The third database, which also remains in part, contains tax credits issued by the Director of Development to business entities, including the name under which the tax credit is known, the name of the entity receiving the tax credit, and the county in which the tax credit recipient's principal place of business in Ohio is located. The Governor vetoed a provision that would have required this database to contain searchable fields.

The Director of Administrative Services is authorized to adopt rules governing the means by which information is submitted and the two remaining databases are updated. The Governor vetoed a provision that would have required each executive agency to provide daily to the Department of Administrative Services information to be published in the databases.

### Life insurance coverage for county and municipal court judges

(R.C. 124.81)

The act requires the Department of Administrative Services, in consultation with the Superintendent of Insurance, to negotiate with and, in accordance with the competitive selection procedures of the State Purchasing Act, to contract with one or more insurance companies that are authorized to do business in Ohio for the issuance of a group life insurance policy covering all municipal and county court judges. The amount of the coverage must equal the aggregate salary for each municipal and county court judge as prescribed by law. On and after the effective date of the life insurance coverage for municipal and county court judges, these judges are ineligible for life insurance coverage from any county or other political subdivision.

### Removal of obsolete pay tables prescribing pay for exempt employees

(R.C. 124.152)

The act removes obsolete pay tables, which apply only to years that have ended, from the statute that prescribes pay for exempt employees. Generally, exempt employees are employees who are exempt from public employee collective bargaining.

### State agency spending controls

The act codifies the Governor's Executive Order 2009-07S by statutorily imposing state agency spending controls as were directed in the order.

The spending controls imposed by the act apply generally to each state agency, that is, to any organized body, office, or agency that is established by law for the exercise of any function of state government. Exempt from the spending controls are the general assembly and any legislative agency, the elected state officers,[11] the courts and any judicial agency, and state institutions of higher education. (R.C. 126.50(B).)

### State agency spending plans and their implementation

(R.C. 126.50(A), 126.501, 126.502, and 126.507)

By November 1, 2009, each state agency must submit to the General Assembly and to the Director of Budget and Management a spending plan that outlines a 30% overall reduction in spending on supplies and services for fiscal years 2010 and 2011. Thereafter, by February 1 of each odd-numbered year, beginning in 2011, the director of each state agency must submit to the General Assembly and the Director of Budget and Management a spending plan for purchasing supplies and services for the following two fiscal years.

Each spending plan must address any potential savings, lack of savings, or costs the state agency may realize by implementing each of the following strategies:

(1) Gaining approval from the state agency's director or the director's designee for any purchase of supplies or services costing $1,000 or more.

(2) Renegotiating, if not otherwise prohibited, contracts entered into before July 1, 2009, and especially those contracts in which a vendor is willing to reduce costs by 15% or more while maintaining substantial equivalency on other terms.

(3) With the approval of the Director of Administrative Services, allowing contracts for critical services that are up for renewal to expire and be rebid.

(4) With the approval of the Director of Budget and Management, cancelling all contracts entered into before July 1, 2009, that are supported by noncapital funds.

(5) Cooperatively purchasing supplies and services with other state agencies.

(6) Using other state agencies to provide needed services.

(7) Purchasing equipment and furniture in compliance with any control-on-equipment directive issued by the Office of Budget and Management (see below).

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[11] The elected state officers are the Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, and Attorney General. The Chief Justice and Associate Justices of the Supreme Court, while elected state officers, are included within the scope of the exclusion for courts.

(8) Reducing parking expenses, including expenses for purchased and leased spaces for state agency employees, spaces for fleet vehicles, and spaces and parking reimbursement for state agency employees on agency business.

In particular, the spending plan must include a review of a loss of efficiency or other benefits related to the reduction in parking expenses.

A "critical service" for purposes of a spending plan is a service provided by the state, the deferral or cancellation of which would cause an immediate risk to the health, safety, or welfare of Ohioans, an undermining of activity aimed at creating or retaining jobs in Ohio, or an interference with the receipt of revenue or the realization of savings. A service provided by the state is not a "critical service" if its deferral or cancellation would result in inconvenience, sustainable delay, or other similar compromise to the normal provision of state-provided services.

By December 1, 2009, the Director of Budget and Management must issue guidance to each state agency on which spending plan strategies the state agency is expected to implement for fiscal years 2010 and 2011. Thereafter, by March 1 in each odd-numbered year, beginning in 2011, the Director of Budget and Management must issue guidance to each state agency on which spending plan strategies the agency is expected to implement for the following two fiscal years.

In consultation with the Director of Budget and Management, the Director of Administrative Services must monitor the implementation of spending plan strategies by state agencies, and must report semiannually to the Governor and the General Assembly regarding the effectiveness of the implemented strategies and any unintended consequences of the implemented strategies.

### Specific state agency spending controls

In addition to general state agency spending plans, the act imposes several specific spending controls on state agencies. All of them are modeled on directives in the Governor's Executive Order 2009-07S, as were the spending plan provisions.

#### State agency travel expense controls

(R.C. 126.503)

Each state agency must control nonessential travel expenses by doing all of the following:

(1) Complying with any travel directives issued by the Director of Budget and Management;

(2) Using, when possible, the online travel authorization and expense reimbursement process;

(3) Conducting meetings, whenever possible and in compliance with the Open Meetings Act, by using conference calls, teleconferences, webinars, or other technology tools;

(4) Using fleet vehicles for official state travel whenever possible; and

(5) Following restrictions set by the Department of Administrative Services regarding mileage reimbursement under the Fleet Management Act.

The Director of Budget and Management is prohibited from reimbursing any state agency employee for unauthorized travel expenses.

**Office overhead cost controls**

(R.C. 126.504)

Each state agency must use the interoffice mailing service provided by the Department of Administrative Services for all mail deliveries to other state agencies that are located within a reasonable distance of the sending agency.

And, by October 1, 2009, each state agency must direct all major printing, copying, mail preparation, and related services through the Department of Administrative Services and eliminate any internal operations providing those services.

**Purchasing controls**

(R.C. 126.505)

The act requires the Director of Budget and Management to issue, and to revise as necessary, control-on-equipment directives applying to all purchases of furniture and equipment by state agencies. Each state agency must comply with the control-on-equipment directives, and with any purchasing standardization and strategic sourcing policy directives that have been issued by the Director of Administrative Services.

### Information technology controls

(R.C. 125.18(B), 125.181, and 126.506)

The State Chief Information Officer[12] is required to lead, oversee, and direct state agency activities related to information technology development and use. In addition to the State Chief Information Officer's other duties, the act requires the State Chief Information Officer (1) to establish policies and standards for the acquisition and use of common information technology by state agencies, including hardware, software, technology services, and security, and for the extension of the service life of information technology systems, (2) to establish policies on the purchasing, use, and reimbursement for the use of handheld computing and telecommunications devices by state agency employees, (3) to establish policies for the reduction of printing and the use of electronic records by state agencies, and (4) to establish policies for the reduction of energy consumption by state agencies. Each state agency must participate in information technology consolidation projects implemented by the State Chief Information Officer under the law prescribing the officer's duties (R.C. 125.18). And each state agency, at the direction of and in the format specified by the Director of Administrative Services, must maintain a list of information technology assets possessed by the agency and associated costs related to those assets.

The act requires the Director of Administrative Services to establish a State Information Technology Investment Board and organize it as part of the Department of Administrative Services. The Board is to consist of representatives from various state elective offices and state agencies, including the Office of Budget and Management. Members of the Board are not entitled to compensation for their services.

The Information Technology Investment Board is to identify and recommend to the State Chief Information Officer opportunities for consolidation and cost-saving measures relating to information technology.

## Compliance with a new uncodified statute based on Executive Order 2008-13S in complying with the Minority Set Aside Act and EDGE Business Enterprise Act

(Section 701.50)

The act requires that state agencies, state universities, and the Ohio Housing Finance Agency, the Third Frontier Commission, the Clean Ohio Council, and the Ohio

[12] The State Chief Information Officer supervises the Office of Information Technology, which is organized as part of the Department of Administrative Services. The Chief Information Officer is appointed by, and serves at the pleasure of, the Director of Administrative Services. (R.C. 125.18(A).)

School Facilities Commission comply with a new uncodified statute based upon Executive Order 2008-13S when complying with the minority business enterprise set aside purchasing requirements of the Minority Business Enterprise Set Aside Act or with the procurement goals of the EDGE Business Enterprise Act (R.C. 123.152(B)(2) and (B)(14) and 125.081(B), not in the act). The uncodified statute, unless its context clearly indicates otherwise, will have no effect after June 30, 2011 (Section 809.10). Executive Order 2008-13S requires each agency to appoint an Equal Opportunity Officer and to include specified provisions in their contracts for the purchase of goods and services.

"Minority business enterprise" means an individual who is a United States citizen and who owns and controls a business, partnership, corporation, or joint venture of any kind that is owned or controlled by United States citizens who are Ohio residents and members of one of the following economically disadvantaged groups: Blacks or African-Americans, American Indians, Hispanics or Latinos, and Asians (R.C. 122.71(E)(1)). "EDGE business enterprise" means a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture certified as a participant in the Encouraging Diversity, Growth, and Equity (EDGE) Program by the Director of Administrative Services (R.C. 123.152(A), not in the act).

### Equal Employment Opportunity Officers

The act requires each state agency to appoint an Equal Employment Opportunity Officer who is responsible for monitoring the agency's compliance with the Minority Business Enterprise Set Aside Act and the EDGE Business Enterprise Act, and for reporting the level of the agency's compliance to the Deputy Director of the Equal Opportunity Division of the Department of Administrative Services. A state agency's Equal Employment Opportunity Officer must also do all of the following:

(1) Analyze spending on goods, services, and construction projects for the agency and determine any missed opportunities for the inclusion of certified minority business enterprise and EDGE business vendors;

(2) Analyze the spending of the agency with EDGE business enterprise vendors, as well as EDGE business enterprise vendor availability by regions of the state, and communicate the analysis to the Department of Administrative Services so that the Department can determine the appropriate EDGE business enterprise goal for each contract;

(3) Report minority business enterprise or EDGE business enterprise enrollment for all contracts issued by the agency to the Deputy Director of the Equal Opportunity Division;

(4) Implement a scorecard system that tracks compliance with the minority business enterprise and EDGE business enterprise program requirements by the agency;

(5) Implement the outreach and training plan to ensure compliance by the agency with minority business enterprise and EDGE business enterprise requirements;

(6) Attend the semiannual training conducted by the Deputy Director of the Equal Opportunity Division on minority business enterprise and EDGE business enterprise requirements; and

(7) Participate in the annual compliance review conducted by the Deputy Director of the Equal Opportunity Division and implement recommendations made by the Deputy Director as a result of the review process.

The act requires the Deputy Director of the Equal Opportunity Division to (1) develop a scorecard system and the outreach and training plan, (2) conduct semiannual training on minority business enterprise set aside and EDGE business enterprise procurement requirements for Equal Employment Opportunity Officers, (3) conduct an annual review of each state agency's compliance with minority business enterprise set aside and EDGE business enterprise procurement requirements, and (4) make recommendations for improved compliance as a result of each review.

### Agency contract provisions

The act requires each state agency to ensure that all contracts it enters into for the purchase of goods and services contain provisions that do all of the following:

(1) Prohibit contractors and subcontractors from engaging in discriminatory employment practices;

(2) Certify that contractors and subcontractors are in compliance with all applicable federal and state laws and rules that govern fair labor and employment practices; and

(3) Encourage contractors and subcontractors to purchase goods and services from certified minority business enterprise and EDGE business enterprise vendors.

### EDGE waiver controls

The act prohibits a state agency from issuing an EDGE business enterprise waiver without doing all of the following:

(1) Having all waivers reviewed by the agency's Procurement Officer, in collaboration with the agency's Equal Employment Opportunity Officer, who must certify that each waiver the agency issues complies with criteria for granting the waiver;

(2) Submitting quarterly reports to the Equal Opportunity Division that lists each waiver the agency grants; and

(3) Permitting the Equal Opportunity Division to complete its review of the agency's quarterly report and to conduct periodic audits of the agency's administration of the waiver process.

The Deputy Director of the Equal Opportunity Division must review each quarterly report of EDGE business enterprise waivers and conduct periodic audits of each agency's administration of the waiver process. If the Deputy Director determines that a state agency has not properly administered the issuance of EDGE business enterprise waivers, subsequent waivers cannot be issued by that state agency without the authorization and approval of the Deputy Director. The Deputy Director may release a state agency from the approval process when the Deputy Director has determined that the agency has the ability to consistently administer the waiver process.

### Annual compliance report

Annually, on October 1, the Deputy Director of the Equal Opportunity Division must submit a written report to the Governor, the Speaker and Minority Leader of the House and the President and Minority Leader of the Senate, that describes the progress of state agencies in advancing the minority business enterprise set aside and EDGE business enterprise procurement programs, as well as any initiatives that have been implemented to increase the number of certified minority business enterprise and EDGE business enterprise vendors doing business with the state.

## Deadline of December 31, 2009, for state agencies to establish a long–term plan for compliance with the Minority Set Aside Act and EDGE Business Enterprise Act

(Section 701.52)

Under the act, if a state agency, including a state university and the Ohio Housing Finance Agency, the Third Frontier Commission, the Clean Ohio Council, and the Ohio School Facilities Commission, has failed to comply with the minority business set aside purchasing requirements of the Minority Business Enterprise Act, or with the procurement goals specified under the EDGE Business Enterprise Act, the state agency must establish, by December 31, 2009, a long-term plan for compliance.

## Explicit requirement to comply with Minority Business Set Aside Act and Edge Business Enterprise Act

(Section 701.51)

The act explicitly requires, to the extent that the Ohio School Facilities Commission, the Ohio Housing Finance Agency, the Third Frontier Commission, the Clean Ohio Council, and state universities are authorized to make purchases, it must set aside a percentage of its purchases of goods and services for purchase from minority business enterprises as required by the Minority Business Enterprise Set Aside Act (R.C. 125.081(B), not in the act). Under continuing law, the percentage of purchases to be so set aside is to approximate 15%.

The act also explicitly requires the Ohio Housing Finance Agency, the Third Frontier Commission, and the Clean Ohio Council to comply with agency procurement goals for contracting with EDGE Business Enterprises established under continuing law (see R.C. 123.152, not in the act).

## Changes in the Minority Business Bonding Program

(R.C. 122.89)

### Minority Business Bonding Program

The act requires that the rules of the Minority Development Financing Advisory Board for the Minority Business Bonding Program must provide for a retainage of money paid to a participating minority business or EDGE business enterprises[13] of 15% for contracts valued at more than $50,000 and for a retainage of 12% for contracts valued at $50,000 or less (R.C. 122.89(D)). "Retainage" is a percentage of what a landowner pays a contractor that is withheld until construction has been satisfactorily completed and all mechanics liens have been released or have expired (Black's Law Dictionary 1341 (8th ed.)).

The act also permits a minority business or EDGE business enterprise to bid or enter into a contract with the state or any state instrumentality without being required to provide a bond as follows:

For the first contract, the minority business or EDGE business enterprise may bid or enter into a contract valued at $25,000 or less without being required to provide a

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[13] An "EDGE business enterprise" is a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture that is certified as a participant in the EDGE Program by the Director of Administrative Services.

bond, but only if the minority business or EDGE business enterprise is participating in a qualified contractor assistance program[14] or has successfully completed such a program[15] after the referendum effective date.[16]

After the state or any state instrumentality has accepted the first contract as completed and all subcontractors and suppliers on the contract have been paid, the minority business or EDGE business enterprise may bid or enter into a second contract with the state or that state instrumentality valued at $50,000 or less without being required to provide a bond, but only if the minority business or EDGE business enterprise is participating in a qualified contractor assistance program or has successfully completed such a program after the referendum effective date.

After the state or any state instrumentality has accepted the second contract as completed and all subcontractors and suppliers on the contract have been paid, the minority business or EDGE business enterprise may bid or enter into a third contract with the state or that state instrumentality valued at $100,000 or less without being required to provide a bond, but only if the minority business or EDGE business enterprise has successfully completed a qualified contractor assistance program after the referendum effective date.

After the state or any state instrumentality has accepted the third contract as completed and all subcontractors and suppliers on the contract have been paid, the minority business or EDGE business enterprise may bid or enter into a fourth contract with the state or that state instrumentality valued at $300,000 or less without being required to provide a bond, but only if the minority business or EDGE business enterprise has successfully completed a qualified contractor assistance program after the referendum effective date.

After the state or any state instrumentality has accepted the fourth contract as completed and all subcontractors and suppliers on the contract have been paid, upon a

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[14] A "qualified contractor assistance program" is an educational program or technical assistance program for business development that is designed to assist a minority business or EDGE business enterprise in becoming eligible for bonding that has been approved by the Director of Development for use as required under the unbonded state contractor program and the unbonded political subdivision contractor program being described in this section of this analysis.

[15] "Successfully completed a qualified contractor assistance program" means the minority business or EDGE business enterprise completed such a program on or after the referendum effective date.

[16] In this section of the analysis, references to "referendum effective date" mean the standard, 91-day-delayed effective date that applies to sections that are not somehow exempt from the possibility of referendum (Ohio Const., art. II, § 1c) under Ohio Const., art. II, § 1d. See the note on effective dates later in this analysis.

showing that with respect to a contract valued at $400,000 or less with the state or any state instrumentality, that the minority business or EDGE business enterprise either has been denied a bond by two surety companies or that the minority business or EDGE business enterprise has applied to two surety companies for a bond and, at the expiration of 60 days after making the application, has neither received nor been denied a bond, the minority business or EDGE business enterprise can repeat its participation in the unbonded state contractor program as explained above. A minority business or EDGE business enterprise is not permitted to participate in the unbonded state contractor program more than twice.

The act further permits a minority business or EDGE business enterprise to bid or enter into a contract with any political subdivision of the state or any instrumentality of a political subdivision of the state without being required to provide a bond as follows:

For the first contract, the minority business or EDGE business enterprise may bid or enter into a contract valued at $25,000 or less without being required to provide a bond, but only if the minority business or EDGE business enterprise is participating in a qualified contractor assistance program or has successfully completed such a program after the referendum effective date.

After any political subdivision or political subdivision instrumentality has accepted the first contract as completed and all subcontractors and suppliers on the contract have been paid, the minority business or EDGE business enterprise may bid or enter into a second contract with that political subdivision or political subdivision instrumentality valued at $50,000 or less without being required to provide a bond, but only if the minority business or EDGE business enterprise is participating in a qualified contractor assistance program or has successfully completed such a program after the referendum effective date.

After any political subdivision or political subdivision instrumentality has accepted the second contract as completed and all subcontractors and suppliers on the contract have been paid, the minority business or EDGE business enterprise may enter into a third contract with that political subdivision or political subdivision instrumentality valued at $100,000 or less without being required to provide a bond, but only if the minority business or EDGE business enterprise has successfully completed a qualified contractor assistance program after the referendum effective date.

After any political subdivision or political subdivision instrumentality has accepted the third contract as completed and all subcontractors and suppliers on the contract have been paid, the minority business or EDGE business enterprise may bid or enter into a fourth contract with that political subdivision or political subdivision

instrumentality valued at $200,000 or less without being required to provide a bond, but only if the minority business or EDGE business enterprise has successfully completed a qualified contractor assistance program after the referendum effective date.

After any political subdivision or political subdivision instrumentality has accepted the fourth contract as completed and all subcontractors and suppliers on the contract have been paid, upon a showing that with respect to a contract valued at $300,000 or less with any political subdivision or any political subdivision instrumentality, that the minority business or EDGE business enterprise either has been denied a bond by two surety companies or that the minority business or EDGE business enterprise has applied to two surety companies for a bond and, at the expiration of 60 days after making the application, has neither received nor been denied a bond, the minority business or EDGE business enterprise can repeat its participation in the unbonded political subdivision contractor program as explained above. A minority business or EDGE business enterprise is not permitted to participate in the unbonded political subdivision contractor program more than twice.

The act allows a minority business or EDGE business enterprise that has entered into two or more contracts with the state or with any state instrumentality to bid or enter into a contract with a political subdivision of the state or with any instrumentality of a political subdivision valued at the level at which the minority business or EDGE business enterprise would qualify if entering into an additional contract with the state.

The act requires the Director of Development to coordinate and oversee the programs explained above and the approval of a qualified contractor assistance program. The Director must prepare an annual report and submit it to the Governor and the General Assembly on or before February 1. The report must include the following: information on the Director's activities for the preceding calendar year regarding the programs explained above, a summary and description of the operations and activities of the programs, an assessment of the achievements of the programs, and a recommendation as to whether the programs need to continue.

## Two-year pilot project involving the conversion of 10% of certain vehicles of the state fleet to a propane fuel system (VETOED)

(Section 701.70)

The Governor vetoed a section of the act that would have required the Department of Administrative Services to conduct a pilot project involving propane-powered state vehicles. During the period commencing October 1, 2009, and ending September 30, 2010, the Department would have been required to convert or cause to be converted to a propane fuel system 5% of the gasoline-powered passenger cars, sport

utility vehicles, and light-duty pickup trucks that are owned by the state and that are used by the Department of Natural Resources, 5% of such vehicles that are used by the Department of Public Safety, and 5% of such vehicles that are used by the Department of Transportation. During the period commencing October 1, 2010, and ending December 31, 2010, the Department of Administrative Services would have been required to convert or cause to be converted to a propane fuel system an additional 5% of such state vehicles. Only propane fuel systems that have been approved by the United States Environmental Protection Agency could have been installed in state vehicles under the pilot program.

From October 1, 2009, through September 30, 2011, the Department would have been required to keep detailed records of the propane-powered vehicles, including fuel mileage and maintenance costs. After September 30, 2011, the Department would have been required to conduct a study of the pilot project to assess all aspects of the use by the state of propane-powered vehicles during the pilot project. The study would have been required to include all relevant findings and recommendations, if any, regarding future use of propane gas in state vehicles, and would have been required to be compiled into a final report. The Department would have been required to submit copies of the final report not later than December 31, 2011, to the Governor, the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives.

## DEPARTMENT OF AGING (AGE)

- Specifies the amounts the Department of Aging must use to determine whether an individual is eligible for a payment under the Residential State Supplement (RSS) program and the amount each resident is to receive per month.
- Would have created the Residential State Supplement Workgroup to examine the issue of which state agency is the most appropriate to administer the RSS program (VETOED).
- Permits the Director of Aging to expand the PACE program to additional regions of Ohio to the extent funding is available.
- Establishes a home first process for the PACE program under which an individual who is admitted to a nursing facility while on a PACE waiting list is to be enrolled in the program in accordance with priorities established in rules.

- Establishes requirements regarding kosher home-delivered meals provided under the PASSPORT program and requires the reimbursement rate for the meals to be equal to the reimbursement rate for home-delivered therapeutic meals.

- Codifies the Choices Program and requires that it be available statewide, subject to federal approval.

- Provides that the Assisted Living Program may not serve more individuals than the number that is set by the federal government when the Medicaid waiver authorizing the program is approved.

- Requires the Director of Job and Family Services to seek federal approval to consolidate three Department of Aging-administered Medicaid waiver programs (the Assisted Living Program, Choices Program, and PASSPORT Program).

- Eliminates the requirement that the Director of Job and Family Services report annually on (1) the number of individuals enrolled in the PASSPORT Program and Assisted Living Program pursuant to the "Home First" provisions of the programs and (2) the costs incurred and savings achieved as a result of the enrollments.

- Permits the Director of Aging to impose civil fines in lieu of the criminal fines that may be imposed for violating the prohibitions against (1) subjecting a long-term care facility resident or community long-term care services recipient to retaliation for filing a complaint or (2) denying the Long-Term Care Ombudsperson access to a long-term care facility or community-based long-term care site to investigate a complaint.

- Expressly provides that a community-based long-term care agency is not required to be certified to receive payment from the Department of Aging if the agency has a grant agreement with the Department or its designee to provide community-based long-term care services.

- Extends the Director of Aging's rulemaking authority regarding contracts and grant agreements to those that are entered into by the Department of Aging's designee.

- Requires, subject to federal approval if needed, the Department of Aging to enter into an interagency agreement with the Department of Job and Family Services under which the Department of Aging is required to establish for each biennium a unified long-term care budget for home and community-based services covered by a component of the Medicaid program the Department of Aging administers.

- Requires, subject to federal approval if needed, the Department of Aging to ensure that the unified long-term care budget is administered in a manner that provides Medicaid coverage of and expands access to three groups of services.

- Requires, subject to federal approval if needed, the Department of Aging or its designee to provide care management and authorization services with regard to certain state Medicaid plan services that are provided to participants of Medicaid waiver programs the Department administers.

- Creates the Unified Long-Term Care Budget Workgroup and requires the Workgroup to develop a unified long-term care budget.

- Requires the Directors of Aging and Budget and Management to annually submit a written report describing the progress towards establishing, or if already established, the effectiveness of the unified long-term care budget.

- Eliminates a requirement that nursing facility residents who apply or indicate an intention to apply for Medicaid and nursing facility residents who are likely to spend down their resources within six months after admission to a nursing facility to a level at which they are financially eligible for Medicaid be provided with a long-term care consultation unless exempt from that requirement and provides instead that a consultation may be provided to a nursing facility resident regardless of the source of payment being used for the resident's care in the nursing facility.

- Requires that a consultation be provided to an individual identified by the Department of Aging or a program administrator as being likely to benefit from consultation and, for this purpose, grants the Department or administrator access to data collected from a nursing facility's assessments of its residents.

- Eliminates provisions that exempt certain individuals from having a consultation.

- Provides that a consultation is not required if an individual or individual's representative "refuses to cooperate" with the consultation, rather than if the individual "chooses to forego" participation.

- Eliminates the requirement that a written summary of each long-term care consultation be provided, but requires the Department of Aging or a program administrator, as part of the Long-Term Care Consultation Program, to assist an individual or individual's representative in accessing all sources of care and services that are appropriate for the individual and for which the individual is eligible.

- Requires the Department of Aging and program administrators to administer the Long-Term Care Consultation Program in a manner that provides for certain assessments and procedures.

- Specifies that the Director of Aging must give notice and an opportunity for a hearing before imposing a fine on a nursing facility for admitting an individual who has not received a long-term care consultation.

- Permits the Director of Aging to fine a nursing facility for denying access to the facility or to residents of a facility as needed to perform a consultation or implement the Long-Term Care Consultation Program.

- Requires the Department of Aging or a program administrator to monitor an individual who receives a long-term care consultation and is eligible for and elects to receive home and community-based services covered by a component of the Medicaid program the Department administers.

- Requires the Department of Aging to prepare an annual report regarding the individuals who are the subjects of long-term care consultations and elect to receive home and community-based services covered by a component of the Medicaid program the Department administers.

- Eliminates the Ohio's Best Rx Program and establishes timeframes for concluding the program's affairs.

- Permits the Director of Aging to contract with any person for the operation of a drug discount program similar to the Best Rx Program and allows the Director to provide information to the person regarding former Best Rx Program participants and applicants.

- Adds the Director of the Governor's Office of Faith-based and Community Initiatives to the Ohio Community Service Council as an ex officio, nonvoting member.

- Removes the Department of Aging as the council's fiscal agent, and instead requires the council to enter into a written agreement with "another state agency" to serve as the council's fiscal agent.

- Specifies that the council must follow, in addition to all state procurement requirements, all state fiscal, human resources, statutory, and administrative rule requirements.

- Adds the Director of Aging to the Brain Injury Advisory Committee.

## Residential State Supplement program

### Background

The Department of Aging administers the Residential State Supplement (RSS) program, which provides a cash supplement to payments provided to eligible aged, blind, or disabled adults under the Supplement Security Income (SSI) program. The cash supplements provided under the RSS program must be used for the provision of accommodations, supervision, and personal care services.[17]

### Eligibility and payments amounts

(Section 209.30)

To qualify for the RSS program, an SSI recipient must meet a number of requirements. One of the requirements concerns where the recipient resides. Another requirement concerns financial matters.

The act specifies the amounts the Department of Aging is required to use to determine whether an SSI recipient is eligible for an RSS payment and the amount each eligible individual is to receive per month.[18] The amounts are tied to the various places in which an SSI recipient must reside to qualify for the RSS program as follows:

(1) $927 for a resident of a residential care facility;[19]

(2) $927 for a resident of an adult group home;[20]

(3) $824 for a resident of an adult foster home;[21]

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[17] R.C. 173.35.

[18] Although this provision is included in an uncodified section, it does not include terms limiting its application to a specified period of time.

[19] A residential care facility is a facility that provides (1) accommodations for 17 or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment or (2) accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, certain skilled nursing care (R.C. 3721.01(A)(7)).

[20] An adult group home is a residence or facility that provides accommodations to six to sixteen unrelated adults and provides supervision and personal care services to at least three of the unrelated adults (R.C. 3722.01(A)(8)).

(4) $824 for a resident of an adult family home;[22]

(5) $824 for a resident of an adult residential facility;[23]

(6) $618 for a person receiving adult community mental health housing services.[24]

### Residential State Supplement Workgroup (VETOED)

(Section 209.30)

The Governor vetoed a provision that would have created the Residential State Supplement Workgroup. The Workgroup was to consist of the following state agency directors or the Directors' designees:

(1) The Director of Aging;

(2) The Director of Health;

(3) The Director of Job and Family Services;

(4) The Director of Mental Health.

The Director of Aging or the Director's designee was to serve as the Workgroup's chairperson. Members were to serve without compensation, except to the extent that serving on the Workgroup was considered part of their regular employment duties.

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[21] An adult foster home is a residence, other than a residence certified or licensed by the Department of Mental Health, in which accommodations and personal care services are provided to one or two adults who are unrelated to the owners of the residence (R.C. 173.36).

[22] An adult family home is a residence or facility that provides accommodations to three to five unrelated adults and supervision and personal care services to at least three of those adults (R.C. 3722.01(A)(7)).

[23] An adult residential facility is a publicly or privately operated home or facility that provides (1) room and board, personal care services, and community mental health services to one or more persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner, (2) room and board and personal care services to one or two persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner, or (3) room and board to five or more persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner (R.C. 5119.22(A)(1)(d)).

[24] Adult community mental health housing services are mental health housing services certified by the Department of Mental Health, approved by a board of alcohol, drug addiction, and mental health services, and certified in accordance with standards established by the Director of Aging (R.C. 173.35(C)(1)(e)).

The Workgroup would have been required to examine solely the issue of which state agency is the most appropriate to administer the RSS program. The act would have required, not later than December 31, 2009, the Workgroup to submit written recommendations on this issue to the Governor and General Assembly.[25] The Workgroup was to cease to exist on submission of its recommendations.

## PACE program

### Background

Federal law permits a state to include in its Medicaid program a component known as the Program of All-inclusive Care for the Elderly (PACE).[26] The state agency administering the PACE program and the United States Secretary of Health and Human Services enter into an agreement with a provider under which the provider, directly or by contract with other entities, provides medical services to individuals enrolled in the PACE program.

The medical services available under the PACE program must include all items and services covered by the Medicaid program and, in the case of PACE enrollees who are also entitled to benefits under Medicare Part A or enrolled in Medicare Part B, all items and services covered by Medicare. The medical services are to be provided without any limitation or condition as to amount, duration, or scope and without application of deductibles, copayments, coinsurance, or other cost-sharing that would otherwise apply under Medicaid or Medicare. The medical services are also to include all additional items and services specified in federal regulations. The provider is required to provide PACE enrollees access to necessary covered items and services 24 hours per day, every day of the year. The enrollees are to receive the medical services through a comprehensive, multidisciplinary health and social services delivery system that integrates acute and long-term services pursuant to federal regulations.

To be eligible for the PACE program, a Medicaid recipient must be (1) at least 55 years old, (2) require the level of care required by the state's Medicaid program for coverage of nursing facility services, (3) reside in an area of the state in which the PACE program is available, and (4) meet all other eligibility requirements included in a PACE agreement with a provider.[27] A PACE enrollee may maintain eligibility despite no longer requiring a nursing facility level of care if losing eligibility for PACE would

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[25] In submitting the report to the General Assembly, the Workgroup would have been required to provide it to Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and the Director of the Legislative Service Commission (R.C. 101.68(B)).

[26] 42 U.S.C. 1396u-4.

[27] The PACE program is also available to Medicare recipients.

reasonably cause the individual to reacquire the need for a nursing facility level of care within the succeeding six-month period.

The PACE agreement with the provider must designate the area of the state the agreement covers. This is known as the service area.

There are two PACE providers in Ohio, TriHealth Senior Link and Concordia Care. The service area for the PACE agreement with TriHealth Senior Link is Hamilton County and certain zip codes in Warren, Butler, and Clermont counties. Cuyahoga County is the service area for the PACE agreement with Concordia Care. The Department of Aging is required to carry out the day-to-day administration of the program pursuant to an agreement with the Department of Job and Family Services, which administers Ohio's Medicaid program.[28]

### Expansion of PACE program

(Section 209.20)

The act permits the Director of Aging to expand the PACE program to additional regions of Ohio to the extent funding is available. In implementing the expansion, the Director is prohibited from decreasing the number of residents of Cuyahoga and Hamilton counties and the parts of Butler, Clermont, and Warren counties participating in the PACE program to below the number of participants in those areas who were enrolled in the PACE program on July 1, 2008.

### Home first process

(R.C. 173.50 and 173.501)

The act requires the Department of Aging to determine, on a monthly basis, whether individuals who are on a waiting list for the PACE program have been admitted to a nursing facility. If the Department determines that such an individual has been admitted to a nursing facility, the Department must notify the PACE provider serving the area in which the individual resides about the determination. The PACE provider is to determine whether the PACE program is appropriate for the individual and whether the individual would rather participate in the PACE program than continue residing in the nursing facility. If the PACE provider determines that the PACE program is appropriate for the individual and the individual would rather participate in the PACE program than continue residing in the nursing facility, the PACE provider must so notify the Department of Aging. On receipt of the notice from the PACE provider, the Department must approve the individual's enrollment in the

[28] R.C. 173.50.

PACE program in accordance with priorities the Director of Aging is authorized to establish in rules. Each quarter, the Department must certify to the Director of Budget and Management the estimated increase in costs of the PACE program resulting from the enrollments through this home first process.

## Kosher home-delivered meals under the PASSPORT program

(R.C. 173.402)

The Pre-Admission Screening System Providing Options and Resources Today (PASSPORT) program is a component of the Medicaid program that provides home and community-based services to eligible individuals age 60 or older as an alternative to care in a nursing facility. The Department of Aging administers the PASSPORT program pursuant to an interagency agreement with the Department of Job and Family Services.

The act permits an individual enrolled in the PASSPORT program to request that home-delivered meals provided to the individual under the program be kosher. The Department of Aging or its designee is required, on receipt of such a request from an individual, to ensure that each home-delivered meal provided to the individual under the PASSPORT program is kosher. In complying with this requirement, the Department or its designee must require each entity that provides home-delivered meals to the individual to provide the individual with meals that meet, as much as possible, the requirements established in the Department's rules governing the PASSPORT program's home-delivered meal service while complying with kosher practices for meal preparation and dietary restrictions.

The act requires that an entity that provides a kosher home-delivered meal to a PASSPORT program enrollee be reimbursed for the meal at a rate equal to the rate for home-delivered meals furnished to PASSPORT program enrollees requiring a therapeutic diet.

## Choices Program

(R.C. 173.403)

The Department of Aging administers a Medicaid waiver program called the Choices Program. The Choices Program provides consumer-driven home and community-based services to participants of the PASSPORT Program. An individual enrolled in the Choices Program may choose an agency, non-agency professional caregiver, or individual provider such as a friend, neighbor, or relative (other than a

spouse, parent, step-parent, or legal guardian) to provide home and community-based services to the individual.[29]

Prior law included references to the Choices Program, but the program was not created in statute. The act creates the Choices Program in statute (i.e., codifies the program).

The Choices Program was formerly available only in central, northwestern, and southern Ohio regions served by the area agencies on aging based in Columbus, Toledo, Marietta, and Rio Grande. The act requires that the Choices Program be available statewide, subject to federal approval.

## Assisted Living Program

(R.C. 5111.89 and 5111.894)

Continuing law modified by the act permits the Director of Job and Family Services to seek federal approval to create the Assisted Living Program under which eligible individuals are provided certain home and community-based services while residing in a residential care facility (i.e., an assisted living facility). The Department of Aging administers the Assisted Living Program pursuant to an interagency agreement with the Department of Job and Family Services.

Under prior law, the Assisted Living Program was limited to not more than 1,800 participants. The act provides instead that the program may not serve more individuals than the number that is set by the federal government when the Medicaid waiver authorizing the program is approved.

The act removes references to the Director's discretion in seeking a waiver to implement the program. Instead, it specifies in statute that the program is created.

## Consolidated federal Medicaid waivers

(R.C. 5111.861; R.C. 173.40, 173.401, 173.403, 5111.89, 5111.891, 5111.894, and 5111.971)

There is a separate federal Medicaid waiver for each of the three Medicaid waiver programs the Department of Aging administers: the Assisted Living Program, Choices Program, and PASSPORT program. The act requires the Director of Job and Family Services to submit a request to the United States Secretary of Health and Human Services to obtain a federal Medicaid waiver that consolidates the three programs into

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[29] Ohio Department of Aging. *Choices Home Care Waiver,* available at <http://aging.ohio.gov/services/choices/>.

one Medicaid waiver program. The programs are to be operated as separate Medicaid waiver programs until the state receives federal approval for the consolidated federal Medicaid waiver.

In seeking the consolidated federal Medicaid waiver, the Director of Job and Family Services must work with the Director of Aging and provide for the waiver to be available statewide. In addition, each part of the waiver that concerns a particular program must comply with state law governing the program.

The act requires the Department of Job and Family Services to contract with the Department of Aging for the Department of Aging to administer the consolidated federal Medicaid waiver if the waiver is approved. However, the Department of Job and Family Services, rather than the Department of Aging, is to administer the part of the waiver that concerns the Assisted Living Program if the Director of Budget and Management does not approve the contract. Also, on federal approval of the waiver, the Director of Job and Family Services must adopt rules to authorize the Director of Aging to adopt rules that are needed to implement the waiver. But, the Director of Job and Family Services is to adopt rules that are needed to implement the part of the waiver that concerns the Assisted Living Program if the Director of Budget and Management does not approve the contract between the Departments of Job and Family Services and Aging. The Director of Aging's rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

### Home First reports

(R.C. 173.401 and 5111.894)

Continuing law has "Home First" provisions for the Assisted Living Program and PASSPORT Program similar to the provision discussed above that the act establishes for the PACE Program. The act eliminates a requirement that the Director of Job and Family Services submit to the General Assembly an annual report regarding the number of individuals enrolled in the Assisted Living Program and PASSPORT Program pursuant to the "Home First" provisions and the costs incurred and savings achieved as a result of the enrollments.

### Civil penalties against long-term care providers

(R.C. 173.28)

Continuing law prohibits a long-term care provider or other entity or a person employed by a long-term care provider or other entity from subjecting any resident of a

long-term care facility[30] or recipient of community-based long-term care services[31] to any form of retaliation, reprisal, discipline, or discrimination for providing information to the Office of the State Long-Term Care Ombudsperson Program, participating in registering a complaint with the Office, or participating in the investigation of a complaint or in administrative or judicial proceedings resulting from a complaint registered with the Office. Retaliatory actions may include physical, mental, or verbal abuse; change of room assignment; withholding services; and failure to provide care in a timely manner (R.C. 173.24). A person who violates this prohibition is subject to a fine not to exceed $1,000 per violation (R.C. 173.99(A)).

Continuing law also prohibits a long-term care provider or other entity, or a person employed by a long-term care provider or other entity from denying a representative of the Office of the State Long-Term Care Ombudsperson Program access to a long-term care facility or community-based long-term care site to investigate a complaint (R.C. 173.19(E)). A person who violates this prohibition is subject to a fine not to exceed $500 per violation (R.C. 173.99(C)).

Continuing law does not specify who imposes and collects the fines described above, but the prohibitions underlying the fines appear to be criminal offenses that constitute minor misdemeanors (R.C. 2901.02(G) and 2901.03). Continuing law specifies that minor misdemeanors are prosecuted by a county prosecutor, city attorney, or prosecuting authority of a municipality and fines collected for violation of state laws must be paid into the county treasury (R.C. 1901.31(F), 1901.34, and 1907.20(C)).

In lieu of the criminal fines that may be imposed under continuing law, the act permits the Director of Aging to impose civil fines in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The act specifies that the civil fines imposed by the Director of Aging cannot exceed the following amounts:

(1) For a violation of the prohibition on retaliation for providing information to the Office of the State Long-Term Care Ombudsperson Program, participating in registering a complaint with the Office, or participating in investigation of a complaint or in administrative or judicial proceedings resulting from a complaint: $1,000 per incident. An "incident" is the occurrence of a violation with respect to a resident of a

[30] A "long-term care facility" includes any residential facility that provides personal care services for more than 24 hours for two or more unrelated adults, including, among other facilities, nursing homes, residential care facilities, and adult foster homes. It does not include residential facilities licensed by the Department of Mental Health or the Department of Developmental Disabilities (R.C. 173.14(A)).

[31] "Community-based long-term care services" are health and social services, such as home healthcare, provided to elderly or disabled persons in their own homes or in community care settings (R.C. 173.14(C)).

long-term care facility or recipient of community-based long-term care services. A violation is a separate incident for each day it occurs and for each resident or recipient who is subject to it.

(2) For a violation of the prohibition on denying a representative of the Office of the State Long-Term Care Ombudsperson Program access to a long-term care facility or community-based long-term care site to investigate a complaint: $500 for each day a violation continues.

The act requires the Attorney General, on the Director of Aging's request, to bring and prosecute to judgment a civil action to collect any fine imposed by the Director that remains unpaid 30 days after the violator's final appeal is exhausted. All such fines imposed by the Director must be deposited in the state treasury to the credit of the State Long-Term Care Ombudsperson Program Fund.

## Community-based long-term care services

(R.C. 173.392)

Generally, the Department of Aging may not pay a person or government entity for providing community-based long-term care services[32] under a program the Department administers unless the person or government entity is certified by the Department or its designee.[33] An exception applies if (1) the person or government entity has a contract with the Department or its designee to provide the services, (2) the contract includes detailed conditions of participation for providers of services and service standards that the person or government entity is required to satisfy, (3) the person or government entity complies with the contract, and (4) the contract is not for Medicaid-funded services, other than services provided under the PACE program.

The act revises the exception by expressly providing that the exception also applies if (1) the person or government entity has received a grant from the Department or its designee to provide the services in accordance with a grant agreement, (2) the grant agreement includes detailed conditions of participation for providers of services and service standards that the person or government entity is required to satisfy, (3) the

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[32] Community-based long-term care services are health and social services provided to persons in their own homes or in community care settings, including (1) case management, (2) home health care, (3) homemaker services, (4) chore services, (5) respite care, (6) adult day care, (7) home-delivered meals, (8) personal care, (9) physical, occupational, and speech therapy, (10) transportation, and (11) other health and social services provided to persons that allow them to retain their independence in their own homes or in community care settings (R.C. 173.14).

[33] R.C. 173.39.

person or government entity complies with the grant agreement, and (4) the grant is not for Medicaid-funded services, other than services provided under the PACE program.

The act expands the preexisting rule-making duties of the Director of Aging by also requiring the Director to adopt rules expressly governing grant agreements between the Department and persons and government entities regarding community-based long-term care services. The act also provides that the Director's rule-making duties apply with respect to contracts and grant agreements entered into by the Department's designee.

## Unified long-term care budget

### Interagency agreement regarding unified long-term care budget

(R.C. 173.43)

The act requires the Department of Aging to enter into an interagency agreement with the Department of Job and Family Services under which the Department of Aging is required to establish for each biennium a unified long-term care budget for home and community-based services covered by a component of the Medicaid program the Department of Aging administers. These components are the following:

(1) Medicaid waiver services available to a participant in the PASSPORT Program, Choices Program, Assisted Living Program, or any other Medicaid waiver program that the Department administers pursuant to an interagency agreement with the Department of Job and Family Services;

(2) The following Medicaid state plan services available to a participant in a Department of Aging-administered Medicaid waiver program as specified in Department of Job and Family Services rules: home health services, private duty nursing services, durable medical equipment, services of a clinical nurse specialist, and services of a certified nurse practitioner;

(3) Services available to a participant of the PACE Program.

The interagency agreement regarding the unified long-term care budget must require the Department of Aging to do all of the following:

(1) Administer the budget in accordance with the act's provisions regarding the budget and the General Assembly's appropriations for the home and community-based services for the applicable biennium;

(2) Contract with each PASSPORT administrative agency for assistance in the budget's administration;

(3) Provide individuals who are eligible for the home and community-based services a choice of services that meet the individuals' needs and improve their quality of life;

(4) Provide a continuum of services that meet the life-long needs of individuals who are eligible for the home and community-based services.

The act requires the Director of Budget and Management to create new appropriation items as necessary for the unified long-term care budget's establishment.

#### Services to be available under the unified long-term care budget

(R.C. 173.431)

The Department of Aging is required by the act to ensure that the unified long-term care budget is administered in a manner that provides Medicaid coverage of and expands access to three groups of services. The first group consists of services that the PACE Program covers. The second group consists of the following state Medicaid plan services as specified in the Department of Job and Family Services' rules: home health services, private duty nursing services, durable medical equipment, services of a clinical nurse specialist, and services of a certified nurse practitioner. The third group consists of all of the following Medicaid waiver services provided under Department of Aging-administered Medicaid waiver programs:

(1) Personal care services;

(2) Home-delivered meals;

(3) Adult day-care;

(4) Homemaker services;

(5) Emergency response services;

(6) Medical equipment and supplies;

(7) Chore services;

(8) Social work counseling;

(9) Nutritional counseling;

(10) Independent living assistance;

(11) Medical transportation;

(12) Nonmedical transportation;

(13) Home care attendant services;

(14) Assisted living services;

(15) Community transition services;

(16) Enhanced community living services;

(17) All other Medicaid waiver services provided under Department of Aging-administered Medicaid waiver programs.

### Care management and authorization services

(R.C. 173.432)

The act requires the Department of Aging or its designee to provide care management and authorization services with regard to the following state Medicaid plan services that are provided to participants of Medicaid waiver programs the Department administers: home health services, private duty nursing services, durable medical equipment, services of a clinical nurse specialist, and services of a certified nurse practitioner. The Department or its designee is required to ensure that no person providing the care management and authorization services performs an activity that may not be performed without a valid certificate or license issued by a state agency unless the person holds the valid certificate or license.

### Federal approval

(R.C. 173.433)

No provision of the act regarding the unified long-term care budget is to be implemented until the United States Secretary of Health and Human Services approves the provision if federal approval is needed. The Director of Job and Family Services is required by the act to do one or more of the following as necessary to obtain federal approval:

(1) Submit one or more state Medicaid plan amendments to the United States Secretary;

(2) Request one or more federal Medicaid waivers from the United States Secretary;

(3) Submit one or more federal Medicaid waiver amendments to the United States Secretary.

## Rules

(R.C. 173.434)

The act requires the Director of Job and Family Services to adopt rules to authorize the Director of Aging to adopt rules that are needed to implement the provisions of the act regarding the unified long-term care budget. The Director of Aging's rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

## Unified Long-Term Care Budget Workgroup (PARTIALLY VETOED)

(Section 209.40)

The act creates the Unified Long-Term Care Budget Workgroup,[34] consisting of the following members:

(1) The Director of Aging;

(2) Consumer advocates, representatives of the provider community, representatives of managed care organizations,[35] and state policy makers, appointed by the Governor;

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

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

The Director of Aging is to serve as the Workgroup's chairperson. The Departments of Aging and Job and Family Services are to staff the Workgroup.

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

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

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[34] Am. Sub. H.B. 119 of the 127th General Assembly also created a Unified Long-Term Care Budget Workgroup.

[35] The Governor vetoed a provision that would have required the representatives of managed care organizations to be from organizations under contract with the Department of Job and Family Services for purposes of the Medicaid managed care system.

(2) Providing a continuum of services that meet the needs of a consumer throughout life and promote a consumer's independence and autonomy;

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

(4) Assuring the state has a system that is cost effective and links disparate services across agencies and jurisdictions.[36]

### Progress report on unified long-term care budget

(Section 209.40)

The act requires the Directors of Aging and Budget and Management to annually submit a written report to the Speaker and the Minority Leader of the House of Representatives, the President and the Minority Leader of the Senate, and the members of the Joint Legislative Committee on Medicaid Technology and Reform[37] describing the progress towards establishing, or if already established, the effectiveness of the unified long-term care budget.[38]

### Transfer of appropriations

(Section 209.40)

The Director of Budget and Management is authorized by the act to seek Controlling Board approval to transfer cash from the Nursing Facility Stabilization Fund to the PASSPORT/Residential State Supplement Fund in support of the Unified Long-Term Care Budget Workgroup's proposal.[39]

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[36] Am. Sub. H.B. 119 of the 127th General Assembly gave the Unified Long-Term Care Budget Workgroup the same responsibilities.

[37] The Joint Legislative Committee on Medicaid Technology and Reform is authorized to review or study any matter it considers relevant to the operation of the Medicaid program, with priority given to the study or review of mechanisms to enhance the program's effectiveness through improved technology systems and program reform (R.C. 101.391).

[38] Am. Sub. H.B. 119 of the 127th General Assembly included the same reporting requirement for the Unified Long-Term Care Budget Workgroup.

[39] The Nursing Facility Stabilization Fund is a fund in the state treasury into which a portion of the franchise permit fee on nursing home beds and hospital long-term care beds is deposited. The Department of Job and Family Services is required to use money in the Fund to make Medicaid payments to nursing facilities. (R.C. 3721.561.) The PASSPORT/Residential State Supplement Fund is a state special revenue fund group. It receives a portion of the money raised by the franchise permit fee on nursing

## Long-Term Care Consultation Program

(R.C. 173.42, 173.421, 173.422, 173.423, 173.424, and 173.425)

### Background

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

### Provision of consultations

(R.C. 173.42 and 173.424)

The act eliminates the requirement that a long-term care consultation be provided to the following individuals unless they are exempt from having a consultation: (1) nursing facility residents who apply or indicate an intention to apply for Medicaid and (2) nursing facility residents who are likely to spend down their resources within six months after admission to a nursing facility to a level at which they are financially eligible for Medicaid. The act provides instead that a long-term care consultation may be provided to a nursing facility resident regardless of the source of payment being used for the resident's care in the nursing facility.

The Department of Aging or program administrator is required by the act to provide consultation to an individual identified by the Department or administrator as being likely to benefit from consultation. To assist the Department or administrator in making this determination, the act provides that the Department or administrator is to have access, except as limited under state or federal law, to data collected from a nursing facility's assessment of its residents.[40] The Department of Health, Department of Job and Family Services, or nursing facility holding the data is required, under the

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home beds and hospital long-term care beds that is originally deposited into the Home and Community-Based Services for the Aged Fund. (Money is transferred from the Home and Community-Based Services for the Aged Fund to the PASSPORT/Residential State Supplement Fund.) Money in the PASSPORT/Residential State Supplement Fund is used to support the PASSPORT and the Residential State Supplement programs. The Fund was originally created by Am. Sub. H.B. 152 of the 120th General Assembly but is not codified in the Revised Code.

[40] The act does not specify the assessments to which the Department or administrator is to have access. Federal law provides for nursing facility assessments under 42 U.S.C. 1396r(e)(5).

act, to grant access to the data on receipt of a request from the Department of Aging or program administrator.

The act removes a provision of prior law that exempts an individual from having a consultation when the individual is (1) transferred to another nursing facility or (2) readmitted to a nursing facility after a period of hospitalization.

As under preexisting law, an individual is not forced by the act to have a consultation. More specifically, the act provides that an individual is not required to be provided a consultation if the individual "refuses to cooperate" rather than, as under prior law, if the individual "chooses to forego" participation.

Law modified by the act provides that a long-term care consultation may be provided at any appropriate time, including either before or after the individual who is the subject of the consultation has been admitted to a nursing facility. The act provides that a consultation also may be provided before or after such an individual is granted assistance in receiving home and community-based services covered by a component of the Medicaid program the Department of Aging administers.

Under prior law, at the conclusion of the consultation, the Department of Aging or program administrator was required to provide a written summary of options and resources available to meet the individual's needs. The act eliminates this requirement. In its place, the act requires the Department or program administrator to assist an individual or individual's representative in accessing all sources of care and services that are appropriate for the individual and for which the individual is eligible, including all available home and community-based services covered by components of the Medicaid program the Department administers. This assistance is to be provided as part of the Long-Term Care Consultation Program. The assistance is to include providing for the conduct of assessments or other evaluations and the development of individualized plans of care or services if, under federal law, an individual's eligibility for the home and community-based services is dependent on the assessment, other evaluation, and plan of care or services. The Department must develop and implement all procedures necessary to comply with the federal law and the procedures must include the use of long-term care consultations.

### Periodic or follow-up consultations

(R.C. 173.421)

The Department of Aging is permitted by the act to establish procedures for the conduct of periodic or follow-up long-term care consultations for nursing facility residents, including annual or more frequent reassessments of the residents' functional capabilities. If the procedures are established, the Department or program

administrator must assign individuals to nursing facilities to serve as care managers within the facilities. To be assigned, an individual must be certified by the Department to provide long-term care consultations.

### Program administration

(R.C. 173.42)

Under the act, the Department of Aging and each program administrator is to administer the Long-Term Care Consultation Program in such a manner that all of the following are included:

(1) Coordination and collaboration regarding funding for long-term care services;

(2) Assessments of individuals regarding their long-term care service needs;

(3) Assessments of individuals regarding their on-going eligibility for long-term care services;

(4) Procedures for assisting individuals in accessing and coordinating health and supportive services, including any waivers administered by the Department;

(5) Priorities for using resources efficiently and effectively.

The act authorizes the Director of Aging to adopt additional rules for the Program, including rules that specify:

(1) Criteria and procedures to be used to identify and recommend appropriate service options for an individual receiving a long-term care consultation;

(2) A description of the types of information from a nursing facility that is needed under the Program to assist a resident with relocation from the facility;

(3) Standards to prevent conflicts of interest relative to the referrals made by a person who performs a long-term care consultation, including standards that prohibit the person from being employed by a provider of long-term care services;

(4) Procedures for providing notice and an opportunity for a hearing of a nursing home that may be subject to a fine for failure to permit the Department of Aging or program administrator access to a nursing facility.

### Fines

(R.C. 173.42)

Continuing law authorizes the Director of Aging to fine a nursing facility if the facility admits an individual without evidence that a long-term care consultation occurred. The act, however, eliminates the Director's prior authority to issue a fine if a nursing facility retains an individual without such evidence.

The act permits the Director to fine a nursing facility that denies a person attempting to provide a long-term consultation access to the facility or to a resident of the facility. It also permits the Director to fine a facility that denies the Department or program administrator access as necessary to administer the Program. The amounts for the fines are to be determined by rules adopted by the Director.

The act specifies that the Director must give notice and an opportunity for a hearing before imposing a fine.

### Monitoring of home and community-based services

(R.C. 173.423)

The act requires the Department of Aging or a program administrator to monitor the subject of a long-term care consultation who is eligible for and elects to receive home and community-based services covered by a component of the Medicaid program the Department administers. Either or both of the following are to be determined at least once each year:

(1) Whether the services are appropriate;

(2) Whether changes in types of services should be made.

### Annual report

(R.C. 173.425)

The act requires the Department of Aging to prepare an annual report regarding the individuals who are the subjects of long-term care consultations and elect to receive home and community-based services covered by a component of the Medicaid program the Department administers. The Department must prepare the report in consultation with the Department of Job and Family Services and Office of Budget and Management. Each report is to include all of the following information:

(1) The total savings achieved by providing the home and community-based services rather than services that otherwise would be provided in a nursing facility;

(2) The average number of days that individuals receive the services before and after receiving nursing facility services;

(3) A categorical analysis of the acuity levels of the individuals who receive the services;

(4) Any other statistical information the Department considers appropriate for inclusion in the report.

## Ohio's Best Rx Program

(R.C. 127.16, 173.70, 173.99, and 2921.13; R.C. 173.71 to 173.91 (repealed); Section 209.50)

Prior law established the Ohio's Best Rx Program to provide prescription drug discounts to Ohioans who have low incomes, are 60 or older, or are disabled. Medicaid-eligible individuals and individuals with health benefits covering outpatient drugs were ineligible for the program. Drug manufacturers seeking to participate in the program could enter into agreements with the Department of Aging to make payments to the program when their drugs were dispensed under the program. Effective on the act's earliest effective date (July 17, 2009), the act repeals all statutes governing the program.

The act requires the Director of Aging to make every effort to conclude the program's operation within 30 days of the repeal of the program. Any program accounts with drug manufacturers or pharmacies still in effect are to be settled until October 1, 2009.

The act permits the Director to contract with any person for the operation of a drug discount program to provide prescription drug discounts to individuals who have low incomes (not above 300% of the federal poverty guidelines), are 60 or older, or are disabled. The act allows the Director to provide information regarding former Best Rx Program participants and applicants to the person under contract.

## Ohio Community Service Council

(R.C. 121.40, 121.401, and 121.402)

Under continuing law, the Ohio Community Service Council consists of 21 voting members as follows: the Superintendent of Public Instruction, the Chancellor of the Ohio Board of Regents, the Director of Youth Services, the Director of Aging, the chairpersons of the Senate and House of Representatives committees dealing with

education,[41] and 15 members appointed by the Governor with the advice and consent of the Senate to serve three-year terms. The appointees must include educators; representatives of youth organizations; students and parents; representatives of organizations engaged in volunteer program development and management throughout Ohio, including youth and conservation programs; and representatives of business, government, nonprofit organizations, social service agencies, veterans organizations, religious organizations, or philanthropies that support or encourage volunteerism within Ohio. The act adds the Director of the Governor's Office of Faith-based and Community Initiatives as a nonvoting ex officio member of the council.

Under continuing law, the council appoints an executive director for the council. The act requires the Governor to be informed of the appointment before it is made.

Under former law, beginning on July 1, 1997, the Department of Aging served as the council's fiscal agent.[42] The council retained any validation, cure, right, privilege, remedy, obligation, or liability.

The act requires the council to enter into an agreement in writing with "another state agency" to serve as the council's fiscal agent. Before entering into such an agreement, the council must inform the Governor of its terms and of the state agency designated to serve as the fiscal agent. The fiscal agent will be responsible for all the council's fiscal matters and financial transactions, as specified in the agreement. The fiscal agent must determine fees to be charged to the council, and the council must pay fees owed to the fiscal agent from a general revenue fund of the council or from any other fund from which the operating expenses of the council are paid.

Formerly, the council, or its designee, had the following authority and responsibility relative to fiscal matters. Under the act, the council continues to have the following authority and responsibility relative to fiscal matters, but in conjunction and consultation with the fiscal agent.

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[41] All the officials can appoint designees to serve in their stead.

[42] Formerly, "fiscal agent" meant technical support and included the following technical support services:

(1) Preparing and processing payroll and other personnel documents that the council executed as the appointing authority. The Department could not approve any payroll or other personnel-related documents.

(2) Maintaining ledgers of accounts and reports of account balances, and monitoring budgets and allotment plans in consultation with the council. The Department could not approve any biennial budget, grant, expenditure, audit, or fiscal-related document.

(3) Performing other routine support services that the Director of Aging or the Director's designee and the council or its designee considered appropriate to achieve efficiency.

(a) Sole authority to draw funds for any and all federal programs in which the council is authorized to participate;

(b) Sole authority to expend funds from their accounts for programs and any other necessary expenses the council may incur and its subgrantees may incur; and

(c) Responsibility to cooperate with and inform the fiscal agent fully of all financial transactions.

Services to be provided by the fiscal agent include, but are not limited to, the following:

(1) Preparing and processing payroll and other personnel documents that the council executes as the appointing authority;

(2) Maintaining ledgers of accounts and reports of account balances, and monitoring budgets and allotment plans in consultation with the council; and

(3) Performing other routine support services that the fiscal agent considers appropriate to achieve efficiency.

The act removes provisions that prohibit the council's fiscal agent from approving any payroll or other personnel related documents, or any biennial budget, grant, expenditure, audit, or other fiscal-related document.

In addition to following all state procurement requirements as in continuing law, the act requires the council to follow all state fiscal, human resources, statutory, and administrative rule requirements.

Finally, the act corrects references to the council that refer anachronistically to the "Governor's Community Service Council."

## Brain Injury Advisory Committee

(R.C. 3304.231)

The preexisting Brain Injury Advisory Committee is required to advise the Administrator of the Rehabilitation Services Commission and the Brain Injury Program regarding the needs of brain-injury survivors. Under continuing law, the Committee's membership includes a brain-injury survivor, a relative of a brain-injury survivor, certain health professionals, a Brain Injury Association of Ohio representative, three to five members of the public, and officials from nine specified state agencies. The act adds the Director of Aging to the Committee.

## DEPARTMENT OF AGRICULTURE (AGR)

- Creates the Sustainable Agriculture Program Fund consisting of money credited to it, including federal money, and requires the Director of Agriculture to use money in the Fund to support activities and programs that advance sustainable agriculture.

- Eliminates the Commercial Feed, Fertilizer, and Lime Inspection and Laboratory Fund, and credits the money that previously had been credited to that Fund either to the renamed Pesticide, Fertilizer, and Lime Program Fund if the money is collected under the Lime and Fertilizer Law or to the Commercial Feed and Seed Fund created by the act if the money is collected under the Agricultural Seed and Livestock Feeds Laws.

- Renames the Pesticide Program Fund the Pesticide, Fertilizer, and Lime Program Fund, and requires the money that previously had been credited to the Pesticide Program Fund under the Pesticides Law to be credited to the renamed Fund.

- Changes the name of the Animal Health and Food Safety Fund to the Animal and Consumer Analytical Laboratory Fund.

- Changes the name of the Market Development Fund to the Ohio Proud, International, and Domestic Development Fund.

- Increases or eliminates certain fees under the Nursery Stock and Plant Pests Law, and requires all of the money collected under that Law to be credited to the Plant Pest Program Fund created by the act rather than to the Pesticide Program Fund or the General Revenue Fund as under former law.

- Revises the funding formula for allocating costs to landowners who want to participate in the Gypsy Moth Suppression Program.

- Authorizes the Director of Agriculture to assess the operating funds of the Department of Agriculture to pay a share of the Department's central support and administrative costs, and requires assessments to be paid from funds designated in an approved plan and credited to the Department of Agriculture Central Support Indirect Costs Fund created by the act.

- Increases the annual fee for a license to operate a meat processing establishment or a poultry processing establishment from $50 to $100.

- Includes poultry dealers in the definition of "dealer" or "broker," and thus in the licensure requirements for dealers and brokers, in the Livestock Dealers Law, and

increases some and adds other fees in that Law, including a new late licensure renewal fee for dealers or brokers.

- Requires small dealers of livestock to be licensed by the Department of Agriculture, defines "small dealer," and establishes requirements and procedures governing small dealers, including a $25 license fee.

- Requires certain records regarding the acquisition or disposal of animals that must be maintained by dealers or brokers to be maintained for at least 60 months rather than at least 24 months as in prior law, and applies the requirement to small dealers.

- Requires employees that are appointed by a small dealer, dealer, or broker of livestock to perform certain duties to pay an annual fee of $20.

- Requires money collected and fines imposed and collected under the Livestock Dealers Law to be credited to the renamed Animal and Consumer Analytical Laboratory Fund rather than to the General Revenue Fund or paid into the state treasury as in prior law.

- Increases the annual license fee to feed treated garbage to swine from $50 to $100, establishes a fee of $50 for late renewal, and credits the fees to the Animal and Consumer Analytical Laboratory Fund.

- Requires conveyances to be cleaned and disinfected before they can be used in the feeding of swine, and defines "conveyance."

- Exempts rendered products from the Garbage-Fed Swine and Poultry Law, and defines "rendered product."

- Applies the continuing $25 fee for an annual license to pick up or collect raw rendering material or to transport raw rendering material to a composting facility to each conveyance that is used for those purposes, establishes a $10 per-conveyance fee for late renewal applications, and defines "conveyance"; increases the annual license fee to pick up or collect raw rendering material and to operate one or more rendering plants from $100 per plant to $300 per plant, and establishes a $100 fee for late renewal applications; and requires all money collected for those licenses to be credited to the Animal and Consumer Analytical Laboratory Fund.

- Eliminates the exemption from licensure under the Rendering Plants Law for operations on any premises that were licensed under the Meat and Poultry Inspection Law or were subject to federal meat inspection and rendered only raw rendering material that was produced on the premises, and exempts holders of nuisance wild animal permits issued by the Division of Wildlife in the Department

of Natural Resources and county dog wardens or animal control officers from those licensure requirements.

- Requires food processing establishments to register annually with the Director of Agriculture and pay a registration fee, and requires the Director to inspect an establishment prior to issuing an initial certificate of registration to ensure that the establishment is in compliance with the Pure Food and Drug Law and with the Bakeries, Canneries and Soft Drink Bottling, Cold Storage and Individual Locker, or Marketing Law, as applicable.

- Authorizes the Director or the Director's designee to suspend or revoke a food processing establishment registration for specified violations, requires the Director to adopt necessary rules, and exempts certain entities from the food processing establishment registration fee.

- Eliminates the requirement that the Governor, when submitting a state budget to the General Assembly, had to include in the budget a special purpose appropriation from the General Revenue Fund for the purpose of supplementing the funding available from the continuing Amusement Ride Inspection Fund.

- Extends through June 30, 2011, the extra 2¢ earmark of wine tax revenue credited to the Ohio Grape Industries Fund.

- Revises the definition of "Ohio Pet Fund" to specify that it consists of any, rather than all, of the following: humane societies, veterinarians, animal shelters, companion animal breeders, dog wardens, or similar individuals and entities.

- With regard to the organizations that may receive financial assistance from the Fund, expands the tax-exempt charitable organizations that may receive assistance to include those tax-exempt charitable organizations that have as one of their purposes, rather than as their primary purpose, the support of programs for the sterilization of dogs and cats and educational programs concerning proper veterinary care.

- Transfers the administration of the Veterinarian Loan Repayment Program from the Ohio Board of Regents to the State Veterinary Medical Licensing Board.

- Authorizes money in the Ohio Farm Loan Fund to be used by the Director for rural rehabilitation purposes benefiting the state rather than for rural rehabilitation purposes that were permissible under the charter of the former Ohio Rural Rehabilitation Corporation as agreed upon by the Director and the United States Secretary of Agriculture or for use by the Secretary in accordance with rural rehabilitation agreements with the Director.

- Creates the Ohio Beekeepers Task Force, and requires it to prepare a report addressing specified topics related to Ohio's bee populations.

## Sustainable Agriculture Program Fund

(R.C. 901.041)

The act creates in the state treasury the Sustainable Agriculture Program Fund consisting of money credited to it, including, without limitation, federal money. The Director of Agriculture must use money in the Fund to support programs and activities that advance sustainable agriculture, including administrative costs incurred by the Department of Agriculture in administering the programs and activities.

## Changes in certain operating and development funds

(R.C. 901.20, 901.43, 905.32, 905.33, 905.331, 905.36, 905.38, 905.381, 905.50, 905.51, 905.52, 905.56, 905.66, 907.13, 907.14, 907.16, 907.30, 907.31, 921.02, 921.06, 921.09, 921.11, 921.13, 921.16, 921.22, 921.27, 921.29, 923.44, and 923.46)

Under former law, money collected from license, registration, inspection, and late renewal fees and penalties under the Lime and Fertilizer Law was credited to the Commercial Feed, Fertilizer, and Lime Inspection and Laboratory Fund. The act eliminates that Fund and credits the money that previously had been so credited to that Fund to the renamed Pesticide, Fertilizer, and Lime Program Fund (see below). The act makes necessary conforming changes.

Under prior law, money collected from license, permit, registration, sales report, and inspection fees and penalties under the Agricultural Seed and Livestock Feeds Laws was credited to the Commercial Feed, Fertilizer, and Lime Inspection and Laboratory Fund. As noted above, the act eliminates that Fund. It credits the money that previously had been so credited to that Fund to the Commercial Feed and Seed Fund created by the act. The act requires the Director of Agriculture to keep accurate records of all receipts into and disbursements from the new Commercial Feed and Seed Fund and to prepare, and provide upon request, an annual report classifying the receipts and disbursements that pertain to commercial feed or seed.

Former law specified that money collected from registration, license, inspection, and late renewal fees, specified proceeds, penalties, fines, costs, and damages collected in consequence of violations under the Pesticides Law was credited to the Pesticide Program Fund. The act renames the Fund the Pesticide, Fertilizer, and Lime Program Fund and requires the money that previously had been so credited to the Pesticide

Program Fund to be credited to the renamed Fund. The act requires the Director to use money in the renamed Fund to administer and enforce the Pesticides and Lime and Fertilizer Laws and rules adopted under those Laws. As required under former law for the Commercial Feed, Fertilizer, and Lime Inspection and Laboratory Fund, the act requires the Director to keep accurate records of all receipts into and disbursements from the Pesticide, Fertilizer, and Lime Program Fund and to prepare, and provide upon request, an annual report classifying the receipts and disbursements that pertain to pesticides, fertilizers, or lime.

Under law largely retained by the act, money collected by the Director from specified sources related to laboratory services under the Department of Agriculture Law is credited to the Animal Health and Food Safety Fund in the state treasury. The Director of Agriculture may use money in the Fund to pay the expenses necessary to operate the animal industry and consumer analytical laboratories. The act changes the name of the Animal Health and Food Safety Fund to the Animal and Consumer Analytical Laboratory Fund.

Finally, the act changes the name of the former Market Development Fund to the Ohio Proud, International, and Domestic Market Development Fund.

## Fee changes in Nursery Stock and Plant Pests Law

(R.C. 927.51, 927.52, 927.53, 927.56, 927.69, 927.70, 927.71, and 927.74)

Law revised in part by the act establishes fees for the issuance of nursery stock collector or dealer licenses, phyto sanitary certificates, compliance agreements, and solid wood packing certificates and for inspecting nursery stock under the Nursery Stock and Plant Pests Law. The act increases or eliminates fees under that Law as follows:

| License, certificate, inspection, agreement, and per acre fee | Former fee | New fee |
|---|---|---|
| Nursery stock collector or dealer license | $ 75 | $ 125 |
| Woody nursery stock inspection | $ 65 | $ 100 |
| Intensive production areas for woody nursery stock inspection, per acre | $ 4.50 | $ 11 |
| Nonintensive production areas for woody nursery stock inspection, per acre | $ 3.50 | $ 7 |
| Nonwoody nursery stock inspection | $ 65 | $ 100 |
| Intensive and nonintensive production areas for nonwoody nursery stock inspection, per acre | $ 4.50 | $ 11 |

| License, certificate, inspection, agreement, and per acre fee | Former fee | New fee |
|---|---|---|
| Phyto sanitary certificate for those collectors or dealers licensed under the Nursery Stock Law | $ 25 | Unchanged |
| Phyto sanitary certificate for all others | $ 25 | $ 100 |
| Compliance agreements | $ 20 | $ 40 |
| Solid wood packing certificate | $ 20 | No fee |

Under prior law, money collected from a portion of the fees discussed above and expenses collected for preventative and remedial measures taken under the Nursery Stock and Plant Pests Law were credited to the Pesticide Program Fund, and the remainder of the fees discussed above, fines, and assessments collected under that Law were credited to the General Revenue Fund. The act instead requires all of the money to be credited to the Plant Pest Program Fund created by the act and requires the Director to use money in the Fund to administer the Nursery Stock and Plant Pests Law. The Director must keep accurate records of all receipts into and disbursements from the Fund and must prepare, and provide upon request, an annual report classifying the receipts and disbursements that pertain to plant pests. Finally, the act makes necessary conforming changes.

### Gypsy Moth Suppression Program

(R.C. 927.701)

Continuing law authorizes the Director of Agriculture to establish a voluntary Gypsy Moth Suppression Program under which a landowner may request that the Department of Agriculture have the landowner's property aerially sprayed to suppress the presence of gypsy moths in exchange for payment from the landowner of a portion of the cost of the spraying. Formerly, in order to determine the amount of payment that was due from a landowner, the Department first had to determine the projected cost per acre to the Department of gypsy moth suppression activities for the year in which the landowner's request was made. The cost had to be calculated by determining the total expense of aerial spraying for gypsy moths that was to be incurred by the Department in that year divided by the total number of acres proposed to be sprayed in that year. With respect to a landowner, the Department had to multiply the cost per acre by the number of acres that the landowner requested to be sprayed. The Department had to add to that amount any administrative costs that it incurs in billing the landowner and collecting payment. The amount that the landowner had to pay to the Department could not exceed 50% of the resulting amount.

The act revises the funding formula for allocating costs to landowners who want to participate in the Program. The act requires the Department, in order to determine the total cost per acre, to add the per-acre cost of the product selected by the landowner to suppress gypsy moths and the per-acre cost of applying the product as determined by the Director in rules. To determine the aggregate total cost, the Department must multiply the total cost per acre by the number of acres that the landowner requests to be sprayed. The act retains the requirement that the Department add to that amount any administrative costs that it incurs in billing the landowner and collecting payment. The act also specifies that the portion of the cost that is assessed to the landowner, if any, must be determined by the funding that is allocated to the Department by the federal and state Gypsy Moth Suppression Programs.

Under prior law, money collected under the Program was credited to the Pesticide Program Fund. As indicated above, the act replaces that Fund with the Plant Pest Program Fund. It requires money collected under the Program to be credited to the Plant Pest Program Fund created by the act and retains continuing law that requires money so credited to be used for the suppression of gypsy moths.

## Central Support and Indirect Costs Fund

(R.C. 901.91)

The act authorizes the Director of Agriculture to assess the operating funds of the Department of Agriculture to pay a share of the Department's central support and administrative costs. The assessments must be based on a plan that the Director develops and submits to the Director of Budget and Management not later than July 15 of the fiscal year in which the assessments are to be made. If the Director of Budget and Management approves the plan, assessments must be paid from the funds designated in the plan and credited by means of intrastate transfer voucher to the Department of Agriculture Central Support Indirect Costs Fund, which the act creates in the state treasury. The Fund must be administered by the Director of Agriculture and used to pay central support and administrative costs of the Department of Agriculture.

## Fee for license to operate meat or poultry processing establishment

(R.C. 918.08 and 918.28)

Continuing law requires an applicant for an annual license to operate a meat processing establishment or a poultry processing establishment to pay a fee to the Director of Agriculture before the Director issues the license. Under prior law, the fee was $50. The act increases the fee to $100.

## Livestock Dealers Law

### Changes in definitions and fees

(R.C. 943.01 and 943.04)

Continuing law establishes requirements governing the licensure of livestock dealers and brokers. Under law generally unchanged by the act, "animals" or "livestock" means horses, mules, and other equidae, cattle, sheep, and goats and other bovidae, swine and other suidae, alpacas, and llamas. The act adds poultry to the definition.

Under law retained by the act, "dealer" or "broker" means any person found by the Department of Agriculture buying, receiving, selling, slaughtering, with the exception of those persons who slaughter or prepare animals for their own consumption as specified under the Meat Inspection Law, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any animals in an amount of more than 250 head of cattle, horses, or other equidae or 500 head of sheep, goats, or other bovidae, swine and other suidae, alpacas, or llamas during any one year. The act adds poultry to the 500-head threshold regarding activities performed by a dealer or broker.

Law revised in part by the act establishes fees for the issuance of livestock dealer or broker licenses and livestock weigher licenses under the Livestock Dealers Law. The act increases or adds fees under that Law as follows:

| License fee | Former fee | New fee |
|---|---|---|
| For dealers or brokers (except small dealers as discussed below) that purchased, sold, or exchanged less than 1,000 head of livestock in the preceding calendar year | $10 | $50 |
| For dealers or brokers that purchased, sold, or exchanged 1,001 to 10,000 head of livestock in the preceding calendar year | $25 | $125 |
| For dealers or brokers that purchased, sold, or exchanged more than 10,000 head of livestock in the preceding calendar year | $50 | $250 |
| Late renewal fee for dealers or brokers | No fee | $100 |
| Weighers | $5 | $10 |

### Small dealers of livestock license

(R.C. 943.01, 943.02, 943.031, 943.04, 943.05, 943.06, 943.07, 943.13, and 943.14)

The act requires small dealers of livestock to be licensed under the Livestock Dealers Law. "Small dealers" means any person found by the Department of Agriculture buying, receiving, selling, slaughtering, with the exception of those persons who slaughter or prepare animals for their own consumption as specified under the Meat Inspection Law, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any animals in an amount of 250 head or less of cattle, horses, or other equidae or 500 head or less of sheep, goats, or other bovidae, swine or other suidae, poultry, alpacas, or llamas during any one year.

The act establishes similar license application requirements and procedures for small dealers as those in continuing law for livestock dealers and brokers, except that it does not require them to maintain or furnish proof of financial responsibility. Application for a license as a small dealer must be made in writing to the Department. The application must state the nature of the business, the municipal corporation or township, county, and post-office address of the location where the business is to be conducted, the name of any employee who is authorized to act in the small dealer's behalf, and any additional information that the Department prescribes.

The applicant must satisfy the Department of the applicant's character and good faith in seeking to engage in the business of a small dealer. The Department then must issue to the applicant a license to conduct the business of a small dealer at the place named in the application. Licenses, unless revoked, expire annually on March 31 and are renewed in accordance with procedures established in the Standard License Renewal Procedure Law.

No license must be issued by the Department to a small dealer having weighing facilities until the applicant has filed with the Department a copy of a scale test certificate showing the weighing facilities to be in satisfactory condition, a copy of the license of each weigher employed by the applicant, and a certificate of inspection from the Department showing livestock market facilities to be in satisfactory sanitary condition. No licensed small dealer can employ as an employee a person who, as a small dealer, dealer, or broker, previously defaulted on contracts pertaining to the purchase, exchange, or sale of livestock until the licensee does both of the following:

(1) Appears at a hearing before the Director of Agriculture or the Director's designee conducted in accordance with the Administrative Procedure Act pertaining to that person; and

(2) Signs and files with the Director an agreement that guarantees, without condition, all contracts pertaining to the purchase, exchange, or sale of livestock made by the person while in the employ of the licensee. The Director must prescribe the form and content of the agreement.

The act establishes an annual $25 license fee and a $25 late fee for each license renewal application that is received after March 31. If a small dealer operates more than one place where livestock is purchased, sold, or exchanged, a fee must be paid for each place, but only the original purchase, sale, or exchange must be counted in computing the amount of fee to be paid for each place operated by the small dealer. Shipment between yards owned or operated by the small dealer are exempt.

The act applies to small dealers ongoing law governing acting as a dealer or broker without a license, refusal or suspension of a dealer or broker license, posting of a license at the dealer's or broker's place of business, sanitation requirements of livestock yards or vehicles owned or operated by a dealer or broker, inspections of those livestock yards or vehicles, requirements for animals that are sold through those livestock yards, and record keeping requirements (see below) for livestock dealers or brokers or their employees.

### Other provisions

(R.C. 943.04, 943.14, and 943.16)

Under law unchanged by the act, a dealer or broker or an employee who acquires or disposes of an animal by any means must make a record of the name and address of the person from whom the animal was acquired and to whom it was disposed. The requirement also applies to any person who buys or receives animals for grazing or feeding purposes at a premises owned or controlled by that person and sells or disposes of the animals after the minimum grazing or feeding period of 30 days. Formerly, the records had to be maintained for a period of 24 months or longer from the date of acquisition or disposal. The act instead requires those records to be maintained for 60 months or longer and applies the requirement to small dealers as discussed above.

The act requires an employee that is appointed by a small dealer, dealer, or broker to act on the small dealer's, dealer's, or broker's behalf to pay a $20 annual fee.

Under former law, the money collected and fines imposed and collected under the Livestock Dealers Law were credited to the General Revenue Fund or paid into the state treasury, as applicable. The act instead requires the money collected and fines imposed and collected under that Law to be credited to the renamed Animal and Consumer Analytical Laboratory Fund (see above).

## Garbage-Fed Swine and Poultry Law

(R.C. 942.01, 942.02, 942.06, and 942.13)

Ongoing law prohibits a person from feeding on the person's premises, or permit the feeding of, treated garbage to swine without a license to do so issued by the Department of Agriculture. In order to obtain a license, an application must be made on a form prescribed by the Director of Agriculture and must be accompanied by an annual fee. Under prior law, the fee was $50. The act increases the garbage-fed swine license fee to $100 per year and establishes a $50 late fee for each license renewal application that is received after November 30. Prior law did not specify to which fund the money collected from the license fees was to be credited. The act credits the license fees to the Animal and Consumer Analytical Laboratory Fund.

Under law retained by the act, equipment used for handling garbage, except for containers in which the garbage is treated, must not subsequently be used in the feeding of swine unless first cleaned and disinfected in accordance with directions on the labels of specified disinfectants approved by the Federal Insecticide, Fungicide and Rodenticide Act. The act adds that conveyances also must be cleaned and disinfected before they can be used in the feeding of swine. "Conveyance" is defined to mean a vehicle, trailer, or compartment that is used to transport raw rendering material.[43] As under continuing law governing the cleaning and disinfecting of the premises, vehicles, and equipment used in the feeding of treated garbage to swine, the act states that the owner of a conveyance is responsible for cleaning and disinfecting the conveyance with no expense to the Department of Agriculture.

Additionally, the act specifies that the Garbage-Fed Swine and Poultry Law does not apply to rendered products. It defines "rendered product" to mean raw rendering material that has been ground and heated to a minimum temperature of 230 degrees Fahrenheit to make products such as animal, poultry, or fish protein, grease, or tallow.

## Rendering Plants Law

(R.C. 953.21, 953.22, and 953.23)

With specified exemptions, law revised in part by the act requires a person to apply for a license to pick up or collect raw rendering material or transport raw rendering material to a composting facility from the Department and pay an annual license fee of $25. The act applies the continuing license fee to each conveyance that is

[43] "Raw rendering material" means any body, part of a body, or product of a body of any dead animal that is unwholesome, condemned, inedible, or otherwise unfit for human consumption (R.C. 942.01(D) by reference to R.C. 953.21, not in the act).

used for those purposes and establishes a $10 per-conveyance fee for late renewal applications that are received after November 30. It defines "conveyance" to mean a vehicle, trailer, or compartment. Continuing law also requires a person to apply for a license to pick up or collect raw rendering material and to operate one or more rendering plants and pay an annual license fee for each plant. Formerly, the fee was $100 per plant. The act increases the license fee to $300 for each plant and establishes a $100 fee for late renewal applications that are received after November 30. Prior law did not specify to which fund the money collected from the license fees was to be credited. The act requires all money that is so collected to be credited to the Animal and Consumer Analytical Laboratory Fund.

Law revised in part by the act exempts certain persons and operations from obtaining a license under the Rendering Plants Law to dispose of, pick up, render, or collect raw rendering material or transport the material to a composting facility. Under former law, included in the exemptions were operations on any premises that were licensed under the Meat and Poultry Inspection Law or were subject to federal meat inspection and rendered only raw rendering material that was produced on the premises. The act eliminates that exemption.

Finally, the act exempts both of the following from the Rendering Plants Law:

(1) A person whose only connection with raw rendering material is trapping wild animals in accordance with a nuisance wild animal permit issued by the Chief of the Division of Wildlife in the Department of Natural Resources; and

(2) A county dog warden or animal control officer who transports raw rendering material only for disposal purposes.

## Food processing establishment registration

(R.C. 915.24 and 3715.041)

Ongoing law requires the Director of Agriculture to adopt rules establishing standards and good manufacturing practices for food processing establishments.[44]

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

However, a business or portion of a business that is regulated under the Dairy Products Law or the Meat Inspection Law is not subject to regulation under those rules as a food processing establishment. The act requires a person that operates a food processing establishment to register the establishment annually with the Director. The person must submit an application for registration or renewal on a form prescribed and provided by the Director. Except as discussed below, an application for registration or renewal must be accompanied by a registration fee in an amount established in rules adopted by the Director under the act (see below). If a person files an application for registration on or after August 1 of any year, the fee must be one-half of the annual registration fee.

The act requires the Director to inspect the food processing establishment for which an application for initial registration has been submitted. If, upon inspection, the Director finds that the establishment is in compliance with the Pure Food and Drug Law and with the Bakeries, Canneries and Soft Drink Bottling, Cold Storage and Individual Locker, or Marketing Law, as applicable, or applicable rules, the Director must issue a certificate of registration to the food processing establishment. A registration expires on January 31 and is valid until that date unless it is suspended or revoked. A copy of the food processing establishment registration certificate must be conspicuously displayed in an area of the establishment to which customers of the establishment have access.

A person that is operating a food processing establishment on the effective date of the applicable provisions of the act must apply to the Director for a certificate of registration not later than 90 days after that date. If an application is not filed with the Director or postmarked on or before 90 days after that date, the Director must assess a late fee in an amount established in rules.

Under the act, a food processing establishment registration may be renewed by the Director. A person seeking registration renewal must submit an application for renewal not later than January 31. The Director must issue a renewed certificate of registration on receipt of a complete renewal application. However, if a renewal application is not filed or postmarked on or before January 31, the Director must assess a late fee in an amount established in rules. Additionally, the Director cannot renew the registration until the applicant pays the late fee.

Under the act, the Director or the Director's designee may issue an order suspending or revoking a food processing establishment registration upon determining that the registration holder is in violation of the Pure Food and Drug Law or the

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of the honey is from that beekeeper's own hives. (R.C. 3715.041(A)(1) by reference to R.C. 3715.021, not in the act.)

Bakeries, Canneries and Soft Drink Bottling, Cold Storage and Individual Locker, or Marketing Law, as applicable, or applicable rules. Generally, a registration cannot be suspended or revoked until the registration holder is provided an opportunity to appeal the suspension or revocation in accordance with the Administrative Procedure Act. However, if the Director determines that a food processing establishment presents an immediate danger to the public health, the Director may issue an order immediately suspending the establishment's registration without affording the registration holder an opportunity for a hearing. The Director then must afford the registration holder a hearing in accordance with the Administrative Procedure Act not later than ten days after the date of suspension.

The act requires the Director to adopt rules in accordance with the Administrative Procedure Act that establish all of the following:

(1) The amount of the registration fee that must be submitted with an application for a food processing establishment registration and with an application for renewal;

(2) The amount of the late fee for a person that is operating a food processing establishment on the effective date of the applicable provisions of the act and that does not apply for a certificate of registration within 90 days of that date;

(3) The amount of the fee for the late renewal of a food processing establishment registration if a renewal application is not filed with the Director or postmarked on or before January 31; and

(4) Any other procedures and requirements that are necessary to administer and enforce the act's food processing establishment registration provisions.

All money that is collected under those provisions must be credited to the Food Safety Fund created in the Cold Storage and Individual Locker Law.

Finally, the act exempts the following entities from paying any food processing establishment registration fee: home bakeries registered under the Bakeries Law, canneries and soft drink plants licensed under the Canneries and Soft Drink Bottling Law, cold-storage warehouses and other persons licensed under the Cold Storage and Individual Locker Law, and persons that are engaged in egg production and that maintain annually 500 or fewer laying hens.

## Amusement ride inspections

(R.C. 1711.58)

Under former law, the Governor, in submitting a state budget to the General Assembly, had to include in the budget a special purpose appropriation from the General Revenue Fund for the purpose of supplementing the funding available from the Amusement Ride Inspection Fund created under the Amusement Rides Law. The act eliminates that requirement.

## Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43)

Continuing law imposes a tax on the distribution of wine, vermouth, and sparkling and carbonated wine and champagne at rates ranging from 30¢ per gallon to $1.48 per gallon. From the taxes paid, a portion is credited to the Ohio Grape Industries Fund for the encouragement of the state's grape industry, and the remainder is credited to the General Revenue Fund. Under prior law, the amount credited to the Ohio Grape Industries Fund was scheduled to decrease from 3¢ to 1¢ per gallon on July 1, 2009. The act extends the extra 2¢ earmarking through June 30, 2011.

## Ohio Pet Fund

(R.C. 955.201)

Under ongoing law, the Registrar of Motor Vehicles is authorized to issue a "Pets" license plate to a person who files an application and pays the applicable fees, including a fee that is determined by the Ohio Pet Fund and that is used to support programs for the sterilization of dogs and cats and for educational programs concerning the proper veterinary care of those animals. Under law changed in part, "Ohio Pet Fund" means a nonprofit corporation that is organized under the Nonprofit Corporation Law that consists of humane societies, veterinarians, animal shelters, companion animal breeders, dog wardens, and similar individuals and entities. The act changes "and" to "or" in the definition so that the Fund consists of any of those individuals and entities rather than all of them.

Under continuing law, the Fund has certain duties and responsibilities regarding the support of sterilization programs and educational programs. One of those duties is to establish eligibility criteria for certain types of organizations that may receive financial assistance from the Fund. Formerly, tax-exempt charitable organizations could receive assistance if their primary purpose was to support programs for the sterilization of dogs and cats and educational programs concerning the proper

veterinary care of those animals. The act expands the tax-exempt charitable organizations that may receive assistance from the Fund to include those that have as one of their purposes, rather than as their primary purpose, the support of programs for the sterilization of dogs and cats and educational programs concerning proper veterinary care.

## Veterinarian Loan Repayment Program

(R.C. 4741.41, 4741.44, 4741.45, and 4741.46; Section 515.20)

Under continuing law, the Veterinarian Loan Repayment Program provides loan repayments, for the principal of and interest on a government or other educational loan, for veterinarians who meet certain criteria. Under prior law, the Ohio Board of Regents administered the Program. The act transfers the administration of the Program from the Ohio Board of Regents to the State Veterinary Medical Licensing Board. In doing so, it states that all determinations of the Ohio Board of Regents that were made pursuant to the Program continue in effect as determinations of the State Veterinary Medical Licensing Board until modified or rescinded by the State Veterinary Medical Licensing Board.

## Ohio Farm Loan Fund

(R.C. 901.32)

Under continuing law, funds and the proceeds of trust assets that are not authorized to be administered by the United States Secretary of Agriculture under rural rehabilitation agreements with the Director of Agriculture must be paid to and received by the Director. That money must be credited to the Ohio Farm Loan Fund. Under prior law, money in the Fund could be used by the Director for rural rehabilitation purposes that were permissible under the charter of the former Ohio Rural Rehabilitation Corporation as agreed upon by the Director and the Secretary or for use by the Secretary in accordance with rural rehabilitation agreements with the Director. The act instead authorizes money in the Fund to be used by the Director for rural rehabilitation purposes benefiting the state.

## Ohio Beekeepers Task Force

(Section 709.10)

The act creates in the Department of Agriculture the Ohio Beekeepers Task Force consisting of the following members:

(1) Two members of the standing committee of the House of Representatives that is primarily responsible for considering agricultural matters appointed by the Governor, each from a different political party;

(2) Two members of the standing committee of the Senate that is primarily responsible for considering agricultural matters appointed by the Governor, each from a different political party;

(3) The Chief of the Division of Plant Industry in the Department of Agriculture or the Chief's designee;

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

(5) Two representatives of the Ohio State Beekeepers Association appointed by the Association;

(6) The Director of The Ohio State University Extension or the Director's designee;

(7) An apiculture specialist of The Ohio State University Extension appointed by the Director of The Ohio State University Extension;

(8) The Chair of The Ohio State University Department of Entomology or the Chair's designee;

(9) A representative of the Ohio Produce Growers and Marketing Association appointed by the Association;

(10) A representative of the Ohio Farm Bureau Federation Bee and Honey Committee appointed by the Federation;

(11) A representative of the Ohio Farmers Union appointed by the Union; and

(12) A representative of the County Commissioners Association of Ohio appointed by the Association.

The act requires the members to be appointed no later than 60 days after the effective date of those provisions of the act. The Task Force must hold its first meeting no later than 90 days after that effective date. The Governor must select a chairperson and vice-chairperson from among the members of the Task Force, and the chairperson may appoint a secretary. The members of the Task Force are to receive no compensation for their services.

The act requires the Task Force, no later than ten months after the effective date of those provisions of the act, to submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Ohio State Beekeepers Association. The report must do all of the following:

(1) Provide an overview of the characteristics of the honeybee crisis in Ohio;

(2) Examine and provide an overview of and conclusions regarding whether pollinator shortages are affecting crop pollination in Ohio;

(3) Review and provide an overview of the Ohio Honeybee Emergency Action Plan;

(4) Review and provide a summary of the federal initiatives regarding Ohio's bee population and of all of the Department of Agriculture's and the Ohio State Beekeepers Association's programs concerning Ohio's bee population;

(5) Provide an overview of the five-year goals of the Department of Agriculture concerning honeybees, including recommendations for the restoration of Ohio's bee population;

(6) Examine and describe the funding that is available for honeybee programs and issues affecting honeybees; and

(7) Any other issues that the Task Force considers appropriate.

Not later than 90 days following the submission of the report, the Task Force must meet and respond to any question from a person who received the report. The Task Force ceases to exist upon submitting its response to all questions from persons who received the report.

## AIR QUALITY DEVELOPMENT AUTHORITY (AIR)

- Requires the Ohio Air Quality Development Authority (OAQDA) to establish the Energy Strategy Development Program for the purpose of developing energy initiatives, projects, and policy for the state.
- Creates the Energy Strategy Development Fund, which is to be used for purposes of the Program.
- Authorizes OAQDA, in accordance with the federal Internal Revenue Code, to allocate the national Qualified Energy Conservation Bond limitation allocated to

Ohio and to reallocate any portion of an allocation waived by a county or municipality.

- Adds as "advanced energy projects" eligible for funding by OAQDA through bond proceeds or by the Department of Development using money from electric ratepayers any technologies, products, activities, or management practices or strategies that facilitate the generation or use of energy.
- Adds coal-mine methane gas as an energy resource that qualifies as an advanced energy project and as a resource electric distribution utilities and electric services companies can use to meet alternative energy benchmarks.

## Energy Strategy Development Program

(Section 213.20)

The act requires the Ohio Air Quality Development Authority (OAQDA) to establish the Energy Strategy Development Program for the purpose of developing energy initiatives, projects, and policy for the state. Issues addressed by the initiatives, projects, and policy are not to be limited to those governed by the continuing Air Quality Development Authority Law (R.C. Chapter 3706.). The act also creates the Energy Strategy Development Fund, which is a fund created in the state treasury. The Fund is to consist of money credited to it and money obtained for advanced energy projects from federal or private grants, loans, or other sources. Money in the Fund must be used to carry out the purposes of the Energy Strategy Development Program. Interest earned on the Fund is to be credited to the GRF. The Fund is abolished on July 1, 2012, or as soon as possible thereafter, with remaining cash credited to the GRF.

## Allocation of the Qualified Energy Conservation Bond limitation

(R.C. 3706.04)

Federal law provides that a state or local government may issue Qualified Energy Conservation Bonds (QECBs) and use their proceeds for qualified conservation purposes, such as capital expenditures incurred for reducing energy consumption in publically-owned buildings by at least 20% or for certain expenses related to advanced or renewable energy development or commercialization. In turn, federal law permits a QECB bondholder to receive a federal tax credit.

Federal law creates a cap on the volume of QECBs that may be issued nationally and provides for the allocation of this total cap among the states in proportion to their

populations. It also requires that within each state, a percentage of the QECBs allocated to that state must be allocated to each large local government--defined as a county or municipality with a population of at least 100,000 people.[45]

The act authorizes OAQDA to allocate the national QECB limitation that is allocated to Ohio by the federal government and to reallocate any portion of an allocation waived by a county or municipality in accordance with the federal law discussed above.

## Advanced energy

(R.C. 3706.25 and 4928.01)

Under continuing law, the Department of Development may provide grants, contracts, loans, loan participation agreements, linked deposits, and energy production incentives for advanced energy projects, and the OAQDA may provide grants and loans for advanced energy projects. Development's program is financed through a temporary surcharge on electric rates; OAQDA's program is financed from the proceeds of state-issued revenue bonds and other available money.[46]

The act changes the definition of "advanced energy project" for both programs, so that such a project can include any technologies, products, activities, or management practices or strategies that facilitate the generation or use of energy--not just the generation or use of electricity, as in ongoing law--and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy.

Continuing law can include as an "advanced energy project" renewable energy resources and advanced energy resources. The act adds methane gas emitted from an abandoned coal mine as a renewable energy resource under the OAQDA law and methane gas emitted from an operating or abandoned coal mine as an advanced energy resource for purposes of the Development law. Also, the addition to what qualifies as an advanced energy resource has the effect of adding coal-mine methane gas to the types of resources that electric distribution utilities and electric services companies can use to meet the alternative energy benchmarks specified in electric restructuring law.[47]

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[45] 26 U.S.C. 54D(e).

[46] R.C. 166.01, 166.08, 166.30, 3706.26, 3706.27, 3706.28, 3706.29, 3734.01, and 4928.62 (not in the act).

[47] R.C. 4928.64 (not in the act).

## DEPARTMENT OF ALCOHOL AND DRUG ADDICTION SERVICES (ADA)

- Requires the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) to make a warning sign regarding anabolic steroids available on its Internet web site rather than print and distribute the sign.

- Requires each board of alcohol, drug addiction, and mental health services (ADAMHS board) to submit annual reports to ODADAS specifying how the board used state and federal funds allocated to it for administrative functions in the year preceding each report's submission.

- Expressly authorizes ODADAS, in consultation with ODMH, to establish and maintain more than one information system (rather than one system) to aid in formulating a comprehensive statewide alcohol and drug addiction services plan and determining the effectiveness and results of alcohol and drug addiction services, and similarly expressly authorizes ODMH to develop and operate more than one community mental health system (rather than one system).

- Changes the prohibition on the collection of information by ODADAS and ODMH from ADAMHS boards to specify that the prohibition is on the collection of personal information except as permitted or required (rather than just required) by state or federal law and adds that it must be for purposes relating to payment, health care operations, program and service evaluation, reporting activities, research, system administration, and oversight.

- Provides that the $50 immobilization waiver fee that a county or municipal court must impose in certain cases involving a motor vehicle that is subject to immobilization must be deposited into the indigent drivers alcohol treatment fund under the control of that court rather than into the state treasury to the credit of the state Indigent Drivers Alcohol Treatment Fund.

- Requires each ADAMHS board and alcohol and drug addiction services board to submit detailed annual reports to ODADAS for each indigent drivers alcohol treatment fund in that board's area.

- Adds the ODADAS Director, or the Director's designee, to the Ohio Commission on Fatherhood.

## Anabolic steroid warning sign

(R.C. 3793.02)

Continuing law requires that a warning about anabolic steroids be posted in the locker rooms of (1) school buildings that include any grade higher than sixth grade, (2) recreational and athletic facilities operated by the university or college for use by students, and (3) every athletic facility.[48] The warning must read as follows:

"Warning: Improper use of anabolic steroids may cause serious or fatal health problems, such as heart disease, stroke, cancer, growth deformities, infertility, personality changes, severe acne, and baldness. Possession, sale, or use of anabolic steroids without a valid prescription is a crime punishable by a fine and imprisonment."

Prior law required ODADAS to print and distribute the warning sign. The act requires ODADAS to make the warning sign available on its Internet web site rather than print and distribute it.

## Annual reports on use of state and federal funds for administrative functions

(R.C. 3793.21)

Continuing law requires ODADAS to establish a comprehensive, statewide alcohol and drug addiction services plan (R.C. 3793.04, not in the act). The plan must provide for the allocation of state and federal funds for services furnished by alcohol and drug addiction programs under contract with boards of alcohol, drug addiction, and mental health services (ADAMHS boards)[49] and must specify the methodology ODADAS will use to determine how funds will be allocated and distributed. Each board is required to submit its own plan to ODADAS that serves as the board's application for funds (R.C. 3793.05, not in the act). ODADAS must distribute funds to a board if it approves the board's plan.

The act requires each ADAMHS board to submit annual reports to ODADAS specifying how the board used state and federal funds allocated to it (according to the methodology specified by the statewide alcohol and drug addiction services plan) for administrative functions[50] in the year preceding each report's submission. The act

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[48] Privately owned athletic training, exercise, and sports facilities and stadiums that are open to the public and publicly owned sports facilities and stadiums are considered to be athletic facilities. (R.C. 3707.50.)

[49] References to ADAMHS boards also refer to alcohol and drug addiction services boards.

[50] The act defines an "administrative function" as a function related to one or more of the following: continuous quality improvement, utilization review, resource development, fiscal administration, general

requires the ODADAS Director to establish the date by which the report must be submitted each year.

### Information systems maintained by ODADAS and ODMH

(R.C. 3793.04 (primary), 340.033, and 5119.61)

Under prior law, ODADAS was required to establish and maintain a single information system to aid it in formulating a comprehensive statewide alcohol and drug addiction services plan. Similarly, the Ohio Department of Mental Health (ODMH) had to establish a single community mental health information system. ADAMHS boards[51] were required to provide certain information for these systems, but ODMH and ODADAS were prohibited from collecting from the ADAMHS boards any information for the purpose of identifying by name any person who received a service through a board, except when the collection was required by state or federal law to validate appropriate reimbursement.

The act expressly authorizes ODADAS, in consultation with ODMH, to establish more than one information system (rather than just one system) to aid it in formulating a comprehensive statewide alcohol and drug addiction services plan and in determining the effectiveness and results of alcohol and drug addiction services. The act also expressly authorizes ODMH to develop and operate more than one community mental health information system.

The act specifies that the prohibition on the collection of information by ODADAS and ODMH from ADAMHS boards is on the collection of *personal information* about persons who receive ADAMHS board services, except when personal information collection is *permitted or* required (rather than just required) by state or federal law. The act adds that the collection of personal information by ODADAS and ODMH must be for purposes relating to payment, health care operations, program and service evaluation, reporting activities, research, system administration, and oversight.[52]

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administration, and any other function related to administration that is required by the laws governing ADAMHS boards.

[51] References to ADAMHS boards also refer to community mental health boards and alcohol and drug addiction services boards.

[52] Regulations regarding health information privacy promulgated under the federal Health Insurance Portability and Accountability Act (HIPAA) permit a covered entity that is a health oversight agency (such as ODMH and ODADAS) to use and disclose protected health information for treatment, payment, health care operations, health oversight activities, and research activities, as long as the use and disclosure otherwise comports with HIPAA regulations. For example, if use or disclosure is made for research purposes, HIPAA requires the covered entity, if it does not want to obtain patient authorization

## Indigent drivers alcohol treatment funds

(R.C. 4503.235 and 4511.191)

### Prior and continuing law

There exists in the state treasury the Indigent Drivers Alcohol Treatment Fund. Pursuant to continuing law, each county has established an indigent drivers alcohol treatment fund and a juvenile indigent drivers alcohol treatment fund, while each municipal corporation in which there is a municipal court has established an indigent drivers alcohol treatment fund. These three kinds of funds are under the control of their respective courts. Under prior law, the state fund consisted of $37.50 of each $475.00 OVI-related driver's license reinstatement fee that the Registrar of Motor Vehicles collects, the motor vehicle immobilization waiver fee of $50 that is imposed in certain cases involving the immobilization of a motor vehicle, and the $100 application fee manufacturers pay to have their ignition interlock devices certified by the Department of Public Safety.

Continuing law requires ODADAS to distribute the money in the state's Indigent Drivers Alcohol Treatment Fund to the county indigent drivers alcohol treatment funds, the county juvenile indigent drivers alcohol treatment funds, and the municipal indigent drivers alcohol treatment funds. These funds also receive $1.50 of an additional court cost of $10 that is imposed on an offender who is convicted of a motor vehicle moving violation, $1.50 of an additional bail amount of $10 that is imposed on an offender who is charged with a motor vehicle moving violation and is convicted of the violation or forfeits the bail, $25 or $50 of each fine imposed on a first-time state OVI offender, 50% of each fine imposed on an offender who commits the offense of driving under OVI suspension, and $25 of each fine imposed on a local OVI offender.

The county, juvenile, and municipal courts may use the money in their respective funds only to pay the cost of an alcohol and drug addiction treatment program attended by an offender or juvenile traffic offender who is ordered to attend an alcohol and drug addiction treatment program by a county, juvenile, or municipal court judge and who is determined by the judge not to have the means to pay for the person's attendance at the program or to pay certain other specified costs. In addition, a county, juvenile, or municipal court judge may use money in that court's indigent drivers alcohol treatment fund to pay for the cost of the continued use of an alcohol monitoring device in certain circumstances. Money in the state fund that ODADAS does not distribute to a county

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for the use or disclosure, to seek permission from an Institutional Review Board (IRB) or privacy board composed of members specified in the regulations to alter the form of authorization or to waive the authorization requirement (45 C.F.R. 164.512).

indigent drivers alcohol treatment fund, a county juvenile indigent drivers alcohol treatment fund, or a municipal indigent drivers alcohol treatment fund because the ODADAS Director does not have the information necessary to identify the county or municipal corporation where the offender or juvenile offender was arrested may be transferred by the Director of Budget and Management to the existing Statewide Treatment and Prevention Fund upon certification of the amount by the ODADAS Director.

### Changes made by the act

The act makes one change from prior law in the revenue sources for the state Indigent Drivers Alcohol Treatment Fund and the local indigent drivers alcohol treatment funds: it requires the court clerk to deposit the $50 vehicle immobilization fee that is imposed in certain cases involving the immobilization of a motor vehicle into the appropriate county or municipal indigent drivers alcohol treatment fund under the control of that court instead of into the state Indigent Drivers Alcohol Treatment Fund.

### Annual reports by ADAMHS boards

The act requires each ADAMHS board[53] to submit to ODADAS an annual report of each local indigent drivers alcohol treatment fund in that board's area. The report, which must be submitted not later than 60 days after the end of the state fiscal year, must provide the total payment that was made from the fund, including the number of indigent consumers that received treatment services and the number of indigent consumers that received an alcohol monitoring device. The report also must identify the treatment program and expenditure for an alcohol monitoring device for which that payment was made and include the fiscal year balance of each indigent drivers alcohol treatment fund located in that board's area. If a surplus is declared in a fund, as permitted by continuing law, the act requires the report to provide the total payment that was made from the surplus money and identify the treatment program and expenditure for an alcohol monitoring device for which that payment was made. ODADAS may require additional information necessary to complete the comprehensive statewide Alcohol and Drug Addiction Services Plan as required by continuing law. If an ADAMHS board is unable to obtain adequate information to develop the report to submit to ODADAS for a particular indigent drivers alcohol treatment fund, the board must submit a report detailing the effort made to obtain the information.

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[53] References to ADAMHS boards also refer to alcohol and drug addiction services boards.

### ODADAS representation on the Ohio Commission on Fatherhood

(R.C. 5101.34)

The Ohio Commission on Fatherhood, created by preexisting law, is required to organize a state summit on fatherhood every four years and prepare an annual report that identifies resources available to fund fatherhood-related programs and explores the creation of fatherhood initiatives. The act adds the ODADAS Director or the Director's designee to the Commission's membership, for a total of 20 members.

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## ATHLETIC COMMISSION (ATH)

- Expands the licensing authority of the Ohio Athletic Commission to cover private competitions and public and private competitions involving not only boxing and wrestling but also martial arts.
- Requires that an applicant for a promoter's license to conduct a public or private competition involving boxing or martial arts that is issued by the Commission submit a surety bond of not less than $20,000, rather than $5,000.
- Eliminates (1) surety bonding for wrestling promoters, (2) the option to provide a cash bond, certified check, or a bank draft instead of a surety bond for a promoter's license, and (3) the requirement that the applicant for a promoter's license verify the application under oath.
- Changes the information that appears on a boxing or wrestling or martial arts promoter's license issued by the Commission.
- Requires the Commission to adopt rules that require the examination by appropriate medical personnel of contestants before and after competitions.
- Specifies that fines imposed against licensees for violations are to be determined by Commission rule.
- Authorizes the Commission to revoke, suspend, or refuse to renew a license if the licensee has been convicted of theft, bribery of a public official, or corruption of a sport, or associates or consorts with any person who has been convicted of a crime that involves a sport the Commission regulates, including a conviction for theft, bribery of a public official, or corruption of a sport.

## Expansion of Ohio Athletic Commission licensing authority

(R.C. 3773.35, 3773.36, and 3773.43)

Any person who wishes to conduct a public boxing or wrestling match or exhibition apply to the Ohio Athletic Commission for a promoter's license. The act expands this licensing requirement also to cover private competitions, and any public or private competition that involves wrestling, boxing, mixed martial arts, kick boxing, tough man contests, tough guy contests, or any other form of boxing or martial arts.

## Evidence of financial security that a promoter must submit with a license application and verification of the application

(R.C. 3773.35 and 3773.36)

Prior law required that an application for a promoter's license to be accompanied by a cash bond, certified check, bank draft, or surety bond of not less than $5,000. The act requires instead that the applicant submit only a surety bond of not less than $20,000, removes the option to provide a cash bond, certified check, or a bank draft, and eliminates the requirement that applicants for a wrestling promoter's license submit a surety bond.

The act also removes a requirement that the applicant verify the application under oath.

## Information contained on a boxing or martial arts or wrestling promoter's license

(R.C. 3773.36)

Under prior law, each boxing or wrestling promoter's license issued by the Ohio Athletic Commission had to bear, among other things, the date of issue, a serial number designated by the Commission, and the signature of the Commission chairperson. The act, reflecting the other amendments that expand the licensing authority to include martial arts, instead requires that each boxing or wrestling or martial arts promoter's license bear the date of expiration and an identification number designated by the Commission and eliminates the requirement for the signature of the Commission chairperson.

### Commission rules regarding medical examination before and after bouts the Commission regulates

(R.C. 3773.45)

Prior law required that each contestant in a public boxing match or exhibition be examined not more than 24 hours before entering the ring by specified medical personnel and immediately after the end of a match or exhibition if the contestant was knocked out. Medical personnel are prohibited from certifying a contestant as physically fit to compete if the contestant was knocked out in a contest that occurred within the preceding 30 days.

The act eliminates the requirements described in the preceding paragraph and instead requires the Commission to adopt, and authorizes the Commission to amend or rescind, rules that require the physical examination by appropriate medical personnel of each contestant in any public competition that involves boxing, mixed martial arts, kick boxing, karate, tough man contestant, or any other form of boxing or martial arts within a specified time period before and after the competition to determine whether the contestant is physically fit to compete in the competition under specified standards, has sustained physical injuries in the competition, or requires a follow-up examination, and require the reporting of each such examination to the Commission. (R.C. 3773.45 (A).)

### Fines for violation of the Ohio Athletic Commission Law

(R.C. 3773.53)

The Ohio Athletic Commission, in addition to any other action it may take, is authorized to impose a fine of not more than $100 against any person licensed by the Commission for a violation of any provision of the Ohio Athletic Commission Law. The act provides that the amount of such a fine will be determined by Commission rule. (R.C. 3773.53(G).)

### Grounds for Ohio Athletic Commission to revoke, suspend, or refuse to renew a license

(R.C. 3773.53)

The Ohio Athletic Commission may revoke, suspend, or refuse to renew a license if a licensee of the Commission is associating or consorting with any person who has been convicted of a crime. The act limits the Commission's authority to situations where the licensee is associating or consorting with any person who has been convicted of a crime involving the sports regulated by the Commission, including a conviction

under sections 2913.02, 2915.05, or 2921.02 of the Revised Code (for theft, bribery of a public official, or corruption of a sport, respectively). The act gives the Commission authority also to revoke, suspend, or refuse to renew a license if a licensee has been convicted of or pleaded guilty to a violation of those same Revised Code sections. (R.C. 3773.53(B).)

### Clarification of Ohio Athletic Commission fee statute

(R.C. 3773.43)

In light of its other amendments, the act clarifies the statute that prescribes the fees that are charged by the Ohio Athletic Commission. First, the act specifies that the $100 application and renewal fee for a promoter's license applies not only with regard to public competitions, but also to private competitions, and applies not only with regard to boxing but also to mixed martial arts, kick boxing, tough man contests, tough guy contests, and any other form of boxing or martial arts. Second, the act specifies that the $200 application and renewal fee with regard to wrestling matches or exhibitions applies, not with regard to professional wrestling matches or exhibitions, but with regard to public or private competitions involving wrestling.

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## ATTORNEY GENERAL (AGO)

- Replaces the requirement that administrative rules adopted by the Attorney General regarding peace officer training specify that the training include and the requirement that state, county, municipal, and Department of Natural Resources peace officer basic training programs include a minimum of 15 hours of training in handling domestic violence relations matters and six hours of training in crisis intervention with a general requirement for training in those two areas.

- Requires each agency or entity that appoints or employs one or more peace officers to report to the Ohio Peace Officer Training Commission (OPOTC) the guilty plea to a felony or a specified misdemeanor of any person who is serving the agency or entity in a peace officer capacity.

- Requires certain peace officers who terminate employment and are subsequently hired as peace officers to complete an unspecified amount of training in crisis intervention instead of six hours of such training.

- Authorizes the Executive Director of the OPOTC to exempt from peace officer training requirements a person who has service equivalent to 16 years of full-time active service as a peace officer.

- Modifies the amount of attorney's fees incurred to obtain a restraining order, custody order, or other order to separate a victim from an offender that are an "allowable expense" under the Crime Victims Reparations Law.

- Modifies the fee an applicant must pay for a license, renewal of a license, or an emergency license to carry a concealed handgun and modifies the procedure for the distribution of the fee.

- Requires the sheriff to waive the payment of the fee for an emergency license to carry a concealed handgun for specified retired peace officers and retired law enforcement officers.

- Requires the Attorney General to publish its pamphlet on firearms laws on the Attorney General's web site, eliminates requirements for distribution of copies of the pamphlet, and requires the Attorney General and firearms trainers to provide the address of that web site to trainees and applicant to a license to carry a concealed handgun.

- Creates a statutory form for an application to renew a license to carry a concealed handgun, requires a sheriff to conduct criminal records and incompetency checks of an applicant for renewal only from the date of the applicant's last application, and authorizes submission of an expired license as prima-facie evidence that an applicant for renewal at one time had an appropriate competency certification.

- For purposes of the prohibition against improperly handling firearms in a motor vehicle, provides that ammunition held in stripper-clips or in en-bloc clips is not considered ammunition that is loaded into a magazine or speed loader.

## Peace officer training and reporting requirements

### Hours of training in certain areas

(R.C. 109.73(A)(4) and (5), 109.742, 109.744(A), and 109.77(B)(3))

Prior law required the Ohio Peace Officer Training Commission (OPOTC) to recommend rules to the Attorney General (AG) that peace officer training programs include at least 15 hours of training in handling domestic relations matters, at least six hours in crisis intervention, and a "specified amount" in handling cases involving missing children and child abuse and neglect. The act eliminates the references to specific numbers of hours of such training and to a "specified amount" of training in the

indicated areas and requires instead that OPOTC recommend rules to the AG that the training programs include such training.

Prior law required the Attorney General to adopt rules that required peace officer training programs to include at least 15 hours of training in handling domestic relations matters and at least six hours in crisis intervention and required a state, county, municipal, or Department of Natural Resources peace officer basic training program to include those types and amounts of training. The act eliminates the references to specific numbers of hours of such training and requires instead that the rules specify the amount of those types of training required and that the programs include those types of training.

Prior law required a person who was serving as a peace officer on April 4, 1985, and who subsequently terminated that employment to complete six hours of training in crisis intervention before being employed again as a peace officer. The act eliminates the six hours of required training in crisis intervention and replaces it with the amount of such training prescribed in the rules adopted by the Attorney General.

### Agency reports to OPOTC

(R.C. 109.761(A)(1)(b))

Under continuing law, each agency or entity that appoints or employs any peace officers must report certain information regarding the appointments or employment to the OPOTC. That information includes the "termination, felony conviction, or death" of any peace officer appointed or employed. The act adds to the information that must be reported any plea of guilty to a felony committed on or after January 1, 1997, and any plea of guilty to a misdemeanor committed on or after January 1, 1997, pursuant to a negotiated plea agreement under R.C. 2929.43(D) in which the peace officer agrees to surrender a certificate of satisfactory completion of an approved peace officer training program issued by the Executive Director of the OPOTC.

### Exemption from peace officer training requirements

(R.C. 109.77(H)(1))

Under continuing law, a person who was employed as a peace officer of a county, township, or municipal corporation on January 1, 1966, and who has completed at least 16 years of full-time active service as such a peace officer may receive an original appointment on a permanent basis and serve as a peace officer of a county, township, or municipal corporation, or as a state university law enforcement officer without having to receive a certificate from the Executive Director of the OPOTC of completion of an approved peace officer training program. The act extends the exemption to a person

who has service equivalent to 16 years of full-time active service as a peace officer, as determined by the Executive Director.

## Reparations Fund and Crime Victims Reparations Law--payment of attorney's fees incurred to obtain a restraining order, custody order, or other order to separate a victim from an offender

(R.C. 2743.51)

The act modifies the amount of attorney's fees incurred to obtain a restraining order, custody order, or other order to separate a victim from an offender that are an "allowable expense" under the Crime Victims Reparations Law (and, thus, that may be awarded to a crime victim under that Law). Previously, "allowable expense" included attorney's fees not exceeding $2,500, at a rate not exceeding $150 per hour, incurred for the specified services, if the attorney had not received payment under R.C. 2743.65 for assisting a claimant with a reparations award application. Under the act: (1) "allowable expense" includes attorney's fees not exceeding $1,320, at a rate not exceeding $60 per hour, incurred for those services, if the attorney has not received payment under R.C. 2743.65 for assisting a claimant with a reparations award application and provided that, except as described in clause (2), the attorney or the attorney's law firm may only receive attorney's fees as an allowable expense for the services in an amount that does not exceed a cumulative total of $30,000 in any calendar year, (2) the $30,000 maximum described above does not apply to an attorney employed by a legal aid society regarding the specified services the attorney performs while so employed and does not apply to a legal aid society, and (3) attorney's fees for the specified services may include an amount for reasonable travel time incurred while performing them, assessed at a rate not exceeding $30 per hour.

## Concealed carry licenses

### Amount of fee

(R.C. 109.731(C), 2923.125(B)(1) and (F), and 2923.1213)

#### Prior law

Prior law required an applicant for a license to carry a concealed handgun or for the renewal of a license to carry a concealed handgun under R.C. 2923.125 to submit a nonrefundable license fee prescribed by the Ohio Peace Officer Training Commission (OPOTC) to the sheriff of the county in which the applicant resided or to the sheriff of any county adjacent to the county in which the applicant resided, except that the sheriff had to waive the payment of the license fee for certain specified persons. Prior law specified that OPOTC, in consultation with the Attorney General, had to prescribe a fee

to be paid by an applicant for a license to carry a concealed handgun or for the renewal of a license to carry a concealed handgun as follows:

(1) For an applicant who had been a resident of Ohio for five or more years, an amount that did not exceed the lesser of the actual cost of issuing the license, including, but not limited to, the cost of conducting a criminal records check, or whichever of the following is applicable:

(a) For an application made on or after March 14, 2007, $55;

(b) For an application made prior to March 14, 2007, $45;

(2) For an applicant who had been a resident of Ohio for less than five years, an amount that consisted of the actual cost of having a criminal background check performed by the Federal Bureau of Investigation (FBI), if one was so performed, plus the lesser of the actual cost of issuing the license, including, but not limited to, the cost of conducting a criminal records check, or whichever of the following is applicable:

(a) For an application made on or after March 14, 2007, $55;

(b) For an application made prior to March 14, 2007, $45.

Prior law also required a person seeking a temporary emergency license to carry a concealed handgun under R.C. 2923.1213 to submit to the sheriff of the county in which the person resided a temporary emergency license fee established by OPOTC for an amount that did not exceed the actual cost of conducting the criminal background check, or $30.

**Operation of the act**

For a license to carry a concealed handgun issued under R.C. 2923.125, the act replaces the fees described above in "**Existing law**" and the requirement that OPOTC prescribe the fees with the following statutory fees:

(1) For an applicant who has been a resident of this state for five or more years, a fee of $67 for an initial license or $50 for renewal of a license;

(2) For an applicant who has been a resident of Ohio for less than five years, a fee of $67 for an initial license or $50 for renewal of a license plus, in either case the actual cost of having a background check performed by the FBI.

The act also specifies that no sheriff may require an applicant to pay for the cost of a background check performed by BCII.

For an emergency license to carry a concealed handgun issued under R.C. 2923.1213, the act replaces the existing fee described above in "**Existing law**" with the following:

(1) For an applicant who has been a resident of this state for five or more years, a fee of $15 plus the actual cost of having a background check performed by BCII pursuant to R.C. 311.41;

(2) For an applicant who has been a resident of this state for less than five years, a fee of $15 plus the actual cost of having background checks performed by the FBI and BCII pursuant to R.C. 311.41.

### Deposit and distribution of fee

(R.C. 311.42 and 2923.125(B)(1)(c))

#### Prior and continuing law

Continuing law specifies that each county must establish in the county treasury a sheriff's concealed handgun license issuance expense fund. Under prior law, the sheriff of that county had to deposit into that fund all fees paid by applicants for the issuance or renewal of a license or duplicate license to carry a concealed handgun under R.C. 2923.125 and all fees paid by the person seeking a temporary emergency license to carry a concealed handgun under R.C. 2923.1213. OPOTC, in consultation with the Attorney General, had to specify the portion of the concealed carry license fee that was used to pay each particular cost of the issuance of the license. The county had to distribute the fees deposited into the fund in accordance with those specifications.

#### Operation of the act

The act eliminates the requirement in prior law that OPOTC, in consultation with the Attorney General, had to specify the portion of the concealed handgun license fee that would be used to pay each particular cost of the issuance of the license and eliminates the requirement that the county must distribute the fees deposited into the fund in accordance with those specifications. Instead, the act specifies that the county must distribute all fees deposited into the fund except $40 of each fee paid by an applicant for an initial license issued under R.C. 2923.125(B), $35 of each fee paid by an applicant for a renewal of a license under R.C. 2923.125(F), and $15 of each fee paid for an emergency license issued under R.C. 2923.1213 to the Attorney General to be used to pay the cost of background checks performed by BCII and the FBI and to cover administrative costs associated with issuing the license.

#### Waiver of fee

Continuing law requires a sheriff to waive the payment of the license fee in connection with an initial or renewal application for a concealed carry license that is submitted by an applicant who is a retired peace officer, a retired person described in R.C. 109.77(B)(1)(b), or a retired federal law enforcement officer who, prior to retirement, was authorized under federal law to carry a firearm in the course of duty, unless the retired peace officer, person, or federal law enforcement officer retired as a result of a mental disability. Under prior law, this waiver did not apply to an applicant for an emergency license to carry a concealed handgun. The act requires the sheriff to waive the fee for persons seeking an application for an emergency license to carry a concealed handgun for any person for whom the sheriff under continuing law must waive the fee for an initial or renewed license.

### Firearms pamphlet

(R.C. 109.731(B)(2) and 2923.125(A), (F)(1)(a), (F)(3), (G)(1), and (I))

Continuing law requires the OPOTC, in consultation with the Attorney General, to prepare a pamphlet that explains Ohio firearms laws, instructs the reader in dispute resolution and explains related Ohio laws, and provides information regarding all aspects of the use of deadly force with a firearm. Under prior law, the OPOTC had to make copies of the pamphlet available to both firearms training programs to give to trainees and to sheriffs for distribution to applicants for licenses or renewals of licenses. The act eliminates the distribution requirements and instead requires the Attorney General to publish the pamphlet on the Attorney General's web site and to provide the address of the web site to any person who requests the pamphlet and requires training programs and sheriffs to provide the web site address to trainees and applicants.

### Renewal applications

(R.C. 109.731(A)(1), 2923.125(F)(3), and 2923.1210)

Prior law established a single statutory form to be used for an application for an initial license and for a renewal of a license to carry a concealed handgun. It required the OPOTC to prescribe and make the application form available to sheriffs. The act retains the existing form for an application for an initial license, but it modifies the form to reflect the fact that under the act the applicant is not given a physical firearms pamphlet. The act creates a new form to be used for an application to renew a license and requires the OPOTC to prescribe and make the form available to sheriffs. The new form is substantially similar to the form that previously was used for both initial licenses and renewals except as noted in the following paragraph and must conform substantially to the statutory form.

Continuing law requires the sheriff receiving an application for an initial license or renewal of a license to conduct a criminal records check and an incompetency records check. Under the act, an application for renewal of a license may require the applicant to list on the application form only information and matters occurring since the date of the licensee's last application for an initial or renewal of a license. The act provides that a sheriff conducting the criminal records check and the incompetency records check may conduct the checks only from the date of the licensee's last application for a license through the date of the application for renewal.

Continuing law requires that an applicant for renewal of a license to carry a concealed handgun that has not previously been renewed must submit proof that the applicant at one time had a competency certification of a type described in R.C. 2923.125(B)(3). Under continuing law, a valid license or any other previously issued license that had not been revoked was prima-facie evidence that the applicant at one time had an appropriate competency certification. The act continues this provision and also specifies that an expired license constitutes such prima-facie evidence.

### Definition of "unloaded" as used in offense of improperly handling firearms in a motor vehicle

(R.C. 2923.16)

Continuing law prohibits a person from knowingly transporting or having a firearm in a motor vehicle unless the person may lawfully possess that firearm under Ohio or federal law, the firearm is unloaded, and the firearm is carried in one of several specified ways. "Unloaded" means either (1) that no ammunition is in the firearm in question, and no ammunition is loaded into a magazine or speed loader that may be used with the firearm in question and that is located anywhere within the vehicle in question, without regard to where ammunition otherwise is located within the vehicle in question or (2) with respect to a firearm employing a percussion cap, flintlock, or other obsolete ignition system, that the weapon is uncapped or the priming charge is removed from the pan. The act specifies that for purposes of the first definition of "unloaded," ammunition held in stripper-clips or in en-bloc clips is not considered ammunition that is loaded into a magazine or speed loader.

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## AUDITOR OF STATE (AUD)

- Would have required the Auditor of State to certify to the Director of Budget and Management the amounts of unpaid audit costs for state agencies and local public offices that have ceased operation and the amounts necessary to conduct an appropriate audit program and would have required the Director to transfer the

certified amounts from the General Revenue Fund to designated audit expense funds (VETOED).

## General Revenue Fund transfers for certain unpaid audit costs (VETOED)

(R.C. 117.13; Section 225.20)

Continuing law requires the Auditor of State to conduct annual or biennial audits of state agencies and local public offices and establishes procedures for the Auditor to recover costs of these audits. The act would have added a new procedure for recovering audit costs in certain circumstances.

The act would have required the Auditor to certify to the Director of Budget and Management the amounts due or necessary for state agency audit costs and the Director would have been required to transfer the certified amounts from the General Revenue Fund (GRF) to the existing Public Audit Expense Fund-Intrastate if either of the following had applied:

(1) A state agency that ceased operation had not paid audit costs pursuant to law.

(2) In the judgment of the Auditor, the money appropriated for the cost of biennial audits of state agencies was not sufficient to conduct an appropriate audit program.

If a local public office ceased operation and had not paid audit costs pursuant to law, the act would have required one of the following to occur:

(1) In the case of costs due for an audit performed by the Auditor, the Auditor would have been required to certify to the Director the amounts due for these costs and the Director would have been required to transfer the certified amounts from the GRF to the Public Audit Expense Fund-Local Government.

(2) In the case of costs due for an audit performed by an independent auditor, the independent auditor would have been required to notify the Auditor of the amounts due for these costs, and the Auditor would have been required to certify the amounts to the Director who then would transfer the certified amounts from the GRF to a new fund that would have been created by the act, the Public Audit Expense Fund-Independent Auditors.

### Public Audit Expense Fund-Independent Auditors

The act would have created the Public Audit Expense Fund-Independent Auditors in the state treasury for the purpose of reimbursing independent auditors for unpaid audit costs for audits of local public offices that have ceased operation.

### Appropriation of GRF transfers[54]

The act would have appropriated the moneys transferred from the GRF pursuant to this section relative to the costs of audits of state agencies and local public offices.

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## STATE BARBER BOARD (BRB)

- Requires the Barber Board to ask each person renewing a license to practice as a barber whether the person wishes to make a $2 voluntary contribution to the Ed Jeffers Barber Museum in addition to the fee otherwise charged and collected.
- Requires the Board to transmit any contributions to the Treasurer of State for deposit into the Occupational Licensing Fund.
- Requires the Director of Budget and Management and the Executive Director of the Barber Board to develop a plan to distribute the amounts collected to the Ed Jeffers Barber Museum.

### Optional charge during barber license renewal to fund barber museum

(R.C. 4709.12; Section 227.10)

Under continuing law the Barber Board must charge and collect a statutorily prescribed fee ($110) for the biennial renewal of a license to practice as a barber. The Board, subject to the approval of the Controlling Board, can increase the fee, provided that the increase does not exceed the statutorily prescribed amount by more than 50%.

The act requires the Board to ask each person renewing a license to practice as a barber whether the person wishes to make a $2 voluntary contribution to the Ed Jeffers Barber Museum in addition to the fee otherwise charged and collected. The Board must

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[54] Although the Governor did not veto Section 225.20 of the act, which section appropriated the amounts transferred to pay audit costs, that section probably will have no effect since it appropriates transfers pursuant to vetoed R.C. 117.13.

transmit any contributions to the Treasurer of State for deposit into the Occupational Licensing Fund. On October 1, 2009, or as soon as possible thereafter, the Director of Budget and Management and the Executive Director of the Barber Board must develop a plan to distribute the amounts collected to the Ed Jeffers Barber Museum.

## OFFICE OF BUDGET AND MANAGEMENT (OBM)

- Permits the Director of Budget and Management to issue guidelines to agencies applying for federal money made available to the state for fiscal stabilization and recovery purposes.
- Provides that federal money received by the state for fiscal stabilization in support of elementary, secondary, and higher education, public safety, and any other government service is to be deposited into the state treasury to the credit of the General Revenue Fund and is not to be used as a match for the state's share of Medicaid.
- Would have prohibited the state from entering into or obtaining a certificate of participation or any similar debt instrument without the express approval of the General Assembly (VETOED).
- Would have required the Director each calendar quarter to prepare a list of all employees paid by warrant of the Director who work primarily for one state agency while being paid from appropriations made to another state agency (VETOED).
- Directs a state agency with a segregated custodial fund to provide an annual report related to the fund to the Director, in the form and containing the information the Director requires.
- Authorizes the Director to appoint, and to fix the compensation of, Office of Budget and Management (OBM) employees whose primary duties include the consolidation of statewide financing functions and common transactional processes.
- Requires the Office of Internal Auditing in OBM to monitor, measure, and report on the effectiveness of federal stimulus funds allocated to Ohio under the federal American Recovery and Reinvestment Act of 2009 (ARRA) to certain members of the General Assembly.
- Requires OBM, with respect to the quarterly reports required to be made to the federal government under the ARRA regarding the effectiveness of allocated funds, to send those same reports to certain members of the General Assembly.

## Federal money made available to the state for fiscal stabilization and recovery purposes

(Section 521.70)

To ensure the level of accountability and transparency required by federal law, the act permits the Director of Budget and Management to issue guidelines to any agency applying for federal money made available to the state for fiscal stabilization and recovery purposes and to prescribe the process by which agencies are to comply with any reporting requirements established by the federal government.

The act requires that federal money received by or on behalf of the state for fiscal stabilization in support of elementary, secondary, and higher education, public safety, and any other government service be deposited into the state treasury to the credit of the General Revenue Fund (GRF). This federal money cannot be used as a match for the state's share of Medicaid.

The act specifies that federal money received by or on behalf of the state for fiscal stabilization and recovery purposes in FYs 2010 and 2011 is not to be used to compute debt service for purposes of Article VIII, Section 17 of the Ohio Constitution. Article VIII, Section 17 of the Ohio Constitution imposes a "5% cap" that limits the amount of new debt the state can take on in a fiscal year: state bonds or other obligations cannot be issued if the total amount of debt service payments that must be made in any future fiscal year from the GRF and net state lottery proceeds would exceed 5% of the total estimated GRF and net state lottery proceeds revenue during the fiscal year of issuance.

## Legislative approval of certificates of participation (VETOED)

(R.C. 126.10)

The Governor vetoed a provision that would have prohibited the state from entering into or obtaining a certificate of participation[55] or any similar debt instrument without the express approval of the General Assembly.

[55] A "certificate of participation" is a type of financing where an investor purchases a share of the lease revenues of a program rather than the bond being secured by those revenues.

### Preparation of list of state employees who work primarily for one state agency while being paid with funds appropriated to another (VETOED)

(Section 701.80)

The Governor vetoed a section of law that would have required the Director of Budget and Management to prepare, beginning on October 1, 2009, and on the first day of each calendar quarter thereafter, a list of all employees paid by warrant of the Director who work primarily for one state agency while being paid from appropriations made to another state agency. The Director would have been required to provide a copy of the list to the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House.

### Reporting related to segregated custodial funds

(R.C. 131.38)

The act requires a state agency that possesses, controls, maintains, or holds a segregated custodial fund or otherwise evidences ownership of the contents of a segregated custodial fund to provide to the Director of Budget and Management a report related to the fund by the first day of May of each fiscal year. This report must be in the form and contain the information the Director requires.

The act defines a "segregated custodial fund" as a fund of a state agency that is established by law that consists of moneys, claims, bonds, notes, other obligations, stocks, and other securities, receipts or other evidences of ownership, and other intangible assets that is neither required to be kept in the custody of the treasurer of state nor required to be part of the state treasury. Under continuing law, a "state agency" is every organized body, office, or agency established by the laws of Ohio for the exercise of any function of state government.

### Employment status of OBM employees whose primary duties include the consolidation of statewide financing functions and common transactional processes

(R.C. 126.21)

The act authorizes the Director of Budget and Management, in consultation with the Director of Administrative Services, to appoint, and to fix the compensation of, Office of Budget and Management employees whose primary duties include the consolidation of statewide financing functions and common transactional processes. The positions of these employees are thus excluded from inclusion in the State Job

Classification Plan that the Director of Administrative Services establishes for employees whose salaries are paid in whole or in part by the state.

## Reports monitoring the effectiveness of federal stimulus funds

(Section 521.80)

Under continuing law, the Office of Internal Auditing in the Office of Budget and Management (OBM) is required to conduct internal audits of certain state agencies generally with the intent of improving their operations regarding risk management, internal controls, and governance. Continuing law also requires the Office to issue preliminary and final reports of individual audit findings and recommendations. The Office also must annually submit a report to the Governor, President of the Senate, Speaker of the House, and the Auditor of State. State agencies subject to internal audit are OBM, the Departments of Commerce, Administrative Services, Transportation, Agriculture, Natural Resources, Health, Job and Family Services, Public Safety, Mental Health, Developmental Disabilities, Insurance, Development, Youth Services, Rehabilitation and Correction, Aging, Alcohol and Drug Addiction, Veteran Services, Taxation, the Environmental Protection Agency, and the Bureau of Workers' Compensation.

### Semi-annual reports

The act requires the Office, in addition to its duties under continuing law, to (1) monitor and measure the effectiveness of federal stimulus funds allocated to Ohio under the American Recovery and Reinvestment Act of 2009 (ARRA) and (2) review how funds allocated to each state agency subject to internal audit under continuing law are spent. In addition to all the reports it must issue under continuing law, the Office must submit a report of its findings regarding the effectiveness and expenditure of the federal stimulus funds to the President, Senate Minority Leader, Speaker, House Minority Leader, and the Chairs of the House and Senate committees that handle finance and appropriations. The reports are to be issued according to the following schedule and time frames: **February 1, 2010** (for July 1, 2009-December 31, 2009); **August 1, 2010** (January 1, 2010-June 30, 2010); **February 1, 2011** (July 1, 2010-December 31, 2010); and **August 1, 2011** (January 1, 2011-June 30, 2011).

### Quarterly reports

The act also requires that, if OBM is required to submit quarterly reports to the federal government regarding the effectiveness of federal stimulus funds allocated under the ARRA for which Ohio is the prime recipient and the reporting requirement has not been delegated to a sub-recipient, then it must submit those reports to the same General Assembly members described above, as well as the ranking members of the

House and Senate committees that handle finance and appropriations. The act requires OBM to continue to submit the quarterly reports to the legislature for as long as the reports are required by the federal government.

## CAPITOL SQUARE REVIEW AND ADVISORY BOARD (CSR)

- Would have placed the Capitol Square Review and Advisory Board in the legislative branch of state government (VETOED).
- Would have placed Board employees in the unclassified civil service and would have specified that they are legislative employees for purposes of the Public Employee Collective Bargaining Act and the law that exempts legislators and legislative employees from paying the Columbus city income tax (VETOED).
- Would have exempted the Board from the jurisdiction of the Office of Information Technology (VETOED).

### Placement of the Capitol Square Review and Advisory Board in the legislative branch of state government (VETOED)

(R.C. 105.41 and 4117.01(C)(18); Section 803.60)

Continuing law creates the Capitol Square Review and Advisory Board and gives the Board the sole authority to coordinate and approve any improvements, additions, and renovations that are made to Capitol Square including, but not limited to, the placement of monuments and sculpture on the Capitol grounds. The Board consists of the Senate Clerk, the House Clerk, five members appointed by the Governor, two Senate members appointed by the Senate President, and two House members appointed by the House Speaker. In addition, the current House Speaker is authorized to appoint to the Board a former House Speaker, and the current Senate President is authorized to appoint to the Board a former Senate President.

The Governor vetoed a provision that would have placed the Board in the legislative branch of state government. The Governor also vetoed a provision that would have placed Board employees in the unclassified civil service and specified that they are legislative employees for purposes of the Public Employee Collective Bargaining Act and the law that exempts General Assembly members and legislative employees from paying the Columbus city income tax. Finally, the Governor vetoed a provision that would have specified that these provisions do not abrogate any collective

bargaining agreement, for the duration of the agreement, that applies to Board employees and that was entered into under the Public Employee Collective Bargaining Act before the effective date of the provisions.

### Exemption of the Board from jurisdiction of the Office of Information Technology (VETOED)

(R.C. 105.41)

Continuing law establishes the Office of Information Technology within the Department of Administrative Services and places it under the supervision of the State Chief Information Officer, who is appointed by the Director of Administrative Services. The Office's duties include (1) coordinating and superintending statewide efforts to promote common use and development of technology by state agencies and (2) establishing policies and standards for the acquisition and use of information technology by state agencies, with which state agencies must comply. Continuing law exempts the following from the Office's jurisdiction:

- The General Assembly and legislative agencies.
- The courts and judicial agencies.
- The offices of the Auditor of State, Secretary of State, Treasurer of State, and Attorney General.
- State-supported institutions of higher education.
- The five state retirement systems.
- The Adjutant General's department.
- The Bureau of Workers' Compensation and the Industrial Commission. (R.C. 125.18(A), (B), and (G), not in the act.)

The Governor vetoed a provision that also would have exempted the Capitol Square Review and Advisory Board from the Office's jurisdiction.

## STATE CHIROPRACTIC BOARD (CHR)

- Requires that a license to practice chiropractic be renewed biennially rather than annually.

- Requires the State Chiropractic Board to adopt rules establishing the amount of (1) the license renewal fee and (2) the penalty for failure to renew, in place of the statutory renewal fee of $250 and penalty of $150.

### Renewal of licenses to practice chiropractic

(R.C. 4734.25)

Under prior law, a license to practice chiropractic had to be renewed annually by the first day of January. The fee for renewal of a license was $250. A $150 penalty was charged for reinstating a license that was forfeited for failure to renew.

In place of the annual license renewal system, the act provides that a license to practice chiropractic is to be renewed biennially according to a schedule established in rules to be adopted by the State Chiropractic Board. The act provides that the fee for renewal and penalty for failure to renew is to be an amount specified in rules to be adopted by the Board.

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## CIVIL RIGHTS COMMISSION (CIV)

- Defines "aggrieved person" for the purpose of who may participate in certain civil rights proceedings to enforce the Ohio Fair Housing Law.
- Extends to any party (not just respondents) a right to have the Ohio Civil Rights Commission issue subpoenas in administrative hearings concerning violations of the Ohio Fair Housing Law.
- Limits the right of a respondent to request a subpoena to when the respondent is a party to an administrative hearing concerning a violation of the Ohio Fair Housing Law.
- Modifies who may appear at an administrative hearing from a "person" who has or claims an interest to an "*aggrieved* person" who has or claims an interest; expands the reasons for that person to appear and limits the appearance to the stated existing reasons and new reasons.
- Requires the Civil Rights Commission to adopt rules governing the appearance of aggrieved persons at an administrative hearing.

- Authorizes an aggrieved person to intervene as a matter of right in a civil action the Attorney General initiates and maintains.

## Civil Rights Law

(R.C. 4112.01, 4112.04, 4112.05, and 4112.051)

### The Ohio Fair Housing Law

The Ohio Civil Rights Law includes as an "unlawful discriminatory practice" the following practices that collectively are known as the Ohio Fair Housing Law:

(1) Certain practices that interfere with a person's ability to obtain housing because of race, color, religion, sex, military status, familial status, ancestry, disability, or national origin;

(2) The refusal to consider without prejudice the combined income of both husband and wife for the purpose of extending mortgage credit;

(3) Using or honoring prohibited discriminatory restrictive covenants;

(4) Coercing, intimidating, threatening, or interfering with the exercise or enjoyment of any right the Ohio Fair Housing Law grants or protects;

(5) Discriminating in the selling, brokering, or appraising of real property because of race, color, religion, sex, military status, familial status, ancestry, disability, or national origin. (R.C. 4112.02(H), not in the act.)

### Enforcement of the Ohio Fair Housing Law

An action to enforce the Ohio Fair Housing Law may be initiated by either: (1) filing a complaint with the Ohio Civil Rights Commission (OCRC) or (2) filing a complaint as a private civil action with a court of common pleas. The case may be heard in one of three ways: (1) an administrative hearing the OCRC conducts following a filing with the commission, (2) a civil action the Attorney General initiates and maintains in a court of common pleas following a filing with the OCRC, or (3) a private civil action in a court of common pleas following a filing made directly with that court.

### Administrative hearing; election of civil action under Attorney General

When a charge of an unlawful discriminatory practice is filed with the OCRC, the OCRC conducts a preliminary investigation and, if discrimination is found, tries informal methods of eliminating the unlawful practice. If those methods fail, the OCRC

issues a complaint and holds an administrative hearing unless the complainant, an aggrieved person on whose behalf the complaint is issued, or the respondent elects to have the Attorney General initiate and maintain a civil action in a court instead of proceeding with the administrative hearing. An administrative hearing is held pursuant to procedures under R.C. Chapter 119., the Administrative Procedure Act. A civil action would proceed pursuant to the Ohio Rules of Civil Procedure.

### Private civil action

Aggrieved persons may enforce the Ohio Fair Housing Law by filing a civil action in the court of common pleas of the county in which the discriminatory practice occurred. The court may appoint an attorney for the person and authorize the commencement of the action without the payment of costs. The civil action would proceed pursuant to the Ohio Rules of Civil Procedure.

## Operation of the act

(R.C. 4112.01, 4112.04, 4112.05, and 4112.051)

### Definition of "aggrieved person"

The Ohio Fair Housing Law provides actions that "aggrieved persons" may take to enforce the law. Prior law did not define "aggrieved person." Under the act, "aggrieved person" includes both of the following:

(1) Any person who claims to have been injured by any unlawful discriminatory practice as described in the Ohio Fair Housing Law;

(2) Any person who believes that the person will be injured by any unlawful discriminatory practice described in the Ohio Fair Housing Law that is about to occur."[56]

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[56] The definition in the act closely parallels the definition of "aggrieved person" in the federal Fair Housing Law (42 U.S.C. 3602(i)).

Continuing law defines "person" for purposes of the Ohio Civil Rights Law as one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons. "Person" also includes any owner, lessor, assignor, builder, manager, broker, salesperson, appraiser, agent, employee, lending institution, and the state and all political subdivisions, authorities, agencies, boards, and commissions of the state. (R.C. 4112.01(A)(1).)

### Authority to request subpoenas

Continuing law gives the OCRC and "any member of the commission authority to issue subpoenas to compel access to or the production of premises, records, documents, and other evidence or possible sources of evidence or the appearance of individuals." Under prior law, the respondent also had authority to require, upon written application, the OCRC to issue a subpoena in the Commission's name to the same extent and subject to the same limitations as subpoenas the Commission issued under its subpoena power.

By deleting "respondent" and substituting "party," the act extends to any party to the administrative hearing the authority to request a subpoena that prior law afforded only to respondents. The act also limits the situations under which a party may request a subpoena to when the hearing is held "under division (B) of section 4112.05," which is an administrative hearing. This limitation effectively precludes a respondent from requesting a subpoena during investigations, which was possible under prior law, and delays the time at which the respondent may request a subpoena until the respondent is a party in an administrative hearing.

### Participation in administrative hearing

Under prior law, any "person who has or claims an interest in the subject of the hearing and in obtaining or preventing relief against the unlawful discriminatory practice may be permitted, in the discretion of the person or persons conducting the hearing, to appear for the presentation of oral or written arguments." The act modifies this provision by (1) limiting it to an "aggrieved" person, (2) making the person's appearance a right ("shall be permitted") instead of at the discretion of those conducting the hearing, and (3) allowing an appearance *only* for the purpose of presenting oral or written arguments (permitted under continuing law) and the following reasons which the act adds: "to present evidence, perform direct and cross-examination, and be represented by counsel." The act directs the Commission to adopt rules under the Administrative Procedure Act to administer this authority to appear.

### Right to intervene in civil action the Attorney General maintains

Under continuing law, when a complaint is filed with the OCRC and the OCRC subsequently issues a complaint for an unlawful discriminatory housing practice, the complainant, any aggrieved person on whose behalf the complaint is issued, or the respondent may elect to have the complaint in a civil action that the Attorney General initiates and maintains.

Under prior law, there was no specific provision that enabled a party to intervene in an action as a matter of right. Under the act, any aggrieved person may

intervene as a matter of right in a civil action the Attorney General maintains, with respect to the issues to be determined in that civil action.

## DEPARTMENT OF COMMERCE (COM)

- Eliminates the requirement that the Director of Commerce retain in the Unclaimed Funds Trust Fund 5% of the total amount of unclaimed funds as a fee for administering the funds.
- Provides that certain savings and loan associations and savings banks are eligible to become public depositories and removes this eligibility from banks that are authorized to do business by another country.
- Would have provided that, in the Superintendent of Financial Institutions' absence, a deputy superintendent, or in the absence of both the Superintendent and an available deputy superintendent, the Director of Commerce, may perform certain examination and regulatory functions of the Superintendent for a limited period of time if written authorization is given by the Superintendent (VETOED).
- As a result of the Governor's veto, provides that, in the Superintendent of Financial Institutions' absence, the Director of Commerce may perform certain examination and regulatory functions of the Superintendent for a limited period of time.
- Provides for the implementation of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("S.A.F.E. Act") by requiring the licensing of "loan originators" who are employed by or associated with either a mortgage broker registered under the Mortgage Brokers Law (R.C. 1322.01 to 1322.12) or a mortgage lender registered under the Mortgage Loan Law (R.C. 1321.51 to 1321.60); eliminates the licensing of "loan officers" under the Mortgage Brokers Law.
- Provides that compliance with the S.A.F.E. Act by credit unions insured by a credit union share guaranty corporation, and the credit unions' subsidiaries and loan originators, be determined by the Superintendent of Financial Institutions by rule.
- Makes numerous revisions to the Mortgage Loan Law with respect to the regulation of mortgage lenders.
- Makes numerous revisions to the Mortgage Brokers Law with respect to the regulation of mortgage brokers.

- Adds to the Video Service Authorization Act's funding sources authority for the Director of Commerce to impose an annual, proportional assessment on video service providers, to be used by the Department of Commerce to carry out the Law.
- Increases certain license, annual renewal, and filing fees for securities dealers, securities salespersons, and investment advisers.
- Creates the Division of Securities Investor Education and Enforcement Expense Fund to pay expenses of the Division relating to education or enforcement for the protection of securities investors and the public.
- In the case of a transfer of a securities dealer's license and the licenses of its salespersons to a successor entity, increases to $15 the fee charged by the Division of Securities for every salesperson's license that is transferred.
- In the case of a transfer of an investment adviser's license and the licenses of its investment adviser representatives to a successor entity, increases to $15 the fee charged by the Division of Securities for every investment adviser representative's license that is transferred.
- Allows the Director of Budget and Management upon determining at any time that the money in the State Fire Marshal's Fund exceeds the amount necessary to defray ongoing operating expenses in a fiscal year, to transfer the excess to the General Revenue Fund.
- Provides that the Director of Commerce may use money in the State Fire Marshal's Fund not used for operating expenses for certain real property and facilities expenses with the approval of the Director of Budget and Management.
- Combines the Division of Labor and Worker Safety and the Division of Industrial Compliance in the Department of Commerce into the Division of Labor in the Department of Commerce, to be led by the Superintendent of Labor.
- Transfers the duties of the Superintendent and Division of Labor and Worker Safety and the Superintendent and Division of Industrial Compliance to the Superintendent of Labor and the Division of Labor, as applicable.
- Renames the Industrial Compliance Operating Fund the Labor Operating Fund.
- Creates the position of Chief of Worker Protection in the Division of Labor and places that position in the unclassified civil service.

- Increases boiler inspection and certificate of operation fees and the fee to receive a permit to make any installation or major repair or modification to any boiler.

- Increases the examination fee to receive a certificate of competency for boiler inspections and the application and license fees for related occupational licenses.

- Requires a fee to be paid for the inspection or attempted inspection by a general inspector before the operation of an elevator after an adjudication under the Elevator Law.

- Increases the fee for inspections or attempted inspections of elevators by a general inspector and the fee for issuing or renewing a certificate of operation for an elevator that is inspected every six months.

- Changes the amount of the additional fee the Superintendent of Industrial Compliance (changed to Superintendent of Labor) may assess for the reinspection of an elevator under specified conditions.

- Increases various real estate licensing fees and makes various real estate licensing fees nonrefundable.

- Reduces the amount of real estate licensing fees that must be contributed to the Real Estate Education and Research Fund.

- Requires a verified application for payment out of the Real Estate Recovery Fund to be filed only in the Court of Common Pleas of Franklin County, instead of any court of common pleas.

- Modifies the Real Estate Appraisers Law as follows:

  --Expands the definition of "appraisal report" and "report" to include "appraisal review" and "appraisal consulting services."

  --Characterizes proceedings related to violations of the Law as disciplinary actions instead of revocation and suspension actions, and modifies procedures for disciplinary actions.

  --Eliminates the requirement that applicants for an appraiser license, certification, or registration submit a fingerprint; increases fees for initial license, registrations, and certificates; and requires appraiser assistants to meet initial education requirements only for the third and subsequent years in that status.

  --Creates a medical exception to the requirement that a real estate appraiser who has allowed the appraiser's certificate, license, or registration to expire and has not

renewed it, or who has failed to meet continuing education requirements, during the three-month grace period must reapply and retake the examination.

--Prohibits an individual from engaging in any activities permitted by a real estate appraisal certificate, registration, or license during the grace period for renewal of an expired certificate, license, or registration or during the time period for which a medical exception applies until all renewal fees and the late filing fee have been paid and all continuing education requirements have been met.

--Enables an informal mediation meeting to deal with complaints against real estate appraisers before a hearing is held and, if a formal hearing is held, permits the appraiser to provide written objections to the hearing examiner's report.

--Expands the list of suggested disciplinary actions the Real Estate Appraiser Board may take and expands the types of violations that require disciplinary actions.

## Unclaimed Funds Trust Fund costs and fees of administration

(R.C. 169.08)

Unclaimed funds are generally defined under continuing law as moneys, rights to moneys, or intangible property enumerated in the Unclaimed Funds Act (Chapter 169. of the Revised Code) with respect to which the owner has not taken specified actions or otherwise indicated any interest. Continuing law requires holders of unclaimed funds to report the amounts to the Director of Commerce and for the transfer of all or some of such funds to the Director for deposit with a financial organization or in the Unclaimed Funds Trust Fund in the state treasury. Claims made to recover unclaimed funds are paid from the Trust Fund. Former law also required the Director to retain in the Trust Fund 5% of the total amount of unclaimed funds payable to a claimant as a fee for administering the funds. The act eliminated this requirement.

## Public Depository Law

(R.C. 135.03, 135.06, 135.08, and 135.32)

The act revises Ohio's Public Depository Law to extend public depository eligibility to savings banks and savings and loan associations that are located in Ohio and doing business under authority granted by another state and withdraws eligibility from any bank doing business under authority granted by the regulatory authority of another country.

## Independence of the Superintendent and Division of Financial Institutions (PARTIALLY VETOED)

(R.C. 121.07(A))

Continuing law states that the Superintendent of Financial Institutions and the Division of Financial Institutions are independent of and not subject to the control of the Department or the Director of Commerce when performing any of the examination or regulatory functions vested in the Superintendent by Title XI (Financial Institutions), Chapter 1733. (Credit Unions), Chapter 1761. (Credit Union Guaranty Corporations), and sections 1315.01 to 1315.18 (Money Transmitters Law) of the Revised Code.

The Governor vetoed a provision providing that, in the absence of the Superintendent, a deputy superintendent, or in the absence of both the Superintendent and an available deputy superintendent, the Director of Commerce may, for a limited period of time, perform or exercise any of the examination or regulatory functions if written authorization is given by the Superintendent. Pursuant to the Governor's veto, the act now provides that in the Superintendent's absence, the Director of Commerce may, for a limited period of time, perform those regulatory functions with no requirement for the Superintendent's written authorization.

## Implementation of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("S.A.F.E. Act")

### Background

The S.A.F.E. Act, Title V of the federal Housing and Economic Recovery Act of 2008, was signed into law by the President on July 30, 2008. The S.A.F.E. Act requires that residential mortgage loan originators be either state-licensed by August 1, 2009, or--for employees of depository institutions and their subsidiaries--federally registered. Both state licensed and federally registered loan originators must register with, and obtain a unique identifier from, the **Nationwide Mortgage Licensing System and Registry**--a mortgage licensing system to be developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of loan originators.

If, by August 1, 2009 (or August 1, 2010, for any state whose legislature meets biennially), a state does not have in place a system for licensing and registering loan originators that meets the requirements of the S.A.F.E. Act, the U.S. Department of Housing and Urban Development (HUD) is to establish a backup licensing system to coordinate licensing and registration for loan originators in that state. However, HUD may grant an extension of up to 24 months to any state making a good faith effort to meet the minimum standards.

According to the National Conference of State Legislatures, the following is what states must due to maintain loan originator supervisory authority:

- Provide effective supervision and enforcement of such law, including suspension, termination or nonrenewal of a license for a violation of State or Federal Law.

- Ensure all State-licensed loan originators operating in the State are registered with the Nationwide Mortgage Licensing System and Registry.

- Regularly report violations of such law, as well as enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry.

- Have due process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry.

- Establish a mechanism to assess civil money penalties for individuals acting as mortgage originators in their State without a valid license or registration.

- Establish minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator, or establish a recovery fund paid into by the loan originators.

To be licensed within a State, loan originators must not have any felonies over the past seven years, never had a felony involving fraud or dishonesty, never had a loan originator license revoked, must demonstrate financial responsibility and general fitness, score 75% or better on a national test created by the Nationwide Mortgage Licensing System and Registry and take eight hours of continuing education annually.[57]

[57] Information Alert, S.A.F.E. Mortgage Licensing Act, National Conference of State Legislatures Office of State-Federal Relations, October 17, 2008, *available at: http://www.ncsl.org/standcomm/sccomfc/SAFEAct.htm.*

### Overview of the act

(R.C. 1321.51, 1321.52 (E) and (F)(1), 1321.521, 1322.01, 1322.02(B) and (C)(1), and 1322.024)

Prior law prohibited any person from acting as a loan officer without first having obtained a license from the Superintendent of Financial Institutions under the Mortgage Brokers Law (R.C. 1322.01 to 1322.12). For purposes of that law, "**loan officer**" was defined as an employee who originates mortgage loans in consideration of direct or indirect gain, profit, fees, or charges. The term included an employee who solicits financial and mortgage information from the public for sale to another mortgage broker. A loan officer was prohibited from being employed by more than one mortgage broker at any one time.[58]

The act eliminates the licensing of loan officers, and instead requires the licensing of *loan originators* who are employed by or associated with:

(1) A mortgage broker registered under the Mortgage Brokers Law (R.C. 1322.01 to 1322.12), or an entity exempt from registration under that law; ***or***

(2) A mortgage lender registered under the Mortgage Loan Law (R.C. 1321.51 to 1321.60), or an entity exempt from registration under that law.

A loan originator cannot be employed by or associated with more than one registrant or exempt entity at any one time.

For purposes of the Mortgage Loan Law, the defined term is "mortgage loan originator" (*see* R.C. 1321.51(P)). Under the Mortgage Brokers Law, however, the defined term is "loan originator" (*see* R.C. 1322.01(E)). Because the two terms have substantially the same meaning, this analysis will simply refer to "loan originator."

"**Loan originator**" is defined as an individual who for compensation or gain, or in anticipation of compensation or gain, does any of the following:

(1) Takes or offers to take a "residential mortgage loan"[59] application;

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[58] Former R.C. 1322.01(E) and 1322.02(B).

[59] A "**residential mortgage loan**" is a loan primarily for personal, family, or household use that is secured by a mortgage on a dwelling or on residential real estate upon which is constructed or intended to be constructed a dwelling (R.C. 1321.51(Q) or 1322.01(X)).

(2) Assists or offers to assist a borrower/buyer in obtaining or applying to obtain a residential mortgage loan by, among other things, advising on loan terms, including rates, fees, and other costs;

(3) Offers or negotiates terms of a residential mortgage loan;

(4) Issues or offers to issue a commitment for a residential mortgage loan to a borrower/buyer.

"**Loan originator**" does *not* include any of the following:

(1) An individual who performs purely "administrative or clerical tasks"[60] on behalf of a loan originator;

(2) A person licensed under the Real Estate Brokers Law (R.C. Chapter 4735.), or under the similar law of another state, who performs only "real estate brokerage activities"[61] permitted by that license, provided the person is not compensated by a mortgage lender, mortgage broker, loan originator, or by any agent thereof;

(3) A person solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101 in effect on January 1, 2009;

(4) A person acting solely as a "loan processor or underwriter"[62] and who does not represent to the public, through advertising or other means of communicating, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities of a loan originator;

(5) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or another loan originator, or by any agent thereof;

(6) Any person engaged in the retail sale of manufactured or mobile homes or industrialized units if, in connection with financing those retail sales, the person only assists the borrower by providing or transmitting the loan application and does not do any of the following:

(a) Offer or negotiate the residential mortgage loan rates or terms;

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[60] For the definition of "**administrative or clerical tasks,**" see R.C. 1321.51(T) or 1322.01(N), as applicable.

[61] For the definition of "**real estate brokerage activity,**" see R.C. 1321.51(W) or 1322.01(W), as applicable.

[62] For the definition of "**loan processor or underwriter,**" see R.C. 1321.51(V) or 1322.01(T), as applicable.

(b) Provide any counseling with borrowers about residential mortgage loan rates or terms;

(c) Receive any payment or fee from any company or individual for assisting the borrower to obtain or apply for financing to purchase the manufactured or mobile home or industrialized unit;

(d) Assist the borrower in completing a residential mortgage loan application.

For purposes of the Mortgage Loan Law, an individual acting exclusively as a servicer engaging in loss mitigation efforts with respect to existing mortgage transactions is not to be considered a "mortgage loan originator" until July 1, 2011, unless the delay is denied by the U.S. Department of Housing and Urban Development.

For purposes of the Mortgage Brokers Law, "loan originator" does not include any individual employed by a nonprofit organization that is recognized as tax exempt under 26 U.S.C. 501(c)(3) and whose primary activity is the construction, remodeling, or rehabilitation of homes for use by low income families, provided that (1) the nonprofit organization makes no-profit mortgage loans or mortgage loans at 0% interest to low income families and no fees accrue directly to the nonprofit organization or individual employed by the nonprofit organization from those mortgage loans and that (2) the U.S. Department of Housing and Urban Development does not deny this exemption.

The act authorizes the Superintendent to adopt rules to expand the definition of loan originator by adding individuals or to exempt additional individuals or persons from that definition, if the Superintendent finds that the addition or exemption is consistent with the purposes fairly intended by the policy and provisions of the Mortgage Loan Law or Mortgage Brokers Law, as applicable, and the S.A.F.E. Act. Such rules must be adopted in accordance with R.C. Chapter 119., the Administrative Procedure Act.

Each licensed loan originator ("licensee") must register with, and maintain a valid unique identifier issued by, the Nationwide Mortgage Licensing System and Registry (NMLSR). A "**unique identifier**" is a number or other identifier that permanently identifies a loan originator and is assigned by protocols established by the NMLSR or federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of, and the publicly adjudicated disciplinary and enforcement actions against, loan originators.

An individual acting under the individual's authority as a *registered* loan originator is *not* required to be licensed under the act. A "**registered loan originator**" is loan originator who is an employee of a "depository institution," a subsidiary that is

owned and controlled by a depository institution and regulated by a "federal banking agency," or an institution regulated by the Farm Credit Administration.[63] Registered loan originators must be registered with, and maintain a unique identifier through, the NMLSR.

### Application for a loan originator license; investigation

(R.C. 109.572, 1321.531, and 1322.031)

An application for a loan originator license must be in writing, under oath, and in the form prescribed by the Superintendent of Financial Institutions. It must be accompanied by a nonrefundable application fee of $150 and all other required fees, including any fee required by the NMLSR.

In connection with applying for a loan originator license, the applicant is also required to furnish to the NMLSR the following information concerning the applicant's identity:

(1) The applicant's fingerprints for submission to the FBI, and any other governmental agency or entity authorized to receive such information, for purposes of a state, national, and international criminal history background check;

(2) Personal history and experience in a form prescribed by the NMLSR, along with authorization for the Superintendent and the NMLSR to obtain an independent credit report from a consumer reporting agency and information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

The act permits the Superintendent to use the Conference of State Bank Supervisors, or a wholly owned subsidiary, as a channeling agent for requesting information from and distributing information to the U.S. Department of Justice or any other governmental agency. The Superintendent may also use the NMLSR as a channeling agent for requesting information from and distributing information to any source related to matters subject to (1) and (2), above.

Upon the filing of the application and payment of the application fee and any other required fee, the Superintendent must obtain a criminal history records check and request that criminal record information from the FBI be obtained. To fulfill this requirement, the Superintendent is to either request the Superintendent of the Bureau of Criminal Identification and Investigation, or a vendor approved by the Bureau, to conduct a criminal records check based on the applicant's fingerprints (or, if the

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[63] For the definitions of "**depository institution**" and "**federal banking agency**," see R.C. 1321.51(U) and (A)(A) or 1322.01(P) and (Q), as applicable.

fingerprints are unreadable, based on the applicant's social security number), or authorize the NMLSR to request a criminal history background check. Any fee required by the Bureau or by the NMLSR is to be paid by the applicant.

The Superintendent of Financial Institutions is also required to conduct a civil records check.

If, in order to issue a license to an applicant, additional investigation by the Superintendent outside this state is necessary, the Superintendent may require the applicant to advance sufficient funds to pay the actual expenses of the investigation, if it appears that these expenses will exceed $150.[64] The Superintendent must provide the applicant with an itemized statement of the actual expenses that the applicant is required to pay.

If an application for a loan originator license does not contain all of the information required under the act, and if that information is not submitted to the Superintendent within 90 days after the Superintendent requests the information in writing, the Superintendent may consider the application withdrawn.

### Issuance of license; license renewals

(R.C. 1321.532 and 1322.041)

Upon conclusion of the investigation, the Superintendent of Financial Institutions must issue a loan originator license to the applicant *if* the Superintendent finds that all of the following conditions are met:

(1) The application is accompanied by the application fee and any fee required by the NMLSR. If a check or other draft instrument is returned to the Superintendent for insufficient funds, the Superintendent must notify the applicant by certified mail, return receipt requested, that the application will be withdrawn unless the applicant, within 30 days after receipt of the notice, submits the application fee and a $100 penalty. If the applicant does not submit the application fee and penalty within that time period, or if any check or other draft instrument used to pay the fee or penalty is returned for insufficient funds, the application is to be withdrawn immediately without a hearing.[65]

If a check or other draft instrument is returned to the Superintendent for insufficient funds *after* the license has been issued, the Superintendent must notify the licensee by certified mail, return receipt requested, that the license issued in reliance on

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[64] For mortgage loan originator applicants, this amount is $100.

[65] This provision only applies with respect to loan originator applicants.

the check or other draft instrument will be canceled unless the licensee, within 30 days after receipt of the notice, submits the application fee and a $100 penalty. If the licensee does not submit the application fee and penalty within that time period, or if any check or other draft instrument used to pay the fee or penalty is returned for insufficient funds, the license must be canceled immediately without a hearing, and the licensee must cease activity as a loan originator.

(2) The applicant complies with the Mortgage Loan Law or Mortgage Brokers Law, as applicable.

(3) The applicant has not had a loan originator license, or comparable authority, revoked in any governmental jurisdiction.

(4) The applicant has not been convicted of, or pleaded guilty to, either of the following in a domestic, foreign, or military court:

(a) During the seven-year period immediately preceding the date of application for licensure, any felony or a misdemeanor involving theft;

(b) At *any* time prior to the date of application for licensure, a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering.[66]

(5) Based on the totality of the circumstances and information submitted in the application, the applicant has proven to the Superintendent of Financial Institutions, by a preponderance of the evidence, that the applicant is of good business repute, appears qualified to act as a loan originator, and has fully complied with the Mortgage Loan Law or Mortgage Brokers Law, as applicable, and that the applicant meets all of the conditions for issuing a loan originator license.

(6) The applicant successfully completed the written test and the prelicensing instruction set forth in the act (see "**Pre-licensing instruction; written test**," below).

(7) The applicant is covered under a valid bond in compliance with the act (see "**Bond requirement**," below).

(8) The applicant's financial responsibility, character, and general fitness command the confidence of the public and warrant the belief that the loan originator will operate honestly and fairly in compliance with the purposes of the Mortgage Loan Law or Mortgage Brokers Law, as applicable. The Superintendent is prohibited from using a credit score as the sole basis for a license denial.

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[66] For loan originator applicants, the time period is "any time prior to the date the application for licensure is approved."

A loan originator license may be ***renewed*** annually on or before December 31, if the Superintendent finds that all of the following conditions are met:

(1) The renewal application is accompanied by a nonrefundable renewal fee of $150 and any fee required by the NMLSR. If a check or other draft instrument is returned to the Superintendent for insufficient funds, the Superintendent is to notify the licensee by certified mail, return receipt requested, that the license renewed in reliance on the check or other draft instrument will be canceled unless the licensee, within 30 days after receipt of the notice, submits the renewal fee and a $100 penalty to the Superintendent. If the licensee does not submit the renewal fee and penalty within that time period, or if any check or other draft instrument used to pay the fee or penalty is returned for insufficient funds, the license is to be canceled immediately without a hearing, and the licensee must cease activity as a loan originator.

(2) The applicant has completed at least eight hours of continuing education as required by the act (see "**Continuing education requirement**," below).

(3) The applicant meets the conditions described above for original licensure.

(4) The applicant's license is not subject to an order of suspension or an unpaid and past due fine imposed by the Superintendent.

If a license renewal application or fee is received by the Superintendent after December 31, the license is not to be considered renewed, and the applicant must cease activity as a loan originator. This does not apply, however, if the applicant submits the renewal application and fee, and a $100 penalty, to the Superintendent not later than January 31.

If a renewal application for a mortgage loan originator license does not contain all of the required information, and if that information is not submitted to the Superintendent within 90 days after the Superintendent requests it in writing, the Superintendent may consider the application withdrawn.

### Pre-licensing instruction; written test

(R.C. 1321.534, 1321.535, 1322.031(B) and (C), and 1322.051(B) and (C))

The act requires loan originator applicants to submit evidence acceptable to the Superintendent of Financial Institutions that the applicant has successfully completed at least 20 hours of pre-licensing instruction in a course or program of study reviewed and approved by the NMLSR. Review and approval of a pre-licensing education course includes review and approval of the course provider. Loan originators under the Mortgage Brokers Law must *also* successfully complete four hours of instruction in a

course or program of study reviewed and approved by the Superintendent concerning state lending laws and the Ohio Consumer Sales Practices Act (R.C. Chapter 1345.) as it relates to mortgage brokers and loan originators.

If a person successfully completed the pre-licensing education requirements reviewed and approved by the NMLSR for any state within the previous five years, the person is to be granted credit toward completion of the pre-licensing education requirements of this state.

In the event the NMLSR does not have in place an approval program to ensure that all pre-licensing education courses meet the criteria set forth above, the Superintendent is to require, until that program is in place, evidence that the applicant has successfully completed 20 hours of instruction in a course or program of study approved by the Superintendent that consists of at least all of the following:

(1) Four hours of instruction concerning state and federal mortgage lending laws;

(2) Four hours of instruction concerning the Ohio Consumer Sales Practices Act, as it applies to registrants and licensees;

(3) Four hours of instruction concerning the loan application and closing process;[67]

(4) Two hours of instruction concerning the underwriting process;

(5) Two hours of instruction concerning the secondary market for mortgage loans;

(6) Two hours of instruction covering basic mortgage financing concepts and terms;

(7) Two hours of instruction concerning the ethical responsibilities of a registrant and a licensee, including with respect to confidentiality, consumer counseling, and the duties and standards of care created by the act.

Each applicant also must submit to a written test that is developed and approved by the NMLSR and administered by a test provider approved by the NMLSR based upon reasonable standards. The test must adequately measure the applicant's

[67] Applicants for a loan originator license under the Mortgage Brokers Law must complete four hours of instruction concerning the loan application process *and* four hours concerning the loan closing process, for a total of 24 hours of instruction.

knowledge and comprehension in appropriate subject matters, including ethics and federal and state law related to mortgage origination, fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues. In order to pass the test, an individual must achieve a test score of at least 75% correct answers on all questions. Applicants for a loan originators license under the Mortgage Brokers Law must *also* achieve a test score of at least 75% correct answers on all questions relating to Ohio mortgage lending laws and the Ohio Consumer Sales Practices Act.

An individual may retake the test three consecutive times provided the period between taking the tests is at least 30 days. After failing three consecutive tests, an individual must wait at least six months before taking the test again. If a loan originator fails to maintain a valid license for a period of five years or longer, the individual must retake the test. For this purpose, any time during which the individual is a registered loan originator is not to be taken into account.

Until the NMLSR implements a testing process that meets the criteria set forth above, the Superintendent is to require evidence that the applicant passed a written test acceptable to the Superintendent.

### Bond requirement

(R.C. 1321.533(A)(2) and (B) to (F) and 1322.05(A)(2) and (B) to (F))

If licensed loan originator is employed by or associated with a person or entity that is *exempt* from registration under the Mortgage Loan Law or Mortgage Brokers Law, as applicable, the licensee, or the exempt person or entity on the licensee's behalf, must obtain and maintain in effect at all times a corporate surety bond issued by a bonding company or insurance company authorized to do business in Ohio. All of the following conditions apply to the bond:

(1) The bond must be in favor of the Superintendent of Financial Institutions.

(2) The bond must be in the penal sum of one-half per cent of the aggregate loan amount of residential mortgage loans originated in the immediately preceding calendar year, but not exceeding $100,000. The bond cannot, however, be less than $50,000.

(3) The term of the bond must coincide with the term of licensure.

(4) A copy of the bond must be filed with the Superintendent.

(5) The bond must be for the exclusive benefit of any borrower/buyer injured by a violation by the licensee of any provision of the Mortgage Loan Law or the Mortgage Brokers Law, as applicable, or the rules adopted thereunder.

(6) The aggregate liability of the corporate surety for any and all breaches of the conditions of the bond cannot exceed the penal sum of the bond.

Licensees covered by a corporate surety bond obtained by a registrant, or by an exempt person or entity, they are employed by or associated with do not have to obtain an individual bond.

### Continuing education requirement

(R.C. 1321.536 and 1322.052)

Each licensed loan originator is required to complete at least eight hours of continuing education every calendar year. To fulfill this requirement, the continuing education must be offered in a course or program of study reviewed and approved by the NMLSR based upon reasonable standards. The course or program of study must include all of the following:

(1) Three hours of applicable federal law and regulations;

(2) Two hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues;

(3) Two hours of training related to lending standards for the "nontraditional mortgage product" marketplace.[68]

The following conditions apply to the continuing education required by the act:

(1) An individual cannot take the same approved course in the same or successive years to meet the annual requirement for continuing education.

(2) An individual can only receive credit for a continuing education course in the year in which the course is taken, unless the individual is making up a deficiency in continuing education as permitted by a rule or order of the Superintendent of Financial Institutions.

(3) A licensee who subsequently becomes unlicensed must complete the continuing education requirement for the last year in which the license was held prior to the issuance of a new or renewed license.

[68] "**Nontraditional mortgage product**" is defined as any mortgage product other than a 30-year fixed rate mortgage (R.C. 1321.51(CC) and 1322.01(V)).

(4) A licensee who is approved as an instructor of an approved continuing education course may receive credit for the licensee's own annual continuing education requirement at the rate of two credit hours for every one hour taught.

(5) A person having successfully completed a continuing education course approved by the NMLSR for any state is to receive credit toward completion of the continuing education requirement of this state.

Until the NMLSR implements a review and approval process, the Superintendent is to require evidence that the licensee has successfully completed at least eight hours of continuing education in a course or program of study approved by the Superintendent.

### Conduct of business

(R.C. 1321.551(B) to (E) and (G) and 1322.031(H) and (J))

The business of a loan originator must principally be transacted at an office of the mortgage lender or mortgage broker ("registrant") with whom the licensee is employed or associated. Each original loan originator license is to be deposited with and maintained at the registrant's main office. A copy of the license is to be maintained and displayed at the office where the loan originator principally transacts business.

If a loan originator's employment or association is terminated for any reason, the registrant is required to return the original loan originator license to the Superintendent of Financial Institutions within five business days after the termination. The licensee may request the transfer of the license to another registrant by submitting a transfer application, along with a $15 fee and any fee required by the NMLSR, to the Superintendent, or may request in writing that the Superintendent hold the license in escrow. A licensee whose license is held in escrow must cease activity as a loan originator, apply for renewal annually, and comply with the annual continuing education requirement.

Pending the transfer of a loan originator's license to a different registrant, the registrant may employ or be associated with the loan originator on a temporary basis *if* the registrant receives written confirmation from the Superintendent that the loan originator holds a valid license.

If a loan originator is employed by or associated with a person *exempt* from registration under the Mortgage Loan Law or Mortgage Brokers Law, the loan originator must maintain and display the original loan originator license at the office where the loan originator principally transacts business. In the event the loan originator's employment or association is terminated for any reason, the licensee is

required to return the original loan originator license to the Superintendent within five business days after the termination. The licensee may request the transfer of the license to a mortgage broker or another person claiming an exemption from the law by submitting a transfer application, along with a $15 fee and any fee required by the NMLSR, to the Superintendent, or may request the Superintendent in writing to hold the license in escrow. A licensee whose license is held in escrow must cease activity as a loan originator, apply for renewal annually, and comply with the annual continuing education requirement. The licensee may seek to be employed or associated with a mortgage broker or another person claiming exemption from the law if the mortgage broker or person receives written confirmation from the Superintendent that the loan originator holds a valid license.

A license, or the authority granted under that license, is not assignable and cannot be franchised by contract or any other means.

### Duties and standards of care

(R.C. 1321.593 and 1322.081)

Under the act, a licensed loan originator and any person required to be licensed must do the following in connection with the business of making or offering to make residential mortgage loans:

(1) Safeguard and account for any money handled for the borrower/buyer;

(2) Follow reasonable and lawful instructions from the borrower/buyer;

(3) Act with reasonable skill, care, and diligence;

(4) Act in good faith and with fair dealing in any transaction, practice, or course of business in connection with making/brokering or originating any residential mortgage loan;

(5) And, with respect to loan originators under the Mortgage Brokers law, make reasonable efforts to secure a residential mortgage loan with rates, charges, and repayment terms that are advantageous to the buyer.

The act provides that these duties and standards of care cannot be waived or modified, and that they do not apply to wholesale lenders.

Under the Mortgage Brokers Law only, a buyer injured by a failure to comply with these duties and standards of care may bring an action for recovery of damages. Damages awarded cannot be less than all compensation paid directly or indirectly to a mortgage broker from any source, plus reasonable attorney's fees and court costs. The

buyer may be awarded punitive damages. An injured buyer is precluded from recovering any damages if the buyer has already recovered damages in a cause of action initiated under any other provision of the Mortgage Brokers Law and the recovery of damages for a failure to comply with these duties and standards of care is based on the same acts or circumstances as the recovery of damages under the other provision.

### Required disclosures

(R.C. 1321.592, 1321.594, 1322.062 to 1322.064, and 1322.09(A))

The act imposes numerous disclosure requirements on licensed loan originators, including the following:

--A licensee must, not earlier than three business days nor later than 24 hours before the loan is closed, deliver to the borrower/buyer a written disclosure that includes (1) a statement indicating whether property taxes will be escrowed and (2) a description of what is covered by the regular monthly payment, including principal, interest, taxes, and insurance, as applicable.

--A licensee under the Mortgage Brokers Law must deliver to the buyer a residential mortgage loan origination disclosure statement and a good faith estimate statement of settlement costs, as ongoing law requires of registrants.

The act also prohibits a licensee from failing to do either of the following:

(1) Timely inform the buyer of any material change in the terms of the residential mortgage loan. "Material change" means: (a) a change in the type of residential mortgage loan being offered, such as a fixed or variable rate loan or a loan with a balloon payment, (b) a change in the term of the loan, as reflected in the number of monthly payments due before a final payment is scheduled to be made, (c) a change in the interest rate of more than 0.15%, (d) a change in the regular total monthly payment, including principal, interest, any required mortgage insurance, and any escrowed taxes or property insurance, of more than 5%, (e) a change regarding whether the escrow of taxes or insurance will be required, or (f) a change regarding whether private mortgage insurance will be required.

(2) Timely inform the borrower/buyer if any fees payable by the borrower/buyer to the licensee, registrant, or lender increase by more than 10% or $100, whichever is greater.

To be considered "timely," a licensee under the Mortgage Loan Law must provide the borrower with the revised information not later than the time requirement

imposed under 12 C.F.R. 226.19(a)(2) and (3),[69] as those provisions of federal law exist on July 31, 2009. Under the Mortgage Brokers Law, the disclosure is considered "timely" if it is provided to the buyer not later than 24 hours after the change occurs, or 24 hours before the loan is closed, whichever is earlier.

If an increase in the total amount of the fee to be paid by the borrower/buyer is not disclosed in accordance with (2), above, the registrant or licensee must refund the amount by which the fee was increased. If the fee is financed into the loan, the registrant or licensee must also refund the interest that would accrue over the term of the loan on that excess amount.

Under the Mortgage Brokers Law, any advertisement relating to a loan originator's services must include the name and street address of the loan originator and the number designated on the loan originator's license.

### Prohibitions; penalties and damages

(R.C. 1321.52(F)(2), 1321.59, 1321.591, 1321.99, 1322.021(C)(2), 1322.07, 1322.071, and 1322.11)

Licensees under the Mortgage Loan Law are subject to some of the same prohibitions the act prescribes for registrants under that law (see "**Regulation of mortgage lenders under the Mortgage Loan Law,**" "**Prohibitions; penalties,**" below). Likewise, licensees under the Mortgage Brokers Law are subject to some of the same prohibitions prescribed for registrants under that law (see "**Regulation of mortgage brokers under the Mortgage Brokers Law,**" "**Prohibitions; penalties,**" below).

The act also prohibits any person from using a licensee's unique identifier for any purpose other than as set forth in the S.A.F.E. Act.

Under ongoing law, a buyer injured by a violation of or failure to comply with certain provisions of the Mortgage Loan Law or Mortgage Brokers Law may bring an action for the recovery of damages.

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[69] Truth In Lending Act (Regulation Z).

### Enforcement; administrative actions; reports to NMLSR

(R.C. 1321.54, 1321.55(B)(3), 1322.06(C), 1322.061(D), and 1322.10)

After notice and an opportunity to be heard, the Division of Financial Institutions may revoke, suspend, or refuse to renew any loan originator license if it finds any of the following:

(1) A violation of or failure to comply with any provision of the Mortgage Loan Law or Mortgage Brokers Law, as applicable, or the rules adopted thereunder, any federal lending law, or any other law applicable to the business conducted under a license;

(2) The person has been convicted of or pleaded guilty to a felony offense in a domestic, foreign, or military court;

(3) The person has been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities, in a domestic, foreign, or military court;

(4) The person's loan originator license, or comparable authority, has been revoked in any governmental jurisdiction.

With respect to mortgage loan originators under the Mortgage Loan Law, the act permits the Division to impose a monetary fine in addition to, or in lieu of, any revocation, suspension, or denial of a license. The Superintendent of Financial Institutions also may impose a fine not exceeding $25,000 for any violation of the Law or any rule adopted thereunder.

Under the Mortgage Brokers Law, the Superintendent may impose a fine of not more than $1,000 for each day a violation of the Law, or any rule adopted thereunder, is committed, repeated, or continued. If the loan originator engages in a pattern of repeated violations, the Superintendent may impose a fine of not more than $2,000 for each day the violation is committed, repeated, or continued.

In determining the amount of a fine to be imposed, the Superintendent may consider all of the following to the extent it is known to the Division:

(1) The seriousness of the violation;

(2) The licensee's good faith efforts to prevent the violation;

(3) The licensee's history regarding violations and compliance with Division orders;

(4) The licensee's financial resources;

(5) Any other matters the Superintendent considers appropriate in enforcing these provisions.

All fines collected are to be paid to the Treasurer of State to the credit of the ongoing Consumer Finance Fund. The act states that imposition of monetary fines under these provisions does not preclude the imposition of any criminal fine.

If the Superintendent makes application to the court of common pleas for an order enjoining a person from acting as a loan originator without being licensed under the act, the Superintendent may seek civil penalties for that unlicensed conduct in an amount not to exceed $5,000 per violation. In addition, if the Superintendent takes *administrative* action to enjoin such unlicensed conduct, the Superintendent may impose fines of not more than $5,000 per violation.

To protect the public interest, the Superintendent is permitted to suspend a loan originator license, without a prior hearing, for specified violations or misconduct. The Superintendent is required to adopt rules establishing the maximum amount of time such a suspension may continue before a hearing is conducted.

The act requires the Superintendent to regularly report violations of the law, as well as enforcement actions and other relevant information, to the NMLSR. In addition, each licensee is required to submit to the NMLSR call reports or other reports of condition, which must be in the form and contain the information required by the NMLSR.

### Information shared with NMLSR; confidentiality; challenge process

(R.C. 1321.531(B), 1321.55, 1322.031(I), and 1322.061)

The Superintendent of Financial Institutions is authorized to establish relationships or enter into contracts with the NMLSR, or any entities designated by it, to collect and maintain records and process transaction fees or other fees related to loan originator licensees or other persons subject to or involved in their licensure. In order to "promote more effective regulation and reduce regulatory burden through supervisory information sharing," the Superintendent may also enter into sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, and the American Association of Residential Mortgage Regulators.

The act states that any confidentiality or privilege arising under federal or state law with respect to any information or material provided to the NMLSR continues to apply to the information or material after the information or material has been provided to the NMLSR. That information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of confidentiality or privilege protections provided by federal law or the law of any state. This provision does *not* apply, however, with respect to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in the NMLSR for access by the public.

Information or material to which confidentiality or privilege applies is not subject to any of the following:

(1) Disclosure under any federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or of the respective state;

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless the person to whom such information or material pertains waives, in whole or in part and at the discretion of the person, any privilege held by the NMLSR with respect to that information or material.

Generally, the act provides that any state law, including the Public Records Law, relating to the disclosure of confidential supervisory information that is inconsistent with these provisions of the act are superseded by the act's requirements.

The act requires the Superintendent to establish a process by which loan originators may challenge information provided to the NMLSR by the Superintendent. That process must be established by rule adopted in accordance with R.C. Chapter 119.

## Rule-making authority

### In general

(R.C. 1321.54(A))

The Division of Financial Institutions is permitted by ongoing law to adopt rules that are necessary for the enforcement of the Mortgage Loan Law and that are consistent with that law. The act additionally authorizes the adoption of rules that are necessary for the *administration* of the law and are consistent with the law *and* rules to carry out the purposes of the law.

Under prior law, each rule had to contain a reference to the statutory provision to which it applied. In addition, the Division was required to send a copy of each newly adopted rule by regular mail to every registrant. The act removes these requirements.

#### If the S.A.F.E. Act is subsequently modified

(R.C. 1321.552 and 1322.025)

The act provides that--if the S.A.F.E. Act is modified after the effective date of this provision of the act, or if any regulation, statement, or position is adopted under the S.A.F.E. Act, and the item modified or adopted affects any matter within the scope of this portion of the act--the Superintendent of Financial Institutions may by rule adopt a similar provision. The rule is to be adopted in accordance with section 111.15 of the Revised Code, not R.C. Chapter 119. (the Administrative Procedure Act).

A rule so adopted by the Superintendent is effective on the later of (1) the date the Superintendent issues the rule or (2) the date the regulation, rule, interpretation, procedure, or guideline the Superintendent's rule is based on becomes effective. The Superintendent may, upon 30 day's written notice, revoke any rule adopted under this authority. A rule adopted and not revoked by the Superintendent lapses 18 months after the rule's effective date.

### Transition to licensed loan originators

(Section 745.60 and 812.20)

These provisions of the act apply on and after January 1, 2010. The Division of Financial Institutions is required to begin accepting applications for a mortgage loan originator license under the Mortgage Loan Law on the act's effective date. Individuals holding a valid loan officer license under the Mortgage Brokers Law as of January 1, 2010, are not required to be in compliance with the act's loan originator requirements until the first renewal of their license after that date.

### Conforming changes

(R.C. 1343.011, 1345.01, 1345.05, 1345.09, 1349.31, and 1349.43)

Due to the elimination of the "loan officer" license and the creation of the "mortgage loan originator" and "loan originator" licenses, the act makes several cross-reference changes in other areas of the law.

## Credit union compliance with the federal S.A.F.E. Act

(R.C. 1733.252 and 1733.269)

The act states that each credit union, the subsidiaries of the credit union, and the loan originators employed by the credit union must comply with the federal S.A.F.E. Act. (*See* "**Implementation of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("S.A.F.E. Act")**, above.) Among other things, the S.A.F.E. Act requires that residential mortgage loan originators who are employees of a *depository institution or its subsidiaries* be registered with the Nationwide Mortgage Licensing System and Registry (NMLSR)--a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of loan originators. The term "depository institution" includes any credit union. Under the S.A.F.E. Act, the federal regulators of depository institutions must develop and maintain a system for registering the institutions' employees who originate residential mortgage loans.

The federal regulator of credit unions, the National Credit Union Administration, oversees only federally insured credit unions. Consequently, the act separately addresses compliance by credit unions that are *not* federally insured (that is, they are insured by a credit union share guaranty corporation established under Ohio law (R.C. Chapter 1761.)). These credit unions, their subsidiaries, and the loan originators employed by them are required to comply with the S.A.F.E. Act *as determined by the Superintendent of Financial Institutions by rule.* At a minimum, the rules must require these loan originators to furnish to the NMLSR information concerning the loan originator's identity and be consistent with the requirements for federally insured credit unions adopted by the National Credit Union Administration pursuant to the S.A.F.E. Act. These rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

These provisions of the act apply on and after January 1, 2010.

## Regulation of mortgage lenders under the Mortgage Loan Law

### Registration required; exemptions

(R.C. 1321.51(Q) and (U), 1321.52, and 1321.53(D))

The Mortgage Loan Law (R.C. 1321.51 to 1321.60) formerly prohibited any person from doing either of the following without having first obtained a certificate of registration from the Division of Financial Institutions:

(1) Advertise, solicit, or hold out that the person is engaged in the business of making loans secured by a mortgage on a borrower's real estate which is other than a first lien on the real estate;

(2) Engage in the business of lending or collecting the person's own or another person's money, credit, or chooses in action for such loans.

The act amends these provisions, as follows:

--In (1), above, the act specifies that the loans are "residential mortgage" loans, and defines "residential mortgage loans" as any loan primarily for personal, family, or household use that is secured by a mortgage or other consensual security interest on a dwelling or on residential real estate upon which is constructed or intended to be constructed a dwelling.

--In (2), above, the act specifies that the loans are "non-first lien residential mortgage" loans.

--The act expands the activities for which a person must be registered by adding the following: (a) employing or compensating mortgage loan originators licensed or who should be licensed under the Mortgage Loan Law to conduct the business of making residential mortgage loans and (b) making unsecured loans or loans secured by other than real property, which loans are for more than $5,000 at a rate of interest greater than permitted by the Usury Law (R.C. 1343.01) or any specific provision of the Revised Code.

The act revises the list of persons exempt from registration under the Mortgage Loan Law as follows:

--The prior exemption for persons lawfully doing business under the authority of this state, another state, or the United States relating to banks, savings banks, trust companies, savings and loan associations, or credit unions is modified to read as follows: "entities chartered and lawfully doing business under the authority of this state, another state, or the United States as a bank, savings bank, trust company, savings and loan association, or credit union, or a subsidiary of any such entity, which subsidiary is regulated by a federal banking agency and is owned and controlled by such a depository institution." The act defines "**federal banking agency**" as the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

--The prior exemption for "governmental agencies or instrumentalities" is modified to expressly include any political subdivision, or any governmental or other

public entity, corporation, instrumentality, or agency, in or of the United States or any state of the United States.

--The act adds a new exemption for a college or university, or controlled entity of a college or university, as those terms are defined in R.C. 1713.05.

--The act also adds an exemption for credit union service organizations, provided the organization utilizes services provided by registered mortgage loan originators or the organization holds a valid letter of exemption issued by the Superintendent of Financial Institutions (see "**Credit union service organization exemption requirements**," below).

### Application; investigation

(R.C. 109.572, 1321.20, 1321.51(R) and (EE), and 1321.53)

Prior law required an application for a certificate of registration to include, among other things, the location where the business was to be conducted and the names and addresses of the partners, officers, or trustees of the applicant. The act removes this specific requirement. Prior law also required that the applicant pay a $200 investigation fee and an annual registration fee determined by the Superintendent of Financial Institutions as provided by law.[70] The act specifies that the investigation fee is nonrefundable, that the annual registration fee is $300 and is nonrefundable, and that the applicant also must pay any additional fee required by the Nationwide Mortgage Licensing System and Registry. The "**Nationwide Mortgage Licensing System and Registry**" (**NMLSR**) is a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successor entities, for the licensing and registration of mortgage loan originators, or any system established by the Secretary of Housing and Urban Development pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("S.A.F.E. Act").

The act requires all applicants making loans secured by an interest in real estate to designate an employee or owner of the applicant as the applicant's primary point of contact--that is, the individual who the Division of Financial Institutions can contact regarding compliance or licensing matters relating to the registrant's or applicant's business or lending activities secured by an interest in real estate. While acting as the primary point of contact, the employee or owner cannot be employed by any other registrant or mortgage broker.

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[70] See R.C. 1321.20.

The act specifies that the investigation undertaken upon application must include both a civil and criminal records check of the applicant, including any individual whose identity is required to be disclosed in the application. Where the applicant is a business entity, the Superintendent may require a civil and criminal background check of those persons that in the determination of the Superintendent have the authority to direct and control the operations of the applicant.

The Superintendent is required to obtain a criminal history records check and, as part of that records check, request that criminal record information from the FBI be obtained. To fulfill this requirement, the Superintendent is to either (1) request the Superintendent of the Bureau of Criminal Identification and Investigation, or a vendor approved by the Bureau, to conduct a criminal records check based on the applicant's fingerprints (or, if the fingerprints are unreadable, based on the applicant's social security number) or (2) authorize the NMLSR to request a criminal history background check. Any fee required by the Bureau or by the NMLSR is to be paid by the applicant.

The act prohibits the Superintendent from using a credit score as the sole basis for a registration denial.

### Renewal

(R.C. 1321.52(D) and 1321.53(A)(7) and (8))

The act states that certificates of registration issued on or after July 1, 2010, annually expire on December 31, unless renewed by the filing of a renewal application and payment of a $300 nonrefundable annual registration fee, any assessment (see directly below), and any additional fee required by the NMLSR. If a renewal application does not contain all of the information required, and if that information is not submitted to the Division of Financial Institutions within 90 days after the Superintendent of Financial Institutions requests the information in writing, the Superintendent may consider the application withdrawn. Renewal cannot be granted if the applicant's certification of registration is subject to an order of suspension, revocation, or an unpaid and past due fine imposed by the Superintendent.

Formerly, if there was a change of 10% or more in the ownership of a registrant, the Division was permitted to make any investigation necessary to determine whether any condition exists that, if it had existed at the time of the original application, the condition would have warranted a denial. The act changes the threshold to 5%.

If a person's registration terminates due to nonrenewal or otherwise, but the person continues to engage in the business of collecting or servicing non-first lien residential mortgage loans in violation of the law, the act authorizes the Superintendent to take administrative action, including action on any subsequent application for a

certificate of registration. In addition, no late fee, back check charge except as incurred, charge related to default or cost to realize on its security interest, or prepayment penalty on non-first lien residential mortgage loans can be collected or retained by a person who is in violation, for the period of time in which the person is in violation. Nothing in this provision precludes any other actions or penalties provided by law or modifies a defense of holder in due course that a subsequent purchaser servicing the residential mortgage loan may raise.

#### Assessments

(R.C. 1321.53(A)(7)(a)(ii))

Under ongoing law, if the annual registration fees billed by the Superintendent are less than the estimated expenditures of the Consumer Finance section of the Division, as determined by the Superintendent, for the following fiscal year, the Superintendent may assess each registrant at a rate sufficient to equal in the aggregate the difference between the annual registration fees billed and the estimated expenditures. The assessed amount must be paid prior to the last day of June. The maximum amount that can be assessed a registrant is $.10 per each $100 of interest (excluding charge-off recoveries), points, loan origination charges, and credit line charges collected by that registrant during the previous calendar year. If an assessment is imposed, it cannot be less than $250 per registrant and cannot exceed $30,000 less the total annual registration fees paid by each registrant.

### Net worth or bond requirement

(R.C. 1321.53(B) and 1321.533(A)(1) and (B) to (F))

Formerly, each registrant had to maintain a net worth of at least $50,000 and, for each certificate of registration, assets of at least $50,000 either in use or readily available for use in the conduct of business. Under the act, a registrant may comply with that net worth and asset requirement *or* obtain a corporate surety bond issued by a bonding company or insurance company authorized to do business in Ohio. All of the following conditions apply to the bond:

(1) The bond must be in favor of the Superintendent of Financial Institutions.

(2) The bond must be in the penal sum of one-half per cent of the aggregate loan amount of residential mortgage loans originated in the immediately preceding calendar year, but not exceeding $150,000. The bond cannot, however, be less than $50,000 and an additional penal sum of $10,000 for each location, in excess of one, at which the registrant conducts business.

(3) The term of the bond must coincide with the term of registration.

(4) A copy of the bond must be filed with the Superintendent.

(5) The bond must be for the exclusive benefit of any borrower injured by a violation by an employee, licensee, or registrant of any provision of the Mortgage Loan Law or the rules adopted thereunder.

(6) The aggregate liability of the corporate surety for any and all breaches of the conditions of the bond cannot exceed the penal sum of the bond.

The act requires any registrant that fails to comply with this provision to cease all mortgage lender activity in this state until the registrant has so complied.

### Permissible fees and other charges

(R.C. 1321.57)

Ongoing law specifies the interest and charges that may be received by a registrant. With respect to a loan secured by an interest in real estate, such charges include certain closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of the law. The act adds that they also must be "paid to third parties."

These permissible closing costs continue to include "settlement or closing costs." The act specifies, however, that they must be "paid to unaffiliated third parties."

Other permissible closing costs under ongoing law include fees for preparation of mortgage documents, appraisal fees, and fees for any federally mandated inspection, if such fees are not paid to the registrant or an employee of the registrant. Formerly, those fees also could not be paid to a person *related to* a registrant. The act replaces "related to" with "affiliated with."

Certain loan origination charges are also permissible under ongoing law, both with respect to secured loans and unsecured loans. The act specifies that secured loans are those secured by goods or real estate, and unsecured loans are those that are not secured by goods or real estate. The act also revises the threshold loan amounts upon which the amount of the loan origination charge is to be determined. Under prior law, if the principal amount of the secured or unsecured loan was *less than* $500, the loan origination charges could not exceed $15. If the principal amount of the loan was *at least* $500 but less than $1,000, the loan origination charges could not exceed $30. Under the act, the first threshold is changed to $500 *or less* and the second threshold is changed to *more than* $500 but less than $1,000.

### Choice of law

(R.C. 1321.52(B))

Ongoing law states that loans made to persons who at the time are Ohio residents are subject to Ohio law, regardless of any statement in the contract to the contrary. The act provides several exceptions. If the loan is primarily secured by a lien on real property in another state and is arranged by a mortgage loan originator licensed by that state, the borrower may by choice of law designate that the transaction be governed by the law where the real property is located if the other state has consumer protection laws covering the borrower that are applicable to the transaction. Additionally, if the loan is for the purpose of purchasing goods acquired by the borrower when the borrower is outside of Ohio, the loan may be governed by the laws of the other state. However, nothing prevents a choice of law or requires registration or licensure of persons outside this state in a transaction involving the solicitation of Ohio residents to obtain non-real estate secured loans that require the borrowers to physically visit a lender's out-of-state office to apply for and obtain the disbursement of loan funds.

### Duties and standards of care

(R.C. 1321.593)

Under the act, a registrant and any person required to be registered must do all of the following in connection with the business of making or offering to make residential mortgage loans:

(1) Safeguard and account for any money handled for the borrower;

(2) Follow reasonable and lawful instructions from the borrower;

(3) Act with reasonable skill, care, and diligence;

(4) Act in good faith and with fair dealing in any transaction, practice, or course of business in connection with making any residential mortgage loan.

The act provides that these duties and standards of care cannot be waived or modified. They do not apply, however, to wholesale lenders.[71]

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[71] *See* R.C. 1321.593(B).

### Required disclosures; advertising

(R.C. 1321.592, 1321.594, and 1321.60)

The act imposes numerous disclosure requirements on registrants, including the following:

In connection with providing a non-brokered loan secured by a lien on real property, a registrant must, not earlier than three business days nor later than 24 hours before the loan is closed, deliver to the borrower a written disclosure that includes (1) a statement indicating whether property taxes or any insurance will be escrowed and (2) a description of what is covered by the regular monthly payment, including principal, interest, taxes, and insurance, as applicable.

If a residential mortgage loan applied for will exceed 90% of the value of the real property, the registrant must provide a statement to the borrower within three business days after taking the loan application, printed in boldface type of the minimum size of sixteen points, as follows: "You are applying for a loan that is more than 90% of your home's value. It will be hard for you to refinance this loan. If you sell your home, you might owe more money on the loan than you get from the sale."

The act also prohibits a registrant, in connection with making a non-brokered residential mortgage, from failing to do either of the following:

(1) Timely inform the borrower of any material change in the terms of the residential mortgage loan. "Material change" means: (a) a change in the type of residential mortgage loan being offered, such as a fixed or variable rate loan or a loan with a balloon payment, (b) a change in the term of the loan, as reflected in the number of monthly payments due before a final payment is scheduled to be made, (c) a change in the interest rate of more than 0.15%, (d) a change in the regular total monthly payment, including principal, interest, any required mortgage insurance, and any escrowed taxes or property insurance, of more than 5%, (e) a change regarding whether the escrow of taxes or insurance will be required, or (f) a change regarding whether private mortgage insurance will be required.

(2) Timely inform the borrower if any fees payable by the borrower to the licensee, registrant, or lender increase by more than 10% or $100, whichever is greater.

To be considered "timely," the registrant must provide the borrower with the revised information not later than the time requirement imposed by the federal Truth in Lending Act, as those provisions of law exist on July 31, 2009.[72] If an increase in the

[72] *See* 12 C.F.R. 226.19(a)(2) and (3).

total amount of the fee to be paid by the borrower to the registrant is *not* disclosed in accordance with this provision of the act, the registrant must refund to the borrower the amount by which the fee was increased. If the fee is financed into the loan, the registrant must also refund the interest that would accrue over the term of the loan on that excess amount.

Under ongoing law, advertising for loans cannot be false, misleading, or deceptive. The act states that "false, misleading, or deceptive advertising" includes the following:

--Placing, or causing to be placed, any advertisement indicating that special terms, reduced rates, guaranteed rates, particular rates, or any other special feature of mortgage loans is available unless the advertisement clearly states any limitations that apply;

-- Placing, or causing to be placed, any advertisement containing a rate or special fee offer that is not a bona fide available rate or fee.

Additionally, the act requires registrants to comply with Regulation Z of the federal Truth in Lending Act (12 C.F.R. 226.16) in making any advertisement.

### Prohibitions; penalties

(R.C. 1321.55(I), 1321.551(F), 1321.59, 1321.591, and 1321.99)

The act prohibits a registrant, though its managers or otherwise, from failing to reasonably supervise mortgage loan originators or other persons employed by or associated with the registrant. In addition, registrants cannot fail to establish reasonable procedures designed to avoid violations of the Mortgage Loan Law or rules adopted thereunder, or violations of applicable state and federal consumer and lending laws or rules, by mortgage loan originators or other persons employed by or associated with the registrant.

Generally, the act also prohibits registrants and mortgage loan originators from doing any of the following:

(1) Obtaining a certificate through any false or fraudulent representation of a material fact or any omission of a material fact required by state or federal law, or making any substantial misrepresentation in the application, to engage in lending secured by real estate;

(2) Knowingly making false or misleading statements of a material fact, omissions of statements required by state or federal law, or false promises regarding a

material fact, through advertising or other means, or engaging in a continued course of misrepresentations, in connection with the business of making or offering to make residential mortgage loans;

(3) Knowingly engaging in conduct in connection with the business of making or offering to make residential mortgage loans in conduct that constitutes improper, fraudulent, or dishonest dealings;

(4) While involved in the business of making or offering to make residential mortgage loans, failing to notify the Division of Financial Institutions within 30 days after knowing that the registrant or licensee has (a) been convicted of or pleaded guilty to a felony offense in a domestic, foreign, or military court, (b) been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities, in a domestic, foreign, or military court, or (c) had a certificate of registration or loan originator license, or comparable authority, revoked in any governmental jurisdiction.

(5) Knowingly making, proposing, or soliciting fraudulent, false, or misleading statements on any mortgage loan document or on any document related to a mortgage loan, including a mortgage application, real estate appraisal, or real estate settlement or closing document. "Fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bona fide error.

(6) Knowingly instructing, soliciting, proposing, or otherwise causing a borrower to sign in blank a loan related document in connection with a residential mortgage loan;

(7) Knowingly compensating, instructing, inducing, coercing, or intimidating, or attempting to compensate, instruct, induce, coerce, or intimidate, a person licensed or certified as an appraiser under Ohio law for the purpose of corrupting or improperly influencing the independent judgment of the person with respect to the value of the dwelling offered as security for repayment of a mortgage loan;

(8) Willfully retaining original documents provided to the registrant or licensee by the borrower in connection with the residential mortgage loan application, including income tax returns, account statements, or other financial related documents.

(9) In connection with making residential mortgage loans, receiving, directly or indirectly, a premium on the fees charged for services performed by a bona fide third party.[73]

(10) In connection with making residential mortgage loans, paying or receiving, directly or indirectly, a referral fee or kickback of any kind to or from a bona fide third party or other party with a related interest in the transaction, including a home improvement builder, real estate developer, or real estate broker or agent, for the referral of business. This provision does not, however, prevent remuneration to a registrant or licensee for the licensed sale of any insurance product permitted under ongoing law, provided there is no additional fee or premium added to the cost for the insurance and paid directly or indirectly by the borrower.

(11) In connection with making or offering to make residential mortgage loans, engaging in any unfair, deceptive, or unconscionable act or practice prohibited under R.C. 1345.01 to 1345.13 of the Consumer Sales Practices Act;

(12) Failing to follow the practices set forth in the federal Fair Debt Collection Practices Act,[74] notwithstanding the fact that the registrant or licensee is seeking to collect upon the registrant's own debt;

(13) In connection with any examination or investigation conducted by the Superintendent, knowingly doing any of the following: (a) circumventing, interfering with, obstructing, or failing to cooperate, including making a false or misleading statement, failing to produce records, or intimidating or suborning any witness, (b) withholding, abstracting, removing, mutilating, destroying, or secreting any books, records, computer records, or other information, or (c) tampering with, altering, or manufacturing any evidence.

### Enforcement; administrative actions; reports to NMLSR

(R.C. 1321.54)

Under prior law, the Division of Financial Institutions was *required* to revoke, suspend, or refuse to renew a lender's certificate of registration under the Mortgage Loan Law, *or* impose a monetary fine, if it determined that the registrant had continued to violate the Law after receiving notice of the violation from the Division or that the registrant was in default in the payment of the annual assessment or certificate of

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[73] For the definition of "**bona fide third party**" see R.C. 1321.51(BB).

[74] *See* 15 U.S.C. 1692.

registration fee. Under the act, the Division *may* revoke, suspend, or refuse to renew any certificate of registration if it specifically finds any of the following:

(1) A violation of or failure to comply with any provision of the Mortgage Loan Law or the rules adopted thereunder, any federal lending law, or any other law applicable to the business conducted under a certificate of registration;

(2) The person has been convicted of or pleaded guilty to a felony offense in a domestic, foreign, or military court;

(3) The person has been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities, in a domestic, foreign, or military court;

(4) The person's certificate of registration, or comparable authority, has been revoked in any governmental jurisdiction.

The act permits the Division to impose a monetary fine in addition to, or in lieu of, any revocation, suspension, or denial of a certificate.

Ongoing law specifies that the revocation, suspension, or refusal to renew does not impair the obligation of any preexisting lawful contract made under the law. The act provides, however, that a prior registrant must make good faith efforts to promptly transfer the registrant's collection rights to another registrant or person exempt from registration, or be subject to additional monetary fines and legal or administrative action by the Division. This provision does not limit a court's ability to impose a cease and desist order preventing any further business or servicing activity.

The Superintendent of Financial Institutions may also impose a fine for a violation of the Mortgage Loan Law, or any rule adopted thereunder. Under ongoing law, these monetary fines cannot exceed $25,000. All fines collected are to be paid to the Treasurer of State to the credit of the ongoing Consumer Finance Fund.

In determining the amount of a fine to be imposed, the Superintendent is authorized by the act to consider all of the following to the extent it is known to the Division:

(1) The seriousness of the violation;

(2) The registrant's good faith efforts to prevent the violation;

(3) The registrant's history regarding violations and compliance with Division orders;

(4) The registrant's financial resources;

(5) Any other matters the Superintendent considers appropriate in enforcing these provisions.

The act states that imposition of monetary fines under this provision does not preclude the imposition of any criminal fine.

If the Superintendent makes application to the court of common pleas for an order enjoining a person from acting as a registrant without being registered, the Superintendent may also seek civil penalties for that unregistered conduct in an amount not to exceed $5,000 per violation. In addition, if the Superintendent takes *administrative* action to enjoin such unregistered conduct, the Superintendent may impose fines of not more than $5,000 per violation.

To "protect the public interest," the Superintendent is permitted to suspend a certificate of registration, without a prior hearing, for specified violations or misconduct. The Superintendent is required to adopt rules establishing the maximum amount of time such a suspension may continue before a hearing is conducted.

The act requires the Superintendent to regularly report violations of the Mortgage Loan Law, as well as enforcement actions and other relevant information, to the NMLSR.

### Confidentiality

(R.C. 1321.55)

The act modifies the confidentiality provisions of the Mortgage Loan Law. Under the act, the following information is confidential:

(1) Examination information, and any information leading to or arising from an examination;

(2) Investigation information, and any information arising from or leading to an investigation.

This information is to remain confidential for all purposes except when it is necessary for the Superintendent of Financial Institutions to take official action regarding the affairs of a registrant or licensee, or in connection with criminal or civil proceedings to be initiated by a prosecuting attorney or the Attorney General. This

information may also be introduced into evidence or disclosed when and in the manner authorized by ongoing law (R.C. 1181.25).

All application information, except social security numbers, employer identification numbers, financial account numbers, the identity of the institution where financial accounts are maintained, personal financial information, fingerprint cards and the information contained on such cards, and criminal background information, is a public record as defined in section 149.43 of the Revised Code.

These provisions do not prevent the Division of Financial Institutions from releasing to or exchanging with other financial institution regulatory authorities information relating to registrants and licensees. For this purpose, a "financial institution regulatory authority" includes a regulator of a business activity in which a registrant or licensee is engaged, or has applied to engage in, to the extent that the regulator has jurisdiction over a registrant engaged in that business activity. A registrant or licensee is engaged in a business activity, and a regulator of that business activity has jurisdiction over the registrant or licensee, whether the registrant conducts the activity directly or a subsidiary or affiliate of the registrant or licensee conducts the activity.

In order to "promote more effective regulation and reduce regulatory burden through supervisory information sharing," the Superintendent is permitted to enter into sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, and the American Association of Residential Mortgage Regulators.

These provisions do not prevent the Division from releasing information relating to registrants or licensees to the Attorney General, to the Superintendent of Real Estate and Professional Licensing for purposes relating to the administration of R.C. Chapters 4735. and 4763., to the Superintendent of Insurance for purposes relating to the administration of R.C. Chapter 3953., to the Commissioner of Securities for purposes relating to the administration of R.C. Chapter 1707., or to local law enforcement agencies and local prosecutors. Information the Division releases remains confidential.

### Credit union service organization exemption requirements

(R.C. 1321.522 and 1321.53(D)(6))

A credit union service organization seeking exemption from registration under the Mortgage Loan Law is required by the act to submit an application to the Superintendent of Financial Institutions along with a nonrefundable fee of $350 for each location of an office to be maintained by the organization. The application must be in a form prescribed by the Superintendent and include all of the following:

(1) The organization's business name and state of incorporation;

(2) The names of the owners, officers, or partners having control of the organization;

(3) An attestation to all of the following:

(a) That the organization and its owners, officers, or partners have not had a mortgage lender certificate of registration or mortgage loan originator license, or any comparable authority, revoked in any governmental jurisdiction;

(b) That the organization and its owners, officers, or partners have not been convicted of, or pleaded guilty to, any of the following in a domestic, foreign, or military court:

--During the seven-year period immediately preceding the date of application for exemption, any felony or a misdemeanor involving theft;

--At any time prior to the date of application for exemption, a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering.

(c) That, with respect to financing residential mortgage loans, the organization conducts business with Ohio residents or secures its loans with property located in Ohio;

(4) The names of all mortgage loan originators or licensees under the organization's control and direction;

(5) An acknowledgment of understanding that the organization is subject to the regulatory authority of the Division of Financial Institutions;

(6) Any further information that the Superintendent may require.

If the Superintendent determines that the credit union service organization honestly made the required attestation and otherwise qualifies for exemption, the Superintendent must issue a letter of exemption. Additional certified copies of a letter of exemption are to be provided upon request and the payment of $75 per copy. If the Superintendent determines that the organization does *not* qualify for exemption, the Superintendent is to issue a notice of denial, and the organization may request a hearing in accordance with R.C. Chapter 119.

All of the following conditions apply to any credit union service organization holding a valid letter of exemption:

--The organization is subject to examination in the same manner as a registrant with respect to the conduct of the organization's mortgage loan originators. In conducting any out-of-state examination, the organization is responsible for paying the costs of the Division in the same manner as a registrant.

--The organization has an affirmative duty to supervise the conduct of its mortgage loan originators, and to cooperate with investigations by the Division with respect to that conduct, in the same manner as is required of registrants.

--The organization is to keep and maintain records of all transactions relating to the conduct of its mortgage loan originators in the same manner as is required of registrants.

--The organization may provide the surety bond for its mortgage loan originators in the same manner as is permitted for registrants.

A letter of exemption expires annually on December 31, and may be renewed on or before that date by submitting an application that meets the requirements described above and a nonrefundable renewal fee of $350 for each location of an office to be maintained by the organization.

The Superintendent is authorized to issue a notice to revoke or suspend a letter of exemption if the Superintendent finds that the letter was obtained through a false or fraudulent representation of a material fact, or the omission of a material fact, required by law, or that a condition for exemption is no longer being met. Prior to issuing an order of revocation or suspension, the credit union service organization must be given an opportunity for a hearing in accordance with R.C. Chapter 119.

All information obtained by the Division pursuant to an examination or investigation is subject to the confidentiality requirements set forth in the Mortgage Loan Law. All money collected is to be deposited into the state treasury to the credit of the ongoing Consumer Finance Fund.

### Transition to the new requirements

(Section 745.60)

These provisions of the act apply on and after January 1, 2010. The Division of Financial Institutions is required to begin accepting applications for an exemption from registration under the Mortgage Loan Law on the act's effective date. Individuals holding a valid mortgage lender certificate of registration under the Mortgage Loan Law as of January 1, 2010, are not required to be in compliance with the act's requirements until the first renewal of their certificate after that date.

## Regulation of mortgage brokers under the Mortgage Brokers Law

### Registration required; exemptions

(R.C. 1322.01, 1322.02, and 1322.024)

The ongoing Mortgage Brokers Law (R.C. 1322.01 to 1322.12) prohibits any person from acting as a mortgage broker without first having obtained a certificate of registration from the Superintendent of Financial Institutions for every office to be maintained by the person for the transaction of business as a mortgage broker in Ohio. "**Mortgage broker**" is defined as any of the following:

(1) A person that holds that person out as being able to assist a buyer in obtaining a mortgage and charges or receives from either the buyer or lender valuable consideration for providing this assistance;

(2) A person that solicits financial and mortgage information from the public, provides that information to a mortgage broker, and charge or receives from the mortgage broker valuable consideration for providing the information;

(3) A person engaged in table-funding or warehouse-lending mortgage loans that are first lien mortgage loans.

The act substantially retains this definition. In (2), above, it adds that the information may be provided to a person making residential mortgage loans, in addition to a mortgage broker. And in (3), above, it clarifies that the loans are first lien *residential* mortgage loans.

Whereas prior law listed the persons that were exempt from the Mortgage Brokers Law,[75] the act specifies what the term "mortgage broker" does not include. Under the act, "**mortgage broker**" does ***not*** include any of the following:

(1) A person that makes residential mortgage loans and receives a scheduled payment on each of those mortgage loans;

(2) Any entity chartered and lawfully doing business under the authority of any law of this state, another state, or the United States as a bank, savings bank, trust company, savings and loan association, or credit union, or a subsidiary of any such entity, which subsidiary is regulated by a federal banking agency and is owned and controlled by a depository institution;

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[75] See former R.C. 1322.02(C).

(3) A consumer reporting agency that is in substantial compliance with the federal Fair Credit Reporting Act;

(4) Any political subdivision, or any governmental or other public entity, corporation, instrumentality, or agency, in or of the United States or any state;

(5) A college or university, or controlled entity of a college or university, as those terms are defined in R.C. 1713.05;

(6) Any entity created solely for the purpose of securitizing loans secured by an interest in real estate, provided the entity does not service the loans. For this purpose, "securitizing" means the packaging and sale of mortgage loans as a unit for sale as investment securities, but only to the extent of those activities.

(7) Any person engaged in the retail sale of manufactured or mobile homes or industrialized units if, in connection with obtaining financing by others for those retail sales, the person only assists the borrower by providing or transmitting the loan application and does not do any of the following:

(a) Offer or negotiate the residential mortgage loan rates or terms;

(b) Provide any counseling with borrowers about residential mortgage loan rates or terms;

(c) Receive any payment or fee from any company or individual for assisting the borrower obtain or apply for financing to purchase the manufactured or mobile home or industrialized unit;

(d) Assist the borrower in completing the residential mortgage loan application.

(8) A mortgage banker, provided it holds a valid letter of exemption issued by the Superintendent (see "**Mortgage banker exemption requirements**," below). The act defines "**mortgage banker**" as any person that makes, services, buys, or sells residential mortgage loans secured by a first lien, that underwrites the loans, and that meets at least one of the following criteria:

(a) The person has been directly approved by the U.S. Department of Housing and Urban Development (HUD) as a nonsupervised mortgagee with participation in the direct endorsement program. This provision includes a person that has been directly approved by HUD as a nonsupervised mortgagee with participation in the direct endorsement program and that makes loans in excess of the applicable loan limit set by the Federal National Mortgage Association, provided that the loans in all respects, except loan amounts, comply with HUD's underwriting and documentation

requirements. This provision does not include a mortgagee approved as a loan correspondent.

(b) The person has been directly approved by the Federal National Mortgage Association as a seller/servicer. This provision includes a person that has been directly approved by the Federal National Mortgage Association as a seller/servicer and that makes loans in excess of the applicable loan limit set by the Association, provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of the Association.

(c) The person has been directly approved by the Federal Home Loan Mortgage Corporation as a seller/servicer. This provision includes a person that has been directly approved by the Federal Home Loan Mortgage Corporation as a seller/servicer and that makes loans in excess of the applicable loan limit set by the Corporation, provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of the Corporation.

(d) The person has been directly approved by the U.S. Department of Veterans Affairs as a nonsupervised automatic lender. This provision does not include a person directly approved by the Department as a nonsupervised lender, an agent of a nonsupervised automatic lender, or an agent of a nonsupervised lender.

(9) A nonprofit organization that is recognized as tax exempt under 26 U.S.C. 501(c)(3) and whose primary activity is the construction, remodeling, or rehabilitation of homes for use by low income families, provided that (a) the nonprofit organization makes no-profit mortgage loans or mortgage loans at 0% interest to low income families and no fees accrue directly to the nonprofit organization from those mortgage loans and that (b) the U.S. Department of Housing and Urban Development does not deny this exemption.

(10) A credit union service organization, provided that the organization utilizes services provided by registered loan originators or that it holds a valid letter of exemption issued by the Superintendent (see "**Credit union service organization exemption requirements**," below).

The act authorizes the Superintendent, by rule, to expand the definition of mortgage broker by adding individuals, persons, or entities, or to exempt additional individuals, persons, or entities from the definition, if the Superintendent finds that the addition or exemption is consistent with the purposes fairly intended by the policy and provisions of the Mortgage Brokers Law and the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("S.A.F.E. Act"). Such rules must be adopted in accordance with R.C. Chapter 119. (Administrative Procedure Act).

### Application; operations manager; investigation; renewals

(R.C. 1322.01(U), 1322.03, 1322.04, 1322.051(A), and 1322.052)

Under prior law, an applicant for a certificate of registration as a mortgage broker, and an applicant for an annual renewal of that certificate, had to submit to the Division of Financial Institutions a fee of $350 for each location of an office to be maintained by the applicant. Persons registered under the Mortgage Loan Law (R.C. 1321.51 to 1321.60), however, did not have to pay this fee when applying for or renewing a mortgage broker certificate of registration. The act increases the application and renewal fee to $500 for each office location, and eliminates the exemption for registrants under the Mortgage Loan Law.

Under the act, applicants also must pay any additional fee required by the Nationwide Mortgage Licensing System and Registry. The "**Nationwide Mortgage Licensing System and Registry**" (NMLSR) is a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successor entities, for the licensing and registration of mortgage loan originators, or any system established by the Secretary of Housing and Urban Development pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

Ongoing law provides that, if a check or other draft instrument is returned to the Superintendent for insufficient funds, the Superintendent is to notify the registrant by certified mail, return receipt requested, that the certificate of registration issued in reliance on the check or other draft instrument will be canceled unless the registrant, within 30 days after receipt of the notice, submits the application fee and a $100 penalty to the Superintendent. If the registrant does not submit the application fee and penalty within that time period, or if any check or other draft instrument used to pay the fee or penalty is returned for insufficient funds, the certificate of registration is to be canceled immediately without a hearing, and the registrant must cease activity as a mortgage broker. The act applies the same requirements to situations in which a check or other draft instrument is returned to the Superintendent for insufficient funds *before* the certificate of registration has been issued.

Under ongoing law, an application must provide the location or locations where the business is to be transacted. If any location is a residence, prior law required that the application be accompanied by a copy of a zoning permit authorizing the use of the residence for commercial purposes or a written opinion issued by the appropriate local government. Under the act, the Superintendent *may* require such documents. Additionally, the act eliminates the requirement that the application include a photograph of each business location.

Prior law required applicants that were business entities to designate an employee or owner as the applicant's operations manager. The act requires *all* applicants to do so. It also requires that the individual be licensed as a loan originator while acting as the operations manager (see "**Implementation of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("S.A.F.E. Act**," above) and not be employed by any other mortgage broker. The act revises the pre-licensing instruction that is required of operations managers and the written test that must be successfully completed.

Though ongoing law requires the Superintendent to obtain a criminal history records check of the applicant and to request that criminal record information from the FBI be obtained, the act permits the Superintendent to authorize the NMLSR to request a criminal history background check. It also requires that an investigation be conducted of any person whose identity is required to be disclosed on the application. The Superintendent is authorized to establish relationships or enter into contracts with the NMLSR, or any entities designated by it, to collect and maintain records and process transaction fees or other fees related to mortgage broker certificates of registration or the persons associated with a mortgage broker.

To issue a certificate of registration, the Superintendent must determine, among other things, that neither the applicant nor any person whose identity is required to be disclosed on the application has had a mortgage broker certificate of registration or loan originator license, or any comparable authority, revoked in any governmental jurisdiction or has pleaded guilty to or been convicted of any of the following in a domestic, foreign, or military court:

(1) During the seven-year period immediately preceding the date of application, any felony or a misdemeanor involving theft;

(2) At any time prior to the date the application is approved, a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering.

The act also requires that, based on the totality of the circumstances and information submitted in the application, the applicant prove to the Superintendent, by a preponderance of the evidence, that the applicant is of good business repute, appears qualified to act as a mortgage broker, has fully complied with the Mortgage Brokers Law and the rules adopted thereunder, and meets all of the conditions for issuing a mortgage broker certificate of registration. The Superintendent is prohibited by the act from using a credit score as the sole basis for registration denial.

Certificates may be renewed annually on or before December 31. One condition that had to be met under prior law was that the operations manager completed at least six

hours of continuing education during the preceding year. The act increases the number of hours to eight and modifies the courses or programs of study that qualify. Additional conditions for renewal include maintaining all necessary filings and approvals required by the Secretary of State and not being subject to an order of suspension or an unpaid and past due fine imposed by the Superintendent.

The act requires that, within 90 days after the departure of a designated operations manager, a registrant designate another person as operations manager. If a registrant is without an operations manager approved by the Superintendent for more than 180 days, the registrant must cease operations unless otherwise authorized in writing by the Superintendent due to exigent circumstances.

### Surety bond requirement

(R.C. 1322.05)

Ongoing law requires that each registrant obtain a corporate surety bond in favor of the Superintendent of Financial Institutions. Under prior law, the bond had to be in the penal sum of at least $50,000 and an additional penal sum of $10,000 for each location, in excess of one, at which the registrant conducts business. The act requires that the bond be in the penal sum of one-half per cent of the aggregate loan amount of residential mortgage loans originated in the immediately preceding calendar year, but not exceeding $150,000. The bond cannot, however, be less than $50,000 and additional penal sum of $10,000 for each location, in excess of one, at which the registrant conducts business.

The bond is to be for the exclusive benefit of a buyer injured by a violation of the Mortgage Brokers Law, or any rule adopted thereunder, by the registrant, an employee of the registrant, or a loan originator employed by or associated with the registrant.

### Call reports to NMLSR; annual reports

(R.C. 1322.06(C) and (D))

The act requires each registrant to submit to the NMLSR call reports or other reports of condition in the form required by the NMLSR. In addition, each registrant must file with the Division of Financial Institutions an annual report under oath or affirmation, on forms supplied by the Division, concerning the business and operations of the registrant for the preceding calendar year. If a registrant operates two or more registered offices, or two or more affiliated registrants operate registered offices, a composite report of the group of registered offices may be filed in lieu of individual reports. Such reports are to be filed "as required by the Superintendent."

The Division is to publish annually an analysis of this information, but the individual reports are not to be considered public records.

### Disclosures

(R.C. 1322.065)

Under the act, a person registered as a mortgage broker solely to sell leads of potential buyers to residential mortgage lenders or mortgage brokers, or solely to match buyers with residential mortgage lenders or mortgage brokers through a computerized loan origination system recognized by the U.S. Department of Housing and Urban Development, is required to make only those disclosures under the Mortgage Brokers Law that apply to the portion of the transaction during which they have direct buyer contact. Those persons are, however, subject to all fair conduct and prohibition requirements in their dealing with buyers.

### Advertising

(R.C. 1322.09(B))

The act requires mortgage brokers to comply with Regulation Z of the federal Truth in Lending Act in making any advertisement.

### Prohibitions; penalties

(R.C. 1322.07, 1322.071, 1322.072, 1322.074, 1322.075, 1322.08, and 1322.99)

The act prohibits a registrant, through its operations manager or otherwise, from failing to (1) reasonably supervise a loan originator or other persons associated with the registrant or (2) establish reasonable procedures designed to avoid violations of the Mortgage Brokers Law or rules adopted thereunder, or violations of applicable state and federal consumer and lending laws or rules, by loan originators or other persons associated with the registrant.

The act modifies the ongoing limitations on the ownership or control of a majority interest in an appraisal company, and on referrals to an appraisal company, by making them apply to the immediate family of an owner of a registrant, rather than to the registrant's immediate family.[76]

Under ongoing law, registrants and loan originators (formerly, loan officers) are prohibited from engaging in certain conduct. The act makes persons required to be registered or licensed under the Mortgage Brokers Law, and the individuals required to

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[76] For the definitions of "**appraisal company**" and "**immediate family**," see R.C. 1322.01(O) and (R).

be disclosed in an application for a certificate of registration, subject to those prohibitions as well. And it additionally prohibits the following:

(1) Making false or misleading statements of a material fact, omissions of statements required by state *or federal* law, or false promises regarding a material fact, through advertising or other means, or engaging in a continued course of misrepresentations;

(2) Failing to notify the Division of Financial Institutions within 30 days after (a) being convicted of or pleading guilty to a felony in a domestic, foreign, or military court, (b) being convicted of or pleading guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities, or (c) having a mortgage broker certificate of registration or loan originator license, or comparable authority, revoked in any governmental jurisdiction;

(3) Engaging in any unfair, deceptive, or unconscionable act or practice prohibited under R.C. 1345.01 to 1345.13 of the Consumer Sales Practices Act.

The act also prohibits any person, in connection with an examination or investigation conducted by the Superintendent under the Mortgage Brokers Law, from knowingly withholding, abstracting, removing, mutilating, destroying, or secreting any books, records, computer records, or other information.

Ongoing law prohibits registrants from receiving fees for assisting a buyer in obtaining a mortgage loan until all of the services the registrant has agreed to perform are completed and the proceeds of the loan have been disbursed. Fees may, however, be paid for services performed by a bona fide third party in assisting the buyer to obtain a mortgage if the fees are paid directly by the buyer to the bona fide third party or the fees are deposited by the registrant into the registrant's special account for services performed by the bona fide third party. The act specifies that these loans are *residential* mortgage loans and modifies the definition of special account.

### Enforcement; administrative actions; damages

(R.C. 1322.10 and 1322.11)

The act adds the following as causes for the suspension, revocation, or refusal to issue or renew a certificate of registration:

--A violation of or failure to comply with federal lending law;

--A conviction of or guilty plea to a felony, or to any criminal offense involving a breach of trust or dishonesty, in a domestic, foreign, or military court;

--The revocation of a mortgage broker certificate of registration, or any comparable authority, in any governmental jurisdiction.

Ongoing law is modified by the act such that, if the Superintendent of Financial Institutions revokes a mortgage broker certificate of registration for any reason, the revocation is permanent and with prejudice. Additionally, the act removes the requirement that the Superintendent suspend, without a prior hearing, the certificate of registration of a registrant whose operations manager has failed to fulfill the continuing education requirements or the license of a loan originator (formerly, loan officer) who has failed to fulfill those requirements.

The act permits the Superintendent to make application to the court of common pleas for an order enjoining any person from acting as a mortgage broker or registrant in violation of the registration requirement and to seek civil penalties for the unregistered conduct of not more than $5,000 per violation. If the Superintendent, by administrative action, enjoins a person from such unregistered conduct, the Superintendent also may impose fines of not more than $5,000 per violation.

### Mortgage banker exemption requirements

(R.C. 1322.01(G)(2)(h) and 1322.022)

A mortgage banker seeking exemption from registration under the Mortgage Brokers Law is required by the act to submit an application to the Superintendent of Financial Institutions along with a nonrefundable fee of $350 for each location of an office to be maintained by the mortgage banker. The application must be in a form prescribed by the Superintendent and include all of the following:

(1) The mortgage banker's business name and state of incorporation or business registration;

(2) The names of the owners, officers, or partners having control of the business;

(3) An attestation to all of the following:

(a) That the mortgage banker and its owners, officers, or partners have not had a mortgage banker license, mortgage broker certificate of registration, or loan originator license, or any comparable authority, revoked in any governmental jurisdiction;

(b) That the mortgage banker and its owners, officers, or partners have not been convicted of, or pleaded guilty to, any of the following in a domestic, foreign, or military court:

--During the seven-year period immediately preceding the date of application for exemption, any felony or a misdemeanor involving theft;

--At any time prior to the date the application for exemption; is approved, a felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering.

(c) That, with respect to financing residential mortgage loans, the mortgage banker conducts business with residents of this state, or secures its loans with property located in this state, under authority of an approval described in R.C. 1322.01(G)(2)(h).

(4) The names of all loan originators or licensees under the mortgage banker's control and direction;

(5) An acknowledgment of understanding that the mortgage banker is subject to the regulatory authority of the Division of Financial Institutions;

(6) Any further reasonable information that the Superintendent may require.

If the Superintendent determines that the mortgage banker honestly made the required attestation and otherwise qualifies for exemption, the Superintendent must issue a letter of exemption. Additional certified copies of a letter of exemption are to be provided upon request and the payment of $75 per copy. If the Superintendent determines that the mortgage banker does *not* qualify for exemption, the Superintendent is to issue a notice of denial, and the mortgage banker may request a hearing in accordance with R.C. Chapter 119.

All of the following conditions apply to any mortgage banker holding a valid letter of exemption:

(1) The mortgage banker is subject to examination in the same manner as a registrant with respect to the conduct of the mortgage banker's loan originators. In conducting any out-of-state examination, a mortgage banker is responsible for paying the costs of the Division in the same manner as a registrant.

(2) The mortgage banker has an affirmative duty to supervise the conduct of its loan originators, and to cooperate with investigations by the Division with respect to that conduct, in the same manner as is required of registrants.

(3) The mortgage banker is to keep and maintain records of all transactions relating to the conduct of its loan originators in the same manner as is required of registrants.

(4) The mortgage banker may provide the surety bond for its loan originators in the same manner as is permitted for registrants.

A mortgage banker that holds a valid letter of exemption, and any licensed loan originator employed by the mortgage banker, are not subject to the disclosure requirements set forth in R.C. 1322.062 with respect to any transaction covered under the authority of an approval described in R.C. 1322.01(G)(2)(h). Those disclosure requirements do apply, however, with respect to transactions not covered under the authority of such an approval.

A letter of exemption expires annually on December 31, and may be renewed on or before that date by submitting an application that meets the requirements described above and a nonrefundable renewal fee of $350 for each location of an office to be maintained by the mortgage banker.

The Superintendent is authorized to issue a notice to revoke or suspend a letter of exemption if the Superintendent finds that the letter was obtained through a false or fraudulent representation of a material fact, or the omission of a material fact, required by law, or that a condition for exemption is no longer being met. Prior to issuing an order of revocation or suspension, the mortgage banker must be given an opportunity for a hearing in accordance with R.C. Chapter 119.

All information obtained by the Division pursuant to an examination or investigation is subject to the confidentiality requirements set forth in the Mortgage Brokers Law. All money collected is to be deposited into the state treasury to the credit of the existing Consumer Finance Fund.

### Credit union service organization exemption requirements

(R.C. 1322.01(G)(2)(j) and 1322.023)

Credit union service organizations seeking exemption from registration under the Mortgage Brokers Law are generally subject to the same procedures, requirements, and conditions described above for mortgage bankers.

### Transition to the new requirements

(Section 745.60)

These provisions of the act apply on and after January 1, 2010. The Division of Financial Institutions is required to begin accepting applications for an exemption from registration under the Mortgage Brokers Law on the act's effective date. Individuals holding a valid mortgage broker certificate of registration as of January 1, 2010, are not required to be in compliance with the act's requirements until the first renewal of their certificate after that date.

## Assessments for video service authorizations

(R.C. 1332.24 and 1332.25)

The Video Service Authorization Act passed in the 127th General Assembly provides for a state franchising system for video programming over wires or cables located in public rights-of-way. Under that act, local franchising authority is preempted once a local franchise expires or terminates according to its terms or an incumbent provider of video service applies for a state franchise under specified conditions. The Director of Commerce must grant a state franchise (referred to as a "video service authorization" or "VSA") upon submission of a completed application, which, by statute, can require only (1) identification of the applicant's business location, video service area, and video service technologies, (2) the making of certain attestations by the applicant, and (3) the provision of a description of the applicant's customer complaint handling process. The Director has the authority to investigate any alleged violation of a prohibition against subscriber group race and income discrimination or any alleged failure by a video service provider to (1) operate with proper authorization, (2) assist municipalities and townships in addressing consumer complaints, (3) meet customer service standards, (4) provide certain notices, filings, reports, and emergency announcements, (5) comply with PEG (public, educational, and governmental) channel requirements, and (6) comply with the service commitment applicable to telecommunications facilities-based franchisees.

The act adds to the application fee and civil penalty funding sources for the Department of Commerce's VSA functions authority for the Director to impose an annual, proportional assessment. Unlike for those other revenue sources, the assessment revenue must be deposited to the credit of the Department's Division of Administration Fund. The assessment is to be paid by video service providers.

The total amount assessed in a fiscal year cannot exceed the lesser of $450,000 or, as determined annually by the Director, the Department's actual, current fiscal year administrative costs in carrying out its VSA duties. The Director must allocate that total

amount proportionately among the providers to be assessed, using a formula based on subscriber counts as of December 31 of the preceding calendar year. Providers must submit those counts by January 31 of each year. The counts must be sent via a notarized statement signed by an authorized officer. Any information submitted to the Director for purposes of determining subscriber counts must be considered trade secret information, must not be disclosed except by court order, and does not constitute a public record under the Public Records Act.

On or about June 1 of each year, the Director must send to each video service provider to be assessed a written notice of its proportional amount of the total assessment. The provider must pay the assessment on a quarterly basis not later than 45 days after the calendar quarter ends. After the initial assessment, the Director annually must reconcile the amount collected with the total, current amount assessed, and then either must charge each video service provider its respective proportion of any insufficiency or proportionately credit each provider's next assessment for any excess collected.

A video service provider may identify or refer to the assessment on a subscriber bill only if the provider opts to pass the cost of the assessment onto its subscribers.

The act expands the Department of Commerce's enforcement authority by authorizing the Director to enforce the assessment provisions in the same manner as other provisions of the VSA law.

## Division of Securities

### Securities license and filing fee increases

(R.C. 1707.17)

The act increases certain license, annual renewal, and filing fees for securities dealers, securities salespersons, and investment advisers. The fees are increased as follows:

(1) Securities dealer license and annual renewal fee--from $100 to $200.

(2) Securities salesperson license and annual renewal fee--from $50 to $60.

(3) Investment adviser's license and annual renewal fee--from $50 to $100.

(4) Investment adviser's notice filing fee--from $50 to $100.

### Fees associated with the transfer of a securities dealer or investment adviser license

(R.C. 1707.18)

Under continuing law, if a partnership licensed as a dealer or an investment adviser under the Securities Law (R.C. Chapter 1707.) is terminated due to the death, resignation, withdrawal, or addition of a general partner, or under the laws of the state where the partnership is organized, the license of the partnership and the licenses of its salespersons or investment adviser representatives, as applicable, may be transferred to the successor partnership if the Division of Securities finds that the successor partnership is substantially similar to its predecessor. The fee for the transfer of the partnership's license is $50. Under former law, the fee for the transfer of every salesperson's or investment adviser representative's license was $10. The act increases that $10 fee to $15.

Similarly, under continuing law, if a licensed dealer or licensed investment adviser changes its business form, reincorporates, or by merger or otherwise becomes a different person, the license of the dealer or investment adviser and the licenses of its salespersons or investment adviser representatives, as applicable, may be transferred to the successor entity if the Division finds that the successor entity is substantially similar to its predecessor. The fee for the transfer of the dealer license or investment adviser license is $50. The act increases the fee for the transfer of every salesperson's or investment adviser representative's license from $10 to $15.

### Investor Education and Enforcement Expense Fund

(R.C. 1707.37)

The act creates in the state treasury the Division of Securities Investor Education and Enforcement Expense Fund, which is to consist of all money received in settlement of any violation of the Securities Law (R.C. Chapter 1707.) and any cash transfers. Money in the fund is to be used to pay expenses of the Division of Securities relating to education or enforcement for the protection of securities investors and the public. The act authorizes the Division to adopt rules that establish what qualifies as such an expense.

## State Fire Marshal's Fund

(R.C. 3737.71)

Generally, under continuing law, money in the State Fire Marshal's Fund must be used to maintain and administer the Office of the Fire Marshall and the Ohio Fire

Academy. Under former law, the Director of Commerce--upon certifying to the Director of Budget and Management that the cash balance in the fund exceeded the amount needed to pay ongoing operating expenses--was authorized to use the excess for certain real property and facilities expenses of the State Fire Marshal and the Ohio Fire Academy.

The act provides that the Director of Commerce may use the excess in the fund for the real property and facilities expenses described above the approval of the Director of Budget and Management. Furthermore the act allows the Director of Budget and Management, at any time and upon determining that the money in the State Fire Marshal's Fund exceeds the amount necessary to defray ongoing operating expenses in a fiscal year, to transfer the excess to the General Revenue Fund.

## Creation of the Division of Labor

(R.C. 121.04, 121.08, 121.083, 121.084, 124.11, 3301.55, 3703.01, 3703.03 to 3703.08, 3703.10, 3703.21, 3703.99, 3713.01 to 3713.10, 3721.071, 3722.02, 3722.04, 3722.041, 3743.04, 3743.25, 3781.03, 3781.102, 3781.11, 3783.05, 3791.02, 3791.04, 3791.05, 3791.07, 4104.01, 4104.02, 4104.06 to 4104.101, 4104.12, 4104.15 to 4104.19, 4104.21, 4104.33, 4104.42 to 4104.44, 4104.48, 4105.01, 4105.02 to 4105.06, 4105.09, 4105.11 to 4105.13, 4105.15 to 4105.17, 4105.191, 4105.20, 4105.21, 4169.02 to 4169.04, 4171.04, 4740.03, 4740.11, 4740.14, and 5104.051; Section 515.70)

### The Division of Labor and Worker Safety and the Division of Industrial Compliance

Under former law, the Division of Labor and Worker Safety and the Division of Industrial Compliance existed as separate divisions within the Department of Commerce and had separate duties as specified in former law. Former law stated that the Division of Labor and Worker Safety had all powers and performed all duties vested by law in the former Superintendent of Labor and Worker Safety. Wherever powers were conferred or duties imposed upon the Superintendent of Labor and Worker Safety, those powers and duties were construed as vested in the Division of Labor and Worker Safety. The Division of Labor and Worker Safety was under the control and supervision of the Director of Commerce and was administered by the Superintendent of Labor and Worker Safety. The Superintendent of Labor and Worker Safety had to exercise the powers and perform the duties delegated to the Superintendent by the Director under the Minor Labor Law, the Minimum Fair Wage Standards Law, and Wage and Hours on Public Works Law (the Prevailing Wage Law is included in this Law).

Under former law, the Superintendent of Industrial Compliance had to do all of the following:

(1) Administer and enforce the general laws of Ohio pertaining to buildings, pressure piping, boilers, bedding, upholstered furniture, and stuffed toys, steam engineering, elevators, plumbing, licensed occupations regulated by the Department, and travel agents, as they apply to plans review, inspection, code enforcement, testing, licensing, registration, and certification.

(2) Collect and collate statistics as are necessary.

(3) Examine and license persons who desire to act as steam engineers, to operate steam boilers, and to act as inspectors of steam boilers, provide for the scope, conduct, and time of such examinations, provide for, regulate, and enforce the renewal and revocation of such licenses, inspect and examine steam boilers and make, publish, and enforce rules and orders for the construction, installation, inspection, and operation of steam boilers, and do, require, and enforce all things necessary to make such examination, inspection, and requirement efficient.

(4) Rent and furnish offices as needed in cities in Ohio for the conduct of its affairs.

(5) Oversee a Chief of Construction and Compliance, a Chief of Operations and Maintenance, a Chief of Licensing and Certification, and other designees appointed by the Director to perform the duties assigned to the Superintendent of Industrial Compliance.

(6) Enforce the rules the Board of Building Standards adopts establishing requirements for the design, installation, inspection of and design review procedure for nonflammable medical gas, medical oxygen, and medical vacuum piping systems of the Revised Code where a municipal, township, or county building department is not certified to enforce those rules or an employee of a health district where no certified municipal, township, or county building department exists or is not certified to enforce those rules.

(7) Accept submissions, establish a fee for submissions, and review submissions of certified welding and brazing procedure specifications, procedure qualification records, and performance qualification records for building services piping.

Continuing law requires money collected under specified laws and any other moneys collected by the former Division of Industrial Compliance to be paid into the state treasury to the credit of the former Industrial Compliance Operating Fund, renamed the Labor Operating Fund by the act. The Department must use the moneys in the Fund for paying the operating expenses of the Division of Industrial Compliance and the administrative assessment required under continuing law.

## Division of Labor

The act combines the Division of Labor and Worker Safety and the Division of Industrial Compliance into the Division of Labor in the Department of Commerce, which is led by the Superintendent of Labor. The act transfers the duties of the Superintendent of Labor and Worker Safety, the Division of Labor and Worker Safety, the Superintendent of Industrial Compliance, and the Division of Industrial Compliance as described under "**The Division of Labor and Worker Safety and the Division of Industrial Compliance**" above to the Superintendent of Labor and the Division of Labor. Under the act, the Superintendent of Labor must oversee a Chief of Worker Protection, who is in the unclassified civil service, in addition to the other chiefs whose oversight is transferred to the Superintendent of Labor under the act. The act also renames the Industrial Compliance Operating Fund the Labor Operating Fund.

The act abolishes the Division of Labor and Worker Safety and the Division of Industrial Compliance in the Department of Commerce on the effective date of this provision. The act states that the Division of Labor supersedes the Division of Labor and Worker Safety and Division of Industrial Compliance, and that the Superintendent of Labor supersedes the Superintendent of Labor and Worker Safety and the Superintendent of Industrial Compliance. Under the act, the Superintendent of Labor or Division of Labor, as applicable, must succeed to and have and perform all the duties, powers, and obligations pertaining to the duties, powers, and obligations of the Superintendent and Division of Labor and Worker Safety and the Superintendent and Division of Industrial Compliance. For the purpose of the institution, conduct, and completion of matters relating to its succession, the act deems the Superintendent of Labor or the Division of Labor, as applicable, as the continuation of and successor under law to the Superintendent and Division of Labor and Worker Safety or the Superintendent and Division of Industrial Compliance, as applicable. All rules, actions, determinations, commitments, resolutions, decisions, and agreements pertaining to those duties, powers, obligations, functions, and rights in force or in effect on this provision's effective date must continue in force and effect subject to any further lawful action thereon by the Superintendent or Division of Labor. Wherever the Superintendent of Labor and Worker Safety, Division of Labor and Worker Safety, Superintendent of Industrial Compliance, or Division of Industrial Compliance are referred to in any provision of law, or in any agreement or document that pertains to those duties, powers, obligations, functions, and rights, the reference is to the Superintendent of Labor or Division of Labor, as appropriate.

Under the act, all authorized obligations and supplements thereto of the Superintendent and Division of Labor and Worker Safety and the Superintendent and Division of Industrial Compliance pertaining to the duties, powers, and obligations transferred are binding on the Superintendent or Division of Labor, as applicable, and

nothing in the act impairs the obligations or rights thereunder or under any contract. The abolition of the Division of Labor and Worker Safety and the Division of Industrial Compliance and the transfer of the duties, powers, and obligations of the Superintendent and Division of Labor and Worker Safety and the Superintendent and Division of Industrial Compliance do not affect the validity of agreements or obligations made by those superintendents or divisions pursuant to the State Departments Law, the Plumbing Law, the Building Standards – General Provisions Law, the Building Standards – Offenses and Penalties Law, the Boiler Law, the Elevator Law, and the Construction Industry Licensing Board Law (R.C. Chapters 121., 3703., 3781., 3791., 4104., 4105., and 4740., respectively), or any other provisions of law.

Under the act, in connection with the transfer of duties, powers, obligations, functions, and rights and abolition of the Division of Labor and Worker Safety and the Division of Industrial Compliance, all real property and interest therein, documents, books, money, papers, records, machinery, furnishings, office equipment, furniture, and all other property over which the Superintendent and Division of Labor and Worker Safety or the Superintendent and Division of Industrial Compliance had control pertaining to the duties, powers, and obligations transferred and the rights of the Superintendent and Division of Labor and Worker Safety and the Superintendent and Division of Industrial Compliance to enforce or receive any of the aforesaid is automatically transferred to the Superintendent and Division of Labor without necessity for further action on the part of the Superintendent, Division of Labor, or the Director of Commerce. Additionally, under the act, all appropriations or reappropriations made to the Superintendent and Division of Labor and Worker Safety and the Superintendent and Division of Industrial Compliance for the purposes of the performance of their duties, powers, and obligations, are transferred to the Superintendent and Division of Labor to the extent of the remaining unexpended or unencumbered balance thereof, whether allocated or unallocated, and whether obligated or unobligated.

### Increase in fees for boiler inspections and related occupational licenses

(R.C. 4104.07, 4104.101, and 4104.18)

Generally, all boilers must be inspected when installed and cannot be put into operation until an appropriate certificate of operation has been issued by the Superintendent of Labor (renamed from the Superintendent of Industrial Compliance under former law). The certificate of operation cannot be issued for any boiler that has not been thoroughly inspected during construction and upon completion, by either a general or special inspector, and that does not conform in every detail with the rules adopted by the Board of Building Standards and unless, upon completion, the boiler is distinctly stamped under the rules adopted by the inspector. A general or special

inspector must possess a certificate of competency issued by the Superintendent to inspect boilers. To receive that certificate, an applicant must pass an examination, the fee for which formerly was $50. The act increases this fee to $150.

A person must obtain a license as a low pressure boiler operator, a high pressure boiler operator, or a stationary steam engineer, or to work directly under one of these types of licensees, to operate specified types of boilers and steam engines. To obtain a license, an applicant must satisfy requirements specified in continuing law and pay a license application fee. The application fee for applicants for steam engineer, high pressure boiler operator, or low pressure boiler operator licenses formerly was $50. The license fee for each original or renewal steam engineer, high pressure boiler operator, or low pressure boiler operator license formerly was $35. The act increases these fees to $75 and $50, respectively.

A person is prohibited from making any installation or major repair or modification of any boiler without first obtaining a permit to do so from the Division of Labor (renamed from the Division of Industrial Compliance under former law). The application permit fee formerly was $50. The act increases the permit application fee to $100.

The owner of a boiler that is required to be inspected upon installation, and the owner of a boiler that is issued a certificate of inspection, which is later replaced with a certificate of operation, must pay a fee to the Superintendent of Labor for inspections required upon installation of a boiler and to maintain a certificate of operation. The act increases those fees as follows:

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| Boilers subject to annual inspection: | $45 to $50 |
| Boilers subject to biennial inspection: | $90 to $100 |
| Boilers subject to triennial inspection: | $135 to $150 |
| Boilers subject to quinquennial inspection: | $225 to $250 |

Prior law required a renewal fee of $45 be paid to the Treasurer of State before the renewal of any certificate of operation for a boiler. The act eliminates this fee.

### Changes to the fees charged for elevator inspections

(R.C. 4105.17)

Generally, an elevator must be inspected prior to its operation. General or special inspectors conduct these inspections. Every inspector must forward to the Superintendent of Labor (renamed from the Superintendent of Industrial Compliance

under former law) a full and complete report of each inspection made of any elevator and, on the day the inspection is completed, must leave a copy of the report with the owner or operator of the elevator, or the owner's or operator's agent or representative. The report must indicate the exact condition of the elevator and list any and all of the provisions of the Elevator Law (R.C. Chapter 4105.) and any rules adopted pursuant thereto, with which the elevator does not comply. Before attempting to enforce, by any remedy, civil or criminal, the provisions with which the inspected elevator does not comply, the Chief (actually the Superintendent) must issue an adjudication order within the meaning of the Administrative Procedure Act.

Ongoing law sets forth a fee for each inspection of an elevator required to be inspected under the Elevator Law, or attempted inspection that, due to no fault of a general inspector or the Division of Labor (renamed from the Division of Industrial Compliance under former law), is not successfully completed by a general inspector conducted at any of the following times:

(1) Before the operation of a permanent new elevator prior to the issuance of a certificate of operation;

(2) Before the operation of an elevator being put back into service after a repair;

(3) As a result of a general inspector, rather than a special inspector, conducting the inspection.

In addition to the circumstances described in (1) to (3) immediately above, the act requires a fee to be paid for the inspection or attempted inspection by a general inspector before the operation of an elevator after an adjudication order issued under the Elevator Act. The act increases the base fee for an inspection conducted at any of the times described above from $20 to $120 (plus $10 for each floor where the elevator stops).

The Superintendent may assess an additional fee for the reinspection of an elevator when a previous attempt to inspect that elevator has been unsuccessful through no fault of a general inspector or the Division. Under former law, the additional fee was $125 plus $5 for each floor where an elevator stops. The act decreases the base fee for reinspection from $125 to $120, but increases the per floor reinspection fee from $5 to $10.

Under former law the fee for issuing or renewing a certificate of operation under the Elevator Law for an elevator that is inspected every six months was $200 plus $10 for each floor where the elevator stops, except where the elevator has been inspected by

a special inspector. The act increases this base fee to $220 and increases the per floor fee to $12 per floor.

## The Real Estate Brokers Law

### Licensing--fees

(R.C. 4735.06, 4735.09, 4735.13, and 4735.15)

The act increases the following fees:

- The fee for an application for a real estate broker's license, and for each successive application, from $69 to $100.
- The fee for an application for a real estate salesperson's license, and for each successive application, from $49 to $60.
- The fee for reactivation or transfer of a license by a real estate salesperson from $20 to $25.
- The fee for a branch office license from $8 to $15 for each year of the licensing period.
- The fee for a renewal real estate broker's license from $49 to $60 for each year of the licensing period.
- The fee for the renewal of a real estate salesperson's license from $39 to $45 for each year of the licensing period.

The act makes the fees for branch office licenses, license renewals, late filings, and foreign real estate dealer and salesperson licenses nonrefundable.

The act reduces the amount of the application fee for a real estate broker's license, the application fee for a real estate salesperson's license, the application fee for a real estate broker to associate with another broker in the capacity of a real estate salesperson, the fee that accompanies a notice of a real estate broker who intends to become a member or officer of an entity that is or intends to become a licensed real estate broker that must be credited to the Real Estate Education and Research Fund from $4 to $1. The act reduces the amount of the fee for the reactivation or transfer of a license, and the fee for a branch office license, license renewal, late filing, and foreign real estate dealer and salesperson license that must be credited to the Real Estate Education and Research Fund from $4 to $1 for yearly fees, and from $12 to $3 for each triennial fee.

### Real Estate Recovery Fund

(R.C. 4735.12)

The Ohio Real Estate Commission must impose a special assessment of up to $10 on each licensed real estate broker, brokerage, or salesperson who files a notice of license renewal if the amount available in the Real Estate Recovery Fund is less than $1 million on the first day of July preceding the renewal filing. The act lowers that threshold amount to $500,000.

Under law largely retained by the act, any person who obtains a final judgment in any court of competent jurisdiction against any broker or salesperson licensed under the Real Estate Brokers Law, on the grounds of conduct that is in violation of the Real Estate Brokers Law or the rules adopted under it, and that is associated with an act or transaction that only a licensed real estate broker or licensed real estate salesperson is authorized to perform, may file a verified application in any court of common pleas for an order directing payment out of the Real Estate Recovery Fund of the portion of the judgment that remains unpaid and that represents the actual and direct loss sustained by the applicant. The act requires the application to be filed only in the Court of Common Pleas of Franklin County instead of in any court of common pleas.

## Real Estate Appraiser Law

(R.C. 4763.01, 4763.03, 4763.04, 4763.05, 4763.06, 4763.07, 4763.09, and 4763.11)

The Ohio Real Estate Appraiser Law, Chapter 4763. of the Revised Code, establishes the licensing and certification requirements for certified general, certified residential, and state licensed real estate appraisers, and registered real estate appraiser assistants. Ohio law does not require that appraisers be licensed or certified but an appraiser who so elects must adhere to the law's requirements and is subject to disciplinary actions for violations.

The Real Estate Appraiser Board in the Division of Real Estate and Professional Licensing, Department of Commerce, adopts rules that govern the licensing, certification, and registration requirements for appraisers. Prior law directed the Board to periodically review the standards for the preparation and reporting of real estate appraisals, while the act directs the Board to review standards for the development and reporting of appraisal reports. This expansion of the actions over which the Board has responsibility is reflected in the definitions of "appraisal report" and "report" which, under the act, include, in addition "appraisal review" and "appraisal consulting service." "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal, appraisal review, or appraisal consulting assignment. "Appraisal consulting"

means the act or process of developing an analysis, recommendation, or opinion to solve a problem related to real estate.

Former law required the Board to appoint a referee or examiner for any proceeding that involves the revocation or suspension of a certificate, registration, or license. The act instead characterizes the proceeding as a "disciplinary action of a certificate holder, licensee, or registrant."

The act changes the procedures for serving a subpoena upon a witness to testify in a matter. Prior law required a sheriff or constable to serve and return the process. The act enables the service to be made "by constable or by certified mail, return receipt requested." The act also deems the subpoena to have been served on the date delivery is made, or the date the person refuses to accept delivery while prior law was silent on this matter.

An applicant for a license, registration, or certificate was required under former law to submit a fingerprint with the other application materials. The act eliminates this requirement.

The act increases the initial fee for certification and licensure from a maximum of $125 to $175 and increases the fee for a registered appraiser assistant from $50 to $100.

Continuing law retained in part by the act requires every state-certified general real estate appraiser, state-certified residential real estate appraiser, state-licensed residential real estate appraiser, and state-registered real estate appraiser assistant to submit proof of successfully completing a minimum of 14 classroom hours of continuing education instruction in courses or seminars approved by the Board. Additionally, the certificate holder and licensee must have satisfied the 14-hour continuing education requirements within the one-year period immediately following the issuance of the initial certificate or license and must satisfy those requirements annually thereafter. Under former law, if the certificate holder or licensee failed to submit proof to the Superintendent of Real Estate and Professional Licensing of meeting these requirements, the certificate holder's, registrant's, or licensee's certificate or license automatically was suspended. The Superintendent had to notify the certificate holder or licensee of the suspension and if the certificate holder or licensee failed to submit proof to the Superintendent of meeting those requirements within three months from the date of suspension, the Superintendent had to revoke the certificate or license. If a certificate holder or licensee whose certificate or license was revoked desired to be certified or licensed under the Real Estate Appraisers Law the certificate holder or licensee had to apply for an initial certificate or license.

The act removes the automatic suspension and revocation procedures described immediately above and instead states that the individual is ineligible for a renewal certificate or license and requires the individual to satisfy all of the requirements specified under continuing law for the issuance of a certificate or license in order to regain a certificate or license registration, except that the certificate holder or licensee may submit proof to the Superintendent of meeting these requirements within three months after the date of expiration of the certificate or license registration, or by obtaining a medical exception, without having to comply with the initial licensure or certification requirements. Under the act, a certificate holder or licensee registrant may not engage in any activities permitted by the certificate or license during the three-month period following the certificate's or license's normal expiration date or during the time period for which a medical exception applies. The act also applies these provisions to registrants.

An applicant to become a registered real estate appraiser assistant must submit proof of meeting the same continuing education requirements as required for appraisers as described above. The act eliminates this as an initial requirement for assistants, specifying that an assistant who remains in this classification for more than two years must satisfy this requirement only in the third and successive years in that status.

A real estate appraiser who fails to timely renew the appraiser's certificate, registration, or license is entitled to a three-month grace period. If the real estate appraiser does not complete the renewal within that time, it becomes necessary for the appraiser to re-take the real estate appraiser examination. The act retains the three-month grace period and, in the alternative, allows a real estate appraiser to avoid re-taking the examination by obtaining a medical exception, applying for renewal, and paying the renewal and late filing fees.

Under prior law, during the grace period, a real estate appraiser was permitted to continue engaging in real estate appraisal activities. The act prohibits a real estate appraiser from doing so during the grace period or during the time period for which a medical exception applies--and in any event, until the renewal and late filing fees have been paid.

The act authorizes the Superintendent to grant a medical exception to a real estate appraiser. To receive a medical exception, the appraiser must submit a request to the Superintendent together with satisfactory proof that a medical exception is warranted. If the Superintendent determines that satisfactory proof has not been presented, the appraiser, within 15 days after the determination, may request the Real Estate Appraiser Board to review the determination. The Board may adopt reasonable

rules under the Administrative Procedure Act to implement the medical exception provisions of the act.

Continuing law enables a person to file a complaint against a licensed, registered, or certified appraiser with the Superintendent of Real Estate. The act modifies some of the procedures related to filing and investigating complaints. In general, the act eliminates or increases the time specified for various steps in the procedure. It also permits the "informal meeting" to be conducted as an "informal mediation meeting." If a formal hearing is held concerning the complaint, the act requires the hearing examiner to file a report of findings with the Superintendent and other specified persons and allows the subject of the complaint to file a written objection to the hearing examiner's report. The act requires the Board to consider any objections before approving, modifying, or rejecting the examiner's report.

Under continuing law, the Board is allowed to take any disciplinary action the Board considers appropriate after considering a referee's or hearing examiner's report. Continuing law lists actions the Board could take following a disciplinary hearing. The act adds to that list the following options: (1) the imposition of a fine not exceeding $2,500 per violation and (2) a requirement that the appraiser complete additional education courses, which do not count toward continuing requirements or pre-license or pre-certification requirements. The act deletes from that same list of approved actions a suspension of the certificate, registration, or license until the person meets a requirement the board specifies.

The Board is authorized under continuing law to take disciplinary action for specified violations of the law. The act adds the following to the specified violations: (1) the failure to provide copies of records to the Superintendent and (2) a failure to provide notice of a felony or crime of moral turpitude that the act requires. To the records a real estate appraiser is required to maintain, the act adds work file documentation. "Work file" means documentation used during the preparation of an appraisal report or necessary to support an appraiser's analyses, opinions, or conclusions. Additionally, with regard to (1) immediately above, that act states that failure to comply with a subpoena is prima facie evidence of violating the prohibition described in (1) above.

The act expands the following continuing law prohibitions:

- Violation of any of the standards for the development or communication of an appraisal report set forth in the Real Estate Appraiser Law and rules of the Board to include violating the standards for preparing and reporting those reports;

- Negligence or incompetence in developing an appraisal, preparing, or communicating an appraisal report, to include reporting an appraisal report.

Under continuing law a real estate appraiser is required to notify the Real Estate Appraisers Board of a criminal conviction of a felony or a crime of moral turpitude within 15 days after conviction. The act retains this requirement and also requires a real estate appraiser to notify the Board, within 15 days after an agency's issuance of an order revoking or permanently surrendering any professional license, certificate, or registration by any public entity other than the Division of Real Estate.

The act specifies that all notices, written reports, and determinations are to be mailed by certified mail, return receipt requested. If the certified mail notice is returned because of failure of delivery or was unclaimed, the notice, written report, or determination is deemed to have been served if the Superintendent then sends the notice, written report, or determination by regular mail and obtains a certificate of mailing. Refusal of delivery of personal service or mail is not considered to be failure of delivery and service is deemed to have been completed.

Continuing law states that nothing in the Real Estate Appraisers Law precludes a partnership, corporation, or association which employs or retains the services of a certificate holder or licensee to advertise that the partnership, corporation, or association offers state-certified or state-licensed appraisals through a certificate holder or licensee if the advertisement clearly states such fact in accordance with guidelines for such advertisements established by the Board's rule. The act expands this provision to include that a partnership, corporation, or association may engage a licensee or certificate holder and advertise in such a manner. Similarly, under continuing law, every partnership, corporation, or association that employs or retains the services of a person licensed, registered, or certified under the Real Estate Appraisers Law, whether the certificate holder, registrant, or licensee is an independent contractor or under the supervision or control of the partnership, corporation, or association, is jointly and severally liable for any damages incurred by any person as a result of an act or omission concerning a state-certified or state-licensed real estate appraisal prepared or facilitated in the preparation by a certificate holder, registrant, or licensee while employed or retained by the partnership, corporation, or association. The act expands this provision to include that the partnership, corporation, or association is jointly and severally liable for any certificate holder, registrant, or licensee the partnership, corporation, or association engages.

## STATE BOARD OF COSMETOLOGY (COS)

- Makes changes to the requirements for restoring a license issued by the State Board of Cosmetology.
- Increases the fines that the Board may impose for specified offenses including failure to comply with Ohio's law regulating cosmetology.
- Increases from eight to ten the number of daily hours of instruction the Board may consider in determining an applicant's total hours of instruction for licensing purposes.

### Restoration of expired license

(R.C. 4713.63)

Under continuing Cosmetology Licensing Law, a practicing license, managing license, or instructor license expires if it has not been renewed for any reason other than because it has been revoked, suspended, or classified inactive, or because the license holder has been given a waiver or extension. Law retained in part by the act allows an expired license to be restored if the person who held the license pays the restoration fee and all lapsed renewal fees and submits proof that the person has completed all applicable continuing education requirements. Additionally, former law required applicants for a practicing or managing license renewal to retake the licensing examination test if the license had been expired for more than two years.

The act requires the person renewing a license to pay the renewal fee for the current renewal period and any applicable late fees and specifies that those fees in addition to the continuing law's restoration fee, must be paid to the State Board of Cosmetology. The act also specifies that the required lapsed renewal fee is $45 per license renewal period[77] that has elapsed since the license was last issued or renewed. Under the act, the lapsed renewal fee must be deposited into the General Revenue Fund.

[77] A license issued by the State Board of Cosmetology is valid until the last day of January of the odd-numbered year following its original issuance or renewal (R.C. 4713.57, not in the act).

The act removes the requirement that all applicants for license renewal of an expired license complete continuation education requirements.[78] However, the act replaces the former requirement that applicants for practicing or managing licenses that have been expired for more than two years retake and pass the licensing examination with a requirement that those applicants complete continuing education requirements. Under the act, they must complete eight hours of continuing education for each license renewal period that has elapsed since the license was last issued or renewed, up to a maximum of 24 hours. At least four of those hours must include a course pertaining to sanitation and safety methods.

## Fines

(R.C. 4713.64)

Under continuing law, the State Board of Cosmetology may impose a fine for any of the following: (1) failure to comply with the requirements of Ohio's law regulating cosmetology and any rules adopted under it, (2) continued practice by a person knowingly having an infectious or contagious disease, (3) habitual drunkenness or addiction to any habit-forming drug, (4) willful false and fraudulent or deceptive advertising, (5) falsification of any record or application required to be filed with the Board, or (6) failure to pay a fine or abide by a suspension order issued by the Board.

The act increases the fines set forth in former law that the Board may impose from not more than $100 to not more than $500 for a first offense, from not more than $500 to not more than $1,000 for a second offense, and from not more than $1,000 to not more than $1,500 for a third and any additional offenses.

## Cosmetology licensing

(R.C. 4713.32)

Under continuing law, applicants seeking a practicing license, managing license, or instructor license from the State Board of Cosmetology are required to successfully complete a specified amount of hours of instruction. The number of hours required varies depending on the type of license sought and the practice area (e.g., cosmetology, esthetics, hair design, manicuring, or hair styling). (R.C. 4713.28, 4713.30, and 4713.31.) Under former law, the Board could only count eight hours of instruction per day toward the total number of hours when determining whether an applicant has

[78] The act does not remove the ongoing law authority of the State Board of Cosmetology to impose continuing education requirements (R.C. 4713.57, not in the act) in connection with a "regular" license renewal.

accumulated the requisite hours of instruction. Any instruction in excess of eight hours in a single day could not be counted.

The act increases from eight to ten the daily number of hours of instruction that the Board may consider in calculating an applicant's total hours of instruction required for licensure.

## COUNSELOR, SOCIAL WORKER, AND MARRIAGE AND FAMILY THERAPIST BOARD (CSW)

- Requires the Counselor, Social Worker, and Marriage and Family Therapist Board to establish fees for all of the following: (1) verification, to another jurisdiction, of a license or registration the Board has issued, (2) continuing education programs offered by the Board to licensees or registrants, and (3) late renewal of licenses or certificates of registration.
- Permits the appropriate professional standards committee of the Board to impose a fine for any disciplinary violation consistent with a graduated system of fines to be established by the Board in rules.

### New fees

(R.C. 4757.31)

Under continuing law, the Counselor, Social Worker, and Marriage and Family Therapist Board is required to establish, and from time to time may adjust, fees for licensure and renewal of licensure for all of the following: professional clinical counselors, professional counselors, independent social workers, social workers, independent marriage and family therapists, and marriage and family therapists. Similarly, the Board is required to establish, and from time to time may adjust, fees for registration and renewal of registration of social work assistants.

The act requires the Board to establish fees for all of the following: (1) verification, to another jurisdiction, of a license or registration the Board has issued, (2) continuing education programs offered by the Board to licensees or registrants, and (3) late renewal of licenses or certificates of registration. The Board is permitted to adjust the fees from time to time.

### Authority to fine

(R.C. 4757.10 and 4757.36)

Law unchanged by the act authorizes the professional standards committees of the Counselor, Social Worker, and Marriage and Family Therapist Board, in accordance with the Administrative Procedure Act (R.C. Chapter 119.), to take disciplinary action against an individual who has applied for or holds a license or certificate of registration issued by the Board for any of a number of reasons specified in statute. The Board may refuse to issue a license or certificate of registration; suspend, revoke, or otherwise restrict a license or certificate of registration; or reprimand a person holding a license or certificate of registration.

In addition to the disciplinary actions described above, the act authorizes the appropriate professional standards committee of the Board to impose a fine for any disciplinary violation. The fine is to be consistent with a graduated system of fines established by the Board in rules that the act requires the Board to adopt. The system of fines must be based on the scope and severity of violations and the history of compliance, not to exceed $500 per incident. The act requires the Attorney General, on request of the Board, to bring and prosecute to judgment a civil action to collect any fine imposed by a professional standards committee that remains unpaid. All fines must be deposited in the Occupational Licensing and Regulatory Fund.

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## DEPARTMENT OF DEVELOPMENT (DEV)

- Expands the "Appalachian region" represented by the Governor's Office of Appalachian Ohio to include Ashtabula, Mahoning, and Trumbull counties, thereby making those counties eligible for funds from the federal Appalachian Regional Commission.

- Prevents appropriated state funds allocated to pay administrative costs of existing local development districts from being reduced due to the creation of additional development districts and ensures that such allocated funds are increased to match federal Consumer Price Index increases.

- Permits the Director of Development to provide export promotion assistance to Ohio businesses and to organize or support missions to foreign countries to promote the export of Ohio products and services and to encourage direct foreign investment in Ohio.

- Permits the Director to charge fees to businesses receiving export assistance and to participants in foreign missions to recover the direct cost of those activities, and requires those fees to be deposited into the International Trade Cooperative Projects Fund.

- Authorizes the Director to make grants of up to $500,000 from the General Revenue Fund to local governments hosting major sporting events, up to a total of $1 million annually, if estimates of the associated state sales tax increase is at least $250,000.

- Increases from 10 to 11 the number of members on the Development Financing Advisory Council.

- Requires a financial institution to indicate in its certification for each capital access loan made by the financial institution whether the business receiving the loan is a minority business enterprise.

- Requires the Director, upon receipt of a certification indicating that a capital access loan was made to a minority business enterprise, to disburse to the financial institution 80% of the principal amount of the loan from the Capital Access Loan Program Fund, instead of the percentages disbursed for other capital access loans.

- Removes a provision that requires the rules regarding the establishment of procedures for minority businesses applying for surety bonds to provide that a minority business submit documentation, as the Director requires, to demonstrate either that the minority business has been denied a bond by two surety companies or that the minority business has applied to two surety companies for a bond and, at the expiration of 60 days after making the application, has neither received nor been denied a bond.

- Makes a community development corporation eligible for loans under the minority business enterprise loan program if the corporation predominantly benefits minority business enterprises or is located in a census tract that has a population that is 60% or more minority.

- Provides that any amounts received by the state as part of the federal Build America Bond program are not to be included when determining the annual $63 million debt service limit on the repayment of certain obligations with profits from the sale of spirituous liquor.

- Creates a micro-lending program within the Department of Development's R.C. Chapter 166. Direct Loan programs specifically for small business enterprises (PARTIALLY VETOED).

- Creates the Rapid Outreach Loan Fund to be used for making loans, including forgivable loans, and grants for research and development projects and logistics and distribution infrastructure projects.

- Authorizes proceeds from the issuance of Chapter 166. bonds to be used for making loans and grants from the Rapid Outreach Loan Fund.

- Creates the Logistics and Distribution Infrastructure Taxable Bond Fund in the state treasury, and provides that the Fund must be used for allowable costs of eligible logistics and distribution projects.

- Authorizes the Director to develop a program to encourage employers to hire individuals from significantly disadvantaged groups including, but not limited to, individuals who have not graduated from high school, have been convicted of a felony, are disabled, or are chronically unemployed.

- Removes the 6% restriction on the portion of the Low- and Moderate-Income Housing Trust Fund that may be used for permanent and transitional housing and services for the homeless.

- Increases the portion of the Housing Trust Fund that may be used for homeless shelters from 7% to 10%; includes unaccompanied youth shelters as a permissible expenditure in this category.

- Expands the activities that may be funded by the Low- and Moderate- Income housing Trust Fund to include tenant education, tenant organizations, promoting positive interactions with landlords, and initiatives related to creating county trust funds.

- Changes the composition of the Ohio Venture Capital Authority by reducing its membership from nine to three members, who would be appointed by the Governor, one of whom from persons nominated by the President of the Senate and one of whom from persons nominated by the Speaker of the House.

- Authorizes port authorities to issue revenue securities to raise funds to invest in Third Frontier research and development projects through the Ohio Venture Capital Authority.

- Authorizes tax credits for the port authority's bond trustee to cover losses on those investments, to be applied "for the benefit of" the port authority.

- Requires, as a condition of investment of Ohio Venture Capital Authority money in a venture capital fund, that the total amount of OVCA money committed to Ohio-

based businesses by all venture funds is at least equal to the total amount of OVCA funds committed to all venture funds receiving OVCA money.

- Limits total OVCA tax credit authorizations to $380 million.
- Temporarily authorizes the Director to seek and use available federal economic stimulus funds to secure and guarantee loans made for historic rehabilitation projects that are approved for an Ohio historic rehabilitation tax credit.
- Includes compressed air in the definition of alternative fuel for the purpose of making alternative fuel transportation grants to businesses, nonprofit organizations, public schools, and local governments for the purpose of increasing the availability and use of alternative fuels.
- Includes compressed air in the definition of alternative fuel for the purpose of requiring all new motor vehicles acquired by the state for use by state agencies be capable of using alternative fuel.
- Authorizes the Department to make allocations and reallocations with respect to the national recovery zone economic development bond limitation and the national recovery zone facility bond limitation.

## Expansion of "Appalachian region"

(R.C. 107.21)

The Governor's Office of Appalachian Ohio in the Department of Development represents the interests of, and maintains local development districts in, counties within the "Appalachian region" for the purpose of planning for the distribution of funds from the federal Appalachian Regional Commission. The Ohio Appalachian Center for Higher Education also looks out for the Appalachian region--its mission is to increase the educational attainment of the Appalachian region's residents (R.C. 3333.58).

The act adds Ashtabula, Mahoning, and Trumbull counties to the Appalachian region, thereby making those counties eligible for federal funds from the Appalachian Regional Commission, and adding their residents' educational attainment to the purview of the Ohio Appalachian Center for Higher Education.

## Local development districts

(R.C. 107.21)

Under continuing law, local development districts in the Appalachian region are responsible for the regional planning for the distribution of funds received from the Appalachian Regional Commission within the region.

The act provides that the amount of money from appropriated state funds allocated each year to pay administrative costs of existing local development districts cannot be decreased due to the creation and funding of additional local development districts. The act also ensures that the amount of such allocated funds must be increased each year by the average percentage of increase in the federal Consumer Price Index (all urban consumers, U.S. city average, all items) for the prior year.

## Export promotion assistance and foreign investment

(R.C. 122.05 and 122.051)

Under continuing law, the Director of Development is permitted to engage in various activities to encourage, promote, and assist trade and commerce between Ohio and foreign nations, including establishing offices in foreign countries and entering into contracts with foreign nationals. The act expands this authority by permitting the Director to provide export promotion assistance to Ohio businesses and to organize or support missions to foreign countries to promote export of Ohio products and services and to encourage foreign direct investment in Ohio.

The act authorizes the Director to charge fees to businesses receiving export assistance and to participants in foreign missions that are sufficient to recover the direct costs of those activities. Fees charged under this provision must be deposited into the International Trade Cooperative Projects Fund. The Director must adopt, as an internal management rule, a procedure for setting the fees and a schedule of fees for services commonly provided by the Department. The procedure must require the Director to annually review the established fees.

## State subsidy for hosting sports events

(R.C. 122.12 and 122.121)

The act authorizes the Director of Development to make grants of General Revenue Fund money to counties or municipal corporations hosting major sporting events (specified below), beginning July 1, 2011. The grant amount is to be "based on" the increased state sales tax revenue directly attributable to the preparation for and

presentation of the event, as determined by the Director. Grants are available only if the increased state sales tax revenue is estimated to be greater than $250,000. No individual grant may exceed $500,000, and the total of all grants in any fiscal year may not exceed $1 million.

The games that qualify for grants are the following: National Football League "Super Bowl," World Cup soccer matches, NCAA championship game, NCAA football Bowl Championship Series games, all-star games of the National Basketball Association, National Hockey League, or Major League Baseball, the National Senior Games, and the Olympic Games. In order to apply for a grant, a county or municipal corporation ("endorsing" county or municipality) must contain a site that may be selected as a site for such an event by the corresponding organization ("site selection organization") and must have entered into a "joinder undertaking" with the organization. A joinder undertaking is a preliminary agreement that the parties will enter into a subsequent "joinder agreement" if the site selection organization selects the county or municipal corporation for the game site. The joinder agreement sets forth "representations and assurances by the endorsing municipality or endorsing county in connection with" the site selection. Combinations of counties and municipal corporations may be parties to joinder undertakings and agreements.

To obtain a grant, an endorsing county or municipality must apply to the Director of Development and must certify information to be used by the Director to estimate the increased state sales tax attributable to the game. The information may include historical attendance and ticket sales for the game, income statements showing revenue and expenditures for the game in prior years, attendance capacity at the proposed venues, event budget at the proposed venues, and projected lodging room nights based on historical attendance, attendance capacity at the proposed venues, and duration of the game and related activities.

In estimating the increased state sales tax revenue attributable to the event, the Director must consider the increase for a two-week period within a "market area," which is a geographic area designated by the Director, in consultation with the Tax Commissioner, where there is "a reasonable likelihood of measurable economic impact directly attributable to the preparation for and presentation of the game and related events, including areas likely to provide venues, accommodations, and services in connection with the game." The endorsing municipality or endorsing county that has been selected as the site for a game must be included in a market area. The two-week period ends on the day after the game is held. The Director's estimate is to be based on the information and the copy of the joinder undertaking provided to the Director by the county or municipal corporation or by a local organizing committee (see below).

If the Director of Development approves an application, and the applicant enters into a joinder agreement, the applicant county or municipality must file a copy of the agreement with the Director. The Director then must notify the Director of Budget and Management, who must establish a schedule for disbursing the grant from the General Revenue Fund.

The act requires the endorsing county or municipality to report to the Director of Development on the economic impact of the game. The report must be filed within 60 days after the game, and must include any information the Director requires, including, at least, a final income statement showing total revenue and expenditures and revenue and expenditures in the market area for the game and ticket sales. On the basis of the report and the "exercise of reasonable judgment," the Director must determine the incremental increase in state sales tax directly attributable to the game. If the actual incremental increase is less than the estimated increase, the Director is authorized to require the endorsing county or municipality to refund all or a portion of the grant.

The act also requires the endorsing county or municipality or a local organizing committee to provide information required by the Director of Development and Tax Commissioner, including annual audited statements of any financial records required by a site selection organization, and data obtained by the county or municipal corporation or the local organizing committee relating to the game's attendance and economic impact. The Director and Tax Commissioner also may require them to provide an annual audited financial statement within four months after the closing date of the financial statement. (A local organizing committee is defined as an organization that an endorsing county or municipal corporation authorizes to pursue and bid on selection of the county or municipal corporation as the site of a game, or that executes an agreement with a site selection organization regarding a bid to host a game.)

The act prohibits disbursement of a grant if the Director of Development determines that the money would be used to solicit the relocation of a professional sports franchise within Ohio. The act also states that the grant provision does not create or require the state's guarantee of any obligation undertaken by a county or municipal corporation under a "game support contract" (i.e., a joinder undertaking, joinder agreement, or similar agreement) or other agreement related to hosting a game.

## Development Financing Advisory Council

(R.C. 122.40)

The Development Financing Advisory Council makes recommendations to the Director of Development and advises the Director regarding various economic development programs, including the purchase and improvement of property for

industrial, commercial, distribution, or research facilities and the Capital Access Loan Program.

Under prior law, the Council was comprised of ten members: seven members appointed by the Governor, one member of the House of Representatives, one member of the Senate, and the Director of Development, or the Director's designee. The act increases the membership of the Council from 10 to 11, by adding an eighth member appointed by the Governor.

### Capital access loans for minority business enterprises

(R.C. 122.603)

The Capital Access Loan Program assists participating financial institutions in making program loans to eligible businesses that face barriers in accessing working capital and in obtaining fixed asset financing. Under the Program, the Department of Development disburses moneys from the Capital Access Loan Program Fund to a financial institution's program reserve account after the financial institution makes a capital access loan to an eligible business.

When a financial institution makes a capital access loan, the financial institution certifies to the Director of Development that the participating financial institution has made the loan. The certification includes the loan amount, the amount of fees paid on the loan, the amount of its own funds that the financial institution deposited into its program reserve account to reflect the fees, and other information specified by the Director. The act requires the certification also to indicate whether the eligible business receiving the capital access loan is a minority business enterprise.

Generally, upon receipt of the first three certifications from a participating financial institution, the Director must disburse to the financial institution, from the Capital Access Loan Program Fund, an amount equal to 50% of the principal amount of the capital access loan for deposit into the financial institution's program reserve account. Thereafter, upon receipt of a certification from that financial institution, the Director must disburse to the financial institution, from the fund, an amount equal to 10% of the principal amount of the capital access loan.

The act generally retains these provisions but establishes a different disbursement percentage with respect to capital access loans that are made to minority business enterprises. It requires the Director to disburse 80% of the principal amount of a capital access loan to a financial institution, if the financial institution made the capital access loan to an eligible business that is a minority business enterprise.

## Rules for application by minority business for a bond

(R.C. 122.89)

Under continuing law the Director of Development can execute bonds as surety for minority businesses as principals, on contracts with the state, any political subdivision or instrumentality thereof, or any person as the obligee. The Director, with the advice of the Minority Development Financing Advisory Board, must adopt rules under the Administrative Procedure Act establishing procedures for application for surety bonds by minority businesses and for review and approval of applications. Prior law required the rules of the Board to provide that a minority business, in order to make an application for a bond to the Director, must submit documentation, as the Director requires, to demonstrate either that the minority business has been denied a bond by two surety companies or that the minority business has applied to two surety companies for a bond and, at the expiration of 60 days after making the application, has neither received nor been denied a bond. The act removes this requirement.

## Community development corporations--Minority Business Enterprise Loan Program

(R.C. 122.71, 122.751, and 122.76)

Under continuing law, the Director of Development, with Controlling Board approval, can lend funds to minority business enterprises and to community improvement corporations, Ohio development corporations, minority contractors business assistance organizations, and minority business supplier development councils for the purpose of loaning funds to minority business enterprises and for the purpose of procuring or improving real or personal property, or both, for the establishment, location, or expansion of industrial, distribution, commercial, or research facilities in Ohio, if the Director determines, in the Director's sole discretion, that all of the following apply:

(1) The project is economically sound and will benefit the people of Ohio by increasing opportunities for employment, by strengthening the economy of Ohio, or expanding minority business enterprises.

(2) The proposed minority business enterprise borrower is unable to finance the proposed project through ordinary financial channels at comparable terms.

(3) The value of the project is or, upon completion, will be at least equal to the total amount of the money expended in the procurement or improvement of the project, and one or more financial institutions or other governmental entities have loaned not less than 30% of that amount.

(4) The amount to be loaned by the Director will not exceed 60% of the total amount expended in the procurement or improvement of the project.

(5) The amount to be loaned by the Director will be adequately secured by a first or second mortgage upon the project or by mortgages, leases, liens, assignments, or pledges on or of other property or contracts as the Director requires, and the mortgage will not be subordinate to any other liens or mortgages except the liens securing loans or investments made by the financial institutions referred to above, and the liens securing loans previously made by any financial institution in connection with the procurement or expansion of all or part of a project.

A loan applicant must not be considered until after a certification by the equal employment opportunity coordinator of the Department of Administrative Services that the applicant is a minority business enterprise, or after a certification by the Minority Business Supplier Development Council that the applicant is a minority business, and that the applicant satisfies all criteria regarding eligibility for assistance.

The act expands eligibility for loans under the minority business enterprise loan program to a community development corporation[79] that predominantly benefits minority business enterprises or is located in a census tract that has a population that is 60% or more minority. The act also specifies that the application of a community development corporation for a loan must not be considered until after a determination that the applicant is indeed a community development corporation.

### Disposition of Build American Bond payments related to liquor profit debt service

(R.C. 166.11)

Continuing law prohibits the repayment of certain development and energy-related obligations with profits from the sale of spirituous liquor in excess of $63 million in any fiscal year. The act provides that amounts received in any fiscal year under the Build America Bond program must not be included when determining the $63 million limit. The Build America Bond program is a program authorized under the federal American Recovery and Reinvestment Act of 2009 to allow state and local governments

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[79] A "community development corporation" is a nonprofit corporation that consists of residents of the community and business and civic leaders and that has as a principal purpose one or more of the following: the revitalization and development of a low- to moderate-income neighborhood or community; the creation of jobs for low- to moderate-income residents; the development of commercial facilities and services; providing training, technical assistance, and financial assistance to small businesses; and planning, developing, or managing low-income housing or other community development activities. (R.C. 122.71(K).)

to issue taxable bonds in 2009 and 2010 for eligible projects and to receive a payment from the federal government to defray a portion of the borrowing costs (*see* 26 U.S.C. 6431).

## Micro-lending Program (PARTIALLY VETOED)

(R.C. 166.07(C))

Continuing law authorizes the Department of Development to lend money at below-market rates to businesses to assist them in acquiring nonretail facilities and equipment (among other "allowable costs"). Lending is from the Facilities Establishment Fund, which is funded primarily from constitutionally authorized state bond issuances. Among the criteria for obtaining a loan are the number of jobs to be created or preserved, the payroll, and the state and local taxes generated. (R.C. 166.05(A)(1)(a) and (b).) Loans are subject to minimum collateral and equity requirements and minimum ratios of jobs-to-loan amount. Application fees, processing fees, and servicing fees are charged.

The act requires the Director of Development to make loans (or to arrange for others to make loans) to "small" businesses from any amount designated for that purpose by the General Assembly. The Director is required to establish eligibility criteria and loan terms that supplement preexisting eligibility criteria and loan terms, and the Director may prescribe reduced fees. The act directs the Director to give precedence to projects "that foster the development of small entrepreneurial enterprises," notwithstanding the preexisting job creation/retention, payroll, and tax generation considerations to the extent those considerations otherwise may disqualify small businesses' projects from the preexisting loan program.

The Governor vetoed the act's requirement that the loans be made from money the General Assembly designates specifically from the Facilities Establishment Fund.

## Rapid outreach loans

(R.C. 166.22)

Under continuing law, obligations may be issued to provide money for economic development under Chapter 166. of the Revised Code. The proceeds of the issuance may be used for research and development projects and logistics and distribution infrastructure development projects. The act creates the Rapid Outreach Loan Fund to be used for making loans, including forgivable loans, and grants for such projects.

The act authorizes the Director of Development, with the approval of the Controlling Board, to make loans and grants from the fund for research and

development and logistics and distribution infrastructure projects, including discretion to decide whether a loan can be forgiven or must be repaid. To receive a rapid outreach loan or grant, a project must be economically sound, and the amount of the loan or grant must be reasonable in light of the scope of the project. The Director is authorized to establish fees, charges, interest rates, times for payment of principal and interest, and other terms and conditions of loans and grants.

The act authorizes the proceeds from the issuance of bonds issued under existing law to be used for making loans from the Rapid Outreach Loan Fund, which will also consist of money appropriated to the fund and transferred to the fund from the Research and Development Loan Fund, the Logistics and Distribution Infrastructure Fund, the repayment of loans and grants, and the recovery of loan guarantees and grants made from the fund.

## Logistics and Distribution Infrastructure Taxable Bond Fund

(R.C. 166.08, 166.25, and 166.28)

The act creates the Logistics and Distribution Infrastructure Taxable Bond Fund in the state treasury. Money in the Fund must be used to pay or make loans for allowable costs of eligible logistics and distribution projects.[80] The Fund is to consist of the following:

(1) Grants, gifts, and contributions of money or rights to money lawfully designated for or deposited into the Fund;

(2) All money and rights to money lawfully appropriated and transferred to the Fund, including money received from the issuance of federally taxable obligations;

(3) Money received from the repayment of loans and recovery on loan guarantees, including any interest, made from the Fund.

Investment earnings on the cash balance of the Fund must be credited to the Fund. The Fund may not be comprised, in any part, of money raised by taxation.

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[80] Continuing law defines "eligible logistics and distribution projects" as eligible projects, including project facilities, which are to be acquired, established, expanded, remodeled, rehabilitated, or modernized for transportation logistics and distribution infrastructure purposes. Continuing law defines "transportation logistics and distribution infrastructure purposes" as promoting, providing for, and enabling improvements of ground, air, and water transportation infrastructure comprising Ohio's transportation system--which includes Ohio highways, streets, roads, bridges, railroads carrying freight, and air and water ports and port facilities, and all related facilities. (R.C. 166.01(Y).)

The act authorizes the Director of Development, subject to the approval of the Controlling Board and all other applicable limitations of the law governing economic development programs, to lend money in the Logistics Distribution and Infrastructure Taxable Bond Fund to pay for allowable costs of eligible logistics and distribution projects.

### Duties of Director of Development

(R.C. 166.02)

Continuing law provides that expenses and obligations incurred by the Director of Development when carrying out official duties must be paid solely from certain funds of the state, including the Facilities Establishment Fund, the Innovation Ohio Loan Guarantee Fund, and the Logistics and Distribution Infrastructure Fund. The act adds the Logistics and Distribution Infrastructure Taxable Bond Fund to the list of funds from which the Director may pay relevant expenses and obligations.

## Department of Development program to encourage businesses to hire individuals from significantly disadvantaged groups

(R.C. 122.042)

The act authorizes the Director of Development to found an employment opportunity program that encourages employers to employ individuals who are members of significantly disadvantaged groups. The act cites, as examples of significantly disadvantaged groups, groups of individuals who have not graduated from high school, who have been convicted of a crime, who are disabled, or who are chronically unemployed, usually for more than 18 months. If the Director intends to found such an employment opportunity program, the Director must adopt, and thereafter may amend or rescind, rules under the Administrative Procedure Act to found, and to operate, maintain, and improve, the program. In the rules the Director must:

- Construct, and as changing circumstances indicate, re-construct, procedures according to which significantly disadvantaged groups are identified as such, an individual is identified as being a member of a significantly disadvantaged group, and an employer is identified as being a potential employer of such an individual.

- Describe, and as experience indicates, re-describe, the kinds of evidence that must be considered to identify significantly disadvantaged groups, the kinds of evidence an individual must offer to prove that the individual is a member of such a group, and the kinds of evidence an employer must

offer to prove that the employer is a potential employer of an individual who is a member of such a group.

- Specify, and as experience indicates, re-specify, strategies and tactics for connecting individuals who are members of significantly disadvantaged groups with potential employers of members of those groups.

- Construct, describe, specify, define, and prescribe any other thing that is necessary and proper for the founding, and for the successful and efficient operation, maintenance, and improvement, of the employment opportunity program.

In founding, and in operating, maintaining, and improving, the employment opportunity program under these rules, the Director must proceed so that the resulting program functions as a coherent, efficient system for improving employment opportunities for significantly disadvantaged groups.

### Low- and Moderate-Income Housing Trust Fund

(R.C. 173.08, 174.02, 174.03, and 174.06)

The Low- and Moderate-Income Housing Trust Fund is a fund the Department of Development administers for housing programs in the Department of Development and the Ohio Housing Finance Agency. Continuing law places restrictions on the portion of the fund that may be used for different categories of expenditures.

The act removes the restriction on the portion of the fund that may be used for permanent and transitional housing and services for the homeless. Prior law limited this category of expenditure to not more than 6% of any current year appropriation authority.

The act increases from 7% to 10% the portion of the fund's current year appropriation that may be used for emergency shelter housing for the homeless, and expands the types of shelters that may be funded from that category by adding shelters serving unaccompanied youth 17 years of age and younger. Such youth shelters are a permitted expenditure under ongoing law, but located in another section of the Revised Code. The act removes the spending authority from that section.

The act expands the purposes for funds to include (1) efforts aimed at improving the quality of life of tenants by tenant education with respect to their rights and responsibilities, planning and implementing activities designed to improve conflict resolution and mediation with landlords, and developing tenant councils and

organizations, and (2) promoting capacity building initiatives related to the creation of county trust funds.

## Venture Capital Authority tax credits

Continuing law establishes the Ohio Venture Capital Authority, a state agency, to administer the Ohio Venture Capital Program, the purpose of which is to increase the amount of private investment capital available in Ohio for Ohio-based businesses in the "seed" or early stages of business development and established Ohio-based businesses developing new methods or technologies. The Authority's principal function is to develop a lending and investment policy for the investment of private capital in private, for-profit venture capital funds and similar investment vehicles, primarily Ohio-based, that invest at least 50% of their program fund money in Ohio-based businesses. The Authority's exercise of its powers and duties is designated by law as an essential state governmental function, and the Authority is subject to all laws generally applicable to state agencies and public officials, with certain exceptions. Its investment policy must include provision of security against program fund investors' investment losses, either directly from program fund money or tax credits against the insurance premiums franchise tax, the financial institutions franchise tax, the dealers in intangibles tax, and the personal income tax.

The Authority is charged with hiring one or two private, for-profit investment companies to execute the investment policy and to serve as the program administrator.

### Composition of Authority

(R.C. 150.03)

The act changes the composition of the Ohio Venture Capital Authority by reducing its membership to three members, beginning February 1, 2010. One member is to be appointed directly by the Governor. One of the other two members is to be appointed by the Governor from a list of three persons nominated by the President of the Senate, and the other member is to be appointed by the Governor from a list of three persons nominated by the Speaker of the House. If the Governor rejects all nominees on either list, the President or the Speaker must provide another list of three nominees. The Tax Commissioner and the Director of Development will no longer be ex-officio, nonvoting members, but they are required to serve as advisors to the Authority. The terms of the existing nine members expire January 31, 2010. The terms of the three new members are four years each, but initially are staggered so that one member's initial term is two years, one member's is three years, and the third member's is four years.

### Investment purposes

(R.C. 150.01)

Under continuing law, money in the Venture Capital "program fund" is invested in venture capital funds, which in turn invest in businesses that are in seed or early stages of development or in established businesses that are developing new methods or technologies. The Program Fund consists of money lent to it, presumably by taxpayers in expectation of security against any losses incurred from investment of the money in venture capital funds.

The act specifies that OVC Program Funds money may be used for the "research and development" purposes of Section 2p, Article VIII, Ohio Constitution (otherwise known as the "Third Frontier" program), which authorizes the use of state general obligation bond proceeds for, among other economic development purposes, "research and product innovation, development, and commercialization through efforts by and collaboration among Ohio business and industry, state and local public entities and agencies, public and private education institutions, or research organizations and institutions . . . ."

### Maximum tax credit issuance

(R.C. 150.07(D))

The act imposes a $380 million limit on the total amount of venture capital tax credits that may be authorized. The act retains the existing $20 million annual limit.

### Port authority bond funding of Third Frontier through OVC Program

(R.C. 150.01, 150.02, 150.04, 150.07, and 4582.71)

The act authorizes port authorities to use their bond issuing authority to raise funds to invest in the OVC Program Fund, which, in turn, would invest the money to fund research and development costs under the "Third Frontier" program. The application of the bond proceeds to this purpose would be subject to an agreement between the port authority (i.e., the "issuer") and the Venture Capital Authority. A trustee engaged by the port authority would be authorized to claim any tax credits "for the benefit of" the port authority to cover any investment losses or to restore reserves that may be used to cover losses. The trustee would have to be a trust company or a bank with corporate trust powers that has a place of business in Ohio and that is subject to any of the following taxes at the time it claims and receives an OVC tax credit: the income tax, corporation franchise tax (as a financial institution), the insurance company tax, the dealers in intangibles tax, public utility excise or property tax, kilowatt-hour

tax, or natural gas distribution tax.[81] Tax credits could not be used to establish reserves against losses, or to fund a reserve established with respect to a loan that has not experienced a loss.

The act "authorizes" the General Assembly to modify or repeal any of the taxes against which the OVC tax credits may be claimed, provided that the General Assembly permits OVC tax credits to be claimed against any other tax. But if the port authority bonds are outstanding when any such modification or repeal occurs, and the modification or repeal impairs any covenant that had been made regarding reserves against losses maintained with the trustee, the act requires the state to provide "other security to the extent necessary to avoid or offset the impairment."

The act specifies a sunset date for credits arising from losses on investment of port authority bond proceeds: such credits must be claimed by June 30, 2036. The act defers the first day such credits may be claimed until July 1, 2012. The act retains the existing June 30, 2026, sunset date for OVC credits not related to port authority bond-financed OVC investments.

More than one port authority may jointly exercise the authority granted to port authorities under the act.

### Investment policy

(R.C. 150.03)

Under continuing law, the OVC Authority is required to maintain a written investment policy for the OVC Program that complies with a number of requirements governing, among other things, the concentration of investments in Ohio-based venture capital funds, Ohio-based businesses, and any single fund, as follows:

(1) At least 75% of Program Fund money must be invested in Ohio-based venture capital funds.

(2) At least 50% of OVC Program Fund money invested in a venture capital fund must be invested by the fund in "Ohio-based business enterprises" (i.e., businesses that employ at least one individual in Ohio on a full-time or part-time basis).

(3) The amount of Program Fund money invested in any single venture capital fund, when combined with Program Fund money invested in any other fund under the

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[81] Although the act requires the trustee to be subject to one of those taxes when it claims and receives a tax credit, the act elsewhere states that a trustee is not required to file any tax return for any purpose other than to claim the credit if the trustee is not otherwise required to file a return. (R.C. 150.07(E).)

same management, may not exceed the lesser of the following: (a) $10 million or (b) 50% of the capital invested in the fund (if the fund is an Ohio-based fund) or 20% of the capital invested in the fund (in the case of any non-Ohio-based fund).

The act modifies the investment policy by setting a floor on the amount of Program Fund money that must be invested in Ohio-based businesses by venture capital funds relative to the amount of Program Fund money invested in those funds. At the time an initial investment is committed to a venture capital fund, the total amount invested in Ohio-based businesses by all venture capital funds receiving Program Fund money must be at least equal to the amount of Program Fund money invested in those funds.

### Reporting

(R.C. 150.07(A))

The act requires each OVC program administrator to estimate the amount of tax credits that are likely to be claimed in the current and succeeding fiscal year and to provide the estimate to the OVC Authority at the same time the administrator is required to file the annual audit with the Authority.

## Loan guarantees for historic rehabilitation projects

(Section 521.90)

The act authorizes the Director of Development to try to obtain up to $75 million in federal economic stimulus funds and to make the funds available to secure and guarantee loans made for historic building rehabilitation projects that have been approved for an Ohio historic rehabilitation tax credit (see R.C. 149.311). The federal funds would be any funds available under the federal American Recovery and Reinvestment Act of 2009 or any other federal source of money that may lawfully be applied to that purpose. Any such funds obtained by the Director must be credited to the Ohio Historic Preservation Tax Credit Fund created by the act.

The Director must enter into loan guarantee contracts under the same general provisions governing Chapter 166 loan guarantees (R.C. 166.06, as authorized by Section 13, Article VIII, Ohio Constitution), except that the guarantee is secured solely by money in the Ohio Historic Preservation Tax Credit Fund instead of the existing Chapter 166 Loan Guarantee Fund. The loan guarantee amount for any project may not exceed the tax credit amount. Rehabilitation projects approved in the first round of rehabilitation tax credit awards would have first priority for loan guarantees.

As an uncodified provision of law, the authority expires at the end of the FY 2010-FY 2011 biennium, as provided in Section 809.10 of the act.

## Compressed air included in the definition of alternative fuel

### Alternative Fuel Transportation Grant Program

(R.C. 122.075)

Continuing law establishes various programs encouraging the use of alternative fuels. The Alternative Fuel Transportation Grant Program permits the Director of Development to make grants to businesses, nonprofit organizations, public school systems, or local governments for the following purposes in order to increase the availability and use of alternative fuel:

- Purchase and installation of alternative fuel refueling or distribution facilities and terminals;
- Purchase and use of alternative fuel;
- Pay the costs of education and promotional materials and activities intended for prospective alternative fuel consumers, fuel marketers, and others.

As used in the Alternative Fuel Transportation Grant Program, "alternative fuel" previously was defined to include only blended biodiesel or blended gasoline. The act expands the definition of alternative fuel also to include compressed air used in air-compression driven engines. Thus, under the act, grants may be awarded to businesses, nonprofit organizations, public school systems, or local governments in order to increase the availability and use of compressed air as an alternative fuel.

### State vehicles capable of using alternative fuel

(R.C. 125.831)

Continuing law requires all new motor vehicles acquired by the state for the use of state agencies to be capable of using alternative fuels. "Alternative fuel" previously was defined to include E85 blend fuel; blended biodiesel; natural gas; liquefied petroleum gas; hydrogen; any power source, including electricity; or any fuel that the United States Department of Energy determines to be substantially not petroleum and that would yield substantial energy security and environmental benefits.

The act generally retains these provisions and adds compressed air to the list of alternative fuels that new state vehicles may use.

## Allocation of National Recovery Zone Bond Limitations

(R.C. 122.011)

The act authorizes the Department of Development, pursuant to federal law, to (1) allocate, among the counties and large municipalities, the portion of the national recovery zone economic development bond limitation and the national recovery zone facility bond limitation that has been allocated to Ohio, and (2) reallocate any such allocated amounts that are waived by counties or municipal corporations.

A "recovery zone economic development bond" is a bond wherein the proceeds are used to promote development or other economic activity in a recovery zone, including capital expenditures for property, expenditures for public infrastructure and construction of public facilities, and expenditures for job training and educational programs. A "recovery zone facility bond" is a bond wherein the proceeds are used for recovery zone property. "Recovery zone" includes any area designated as such due to general and economic distress or because of certain efforts at revitalization in the area. Federal law establishes national limitations on the amount of such bonds that are entitled to federal tax benefits and allocates a portion of the national limit to each state.

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# DEPARTMENT OF EDUCATION (EDU)

## I. State Funding for Primary and Secondary Education

### City, local, and exempted village school districts

- Establishes a new school funding method that calculates an "adequacy amount" for each city, local, and exempted village school district.
- Allows school districts to use state education funds that are not allocated for another purpose for the modification or purchase of classroom space to provide all-day kindergarten or to reduce class sizes in grades K to 3.
- States that the act's school funding provisions neither (1) prohibit school districts, community schools, or STEM schools from using state funds to contract for services from educational service centers nor (2) prohibit school districts from using state funds to establish, operate, or participate in joint or cooperative programs with each other.

### Spending accountability for school districts

- Requires each city, local, and exempted village school district to submit to the Department of Education a spending plan for its state funds.
- Beginning in fiscal year 2011, requires school districts with graduation rates of 80% or less (1) to obtain approval of certain components of their spending plans from the Department and the Governor's Closing the Achievement Gap Initiative and (2) to create and staff the position of "linkage coordinator" to serve as mentor and service coordinator for students at risk of not graduating, and directs the Governor's Closing the Achievement Gap Initiative to work with school districts in fiscal year 2010 to assist them in planning for implementation of these provisions.
- Requires the Department annually to reconcile each district's spending plan with its actual spending.
- Requires the Superintendent of Public Instruction to adopt three classes of rules prescribing spending and reporting requirements for components of the new school funding model: (1) core academic strategies, (2) academic improvement, and (3) other funded components.
- Sets specific spending requirements for the use of gifted education funding by school districts and educational service centers.
- Prescribes graduated sanctions the Department must take against a school district that fails to comply with the state Superintendent's spending and reporting rules or fails to submit a spending plan, but stipulates that none of the actions may be applied before July 1, 2011, at the earliest.
- Permits school districts to apply to the Superintendent of Public Instruction for a waiver of the state Superintendent's spending and reporting rules or the State Board of Education's new state operating standards.
- Requires the Department to develop the "Formula ACcountability and Transparency" form, or "FACT" form, to provide to the public a comparison of a district's funded components with its spending plan.
- Renames the "SF-3" form developed by the Department to report each school district's operating funding as the "PASS" ("PAthway to Student Success") form.

## Ohio School Funding Advisory Council

- Establishes the Ohio School Funding Advisory Council to submit biennial recommendations for revisions to the components of the adequacy amount calculation.

- Requires the Ohio School Funding Advisory Council, by December 1, 2010, to make recommendations for (1) a student-centered evidence-based model for schools that uses a per pupil level of funding to follow a student to the school that best meets the student's individual learning needs, (2) revisions to career-technical education programming and funding, (3) a new regional service delivery system, the educational service system governance structure, and accountability metrics for educational service centers, (4) changes to the systems of teacher compensation and retirement, (5) whether and how community schools and STEM schools should be made subject to the school funding expenditure and reporting standards adopted by the state Superintendent, and (6) the equity of open enrollment policy and financing for students and school districts.

- Establishes a subcommittee of the Ohio School Funding Advisory Council to provide recommendations for fostering collaboration between school districts and community schools, and permits the council to establish other subcommittees and appoint some non-council members to them.

## Creative learning environment classrooms

- Establishes a 21-member "Harmon Commission" to review applications for and designate classrooms operated by school districts and community schools as creative learning environments.

- Requires the Department of Education to provide staff to assist the Harmon Commission.

- Authorizes each city, exempted village, or local school district, and each community school that has a memorandum of understanding with one or more school districts that specifies a collaborative agreement, to apply to the Harmon Commission for designation of one or more classrooms as creative learning environments.

- Permits the Department to accept gifts, devises, or bequests of money, lands, or other properties for the Harmon Commission.

- Permits the Harmon Commission, beginning in fiscal year 2011, to award grants or stipends to school districts and community schools that have classrooms designated as creative learning environments.

### Joint vocational school districts

- Sets the payment for each joint vocational school district for fiscal years 2010 and 2011 at ¾ of 1% more than the previous year's amount.

### Community school and STEM school payments

- For deductions and payments for community school and STEM school students, sets the formula amount at $5,718 for fiscal year 2010 and $5,703 for fiscal year 2011, except for deductions and payments for special education and vocational education.

- For special education and vocational education deductions and payments for community school and STEM school students, specifies that those amounts be computed by multiplying the respective fiscal year 2009 weight times $5,732.

### Open enrollment and PSEO payments

- For deductions and payments for interdistrict open enrollment and Post-Secondary Enrollment Options Program students, sets the formula amount at $5,732 for both fiscal years 2010 and 2011.

### Ed Choice scholarships

- Increases from $2,700 to $5,200 the annual deduction of state funds from school districts' accounts for kindergartners receiving Ed Choice scholarships.

- Would have prescribed permanent Ed Choice maximum scholarship amounts of $4,500 for grades K to 8 and $5,300 for grades 9 to 12 for FY 2010 and thereafter (VETOED). The veto appears to have the effect of reducing and permanently setting the maximum scholarship amount at $4,250 for grades K to 8 and $5,000 for grades 9 to 12.

### Other funding provisions

- Specifies that school districts must spend portions of their federal stimulus funds on services for students in nonpublic schools, as prescribed by federal law.

- Authorizes the Superintendent of Public Instruction and the Chancellor of the Ohio Board of Regents jointly to adopt rules allowing school districts, community schools, STEM schools, and nonpublic schools to enter into alternative funding options to pay colleges and universities for high school students taking college courses through Post-Secondary Enrollment Options programs, including Seniors to Sophomores.

- Prohibits all school districts from charging students who are eligible for free lunch programs any fees for materials necessary to participate in a course of instruction,

instead of prohibiting only districts receiving poverty-based assistance (paid under prior law) from charging such fees to students from families receiving Ohio Works First or state disability assistance as under prior law.

- Requires school districts that owe tuition for a regular education student housed in a residential facility to pay an amount determined by a formula approved by the Department of Education, if the student (1) resides in a facility that is not a foster home or a facility maintained by the Department of Youth Services and (2) receives educational services at the facility from a school district under contract with the facility to provide those services.
- Specifies that a school district for which a reduction was made in its reported formula ADM for FY 2005 based on community school enrollment reports and, accordingly, for which state funding was reduced for FY 2005, 2006, or 2007, does not have a legal right to reimbursement for the reduced funding except as expressly provided in a final court judgment or in a settlement agreement executed on or before June 1, 2009.
- Increases to $325 (from $300 under prior law) the maximum per pupil amount for reimbursement of chartered nonpublic school administrative costs.

## II. Academic Standards and Assessments

### Minimum standards for schools

- Specifies that the State Board of Education's minimum standards for public schools must require that instructional and library materials be aligned with the statewide academic content standards.
- Requires the State Board to adopt minimum operating standards for school districts.
- Specifies that the minimum school district operating standards override any conflicting provisions of a collective bargaining agreement between a district and its employees.
- Modifies the requirement for the State Board to develop a standard for school districts and educational service centers (ESCs) to report financial information to the public by (1) requiring districts and ESCs to report revenues and expenditures by school building, and (2) eliminating a requirement that the reporting format include year-to-year comparisons of budgets over a five-year period.

- Allows a school district to request a waiver from the financial reporting standard or any of the State Board's minimum standards for public schools or operating standards for districts.

### Academic standards and model curricula

- Requires the State Board of Education, by June 30, 2010, and every five years thereafter, to revise the statewide academic standards for grades K to 12 in English language arts, math, science, and social studies.

- Requires the State Board, by March 31, 2011, to update the model curricula for the core subject areas based on the revised academic standards.

- Requires the Superintendent of Public Instruction to present the revised academic standards and model curricula in the core subject areas to the House and Senate education committees at least 45 days prior to the deadline for their adoption.

- Directs the State Board (1) to revise the academic standards and model curricula for grades K to 12 in fine arts and foreign language, (2) to revise the standards and curricula in computer literacy and to expand them to cover grades K to 12 (instead of grades 3 to 12, as in prior law), and (3) to adopt standards and curricula for grades K to 12 in the new area of financial literacy and entrepreneurship.

- Requires the State Board to periodically update its physical education standards.

- Requires the State Board to convene a committee by September 15, 2009, to provide guidance in the design of the updated academic standards and model curricula.

### Achievement assessments

- Renames the state achievement tests as "achievement assessments."

- Combines the elementary-level reading and writing achievement assessments and diagnostic assessments into the single subject of English language arts, but delays administration of the combined achievement assessments until a date designated by the State Board of Education.

- Reduces the number of scoring levels on the achievement assessments from five to three once the new English language arts achievement assessments are developed.

- Transfers authority for designating dates for administration of the achievement assessments from the State Board of Education to the Superintendent of Public Instruction.

- Eliminates a prohibition on administering the elementary achievement assessments before Monday of the week of April 24 and the Ohio Graduation Tests (OGT) to tenth graders before Monday of the week of March 15.

- Eliminates a requirement that the elementary achievement assessments be given over a two-week period.

- Repeals the following provisions: (1) authority to administer an achievement assessment to limited English proficient students one week earlier than it is given to other students, (2) a requirement that alternate assessments for disabled students be submitted to the scoring company by April 1, and (3) a requirement that schools be given the option of administering the OGT for eleventh and twelfth graders and make-up assessments for sick students outside of regular school hours.

- Prohibits release of the OGT as a public record.

- Suspends the administration of the elementary writing and social studies achievement assessments for the 2009-2010 and 2010-2011 school years, unless the Department of Education has sufficient funds to pay for furnishing and scoring the assessments.

### Replacement of OGT as graduation requirement

- Requires the State Board of Education, Superintendent of Public Instruction, and Chancellor of the Board of Regents to develop a multi-factored assessment system to replace the OGT as a requirement for a high school diploma.

- Specifies that the new high school assessment system must consist of (1) a nationally standardized assessment in English language arts, math, and science, (2) a series of end-of-course exams in English language arts, math, science, and social studies, and (3) a senior project completed individually or by a group of students.

- Directs the State Board of Education to convene a group of experts and local practitioners to recommend ways to align the academic standards and model curricula with the new high school assessments and to design the end-of-course exams and scoring rubrics.

- Requires the State Board to adopt rules for implementing the new assessment system that address (1) timelines for implementation, (2) how the system will work as a graduation requirement, and (3) its applicability to dropout programs.

- Requires the Superintendent of Public Instruction to present the new assessment system to the House and Senate education committees at least 45 days before the

State Board adopts a resolution directing the Department of Education to file the rules implementing the system in final form.

### Performance indicators for report cards

- Directs the State Board of Education to establish new performance indicators for the school district and building report cards within one year after it adopts rules to implement the new high school assessment system, and at least every six years thereafter.

- Requires the State Board, by December 31, 2011, to establish a performance indicator that reflects the level of services provided to, and the performance of, gifted students.

- Requires the State Board to establish the performance indicators based on recommendations of the Superintendent of Public Instruction.

- Eliminates the requirement that the State Board establish a minimum of 17 performance indicators.

- Repeals a requirement that the State Board include measures of high school graduates' preparedness for higher education and the workforce on the report cards.

### Community service education

- Permits community schools and STEM schools to include community service education in their educational programs, in the same manner as school districts are authorized to do under continuing law.

- Requires the Superintendent of Public Instruction (1) to develop guidelines for rubrics for public schools to use to evaluate community service projects and (2) to adopt rules for granting students special recognition for successfully completing a community service project.

### College and career readiness

- Requires the Superintendent of Public Instruction to develop a model curriculum for instruction in college and career readiness and financial literacy in grades 7 to 12 for optional use by school districts, community schools, and STEM schools.

- Requires each school district, community school, and STEM school to adopt a resolution describing how it will address college and career readiness and financial literacy in its seventh or eighth grade curriculum.

### All-day kindergarten

- Requires each school district to offer all-day kindergarten to all kindergarten students beginning in the 2010-2011 school year, but retains the law prohibiting a district from requiring a kindergartner to attend more than half-day kindergarten.
- Allows school districts to apply to the Superintendent of Public Instruction for a waiver from the requirement to provide all-day kindergarten to all kindergartners.
- Permits school districts to use space in child day-care centers licensed by the Department of Job and Family Services to provide all-day kindergarten.
- Repeals the authority of certain school districts and community schools to charge tuition for all-day kindergarten, beginning in fiscal year 2012.

### Extending the school year

- For the 2010-2011 school year only, reduces the number of excused calamity days from five days to three days.
- Requires the Superintendent of Public Instruction to submit recommendations on extending the school year to the General Assembly not later than December 31, 2010.

### Interstate Compact

- Ratifies the Interstate Compact on Educational Opportunity for Military Children.
- Establishes the State Council on Educational Opportunity for Military Children and authorizes the appointment of a state compact commissioner and a military family education liaison to implement the state's participation in the compact.

### Other academic provisions

- Requires the State Board of Education to adopt standards for business education in grades 7 to 12, which any school district, community school, or STEM school may utilize (PARTIALLY VETOED).
- Requires the State Board, by January 29, 2010, to develop a list of best practices for improving parental involvement in schools for optional use by public and nonpublic schools.
- Permits a school district to waive the requirement to complete an eighth-grade American history course for promotion to high school for academically accelerated students who demonstrate mastery of the course content.

- Clarifies that a high school that permits students below ninth grade to take high school work for high school credit must award high school credit for successful completion of that work.

- Requires school districts, community schools, and STEM schools to count up to four days per school year as excused absences if a student is traveling out of state to participate in an approved enrichment or extracurricular activity, and requires that a classroom teacher accompany the student to provide instructional assistance if the student will be out of state for four or more consecutive school days.

## III. Educator Licensure and Employment

### Educator licenses

- Requires the State Board of Education to issue the following educator licenses beginning January 1, 2011: (1) a resident educator license, (2) a professional educator license, (3) a senior professional educator license, and (4) a lead professional educator license.

- Prescribes minimum qualifications for each of the new educator licenses.

- Permits the State Board to issue additional educator licenses of categories and types it elects to provide.

- Repeals the prohibition on the State Board requiring an educator license for teaching children two years old or younger.

### Alternative credentials

- Renames the alternative educator license as the "alternative resident educator license" and makes it a four-year license for teaching in grades 4 to 12 (instead of a two-year license for teaching in grades 7 to 12, as in prior law).

- Requires the Superintendent of Public Instruction and the Chancellor of the Ohio Board of Regents to develop an intensive pedagogical training institute for applicants for the alternative resident educator license.

- Eliminates the one-year conditional teaching permit for teaching in grades 7 to 12 and the one-year conditional teaching permit for teaching as an intervention specialist.

- Expands the requirements for upgrading a provisional educator license for teaching in a STEM school to a professional educator license to include satisfying all of the State Board's requirements for a professional license (in addition to completing an

apprenticeship program and receiving positive recommendations, as required by continuing law).

### Principal licenses

- Specifies that the State Board of Education's qualifications for obtaining a principal license must be aligned with the Educator Standards Board's principal standards.

### Transition

- Requires the State Board of Education to accept applications for the former types of educator licenses through December 31, 2010, and to issue the licenses in accordance with prior requirements, and specifies that those licenses remain valid until they expire.

### Ohio Teacher Residency Program

- Requires the Superintendent of Public Instruction and the Chancellor of the Ohio Board of Regents to establish the Ohio Teacher Residency Program for entry-level classroom teachers.

### Educator preparation programs

- Transfers responsibility for approving teacher preparation programs from the State Board of Education to the Chancellor of the Ohio Board of Regents and expands the duty to include approval of preparation programs for other educators and school personnel.

- Directs the Chancellor, jointly with the Superintendent of Public Instruction, to (1) establish metrics and preparation programs for educators and other school personnel and the institutions of higher education with preparation programs and (2) to provide for inspection of those institutions.

- Requires the Chancellor (instead of the State Board as in prior law) to issue an annual report on the quality of approved teacher preparation programs.

- Requires the Department of Education to share with the Chancellor aggregate student data generated in connection with the value-added progress dimension.

### Licensure of school nurses

- Requires the State Board of Education to adopt rules establishing standards and requirements for obtaining a school nurse license and a school nurse wellness coordinator license.

- Directs the Department of Education to provide the results of any examinations required for licensure as a school nurse or school nurse wellness coordinator to the Chancellor of the Ohio Board of Regents, to the extent permitted by law.

- Establishes the School Health Services Advisory Council to make recommendations on (1) the coursework required to obtain a school nurse license and a school nurse wellness coordinator license and (2) best practices for the use of school nurses and school nurse wellness coordinators in providing health and wellness programs for students and employees of public schools.

### Educator Standards Board

- Requires the Educator Standards Board to develop and recommend to the State Board of Education, by September 1, 2010, revised standards for teachers and principals, license renewal, and educator professional development and new standards for school district superintendents, treasurers, and business managers.

- Establishes the Subcommittee on Standards for Superintendents and the Subcommittee on Standards for School Treasurers and Business Managers to assist the Educator Standards Board in developing standards for those officials.

- Directs the Educator Standards Board to (1) develop model teacher and principal evaluations, (2) adopt criteria that an applicant for a lead professional educator license who is not certified by the National Board for Professional Teaching Standards and does not meet the definition of "master teacher" must meet to be considered a lead teacher, (3) develop a measure of individual students' academic improvement over a one-year period and make recommendations for incorporating the measure into evaluations and licensure eligibility for teachers and principals, and (4) make recommendations for creating school district and building leadership academies.

- Repeals the requirement that the Educator Standards Board collaborate with teacher preparation programs to align their coursework with the teacher and principal standards developed by the Board and the State Board of Education's academic content standards.

- Adds a school district treasurer or business manager, a parent, and one more high school teacher and one more elementary school teacher to the Educator Standards Board as voting members and adds the ranking minority members of the House and Senate education committees as nonvoting members.

- Transfers authority to appoint the representatives of institutions of higher education on the Educator Standards Board from the State Board of Education to the Chancellor of the Ohio Board of Regents.

- Requires the membership of the Educator Standards Board to reflect Ohio's diversity in terms of gender, race, ethnicity, and geographic distribution.

### Peer assistance and review programs

- Requires the Department of Education, by December 31, 2010, to develop a model peer assistance and review program and to make recommendations to expand the use of peer assistance and review programs in school districts.

### Teach Ohio Program

- Directs the Chancellor of the Ohio Board of Regents and the Superintendent of Public Instruction to establish and administer the Teach Ohio Program, which includes (1) a statewide program administered by a nonprofit corporation that encourages high school students from economically disadvantaged groups to become teachers, (2) the Ohio Teaching Fellows Program, (3) the Ohio Teacher Residency Program, (4) alternative licensure programs, and (5) any other program identified by the Chancellor and Superintendent.

- If sufficient funds are available, permits the Chancellor and the Superintendent to create the Ohio Teaching Fellows Program to provide undergraduate scholarships for qualified students going into the teaching profession who commit to teach at a hard-to-staff, or academic watch or academic emergency, public school for at least four years.

- Stipulates that failure to fulfill the four-year teaching commitment in the Ohio Teaching Fellows Program will result in the conversion of the scholarship into a loan that accrues interest at 10% annually.

### Teacher tenure

- Revises the qualifications for a continuing contract (tenure) for regular classroom teachers who become licensed for the first time on or after January 1, 2011, so that a teacher is eligible for tenure if the teacher (1) holds a professional, senior professional, or lead professional educator license, (2) has held an educator license for at least seven years, and (3) has completed 30 semester hours of coursework in the area of licensure since initially receiving a license, if the teacher did not have a master's degree at the time of initial licensure, or six semester hours of graduate

coursework in the area of licensure since initially receiving a license, if the teacher had a master's degree at that time.

- Stipulates that the tenure qualifications for teachers initially licensed on or after January 1, 2011, override any conflicting collective bargaining agreement entered into on or after the provision's effective date.

- Clarifies that, for classroom teachers licensed for the first time prior to January 1, 2011, the continuing education coursework required for tenure under continuing law must have been completed since initial receipt of an educator license other than a substitute teaching license.

### Termination of educator employment contracts

- Eliminates "gross inefficiency or immorality" and "willful and persistent violations of reasonable regulations of the board of education" but retains "good and just cause" as statutory grounds for termination of a school district employment contract with a licensed educator.

- Specifies that the act's changes to the grounds for termination of an educator's employment contract prevail over conflicting provisions of a collective bargaining agreement entered into after the changes' effective date.

- Repeals a provision that limited referees who hear termination cases of licensed educators to hearing no more than two cases per school year.

## IV. Community Schools

- Beginning July 1, 2009, replaces the performance criteria that trigger automatic closure of a community school with new criteria requiring a community school to close if it (1) does not offer a grade higher than 3 and has been in academic emergency for three of the four most recent school years, (2) offers any of grades 4 to 8 but no grade higher than 9, has been in academic emergency for two of the three most recent school years, and showed less than one year of academic growth in reading or math for at least two of the three most recent school years, or (3) offers any of grades 10 to 12 and has been in academic emergency for three of the four most recent school years.

- Exempts from the automatic closure requirement community schools in which a majority of the students are children with disabilities receiving special education (in addition to community schools operating dropout programs with a waiver from the Department of Education, as in continuing law).

- Specifies that if a community school closes, the chief administrative officer must transmit within seven business days all student educational records to the students' resident districts, and that failure to do so is a third degree misdemeanor.

- Clarifies that the Department of Education's authority to oversee and monitor community school sponsors applies to all sponsors, regardless of whether they must initially be approved by the Department for sponsorship.

- Requires the Department's annual report on community schools to include the performance of community school sponsors.

- Revises the requirement that new start-up community schools contract with an operator that manages other schools that perform better than academic watch in order to open despite the moratorium on new start-up schools, by specifying that if the operator already manages community schools in Ohio, at least one of the operator's *Ohio* schools (rather than *any* school managed by the operator, as in prior law) must perform at that level.

- Requires the Department of Education to begin issuing report cards for a community school after its first year of operation (instead of after its second year of operation, as in former law).

- Prohibits consideration of a community school's performance ratings for its first two years of operation in any matter in which those ratings are a factor, including the automatic closure criteria for poor academic performance.

- Duplicates, also in uncodified law, Section 269.60.60 of Am. Sub. H.B. 119 of the 127th General Assembly, which prescribes procedures for the Auditor of State, community school sponsors, and the Department of Education with regard to unauditable community schools.

- Permits a community school to continue operating from the facility it occupied in the 2008-2009 school year, rather than relocating to another school district, if the school (1) has been in its current facility for at least three years, (2) is sponsored by a school district adjacent to the district in which the school is located, (3) emphasizes serving gifted students, and (4) has been rated continuous improvement or higher for the previous three years.

- Permits the conversion of a building operated by a joint vocational school district into a community school, in the same manner as a building operated by a city, local, or exempted village school district under continuing law.

- Eliminates the prohibition on Internet- or computer-based community schools (e-schools) counting expenditures for computers and software toward their required minimum level of spending for instructional purposes.

- Would have required the Department of Education to waive the number of hours a community school is closed for a public calamity as long as the school provides the required minimum number of learning opportunities to students in the school year (VETOED).

## V. Scholarship programs

- Would have qualified for the Educational Choice Scholarship students who (1) were enrolled in, (2) were eligible to enroll in kindergarten in the school year for which the scholarship is sought and would otherwise be assigned to, or (3) were enrolled in a community school but otherwise be assigned to, a new school building that is operated by the student's resident district under certain circumstances (VETOED).

- Requires all nonpublic schools that participate in the Cleveland Scholarship Program (in addition to nonpublic schools that participate in the Ed Choice Scholarship Program, as in continuing law) to administer the state achievement assessments to enrolled scholarship students and to report their scores to the Department of Education.

- Requires the Department to post achievement assessment data for students participating in the Cleveland Scholarship Program or the Ed Choice Scholarship Program on its web site and to distribute that data to the parents of students eligible for the programs.

- Requires the Department to provide the parent of each Cleveland or Ed Choice scholarship student with a comparison of the student's performance on the achievement assessments with the average performance of similar students enrolled in the school district building the scholarship student would otherwise attend.

## VI. Early Childhood Programs

- Creates the Center for Early Childhood Development to make recommendations regarding the transfer from other state agencies to the Department of Education of the responsibility to coordinate early childhood programs and services.

- Creates the Early Childhood Advisory Council to serve as the federally mandated State Advisory Council on Early Childhood Education and Care.

- Creates the Early Childhood Financing Workgroup to develop recommendations that explore the implementation of a single financing system for early care and education programs.

- Continues for the 2010-2011 biennium a GRF-funded program to support early childhood education programs offered by school districts and educational service centers to preschool children whose families earn up to 200% of the federal poverty guidelines.

- Would have re-established the Early Learning Initiative, jointly administered by the Department of Education and the Department of Job and Family Services, to provide early learning services to children eligible for federal Title IV-A (TANF) services (VETOED).

- Requires the Governor to appoint to the Early Childhood Cabinet a representative of a board of health of a city or general health district or an authority having the duties of a board of health.

- Reduces the number of inspections of preschool and latchkey programs by the Department of Education from twice to once during each 12-month period, but permits the Department to inspect any program more than once during a 12-month period as it considers necessary.

## VII. Other Provisions

- Requires the Superintendent of Public Instruction to develop a ten-year strategic plan by December 1, 2009.

- Abolishes the Partnership for Continued Learning, and transfers the responsibilities of the STEM subcommittee of the Partnership to an independent STEM committee.

- Permits the Superintendent of Public Instruction to establish the Center for Creativity and Innovation within the Department of Education.

- Requires the State Board of Education to post via the Internet audio recordings of its regular and special business meetings within five days of the meeting.

- Eliminates the law that permits the Department of Education to contract with an independent for-profit or nonprofit entity to provide information on Ohio government through the Ohio Education Computer Network (OECN) to school district libraries to assist teachers in social studies course instruction and support student research projects.

- Permits the Department to approve and administer funding for educational technology for OECN information technology centers, school districts, educational service centers, and other entities.
- Specifies that OECN information technology centers are not required to maintain operating reserve accounts or funds or minimum cash balances relative to their operating funding.
- Allows the Department to use volunteers in performing the Department's functions.
- Requires each school district to appoint a family and civic engagement team to consist of parents and members of the community, representatives of health and human services and business, and others.
- Permits city and exempted village school districts to appoint one committee that functions as both a business advisory council and a family and civic engagement team.
- Prohibits corporal punishment in all public schools, but retains preexisting law permitting school employees to use force or restraint as reasonable or necessary to quell a disturbance, to obtain possession of a weapon, for self-defense, or to protect persons or property.
- Beginning July 1, 2011, permits only school district employees who are licensed health professionals, or who have completed an appropriate drug administration training program conducted by a licensed health professional to administer prescription drugs to students in school districts.
- Repeals the law establishing the School Health and Safety Network under which boards of health, in accordance with standards and procedures adopted by the Director of Health, inspected public and chartered nonpublic schools and their grounds at least annually to identify conditions dangerous to public health and safety.
- Requires boards of health to inspect the sanitary condition of schools semiannually (rather than annually, under prior law).
- Repeals authorization for boards of health to close a school for an imminent public health threat other than an epidemic or a high prevalence of communicable disease.
- Requires school districts, community schools, STEM schools, and chartered nonpublic schools periodically to review their policies and procedures to ensure (1) the safety of persons using a school from known hazards that pose an immediate

risk to health or safety and (2) compliance with federal health and safety laws and regulations applicable to schools.

- Requires school districts, community schools, STEM schools, and chartered nonpublic schools to establish policies to protect students with peanut or other food allergies.

- Specifies that when a person is subject to a periodic criminal records check as a condition of licensure by the State Board of Education or of employment with a public or chartered nonpublic school, the records check is limited to an FBI check if (1) the State Board or employer has previously requested a records check of the person by the Bureau of Criminal Identification and Investigation (BCII) and (2) the person provides proof of Ohio residency for the previous five-year period.

- Prohibits the State Board from requiring a criminal records check for licensure purposes any more often than every five years.

- Requires school districts, community schools, STEM schools, and chartered nonpublic schools annually to inform students and parents of the parental notification procedures in the school's protocol for responding to threats and emergency events.

- Extends to middle and secondary schools the existing requirement that specified categories of school employees complete four hours of in-service training in the prevention of child abuse, violence, substance abuse, and the promotion of positive youth development.

- Directs districts and schools to incorporate training in school safety and violence prevention into their in-service training in the prevention of child abuse, violence, substance abuse, and the promotion of positive youth development.

- Modifies procedures that the State Board is required to adopt with respect to children with disabilities by specifying who may appoint the surrogate for a child whose parents cannot be found or who is a ward of the state.

- Would have placed a two-year moratorium on local school districts relocating from their current educational service centers (ESCs) to adjacent ESCs, and would have voided recently approved, as well as pending, resolutions for such relocations (VETOED).

- Would have specified that when the State Board considers a local school district's relocation to an adjacent ESC, it must (1) consider the impact on the district's current ESC (in addition to the impact on the district and the ESC to which the district seeks

to relocate, as in continuing law) and the financial, staffing, and programmatic impacts on all parties involved, (2) consider the proposed relocation at two or more meetings with an opportunity for public testimony at each meeting, and (3) provide at least 30 days before the Board's first hearing on the matter and its vote (VETOED).

- Would have provided procedures for dissolving an ESC if all of its "local" school districts sever from it and annex to another ESC (VETOED).
- Would have permanently permitted a "city" or "exempted village" school district that entered into an agreement for services from an ESC that is dissolved to enter into a new agreement with another ESC, which may receive per pupil state funds in the same manner as the original ESC (VETOED).
- Prohibits school districts from preventing a teacher from providing time to recite the Pledge of Allegiance to the flag in the teacher's classroom.
- Prohibits school districts from altering the Pledge of Allegiance to the flag from the wording set forth in the United States Code.
- Permits two local school districts to renew their contract for vocational education (career-technical) services for a term of less than five years, if the district receiving the services had been created out of the territory of the district providing the services and began operating in fiscal year 2005.
- Repeals a statutory procedure for a school district not covered by the state Civil Service Law to terminate some or all of its pupil transportation staff and to instead engage an independent contractor to provide pupil transportation.
- Grants authority to boards of education of two or more city, local, or exempted village school districts in Cuyahoga County to create, by agreement, a regional student education district (RSED) to fund special education services and behavioral health services for the students enrolled in those districts and their immediate family members.
- Requires that the superintendent of each member school district serve on the board of directors of the RSED and requires the agreement to provide other specific provisions governing the board of directors.
- Requires the board of directors to hire employees or contract with a qualified nonprofit, nationally accredited agency meeting certain additional requirements to provide behavioral health services.

- Permits the board of directors, with the approval of a majority of the member school district boards of education and then of the voters of the RSED, to levy a property tax to fund RSED services and operations.

- Authorizes a board of education that acquired or acquires a parcel of real property between January 1, 2008, and December 31, 2010, and that determines, by vote of a majority of its members, that a portion of the parcel, or a portion of the improvements located on or to be constructed on the parcel, is not required for school use, to convey a leasehold interest in that excess property for a term not to exceed 99 years, without reserving any right to cancel or terminate the lease other than breach by the lessee.

- Increases the maximum maturity of school district bonds issued to acquire or construct real property, from 30 years to 40 years.

- Would have transferred the School Employees Health Care Board and any unexpended or unencumbered appropriation or reappropriation balances from the Department of Administrative Services to the Department of Education (VETOED).

## I. State Funding for Primary and Secondary Education

### Introduction

The act codifies a new R.C. Chapter 3306., and revises many other laws, to establish a new system of financing for city, local, and exempted village school districts. Known unofficially as the "evidence-based model," this funding system does not use a pupil formula amount like the prior law did, but instead computes an aggregate of various factors and components to fund the operation of school districts starting with each district's student count (average daily membership and formula ADM), from which the factors for faculty and other personnel are derived. These factors are multiplied by an "education challenge factor," which is a unique multiple assigned to each district based on the college attainment rate of the district's population, its wealth per pupil, and its concentration of poverty. Other nonpersonnel components are also funded. Taken altogether, these factors and components make up a district's "adequacy amount."

In a manner similar to that of the former school funding system, a district "charge-off" is then subtracted from the adequacy amount. The charge-off is the district's presumed contribution to the total calculated amount. For fiscal years 2010 and 2011, the charge-off amount is 22 mills times either the district's tax valuation or its "recognized valuation" (adjusted over three tax years), if its effective tax rate is 20.1

mills or greater. (The charge-off under the former system was 23 mills times the district's recognized valuation.)

In transition to the new system, for fiscal year 2010, each district is guaranteed a state payment that is at least 99% of its previous year's funding base and, for fiscal year 2011, at least 98% of its previous year's base. On the other hand, no district for either fiscal year 2010 or 2011 may receive a gain in state funds over the previous year that is greater than ¾ of 1% of the previous year's base.

Analyses and descriptions of the school funding system are available in the LSC Greenbook for the Department of Education, published on the LSC web site at **www.lbo.state.oh.us/fiscal/budget/greenbooks128/default.cfm**, and the LSC Comparison Document, published at **www.lbo.state.oh.us/fiscal/budget/CompareDoc128/AsEnacted/Default.cfm**.

## Spending accountability for school districts

### Spending plans

(R.C. 3306.30 and 3306.31)

The act requires each city, exempted village, and local school district, by a date and in a manner set by the Superintendent of Public Instruction, annually to the Department of Education a plan for the deployment of the state funds the district receives. The plan must show how the district will spend each component of its computed adequacy amount and, when they are effective, must comply with rules adopted by the state Superintendent for the expenditure and reporting of the funds computed under those components (see "**Rules for expenditure and reporting**" and "**Statutory spending requirements**" below). The spending plan also must comply with the State Board's new operating standards regarding the evidence-based model and directives of the state Superintendent.

At the end of each fiscal year, the Department must reconcile each district's spending plan with its actual spending. If the Department finds that a district or school has not complied with any applicable expenditure or reporting rule, the Department must take one of the specific sanctions prescribed by the act (see "**Sanctions**" below). In the case of a school district that has a three-year average graduation rate of 80% or less, the Department must work with the Governor's Closing the Achievement Gap Initiative in reconciling the district's spending plan (see below).

### Spending plans for school districts with low graduation rates

The act establishes both temporary and permanent requirements for assistance and coordination of spending for certain activities in school districts with graduation rates of 80% or less by the Governor's Closing the Achievement Gap Initiative. The temporary provision appears to suspend the permanent provisions for fiscal year 2010 and requires some assistance in planning for implementation of the permanent provisions beginning in fiscal year 2011.

In 2008, the Governor appointed a special adviser on closing the achievement gap and increasing the graduation rates of students with the highest rates of failure. The office of the special adviser is housed at the Department of Education.

#### Temporary provision--fiscal year 2010

(Section 265.70.80)

The act's temporary provision states that "notwithstanding section 3306.31 of the Revised Code," which contains the act's codified provisions regarding spending plans of school districts with three-year average graduation rates of 80% or less, the Governor's Closing the Achievement Gap Initiative must work with those districts in fiscal year 2010 to assist them in planning for "implementation of the program" in fiscal year 2011. Thus, it appears that the act suspends all of the codified spending requirements for such districts for the first year of the biennium while both the districts and Governor's Initiative plan for their full implementation in fiscal year 2011. The act also states that districts currently working with the Governor's Initiative and that continue to have graduation rates of 80% or less "are encouraged" to maintain their closing-the-achievement-gap programs during the planning period.

#### Permanent provisions

(R.C. 3306.31(C) and (E))

Under the act's permanent provisions, beginning in fiscal year 2011, each school district that has a three-year average graduation rate of 80% or less must work with the Department of Education and the Governor's Closing the Achievement Gap Initiative in developing the district's annual spending plan. The items in the spending plan that relate to required closing the achievement gap actions (see below) must be approved by both the state Superintendent and the Governor's Closing the Achievement Gap Initiative. If they disapprove those items of the plan, the state Superintendent must either (1) modify those items of the plan and notify the district board of the modifications, or (2) return the plan and require the board to modify those items of the plan according to the state Superintendent's instructions or recommendations.

Furthermore, the act requires the Governor's Closing the Achievement Gap Initiative to work with each organizational unit of each of these low-graduation-rate districts to assess its progress in implementing the required activities and ensuring the unit's compliance with the district's annual spending plan.

#### Closing-the-achievement-gap actions in districts with low graduation rates

(R.C. 3306.31(B))

The act requires a district with a three-year average graduation rate of 80% or less to implement actions prescribed by the Governor's Closing the Achievement Gap Initiative in both (1) each high school and (2) each elementary and middle school where less than 50% of the students have attained a proficient score on the 4th and 7th grade achievement assessments in English language arts and math.

#### Linkage coordinator for school districts with low graduation rates

(R.C. 3306.31(D))

Each district with a graduation rate of 80% or less must create and staff in each organizational unit at least one position, funded with the amount computed under its family and community liaison factor, to function as a "linkage coordinator" for closing the achievement gap and increasing the graduation rate. The act describes the linkage coordinator as a person who meets guidelines established by the Governor's Closing the Achievement Gap Initiative and "who is the primary mentor, coach, and motivator for students identified as at risk of not graduating[82] . . . and who coordinates those students' participation in academic programs, social service programs, out-of-school cultural and work-related experiences, and in-school and out-of-school mentoring programs, based on the students' needs." The linkage coordinator also must coordinate remedial disciplinary plans and work with school personnel to gather student academic information and to engage parents of targeted students. In addition, the act specifies that the linkage coordinator is a liaison between the school and the Governor's Closing the Achievement Gap Initiative and must participate in all professional development activities as directed by the Initiative. Moreover, the linkage coordinator is required to establish and coordinate the work of academic promotion teams, which must address the academic and social needs of the identified students.[83]

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[82] For this purpose, "at risk of not graduating" is to be as defined by the Governor's Closing the Achievement Gap Initiative.

[83] The act specifies that membership of academic promotion teams may vary from school-to-school and may include the linkage coordinator, parents, teachers, principals, school nurses, school counselors, probation officers, or other school personnel or community members.

### Rules for expenditure and reporting

(R.C. 3306.25)

The act requires the Superintendent of Public Instruction to adopt rules prescribing spending and reporting requirements for particular components funded under the act's new evidence-based school funding model. In doing so, the Superintendent must classify the components into three separate categories: (1) core academic strategies, (2) academic improvement, and (3) other funded components. The Superintendent must determine the components of the school funding system that are included in each of the categories. The act's system of graduated sanctions, when effective, will be based in part on a district's compliance with these rules. (No sanction may be imposed before July 1, 2011.)

#### Core academic rules

The rules for reporting of expenditures of core academic strategy components must not take effect earlier than July 1, 2010, and the rules governing the actual spending of those components must not take effect earlier than July 1, 2011. The spending rules must afford districts degrees of flexibility depending on their current report card performance ratings, and districts rated as "excellent" are not subject to the spending rules at all. Nevertheless, "excellent" districts must comply with the reporting rules.

On the other hand, elsewhere, the act makes the following stipulations about the state Superintendent's spending and reporting rules:

(1) They must "encourage school districts to give preference to employing or obtaining the services of licensed school nurses with funds received for the school nurse wellness coordinator factor and the district health professional factor."[84]

(2) They must specify that the gifted education support component be spent only on staff and services for identified gifted students in accordance with the State Board's operating standards for services to gifted students. These gifted education spending and reporting rules must take effect on July 1, 2011.[85] (See also "**Statutory spending requirements--Gifted education**" below.)

[84] R.C. 3306.06(C). However, the act provides no payments for these two factors of the funding model for fiscal years 2010 and 2011.

[85] R.C. 3306.09(E).

#### Academic improvement rules

Like the core academic rules, the rules for reporting for academic improvement components must not take effect earlier than July 1, 2010, and the rules on spending the funds computed for those components must not take effect earlier than July 1, 2011. They must apply only to school districts in academic emergency or academic watch for two or more consecutive years.

#### Rules on other components

The rules on other components must prescribe only reporting standards and not spending standards. These rules must not take effect earlier than July 1, 2010, and must apply to all school districts regardless of performance rating.

### Statutory spending requirements

Although the act generally leaves spending requirements related to the new funding model to future rules of the state Superintendent, it also includes some statutory provisions that address spending, as described below:

#### Special education and related services

(R.C. 3306.11)

The act specifically permits the instructional services support funds received for children with disabilities to be used to pay for providers of related services for those children. "Related services" include those services necessary to assist a child with a disability to benefit from special education, including transportation, speech-language pathology and audiology services, psychological services, physical and occupational therapy, health services, and counseling.[86]

#### Gifted education

(R.C. 3306.09)

The act sets forth a number of spending requirements related to the gifted education support component:

- Specifies that the state Superintendent's expenditure and reporting rules require the gifted education support component to be spent only on staff and services for identified gifted students in accordance with the State Board's operating standards for services to identified gifted students.

[86] R.C. 3323.01(K), not in the act.

- Permits school districts to use up to 15% of the gifted intervention specialist funds attributable to grades 6 to 12 for services that are specified in gifted students' written education plans, but are not described in the laws governing gifted education (R.C. Chapter 3324.), subject to the Department of Education's approval.

- Requires a district that received gifted unit funding in fiscal year 2009 to spend on services to identified gifted students in subsequent fiscal years not less than its amount of fiscal year 2009 gifted unit funding.

- Requires each school district that received gifted student services from an educational service center (ESC) in fiscal year 2009, to do one of the following in each subsequent fiscal year if the services from the ESC were financed with state gifted unit funding: (a) obtain gifted student services from an ESC that are comparable to the services provided in that fiscal year by an ESC with the unit funding, or (b) spend from the district's own state funding at least as much as it received in gifted student services from an ESC in that fiscal year. A district that received any gifted unit funding or received gifted services through an ESC in fiscal year 2009 may not apply for or receive a waiver from the gifted funding expenditure requirements. Any other district may apply for and receive a waiver from spending its gifted education support component on gifted student services.

- Requires each ESC that received gifted unit funding for fiscal year 2009 to spend on services to identified gifted students in subsequent fiscal years not less than the amount of fiscal year 2009 gifted unit funding. ESCs may not receive waivers from this spending requirement.

#### Enrichment support

(R.C. 3306.091)

The act specifies that the enrichment support component may not be used for gifted education services delivered under the laws governing services to identified gifted students (R.C. Chapter 3324.). However, it also specifies enrichment funds may be used to pay for activities that may encourage the intellectual and creative pursuits of all students, including the fine arts.

## Sanctions

(R.C. 3306.33)

The act establishes a system of graduated sanctions to be imposed, not earlier than July 1, 2011, by the Department of Education if a school district fails to comply with any applicable spending or reporting rules of the state Superintendent or fails to submit the required spending plan.

### Required actions--year 1

(R.C. 3306.33(B))

The first year that one of the triggering circumstances applies, the Department must provide technical assistance to bring the district into compliance. In addition, the district board must do *all* of the following:

(1) Develop and submit to the Department a three-year operations improvement plan. The plan must include (a) analysis of the reasons for the failure, (b) strategies to address the problems in meeting the standards or requirements, (c) identification of the resources the board will use to meet the standards or requirements, and (d) description of how the district will measure its progress in meeting the standards or requirements.

(2) Notify the parent or guardian of each student served by the district, either in writing or by electronic means, of the standards or requirements that were not met, the actions being taken to meet them, and any progress achieved in the immediately preceding school year toward meeting them; and

(3) Present the plan, and take public testimony with respect to it, in a public hearing before the board.

### Required actions--year 2

(R.C. 3306.33(C))

The second consecutive year the same or a different triggering circumstance applies, (1) the Department must again provide technical assistance as before, (2) the board must again take all of the required year-1 actions, and (3) the Department must establish a "state intervention team" to evaluate all aspects of the district's operations. The team must include teachers and administrators recognized as "outstanding in their fields." The team must recommend methods for bringing the district into compliance. The state Superintendent must establish guidelines for the operation of these teams. The district must pay the costs of the intervention team.

#### Required actions--year 3

(R.C. 3306.33(D))

The third consecutive year the same or a different triggering circumstance applies, the state Superintendent must either (1) establish an "accountability compliance commission" (see below), or (2) appoint a "trustee" to govern the district in place of the district board until the beginning of the first year that none of the triggering circumstances apply to the district.

#### Required actions--year 4

(R.C. 3306.33(E))

The fourth consecutive year the same or a different triggering circumstance applies, the State Board must take action to revoke the district's charter.[87] The act also specifies that the State Board, at any time, may revoke a district's charter for not complying with the State Board's operating standards for school districts.[88]

#### Accountability compliance commissions

(R.C. 3306.34)

One of the two options for a year-3 sanction is the establishment of an accountability compliance commission for the district. Each of these commissions must consist of three members, one each appointed by the Governor, the state Superintendent, and the Auditor of State.[89] Members serve without compensation except for their necessary and actual expenses incurred while engaged in the business of the commission. The chairperson of each commission is selected from among the members by the state Superintendent. The chairperson is responsible for calling all

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[87] Continuing law authorizes the State Board of Education to "classify and charter all school districts and individual schools within each district" (R.C. 3301.16). A district school may not operate without such a charter.

[88] R.C. 3306.33(F).

[89] Two members of an accountability compliance commission constitute a quorum, and the affirmative vote of two members is necessary for any action taken by vote of the commission. Members are not disqualified from voting by reason of the functions of any other office they hold and are not disqualified from exercising the functions of the other office with respect to the school district. They must file financial disclosure statements with the Ohio Ethics Commission, however. The members, the state Superintendent, and any person authorized to act on behalf of or assist them is not personally liable or subject to any suit, judgment, or claim for damages resulting from the exercise of or failure to exercise the powers, duties, and functions of the commission. They may be subject to mandamus proceedings to compel performance of their duties relative to the commission.

meetings of the commission except the first one, which is called by the state Superintendent, and for setting meeting agendas and acting as a liaison between the commission and the district. The chairperson must appoint a secretary who may not be a member of the commission. Each commission may adopt rules and bylaws for its operation.[90] Its meetings must be held in compliance with the state Open Meetings Law. The Department of Education must provide the commission with administrative support, requested data, and information about available state resources that could assist the commission in its work.

An accountability compliance commission may do any of the following:

(1) Prepare and submit the district's required spending plan;

(2) Appoint building administrators and reassign administrative personnel;

(3) Terminate the contracts of administrators or administrative personnel;[91]

(4) Contract with a private entity to perform school or district management functions;

(5) Establish a budget for the district and approve district appropriations and expenditures, unless a financial planning and supervision commission has been established for the district under the state law on school district solvency assistance;[92]

(6) Exercise the certain specified powers as are granted to a financial planning and supervision commission, under the state law on school district solvency assistance, unless a financial planning and supervision commission already has been established for the district. These specific powers entail essentially reviewing revenue projections, establishing budgets, and gathering and reviewing fiscal information.

In performing its duties, each accountability compliance commission must seek input from the district board regarding ways to improve the district's operations and compliance. But any decision of the commission related to any authority granted to the commission is final. The act also specifies that if a district board renews a collective

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[90] The commission's rules are not subject to the rulemaking provisions of R.C. Chapter 119. or section 111.15.

[91] The act specifies that the commission does not have to follow the termination procedures set forth in R.C. 3319.16 that otherwise apply to teacher, administrator, superintendent, and treasurer terminations undertaken by school district boards.

[92] A district may be declared to be in a state of fiscal caution, fiscal watch, or fiscal emergency, if certain deficits are projected in its budget. Under these declarations particular fiscal oversight provisions apply. See R.C. Chapter 3316.

bargaining agreement while it has an accountability compliance commission in place, it may not enter into such an agreement that would render any decision of the commission unenforceable.

### Waivers

(R.C. 3306.40; conforming changes in R.C. 3302.05 and 3302.07)

Under the act, a school district board may apply to the state Superintendent for a waiver of standards or requirements related to the evidence-based funding model, including most of the expenditure or reporting rules of the state Superintendent. Also, a district board may apply to the state Superintendent for a waiver of any of the State Board's new operating standards for school districts. The State Board is required to adopt standards for the approval or disapproval of waivers. For each waiver granted, the state Superintendent must specify the duration, which may not exceed five years. A district may apply to renew a waiver. The act further limits the duration of waivers of the spending and reporting rules for the gifted education support component. Those waivers, which may be granted only to school districts that did not receive gifted unit funding in fiscal year 2009, may not exceed two years for an initial waiver and one year at a time for each renewal.[93]

## FACT form

(R.C. 3306.35)

The act requires the Department of Education to develop a separate form to be called the "Formula ACcountability and Transparency" form or "FACT" form. The Department annually must issue, and publish on its web site, a FACT form for each city, exempted village, and local school district. The form must compare the district's payments under the evidence-based model with its deployment of those payments as indicated in its spending plan. The act states that the FACT form must not form the basis of any sanctions taken against the district but is only a document intended to inform the public about its spending.

## PASS form

(R.C. 3306.012)

For several previous fiscal years, the Department of Education has reported each school district's payment of state operating funds using a form the Department called the "SF-3" form. The act renames that form as the "PASS" form, "PASS" being an

[93] R.C. 3306.09(H).

acronym for "PAthway to Student Success." The act also specifies that the new form must be revised as necessary to reflect payments made under the act's new school funding model. It further specifies that the PASS form must be available to the public in a format understandable to the average citizen. The prior SF-3 form for each school district is published on the Department's web site.[94]

## Ohio School Funding Advisory Council

(R.C. 3306.29)

The act establishes the Ohio School Funding Advisory Council to recommend biennial updates to the components of the school funding system. The council must submit its recommendations by December 1, 2010, and by July 1 of each even-numbered year thereafter. The act states that the recommendations must be "based on current, high quality research, information provided by school districts, and best practices in operational efficiencies."

The council's analyses due on December 1, 2010, must include a report on the adequacy of the model's financing for special education, gifted education services, career-technical education, arts education, services for limited English proficient students, and early college high schools. The December 1, 2010, report also must include:

(1) Recommendations for a student-centered evidence-based model for schools that use a per pupil level of funding to follow a student to the school that best meets the student's individual learning needs;

(2) A study of the extent to which current funding for joint vocational school districts and compact and comprehensive career-technical schools is responsive to state, regional, and local business and industry needs, and recommendations for revisions to career-technical education programming and funding;

(3) A study of the extent to which the current educational service center (ESC) system supports school districts in academic achievement, teacher quality, shared educational services, and the purchasing of educational services and commodities, and recommendations for a new regional service delivery system, the educational service system governance structure, and accountability metrics for ESCs;

(4) An examination of the existing structures and systems that support compensation and retirement benefits for teachers, and recommendations for changes

[94] http://webapp2.ode.state.oh.us/school_finance/data/2009/foundation/SF3-report-FY2009.asp.

to improve the connections between teacher compensation, teaching excellence, and higher levels of student learning;

(5) A consideration of whether community schools and STEM schools should be subject to the expenditure and reporting standards adopted by the state Superintendent and the act's other spending accountability requirements (see below); and

(6) An analysis of the effects of open enrollment on students and school districts and recommendations for ensuring that open enrollment policy and financing is equitable for students and districts.

The council's analyses due on December 1, 2010, and each subsequent biennial report, may address (1) strategies and incentives to promote school cost-saving measures and efficiencies, (2) options for adding learning time to the learning year,[95] (3) adequacy of the model's accounting for and financing of operational costs and the effect of those costs on student academic achievement,[96] (4) accuracy of the calculation of each component of the funding model, and of the model as a whole, in light of current educational needs, current educational practices, and best practices, and (5) options to encourage school districts and schools already attaining "excellent" ratings on their annual academic performance report cards to go beyond state standards and aspire to higher international norms.

### Council membership

The council's membership is to consist of the following:

(1) The Governor, or the Governor's designee;

(2) The Superintendent of Public Instruction, or the Superintendent's designee;

(3) The Chancellor of the Board of Regents, or the Chancellor's designee;

(4) Two school district teachers, appointed by the Governor;

(5) Two nonteaching, nonadministrative school district employees, appointed by the Governor;

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[95] The act suggests that these options might include moving professional development for educators to summer, adding learning time for children with greater educational needs, accounting for learning time by hours instead of days, and appropriate compensation to school districts and staff for providing additional learning time.

[96] According to the act, these costs include district-level administration and administrative and transportation challenges experienced by low-density and low-wealth school districts.

(6) One school district principal, appointed by the Speaker of the House;

(7) One school district superintendent, appointed by the Senate President;

(8) One school district treasurer, appointed by the Speaker of the House;

(9) One member of a school district board, appointed by the Senate President;

(10) One representative of a college of education, appointed by the Speaker of the House;

(11) One representative of the business community, appointed by the Senate President;

(12) One representative of a philanthropic organization, appointed by the Speaker of the House;

(13) One representative of the Ohio Academy of Science, appointed by the Senate President;

(14) One representative of the general public, appointed by the Senate President;

(15) One representative of educational service centers, appointed by the Speaker of the House;

(16) One parent of a student attending a school operated by a school district, appointed by the Governor;

(17) One representative of community school sponsors, appointed by the Governor;

(18) One representative of operators of community schools, appointed by the Senate President;

(19) One community school fiscal officer, appointed by the Speaker of the House;

(20) One parent of a student attending a community school, appointed by the Senate President;

(21) One representative of early childhood education providers, appointed by the Governor;

(22) One representative of chartered nonpublic schools, appointed by the Speaker of the House;

(23) Two persons appointed by the Senate President, one of whom is recommended by the Senate Minority Leader; and

(24) Two persons appointed by the Speaker of the House, one of whom shall be recommended by the House Minority Leader.

The state Superintendent, or the Superintendent's designee on the council, is the chairperson of the council.

### Subcommittee on school district-community school collaboration

(R.C. 3306.291)

The act also establishes a subcommittee of the School Funding Advisory Council to make recommendations for fostering collaboration between school districts and community schools. Its recommendations must include fiscal incentives, including changes to the funding model, to encourage districts and community schools to enter into collaborative agreements for "creative and innovative academic programming" and "academic and fiscal efficiency." The subcommittee must report its recommendations to the full council and General Assembly by September 1, 2010, and periodically thereafter at the direction of the state Superintendent.

The subcommittee consists of the following nine members of the full council:

(1) The school district superintendent;

(2) The school district treasurer;

(3) One of the school district teachers, selected by the state Superintendent;

(4) The member representing a college of education;

(5) The member representing community schools sponsors;

(6) The member representing operators of community schools;

(7) The community school fiscal officer;

(8) The parent of a student attending a community school; and

(9) The parent of a student attending a school operated by a school district.

### Other subcommittees

(R.C. 3306.292)

The act specifically permits the School Funding Advisory Council to establish other subcommittees and to determine the membership of those subcommittees. The council may appoint non-council members to the other subcommittees, but no more than one-half of a subcommittee's membership may consist of non-council members.

### Staff assistance

The Department of Education must provide staffing assistance to the council and its subcommittees.

## Use of state funds--all-day kindergarten and class-size reduction

(R.C. 3306.01(C))

All state funds distributed to school districts under the act's school funding system, except funds specifically allocated for another purpose, may be used only for one of the following expenditures: (1) current operating expenses, (2) the modification or purchase of classroom space to provide all-day kindergarten for all kindergarten students (see "**All-day kindergarten**" below), or (3) the modification or purchase of classroom space to reduce class sizes in grades K to 3 to attain the goal of a student-core teacher ratio of 15 to 1. To use state funds for classroom space for kindergarten or class-size reduction, a district must certify its need for additional space to the Department of Education.

## Use of state funds--ESC services and joint programs

(R.C. 3306.21 and 3306.22)

The act specifically states that nothing in its school funding provisions should be construed to prohibit either:

(1) School districts, community schools, or STEM schools from using state funds to contract to receive services from an educational service center (ESC); or

(2) School districts from using state funds to establish, operate, or participate in joint or cooperative programs with each other.

## Designation of creative learning environments

The act establishes the "Harmon Commission" to review applications for designation of certain classrooms as "creative learning environments," authorizes the

Department of Education to accept gifts, devises, or bequests of money, lands, or other properties for the Commission, and authorizes the Commission (using these donations) to award grants or stipends to school districts and community schools that have classrooms designated as creative learning environments.

### Harmon Commission

(R.C. 3306.50)

The act establishes the "Harmon Commission" to consist of 21 members appointed by the Governor and legislative leaders. The Commission consists of six members appointed by the Speaker of the House, six appointed by the Senate President, and nine appointed by the Governor. Of the six persons appointed by each of the Speaker or the Senate President, two must be classroom teachers, two must be school administrators, and two must be instructors at Ohio teacher preparation programs. Similarly, of the nine persons appointed by the Governor, three must be classroom teachers, three must be school administrators, and three must be instructors at Ohio teacher preparation programs. Members serve at the pleasure of their appointing authority, but the terms of members appointed by the Governor are limited to the four-year term of office of that Governor, and the terms of members appointed by the Speaker and the Senate President are limited to the two-year term of the General Assembly in which they were appointed. The chairperson of the Commission must be selected by the Governor from among the members of the Commission.

### State Board guidelines and Department of Education assistance

(R.C. 3306.52)

The State Board of Education must adopt guidelines for the Harmon Commission to use in reviewing applications for designation of classrooms as creative learning environments. In addition, the Department of Education must provide staff to assist the Commission in carrying out the Commission's duties.

### Designation of creative learning environments

(R.C. 3306. 51, 3306.53, 3306.54, and 3306.55)

Beginning January 1, 2010, school districts and community schools may apply to the Harmon Commission to have one or more of their classrooms designated as creative learning environments. To qualify for that designation, a district or school must demonstrate to the Commission's satisfaction that the classroom supports and emphasizes innovation in instruction methods and lesson plans and operates in accordance with the State Board's guidelines for such classrooms. Each city, exempted

village, or local school district may apply. A community school may apply only if it has entered into a memorandum of understanding with one or more school districts. The memorandum must be approved by the Department of Education and must specify "a collaborative agreement to share programming and resources to promote successful academic achievement for students and academic and fiscal efficiencies."

From January 1, 2010, through April 14, 2010, a school district and a qualifying community school may submit to the Commission an unlimited number of applications for first-time designation of individual classrooms as creative learning environments. No applications may be submitted between April 15, 2010, and July 1, 2010. After July 1, 2010, each district and each qualifying community school may submit only one application per fiscal year for first-time designation of one classroom as a creative learning environment.

Not later than May 1 each year, the Commission must begin meeting to review pending applications for first-time designations. The Commission must approve or disapprove all pending applications by July 1. Each first-time designation is valid for only one fiscal year. Upon application, a first-time designation may be renewed for two more fiscal years. Further subsequent renewals for two years at a time are automatic and do not require application by the district or community school.

However, a designation may be revoked. If the Department of Education at any time finds that a designated classroom is no longer operating in accordance with the State Board's creative learning environment standards, the Department may appeal the designation to the Harmon Commission. The Department's appeals must be filed by February 15 each year. Upon appeal, the Commission must review the operation of the classroom and either continue the designation or revoke it, effective the following July 1.

The decision of the Commission to grant, renew, or revoke a designation is final. If the Commission declines to renew or revokes a designation, the district or community school may reapply for designation of the classroom, but the application must be treated as a new application for first-time designation.

### Progress reports

(R.C. 3306.56)

Each school district or community school that operates a classroom designated as a creative learning environment must submit periodic progress reports to the Department of Education on the operation and performance of the classroom. The reports are to be submitted by a deadline and in the manner prescribed by the Department.

### Acceptance of donations

(R.C. 3306.57)

The act authorizes the Department of Education to receive and expend gifts, devises, or bequests of money, lands, or other properties for operation of the Harmon Commission and for the award of grants and subsidies. Also, the State Board of Education may adopt rules for the purpose of enabling the Department to carry out the conditions and limitations of any bequest, gift, or endowment.

### Grants and stipends

(R.C. 3306.58)

The act permits the Harmon Commission, beginning July 1, 2010, to use a portion of any donations the Department of Education might receive on its behalf to award grants or stipends to school districts and community schools that have one or more of their classrooms designated as creative learning environments. The Commission must first adopt procedures for application for and the award of such grants or stipends.

## Joint vocational school districts

(Section 265.30.50)

The act does not provide a funding formula for joint vocational school districts (JVSDs). Instead, it specifies that each JVSD's payment for fiscal years 2010 and 2011 will be equal to the amount the district received in the previous year inflated by 0.75%. The act also requires the Ohio School Funding Advisory Council to recommend revisions to JVSD programming and funding (see above).

## Educational service center funding

(Section 265.50.10)

The act retains the permanent law on funding educational service centers (ESCs). Accordingly, an ESC may receive state funds in an amount of either $37 or $40.52 per pupil for each local and client (city or exempted village) school district served by the ESC.[97] The latter amount applies in the case of an ESC made up of a merger of at least three smaller ESCs. However, in the event that the total amount appropriated for ESCs is not enough to pay each ESC the full amount, the act directs the Department of Education to use the same methodology it used for that circumstance in fiscal year 2009. Reportedly, that methodology was a per pupil pro rata distribution to all ESCs. Again,

[97] R.C. 3317.11, not in the act.

the act requires the School Funding Advisory Council to recommend governance and funding changes for ESCs.

### Community school and STEM school payments

(R.C. 3314.088 and 3326.39; conforming changes in R.C. 3314.08, 3314.13, and 3326.33)

The act continues the practice of prior law of counting students who enroll in community schools and STEM schools in the average daily memberships of their resident school districts, crediting those districts with state funds for those students, and deducting from those districts and paying to the respective community school or STEM school a per pupil amount attributable to each individual student. In doing so, the act retains, largely unchanged, the codified law on payments to community schools and STEM schools. But the act's evidence-based funding model for school districts does not provide for a per pupil amount of funding to each district, like the prior district funding model did; therefore, the act specifies certain per pupil amounts to be deducted from districts and paid to community schools and STEM schools based on the amounts computed for fiscal year 2009 under prior law.

For this purpose, the act sets the formula amount (the per pupil base-cost attributed to all students under former law) at $5,718 for fiscal year 2010 and $5,703 for fiscal year 2011, except for deductions and payments for special education and vocational education.[98] For special education and vocational education payments, the act specifies that deductions and payments be computed by multiplying the respective fiscal year 2009 weight times $5,732. (The act prescribes a different set of special education weights and categories for special education payments to school districts under the evidence-based model. It does not prescribe any funding weights for career-technical education payments to school districts but instead bases a district's payments for fiscal years 2010 and 2011 on a percentage of its career-technical education payment for the previous year.)

### Formula amount for other purposes

(R.C. 3317.02(B))

As in the case of community school and STEM school students, the act continues the practice of counting interdistrict open enrollment students, Post-Secondary Enrollment Options Program (PSEO) students, and scholarship students in the average daily membership of their resident school districts.[99] It also continues to compute the

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[98] The formula amount prescribed under former law for school districts for fiscal year 2009 was $5,732.

[99] R.C. 3317.03(A).

payments for open enrollment students and PSEO students on a per pupil basis relying in part on the formula amount.[100] For these purposes, the act sets the formula amount at $5,732 for both fiscal years 2010 and 2011.[101]

## Ed Choice funding

The Educational Choice Scholarship Pilot Program provides up to 14,000 scholarships each year to students in lower performing public schools to pay tuition at chartered nonpublic schools. The Ed Choice program is separate from the scholarship program that serves students in the Cleveland Municipal School District. To finance Ed Choice scholarships (and partially to fund scholarships in the Cleveland program), Ed Choice recipients are counted in the enrollments of their resident school districts, and state funds are then deducted from the districts' state funding accounts.

### Deductions

(R.C. 3310.08)

The act continues this practice, but it increases the annual deduction for kindergartners receiving Ed Choice scholarships from $2,700 to $5,200, the latter being the amount currently deducted for Ed Choice recipients in grades 1 to 12. This accounts for the counting of each kindergarten student as one full-time-equivalent student under the act's new school funding system, rather than as one-half student under the prior funding system.

### Maximum scholarship amounts (PARTIALLY VETOED)

(R.C. 3310.09)

The act would have permanently set the Ed Choice scholarship amounts at $4,500 for students in grades K to 8, and $5,300 for students in grades 9 to 12. These

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[100] The act retains the current formula for calculating PSEO payments, but also authorizes the Superintendent of Public Instruction and the Chancellor of the Board of Regents jointly to adopt rules prescribing alternative PSEO payment arrangements. See "**Post-Secondary Enrollment Options alternative funding**" below.

[101] Continuing law requires each school district annually to deposit money into both a district textbook and instructional materials fund and a district capital and maintenance fund (R.C. 3315.17 and 3315.18, neither section in the act). The required annual deposits into each fund generally equal (a) 3% of the per-pupil base-cost formula amount specified for the previous fiscal year, times (b) the district's student count for the previous year. The per-pupil amount for fiscal year 2009, to be used for calculating deposits in fiscal year 2010, is $5,732; 3% of that amount is $172. Since the act retains that formula amount for the next two fiscal years, it appears that the required per-pupil deposit into these two funds is also frozen for two more years thereafter.

were the amounts that the Department of Education had projected for the 2009-2010 school year (fiscal year 2010) under prior law.[102] Under that prior law, the maximum scholarship amounts in fiscal year 2007, the first year of the program, were set at $4,250 for grades K to 8, and $5,000 for grades 9 to 12, and were increased each fiscal year thereafter by the same percentage that the per pupil base-cost formula amount increased under the former school funding system.

However, the Governor vetoed the act's provisions fixing the new amounts for fiscal year 2010 and thereafter and left intact the act's elimination of the statutory language requiring the annual inflation of the scholarship amounts. The Governor's veto appears to permanently fix the scholarship amounts at $4,250 for grades K to 8, and $5,000 for grades 9 to 12, thus reducing and permanently fixing the scholarship amounts at their fiscal year 2007 levels.

### Post-Secondary Enrollment Options alternative funding

(R.C. 3365.12; conforming changes in R.C. 3314.08, 3326.36, 3365.04, 3365.041, and 3365.07 to 3365.10)

The Post-Secondary Enrollment Options program enables high school students to enroll in college courses for college credit only, or for both high school and college credit. Students who choose to receive only college credit must pay the college's tuition and fees themselves. But for most who elect to receive high school credit as well, money for the colleges' tuition and fees is deducted from their school districts' state aid (or, in the case of nonpublic schools, from an amount set aside from state Auxiliary Services funds).

The act authorizes the Superintendent of Public Instruction and the Chancellor of the Ohio Board of Regents to jointly adopt rules that permit a school district or joint vocational district board, community school, STEM school, or nonpublic school to enter into an agreement with a college or university to use an alternate funding formula to calculate, or an alternate method to transmit, the amount the college or university would be paid for a student who participates in a Post-Secondary Enrollment Options program, including the Seniors to Sophomores program.

The act offers some possible alternative funding options, but does not limit the options to any of the following: (1) direct payment of necessary funds by the student's high school to the college or university in which the student is enrolled, (2) alternate

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[102] An Ed Choice scholarship cannot exceed the tuition charged by the student's chartered nonpublic school. If the tuition is less than the maximum amount, the scholarship pays only the amount of the tuition.

funding formulas to calculate the amount to be paid to colleges and universities, and (3) negotiated amounts to be paid, as agreed to by the school district, joint vocational school district, community school, or STEM school and the college or university.

## School fees for low-income students

(R.C. 3313.642)

The act expands the prior law prohibiting school districts from charging fees to low-income students. The act outright prohibits every school district from charging for materials necessary to participate fully in a course of instruction to students who are eligible for free lunch programs under federal law.

Prior law prohibited only school districts that received state poverty-based assistance (paid under prior law) from charging students whose families were enrolled in the Ohio Works First or state disability assistance programs fees for materials needed to participate fully in a course of instruction.

## Payments for students in residential facilities

(R.C. 3313.64(C))

### Background

Under continuing law, all persons residing in the state, who are between 5 and 22 years old (or 3 and 22 years old if disabled), are entitled to attend school free of charge in the school district in which their parent resides. In some instances, a person may attend school in the school district in which the person resides regardless of where the person's parent resides. These cases often result from incarceration or other institutionalization of the parent or the necessity of placing the person in a residential facility. In these cases, while the person attending school does not owe tuition, some other entity (usually the district in which the person's parent resides or resided) may be charged tuition for the person's attendance.[103] The tuition amount is the per pupil amount of taxes charged and payable for the district providing the services.[104] If the student is receiving special education and related services for a disability, the district providing services may be entitled to charge the entity responsible for tuition for the

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[103] R.C. 3313.64(B) and (C). There are numerous specific exceptions in which a person may be admitted to school in the district in which that person and not the person's parent resides and no tuition is owed by anyone (R.C. 3313.64(F)).

[104] R.C. 3317.08. The tuition charged for a person who is not a resident of Ohio also includes the amount of state funding the district would have received for the student if the student were an Ohio resident (R.C. 3317.081 and 3317.082).

costs in excess of the amount covered by the tuition and any state payments paid to the district for the student.[105]

### The act

The act provides a special tuition rule in the case of a child who is admitted to a school district other than the one in which the child's parent resides because the child is placed in a residential facility that is not a foster home or a home maintained by the Department of Youth Services. Under the act, if a child in such a circumstance receives educational services at the residential facility under a contract between the facility and the school district providing those services and does *not* receive special education, the tuition for the child must be determined by a formula approved by the Department of Education. That formula must be designed to calculate a per diem cost for the educational services provided to the child and to reflect the total actual cost incurred in providing those services. The Department must certify the computed amount to both districts and deduct that amount from the state aid account of the district responsible for the cost of educating the child and credit it to the account of the district providing the services.

## Legal claims for reimbursement of reduced funds

(Section 265.60.70)

The act states that, if a school district had its formula ADM (full-time-equivalent enrollment) for FY 2005 reduced based on enrollment reports for community schools, and that reduction resulted in reduced state funding for FY 2005, 2006, or 2007, the district has no legal claim, and the state has no liability, for reimbursement of the reduced funds, except as provided in a court's judgment or in a settlement agreement executed on or before June 1, 2009. This would mean that should there be such a court order or settlement agreement with a school district, no other district could make a similar claim.

## Nonpublic school administrative cost reimbursement

(R.C. 3317.063)

The Superintendent of Public Instruction annually reimburses each chartered nonpublic school[106] for administrative and clerical costs incurred as a result of

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[105] R.C. 3323.142.

[106] A chartered nonpublic school is a private school that operates under a charter issued by the State Board of Education. In return for abiding by certain standards, each chartered nonpublic school receives reimbursement of some of its administrative costs (as described in the text above) and its students are

complying with state and federal recordkeeping and reporting requirements. The act increases to $325 (from $300) the maximum amount per pupil that may be reimbursed to a school each year.

## Sharing of stimulus funds with nonpublic schools

(R.C. 3301.95)

The federal stimulus funds under the American Recovery and Reinvestment Act of 2009 for primary and secondary education consist of funds to the state for budget stabilization and of funds to be allocated by the state to school districts for Title I services for economically disadvantaged students,[107] for IDEA services to children with disabilities,[108] and for education technology[109] in accordance with existing federal formulas. In all three cases, underlying federal law requires school districts receiving those funds to spend a portion to provide similar services for students enrolled in nonpublic schools.[110] The act further specifies that each district receiving this federal stimulus funding must use the required amounts of that funding for services for students enrolled in nonpublic schools located in the district as prescribed under the federal statutes.

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entitled to some goods and services purchased with state Auxiliary Services funds (R.C. 3317.06, not in the act).

[107] "Title I" refers to a long-standing federal education program providing targeted funds to schools with relatively high concentrations of economically disadvantaged students. See 20 United States Code (U.S.C.) 6301 *et seq*.

[108] "IDEA" refers to the federal Individuals with Disabilities Education Improvement Act, 20 U.S.C. 1400 et seq. IDEA requires public schools to identify children with disabilities and to provide those children with a "free appropriate public education" in accordance with their own "individualized education programs."

[109] These education technology funds are provided through the parameters of the "Enhancing Education Through Technology Act of 2001" (EETT). See 20 U.S.C. 6751 et seq.

[110] In the case of IDEA, districts are required to spend a per pupil amount for services to disabled students placed by their parents in private schools, but those students do not have a federally protected right to a particular level of service like public school students do (20 U.S.C. 1412(a)(3)(A) and 1412(a)(10)(A)(ii)). See also R.C. 3323.041, which partially mimics the federal statute on point.

## II. Academic Standards and Assessments

### Minimum standards for schools

(R.C. 3301.07(D)(2) and last paragraph)

Under continuing law, the State Board of Education prescribes minimum standards for all public and nonpublic schools. These standards address such factors as educator licensing, instructional materials, school organization, and student admissions and graduation requirements.[111]

With regard to the minimum standards for *public* schools, the act allows a school district to request a temporary waiver of particular standards from the Superintendent of Public Instruction. The act also specifies that the minimum standards for public schools must require that instructional materials and equipment, including library materials, be aligned with, and promote skills expected under, the academic content standards adopted by the State Board.

#### Minimum school district operating standards

(R.C. 3301.07(D)(3) and last paragraph, 3302.05, and 3302.07)

The act directs the State Board of Education to develop additional minimum *operating* standards for school districts. Each district must comply with the operating standards, but a district may apply to the Superintendent of Public Instruction for a temporary waiver of particular standards.

The State Board's minimum operating standards for districts must include the following:

(1) Standards for effective and efficient organization, administration, and supervision of each district and organizational unit so that it becomes "a thinking and learning organization" in accordance with principles of systems design and collaborative professional learning communities research, as defined by the state Superintendent. The standards must provide for (a) a focus on the individual needs of each student, (b) a shared responsibility among school boards and staff to develop a common mission and set of guiding principles and to engage in a process of collective inquiry, action orientation, and experimentation to ensure each student's academic success, (c) a commitment to teaching and learning strategies that use technology and emphasize inter-disciplinary, real world, project-based, and technology-oriented learning experiences to meet every student's needs, (d) a commitment to high

[111] See Ohio Administrative Code Chapter 3301-35.

expectations for every student to attain core knowledge and skills in accordance with the State Board's academic content standards, (e) a commitment to the use of assessments to identify each student's needs, (f) effective relationships with families and others to support student success, and (g) a commitment to the use of positive behavior intervention supports to ensure a safe learning environment.

(2) Standards for the establishment of business advisory councils and family and civic engagement teams by school districts (see "**Family and civic engagement teams**" below);

(3) Standards incorporating the Superintendent of Public Instruction's classifications of the components of the adequacy amount under the act's funding model into core academic strategy components and academic improvement components;

(4) Standards for each district organizational unit that require (a) a commitment to job-embedded professional development and professional mentoring and coaching, (b) periods of time for teachers to pursue development of lesson plans, professional development, and shared learning, and (c) a commitment to effective management strategies that allow administrators reasonable access to classrooms for observation and professional development experiences; and

(5) Standards for each district organizational unit that require a school leadership team to coordinate positive behavior intervention supports, family and civic engagement services, learning environments, thinking and learning systems, collaborative planning, planning time, student academic interventions, student extended learning opportunities, and other activities identified by the team and approved by the school board. The leadership team must include the building principal, representatives from each collective bargaining unit, the building lead teacher, parents, and business representatives.

### Construction; application of Collective Bargaining Law

(R.C. 3301.07(D)(1))

The act states that, with one exception and unless the context specifically indicates otherwise, references in the Revised Code to the State Board of Education's minimum standards are to be construed to refer to the State Board's standards for all public and nonpublic schools (see "**Minimum standards for schools**" above) and not to the minimum *operating* standards, which apply only to school districts (see "**Minimum school district operating standards**" above). The exception applies to a reference contained in the Public Employee Collective Bargaining Law. Under a continuing provision of the Collective Bargaining Law, the State Board's minimum

standards prevail over any conflicting provisions of a collective bargaining agreement between school employees and their public employers.[112] By stating that this reference is an exception to the general rule described above for construing references to the minimum standards as including only the minimum standards for *all* schools, the act has the effect of requiring this reference to be construed as including both those standards and the act's new minimum operating standards for school districts. Consequently, under the act, the State Board's minimum operating standards for school districts also prevail over conflicting provisions of a collective bargaining agreement between a district and its employees.

## Standard for reporting financial information to the public

(R.C. 3301.07(B)(2) and last paragraph)

Under continuing law, the State Board of Education must develop a standard for making school district financial information available to the public in an easily understandable format. The format must show revenue by source, per pupil expenditures, expenditures for employee salaries and benefits, and non-personnel expenditures such as utilities, textbooks, equipment, permanent improvements, transportation, and extracurricular activities. All school districts and educational service centers (ESCs) must comply with the financial reporting standard.

The act makes several modifications to the standard. First, it requires school districts and ESCs to report revenues and expenditures by school building, rather than by the district or ESC as a whole, if the Department of Education determines that method is more appropriate. Second, it eliminates a requirement that the reporting format provide year-to-year comparisons of budgets over a five-year period. Finally, the act allows a school district to apply to the Superintendent of Public Instruction for a waiver from compliance with the financial reporting standard.

## Academic standards and model curricula

(R.C. 3301.079, 3301.0718, and 3313.603; Section 265.60.80)

### Background

Under prior law, the State Board of Education was required to adopt statewide academic standards and model curricula for grades K to 12 in the core subject areas of reading, writing, math, science, and social studies. The State Board adopted academic standards for reading, writing, and math in late 2001, and model curricula for those subjects in 2003. Standards for science and social studies were adopted in late 2002,

[112] R.C. 4117.10(A), not in the act.

followed by model curricula in 2004. Each set of standards describes the academic content and skills that students are expected to know and perform at each grade level. The model curricula are aligned with the standards to ensure that the appropriate content and skills are taught.

### Adoption of revised standards and curricula in core subjects

(R.C. 3301.079(A)(1) and (4), (B), and (H))

The act directs the State Board to revise the academic standards in the core subject areas and to issue new ones by June 30, 2010. Revised model curricula must be adopted by March 31, 2011. In addition, the State Board must update and revise the standards (and presumably the model curricula) at least every five years thereafter. Under the act, reading and writing are combined into the single subject area of English language arts. Therefore, the revised standards and model curricula will be in English language arts, math, science, and social studies. The act requires the Superintendent of Public Instruction to present the revised standards and model curricula to the House and Senate education committees at least 45 days prior to the deadline for their adoption.

Following completion of the revised standards and curricula, the State Board must inform all school districts, community schools, and STEM schools of their content.[113] As in former law, districts and schools are not required to use the standards or model curricula, but they may draw on them along with other relevant resources.

#### Academic standards

The act requires the revised academic standards to emphasize (1) coherence, by reflecting the structure of the discipline being taught, (2) focus, by limiting the number of items in the curriculum to allow for deeper exploration of the subject matter, and (3) rigor, by being more challenging and demanding compared to international standards. Also, the standards must specify the following:

(1) The core academic content and skills for each grade level that will prepare students for post-secondary instruction and the workplace for success in the 21st century;

(2) The development of skills related to creativity and innovation, critical thinking and problem solving, and communication and collaboration;

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[113] Under the act, nonpublic schools required to administer the state achievement assessments, which include chartered nonpublic high schools and nonpublic schools that enroll Ed Choice or Cleveland voucher students, also must be notified of the content of the revised standards.

(3) The development of skills that promote information, media, and technological literacy;

(4) The development of skills that promote personal management, productivity and accountability, and leadership and responsibility; and

(5) Interdisciplinary, project-based real, world learning opportunities.

#### Model curricula

Besides demonstrating the coherence, focus, and rigor of the academic standards, the model curricula also must ensure that key concepts and skills associated with mastery of particular content areas are articulated and reinforced in a developmentally appropriate way at each grade level so that students acquire a depth of knowledge and understanding in the core academic disciplines over time.

### Adoption of standards and curricula in other subjects

(R.C. 3301.079(A)(2) to (4) and 3301.0718)

Prior law required the State Board, after adopting academic standards in the core subject areas, to adopt standards and model curricula in computer literacy for grades 3 to 12 and in both fine arts and foreign language for grades K to 12. Standards for these subjects were adopted by the State Board in December 2003 and the model curricula were adopted in November 2004.

The act requires the State Board to update the standards and model curricula in these subjects. However, the updated standards and curricula for computer literacy must be expanded to cover all grades. The act also requires adoption of standards and model curricula for grades K to 12 in the new subject area of financial literacy and entrepreneurship.[114] Standards and curricula in the non-core subject areas must be adopted after the State Board completes its revisions to the standards in the core subjects. Like the standards in the core subjects, the non-core subject standards must include the content knowledge, skills, and learning opportunities necessary to prepare students for success in the 21st century.

Finally, the act requires the State Board to periodically update its physical education standards for grades K to 12. In December 2007, in accordance with

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[114] Under continuing law, the study of economics and financial literacy, as expressed in the social studies content standards, must be integrated into one or more high school social studies classes as part of the Ohio Core curriculum, which applies to students in the Class of 2014 and later. The act further requires the course content to reflect the new standards in financial literacy and entrepreneurship. (R.C. 3313.603(C).)

continuing law, the State Board adopted the physical education standards developed by the National Association for Sport and Physical Education (NASPE).[115] Consequently, the act's provision appears to require the State Board to update the physical education standards to reflect future changes by NASPE.

### Committee to advise on standards and curricula

(Section 265.60.80)

No later than September 15, 2009, the State Board must convene a committee to provide advice and guidance in the design of the new standards and model curricula. Members of the committee must include national and state experts and local practitioners.

## Achievement assessments

(R.C. 3301.0710, 3301.0711, and 3313.608; conforming changes in R.C. 3301.079, 3301.0714, 3301.0716, 3302.01, 3302.02, 3302.03, 3302.031, 3310.03, 3310.11, 3310.14, 3313.532, 3313.603, 3313.61, 3313.611, 3313.612, 3313.614, 3313.615, 3313.6410, 3314.03, 3314.08, 3314.19, 3314.25, 3314.26, 3314.36, 3317.03, 3319.151, 3319.28, 3325.08, 3326.14, 3326.37, and 3333.123; Sections 265.20.15 and 265.20.18)

### Background

Law retained in part by the act prescribes achievement tests for each of grades 3 to 8 and grade 10, as shown in the table below. These tests are aligned with the academic standards and model curricula adopted by the State Board of Education. The tenth grade tests are collectively known as the Ohio Graduation Tests, or OGT.

| | Achievement Tests | | | | |
|---|---|---|---|---|---|
| | **Reading** | **Writing** | **Math** | **Science** | **Social Studies** |
| **Grade 3** | X | | X | | |
| **Grade 4** | X | X | X | | |
| **Grade 5** | X | | X | X | X |
| **Grade 6** | X | | X | | |
| **Grade 7** | X | X | X | | |
| **Grade 8** | X | | X | X | X |
| **Grade 10** | X | X | X | X | X |

[115] NASPE is a nonprofit organization of physical education professionals and researchers that supports physical activity programs and promotes awareness of the importance of physical education for youth.

### Name and content changes

(R.C. 3301.0710; Section 265.20.15(A))

The act replaces the term "test" with "assessment," so that the achievement tests are referred to as "achievement assessments." It also specifies that the assessments must be designed to ensure that students demonstrate skills needed in the 21st century.

Since reading and writing are combined into English language arts for the purposes of the academic standards and model curricula, the act combines the elementary level reading and writing assessments into one English language arts assessment. However, the act delays administration of the English language arts assessments until a date prescribed by rule of the State Board of Education for the stated purpose of allowing adequate time for development of the new assessments. Until that date, students will still take separate reading and writing assessments, except to the extent the writing assessments are suspended for the 2009-2010 and 2010-2011 school years (see "**Temporary suspension of writing and social studies assessments**" below).

When the new English language arts assessments are implemented, the reading assessments in grades 3 to 8 will expand to include coverage of writing skills.[116] This change has the effect of reducing the number of assessments in fourth and seventh grades from three to two, as students will only be required to take the combined English language arts assessment and a math assessment in those grades. The OGT will continue to include both a reading and writing assessment.

### Scoring levels

(R.C. 3301.0710(A)(2), 3301.0711(M), and 3313.608; Section 265.20.15(B))

Under prior law, there were five ranges of scores on the achievement tests--*advanced*, accelerated, *proficient*, *basic*, and *limited*. The act decreases the number of performance levels to three, by eliminating the *accelerated* and *basic* levels.[117] However, the State Board of Education is not required to prescribe the cut scores for the three

[116] Combining reading and writing into the single subject of English language arts does not affect Ohio's compliance with the federal No Child Left Behind Act (NCLB). NCLB requires assessments in specified grades in reading *or language arts* (20 United States Code 6311(b)(3)(C)(vii)). Ohio's former testing system, by prescribing separate reading and writing tests, went beyond NCLB requirements.

[117] Regulations adopted under NCLB require state assessment systems to have at least three performance levels--*advanced*, *proficient*, and *basic* (34 Code of Federal Regulations § 200.1(c)(1)(ii)). Using the term "limited" instead of "basic" for the lowest scoring range probably does not present an issue for Ohio's compliance with NCLB, although that is not clear.

performance levels until it adopts the rule designating the date for administration of the new elementary English language arts assessments (see "**Name and content changes**" above). In the meantime, it must continue to designate scores for the five previous performance levels. A score in the *proficient* range remains necessary to pass an achievement assessment once the reduction to three scoring levels takes effect.

In some cases, under continuing law, the possibility of retention in a student's current grade level is tied to a student's score on an achievement assessment. Formerly, a public school could use a student's failure to attain at least a score in the *basic* range on an elementary achievement assessment as a factor in retaining the student. The act retains this option, but once the *basic* range is eliminated, students who fail an elementary assessment by attaining less than a *proficient* score may be held back.

Similarly, under the third grade reading guarantee, which aims to ensure that students are reading at grade level by the end of third grade, a student who scores in the *limited* range on the third grade English language arts assessment must be retained in third grade, unless the student's principal and reading teacher agree that other evaluations of the student's reading skills indicate the student is prepared for fourth grade or the school will provide the student with intervention services in fourth grade. Since the *limited* range was the lowest of five scoring ranges under prior law, only the lowest performing students were subject to the possibility of retention. Under the act, however, the *limited* range is the lowest of only three scoring ranges, and contains all students who do not pass the third grade assessment, so more students will be eligible for retention under the reading guarantee.

### Administration dates

(R.C. 3301.0710(C) and (E))

Under former law, the State Board of Education designated the dates for administration of the achievement tests, within statutory parameters. These parameters specified the earliest possible date the tests could be given in the spring (see "**Background**" below) and required that the elementary-level tests be given over a two-week period.

The act directs the Superintendent of Public Instruction, rather than the State Board, to set dates and times for administration of the achievement assessments, and leaves those dates to the Superintendent's discretion. By eliminating the statutory restrictions on the assessment dates, the act permits the Superintendent to designate

earlier times during the school year for giving the assessments and to administer them in a shorter timeframe than previously required.[118]

The act also repeals several other provisions regarding the timing of the assessments. First, it eliminates a provision allowing an achievement assessment to be administered to limited English proficient students one week earlier than it is given to other students.

Second, it repeals a requirement that alternate assessments administered to students with disabilities be completed and submitted to the scoring company by April 1. Under continuing law, a disabled student may be excused from taking an achievement assessment and instead take an alternate assessment, if no reasonable accommodations can be made to enable the student to take the regular assessment.

Finally, the act repeals a requirement that schools be given the option of administering the OGT for eleventh and twelfth graders and make-up assessments for sick students outside of regular school hours.

#### Background

Formerly, the earliest date the State Board could designate for administration of the elementary achievement tests was Monday of the week of April 24. Therefore, the earliest possible administration date for those tests was April 19. The third grade reading test (replaced by the English language arts assessment under the act) also was given once in the fall prior to December 31. The OGT had to be given no earlier than Monday of the week of March 15 to tenth graders taking the test for the first time. Eleventh and twelfth graders who had failed a portion of the OGT had at least two opportunities each year to retake the test, on a date before December 31 and on a date after December 31 but prior to March 31. Many school districts also administered the OGT in the summer for these students.

### Public records status of OGT

(R.C. 3301.0711(N))

Under prior law, the version of the OGT administered in the spring was a public record, but the versions administered in the fall and summer were not available to the public. The act prohibits release of *any* version of the OGT as a public record. It does not affect the public records status of the elementary achievement assessments, for

[118] As in prior law, however, the Superintendent must allow a reasonable length of time between the state assessments and any administration of the National Assessment of Educational Progress (R.C. 3301.0710(C)).

which at least 40% of the questions that are counted toward a student's score must be a public record.

#### Temporary suspension of writing and social studies assessments

(Section 265.20.18)

The act suspends administration of the elementary achievement assessments in writing and social studies for the 2009-2010 and 2010-2011 school years, unless the Superintendent of Public Instruction determines the Department of Education has sufficient funds to pay for the furnishing and scoring of those assessments.

### Replacement of OGT as graduation requirement

(R.C. 3301.0710(B), 3301.0711(B) and (K), 3301.0712, 3313.532, 3313.603(F), 3313.61, 3313.611, 3313.612, 3313.614, 3314.36, 3325.08, and 3326.14; conforming changes in R.C. 3301.0714, 3301.16, 3314.19, 3314.25, 3326.11, and 3326.23)

To graduate from a public or chartered nonpublic high school, a student generally must (1) complete the curriculum required by the student's school or the student's individualized education program (IEP) and (2) pass all subject-area tests of the OGT. However, students who pass all of the OGT but one, and miss a passing score on that one test by ten points or less, may satisfy alternative criteria for graduation.[119]

The act directs the State Board of Education, the Superintendent of Public Instruction, and the Chancellor of the Ohio Board of Regents to develop a new, multi-factored assessment system to replace the OGT as a graduation requirement from a public or chartered nonpublic high school. This system must assess whether graduating high school students are ready for college or the workforce. The State Board, by administrative rule, must determine when the new system will be implemented. At least 45 days prior to the State Board's adoption of a resolution directing the Department of Education to file those rules in final form, the Superintendent of Public Instruction must present the assessment system to the House and Senate education committees. Until the new system is implemented, the act retains the OGT as a requirement for high school graduation.

The new assessment system must consist of the following elements:

(1) A nationally standardized assessment that measures competencies in English language arts, math, and science;

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[119] Those alternative criteria include such factors as attendance rate, grade point average, expulsions, participation in intervention opportunities, and teacher recommendations (see R.C. 3313.615).

(2) A series of end-of-course exams in the areas of English language arts, math, science, and social studies; and

(3) A senior project.

### National assessment and end-of-course exams

(R.C. 3301.0712(B)(1) and (2))

The nationally standardized assessment must be selected by the state Superintendent and the Chancellor. To comply with the federal No Child Left Behind Act (NCLB), Ohio must administer assessments in the subject areas of English language arts, math, and science at least one time in grades 10 to 12. NCLB further requires that these assessments be aligned with the state academic standards.[120] Although the act requires the nationally standardized assessment to cover the NCLB-mandated subject areas, it is not clear if a national assessment, such as the ACT, will be sufficiently aligned to Ohio's academic content standards to comply with NCLB. If it is not, the assessment may need to be modified (by incorporating additional questions, for example) to align it more closely with those standards.

The end-of-course exams must be chosen by the Superintendent and Chancellor, in consultation with faculty of Ohio's public institutions of higher education who teach in the required subject areas. The act does not specify how many end-of-course exams there will be in total.

### Senior project

(R.C. 3301.0712(B)(3))

Each student may complete the senior project either individually or with a group of other students. The purpose of the senior project is to assess each student's (1) mastery of core knowledge in the chosen subject area, (2) written and verbal communication skills, (3) critical thinking and problem solving skills, (4) real world and interdisciplinary learning, (5) creative and innovative thinking, (6) technology, information, and media skills, and (7) personal management skills such as self-direction, time management, work ethic, enthusiasm, and desire to produce a quality product. The state Superintendent and the Chancellor must develop standards for the senior project for students participating in dual enrollment programs.

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[120] 20 United States Code 6311(b)(3)(C).

### Scoring requirements

(R.C. 3301.0712(C))

The Superintendent of Public Instruction and the Chancellor must designate the scoring rubrics to be used in evaluating students under the new assessment system. The senior projects must be judged by the student's high school in accordance with the scoring rubrics. In addition, the state Superintendent and Chancellor must establish an overall composite score on the three components that indicates that a student is college or work ready. This composite score is the passing score needed to complete the assessment requirement for a high school diploma.

### Timeline for development and implementation

(R.C. 3301.0712(D) and (E))

Within 30 days after the State Board of Education adopts new model curricula for the core subject areas, the Board must convene a group of national and state experts and local practitioners to provide advice and recommendations for aligning the academic content standards and model curricula to the new assessments and for designing the end-of-course exams and scoring rubrics. Since the model curricula are due by March 31, 2011, the latest this group may convene is April 30, 2011.

Once the new assessment system has been developed, the State Board must adopt rules describing when and how the system will be implemented. These rules cannot be effective for at least one year after they are filed in final form under the Administrative Procedure Act. The rules must specify all of the following:

(1) A timeline and plan for implementing the assessment system, including a phased implementation if the State Board determines a phase-in is warranted;

(2) The date after which an entering ninth grader must attain at least the designated composite score to qualify for a high school diploma and the date after which a person must attain that score to qualify for a diploma of adult education;

(3) Whether, and to what extent, to excuse from a social studies end-of-course exam any person who (a) is not a U.S. citizen, (b) is not a permanent resident of the United States, and (c) indicates no intention to reside in the United States after high school. (A person who meets these criteria is excused from the social studies portion of the OGT. The criteria essentially describe foreign exchange students.)

(4) The date after which a person who has fulfilled the curriculum requirement for a diploma, but who has not passed one or more portions of the OGT, no longer has the opportunity to retake the OGT and must instead attain at least the designated

composite score on the new assessment system in order to meet the assessment requirement for graduation;[121] and

(5) The extent to which the new assessment system applies to students enrolled in a dropout program, for purposes of granting exemptions from (a) the requirement for the program's students to complete the Ohio Core curriculum and (b) in the case of a community school serving dropouts, from the requirement for the school to close for poor academic performance. Under continuing law, the Department of Education grants waivers from these requirements to dropout programs that meet specified criteria, including requiring their students to pass the OGT.[122] Under the act, the State Board must determine if the students in these programs must comply with the new assessment system as a condition of the program receiving a waiver.

### Exemption for disabled students

(R.C. 3313.532, 3313.61(L), 3313.611, 3313.612, and 3325.08)

Continuing law exempts students with disabilities from having to pass one or more portions of the OGT as a condition of receiving a high school diploma, if the student's IEP excuses the student from having to pass the assessment.[123] The act preserves this exemption for disabled students under the new assessment system. In other words, if the student's IEP excuses the student from some component of the new assessment system, the student may still graduate without attaining a passing composite score.

## Performance indicators for district and building report cards

(R.C. 3302.02)

Former law directed the State Board of Education, every six years, to establish at least 17 performance indicators for the annual school district and building report cards. The performance indicators are one factor in determining each district's and building's performance rating. As most recently established, they include (1) a 75% proficiency rate on each grade-level state achievement test, (2) a 93% attendance rate, and (3) a 90% graduation rate. The State Board last approved performance indicators in 2007, so they were not due for reconsideration until 2013.

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[121] Until the date set by the State Board for ending access to the OGT, school districts must continue to administer the OGT to students who started ninth grade prior to the date the new system takes effect (R.C. 3301.0710(B)(8)(b) and 3313.614).

[122] See R.C. 3313.603(F) and 3314.36.

[123] In the case of a person seeking a diploma of adult education, the school district board of education decides whether to excuse the person (R.C. 3313.532).

Under the act, the State Board must reconsider the performance indicators within one year after it adopts rules to implement the act's new assessment system for high school graduation (see "**Replacement of OGT as graduation requirement**" above). Since the act does not set a deadline for the assessment system, this date could be earlier or later than 2013. Similarly to prior law, the State Board must review the indicators at least every six years after the initial reconsideration. Also, by December 31, 2011, the State Board must establish a performance indicator reflecting the level of services provided to gifted students and the performance of those students.

The act requires the State Board to establish all future performance indicators, including the indicator for gifted students, based on recommendations of the Superintendent of Public Instruction. It also eliminates the requirement that there be a minimum of 17 indicators. When the new high school assessment system is operational, the Superintendent may consider including student performance on the three components of the system as possible performance indicators.

## Report card data on college and work readiness

(R.C. 3314.012 and repealed R.C. 3302.032)

The act repeals a requirement that the State Board of Education include measures of high school graduates' preparedness for higher education and the workforce on the school district and building report cards.

### Background--prior law

By June 30, 2012, the State Board was required to select one or more measures of the readiness of high school graduates for college and the workforce. Those measures could include student performance on college readiness assessments recommended by the Partnership for Continued Learning,[124] the percentage of students who earn college credit while in high school, or the percentage of students who take remedial coursework in college. The Department of Education was to begin including the measures on the report cards for the 2012-2013 school year. A district's or building's performance on the measures did not affect its report card rating.

## Diagnostic assessments

(R.C. 3301.079(D), 3301.0715, and 3313.608)

Law retained in part by the act requires the State Board of Education to adopt a diagnostic assessment for each of grades K to 2 in reading, writing, and math and for

[124] See R.C. 3301.43, which is repealed by the act.

grade 3 in writing. The diagnostic assessments must be aligned with the State Board's academic content standards and model curricula. Since the act combines the reading and writing standards and curricula into the single subject of English language arts (see "**Name and content changes**" above), the reading and writing diagnostic assessments also are combined. Therefore, under the act, an English language arts diagnostic assessment will replace the separate reading and writing assessments in grades K to 2 and the writing assessment in grade 3.

## Community service education

(R.C. 3313.605)

The act explicitly permits community schools and STEM schools to include community service education in their educational programs, as school districts are authorized to do under continuing law. Like school districts, community schools and STEM schools that voluntarily provide the education must comply with certain requirements (see below).

Additionally, the act directs the Superintendent of Public Instruction to establish guidelines for the development and implementation of a rubric for districts and schools that offer community service education to use to evaluate community service projects. The state Superintendent also must adopt rules for granting a student special recognition, either on the student's diploma or in the student's record, for successful completion of an approved community service project. Districts, community schools, and STEM schools must use a rubric developed in accordance with the state Superintendent's guidelines to determine whether a community service project warrants special recognition.

### Background

Under continuing law, each school district that offers community service education must establish a community service advisory committee to make recommendations for a community service plan for students and to assist in the plan's implementation. This committee may be organized as the district considers appropriate, but it must include at least two students. It also must include or consult with one or more persons who are employed in the field of volunteer management and devote at least 50% of their employment hours to coordinating volunteerism among community organizations. Other members may include parents, teachers, administrators, or representatives of business, government, nonprofit organizations, veterans organizations, social service agencies, or religious organizations.

After considering the advisory committee's recommendations and consulting with local or regional organizations experienced in volunteer program development,

the district board of education must adopt a community service plan. The plan must provide for the following:

(1) Education of students in the value of community service and its contributions to the history of Ohio and the United States;

(2) Identification of opportunities for students to provide community service and encouragement to take advantage of those opportunities;

(3) Integration of community service opportunities into the curriculum;

(4) A community service instructional program for teachers, including strategies for teaching community service education, discovering community service opportunities, and motivating students to participate; and

(5) That students not be allowed to perform services that result in the supplanting of employees of the entities for which the services are performed.

At least every five years, the advisory committee must review the community service plan and, if necessary, the school board must amend it. A copy of the plan must be submitted to the Department of Education, which must periodically review all plans and publish those that could serve as models for other districts.

Finally, continuing law specifies that a district may grant high school credit for a community service education course, but only if approximately half of the course is devoted to classroom study of civic responsibility, the history of volunteerism, and community service training, and the remainder of the course is dedicated to actual community service.[125]

## College and career readiness; financial literacy

(R.C. 3301.0721, 3313.6015, 3314.03(A)(11)(d), and 3326.11)

Under the act, the Superintendent of Public Instruction must develop a model curriculum for instruction in college and career readiness and financial literacy. The curriculum must focus on grades 7 to 12, but the Superintendent may include

[125] As defined in continuing law, community service may include such activities as tutoring, literacy training, neighborhood improvement, encouraging interracial and multicultural understanding, promoting patriotic ideals, increasing environmental safety, assisting the elderly or disabled, or providing mental health care, housing, drug abuse prevention programs, or other philanthropic programs, particularly for disadvantaged or low-income individuals (R.C. 3313.605(A)(3)).

additional grades.[126] The Department of Education must notify all school districts, community schools, and STEM schools of the curriculum's content. Use of the model curriculum is optional.

Nevertheless, each district, community school, and STEM school must adopt a resolution describing how it will address college and career readiness and financial literacy in its curriculum for seventh or eighth grade and for any other grades in which it determines those issues should be addressed. The district or school must submit its resolution to the Department.

## All-day kindergarten

(R.C. 3321.01 and 3321.05; Section 265.70.70)

Beginning in the 2010-2011 school year, the act requires each school district to provide all-day kindergarten to each kindergarten student, except that, as in continuing law, the district must honor the wishes of parents who want their children to attend class only for a half day. However, the district may apply to the Superintendent of Public Instruction for a waiver of the requirement to provide all kindergartners with all-day kindergarten. In deciding whether to grant the waiver, the Superintendent may consider space concerns or alternative delivery approaches used by the district. To alleviate space concerns, the act authorizes districts to use space in child day-care centers licensed by the Department of Job and Family Services to provide all-day kindergarten.

### Authority to charge tuition for all-day kindergarten

(R.C. 3321.01(H); Section 265.70.70)

Prior law allowed school districts that were *not* eligible for state poverty-based assistance payments for all-day kindergarten to charge fees or tuition, on a sliding scale, for students enrolled in all-day kindergarten classes. Community schools also could charge fees or tuition for all-day kindergarten students whose resident school districts were not eligible for the poverty-based assistance payments for all-day kindergarten. Since prior law generally counted each kindergarten student as one-half of one full-time-equivalent (FTE) student for state funding purposes, the student only generated one-half of the full base-cost formula amount. Therefore, the authority to charge fees or tuition was intended to enable districts that did not receive poverty-based assistance

[126] Under continuing law, the study of economics and financial literacy, as expressed in the social studies content standards, must be integrated into one or more high school social studies classes as part of the Ohio Core curriculum, which applies to students in the Class of 2014 and later (R.C. 3313.603(C)).

payments for all-day kindergarten, and community schools with students from those districts, to recoup at least part of the other half of the formula amount.

The act's new evidence-based funding model, however, counts each kindergartner as one FTE student, regardless of whether the student attends kindergarten for a full day or a half day. Consequently, beginning in fiscal year 2012, the act repeals the authority of school districts and community schools to charge fees or tuition for all-day kindergarten.

Until that time, districts and community schools that charged fees or tuition for all-day kindergarten in fiscal year 2009 may continue to charge for all-day kindergarten in fiscal years 2010 and 2011. However, they cannot charge a rate higher than the per-student amount charged in fiscal year 2009, as specified in the sliding fee scale used by the district or school for that fiscal year. Districts did not offer all-day kindergarten in fiscal year 2009, or that did not charge tuition for all-day kindergarten in fiscal year 2009 could not charge in fiscal years 2010 and 2011.

### Annual surveys

(R.C. 3321.01(H))

Under the act, the Department of Education must conduct an annual survey of each school district to determine (1) how many students are enrolled in half-day kindergarten and how many students are enrolled in all-day kindergarten and (2) how many students are eligible for a free lunch. The Department is no longer required to survey districts on the amount of fees or tuition charged for all-day kindergarten, as in prior law, since the act repeals the authority of districts to charge for that service after fiscal year 2011.

## Reduction of excused calamity days; study of extended school year

(R.C. 3306.01(A)(2) and 3317.01(B); Section 265.70.23)

For the 2010-2011 school year only, the act reduces the number of excused calamity days for school districts from five days to three days. Calamity days are days a school is closed due to: (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. The act does not change the law allowing schools to shorten any number of school days by up to two hours due to hazardous weather conditions. Continuing law, likewise unchanged by the act, also mandates that teachers be paid when schools are closed due to hazardous weather or other calamity.

The act requires the Superintendent of Public Instruction to study extending the school year. The Superintendent must submit a report of findings and recommendations on extending the school year, by December 31, 2010, to the General Assembly.

## Interstate Compact on Educational Opportunity for Military Children

(R.C. 3301.60)

### Introduction

The act enacts R.C. 3301.60 and related sections to ratify the Interstate Compact on Educational Opportunity for Military Children. The compact seeks to address on a uniform basis enrollment and other issues that school-age children of military parents may face when they are required to relocate across state lines. The compact prevails over conflicting laws of member states (Article XVIII).

The compact also establishes the Interstate Commission on Educational Opportunity for Military Children to make rules for and oversee and arbitrate matters among member states (Articles IX, X, XI, XII, and XIII). The Interstate Commission may levy and collect annual assessments from each member state to cover the cost of operating the commission (Article XIV(B)). Each member state has one vote in decisions made by the Interstate Commission (Article IX(B)(1)). Among the powers granted to the Interstate Commission is the authority to file an enforcement action in the U.S. District Court for the District of Columbia, or for the federal district where the commission has its principal offices (Article XIII(D)).

By its own terms, the compact is effective among member states when at least ten states have ratified it (Article XV(B)). According to the Council of State Governments, to date, more than ten states have now ratified it, and the compact is effective.[127]

Each member state must have its own state council, a liaison to assist military families in school enrollment matters, and a compact commissioner to administer the state's participation in the compact (Article VIII). The act creates these entities for Ohio and specifies that appointments to the state council and other positions may not be made until at least ten states have ratified the compact. Since more than ten states have ratified the compact, the appointments prescribed in the act would be authorized as soon as the act is effective. (R.C. 3301.61 to 3301.64; see "**State coordination**" below.)

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[127] See http://www.csg.org/programs/ncic/EducatingMilitaryChildrenCompact.aspx.

### Matters between a "sending state" and a "receiving state"

(Article II (L), (N), and (O))

The compact controls matters when the child of a military parent leaves a public school of one member state (the "sending state") and enrolls in a public school of another member state (the "receiving state") because the family must relocate, or the child must reside with someone other than a parent, due to the child's parent's or parents' military assignments. It controls enrollment in public schools only.[128] For purposes of the compact, "state" refers any of the 50 U.S. states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. territory.

### Applicability

(Articles II(B) and III)

The provisions of the compact apply *only* to school-age children in grades K through 12 of:

(1) "Active duty members of the uniformed services,"[129] including members of the National Guard and Reserve while on active duty;

(2) Members or veterans of the uniformed services who are severely injured and either are medically discharged or are retired, for a period of one year after their medical discharge or retirement; and

(3) Members of the uniformed services who die while on active duty or die as a result of injuries sustained while on active duty, for a period of one year after their death.

### Records and enrollment

(Articles IV and VI)

The compact specifies that when the child of a military parent seeks to enroll in a new school and the student's "official" education records cannot be released at that time,

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[128] The compact refers to a public school as a "local educational agency," which it defines as "a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions" (Article II(H)).

[129] The compact defines "uniformed services" as the Army, Navy, Air Force, Marine Corps, Coast Guard, and the Commissioned Corps of the National Oceanic and Atmospheric Administration and the Public Health Service (Article II(R)).

the keeper of the records in the sending state must prepare and furnish to the parent a complete set of "unofficial" educational records. Upon receipt of the unofficial records by a school in the receiving state, the school "as quickly as possible" must enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records. The compact also requires the school in the receiving state to request the student's official education record from the school in the sending state. The school in the sending state must process and furnish the student's official education records within ten days or "within such time as is reasonably determined under the rules promulgated by the Interstate Commission."[130]

States are required under the compact to give at least 30 days from the date of enrollment, "or within such time as is reasonably determined under the rules promulgated by the Interstate Commission," for students to obtain any immunizations required by the receiving state. Ohio law generally gives only 14 days for students to provide a record of the required immunizations.[131]

The compact specifies that anyone who has a "special power of attorney, relative to the guardianship of a child" may enroll the child in school. No tuition may be charged for a child of a military parent who is placed with a guardian while the parent is away on active duty.[132]

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[130] Under Ohio law, likely not affected by the compact, each public or nonpublic school, within 24 hours of a student's first enrollment, must request the student's official record from the student's former school. The school must notify the appropriate law enforcement agency that the newly enrolled student may be a missing child if (1) the school does not receive the record within 14 days, (2) the school to which the request was made indicates that it does not have a record for that student, or (3) the student does not provide the school with a birth certificate or other legitimate proof of birth date and birthplace. (R.C. 3313.672, not in the act.)

[131] R.C. 3313.671, not in the act.

[132] Under Ohio law, probably not affected by the compact, every student residing in Ohio who is at least 5 and less than 22 years old (or, if disabled, at least 3 and less than 22) may attend school free of tuition in the school district in which the student's parent resides. In many prescribed circumstances, a child may enroll in the school district in which the child, but not the child's parent, resides. In some situations, tuition must be charged to some other district or entity. But no tuition may be charged for the child of a military parent living with a person who has a military power of attorney or a comparable document giving that person care, custody, and control of the child while the parent is on active duty. Also, a child of a military parent who has relocated out of the parent's permanent resident Ohio school district while on active duty may continue to attend school in that district free of tuition but is not entitled to transportation to school in that district. (R.C. 3313.64 and 3313.65.) A child who resides in Ohio and is between 6 and 18 years old is "of compulsory school age" and must attend a public or private school that meets the minimum education standards set by the State Board of Education unless excused for home instruction or medical reasons (R.C. 3321.01).

### Placement

(Articles IV and V)

The school in the receiving state must allow the student to enroll in the same grade level in which the student was enrolled in the sending state. In addition, if the student has satisfactorily completed the prerequisites for promotion to the next grade level of the school in the sending state, the school in the receiving state must honor that promotion. Also, a school in the receiving state must initially honor the "placement" for the student in educational courses based on the student's enrollment in the sending state, if those courses are offered by the school in the receiving state. The compact specifies that school officials must have the flexibility to waive course or program prerequisites if necessary to accommodate the placement of the child of a military parent.

### Graduation requirements

(Article VII)

The compact requires that local school officials waive specific courses required for graduation from high school if the child of a military parent has satisfactorily completed similar coursework at a public school in a sending state or provide "reasonable justification" for denial of a waiver. If a waiver is not granted to a student who would qualify to graduate from the student's former school, the school in the receiving state must provide an alternative means of acquiring required coursework so that student still may graduate on time. If a student transfers during the student's senior year and is not eligible for graduation even "after all alternatives have been considered," the school officials in both the sending and receiving states must "ensure the receipt of a diploma" from the school in the sending state. The compact also specifies that states must accept end-of-course exams required in sending states, national norm-referenced tests, and "alternative testing."

### Excused absences

(Article V(E))

The compact requires that school officials grant a child of a military parent "additional excused absences" to visit the child's parent, if the parent is called to active duty in a combat zone or is on leave from a combat zone.

### Extracurricular participation

(Articles II(F) and VI(B))

The compact requires that state and local school officials must "facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified." It defines an extracurricular activity as "a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities."

### State coordination

(R.C. 3301.61, 3301.62, 3301.63, and 3301.64)

As required by the compact (Article VIII), the act establishes a state council and other offices to implement the state's participation in the compact. The state council is under the Department of Education, which must provide staff support for the council.

#### State council

The State Council on Educational Opportunity for Military Children must oversee and coordinate the state's participation in the compact. It is made up of the following voting members:

(1) The Superintendent of Public Instruction or the Superintendent's designee;

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

(3) The superintendent of a school district that has a high concentration of children of military families, appointed by the Governor;

(4) A representative of a military installation located in Ohio, appointed by the Governor; and

(5) A representative of the Governor's office, appointed by the Governor.

The state council also includes the following nonvoting members:

(1) Two members of the House of Representatives, one each appointed by the Speaker and minority leader of the House;

(2) Two members of the Senate, one each appointed by the President and minority leader of the Senate;

(3) The state compact commissioner (see below);

(4) The military family education liaison (see below); and

(5) Other members appointed in the manner prescribed by and seated at the discretion of the voting members of the council.

#### Compact commissioner

The act requires the Governor to appoint a compact commissioner, to be a state officer within the Department of Education, to administer the state's participation in the interstate compact. The compact commissioner is the state's voting representative on the Interstate Compact Commission (Articles II(C) and IX(B)). The commissioner serves at the pleasure of the Governor.

#### Liaison

The act directs the state council to appoint a military family education liaison to assist families and the state in implementing the interstate compact.

#### Annual assessment

Finally, the act requires the Department of Education and the Department of Veterans Services to divide and pay equally the annual assessment charged to the state for participating in the compact.

### Business education standards (PARTIALLY VETOED)

(R.C. 3301.0719)

The act requires the State Board of Education to adopt standards for business education in grades 7 to 12. The Governor vetoed a provision that would have set July 1, 2010, as the deadline for adoption of the standards. Under the act, "business education" includes, but is not limited to, accounting, career development, economics and personal finance, entrepreneurship, information technology, management, and marketing.

The State Board's standards must incorporate existing business education standards, as appropriate, to help guide instruction in schools. Further, the act specifies that the standards must supplement, and not supersede, other academic content standards adopted by the State Board. The Department of Education must provide the

standards and any subsequent revisions to all school districts, community schools, and STEM schools. Any district or school may use the standards.

### Parental involvement best practices

(Section 265.80.40)

Not later than January 29, 2010, the act requires the State Board of Education to develop a list of best practices for improving parental involvement in schools that public and nonpublic schools may use to increase parental participation. The Department of Education must make the list available to schools on its web site.

### Waiver of eighth-grade American history

(R.C. 3313.60)

Continuing law requires students enrolled in a school district to complete a year-long course in American history as a condition of promotion from eighth grade to ninth grade. The act, however, permits a district to waive this requirement for academically accelerated students who demonstrate mastery of essential concepts and skills of eighth grade American history. Mastery must be shown in accordance with procedures adopted by the district board of education.

In addition to the requirement to take American history in eighth grade, continuing law requires high school students to complete ½ unit (60 hours) of coursework in American history and ½ unit (60 hours) in American government, as a condition for receiving a high school diploma.[133] The act does not affect the high school requirements.

### High school credit

(R.C. 3313.603)

Existing law enables a high school to permit students below the ninth grade to take advanced work for high school credit. The act clarifies this law by specifying that if a high school so permits, the school must award high school credit for successful completion of that work.

[133] R.C. 3313.603(B)(6) and (C)(6).

## Student absences for extracurricular activities

(R.C. 3321.041, conforming amendments to 3314.03(A)(11)(d), and 3326.11)

Beginning in the 2009-2010 school year, if a student enrolled in a school district, community school, or STEM school is absent from school for the sole purpose of traveling out of state to participate in an enrichment activity approved by the district board of education, governing authority of a community school, or governing body of a STEM school, or an extracurricular activity,[134] the district, governing authority, or governing body must count the student's absence as an excused absence. Students may have up to four days per school year for any such absence. The student must complete any classroom assignments that the student misses because of the absence.

If a student will be absent for four or more consecutive school days to travel out of state for an approved enrichment activity or an extracurricular activity, a classroom teacher employed by the district or school must accompany the student during the travel period to provide instructional assistance.

# III. Educator Licensure and Employment

## Educator licensure

(R.C. 3319.22, 3319.222, 3319.24, 3319.26, and 3319.28 and repealed R.C. 3319.261, 3319.302, and 3319.304 and repealed former R.C. 3319.222; conforming changes in R.C. 3313.53, 3319.11, 3319.25, 3319.291, 3319.303, 3319.36, 3319.51, and 3333.35)

Under law largely retained by the act, the State Board of Education may issue temporary, associate, provisional, and professional educator licenses of any categories, types, and levels it chooses. Under this authority, the State Board issues licenses for teachers, paraprofessionals, principals, administrators, superintendents, and other school personnel. The act retains the State Board's authority to issue educator licenses of any type it elects to provide, but it also requires the State Board to issue certain licenses for teachers and specifies minimum qualifications for the teacher licenses. However, the State Board may establish additional qualifications for these licenses by administrative rule.[135] The State Board must begin issuing the new licenses on January 1, 2011.

[134] The act defines "extracurricular activity" as a pupil activity program operated by but not included in a school or school district's course of study, including an interscholastic extracurricular activity that a school or school district sponsors or participates in and that has participants from more than one school or school district.

[135] Under continuing law, the State Board must adopt rules under the Administrative Procedure Act (R.C. Chapter 119.) outlining requirements for obtaining educator licenses. However, the State Board may not

### New teacher licenses

(R.C. 3319.22(A) and (B) and 3319.24)

Under the act, the State Board must issue (1) a resident educator license, (2) a professional educator license, (3) a senior professional educator license, and (4) a lead professional educator license. The act repeals a prohibition on the State Board requiring an educator license for teaching children two years old or younger.

#### Resident educator license

The resident educator license is designed for teachers who follow a traditional path to licensure by majoring in education in college. It replaces the provisional educator license for entry-level teachers, which was formerly issued by the State Board and eliminated by the act. The table below compares the new resident educator license with the former provisional license.

| | Former provisional educator license | New resident educator license |
|---|---|---|
| **Duration** | 2 years | 4 years, except that the State Board may extend the license's duration, on a case-by-case basis, to enable the license holder to complete the Ohio Teacher Residency Program (see "**Ohio Teacher Residency Program**" below) |
| **Renewable** | Yes | No |
| **Qualifications for license** | Under prior State Board licensure rules, the qualifications for a provisional license were:<br><br>(1) A bachelor's degree;<br><br>(2) Completion of an approved teacher preparation program and recommendation of the dean or head of the program; | Under the act, the minimum qualifications for the resident license are:<br><br>(1) A bachelor's degree from an accredited teacher preparation program; and<br><br>(2) If the license will be for teaching in grades K to 6, completion of at least 6 semester hours of coursework in the |

adopt, amend, or rescind emergency rules with respect to educator licenses. If the State Board's licensure rules necessitate changes in the curricula of programs that prepare educators, the effective date of those rules may be no earlier than one year after the January 1 following publication of the rule change. (R.C. 3319.22(A)(3) and (E).)

| | Former provisional educator license | New resident educator license |
|---|---|---|
| | (3) Passage of the Praxis II assessment, which measures pedagogical skills and knowledge of the subject area to be taught;<br><br>(4) Demonstrated skill in integrating educational technology into instruction; and<br><br>(5) If the license was for teaching in grades pre-K to 3 or grades 4 to 9, completion of at least 12 semester hours of coursework in the teaching of reading, including 3 semester hours of coursework in the teaching of phonics.[a] If the license was for teaching in grades 7 to 12, completion of at least 3 semester hours of coursework in the teaching of reading in the instructional content area.<br><br>A provisional license could be renewed upon completion of 3 semester hours of coursework in pedagogy or the area of specialization since issuance of the current provisional license.[136] | teaching of reading, including 3 semester hours of coursework in the teaching of phonics.[a]<br><br>The State Board may adopt additional qualifications for the license, which could include any of the criteria it previously required for the provisional license.<br><br>Holders of the license must participate in the Ohio Teacher Residency Program. |

[a] Under the State Board's prior licensure rules, this coursework requirement did not apply to applicants who would be teaching dance, drama, theater, music, visual arts, physical education, or a similar specialty area. The act retains this exemption for the resident educator license.

#### Professional educator license

Upon expiration of the former provisional educator license, an individual could apply for a professional educator license, which is the standard license for teachers. The act retains the professional educator license, but it establishes new minimum requirements for the license. A teacher who initially receives a resident educator license may apply for the new professional educator license upon expiration of the resident license. Teachers who have a provisional or professional educator license issued under the former licensure requirements may apply for the new professional educator license beginning January 1, 2011. The table below compares the former and new licenses.

[136] Ohio Administrative Code 3301-24-05(A) and 3301-24-07.

| | Former professional educator license | New professional educator license |
|---|---|---|
| **Duration** | 5 years | 5 years |
| **Renewable** | Yes | Yes |
| **Qualifications for license** | Under prior State Board licensure rules, the qualifications for a professional license were:<br><br>(1) A bachelor's degree;<br><br>(2) Completion of an approved teacher preparation program;<br><br>(3) Completion of an entry-year mentoring program; and<br><br>(4) Passage of the Praxis III assessment, which evaluates teacher performance based on observations of the teacher's classroom instruction.[137] | Under the act, the minimum qualifications for the professional license are:<br><br>(1) A bachelor's degree from an institution of higher education accredited by a regional accrediting organization;<br><br>(2) If the applicant's prior license was a resident educator license or an alternative resident educator license, successful completion of the Ohio Teacher Residency Program; and<br><br>(3) If the applicant's prior license was a resident educator license for teaching in grades K to 6, completion of 6 semester hours of undergraduate or graduate coursework in the teaching of reading since issuance of the resident license; and<br><br>The State Board may adopt additional qualifications for the license, which could include any of the criteria it previously required for the professional license. |

**Senior professional educator license**

The senior professional educator license is a five-year, renewable license for which there was no comparable license in prior law. The act's minimum qualifications for the senior license are:

[137] Ohio Administrative Code 3301-24-05(D).

(1) A master's degree from an institution of higher education accredited by a regional accrediting organization;

(2) Previous receipt of a professional educator license (either under the former requirements or the act's provisions); and

(3) Meeting the criteria for the accomplished or distinguished level of performance described in the standards for teachers adopted by the State Board, based on recommendations of the Educator Standards Board. Under those standards, an accomplished teacher is one who (a) successfully integrates the knowledge and skills needed for effective content-area instruction, (b) shows purposefulness, flexibility, and consistency, and (c) anticipates and monitors situations in the teacher's classroom and school and responds appropriately. A distinguished teacher is one who (a) uses a strong foundation of knowledge and skills to innovate and enhance the teacher's classroom, building, and school district, (b) empowers and influences others, (c) anticipates and monitors situations in the teacher's classroom and school and reshapes the environment accordingly, and (d) responds to the needs of students and colleagues immediately and effectively.[138]

**Lead professional educator license**

A lead professional educator license, which had no equivalent in prior law, is valid for five years and is renewable. To qualify for the license, an applicant must meet the following minimum conditions:

(1) Have a master's degree from an institution of higher education accredited by a regional accrediting organization;

(2) Have previously held a professional educator license (issued either under the former requirements or the act's provisions) or a senior professional educator license;

(3) Satisfy the criteria for the distinguished level of performance described in the teacher standards adopted by the State Board; and

(4) Either hold a valid certificate from the National Board for Professional Teaching Standards or satisfy the Educator Standards Board's criteria for a master teacher or lead teacher.

Under the act, a "lead teacher" generally is a person who holds a lead professional educator license. The number of lead teachers employed by each school district and building must be reported to the Department of Education through the

[138] See "Ohio Standards for the Teaching Profession" at *http://esb.ode.state.oh.us/*.

Education Management Information System (EMIS) and included on the district and building report cards.[139]

### Alternative resident educator license

(R.C. 3319.26 and repealed R.C. 3319.261)

Law generally retained by the act provides for an alternative educator license, which is intended to give individuals who have not graduated from a traditional teacher preparation program the opportunity to work toward standard licensure while employed full-time as a teacher. The act changes the name of the license to "alternative resident educator license" and makes other changes to the requirements for obtaining and upgrading the license, as shown in the table below.

| | Former alternative educator license | Act's alternative resident educator license |
|---|---|---|
| **Duration** | 2 years | 4 years, except that the State Board may extend the license's duration, on a case-by-case basis, to enable the license holder to complete the Ohio Teacher Residency Program |
| **Renewable** | No | No |
| **Grade levels** | Valid for teaching in grades 7 to 12 in a designated subject area, except that the license in the area of intervention specialist was valid for teaching in grades K to 12[a] | Valid for teaching in grades 4 to 12 in a designated subject area, except that the license in the area of intervention specialist is valid for teaching in grades K to 12[a] |
| **Qualifications for obtaining license** | Under prior statute and State Board licensure rules, the qualifications for an alternative license were:<br><br>(1) A bachelor's degree;<br><br>(2) A major with a grade point average (GPA) of at | Under the act, the minimum qualifications for the alternative resident license are:<br><br>(1) A bachelor's degree;<br><br>(2) Completion of an intensive pedagogical |

[139] R.C. 3301.0714(B)(2)(d) and 3302.03(C)(8). The act also requires the Department of Education to identify promising practices for using lead teachers in ways that add value beyond their own classrooms (R.C. 3319.56).

| | Former alternative educator license | Act's alternative resident educator license |
|---|---|---|
| | least 2.5 in the subject area to be taught, extensive work experience related to that subject area, or a master's degree with a GPA of at least 2.5 in that subject area;<br><br>(3) Completion of 3 semester hours of college coursework in the developmental characteristics of adolescents and 3 semester hours in teaching methods, including a supervised field experience. The coursework must have been completed at an approved teacher education program within the past 5 years with a GPA of at least 2.5.<br><br>(4) Passage of the applicable Praxis II subject area assessment.[b] | training institute to be developed by the Superintendent of Public Instruction and the Chancellor of the Ohio Board of Regents. The instruction must cover such topics as student development and learning, assessment procedures, curriculum development, classroom management, and teaching methodology.<br><br>(3) Passage of an examination in the teaching area, which could still be the Praxis II subject area assessment.<br><br>The State Board may adopt additional qualifications for the license, which could include any of the criteria it previously required for the alternative license. |
| **Conditions of holding license** | Show satisfactory progress in taking and completing at least 12 additional semester hours of college coursework in the principles and practices of teaching at an approved teacher preparation program. | (1) Show satisfactory progress in taking and completing at least 12 additional semester hours of college coursework in the principles and practices of teaching;<br><br>(2) Participate in the Ohio Teacher Residency Program; and<br><br>(3) Take an assessment of professional knowledge in the second year of teaching under the license. |
| **Licensure upon expiration** | The holder of an alternative license was eligible for a provisional educator license upon completing: | The holder of an alternative resident license is eligible for a professional educator license upon successfully completing: |

| | Former alternative educator license | Act's alternative resident educator license |
|---|---|---|
| | (1) Two years of successful teaching under the alternative license, as verified by the employer;<br><br>(2) The 12 semester hours of additional coursework described above with a GPA of at least 2.5; and<br><br>(3) The Praxis II professional knowledge assessment.[140] | (1) Four years of teaching under the alternative resident license;<br><br>(2) The 12 semester hours of additional coursework described above;<br><br>(3) The Ohio Teacher Residency Program;<br><br>(4) The assessment of professional knowledge; and<br><br>(5) All other requirements for a professional educator license adopted by the State Board. |

[a] An intervention specialist works with disabled, gifted, and other students with individualized instructional needs that require use of particularized teaching practices.

[b] However, under prior law repealed by the act, an applicant for an alternative educator license in the area of intervention specialist was not required to take the subject area assessment until upgrading the license after its expiration.

### One-year conditional teaching permits

(repealed R.C. 3319.302 and 3319.304)

The act repeals the requirement that the State Board of Education issue a one-year conditional teaching permit for teaching in grades 7 to 12 and a one-year conditional teaching permit in the area of intervention specialist, both of which were optional precursors to the former alternative educator license. Therefore, under the act, the only general entry-level educator license available to individuals who do not have an education major is the alternative resident educator license.

#### Background

Under prior law, the State Board issued the one-year conditional teaching permit to applicants who:

[140] R.C. 3319.26 and Ohio Administrative Code 3301-24-10.

(1) Had a bachelor's degree;

(2) Had passed the Praxis I basic skills test;

(3) Had completed 15 semester hours of coursework in the teaching area, except that, in the case of an applicant for a permit to be an intervention specialist, the coursework had to be in the principles and practices of teaching exceptional children;

(4) Except in the case of an applicant for a permit to be an intervention specialist, had completed six semester hours of additional coursework within the previous five years with a GPA of at least 2.5. This coursework, which had to be approved by the applicant's prospective employer, had to be in the teaching area, characteristics of student learning, diversity of learners, planning for instruction, instructional strategies, learning environments, communication, assessment, or student support.

(5) Had entered into an agreement with the applicant's prospective employer under which the employer would provide a structured mentoring program; and

(6) Agreed to complete another three semester hours of coursework in the teaching area (or in reading in the case of an intervention specialist) while employed under the permit.

### Provisional license for teaching in a STEM school

(R.C. 3319.28)

Although the act eliminates the general provisional educator license, it retains a requirement that the State Board issue a two-year provisional license for teaching in grades 6 to 12 in a STEM school.[141] Under continuing law, to be eligible for a professional educator license after the two-year duration of the provisional STEM license, a person must (1) complete a structured apprenticeship program provided by an educational service center (ESC) or approved teacher preparation program in partnership with the employing STEM school and (2) receive a positive recommendation indicating that the person is an effective teacher from both the STEM school's chief administrator and the ESC or college administrator in charge of the apprenticeship program.

The act adds that the person also must meet all other requirements for a professional educator license adopted by the State Board.

[141] To qualify for the license, an applicant must have a bachelor's degree in a field related to the teaching area and have passed an examination in that area.

### Principal licenses

(R.C. 3319.22(C))

The act requires the State Board to align its standards and qualifications for a principal license with the standards for principals adopted by the State Board, based on recommendations of the Educator Standards Board.

### Continuing effect of former licenses

(R.C. 3319.222)

The act directs the State Board of Education to accept applications for new, and renewal or upgrade of, all former educator licenses and teaching permits through December 31, 2010, and to issue the licenses and permits to qualified applicants in accordance with the prior statutes and rules regarding licensure. Those licenses and permits remain valid for teaching in the specified subjects and grades until their expiration.[142] All educator licenses issued based on applications received on or after January 1, 2011, must comply with the act's new licensure requirements and corresponding licensure rules adopted by the State Board. An individual may apply for one of the act's new educator licenses beginning January 1, 2011, even if the individual's existing license or permit is still valid on that date.

## Ohio Teacher Residency Program

(R.C. 3319.223)

Under the act, by January 1, 2011, the Superintendent of Public Instruction and the Chancellor of the Ohio Board of Regents jointly must establish a four-year, entry-level program for classroom teachers, to be known as the Ohio Teacher Residency Program. Individuals who hold a resident educator license or an alternative resident educator license issued under the act's new licensure provisions (see "**Resident educator license**" and "**Alternative resident educator license**" above) must participate in the program. The program is to be operational in the 2011-2012 school year when the first recipients of the new licenses will begin teaching. Successful completion of the program is a requirement for individuals holding those licenses to qualify for a professional educator license.

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[142] Prior to September 1, 1998, the State Board issued professional (eight-year) and permanent (lifetime) teacher's certificates. Under former law, individuals were permitted to apply for one-time renewals of the professional certificates through September 1, 2006. Under the act, the renewed professional certificates remain valid until their expiration and teachers with permanent certificates may continue to teach under the certificates for the remainder of their careers. (Repealed R.C. 3319.222 and new R.C. 3319.222.)

The residency program must include (1) mentoring by teachers who hold a lead professional educator license, (2) counseling to ensure that participants received needed professional development, and (3) measures of appropriate progression through the program. Furthermore, the program must be aligned with the standards for teachers adopted by the State Board of Education, based on recommendations of the Educator Standards Board (see "**Duties of Board**" below), and best practices identified by the Superintendent of Public Instruction.

## Approval of educator preparation programs

(R.C. 3301.12, 3333.048, and 3333.049 and repealed R.C. 3319.23; conforming changes in R.C. 3315.37, 3319.22(E)(1), 3319.234, 3319.235, 3319.28, and 3319.60)

Prior law required the State Board of Education to establish standards and courses of study for the preparation of teachers, to provide for the inspection of institutions of higher education offering teacher preparation programs, and to approve those institutions with satisfactory training procedures. The act transfers the duty to approve teacher preparation programs from the State Board to the Chancellor of the Ohio Board of Regents and expands that duty to include approval of preparation programs for other educators and school personnel. For this purpose, the Chancellor, jointly with the Superintendent of Public Instruction, must (1) establish metrics and preparation programs for educators and other school personnel and the higher education institutions that offer the programs and (2) provide for inspection of the institutions. Within one year after the provision's effective date, the Chancellor, based on the new metrics and preparation programs developed with the Superintendent, must approve institutions with preparation programs that maintain satisfactory training procedures and records of performance, as determined by the Chancellor. The Chancellor must notify the State Board of the metrics and preparation programs and the approved institutions of higher education, which the State Board must publish with the standards and qualifications for educator licensure.

The new metrics and preparation programs, which must be adopted in accordance with the Administrative Procedure Act, must be aligned with the State Board's standards and qualifications for educator licensure and the requirements of the Ohio Teacher Residency Program established by the act (see "**Ohio Teacher Residency Program**" above). The metrics and preparation programs also must ensure that educators and other school personnel are adequately prepared to use the value-added progress dimension, which measures student academic gain attributable to a particular teacher or school and is a factor in the performance ratings assigned to school districts and buildings on the annual report cards.[143] Similar to prior law, if the metrics require a

[143] See R.C. 3302.021 and 3302.03.

teacher preparation program to meet the standards of an independent accreditation organization, the Chancellor must allow the program to satisfy the standards of either the National Council for Accreditation of Teacher Education or the Teacher Education Accreditation Council.

Finally, the act specifies that if rules adopted by the Chancellor necessitate changes in the curricula of preparation programs as a condition of approval by the Chancellor, those rules do not take effect for at least one year after the January 1 following publication of the rule change. Prior law placed the same restriction on State Board rules regarding teacher preparation programs, so the act simply broadens the restriction to apply to rule changes affecting preparation programs for other school personnel. Under the act, institutions of higher education must pay for curricular changes from their existing appropriations.

### Report on quality of teacher preparation programs

(R.C. 3333.049)

Prior law required the State Board of Education, in collaboration with the Chancellor of the Board of Regents and the Teacher Quality Partnership,[144] to issue an annual report on the quality of approved teacher preparation programs. The Chancellor assumes responsibility for publishing the report under the act, although the Chancellor must continue to collaborate with the other parties in its preparation.

## Sharing of value-added data with Chancellor

(R.C. 3302.021)

The act requires the Department of Education to share aggregate student data derived from the value-added progress dimension with the Chancellor of the Board of Regents. This data includes any calculation, analysis, or report using aggregate student data that is generated in connection with the value-added progress dimension. The act prohibits the sharing of individual student test scores or reports with the Chancellor.

## Licensure of school nurses

(R.C. 3319.221 and 3319.222)

Under its licensure rules, the State Board of Education issues a five-year professional pupil services license for nurses, social workers, audiologists, and other

[144] The Teacher Quality Partnership is a research consortium of 50 Ohio colleges and universities that offer teacher preparation programs.

health professionals who work in schools. To obtain the license to work as a school nurse, an applicant must (1) have a bachelor's degree, (2) have completed an approved preparation program, (3) be recommended by the dean or head of the preparation program, (4) have successfully completed an examination prescribed by the State Board, and (5) be licensed as a registered nurse by the Ohio Board of Nursing.[145]

The act directs the State Board to adopt rules establishing standards and requirements for obtaining a school nurse license and a school nurse wellness coordinator license. The State Board must begin issuing the licenses January 1, 2011. Until that time, a person seeking to be a school nurse still may obtain the professional pupil services license, which will remain valid until its expiration.

At a minimum, the State Board's rules must require that an applicant for a school nurse license be a registered nurse. Presumably, under the act, the State Board could keep its previously adopted qualifications for licensure of school nurses, but it must establish qualifications for the school nurse wellness coordinator license since that license is entirely new. As with all other State Board licensure rules, the rules must be adopted under the Administrative Procedure Act, but the State Board is prohibited from adopting, amending, or rescinding emergency rules regarding the two licenses.

Finally, if the State Board requires any examinations for the school nurse license or the school nurse wellness coordinator license, the Department of Education must provide the examination results to the Chancellor of the Ohio Board of Regents, to the extent permitted by state and federal law.

### School Health Services Advisory Council

(R.C. 3319.70 and 3319.71)

The act establishes the nine-member School Health Services Advisory Council to make recommendations on the coursework required to obtain a school nurse license and a school nurse wellness coordinator license. The Council also must recommend best practices for the use of school nurses and school nurse wellness coordinators in providing health and wellness programs for students and employees of school districts, community schools, and STEM schools. Initial recommendations must be issued by March 31, 2010, and subsequent recommendations may be issued as the Council considers necessary. Copies of all recommendations must be provided to the State

[145] Ohio Administrative Code 3301-24-05(F)(1)(f).

Board of Education, the Chancellor of the Board of Regents, the Ohio Board of Nursing, and the Health Care Coverage and Quality Council.[146]

**Membership**

Members of the Council, who must be appointed within 30 days after the provision's effective date, are the following:

(1) A registered nurse who is also licensed as a school nurse and is a member of the Ohio Association of School Nurses, appointed by the Governor;

(2) A representative of the Ohio Board of Nursing, appointed by the Governor;

(3) A representative of the Department of Health with expertise in school and adolescent health services, appointed by the Director of Health;

(4) A representative of the Department of Education, appointed by the Superintendent of Public Instruction;

(5) A representative of the Chancellor of the Board of Regents, appointed by the Chancellor;

(6) A representative of a nurse education program, appointed by the Chancellor;

(7) A representative of the Department of Development with expertise in workforce development, appointed by the Director of Development;

(8) A representative of the Department of Job and Family Services with expertise in child and adolescent care, appointed by the Director of Job and Family Services; and

(9) A representative of the public, appointed by the Governor.

Council members serve at the pleasure of their appointing authorities. They receive no compensation, except to the extent that service on the Council is part of their regular job duties. The representative of the Department of Education must call the first meeting, but all subsequent meetings are at the call of the chairperson.

[146] The Health Care Coverage and Quality Council was established by executive order on March 5, 2009, to advise the Governor and General Assembly on improvements to Ohio's health care and health insurance policies.

## Educator Standards Board

(R.C. 3319.60, 3319.61, 3319.611, 3319.612, and 3319.63; Section 265.60.60)

### Duties of Board

(R.C. 3319.61)

#### Recommending standards

(R.C. 3319.61(A), (D), (E), and (G))

Continuing law charges the Educator Standards Board, in consultation with the Chancellor of the Ohio Board of Regents, to develop state standards for (1) teachers and principals, (2) renewal of licenses, and (3) educator professional development. The Educator Standards Board was required to submit recommendations for these standards to the State Board of Education within one year after its first meeting. In 2005, the State Board adopted standards for teachers and principals and for educator professional development, based on the recommendations of the Educator Standards Board.

The act directs the Educator Standards Board to recommend new standards in the three areas described above. The purpose of the new standards is to reflect changes in their content mandated by the act. Specifically, the standards for teachers and principals must be aligned with the operating standards for school districts that the State Board must prescribe under the act (see "**Minimum school district operating standards**" above). The standards for teachers also must reflect (1) the Ohio Leadership Framework[147] and (2) the revised academic content standards adopted by the State Board (see "**Academic standards and model curricula**" above), including standards on collaborative learning environments and interdisciplinary, project-based real world learning, and differentiated instruction.

The act also requires the Educator Standards Board to recommend standards for school district superintendents and district treasurers and business managers that indicate what these officials are expected to know and be able to do at all stages of their careers. These standards must reflect knowledge of systems theory and effective management principles and be aligned with the State Board's operating standards for school districts. Additionally, the standards for superintendents must be aligned with

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[147] The Ohio Leadership Framework probably refers to the Ohio Leadership Development Framework, which describes core leadership practices that school districts can use to make systemic advances in leadership at the district and building levels (see http://education.ohio.gov/GD/Templates/Pages/ODE/ODEDetail.aspx?page=3&TopicRelationID=523&ContentID=9169&Content=68485).

the Buckeye Association of School Administrators' standards, and the standards for treasurers and business managers must be aligned with the Association of School Business Officials International's standards. Finally, the Educator Standards Board's standards for license renewal must include standards for the renewal of treasurer and business manager licenses.

In developing the standards required by the act, the Educator Standards Board must ensure that teachers "have sufficient knowledge . . . to provide learning opportunities for all children to succeed." The Board further must ensure that principals, superintendents, treasurers, and business managers have the knowledge "to provide principled, collaborative, foresighted, and data-based leadership that will provide learning opportunities for all children to succeed." Also, under continuing law, the Board must consider indicators of cultural competency and the impact on the achievement gap between students when developing the standards.

Finally, the act also requires that the professional development standards developed by the Educator Standards Board contain standards for the inclusion of local professional development committees in the planning and design of professional development. Local professional development committees are established at the school-district level to determine whether a teacher's proposed coursework meets the State Board of Education's requirements for license renewal.

Recommendations for all of the standards required by the act must be submitted to the State Board of Education by September 1, 2010. Under continuing law, the State Board may adopt the standards as recommended, modify the standards prior to adoption, or elect not to adopt the standards at all. The Superintendent of Public Instruction, the Chancellor of the Board of Regents, or the Educator Standards Board itself may request that any of the standards be updated, reviewed, or reconsidered.

**Other duties**

(R.C. 3319.61(A)(6) and (F))

The act assigns the following other duties to the Educator Standards Board:

(1) Investigate and make recommendations for the creation, expansion, and implementation of school district and building leadership academies;

(2) Develop model teacher and principal evaluation instruments and processes based on the Board's standards for teachers and principals;

(3) Monitor compliance with all of the standards required by the act and make recommendations for corrective action if the standards are not met. (The Board formerly had to do this for the teacher and principal standards.)

(4) Adopt criteria that a candidate for a lead professional educator license who is not certified by the National Board for Professional Teaching Standards and does not satisfy the Educator Standard Board's definition of "master teacher" must meet to be considered a lead teacher for licensure purposes. The criteria must be in addition to the act's qualifications for a lead professional educator license (see "**Lead professional educator license**" above) and may include completion of educational levels beyond a master's degree or other professional development or demonstration of a leadership role in the teacher's district or building. The act states the General Assembly's intent that the Board adopt multiple, equal-weighted criteria to use in determining if an applicant is a lead teacher. The number of criteria an applicant must meet to be recognized as a lead teacher must be less than the total number of criteria adopted by the Board.

(5) Develop a method of measuring the academic improvement of individual students over a one-year period and make recommendations for incorporating the measurement, as one of multiple evaluation criteria, into (a) eligibility for a professional, senior professional, or lead professional educator license or principal license, (b) the Ohio Teacher Residency Program (see "**Ohio Teacher Residency Program**" above), and (c) the model teacher and principal evaluation instruments and processes described in (2) above.

The act repeals the requirement that the Educator Standards Board collaborate with teacher preparation programs to align teacher and principal preparation coursework with the Board's standards for those employees and with the State Board of Education's academic content standards. Prior law, also repealed by the act, required the Educator Standards Board, for this purpose, to study the model for aligning teacher preparation programs in agricultural education with recognized standards developed by The Ohio State University's College of Food, Agricultural, and Environmental Sciences and College of Education.

### Membership

(R.C. 3319.60; Section 265.60.60)

The act makes several changes to the membership of the Educator Standards Board. First, the act retains the three members employed by institutions of higher education that offer educator preparation programs, but it transfers the appointing authority for those members from the State Board of Education, which appoints all

other members of the Board, to the Chancellor of the Board of Regents. The Chancellor must appoint new members as the terms of the existing appointees expire.

Second, the act adds six members to the Educator Standards Board. It adds, as voting members, a school district treasurer or business manager, a parent of a student enrolled in a school district, and two additional teachers employed by school districts (one high school teacher and one elementary school teacher),[148] bringing the total number of voting members to 21. The Ohio Association of School Business Officials must submit two nominees for the treasurer or business manager and the Ohio Parent Teacher Association must submit two nominees for the parent member, from which the State Board must select one person for each appointment. The State Board must make initial appointments for these members within 60 days after the provision's effective date. Although the terms for these members are initially staggered, they subsequently will have two-year terms like the other voting members.

The act also adds the ranking minority members of the House and Senate education committees as nonvoting members of the Board.[149]

Finally, the act specifies that the membership of the Educator Standards Board must reflect Ohio's diversity in terms of gender, race, ethnicity, and geographic distribution.

### Subcommittees on standards

(R.C. 3319.611, 3319.612, and 3319.63)

The act creates two subcommittees of the Educator Standards Board to assist the Board in developing the standards for superintendents, treasurers, and business managers and with any other matters the Board directs the subcommittees to examine. As with members of the Educator Standards Board who are employed by a school district, subcommittee members who work for a district must be granted paid professional leave to attend subcommittee meetings and conduct other official business. Subcommittee members receive no compensation.

[148] The other school district teachers are two high school teachers, two middle school teachers, two elementary school teachers, one preschool teacher, and one teacher who serves on a local professional development committee.

[149] Members of the Educator Standards Board who are not affected by the act are: (1) eight school district teachers, (2) a chartered nonpublic school teacher, (3) three principals, (4) a district superintendent, and (5) a school board member. The Superintendent of Public Instruction, the Chancellor of the Board of Regents, and the chairpersons of the House and Senate education committees are nonvoting members of the Board. (R.C. 3319.60(A).)

### Subcommittee on Standards for Superintendents

(R.C. 3319.611)

The Subcommittee on Standards for Superintendents consists of the following members:

(1) The school district superintendent appointed to the Educator Standards Board, who is the subcommittee's chairperson;

(2) Three other district superintendents, appointed to two-year terms by the State Board of Education from a slate of six nominees submitted by the Buckeye Association of School Administrators;

(3) Three additional members of the Educator Standards Board, appointed by the Board's chairperson; and

(4) The Superintendent of Public Instruction and the Chancellor of the Board of Regents, or their designees, as nonvoting members.

### Subcommittee on Standards for School Treasurers and Business Managers

(R.C. 3319.612)

The Subcommittee on Standards for School Treasurers and Business Managers consists of the following members:

(1) The school district treasurer or business manager appointed to the Educator Standards Board, who is the subcommittee's chairperson;

(2) Three other district treasurers or business managers appointed to two-year terms by the State Board of Education from a slate of six nominees submitted by the Ohio Association of School Business Officials;

(3) Three additional members of the Educator Standards Board, appointed by the Board's chairperson; and

(4) The Superintendent of Public Instruction and the Chancellor of the Board of Regents, or their designees, as nonvoting members.

## Peer assistance and review programs

(Section 265.70.50)

Under the act, by December 31, 2010, the Department of Education, in consultation with the Educator Standards Board, must develop a model peer assistance and review program and make recommendations to expand the use of peer assistance and review programs by school districts. The model program and recommendations must be provided to the Governor and legislative leaders and posted on the Department's web site.

In developing the model program, the Department must examine the operation of existing peer assistance and review programs used by Ohio school districts. The model program must include the following elements: (1) releasing experienced teachers from instructional duties for up to three years to mentor and evaluate new and underperforming teachers through classroom observations and follow-up meetings, (2) targeted professional development to improve instructional weaknesses, and (3) a committee of representatives of teachers and the employer to review teacher evaluations and make recommendations regarding teachers' continued employment.

The recommendations for expanding peer assistance and review programs must include: (1) identification of barriers to expansion, such as financial constraints, labor-management relationships, and barriers unique to small school districts, (2) legislative changes that would eliminate those barriers, and (3) incentives to increase participation in the programs.

## Teach Ohio Program

(R.C. 3333.39)

The act directs the Chancellor of the Ohio Board of Regents and the Superintendent of Public Instruction to establish and administer the Teach Ohio Program to promote and encourage Ohioans to consider teaching as a profession. The program includes the following components:

(1) A statewide program administered by a nonprofit corporation that has been in existence for at least 15 years and has demonstrated results in encouraging high school students from economically disadvantaged groups to become teachers. The Chancellor and Superintendent must choose the organization jointly.

(2) The Ohio Teaching Fellows Program created in the act (see below);

(3) The Ohio Teacher Residency Program created in the act as part of the new educator licensing requirements (see above);

(4) Alternative educator licensure procedures; and

(5) Any other program as identified jointly by the Chancellor and the Superintendent.

## Ohio Teaching Fellows Program

(R.C. 3333.38, 3333.391, 3333.392, and 3345.32)

If the Chancellor determines that sufficient funds are available from general revenue fund appropriations made to the Board of Regents, the act allows the Chancellor of the Ohio Board of Regents and the Superintendent of Public Instruction to jointly develop and agree on a plan for the Ohio Teaching Fellows Program. The program is to promote and encourage high school seniors to enter and remain in the teaching profession. Upon agreement on a plan, the Chancellor must "establish and administer the program in conjunction with the Superintendent and with the cooperation of teacher training institutions."

Under the program, the Chancellor must award undergraduate scholarships, for up to four years, to qualified students who commit to teaching in a hard-to-staff (as defined by the Department of Education) or academic watch or emergency school district school for at least four years upon graduation from a teacher training program at an Ohio public or private institution of higher education. The Chancellor must determine the amount of the scholarship based on state appropriations.

The Chancellor must establish a competitive process for awarding scholarships that must include establishing a minimum grade point average and scores on college admissions tests. The selection process must also give additional consideration to applicants who (1) have participated in the statewide teacher recruitment program administered by a nonprofit corporation as part of the Teach Ohio Program established under the act, (2) plan to specialize in teaching special needs students, or (3) plan to teach in the STEM (science, technology, engineering, or math) disciplines.[150]

Teaching fellows have seven years after graduating from the teacher training program to complete the four-year teaching commitment. If a recipient fails to do so,

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[150] As with other state financial aid programs, in order to be eligible for the scholarship, applicants must have filed a statement of Selective Service, if applicable, and not have been convicted of, plead guilty to, or adjudicated a delinquent child for aggravated riot, riot, failure to disperse, misconduct at an emergency, or disorderly conduct.

the scholarship converts to a loan to be repaid at an annual interest rate of 10%. A recipient, or if the recipient is younger than 18 the recipient's parent, must sign a promissory note payable to the state in the event the recipient does not satisfy the four-year teaching commitment at a qualified school or if the scholarship is terminated. The amount payable under the note is the amount of the total scholarship accepted by the recipient plus 10% interest accrued annually beginning on the first day of September after graduating from the teacher training program or immediately after termination of the scholarship. The Chancellor must determine the period of repayment under the note. Finally, the note must stipulate that the obligation to make payments under the note is cancelled if the recipient fulfills the four-year commitment within seven years of graduating, or if the recipient dies, becomes totally and permanently disabled, or is unable to complete the required service as a result of layoffs from the recipient's school of employment before the four years of service have been completed.

Repayment and interest accrued must be deferred while the recipient is enrolled in an approved teaching program, while the recipient is seeking employment to fulfill the service obligation for a period not to exceed six months, and while the recipient is employed as a teacher at a qualifying school. For every year a recipient teaches at a qualifying school, the Chancellor must deduct 25% of the outstanding balance that may be converted to a loan.

The Chancellor may terminate the scholarship at any time, in which case the scholarship must be converted into a loan. The scholarship is also considered terminated and converted into a loan if a recipient withdraws from school or fails to meet the standards of the scholarship as determined by the Chancellor.

The act directs the Chancellor and the Attorney General to collect payments on a converted loan under established procedures for payment collection by state officers.[151]

## Teacher tenure

(R.C. 3319.08 and 3319.11)

### Background

There are generally two types of employment contracts for classroom teachers employed by school districts and educational service centers (ESCs). A limited contract is for a fixed length of time, which may be no longer than five years. A continuing contract, however, is considered "tenure" because it remains in effect until the teacher

[151] R.C. 131.02, not in the act.

resigns or retires. Under law retained in part by the act, to receive a continuing contract, a teacher must meet the following requirements:

(1) Hold a professional educator license; and

(2) Have completed the applicable one of the following: (a) if the teacher did not hold a master's degree at the time of initial receipt of an educator license, 30 semester hours of coursework in the area of licensure or a related area since initial issuance of the license or (b) if the teacher held a master's degree at the time of initial receipt of an educator license, six semester hours of graduate coursework in the area of licensure or a related area since initial issuance of the license.[152]

### The act

The act revises the tenure qualifications for regular classroom teachers who become licensed for the first time on or after January 1, 2011, and are employed by a school district or ESC. These new qualifications override any conflicting provisions of a collective bargaining agreement entered into on or after the provision's effective date. Classroom teachers employed by a district or ESC who are first licensed prior to January 1, 2011, remain subject to the tenure requirements described above, except that a teacher holding a senior professional educator license or a lead professional educator license issued under the act's licensure provisions (see "**New teacher licenses**" above) also meets the requirement in (1). Those tenure requirements continue to be a potential issue for collective bargaining. The act explicitly states that the changes regarding tenure do not void or otherwise affect any continuing contract entered into with a teacher prior to the effective date of the changes.

A teacher who is initially licensed on or after January 1, 2011, is eligible for tenure if the teacher:

(1) Holds a professional educator license, senior professional educator license, or lead professional educator license;

(2) Has held an educator license, other than a substitute teaching license, for at least seven years; and

(3) Has completed the applicable one of the following: (a) if the teacher did not hold a master's degree at the time of initial licensure, 30 semester hours of coursework

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[152] Prior to September 1, 1998, the State Board of Education issued professional (eight-year) and permanent (lifetime) teaching certificates. A teacher who holds a professional or permanent teaching certificate, and never upgraded that certificate to an educator license, is eligible for a continuing contract without further coursework (R.C. 3319.08(D)(1)).

in the area of licensure or a related area since initial issuance of the license or (b) if the teacher held a master's degree at the time of initial licensure, six semester hours of graduate coursework in the area of licensure or a related area since initial issuance of the license.

The act retains prior law requiring a teacher to have taught for a certain period of time in the employing district or ESC to qualify for tenure. Specifically, the teacher must have taught there for at least three of the past five years or, if the teacher attained continuing contract status elsewhere, have taught there for the last two years.[153] All teachers, regardless of the date of their initial licensure, must meet these employment criteria to receive a continuing contract.

Under the act, the date of initial licensure determines which set of tenure qualifications a teacher is subject to and when a teacher's additional coursework begins counting toward the continuing education requirements for tenure. The date of initial licensure is the date the teacher first receives an educator license *other than a substitute teaching license*.[154] This means, for example, that a person who is licensed as a substitute teacher prior to January 1, 2011, but who receives the act's new resident educator license after that date is eligible for tenure only under the new qualifications. It also means, for any teacher, that continuing education completed while holding a substitute teaching license does not count toward the coursework requirements for tenure.

## Termination of educator employment contracts

(R.C. 3319.16)

### Background

Law retained in part by the act provides that a school district's employment contract with a person licensed by the State Board of Education may be terminated for gross inefficiency or immorality, willful and persistent violations of district regulations, sexual conduct with a student, or "other good and just cause."[155] Separate statutes also

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[153] Nevertheless, upon recommendation of the district or ESC superintendent, a teacher who attained continuing contract status elsewhere may be made eligible for that status in the employing district or ESC at the time of employment or any time during the two-year waiting period (R.C. 3319.11(B)).

[154] If a teacher taught under a teacher's certificate issued under prior law, the date of initial licensure is the date the teacher received the first teacher's certificate. No teacher who was issued a teacher's certificate is subject to the act's new tenure qualifications.

[155] R.C. 3319.16. The Supreme Court of Ohio has opined that the fact the words "other good and just cause" follow relatively severe acts ("gross inefficiency or immorality" and "willful and persistent violations" of district rules) "indicates a legislative intention that the 'other good and just cause' [also] be a fairly serious matter" (*Hale v. Bd. of Edn.* (1968), 13 Ohio St.2d 92, 98-99).

specify that a licensed educator's contract may be terminated or suspended for willfully belonging to an organization that advocates overthrow of the U.S. or state government by force or violence,[156] falsification of a sick or assault leave statement,[157] and assisting a student in cheating on a statewide achievement assessment.[158] Statutory law also sets out specific contract termination procedures requiring prior notice, chance for a hearing before the district board, and the right of appeal of the board's decision to the appropriate common pleas court. Either the employee or the district board also may have the right to appeal the common pleas court's decision to the appropriate court of appeals subject to the Rules of Appellate Procedure.[159]

### The act

The act eliminates "gross inefficiency or immorality" and "willful and persistent violations of reasonable regulations of the board of education" as statutory grounds for termination of an educator's employment contract. It specifically retains "good and just cause" as statutory grounds for termination, removing also the modifying word "other." The act does not affect the other separate statutory grounds for termination or suspension of an educator's employment contract. Nor does the act affect the statutory due process procedures. The act states, however, that its changes to the grounds for termination of an educator's employment contract prevail over conflicting provisions of a collective bargaining agreement entered into after the amendment's effective date.

## Contract termination referees

(R.C. 3319.161)

Under continuing law, in a contract termination case involving a licensed educator employed by a school district where the employee has requested a hearing, either the employee or the board of education may request a referee to conduct the hearing.[160] Prior law limited referees to hearing no more than two contract termination cases involving a licensed educator each school year. The act repeals this provision,

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[156] R.C. 124.36, not in the act.

[157] R.C. 3319.141 and 3319.143, neither section in the act.

[158] R.C. 3319.151.

[159] According to Anderson's Ohio School Law Manual (2009 ed.) § 7.37, the due process provisions of R.C. 3319.16 satisfy the constitutional procedural due process requirement. See also, *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 552 (1985).

[160] Referees are selected from a list provided by the State Bar Association and must be mutually agreed to by the employee and the board or, if no agreement can be reached, appointed by the Superintendent of Public Instruction.

thereby allowing referees to hear an unlimited number of such termination cases in a single school year.

## IV. 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. 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).[161]

The sponsor of a start-up community school may be any of the following:

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

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

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

(4) An educational service center 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.[162]

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

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

[162] R.C. 3314.02(C)(1)(a) through (f).

## Closure of poorly performing community schools

(R.C. 3314.35)

Under continuing law, community schools that meet statutory criteria for poor academic performance after July 1, 2008, must permanently close. Beginning July 1, 2009, the act replaces the performance criteria that trigger the closure of a community school with new, more stringent criteria. Community schools that meet the former criteria between July 1, 2008, and June 30, 2009, still must close at the end of the 2008-2009 school year, in accordance with prior law. The first schools subject to the new performance criteria will close following the 2009-2010 school year. The table below compares the former closure criteria with the act's new criteria.

| Community School Closure Criteria | | |
|---|---|---|
| **Type of school** | **Prior law** | **The act** |
| A school that does not offer a grade higher than 3 | Has been in academic emergency for four consecutive school years | Has been in academic emergency for *three of the four most recent school years* |
| A school that offers any of grades 4 to 8 but no grade higher than 9 | (1) Has been in academic emergency for three consecutive school years and (2) showed less than one standard year of academic growth in reading or math for two of those years | (1) Has been in academic emergency for *two of the three most recent school years* and (2) showed less than one standard year of academic growth in reading or math for *at least two of the three most recent school years* |
| A school that offers any of grades 10 to 12 | Has been in academic emergency for four consecutive school years | Has been in academic emergency for *three of the four most recent school years* |

### Exemptions

The act retains prior law exempting a community school from the closure requirement if it operates a dropout prevention and recovery program and has a waiver from the Department of Education.[163] Additionally, it grants an exemption to a

[163] The Department must grant a waiver to a dropout program that (1) serves only students between 16 and 21 years old, (2) enrolls students who are one or more grades behind their cohort age group or experience crises that prevent them from continuing in traditional educational programs, (3) requires students to pass the Ohio Graduation Tests, (4) develops individual career plans for students and provides counseling and support related to the plans, and (5) submits to the Department an instructional

community school in which a majority of the students are disabled students receiving special education.

### Handling of student records after school closes

(R.C. 3314.44)

Under the act, when a community school permanently closes, the school's chief administrative officer must transmit all educational records of past and current students, within seven business days of the school's closing, to each student's school district of residence. The chief administrative officer must act in good faith to take all reasonable steps necessary to collect and assemble the records in an orderly manner prior to the transfer. Failure of the chief administrative officer to collect, assemble, or transmit student records as required is a third degree misdemeanor.

### Oversight of sponsors

(R.C. 3314.015, 3314.021, and 3314.027)

Under continuing law, the Department of Education is responsible for overseeing community school sponsors. Its responsibilities in this regard include approving entities to sponsor start-up community schools and monitoring the effectiveness of those sponsors in their oversight of the schools they sponsor.[164] However, there are certain sponsors that are not subject to initial Department approval. Specifically, entities that were already sponsoring community schools as of April 8, 2003, when the approval requirement became law, are exempt from ever having to be approved by the Department.[165] Continuing law also grants an exemption from Department approval to the successor of the University of Toledo board of trustees or its designee as a sponsor of community schools.[166] These grandfathered sponsors may continue to sponsor

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plan indicating how the State Board of Education's academic content standards will be taught and assessed (R.C. 3314.36).

[164] As required by continuing law, the Department has adopted rules containing criteria and procedures for approving sponsors, for oversight of sponsors, and for revocation of a sponsor's approval (Ohio Administrative Code Chapter 3301-102).

[165] The requirement for sponsors to be approved by the Department was enacted in Sub. H.B. 364 of the 124th General Assembly. Section 6 of that act, which exempted the grandfathered sponsors from approval, is codified as R.C. 3314.027 by this act.

[166] The successor must be a federally tax-exempt entity that has assets of at least $500,000 and that is an education-oriented entity, as determined by the Department. Unlike other federally tax-exempt sponsors, however, it was not required to have been in existence for at least five years prior to becoming a sponsor. (R.C. 3314.02(C)(1)(f) and 3314.021.)

existing and new community schools in conformance with all other provisions of the Community School Law and their contracts with the schools.

Although continuing law charges the Department with overseeing and monitoring community school sponsors, it is not explicit whether that oversight authority extends to grandfathered sponsors. The act explicitly states that *any and all* sponsors are under the oversight of the Department, regardless of whether they must initially be approved for sponsorship.

### Annual report on community school sponsors

(R.C. 3314.015(A)(4))

Continuing law requires the Department of Education to issue an annual report on community schools regarding their financial condition and the effectiveness of their academic programs, operations, and legal compliance. The act further requires the report to address the performance of community school sponsors.

### New start-up community schools

(R.C. 3314.016)

Continuing law has established a moratorium on new start-up community schools since June 30, 2007.[167] 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.[168] 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.

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

[168] R.C. 3314.014(A), not in the act.

The act stipulates that for a new start-up community school to contract with an operator that already manages other community schools in Ohio, at least one of the operator's *Ohio* schools must have a report card rating higher than academic watch.[169]

## Report cards

(R.C. 3314.012)

Like other public schools, community schools receive annual report cards from the Department of Education detailing the school's academic performance. However, prior law prohibited the Department from issuing a community school's first report card until the school had been open for two full school years. The act repeals this prohibition and instead requires the Department to begin issuing report cards for a community school after its first year of operation. But it excludes consideration of a school's performance ratings on its first two report cards in any matter in which those ratings are a factor, including whether the school meets the automatic closure criteria for poor academic performance (see "**Closure of poorly performing community schools**" above).

## Unauditable community schools

(Section 265.80.20)

The act includes an uncodified provision that duplicates an uncodified measure of Am. Sub. H.B. 119 of the 127th General Assembly (the main budget act for the 2007-2009 biennium) addressing unauditable community schools. Under this provision, if the Auditor of State finds a community school to be unauditable, the Auditor must provide written notification of that fact to the school, the school's sponsor, and the Department of Education, and post the notification on the Auditor's web site. The school's sponsor is prohibited from entering into contracts with any additional community schools until the Auditor is able to complete a financial audit of the school. Also, within 45 days after the notification, the sponsor must send a written response to the Auditor describing (1) the process the sponsor will use to review and understand the circumstances that led to the school becoming unauditable, (2) a plan for providing the Auditor with the documentation needed to complete an audit and for ensuring that all financial documents are available in the future, and (3) the actions the sponsor will take to ensure that the plan is implemented.

If the community school fails to make reasonable efforts and continuing progress to bring its accounts and records into an auditable condition within 90 days after being

[169] Ratings higher than academic watch under R.C. 3302.03 are: in need of continuous improvement, effective, and excellent.

found unauditable, the Auditor must notify the Department of Education, which must immediately cease all state payments to the school. Under continuing law, the Auditor also must request the Attorney General to take necessary legal action to compel the school to bring its financial records into order. If the Auditor subsequently is able to complete a financial audit of the school, the Department must release the funds withheld from the school.

All of these requirements are maintained in uncodified law. The act states that its uncodified provisions have no effect after June 30, 2011, unless their context clearly indicates otherwise.[170] It is not certain, therefore, whether these requirements will expire on that date or could be construed to operate after that date.

## Exception to community school location

(R.C. 3314.028)

Under the act, beginning in the 2009-2010 school year, a community school may continue to operate from the facility it occupied in the 2008-2009 school year and cannot be required to relocate to another school district (presumably under another provision of law), if it meets the following conditions:

(1) It has been located in its current facility for at least three school years;

(2) It is sponsored by a school district adjacent to the district in which the school is located;

(3) Its education program emphasizes serving gifted students; and

(4) It has been rated continuous improvement or higher for the previous three school years.

## Conversion community schools

(R.C. 3314.02)

The act permits the conversion of a building operated by a joint vocational school district into a community school in the same manner as a building operated by a city, local, or exempted village school district or an educational service center may be converted under continuing law. Upon receipt of a proposal, the board of education of a joint vocational school district may enter into a preliminary agreement with the person or group proposing the conversion, indicating the intention of the board to

[170] Section 809.10.

support the conversion to a community school. The proposing person or group then may proceed to finalize plans for the school, including establishing a governing authority for the school and negotiating a sponsorship contract with the board.

## E-school expenditures for instruction

(R.C. 3314.085)

Law largely retained by the act requires Internet- or computer-based community schools (e-schools) to spend at least the per pupil amount of their state funds designated for base classroom teachers on instructional purposes, including (1) teachers, (2) curriculum, (3) academic materials *other than computers and obscenity filtering software*, and (4) other purposes specified by the Superintendent of Public Instruction. If an e-school does not comply with the spending requirement, it must pay a fine equal to the greater of 5% of its total state payments for the fiscal year or the amount the school underspent on instruction.

The act eliminates the prohibition on e-schools counting toward this requirement their expenditures to purchase computers and obscenity filtering software, both of which the schools are statutorily required to provide for their students.[171] It also adds other types of software to the list of allowable expenditures for instructional purposes.

## Community school calamity days (VETOED)

(R.C. 3314.08(L))

Under continuing law, community schools must provide each student enrolled for a full school year at least 920 hours of learning opportunities. But each community school student's full-time equivalency for purposes of calculating per pupil state funding for the school is based on the number of hours actually offered by that school to a student who attends for the school's entire school year. In other words, for a school to be paid the full per pupil amount for each student, the student must participate in each scheduled hour of learning opportunities. This does not appear to permit a community school to be excused from making up days the school is closed due to a public calamity even though its scheduled hours of operation exceed the statutory minimum.[172]

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[171] R.C. 3314.21 and 3314.22, neither section in the act.

[172] Continuing law permits a school operated by a school district on a schedule that just meets the statutory minimum 182 days to miss up to five days due to a public calamity in the 2009-2010 school year without having to make up those days. The act reduces the excused calamity days to three in the 2010-2011 school year. (R.C. 3317.01(B).)

The Governor vetoed a provision that would have specified that, with respect to the calculation of full-time equivalency, the Department of Education must waive the number of hours or days of learning opportunities not offered by a community school because it was closed during the school year due to a public calamity, so long as the school was actually open for instruction with students in attendance during that school year for at least the minimum number of hours required by law (that is, 920 hours). The Department would have been required to treat those waived hours as if the school were open for instruction with students in attendance during that time. The public calamities recognized by the vetoed provision were the same ones recognized under continuing law for excused calamity days for school districts and chartered nonpublic schools. They are (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.

## V. Scholarship Programs

### Ed Choice eligibility (VETOED)

(R.C. 3310.03)

#### Background

The Educational Choice Scholarship Pilot Program provides up to 14,000 scholarships each year to students in lower performing public schools to pay tuition at chartered nonpublic schools. To be eligible for an Educational Choice scholarship, a student must meet one of the following conditions when the student applies for a scholarship:

(1) The student is enrolled in the student's resident school district in a school that (a) has been declared in at least two of three most recent ratings to be in academic watch or academic emergency and (b) has not been declared excellent or effective in the most recent published ratings;

(2) The student is eligible to enroll in kindergarten in the school year for which a scholarship is sought and otherwise would be assigned to a school described in (1) above;

(3) The student is enrolled in a community school but otherwise would be assigned to a school described in (1) above;

(4) The student is enrolled in a school operated by the student's resident district or in a community school and otherwise would be assigned to an eligible school building in the year for which the scholarship is sought. This "look-ahead" provision

addresses a situation in which the school a student currently attends does not qualify for scholarships, but the student will be assigned to a different school in the next school year; or

(5) The student is eligible to enroll in kindergarten in the school year for which a scholarship was sought, or was enrolled in a community school, and the student's resident school district (a) has an intradistrict open enrollment policy that does not assign students in kindergarten or the community school student's grade level to a particular school, (b) has been declared in at least two of the three most recent ratings to be in academic emergency, and (c) was not declared excellent or effective in the most recent published ratings.

### Vetoed eligibility standards

The Governor vetoed provisions that would have additionally qualified students who were enrolled in, were eligible to enroll in kindergarten in the school year for which the scholarship was sought and would otherwise be assigned to, or were enrolled in a community school but otherwise be assigned to, a new school building that was operated by the student's resident district for the scholarship if all of the following applied to the new school building:

(1) The new building was open for instruction for its second or third school year.

(2) For the first school year the building was open for instruction, at least 75% of the enrolled students had transferred directly from two or more school buildings that closed; and the closed buildings were: (a) operated by the same school district that operates the new building, (b) offered at least some of the grade levels offered by the new building, and (c) were declared, for at least two of their last three report card ratings, to be in a state of academic emergency or watch, and not excellent or effective in their last rating.

(3) If the new building was in its second year of instruction, the building was declared to be in a state of academic emergency or watch in its first year of instruction.

(4) If the new building was in its third year of instruction, the building was declared in either its first or second year to be in a state of academic emergency or watch, but not excellent or effective in its second year of instruction.

### Administration of achievement assessments to scholarship students

(R.C. 3310.15, 3313.976, and 3313.978)

Continuing law requires nonpublic schools that enroll students with a scholarship under the Educational Choice Scholarship Program to administer the state achievement assessments to the scholarship students and to report their scores to the Department of Education. The act imposes the same requirement on nonpublic schools that accept scholarship students under the Cleveland Scholarship Program.

Additionally, the act requires the Department to report performance data derived from the achievement assessments taken by the Cleveland and Ed Choice scholarship students. The Department must post the performance data on its web site and distribute it to the parent of each student eligible to participate in the scholarship programs. For each program, the data must be grouped by school district (including all participants in the program from that district), by nonpublic school (including all program participants enrolled in that school), and, in the case of the Ed Choice program, by state (including all program participants statewide). The data also must be disaggregated within each group by (1) age, (2) race and ethnicity, (3) gender, (4) students who have participated in the scholarship program for three or more years, (5) students who have participated in the program between one and three years, (6) students who have participated in the program for one year or less, and (7) economically disadvantaged students.

In reporting performance data for scholarship students, the Department may not report data that is statistically unreliable or that could result in the identification of individual students. The act prohibits the Department from reporting data for any group that contains less than ten scholarship students. Therefore, for example, if a nonpublic school enrolls 20 scholarship students across several grade levels, the Department could report the school-wide assessment results, but there may be too few students in a particular grade or racial group to report the results without endangering a student's privacy.

Finally, the Department must provide the parent of each scholarship student with a comparison of the student's achievement assessment scores with the average scores of similar students enrolled in the school district-operated building the scholarship student would otherwise attend. For this purpose, the scholarship student must be compared to students of similar age, grade, race or ethnicity, gender, and socioeconomic status.

## VI. Early Childhood Programs

### Center for Early Childhood Development

(Section 265.70.10)

The act requires the Superintendent of Public Instruction, in consultation with the Governor, to create the Center for Early Childhood Development comprised of staff from the Departments of Education, Job and Family Services, and Health, and any other state agency as determined necessary by the Superintendent and the Governor. The Superintendent and the Governor must also hire a Director of the Center, who must report to the Superintendent and the Governor. The Center, under the supervision of the Director, must research and make recommendations about the coordination of early childhood programs and services for children, from prenatal care and through entry into kindergarten, and the eventual transfer of the authority to implement those programs and services from other state agencies to the Department of Education.

The Center must promote family-centered programs and services to support the social, emotional, cognitive, intellectual, and physical development of children and the role of families in the well-being and success of children.

After considering advice from the Early Childhood Advisory Council, the Director of the Center, in partnership with staff from the Departments of Education, Job and Family Services, and Health and any other state agency as determined necessary, must submit an implementation plan to the Superintendent and the Governor by December 31, 2009. The implementation plan must include research and recommendations regarding all of the following:

(1) The identification of programs, services, and funding sources to be transferred from other state agencies to the Department of Education;

(2) The creation of a new administrative structure within the Department for implementing early childhood programs and services;

(3) Statutory changes necessary to implement the new administrative structure within the Department; and

(4) A timeline for the transition from the current administrative structure within other state agencies to the new administrative structure within the Department.

The act also permits the Director of Budget and Management to seek Controlling Board approval to do any of the following to support the preparation of an

implementation plan to create a new administrative structure for early childhood programs and services within the Department of Education:

(1) Create new funds and non-GRF appropriation items;

(2) Transfer cash between funds; and

(3) Transfer appropriations within the same fund used by the same state agency.

## Early Childhood Advisory Council

(R.C. 3301.90)

The act requires the Governor to create the Early Childhood Advisory Council, in accordance with federal law (42 U.S.C. 9837b(b)(1)), and to appoint one of its members to serve as chairperson of the Council. The Council will serve as the federally mandated State Advisory Council on Early Childhood Education and Care. In addition to the duties specified in federal law, the Council must advise the state regarding the creation and duties of the Center for Early Childhood Development.

## Early Childhood Financing Workgroup

(Section 265.70.20)

The act requires the Early Childhood Advisory Council to establish an Early Childhood Financing Workgroup. The chairperson of the Early Childhood Advisory Council will serve as chairperson of the Early Childhood Financing Workgroup. The Workgroup must develop recommendations that explore the implementation of a single financing system for early care and education programs that includes aligned payment mechanisms and consistent eligibility and co-payment policies. Not later than December 31, 2009, the Workgroup must submit its recommendations to the Governor. Upon the order of the Early Childhood Advisory Council, the Workgroup will cease to exist.

## State-funded early childhood education programs

(Section 265.10.20)

The act continues for the 2010-2011 biennium a GRF-funded program, administered by the Department of Education, to support early childhood education programs serving preschool-age children from families earning up to 200% of the

federal poverty guidelines.[173] Program providers may include school districts and educational service centers (ESCs). If a program also serves children from families who earn more than 200% of the federal poverty guidelines, the provider must charge those families in accordance with a sliding fee scale developed by the provider.

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

(1) Meet teacher qualification requirements applicable to early childhood education programs;[174]

(2) Align its curriculum to the Department of Education's early learning content standards;

(3) Comply with any child or program assessment requirements prescribed by the Department;

(4) Require teachers, except for those working toward an associate or bachelor's degree in a related field, to attend at least 20 hours every two years of professional development;

(5) Document and report child progress; and

(6) Meet and report compliance with the Department's early learning program guidelines.

In distributing funds to providers of early childhood education programs, the Department of Education must give priority in each fiscal year to previous recipients of state funds for such programs. The remainder of the funding must be directed to new program providers or to previous recipients for serving more children or for program expansion, improvement, or special projects to promote quality and innovation. The Department may use up to 2% of the total appropriation in each fiscal year for administrative expenses.

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[173] A preschool-age child is one who is at least three years old by the provider's entry date for kindergarten (either August 1 or September 30) but not yet eligible to start kindergarten. However, a disabled child with an individualized education program (IEP) may enroll on the child's third birthday, if the program is the least restrictive environment for the child. The 2009 federal poverty guideline for a family of four is $22,050. Two hundred per cent of that amount is $44,100.

[174] Under continuing law, for an early childhood education program that existed prior to FY 2007 to receive state funding in FY 2010, every staff member employed as a teacher must have an associate degree, and to receive funding in FY 2011, at least 50% of the program's teachers must have a bachelor's degree. An early childhood education program established in FY 2007 or later may only receive state funding if at least 50% of its teachers are working toward an associate degree. (R.C. 3301.311, not in the act.)

Funding must be distributed on a per pupil basis. Per pupil funding for programs must be sufficient to provide services for half of the statewide average length of the school day for 186 days each school year.[175] However, if this service schedule does not meet local needs or creates a hardship, the provider may apply to the Department for a waiver to offer services on a different schedule. If the Department approves a waiver allowing a provider to offer services for less time than the standard schedule, the Department must reduce the provider's funding proportionally. The act prohibits increasing a provider's funding due to the Department's approval of an alternate schedule. The Department may adjust funding as necessary so that the per pupil amount, when multiplied by the number of eligible children receiving services on December 1 (or the first business day after that date), equals the total amount appropriated for early childhood education programs.

The Department may examine a program provider's records to ensure accountability for fiscal and academic performance. If the Department finds that (1) the program's financial practices are not in accordance with standard accounting principles, (2) the provider's administrative costs exceed 15% of the total approved program costs, or (3) the program substantially fails to meet the early learning program guidelines or exhibits below-average performance compared to the guidelines, the provider must implement a corrective action plan approved by the Department. This plan must be signed by the chief executive officer and the executive of the governing body of the provider. The plan must include a schedule for monitoring by the Department. Monitoring may involve monthly reports, inspections, a timeline for correction of deficiencies, or technical assistance provided by the Department or another source. If an early childhood education program does not improve, the Department may withdraw all or part of the funding for the program.

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

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

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

The act requires that eligible expenditures for the Early Childhood Education program be claimed each fiscal year to help meet the state's TANF maintenance of effort requirement. The Superintendent of Public Instruction and Director of Job and Family Services must enter into an interagency agreement to carry out the requirements, which must include development of reporting guidelines for these expenditures.

## Early Learning Initiative (VETOED)

(Section 309.40.60)

The Governor vetoed provisions that would have re-established the Early Learning Initiative (ELI) to provide early learning services on a full-day, part-day, or both a full-day and part-day basis, to eligible children. Under the vetoed provisions, an eligible child would have been a child who is at least three years of age but not of compulsory school age or enrolled in kindergarten, is eligible for Title IV-A services,[176] and whose family income at the time of application does not exceed 200% of the federal poverty line. Each county department of job and family services would have had to determine eligibility for Title IV-A services for children who wished to enroll in an early learning program within 15 days after the county department received a completed application.

The Department of Education (ODE) and the Ohio Department of Job and Family Services (ODJFS) would have been required to jointly administer ELI in accordance

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[176] Title IV-A services cannot include "cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses)." Title IV-A services, however, may include: (1) "nonrecurrent, short-term benefits . . . designed to deal with a specific crisis situation or episode of need [that are] not intended to meet recurrent or ongoing needs, and [that will] not extend beyond four months, (2) work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training), (3) supportive services such as child care and transportation provided to families who are employed, (4) refundable earned income tax credits, (5) contributions to, and distributions from, Individual Development Accounts, (6) services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support, and (7) transportation benefits provided under a Job Access or Reverse Commute project . . . to an individual who is not otherwise receiving assistance." (45 Code of Federal Regulations 260.31(a) and (b).)

with the law governing the administration of Title IV-A programs. Under the vetoed provisions, ODJFS and ODE would have had both separate and joint duties to fulfill for ELI.

### ODJFS duties

The vetoed provisions would have directed ODJFS to reimburse early learning agencies for services provided to eligible children under the terms of the ELI contract and in accordance with rules adopted by ODJFS and ODE (see "**Contracting with an early learning agency**" and "**Joint ODJFS and ODE duties**").

### ODE duties

The vetoed provisions would have directed ODE to (1) define the early learning services that will be provided to eligible children through ELI, (2) establish an application deadline for entities seeking to become early learning agencies, and (3) establish early learning program guidelines for school readiness to assess the operation of early learning programs.[177]

### Joint ODJFS and ODE duties

The vetoed provisions would have directed ODJFS and ODE to jointly:

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

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

(a) Establishing co-payments for families of eligible children whose family income is more than 100% of the federal poverty line but equal to or less than the maximum amount of family income authorized for an eligible child (200% of the federal poverty guidelines);

(b) An exemption from co-payment requirements for families whose family income is equal to or less than 100% of the federal poverty line;

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[177] An early learning agency would have included an early learning provider or an entity that enters into an agreement with an early learning provider to operate an early learning program on behalf of the entity.

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

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

(e) Completion of criminal record checks for certain employees of early learning agencies and early learning providers;

(f) The timeline of eligibility determination; and

(g) The required participation of early learning programs licensed by ODE under the Preschool Law in the quality-rating program established under the Child Care Law.

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

### Contracting with an early learning agency

Under the vetoed provisions, once an entity applied to ODE to become an early learning agency, ODE would have been required to select entities that meet the criteria established in conjunction with ODJFS. When ODE selected an entity to be an early learning agency, ODJFS and ODE would have been required to enter into a contract with that entity, and ODE would have to designate the number of eligible children that the entity may enroll and notify ODJFS of the number. The vetoed provisions also specified that certain contracts would remain effective, regardless of the date of issuance of a state purchase order. Competitive bidding requirements would not apply to these requirements.

### Terms of the contract

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

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

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

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

(4) The compensation schedule payable under the contract;

(5) Audit requirements; and

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

Also, if an early learning agency, or an early learning provider operating on an agency's behalf, substantially failed to meet ODE's early learning program guidelines for school readiness or otherwise exhibited below average performance, the vetoed provisions required the early learning agency to implement a corrective action plan approved by ODE. If the agency did not implement a corrective action plan, ODE would have been permitted to direct ODJFS to withhold funding from the agency or request that ODJFS suspend or terminate the agency's contract.

### Early learning program duties

The vetoed provisions required each early learning program to do all of the following:

(1) Meet certain teacher qualification requirements;

(2) Align curriculum to early learning content standards;

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

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

(5) Document and report child progress;

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

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

The vetoed provisions also specified that participation in an ELI program would not prohibit an individual from obtaining a certificate for payment for publicly funded child care under R.C. 5104.32(C) (not in the act).

### Eligible expenditures

Finally, the vetoed provisions required that eligible expenditures for the Early Learning Initiative be claimed each fiscal year to help meet the state's TANF maintenance of effort requirement. The Superintendent of Public Instruction and ODJFS Director would have had to enter into an interagency agreement to claim eligible expenditures, which were required to include development of reporting guidelines for these expenditures.

## Early Childhood Cabinet--health district representation

(Section 265.10.23)

The act requires the Governor to appoint to the Early Childhood Cabinet a representative of a board of health of a city or general health district or an authority having the duties of a board of health. The Early Childhood Cabinet is an initiative of the Governor's Office that seeks to coordinate state activities and programs that serve children, prenatal through age six.

## Inspection of preschool and latchkey programs

(R.C. 3301.57)

Former law required the Department of Education to inspect each preschool program or licensed school child ("latchkey") program at least twice during every 12-month period of operation and provide a written inspection report to the superintendent of the school district, county DD board, or nonpublic school.

The act reduces the number of inspections from twice to once during each 12-month period of operation, but permits the Department of Education to inspect any program more than once during a 12-month period as it considers necessary.

## VII. Other Provisions

## Strategic plan

(R.C. 3301.122)

The act requires the Superintendent of Public Instruction to develop a ten-year strategic plan that is aligned with the strategic plan for higher education developed by the Chancellor[178] not later than December 1, 2009. The act allows the Superintendent to

[178] Section 375.30.25(D) of Am. Sub. H.B. 119 of the 127th General Assembly required the Chancellor to develop a strategic plan for higher education.

consult with the Chancellor of the Board of Regents in developing the plan. The Superintendent must submit the plan to the General Assembly and the Governor and include all of the following recommendations:

(1) A framework for collaborative, professional, innovative, and thinking twenty-first century learning environments;

(2) Ways to prepare and support Ohio's educators for successful instructional careers;

(3) Enhancement of the current financial and resource management accountability systems; and

(4) Implementation of an effective school funding system according to the principles, mandates, and guidance established in the act's new school funding provisions.

## Partnership for Continued Learning

(Repealed R.C. 3301.41, 3301.42, and 3301.43; R.C. 3301.46, 3313.603, 3313.6013, 3319.234, 3326.02 to 3326.08, 3326.20, 3326.51, and 3345.062)

The act abolishes the Partnership for Continued Learning. It also abolishes the separate STEM subcommittee of the Partnership, which approved proposals for the establishment of STEM schools and STEM programs of excellence, and replaces the subcommittee with an independent STEM committee to perform those same functions.

### Background

The Partnership for Continued Learning was created in 2005 as an independent state committee to "promote systemic approaches" to preschool, primary, secondary, and higher education. Its general duties were to support regional efforts to foster collaboration among education providers, identify the workforce needs of private sector employers in the state, and make recommendations for facilitating collaboration among education providers and maintaining a high-quality workforce in the state. The Partnership's recommendations were to be provided to the Governor, the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House, the chairpersons and ranking minority members of the Senate and House education committees, the chairperson of the Board of Regents, and the President of the State Board of Education.

#### Membership of the Partnership

The Partnership for Continued Learning consisted of the following 25 members:

(1) The Governor, who was the chair;

(2) The Superintendent of Public Instruction;

(3) The Chancellor of the Board of Regents;

(4) The Director of Development;

(5) The chairpersons and ranking minority members of the Senate and House education committees;

(6) Three representatives of the private sector;

(7) Two representatives of organizations that have formed regional partnerships that foster collaboration among education;

(8) One member of the Student Access and Success Coordinating Council of Ohio;[179]

(9) Two representatives of elementary and secondary schools, including one member of the State Board of Education and one representative of chartered nonpublic schools;

(10) Two representatives of institutions of higher education, including one member of the Board of Regents and one representative of private, nonprofit institutions of higher education;

(11) One member of the State Workforce Policy Board;[180]

(12) One member who is a representative of a community school sponsor;

(13) One member who is a community school teacher or administrator;

(14) One school district teacher;

(15) One teacher in a chartered nonpublic school;

(16) One teacher in a career center; and

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[179] The Student Access and Success Coordinating Council of Ohio was established by the Board of Regents and the Ohio College Access Network.

[180] The State Workforce Policy Board is established and appointed by the Governor to assist in performing the state's duties under the federal Workforce Investment Act of 1998 (R.C. 6301.04, not in the act).

(17) One representative of a comprehensive or compact career-technical school.

The members described in (6) to (17) above were appointed by, and served at the pleasure of, the Governor.

**Other duties**

The Partnership also was specifically required to do the following:

(1) In collaboration with the State Board of Education and the Chancellor of the Board of Regents, develop a standard assessment to measure a student's college and work readiness (R.C. 3301.43 and 3302.032);

(2) In collaboration with the Department of Education and the Chancellor, recommend whether there are mitigating factors that warrant extending the temporary "opt-out" form the Ohio Core curriculum for high school graduation beyond classes entering ninth grade before July 1, 2014 (R.C. 3313.603(D));[181]

(3) Define "in good standing" for purposes of eligibility for high school students to participate in most dual enrollment programs (R.C. 3301.42(B) and 3313.6013);

(4) Recommendations for changes in the Post-Secondary Enrollment Options Program and other dual enrollment programs (R.C. 3301.42(B));

(5) Recommendations for criteria for admitting students to state universities without completing the Ohio Core curriculum (R.C. 3301.42(M) and 3345.06(B));[182] and

(6) Conduct a study of the operation and oversight of community schools and the Educational Choice Scholarship Pilot Program (Ed Choice) and submit recommendations to the General Assembly (Section 3 of Am. Sub. H.B. 79 of the 126th General Assembly).

The act transfers most of the Partnership's duties to the Department of Education. The act does not affect the community school and Ed Choice study requirement, which was due March 28, 2008, and was not completed.

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[181] R.C. 3313.603(C) specifies 20 particular units of study that a student entering ninth grade after July 1, 2010, must successfully complete for graduation, unless the student is enrolled in an approved dropout prevention and recovery program. However, a student who enters ninth grade between July 1, 2010, and July 1, 2014, may opt to complete an alternative curriculum of 20 units (R.C. 3313.603(D)).

[182] Beginning with the 2014-2015 academic year, most state universities generally may not admit a first-time undergraduate student unless the student has completed the Ohio Core curriculum.

### STEM subcommittee

In 2007, the General Assembly authorized the development of specialized STEM schools, for any of grades 6 through 12, to be organized as collaborative efforts among at least one school district and several other public and private entities. "STEM" stands for "science, technology, engineering, and mathematics," which are the disciplines emphasized in the unique project-based curricula of these schools. The General Assembly also authorized grants for STEM programs of excellence in existing elementary schools. Proposals for the establishment of and the award of grants to these STEM schools and programs were reviewed and approved by a STEM subcommittee of the Partnership for Continued Learning. That subcommittee consisted of the Superintendent of Public Instruction, the Chancellor of the Board of Regents, the Director of Development, and four members of the public who have expertise in STEM fields but were not at large members of the Partnership. Two of the public members were appointed by the Governor, one by the Senate President, and one by the Speaker of the House.

The act replaces the STEM subcommittee with a new independent STEM committee constituted in the same manner as the original subcommittee of the now abolished Partnership. The new committee has the same powers and duties as the original subcommittee.

## Center for Creativity and Innovation

(R.C. 3301.82)

The act permits the Superintendent of Public Instruction to establish the Center for Creativity and Innovation within the Department of Education to assist school districts, educational service centers, community schools, and STEM schools with any of the following:

(1) Designing and implementing strategies and systems that enable schools to become professional learning communities. Strategies and systems include (a) mentoring and coaching teachers and support staff, (b) enabling principals to focus on supporting instruction and engaging teachers and support staff as part of the instructional leadership team to give teachers and staff input on making and implementing school decisions, (c) adopting new models for restructuring the learning day or year, such as incorporating teacher planning and collaboration time as part of the school day, and (d) creating smaller schools or units within larger schools to facilitate teacher collaboration to improve and advance the practice of teaching and to enhance instruction that yields enhanced student achievement.

(2) Collaborating with the new Teach Ohio program to promote, recruit, and enhance the teaching profession by (a) using strategies such as "grow your own" teacher recruitment and retention strategies to support individuals becoming licensed teachers, retain highly qualified teachers, assist experienced teachers in obtaining licensure in subject areas for which there is need, assist teachers in obtaining senior professional education and lead professional educator licenses, and assist teachers to grow and develop, (b) enhancing conditions for new teachers, (c) creating incentives to attract qualified math, science, or special education teachers, (d) developing and implementing partnerships with teacher preparation programs at colleges and universities to attract qualified teachers in shortage areas, and (e) implementing a program to increase cultural competency of new and veteran teachers.

(3) Identifying any impediments in statute, rule, or regulation to the adoption of innovative practices and recommending to the Superintendent of Public Instruction that those provisions be repealed, revised, or waived.

(4) Identifying promising programs and practices based on high quality research and developing models for early adoption, including research and practices in arts education and creativity, of those programs.

(5) Other duties as assigned by the Superintendent of Public Instruction.

If created, the Center also must promote collaboration between school districts and community schools to enhance the academic programs and to broaden the application of successful and innovative academic practices developed by community schools. Together with the Department's Office of Community Schools, the Center must (1) study, gather information concerning, and serve as a clearinghouse of best practices and innovative programming developed and utilized by community schools that could be adopted by school districts, and (2) identify circumstances in which students could benefit from collaboration between the complementary programs of school districts and community schools.

The act allows the Department to accept, receive, and expend gifts, devises, or bequests of money, lands, or other properties for the Center. The State Board of Education must adopt rules to enable the Center to carry out the conditions and limitations upon which a bequest, gift, or endowment may be made.

## Audio recordings of State Board meetings

(R.C. 3301.041)

Beginning with meetings held on or after the effective date of this provision, the act requires the State Board of Education to post via the Internet audio recordings of all

regular and special business meetings of the State Board. The recordings must be posted within five business days after the conclusion of each meeting. Recordings of executive sessions of the State Board, dealing with issues exempt from the Open Meetings Law,[183] are not to be posted.

The State Board may contract or consult with the Ohio Government Telecommunications Service.

## Ohio Education Computer Network

Continuing law provides for the establishment of the Ohio Education Computer Network (OECN), which is a collective of 23 information technology centers (ITCs), formerly called data acquisition sites or "DA sites."[184] The network is under the oversight of a "management council" made up of representatives of each ITC. The ITCs provide a variety of administrative and instructional computer services to member school districts and other education entities, including accounting, payroll, curriculum management, test scoring, student scheduling, and data entry for the Education Management Information System. They are organized through multiple-district cooperative agreements or as regional councils of government.

### Programs

(R.C. 3301.075)

The act eliminates a provision of law that permits the Department of Education to contract with an independent for-profit or nonprofit entity to provide information on Ohio government through the OECN to school district libraries to assist teachers in social studies course instruction and support student research projects. Separately, it specifically permits the Department to approve and administer funding for educational technology technical support, maintenance, consulting, and group purchasing services for ITCs, school districts, educational service centers, and other entities and to deliver to schools programs operated by the INFOhio Network[185] and the OECN Management Council.

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[183] Under R.C. 121.22(G) (not in the act), a public body, including the State Board of Education, may hold executive sessions, closed to the public, when dealing with certain issues including: employment, purchase of or sale of land using competitive bidding, legal matters, collective bargaining, matters required to remain confidential under state or federal law, and security/emergency response protocols.

[184] Continuing law specifies that there may not be more than 27 ITCs.

[185] INFOhio provides students and teachers with electronic educational resources. According to its web site, INFOhio is a project of the Department of Education and is "accountable" to the OECN Management Council (http://www.infohio.org/about/organization.html).

### ITC funding reserves

(R.C. 3301.076)

A rule of the State Board of Education requires all ITCs to "maintain a minimum cash balance equivalent to the higher of the following: an average of thirty days' expenditures for the previous twelve-month period; or anticipated expenditures for the next sixty days" (Ohio Administrative Code 3301-3-07(B)(2)(b)). The act specifies that ITCs may not be required to have operating reserve accounts or funds or minimum cash balances relative to their operating funding. This essentially nullifies the rule.

## Use of volunteers by Department of Education

(Section 265.60.30)

The act authorizes the Department of Education to use volunteers in performing the Department's functions. The Superintendent of Public Instruction must approve the purposes for which volunteers may be utilized and may recruit, train, and oversee the volunteers. Volunteers may be reimbursed for necessary expenses in accordance with state guidelines.

In addition, the Superintendent may designate volunteers as state employees for liability purposes. If so designated, the volunteers, like regular Department employees, would have a qualified personal immunity from liability for damage or injury caused in the performance of their duties and would be indemnified by the state in a civil action. The Superintendent also may cover volunteers under the liability provisions of the Department's motor vehicle insurance policy.

## Family and civic engagement teams

(R.C. 3313.821)

The act requires school districts to appoint a family and civic engagement team. The board of education must determine the membership and organization of the team, which must include parents, community representatives, health and human service representatives, business representatives, and any other representatives identified by the board.

Under the act, family and civic engagement teams must work with local county family and children first councils to recommend qualifications and responsibilities that should be included in the job description for school family and civic engagement coordinators. Teams also must develop five-year family and civic engagement plans and provide annual progress reports on the development and implementation of the plans. The plan and progress reports must be submitted to the county family and

children first council.  Finally, the team must provide recommendations on matters specified by the school board.

Although not required to do so, community schools and STEM schools may establish family and civic engagement teams under the act.  If a community or STEM school establishes a team, it must operate in the same manner as a school district team.

### Combining with business advisory council

(R.C. 3313.822)

Under continuing law, each city and exempted village school district must appoint a business advisory council to provide recommendations on matters such as employment skills and curriculum to develop those skills, changes in the economy and job markets, and developing working relationships among businesses, labor organizations, and education personnel.[186]  As an alternative to creating both a business advisory council and a family and civic engagement team, the act allows city and exempted village school districts to appoint one committee to perform all the functions of both.  The membership of a combined committee must include all the members required for family and civic engagement teams.

## Corporal punishment

(R.C. 3319.41; conforming changes in R.C. 3301.0714, 3301.0715, 3314.03, 3319.088, and 3326.11)

The act prohibits all public schools (school districts, educational service centers, community schools, and STEM schools) from using corporal punishment as a means of discipline.  The act retains the laws (1) that permit use of corporal punishment by private school employees and (2) that allow public and private school employees to use force or restraint as reasonable and necessary to quell a disturbance, to obtain possession of a weapon, for self-defense, or to protect persons or property.

## Administration of prescription drugs to students

(R.C. 3313.713)

Under continuing law, school district boards of education may permit "designated persons" employed by the board to administer prescription medicine (that is, medicine that must be administered according to the instructions of the health care

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[186] R.C. 3313.82.  A local school district is not required to have a business advisory council, but the educational service center (ESC) in which the district is located must appoint one for the entire ESC.

practitioner who prescribed it) to students. Beginning July 1, 2011, the act allows only employees of the school board who are licensed health professionals, or who have completed a drug administration training program conducted by a licensed health professional and considered appropriate by the board, to administer prescription drugs to students in school districts.

The act retains the authority of school boards to outright prohibit *any* employee, including licensed health professionals from administering any prescription drugs to students, or to prohibit administration of drugs that require certain procedures, such as injection.

## School Health and Safety Network; periodic review of school safety policies

(Repealed R.C. 117.102, 3313.473, 3314.15, 3701.93, 3701.931, 3701.932, 3701.933, 3701.934, 3701.935, and 3701.936; R.C. 3707.26, 3313.86, 3314.03, 3326.11, and 4736.01)

The act repeals the laws establishing School Health and Safety Network and the corresponding provisions of law described below. Further, the act requires school districts, community schools, STEM schools, and chartered nonpublic schools to periodically review their policies and procedures to ensure the safety of students, employees, and other persons using a school building from any known hazards in the building or on building grounds that, in the judgment of the board or governing authority pose an immediate risk to health or safety. The board or governing authority must also further ensure that its policies and procedures comply with all federal laws and regulations regarding health and safety applicable to school buildings.

The act requires boards of health to inspect the sanitary condition of schools semiannually rather than annually, as in prior law. However, the act repeals the authorization for boards of health to close a school for an imminent public health threat other than an epidemic or a high prevalence of communicable disease. The act also repeals the requirement that the Director of Health adopt rules establishing minimum standards for school sanitary inspections.

### Background--the repealed law

The repealed law required the Director of Health to establish the School Health and Safety Network, under which local boards of health were required to inspect each public and chartered nonpublic school building and building grounds within their jurisdictions at least once annually to identify conditions dangerous to public health and safety. Inspectors were required to use forms, templates, and checklists developed or approved by the Director of Health. Further, the law required the Director to adopt

rules establishing minimum standards and procedures for Network inspections and sanitary inspections.

Reports of the inspection findings had to be reported to officials responsible for the school and the Auditor of the State and include recommendations. A school had to develop a plan for abatement of conditions that are determined to be hazardous to occupants. The Director had to develop information specifying dangerous conditions and products and distribute the information on a quarterly basis via electronic mail and the Department of Health's web site.

The Auditor of State had to review all submitted reports of each Network inspection of a public school building and grounds.

Also, the law dictated that the practice of environmental science by registered sanitarians included the administration and enforcement of rules adopted by the Director for Network inspections and sanitary inspections of schools and school buildings.

## School policies on food allergies

(R.C. 3313.719, 3314.03, and 3326.11)

The act requires all school districts, community schools, and STEM schools to establish a written policy with respect to protecting students with peanut or other food allergies. In developing the policy, schools must consult with parents, school nurses and other school employees, school volunteers, students, and community members.

## Criminal records checks of school employees

(R.C. 109.57, 109.572(B)(2), 3319.291, 3319.391, and 3327.10; Sections 812.10 and 812.50)

### Background

Under law largely retained by the act, all employees of school districts, educational service centers (ESCs), community schools, STEM schools, and chartered nonpublic schools are subject to periodic criminal records checks conducted by the Bureau of Criminal Identification and Investigation (BCII). Each records check must include records of the Federal Bureau of Investigation (FBI).[187] School employees must undergo criminal records checks as follows:

[187] The only exception is that adult education instructors who do not have unsupervised access to children are not required to have an FBI check prior to employment if they have been Ohio residents for the five-year period prior to the date the records check is requested (R.C. 3319.39(A)(1), not in the act).

(1) The State Board of Education must request a records check prior to issuing or renewing a license for an educator (such as a teacher, principal, administrator, paraprofessional, counselor, or school nurse).

(2) The employing district, ESC, or school must request a records check of each employee prior to hiring.

(3) For each employee who is not licensed by the State Board and is not a bus driver, the employer must request a new records check every five years.

(4) For bus drivers, the employer must request a new records check every six years.

Continuing law requires BCII to maintain the Retained Applicant Fingerprint Database, which is a database of fingerprints of persons on whom BCII has conducted criminal records checks to determine eligibility for employment with or licensure by a public office. When BCII receives information that a person in the database has been arrested for or convicted of any offense, it must notify the public office that employs or licensed the person of the arrest or conviction, if the public office elects to receive those notifications. The Department of Education must participate in the notification program regarding persons licensed by the State Board of Education.[188]

### The act

The act makes two changes to the criminal records check requirements for school employees, both of which take effect January 1, 2010. First, while the act retains the requirement that all persons have a BCII check prior to initial licensure or employment, it eliminates the BCII check for most subsequent licensure or employment checks. Specifically, the act requires a person to have *only an FBI check* when (1) the requester of the records check (either the State Board, in the case of a licensure check, or the employer, in the case of an employment check) has previously requested a BCII records check of the person and (2) the person provides proof of Ohio residency for the preceding five years.

By requiring the initial licensure or employment records check to include a BCII check, the act ensures that the person subject to the check will be entered into BCII's Retained Applicant Fingerprint Database. In the case of licensed persons, the Department of Education will receive notification of any arrests or criminal convictions in Ohio involving those persons. School districts, ESCs, or schools may opt to receive the notification regarding their employees. Limiting subsequent records checks to FBI

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[188] R.C. 109.5721 and 3319.316, neither section in the act.

records does not appear to result in the loss of any information about criminal activity, since an FBI check will report all convictions in all states, including Ohio.

Second, the act prohibits the State Board of Education from requiring a criminal records check for licensure purposes any more often than every five years. The State Board issues licenses of varying lengths, up to five years. Under prior law, a person had to undergo a criminal records check every time the person applied for a new license or renewed an existing one. A person with a two-year license, for example, had to have a records check every two years to renew the license. The act specifies instead that a person applying for issuance or renewal of a license must have a records check only if the person has not had one for licensure purposes within the previous five years.[189]

## School emergency procedures

(R.C. 3313.536)

Continuing law requires boards of education of school districts, community schools, STEM schools, and chartered nonpublic schools to adopt a comprehensive school safety plan for each school building. This safety plan includes procedures for notifying parents as part of the protocol for responding to threats and emergency events.

The act requires that prior to the opening day of each school year, the board or school inform each enrolled student and the student's parent of the parental notification procedures in the school's protocol for responding to threats and emergency events.[190]

## School safety and violence in-service training

(R.C. 3319.073)

Continuing law requires each school district, educational service center, community school, and STEM school to develop a program of in-service training in the prevention of child abuse, violence, substance abuse, and the promotion of positive youth development.[191] Specified categories of employees in elementary schools must complete at least four hours of this training within two years of commencing

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[189] Under continuing law, a person who holds more than one license issued by the State Board is subject to the criminal records check requirements only when applying for renewal of the person's primary license or the license with the longest duration (R.C. 3319.291(F)).

[190] This requirement applies to community schools and STEM schools by virtue of a reference in R.C. 3314.03 and 3326.11, respectively.

[191] This requirement applies to community schools and STEM schools by virtue of a reference in R.C. 3314.03 and 3326.11, respectively.

employment and every five years thereafter. The specified categories are: nurse, teacher, counselor, school psychologist, and administrator.

The act extends to public middle and high schools this in-service training requirement, requiring it of the same specified categories of employees as for elementary schools and requiring completion within two years of commencing employment and every five years thereafter. For persons employed on the provision's effective date, the training must be completed within two years of that date and every five years thereafter.

The act modifies the manner in which districts and schools are to develop the in-service curriculum. Continuing law stipulates that districts and schools develop the curriculum, but the act allows districts and schools, as an alternative, to adapt or adopt the curriculum that the Department of Education develops. It also directs districts and schools to incorporate school safety and violence prevention into their in-service training in the prevention of child abuse, violence, substance abuse, and the promotion of positive youth development.

## Special education

(R.C. 3323.05)

Continuing law requires the State Board of Education to establish procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to receiving a free appropriate public education. Included are procedures to assign an individual to act as a surrogate when the parents cannot be found or the child is a ward of the state.

The law did not specify who is to appoint the surrogate. The act modifies the law by specifying that the surrogate be assigned by the school district or other educational agency responsible for educating the child or by the court with jurisdiction over the child's custody.

## ESC switches by local school districts

### Background

Continuing law permits a local school district (which receives mandatory services and is under some oversight by an educational service center (ESC)) to sever its territory from its current ESC and annex itself to an adjacent ESC.[192] The local district board's resolution to do so is subject to approval by both (1) the State Board of

[192] R.C. 3311.059.

Education and (2) the district's voters at a referendum election if a petition is filed within 60 days following the district board's adoption of the resolution. The severance and annexation action may not take effect sooner than one year after the first day of July that follows the later of the date the State Board approves the action or the date voters approve the action at a referendum election, if one is held.

### Moratorium on ESC switches (VETOED)

(Section 265.70.40)

The Governor vetoed a provision that would have placed a two-year moratorium (from July 1, 2009, to July 1, 2011) on pending and new proposals for local school districts to sever from their current ESCs and annex to different ESCs. Under the act, all severance and annexation resolutions that are pending, or already approved but not yet effective, would have been void and could not be refiled until after the moratorium expired. The act also would have prohibited a local school district board from adopting a severance and annexation resolution during the moratorium period.

### State Board procedures for approval of ESC switches (VETOED)

(R.C. 3311.059; Section 265.70.41)

The Governor also vetoed provisions that would have modified the procedures the State Board of Education must follow when considering whether to approve a severance proposed action. While continuing law requires the State Board to consider the impact of a severance and annexation on the school district proposing the action and the ESC to which the district seeks annexation, the act would have also required the State Board to consider the impact on the ESC that currently serves the district. Furthermore, under the act, the State Board would have had to consider the financial, staffing, programmatic, and other effects of the transfer on all the parties involved, including the effect on each ESC's costs of operation and ability to deliver services in a cost-effective, efficient manner. The act would have prohibited the State Board from voting on a proposed severance and annexation action until it has been presented on its agenda as an independent item for consideration and heard by the Board at two or more separate meetings. The act also would have required the State Board to allow public testimony at each hearing on the proposal and would have required at least a 30-day period between the State Board's first hearing on the proposal and its vote on whether to approve the proposal.

## Dissolution procedures for ESCs (VETOED)

(R.C. 3311.0510)

Since the electoral territory of each ESC, from which its governing board is elected, is made up of the territory of each "local" school district that receives services from the ESC, if all of its local school districts sever from it, the ESC no longer has any territory.[193] It appears that the ESC must, therefore, dissolve.

The Governor vetoed provisions that would have established specific procedures for dissolving an ESC when it no longer has any territory. Those procedures would have formally abolished such an ESC and its governing board and would have required an equitable distribution of its assets and liabilities among the local school districts that made up its territory and city and exempted village districts that last received services from the ESC. The act also would have required that the ESC's public records be transferred to the school districts that received services from the ESC and, in the case of records not related to services to a particular school district, to the Ohio Historical Society.

### Continuation of services to "city" and "exempted village" districts (PARTIALLY VETOED)

(R.C. 3313.843; Section 265.50.10)

Although an ESC is required to provide services and oversight for local school districts that make up its territory, the ESC also may contract with city and exempted village school districts to provide similar services. For those services, an ESC may be eligible for the same state and district per pupil payments prescribed for serving local districts.[194] Generally, to receive those payments, under temporary law enacted for each operating biennium since 1997, an ESC must have initially contracted with the city or exempted village school district by January 1, 1997. The Governor vetoed provisions that would have permanently permitted a city or exempted village district that had received services from an ESC that dissolved because all of its local districts have severed from it to contract for those services from another ESC and for the state per

[193] R.C. 3311.05, not in the act. The ESC's electoral territory does not include the territory of "city" or "exempted village" districts that receive services from the ESC.

[194] The mandatory payments received by an ESC for services to school districts are as follows: (1) $6.50 per pupil from each school district served, (2) either $37 or $40.52 (for an ESC made up of the merger of at least three smaller ESCs) per pupil of direct state funding for each school district served, and (3) one "supervisory unit" for the first 50 classroom teachers required to be employed in the district and one such unit for each additional 100 required classroom teachers (R.C. 3317.11, not in the act). Plus, an ESC may enter into extra fee-for-service contracts with the districts for other services (R.C. 3313.845, not in the act).

pupil payments to be made to the new ESC in the same manner as they were made to the original (now dissolved) ESC.

However, the act temporarily qualifies an ESC to receive per pupil state funds in fiscal years 2010 and 2011 for services provided to a city or exempted village school district, if that ESC "assumes" the obligation to provide services to the district, and if the dissolved ESC entered into the original agreement by January 1, 1997.[195] Otherwise, the act renews the prior temporary restrictions on ESC payments.

## Pledge of allegiance

(R.C. 3313.602)

Under ongoing law, school districts must adopt a policy specifying whether or not oral recitation of the pledge of allegiance to the flag will be a part of the school's program and, if so, establish a time and manner for the recitation. No policy, however, may require a student to recite the pledge. The policy must also prohibit the intimidation of any student by other students or staff aimed at coercing participation.

The act further specifies that regardless of the policy adopted by the school district board, a teacher may still choose to provide a reasonable amount of time in the teacher's classroom to recite the pledge. However, no teacher may require a student to recite the pledge, and teachers must prohibit the intimidation of a student to coerce participation.

In addition, the act prohibits school districts from altering the wording in the oral recitation of the pledge of allegiance to the flag from the words set forth in 4 U.S.C. 4: "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

## Vocational education contracts

(Section 265.80.30)

Each city, local, and exempted village school district is required under ongoing law to provide vocational (career-technical) education services to its students. A district may do so by operating its own vocational education program, being a member of a joint vocational school district, or by contracting for those services from another

[195] A similar provision was enacted for fiscal year 2009. See Section 269.50.30(B) of Am. Sub. H.B. 119 of the 127th General Assembly, as amended in Sections 610.40 and 610.41 of Am. Sub. H.B. 562 of the 127th General Assembly.

district.[196] When a district opts to contract with another district for vocational education services, under a rule of the State Board of Education the term of the contract must be at least five years.[197]

The act provides a temporary exception from the five-year minimum contract term for a vocational education services contract between (1) a local school district receiving the services that was created out of another (now adjacent) district and that began operating in fiscal year 2005, and (2) the other local school district out of which the district receiving the services was created. In such a case, the act specifies that the current contract between those districts expiring on or before June 30, 2010, may be renewed one time for a term of less than five years.

## Termination of school district transportation staff

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

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

## Creation and operation of a regional student education district (RSED)

(R.C. 3313.83)

### Creation

The act permits the boards of education of two or more city, local, or exempted village school districts, by adopting identical resolutions, to enter into an agreement creating a regional student education district (RSED) to fund one or both of the following for students enrolled in those school districts and their immediate family members: (1) special education services and (2) behavioral health services for persons with special needs. The authority applies only to school districts having a majority of their territory in a county with a population exceeding 1,200,000 (currently only

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[196] R.C. 3313.90(A), not in the act.

[197] Ohio Administrative Code 3301-61-06(A)(5).

Cuyahoga County). An RSED's territory must be composed of the combined territories of the member districts.

### Board of directors

A board of directors must govern each RSED. The superintendent of each school district that is an RSED member must serve on the board of directors. The agreement must provide for the terms of office of directors. Directors are to receive no compensation, but will be reimbursed, from the RSED's special fund, for the reasonable and necessary expenses they incur in performing their RSED duties. The agreement must also provide for the conduct of the board's initial organizational meeting and for the frequency of subsequent meetings and quorum requirements. At its first meeting, the board must designate from among its members a president and secretary in the manner provided in the agreement. The agreement also must require the board to designate a permanent location for its offices and meeting place, and may provide for the person or organization contracted with to provide services as discussed below to use the facilities and property.

### Provision of services

Services funded by an RSED must be available for all students enrolled in the member school districts and their immediate family members. To provide those services, the board of directors may provide for the hiring of employees or may contract with one or more entities. An entity contracted with to provide behavioral health services must be a qualified nonprofit, nationally accredited agency to which both of the following apply:

(1) The agency is licensed or certified by the Departments of Mental Health, Job and Family Services, and Alcohol and Drug Addiction Services;

(2) The agency provides school-based behavioral health services.

### Status and authority of RSED and board of directors

Each RSED board of directors is a body corporate and politic, is capable of suing and being sued, is capable of contracting to the extent described in this analysis and the agreement governing each RSED, and is capable of accepting gifts, donations, bequests, or other grants of money for use in paying its expenses.

The act also provides the following with respect to RSEDs:

- An RSED is a public office and its directors are public officials with respect to Ohio law granting the Auditor of State authority to conduct audits of public offices;

- The board of directors is a public body under Ohio's open meetings law;
- The records of the board and of the RSED are public records under Ohio's public records law;
- An RSED is a political subdivision for purposes of Ohio law governing political subdivision tort liability.

### Officers

The agreement must provide for appointment of a fiscal officer. The agreement must specify the length of time that the fiscal officer is to perform the officer's duties and whether the officer may be reappointed upon the completion of a term. The legal advisor for the RSED is the prosecuting attorney of the most populous county containing a school district that is a member of the RSED. The fiscal officer and prosecutor are not to receive compensation for performing their duties, but the agreement may provide for the fiscal officer to be reimbursed for reasonable expenses of performing duties from the RSED's special fund.

The prosecutor is required to prosecute all actions against a member of the board of directors for malfeasance or misfeasance in office and is to be the legal representative of the board or the directors in all civil actions brought by or against them.

### Procuring liability insurance

The board of directors must procure a policy or policies of insurance insuring the board, the fiscal officer, and the prosecuting attorney against liability on account of damage or injury to persons and property. Before procuring the insurance the board must adopt a resolution setting forth the amount of insurance to be purchased, the necessity of the insurance, and a statement of its estimated premium cost. The insurance must be procured from one or more recognized insurance companies authorized to do business in Ohio. The cost of the insurance must be paid from the RSED's special fund.

### Changes to and dissolution of the RSED

#### Amendment

The agreement creating an RSED may be amended pursuant to terms and procedures mutually agreed to by the member boards of education.

#### New members

The board of education of a school district having a majority of its territory in the county may join an existing RSED by adopting a resolution requesting to join and upon

approval by the member boards of education of the RSED. If a tax is levied in the RSED as discussed below, a board of education may join the RSED only after a majority of qualified electors in the school district voting on the question vote in favor of levying the tax throughout the school district. A board of education joining an existing district has the same powers, rights, and obligations under the agreement as other member boards of education.

#### Withdrawal of members

A member board of education may withdraw its school district from an RSED by adopting a resolution. The withdrawal will take effect on the date provided in the resolution. If a tax is levied in the RSED, the resolution must take effect not later than the first day of January following adoption of the resolution. Beginning with the first day of January following adoption of the resolution, any tax levied for the RSED cannot be levied within the territory of the withdrawing school district. Any collection of tax levied in the territory of the withdrawing school district that has not been settled and distributed when the resolution takes effect is credited to the RSED's special fund.

#### Dissolution of RSED

An agreement creating an RSED must provide for the manner of the RSED's dissolution. An RSED ceases to exist when not more than one school district remains in the district. Once an RSED ceases to exist, the levy of any tax for the RSED cannot be extended on the tax lists in any tax year beginning after the RSED's dissolution. The agreement must provide that, upon dissolution, any unexpended balance in the RSED's special fund will be divided among the school districts that were members of the RSED immediately before dissolution in proportion to the taxable valuation of property in the districts, and credited to their respective general funds.

## Tax levy to fund RSED services

(R.C. 3313.83(C), 5705.01, 5705.2111, and 5705.25)

### Resolution to levy tax

If an RSED board of directors desires to levy a tax in excess of the ten-mill limitation throughout the RSED to fund the services to be provided to students enrolled in the districts that make up the RSED and the students' immediate family members, the board must propose the levy to each of the member boards of education. The proposal must specify the rate or amount of the tax, the number of years the tax will be levied, and that the aggregate rate of tax will not exceed three mills per dollar of taxable value in the RSED. If a majority of the member boards of education approves the proposal, the RSED board of directors may adopt a resolution approved by a majority

of the board's full membership declaring the necessity of levying the proposed tax throughout the RSED for the purpose of funding the special services. The levy may be for a specified number of years or permanent. The aggregate rate of tax levied by an RSED at any time cannot exceed three mills per dollar of taxable value in the district.

The tax takes effect only if approved by a majority of the voters in the RSED.

### Effect of levy adoption, rejection, or expiration

The act provides that the adoption or rejection by the voters of a tax levy to fund an RSED does not alter the duty of each school district member of the RSED to provide special education and related services as required under law. On the expiration of an RSED levy, the state, member school districts, and any other governmental entity is not obligated to provide replacement funding for the revenues under the expired levy. The tax levy, in whole or in part, must not be considered a levy for current operating expenses for purposes of the state school funding formula for any of the school district members of the RSED.

### Creation of RSED special fund to hold tax levy proceeds

The board of directors of each RSED must create a special fund to hold the proceeds of the tax levy and any gifts, donations, bequests, or other grants of money coming into the possession of the RSED. An RSED and the board of directors are subject to Ohio's Uniform Depository Act.

## School district ninety-nine year lease of excess real property

(Section 733.20)

If a board of education acquired or acquires a parcel of real property between January 1, 2008, and December 31, 2010, and if the board, by vote of a majority of its members, determines that a portion of the parcel, or a portion of the improvements located on or to be constructed on the parcel, is not required for school use, the board may convey a leasehold interest in that excess property for a term not to exceed 99 years, without reserving any right to cancel or terminate the lease other than breach of the lease by the lessee. The board may convey the leasehold interest as a single leasehold interest pursuant to one lease or as separate leasehold interests pursuant to two or more leases.

The board must convey the leasehold interest at public auction or by sealed bid to the highest bidder. If the board proceeds by sealed bid, the board must prescribe the form of the bid, and must require that each bid contain the name of the person submitting the bid.

The board is required to publish notice of the time and place of the auction or bid opening in a newspaper of general circulation in the school district or by posting notices in five of the most public places in the school district. And, if the board is proceeding by sealed bid, the notice must include instructions for making a bid.

The board, from and after the day the notice is published, must make all the terms and conditions of the lease available in the office of the treasurer of the school district for review by prospective bidders. The notice, described above, must inform readers of this availability.

The base rent payable under the lease cannot be made part of the terms and conditions of the lease. Rather, the highest bid is to establish the base rent payable under the lease. The base rent may be in addition to other payments and nonmonetary obligations of the lessee under the lease.

If the board proceeds by auction, the board must conduct the auction at the time and place stated in the notice. Similarly, if the board proceeds by sealed bid, the board must open and tabulate the bids at the time and place stated in the notice. The board may reject all bids, but only if the rejection occurs within 60 days following the auction or the opening of bids. Upon rejection of all the bids, the board may again proceed by public auction or sealed bid to convey the leasehold interest in the manner described here.

The president and treasurer of the board of education are required to execute and deliver the lease agreement and any other agreements, documents, or instruments that are necessary to complete conveyance of the leasehold interest.

## School construction bonds: 40-year maturity

(R.C. 133.20(B)(4) and (F))

The act permits school districts to increase the length of time within which certain school building bonds must be repaid, from a maximum of 30 years to 40 years. The provision applies to general obligation bonds issued to finance the construction or acquisition of real property. To issue bonds with a maturity of more than 30 years, the district's fiscal officer must certify to the school board that the useful life of the bond-financed property will exceed 30 years.

## Transfer of School Employees Health Care Board (VETOED)

(Section 265.60.90)

The Governor vetoed a section that would have transferred the School Employees Health Care Board from the Department of Administrative Services to the Department of Education. Under the vetoed provisions, on July 1, 2009, all duties, powers, obligations, and functions performed by, all rights exercised by, and the remaining unexpended, unencumbered balance of any money appropriated or reappropriated to the Department of Administrative Services with regard to the School Employees Health Care Board, whether obligated or unobligated, would have been transferred to the Department of Education. The Department of Education would have succeeded to, and would have assumed, all duties, powers, obligations, and functions performed by, all rights exercised by, and the remaining unexpended, unencumbered balance of any money appropriated or reappropriated to the Department of Administrative Services with regard to the board.

Any aspect of the board's operations commenced but not completed by the Department of Administrative Services on July 1, 2009, would have been completed by the Superintendent of Public Instruction or staff of the Department of Education in the same manner, and with the same effect, as if it had been completed by the Department of Administrative Services or the staff of the Department of Administrative Services. Any validation, cure, right, privilege, remedy, obligation, or liability related to the board's operations would have been neither lost nor impaired by reason of the transfer and would have been administered by the Department of Education.

Furthermore, all of the rules, orders, and determinations of the Department of Administrative Services in relation to the board's operations would have continued in effect as rules, orders, and determinations of the Superintendent of Public Instruction until modified or rescinded by the Superintendent. At the request of the Superintendent, and if necessary to ensure the integrity of the numbering of the Administrative Code, the Director of the Legislative Service Commission would have been required to renumber the rules of the board to reflect the transfer to the Department of Education.

The Department of Administrative Services and the Superintendent would have been required to identify the employees of the board to be transferred to the Department of Education. The employees would have been transferred on July 1, 2009, or as soon as possible thereafter.

The act would have specified that whenever the Department of Administrative Services is referred to in relation to the board in any law, contract, or other document,

the reference was to be deemed to refer to the Department of Education in relation to the board.

Any action or proceeding that is related to the board's operations and that is pending on the immediate effective date of the act would not have been affected by the transfer and would have been prosecuted or defended in the name of the Superintendent or the Department of Education. In all these actions and proceedings, the Superintendent or the Department of Education, upon application to the court or agency, would have been substituted as a party.

On or after July 1, 2009, notwithstanding any provision of law to the contrary, the Director of Budget and Management would have been required to take any action with respect to budget changes made necessary by the transfer, including the creation of new funds and the consolidation of funds. The Director would have been authorized to transfer cash balances between funds. The Director would have been authorized to cancel encumbrances and re-establish encumbrances or parts of encumbrances as needed in the fiscal year in the appropriate fund and appropriation item for the same purpose and to the same vendor. As would have been determined by the Director, encumbrances re-established in the fiscal year in a different fund or appropriation item used by an agency or between agencies would have been appropriated. The Director would have been required to reduce each year's appropriation balances by the amount of the encumbrance canceled in their respective funds and appropriation item. Any unencumbered or unallocated appropriation balances from the previous fiscal year could have been transferred to the appropriate appropriation item to be used for the same purposes, as determined by the Director.

The net effect of the veto is to leave the School Employees Health Care Board organized and financed as part of the Department of Administrative Services.

## STATE EMPLOYMENT RELATIONS BOARD (ERB)

- Places the State Personnel Board of Review (SPBR) within the administrative structure of the State Employment Relations Board (SERB) but specifies that the SPBR exists as a separate entity within that structure.

- Requires SPBR to utilize SERB employees in the exercise of SPBR's powers and the performance of the SPBR's duties and functions rather than requiring SPBR to appoint employees as necessary in the exercise of its powers and performance of its duties and functions.

- Transfers SPBR employees to SERB and declares the Chairperson of SERB the appointing authority for both SPBR and SERB.

- Abolishes the Transcripts and Other Documents Fund in the state treasury and transfers any moneys in that fund to the Training, Publications, and Grants Fund.

- Requires the Training, Publications, and Grants Fund, in addition to the other uses specified in continuing law, to be used to defray the cost of producing an administrative record for SPBR, which was the former purpose of the Transcripts and Other Documents Fund.

- Removes the requirement that SERB appoint mediators, arbitrators, and local area directors and specify their duties.

- Places SERB's Assistant Executive Director, administrative law judges, and employees holding a fiduciary or administrative relation to SERB in the unclassified civil service and places the head of the Bureau of Mediation in the classified civil service.

- Requires the Assistant Executive Director to be an attorney licensed to practice in Ohio and requires the Assistant Executive Director to serve as a liaison to the Attorney General on legal matters before SERB.

- Changes references to "hearing officer" and "attorney-trial examiners" to "administrative law judges" throughout the Public Employees Collective Bargaining Law (PECBL).

- Expands the methods useable by SERB, at its discretion, to conduct a secret ballot representation election, from only an in person vote to also a vote by mail or electronically.

- Would have exempted members and employees of the Capitol Square Review and Advisory Board from the definition of "public employee" under the PECBL and would have prohibited members and employees of the Capital Square Review and Advisory Board likewise from being members of the Ohio Elections Commission (VETOED).

- Allows independent home care providers and independent child care providers to bargain collectively with the state to determine wages, hours, terms, other conditions of employment that are within the control of the state.

- Allows independent home care providers and independent child care providers to form, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in any representative organization of their own choosing.

- Specifies processes by which a representative organization may become the exclusive representative of the independent home care providers or independent child care providers.

- Specifies processes by which collective bargaining between the state and the providers can occur.

- Maintains the right of the recipients of care to choose providers and to control the hiring, termination, and supervision of providers and the right of the state to take appropriate action when a provider is no longer eligible to provide care under state or federal law, or any state or federal rules or regulations.

- Grants SERB the same authority as that provided in the PECBL to investigate, hold hearings, make determinations, and issue complaints regarding unfair labor practices with respect to providers.

- Sunsets the provisions regarding collective bargaining for independent home care providers and independent child care providers at the end of Governor Strickland's time in office as Governor.

## Administrative merger of the State Employment Relations Board and the State Personnel Board of Review

(R.C. 124.03, 4117.01, 4117.02, and 4117.24; Section 273.20)

### Background

Under continuing law the State Employment Relations Board (SERB) carries out Ohio's Public Employees' Collective Bargaining Law (R.C. Chapter 4117.; "PECBL") by administering representative elections, certifying exclusive representatives (see "**Method of conducting a representation election for collective bargaining**"), monitoring and enforcing statutory dispute resolution procedures, mediating collective bargaining negotiations, adjudicating unfair labor practice charges, determining unauthorized strike claims, and providing information and training to parties engaging in contract negotiations.

The State Personnel Board of Review (SPBR) hears appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities

or the Director of Administrative Services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, or refusal of the Director, or anybody authorized to perform the Director's functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under continuing law. SPBR also appeals, as provided by law, of appointing authorities from final decisions of the Director relative to the classification or reclassification of any position in the classified state service under the jurisdiction of that appointing authority. SPBR hears appeals of employees on both the state and local levels and hears appeals filed by nonexempt classified employees who have not organized and nonexempt employees whose bargaining agreement specifies a right to appeal to SPBR.

### Administrative merger

The act places the SPBR within the administrative structure of the SERB but specifies that the SPBR exists as a separate entity within that structure.

Former law required SPBR to appoint a secretary, referees, examiners, and whatever other employees were necessary in the exercise of SPBR's powers and performance of SPBR's duties and functions. SPBR also had to determine appropriate education and experience requirements for its secretary, referees, examiners, and other employees and had to prescribe their duties. A referee or examiner did not need to have been admitted to the practice of law. Under law retained in part by the act, SPBR employees are excluded from the definition of "public employee" for the purposes of the PECBL.

The act removes these hiring requirements and instead requires SPBR to utilize employees provided by SERB in the exercise of SPBR's powers and the performance of the SPBR's duties and functions. Under the act, the Chairperson of SERB must determine the utilization by the SPBR of those SERB employees as are determined necessary for the SPBR to exercise SPBR's powers and perform SPBR's duties. The act does not substantively change the definition of "public employee" under the PECBL regarding SPBR employees. SERB employees are excluded from that definition, and the act specifies that the exclusion of SERB employees includes those SERB employees utilized by SPBR in the exercise of SPBR's powers and the performance of SPBR's duties and functions.

Under the act, beginning on July 1, 2009, the SERB Chairperson is the appointing authority for all employees of the SPBR and the SERB. Under the act, after conferring with the Chairperson of SPBR the SERB Chairperson must identify the SPBR employees, equipment, assets, and records to be transferred to SERB. SERB and SPBR must enter into an interagency agreement to transfer to SERB the identified SPBR

employees, equipment, assets, and records by July 1, 2009, or as soon as possible thereafter. The agreement may include provisions to transfer property and any other provisions necessary for the continued administration of program activities. The act states that the SPBR employees that the SERB Chairperson identifies for transfer, and any equipment assigned to those employees are hereby transferred to SERB. Any employees of the SPBR so transferred retain the rights specified in continuing law concerning layoff procedures, and any employee transferred to SERB retains the employee's respective classification, but the act allows the SERB Chairperson to reassign and reclassify the employee's position and compensation as the Chairperson determines to be in the interest of efficient office administration. In accordance with the act's requirements, to the extent determined necessary by the SERB Chairperson, SPBR must utilize SERB employees in the exercise of SPBR's powers and the performance of SPBR's duties.

Continuing law requires the Chairperson of SERB to maintain SERB's office in Columbus and manage the office's daily operations, including securing facilities, equipment, and supplies necessary to house SERB, employees of SERB, and files and records under SERB's control. The act requires the Chairperson also to secure offices for SERB and SPBR and facilities, equipment, and supplies necessary to house SPBR and files and records SPBR's control. Additionally, when the Chairperson prepares and submits SERB's biennial budget to the Office of Budget Management under continuing law, the act requires the Chairperson to include SPBR's costs in discharging any duty imposed by law on SPBR or an SPBR agent.

### Abolishment of the Transcripts and Other Documents Fund

The act abolishes the Transcript and Other Documents Fund, which, under former law SPBR was required to deposit all moneys received by SPBR for copies of documents, rule books, and transcriptions and to use to defray the cost of producing an administrative record. The fund is abolished after the Director of Budget and Management transfers any funds in that fund to the Training, Grants, and Publications Fund. The act requires instead that all moneys received by SPBR for copies of documents, rule books, and transcriptions be deposited into the Training, Grants, and Publications Fund within the state treasury. Under continuing law, SERB must use the Training, Grants, and Publications Fund to defray specified administrative costs, and the act requires SERB to use the Training, Grants, and Publications Fund also to defray the cost of producing SPBR's administrative record.

## Changes regarding the appointment and classification of specified SERB employees

(R.C. 4117.02 and 4117.12)

Under law retained in part by the act, the SERB Chairperson must employ, promote, supervise, and remove all SERB employees, except for mediators, arbitrators, members of fact-finding panels, and directors for local areas who SERB currently appoints, and establish, change, or abolish positions and assign or reassign the duties of those employees as the Chairperson determines necessary to achieve the most efficient performance of SERB's duties under the PECBL. Former law also required SERB and the Chairperson, respectively, to appoint all employees on the basis of training, practical experience, education, and character and required SERB to give special regard to the practical training and experience that employees have for the particular position involved.

The act removes the requirement that, in terms of actual employment with SERB, SERB appoint mediators, arbitrators, and local area directors and specify their job duties. Thus SERB, under continuing law, appoints members of fact finding panels and prescribes their job duties. The act also removes the requirement that SERB appoint all employees on the basis of training, practical experience, education, and character and requires the Chairperson, instead of SERB as under former law, to give special regard to the practical training and experience that employees have for the particular position involved.

The act requires the SERB Chairperson to appoint an Assistant Executive Director who must be an attorney licensed to practice in Ohio. The Assistant Executive Director serves as a liaison to the Attorney General on legal matters before SERB.

Former law required SERB to select and assign attorney-trial examiners and other agents whose functions are to conduct hearings with due regard to their impartiality, judicial temperament, and knowledge. Additionally, under continuing law, if a person files a complaint with SERB, and if after an investigation SERB has probable cause that a violation has occurred, a hearing is held either by SERB, a SERB member, or a hearing officer in accordance with procedures specified under continuing law. The act changes references to "hearing officer" and "attorney-trial examiners" to "administrative law judges" throughout the PECBL, and requires the Chairperson, rather than SERB as under former law, to select and assign administrative law judges. However, it appears that SERB actually employs administrative law judges, not the Chairperson.

Under law retained in part by the act, SERB's Executive Director, the head of the Bureau of Mediation, and the personal secretaries and assistants of SERB members are in the unclassified service. All other full-time SERB employees are in the classified service. The act places SERB's Assistant Executive Director, administrative law judges, and employees holding a fiduciary or administrative relation to SERB as described in the Civil Service Law (R.C. Chapter 124.) in the unclassified civil service and places the head of the Bureau of Mediation in the classified service.

### Method of conducting a representation election for collective bargaining

(R.C. 4117.07)

Continuing law requires a public employer who is subject to the PECBL to bargain collectively with an exclusive representative designated under continuing law for purposes of the PECBL (R.C. 4117.04, not in the act). An employee organization (union) becomes the exclusive representative of all the public employees in an appropriate unit for the purposes of collective bargaining in one of two ways: (1) by being certified by SERB when a majority of the voting employees in the unit select the employee organization as their representative in a SERB-conducted election, or (2) by filing a request with a public employer with a copy to SERB for recognition as an exclusive representative in accordance with the requirements specified in the PECBL (R.C. 4117.05, not in the act).

Under continuing law, SERB must conduct a representation election if, after conducting a hearing, SERB determines that a question of recognition exists.

The act eliminates the prohibition against a person voting in an election by mail. Accordingly, the act allows SERB to conduct a representation election by secret ballot cast, at SERB's discretion, by mail, electronically, or in person, in accordance with the requirements specified in continuing law.

### Collective bargaining for members and employees of the Capitol Square Review and Advisory Board (VETOED)

(R.C. 4117.01)

Under the PECBL, a public employee, as defined under that law, has the right to collectively bargain with the public employee's public employer concerning wages, hours, terms, and conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. "Public employer" includes "the state or any political subdivision of the state located entirely in the state. . ." (R.C. 4117.01(B)). Continuing law defines "public employee" for the purpose of the PECBL generally as any person who works for a public employer,

whether by employment or appointment. The definition also lists 18 specific exceptions, making those employees not "public employees" for purposes of that law.[198] The Governor vetoed a provision that would have added to that list of exemptions members and employees of the Capitol Square Review and Advisory Board, meaning that, under the act, such persons would not be "public employees" for purposes of the PECBL if the provision had not been vetoed.

Under continuing law, the Ohio Elections Commission has restrictions on who can be members of the Commission. For instance, members of the Commission are not permitted to run for or hold a public office. They also are not permitted to work on a committee for a candidate or an issue. In addition, if an individual is one of the types of employees included in the list of exceptions to the definition of a "public employee" for purposes of the PECBL, that individual cannot also be a member of the Commission. (R.C. 3517.152(F)(1)(g), not in the act.) Therefore, by including Capital Square Review and Advisory Board employees in the list of exceptions from being a "public employee" under the PECBL, the act would have had the effect also of prohibiting these types of employees from being members of the Elections Commission had the provision not been vetoed.

## Collective bargaining for independent home care providers and independent child care providers

(Sections 741.01, 741.02, 741.03, 741.04, 741.05, 741.06, and 741.07)

### Introduction

On July 17, 2007, Governor Strickland issued executive order 2007-23s permitting independent home care providers to collectively bargain with the state regarding reimbursement rates and other terms and conditions of the provisions of the provision of services. Shortly thereafter, on February 1, 2008, Governor Strickland issued a similar order, 2008-02s permitting independent child care providers (hereinafter independent home care providers and independent child care providers shall collectively be referred to as "providers") to collectively bargain with the state regarding reimbursement rates and other terms and conditions of the provision of services. The executive orders contain provisions substantially similar to those found in the act.

[198] Continuing law states that, with one exception, nothing in the PECBL prohibits public employers from electing to engage in collective bargaining, to meet and confer, to hold discussions, or to engage in any other form of collective negotiations with public employees who are not subject to the PECBL because the public employee is excluded from the definition of public employee for purposes of the PECBL. Thus, these public employees are not completely barred from collective bargaining; however, such a public employee's public employer would not be required to collectively bargain with those employees if the public employer did not elect to collectively bargain. (R.C. 4117.03(C).)

### Collective bargaining rights of providers

The act permits providers to do all of the following:

(1) Form, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in any representative organization of their own choosing;

(2) Engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection;

(3) Be represented by a representative organization;

(4) Bargain collectively with the state to determine wages, hours, terms, other conditions of employment that are within the control of the state, the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, and enter into a collective bargaining agreement;

(5) Present grievances and have them adjusted, without the intervention of the representative organization, so long as the adjustment is not inconsistent with the terms of any collective bargaining agreement then in effect and the representative organization has the opportunity to be present at the adjustment.

### Collective bargaining rights of representative organizations

The act requires a representative organization to become the exclusive representative of all the providers in an appropriate unit for the purpose of collective bargaining by satisfying either of the following criteria:

(1) Being certified by an impartial election monitor as described in the Governor's executive order 2008-02s for independent child care providers or the Governor's executive order 2007-23s for independent home care providers;

(2) Filing a request with the state for recognition as an exclusive representative that fulfills the criteria described below, a copy of which must be sent to the SERB.

The request for recognition an exclusive representative may file with the state for recognition, must do all of the following:

(1) Describe the bargaining unit;

(2) Allege that a majority of the providers in the bargaining unit wish to be represented by the representative organization;

(3) Support the request with substantial evidence based on, and in accordance with, rules prescribed by SERB demonstrating that a majority of the providers in the bargaining unit wish to be represented by the representative organization.

The state must request an election in accordance with the same requirements as provided in the PECBL immediately upon receipt of the request described above. The provisions describing the collective bargaining rights of representative organizations must not be construed to permit the state to recognize, or SERB to certify, a representative organization as an exclusive representative if there is in effect a lawful writing agreement, contract, or memorandum of understanding between the state and another representative organization that, on the effective date of these provisions, has been recognized by the state as the exclusive representative of the providers in an appropriate unit or that by tradition, custom, practice, election, or negotiation has been the only representative organization representing all providers in the unit. This limitation does not apply to any agreement that has been in effect in excess of three years, and extensions of an agreement do not affect the expiration of the original agreement.

### Collective bargaining agreements

Under the act, all matters pertaining to wages, hours, terms, and other conditions of employment that are within the control of the state, the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the state and the exclusive representative of all the providers in an appropriate unit. The provisions of the act relating to collective bargaining between providers and the state do not affect the ability of the state to take appropriate action when a provider is no longer eligible to provide care under Ohio or federal law, or any rules or regulations adopted pursuant to those laws.

The collective bargaining rights provided by the act, or any collective bargaining agreement entered into pursuant to those rights, do not alter the unique relations between providers and recipients of care. Recipients retain the absolute right to choose providers and to control the hiring, termination, and supervision of providers.

The act requires the parties to any collective bargaining agreement entered into between providers and the state to record that agreement in writing, which is to be executed by all of the parties to the agreement. The agreement must contain the same provisions as described in the PECBL. Such provisions apply to the state, its agents or representatives, any representative organization, its agents or representatives, and providers in the same manner as the same provisions apply to public employers, public employees, and employee organizations as described in the PECBL.

### SERB authority

The act grants SERB the same authority as described in the PECBL to investigate, hold hearings, make determinations, and issue complaints regarding unfair labor practices, insofar as that authority does not conflict with the rights provided to the state, providers, and representative organizations under the act. For purposes of the act, "unfair labor practice" has the same meaning as in the PECBL, except any provisions that apply to public employers apply to the state, any provisions that apply to employee organizations apply to representative organizations, and any provisions that apply to public employees apply to providers.

### Applicable definitions

Under the act, "independent home care provider" means any person who provides home services under a Medicaid waiver component or who provides home services through a state Medicaid plan amendment, but does not include any person employed by a private agency for purposes of performing the activities otherwise attributed to an independent home care provider. "Independent child care provider" means a child care provider categorized as either a Type A licensed provider who does not meet the definition of employee under the National Labor Relations Act, or a Type B certified or licensed provider or an in-home aide who is not a county or state employee. "Representative organization" means any employee organization as defined in the PECBL or any labor or bona fide organization in which providers participate and that exists for the purpose, in whole or in part, of dealing with the state concerning grievances, wages, hours, terms, and other conditions of employment of providers that are within the control of the state.

### Effective period

Under the act, the provisions described above remain in effect until the end of the Governor Strickland's time in office as Governor.

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## BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND SURVEYORS (ENG)

- Requires the Board of Registration for Professional Engineers and Surveyors to issue an official verification of the status of any person registered as a professional engineer or professional surveyor in Ohio upon receipt of a verification form and the payment of a fee.

## Professional engineer or surveyor registration verification

(R.C. 4733.10)

Continuing law requires the Board of Registration for Professional Engineers and Surveyors to prepare annually a list of all registered professional engineers, registered professional surveyors, and firms that possess a certificate of authorization. The Board then must provide a copy of this list, upon request, to registrants of the Board and to firms possessing a certificate of authorization without charge and to the public upon request and payment of copy costs. The act additionally requires the Board to issue an official verification of the status of any person registered as a professional engineer or professional surveyor in Ohio upon receipt of a verification form and the payment of a fee established by the Board. The act does not specify the person that sends the verification form to the Board, that pays the fee, or that receives the verification of status from the Board.

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# ENVIRONMENTAL PROTECTION AGENCY (EPA)

- Extends from June 30, 2010, to June 30, 2012, the expiration date of the continuing state fees on the disposal of solid wastes that are used to fund the Environmental Protection Agency's (EPA) solid, infectious, and hazardous waste and construction and demolition debris management programs and to pay the EPA's costs associated with administering and enforcing environmental protection programs.

- Beginning August 1, 2009, adds a new solid waste disposal fee of $1 per ton, the proceeds of which must be credited to the continuing Environmental Protection Fund.

- Establishes a new solid waste disposal fee of 25¢ per ton, the proceeds of which must be credited to the Soil and Water Conservation District Assistance Fund, and provides that the increased fee must be levied from August 1, 2009, through June 30, 2012.

- Would have exempted a solid waste transfer facility or solid waste disposal facility that is located in a county that has a population that is equal to or greater than 400,000 and that is within 15 miles of a solid waste disposal facility located in another state from the new fees on the disposal of solid waste (VETOED).

- Authorizes owners or operators of solid waste transfer facilities, solid waste disposal facilities, and construction and demolition debris facilities to submit monthly solid

waste disposal fees or construction and demolition debris disposal fees electronically rather than only by mail as required in law revised by the act.

- Authorizes solid waste disposal fees to be paid by a customer or political subdivision to a transporter of solid waste rather than only to the owner or operator of a solid waste transfer or disposal facility as in law revised by the act notwithstanding the existence of a contract that would not require or allow such payment.

- Specifies that the continuing solid waste generation fee that may be levied by a solid waste management district does not apply to solid waste delivered to a solid waste composting facility for processing rather than yard waste delivered to a composting facility or transfer facility as in former law; declares that if any unprocessed solid waste or compost product is transported off the premises of a composting facility for disposal at a landfill, the solid waste generation fee applies and must be collected by the owner or operator of the landfill; and specifies that the solid waste generation fee does not apply to materials removed from the solid waste stream as a result of recycling.

- Provides that rules of a solid waste management district governing out-of-district waste apply only to county and district solid waste disposal facilities unless the board of county commissioners or board of directors of the district submits an application to the Director of Environmental Protection that demonstrates insufficient disposal capacity in the district and the Director approves the application, and provides for appeal of the Director's action.

- Alters the purposes for which money in the Scrap Tire Management Fund may be used by removing a limitation on the amount of money that may be expended for the administration of the scrap tire management program and authorizing the Director of Environmental Protection to determine the amount needed and by authorizing a portion of the money in the Fund to be transferred to the Scrap Tire Grant Fund, which is administered by the Department of Natural Resources, to be used for supporting scrap tire amnesty and cleanup events administered by solid waste management districts.

- Streamlines the requirements for expending money in the Scrap Tire Management Fund by requiring that, after money is expended for the administration of the scrap tire management program and transferred to the Scrap Tire Grant Fund as discussed above, the remainder of the money in the Scrap Tire Management Fund be used to pay for scrap tire removal actions and for making grants to boards of health to remove vectors from scrap tire facilities.

- Authorizes the extension of the motor vehicle inspection and maintenance program (E-Check) through June 30, 2012, if the Director of Environmental Protection determines that it is necessary to comply with federal law.

- Makes other changes regarding the motor vehicle inspection and maintenance program, including provisions that establish requirements governing a competitive selection process for a contract to operate the program and replace the Motor Vehicle Inspection and Maintenance Fund with the Auto Emissions Test Fund.

- Requires the Director of Environmental Protection to make grants from the Clean Diesel School Bus Fund to county boards of mental retardation and developmental disabilities in addition to school districts as in continuing law.

- Extends all of the following for two years:

  --The sunset of the annual emissions fees for synthetic minor facilities;

  --The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works under the Water Pollution Control Law;

  --The sunset of the annual discharge fees for holders of NPDES permits issued under the Water Pollution Control Law;

  --The sunset of license fees for public water system licenses issued under the Safe Drinking Water Law;

  --A higher cap on the total fee due for plan approval for a public water supply system under the Safe Drinking Water Law and the decrease of that cap at the end of the two years;

  --The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;

  --The levying of higher fees, and the decrease of those fees at the end of the two years, for applications and examinations for certification as operators of water supply systems or wastewater systems under the Safe Drinking Water Law or the Water Pollution Control Law, as applicable; and

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

- Declares that the transfer of a hazardous waste facility installation and operation permit for a facility that is not an off-site facility is a Class 1 modification rather than a Class 3 modification as in former law; specifically declares that the transfer of a hazardous waste facility installation and operation permit for an off-site facility is a Class 3 modification; and, with respect to the modification of a hazardous waste facility that involves the transfer of a permit, eliminates provisions of law that required the Director of Environmental Protection to make certain determinations regarding the background of the transferee if the transferee had been involved in any prior activity involving hazardous waste.

- Creates the Natural Resource Damages Fund consisting of money collected by the state for natural resources damages under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Oil Pollution Act, the federal Clean Water Act or any other applicable federal or state law, and requires money in the Fund to be used in accordance with those acts.

- Repeals a provision in prior law that specified that the Hazardous Waste Clean-up Fund consisted of, in part, natural resource damages collected by the state under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

- Allows money in the Hazardous Waste Clean-up Fund to be used to fund certain emergency and remedial actions and the Voluntary Action Program permanently rather than only through October 15, 2005, as in prior law.

- Alters the sources of money that are required to be credited to the Environmental Protection Remediation Fund.

- Authorizes the Director of Environmental Protection to enter into contracts and grant agreements with federal, state, or local government agencies, nonprofit organizations, and colleges and universities for the purpose of carrying out the Environmental Protection Agency's and the Director's responsibilities for which money may be expended from the Hazardous Waste Clean-up Fund, the Environmental Protection Remediation Fund, and the Natural Resource Damages Fund.

- Requires an air contaminant source that is the subject of an installation permit to be installed or modified in accordance with the permit not later than 18 months after the permit's effective date at which point the permit must terminate unless any of specified circumstances exists.

- Establishes statutory deadlines by which the Environmental Review Appeals Commission must issue written orders regarding appeals before the Commission.

## State solid waste disposal fees; construction and demolition debris disposal fees

(R.C. 3714.07, 3734.57, and 3745.015)

Continuing law levies three state fees on the disposal of solid wastes. The first is a $1 per-ton fee, of which one-half of the proceeds must be deposited in the state treasury to the credit of the Hazardous Waste Facility Management Fund and one-half of the proceeds must be deposited in the state treasury to the credit of the Hazardous Waste Clean-up Fund. Both funds are administered by the Environmental Protection Agency (EPA). The second fee is another $1 per-ton fee that is deposited in the state treasury to the credit of the Solid Waste Fund and used to fund the EPA's solid and infectious waste and construction and demolition debris management programs. The third fee is an additional $1.50 per-ton fee (see below) the proceeds of which must be deposited in the state treasury to the credit of the Environmental Protection Fund, which is used to pay the EPA's costs associated with administering and enforcing environmental protection programs. The solid waste disposal fees are collected by the owners and operators of solid waste disposal and transfer facilities as trustees for the state. The act extends from June 30, 2010, to June 30, 2012, the expiration date of the three state fees levied on the disposal of solid wastes.

Continuing law also establishes certain fees on the disposal of construction and demolition debris. Those fees are collected by the owners and operators of facilities as trustees for the state. One fee is used to fund the Construction and Demolition Debris Program. Additional fees are used to provide funding for the continuing Soil and Water Conservation District Assistance Fund and the continuing Recycling and Litter Prevention Fund. Both of those Funds are administered by the Department of Natural Resources with the former used to provide funding for local soil and water conservation districts and the latter used to fund recycling and litter programs administered by the Division of Recycling and Litter Prevention in the Department of Natural Resources.

### Funding for Environmental Protection Fund

As stated above, continuing law establishes a solid waste disposal fee of $1.50 per ton the proceeds of which must be deposited in the state treasury to the credit of the

Environmental Protection Fund. Beginning on August 1, 2009, the act adds an additional $1 per-ton disposal fee the proceeds of which must be credited to that Fund.

### Funding for Soil and Water Conservation District Assistance Fund

As stated above, money in the Soil and Water Conservation District Assistance Fund is derived from the proceeds of a fee levied on the disposal of construction and demolition debris. The fee is levied at the rate of 12.5¢ per cubic yard or 25¢ per ton, as applicable. The act establishes a new solid waste disposal fee of 25¢ per ton from August 1, 2009 through June 30, 2012, and requires the proceeds to be credited to the Fund.

### Exemption from new solid waste disposal fees (VETOED)

The Governor vetoed a provision in the act that would have exempted a solid waste transfer facility or solid waste disposal facility that is located in a county that has a population that is equal to or greater than 400,000 and that is within 15 miles of a solid waste disposal facility located in another state from the new fees on the disposal of solid waste that are established by the act.

### Electronic filing of fees

Continuing law establishes procedures by which owners and operators of solid waste transfer facilities, solid waste disposal facilities, and construction and demolition debris facilities must submit monthly solid waste disposal fees or construction and demolition debris disposal fees, as applicable. Under law revised by the act, those procedures require the fees to be submitted by mail. The act also authorizes the fees to be submitted electronically.

### Payment of solid waste disposal fees

Continuing law requires solid waste disposal fees levied by the state, solid waste management districts, and other local governments to be paid by the customer or political subdivision to the owner or operator of a solid waste transfer facility or disposal facility notwithstanding the existence of any provision in a contract that the customer or political subdivision may have with the owner or operator or with a transporter of the waste to the facility that would not require or allow such payment. The act adds that in the alternative, the fees must be paid by a customer or political subdivision to a transporter of waste who subsequently transfers the fees to the owner or operator of such a facility. The act then provides that the fees must be paid notwithstanding the existence of any provision in a contract that the customer or political subdivision may have with the owner or operator or with a transporter of the waste to the facility that would not require or allow such payment regardless of

whether the contract was entered into prior to or after the effective date of those provisions of the act. The act defines "customer" to mean a person who contracts with, or utilizes the solid waste services of, the owner or operator of a solid waste transfer or disposal facility or a transporter of solid waste to such a facility.

### Solid waste generation fees--composted and recycled materials

(R.C. 3734.573)

Continuing law authorizes solid waste management districts to levy a fee on the generation of solid waste for the same purposes for which solid waste disposal fees may be levied by such districts. Under prior law, the generation fee did not apply to yard waste delivered to a solid waste composting facility for processing or to a solid waste transfer facility. The act instead specifies that the generation fee does not apply to solid waste delivered to a solid waste composting facility for processing. Continuing law also specifies that the generation fee does not apply to materials separated from a mixed waste stream for recycling by the generator. The act adds that the fee does not apply to materials removed from the solid waste stream as a result of recycling. Finally, the act provides that if any unprocessed solid waste or compost product is transported off the premises of a composting facility for disposal at a landfill, the generation fee applies and must be collected by the owner or operator of the landfill.

### Solid waste management district rules governing out-of-district waste

(R.C. 343.01 and 3734.53)

Continuing law authorizes a solid waste management plan (plan) of a solid waste management district to provide for the adoption of rules governing various issues concerning solid waste management within the district. One such issue is the disposal within the district of solid wastes generated outside the district but inside Ohio. Law largely retained by the act authorizes a solid waste management district to adopt and enforce rules prohibiting or limiting the receipt at facilities covered by the district's plan of solid wastes generated outside the district or outside a service area prescribed in the plan consistent with certain generation and disposal capacity projections that are required to be made by the district. The act provides that the rules apply to the receipt of solid wastes at facilities that are located within the district rather than those covered by the district's plan. It then states that such rules may be adopted and enforced with respect to solid waste disposal facilities in the district that are not owned by a county or the district only if the board of county commissioners or board of directors of the district, as applicable, submits an application to the Director of Environmental Protection that demonstrates that there is insufficient capacity to dispose of all solid wastes that are generated within the district at the facilities located within

the district and the Director approves the application. The demonstration must be based on projections contained in the plan or amended plan of the district. The act declares that the approval or disapproval of such an application by the Director is an action that is appealable to the Environmental Review Appeals Commission. Finally, the act requires the Director to establish the form of the application.

### Scrap Tire Grant Fund; Scrap Tire Management Fund; tire fees

(R.C. 1502.12, 3734.82, and 3734.901)

Continuing law creates the Scrap Tire Grant Fund consisting of money transferred from the continuing Scrap Tire Management Fund (see below). The Scrap Tire Grant Fund is required to be used by the Division of Recycling and Litter Prevention in the Department of Natural Resources for the purpose of supporting market development activities for scrap tires and synthetic rubber from tire manufacturing processes. The act also allows money in the Scrap Tire Grant Fund to be used for supporting scrap tire amnesty and cleanup events sponsored by solid waste management districts.

The Scrap Tire Management Fund consists of license fees, money received from certain fees on the sale of tires, and other money received for purposes of the EPA's scrap tire management program. Under prior law, in each fiscal year, not more than $750,000 in the Fund could be expended to administer and enforce the scrap tire management program, and $1 million was required to be transferred by the Office of Budget and Management to the Scrap Tire Grant Fund. After those expenditures, not more than $4.5 million in the Fund was required to be used each fiscal year to pay for scrap tire removal actions and for making grants to boards of health to remove vectors from scrap tire facilities. However, more than $4.5 million could be expended for those purposes if the Director of Environmental Protection requested approval from the Controlling Board and followed other specified procedures. Finally, if the balance in the Scrap Tire Management Fund exceeded certain levels, the law made provision for transferring additional money in the Scrap Tire Management Fund to the Scrap Tire Grant Fund and for providing additional money for scrap tire removals and grants to boards of health.

The act eliminates the cap on the amount of money that may be expended to administer and enforce the scrap tire management program. It then streamlines the requirements for expenditures of money in the Scrap Tire Management Fund. Under the act, in each fiscal year, money in the Fund must be used as follows:

(1) To administer and enforce the scrap tire management program with the Director of Environmental Protection determining the amount to be expended;

(2) $1 million transferred by the Office of Budget and Management to the Scrap Tire Grant Fund and used for supporting market development activities for scrap tires and synthetic rubber from tire manufacturing processes and tire recycling processes;

(3) $500,000 transferred to the Scrap Tire Grant Fund, if the Director of Environmental Protection so requests, to be used for scrap tire amnesty events and scrap tire cleanup events sponsored by solid waste management districts; and

(4) The remaining balance to pay for scrap tire removal actions and to make grants to boards of health to remove vectors from scrap tire facilities.

The act repeals a provision that allowed the proceeds of a continuing fee on the sale of tires to be used to make grants to promote research regarding alternative methods of recycling scrap tires and instead allows the proceeds to be used to make grants supporting market development activities for scrap tires and synthetic rubber from tire manufacturing processes and tire recycling processes and to support scrap tire amnesty and cleanup events.

### Extension of E-Check; Auto Emissions Test Fund (PARTIALLY VETOED)

(R.C. 3704.14, 3704.143, and 4503.10)

Prior to 2006, under contracts that were authorized by codified statute and that expired on December 31, 2005, the EPA oversaw the implementation of an enhanced motor vehicle inspection and maintenance program in the Cincinnati area, the Dayton area, and the Cleveland area. The program operated under the name E-Check and was designed to comply with the federal Clean Air Act. Motor vehicle emissions inspections were conducted under the program by a contractor selected pursuant to requirements established in law enacted in 1993. There was a separate contract governing each metropolitan area in which the program was operating.

As indicated above, contracts for the original program expired at the end of 2005. At that time, it also became unnecessary to implement the E-Check program in the Cincinnati and Dayton areas for purposes of the federal Clean Air Act. However, E-Check was still necessary for the Cleveland area to achieve and maintain compliance with the Clean Air Act. Thus, through the enactment of Am. Sub. H.B. 66 of the 126th General Assembly, the General Assembly extended the E-Check program for that area. In providing for the continuation of the program, Am. Sub. H.B. 66 eliminated many of the specific statutory requirements related to the E-Check program, replacing them with more general authority granted to EPA. Under that authority, the Director was required to continue to implement an enhanced motor vehicle inspection and maintenance program in counties in which an enhanced program is federally mandated. The program was required to operate for a period of two years beginning

on January 1, 2006, and ending on December 31, 2007, and was required to be substantially similar to the enhanced program that was implemented in those counties under the contract that expired on December 31, 2005.

Am. Sub. H.B. 66 also prohibited the Director of Environmental Protection from implementing a motor vehicle inspection and maintenance program in any county other than a county in which the program is federally mandated. Further, the law stated that the enhanced program established under that act expired on December 31, 2007, and could not be continued beyond that date unless otherwise federally mandated.

As discussed above, the E-Check program operating in the Cleveland area was scheduled to expire on December 31, 2007. In order to continue the authority to implement the program, the 127th General Assembly amended and subsequently enacted Am. Sub. H.B. 24 in 2007 to establish uncodified authority for the Governor to order the extension of the program through June 30, 2009, if the Governor, in consultation with the Director of Environmental Protection, determined that the program was necessary for the state to comply with the federal Clean Air Act. The Director was required to select a vendor to operate the program during that time period via a competitive selection process.

The act establishes authorization for the extension of the motor vehicle inspection and maintenance program through June 30, 2012. Under the act, if the Director of Environmental Protection determines that implementation of a motor vehicle inspection and maintenance program is necessary for the state to effectively comply with the federal Clean Air Act after June 30, 2009, the Director may provide for the implementation of the program in those counties in Ohio in which such a program is federally mandated. Upon making such a determination, the Director of Environmental Protection may request the Director of Administrative Services to extend the terms of the contract that was entered into under the authority of Am. Sub. H.B. 24 of the 127th General Assembly. Upon receiving the request, the Director of Administrative Services must extend the contract beginning on July 1, 2009. The contract must be extended for a period of up to six months with the contractor who conducted the motor vehicle inspection and maintenance program under that contract.

Prior to the expiration of the contract extension authorized by the act, the Director of Environmental Protection may request the Director of Administrative Services to enter into a contract with a vendor to operate a motor vehicle inspection and maintenance program in each county in Ohio in which such a program is federally mandated through June 30, 2011, with an option for the state to renew the contract through June 30, 2012. The contract must ensure that the program achieves at least the same ozone precursor reductions as achieved by the program operated under the authority of the contract that was extended under the act. The Director of

Administrative Services must select a vendor through a competitive selection process in compliance with continuing law.

Notwithstanding any law to the contrary, the act requires the Director to ensure that a competitive selection process regarding a contract to operate a motor vehicle inspection and maintenance program in Ohio incorporates certain elements. However, several of those elements were vetoed by the Governor. The following is a list of the elements, including those that were vetoed:

(1) The act requires the process to incorporate a requirement that the vendor selected to operate the program provide notification of the program's requirements to each owner of a motor vehicle that is required to be inspected under the program. The contract must require the notification to be provided not later than 60 days prior to the date by which the owner of the motor vehicle is required to have the motor vehicle inspected. The Director of Environmental Protection and the vendor must jointly agree on the content of the notice. However, the notice must include at a minimum the locations of all inspection facilities within a specified distance of the address that is listed on the owner's motor vehicle registration.

(2) The Governor vetoed a requirement that would have required the vendor selected to operate the program to spend not more than $500,000 over the term of the contract for public education regarding the locations at which motor vehicle inspections would be conducted.

(3) The Governor vetoed a requirement that would have required the vendor selected to operate the program to acquire all facilities that were previously utilized for motor vehicle emissions inspections via arm's-length transactions at the discretion of the interested parties if the vendor chose to utilize those inspection facilities for purposes of the contract. The competitive selection process would have been required to include a requirement that a vendor pay book value for such facilities.

(4) The Governor vetoed a requirement that would have required the motor vehicle inspection and maintenance program to utilize established local businesses, such as existing motor vehicle repair facilities, for the purpose of expanding the number of inspection facilities for consumer convenience and increased local business participation.

The act requires the Director of Environmental Protection to administer the motor vehicle inspection and maintenance program operated under the act. The act retains law that was previously enacted requiring the program, at a minimum, to do all of the following:

(1) Comply with the federal Clean Air Act;

(2) Provide for the issuance of inspection certificates; and

(3) Provide for a new car exemption for motor vehicles four years old or newer and provide that a new motor vehicle is exempt for four years regardless of whether legal title to the motor vehicle is transferred during that period.

The act repeals prior law that precluded the Director from implementing a motor vehicle inspection and maintenance program in any county other than a county in which a motor vehicle inspection and maintenance program was federally mandated. Instead, the act declares that a motor vehicle inspection and maintenance program must not be implemented in any county in which such a program is not authorized under the act without the approval of the General Assembly through the enactment of legislation. Further, the act declares that a motor vehicle inspection and maintenance program must not be implemented in any county beyond June 30, 2012, without the approval of the General Assembly through the enactment of legislation.

The Director must adopt rules in accordance with the Administrative Procedure Act that the Director determines are necessary to implement continuing law and the act. The Director may continue to implement and enforce rules pertaining to the motor vehicle inspection and maintenance program previously implemented under former law, provided that the rules do not conflict with the enabling statutory authority for the program.

The act creates in the state treasury the Auto Emissions Test Fund, which replaces the former Motor Vehicle Inspection and Maintenance Fund from which money was previously expended for the motor vehicle inspection and maintenance program. The Auto Emissions Test Fund must consist of money from any cash transfers, state and local grants, and other contributions that are received for the purpose of funding the program. The Director of Environmental Protection must use money in the Auto Emissions Test Fund solely for the implementation, supervision, administration, operation, and enforcement of the motor vehicle inspection and maintenance program established under the act. Money in the Fund cannot be used for either of the following:

(1) To pay for the inspection costs incurred by a motor vehicle dealer so that the dealer may provide inspection certificates to an individual purchasing a motor vehicle from the dealer when that individual resides in a county that is subject to the motor vehicle inspection and maintenance program; or

(2) To provide payment for more than one free passing emissions inspection or a total of three emissions inspections for a motor vehicle in any 365-day period. The owner or lessee of a motor vehicle is responsible for inspection fees that are related to emissions inspections beyond one free passing emissions inspection or three total emissions inspections in any 365-day period. Inspection fees that are charged by a contractor conducting emissions inspections under a motor vehicle inspection and maintenance program must be approved by the Director of Environmental Protection.

The act declares that the motor vehicle inspection and maintenance program established under the act expires upon the termination of all contracts entered into under the act and must not be implemented beyond the final date on which termination occurs.

Finally, the act repeals a statute governing earlier programs that is no longer operative.

## Clean Diesel School Bus Fund

(R.C. 3704.144)

Continuing law creates the Clean Diesel School Bus Fund consisting of gifts, grants, and contributions made for the purpose of adding pollution control equipment to diesel-powered school buses. The Fund is administered by the Director of Environmental Protection who must use money in the Fund for the above purpose and to pay the EPA's costs incurred in administering the grant program. The act requires the Director to make grants from the Fund to county boards of mental retardation and developmental disabilities as well as to school districts.

## Extension of various air and water fees and related provisions

### Synthetic minor facility emissions fees

(R.C. 3745.11(D))

Under continuing law, each person who owns or operates a synthetic minor facility must pay an annual fee based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead in accordance with a fee schedule. "Synthetic minor facility" means a facility for which one or more permits to install or permits to operate have been issued for the air contaminant sources at the facility that include terms and conditions that lower the facility's potential to emit air contaminants below the major source thresholds established in rules adopted under continuing law. Prior law required the fee to be paid through June 30, 2010. The act extends the fee through June 30, 2012.

### Water pollution control fees and safe drinking water fees

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

Under law revised in part by the act, a person applying for a plan approval for a wastewater treatment works is required to pay a fee of $100 plus 0.65 of 1% of the estimated project cost, up to a maximum of $15,000, when submitting an application through June 30, 2010, and a fee of $100 plus 0.2 of 1% of the estimated project cost, up to a maximum of $5,000, on and after July 1, 2010. Under the act, the first tier fee is extended through June 30, 2012, and the second tier applies to applications submitted on or after July 1, 2012.

Continuing law establishes two schedules for annual discharge fees to be paid by holders of national pollutant discharge elimination system (NPDES) permits with an average daily discharge flow of 5,000 or more gallons per day. Under each of the schedules, one of which is for public dischargers and one of which is for industrial dischargers, the fees are based on the average daily discharge flow and increase as the flow increases. Under prior law, the fees were due by January 30, 2008, and January 30, 2009. The act extends payment of the fees and the fee schedules to January 30, 2010, and January 30, 2011.

In addition to the fee schedules described above, continuing law imposes a $7,500 surcharge to the annual discharge fee applicable to major industrial dischargers. Under prior law, the surcharge was required to be paid by January 30, 2008, and January 30, 2009. The act continues the surcharge and requires it to be paid annually by January 30, 2010, and January 30, 2011.

Under continuing law, one category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of $180. Under prior law, the fee was due annually not later than January 30, 2008, and January 30, 2009. The act continues the fee and requires it to be paid annually by January 30, 2009, and January 30, 2010.

The Safe Drinking Water Law prohibits anyone from operating or maintaining a public water system without an annual license from the Director of Environmental Protection. Applications for initial licenses or license renewals must be accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems established in continuing law. Under prior law, the fee for initial licenses and license renewals was required in statute through June 30, 2010, and had to be paid annually prior to January 31, 2010. The act extends the initial license and license

renewal fee through June 30, 2012, and requires the fee to be paid annually prior to January 31, 2012.

The Safe Drinking Water Law also requires anyone who intends to construct, install, or modify a public water supply system to obtain approval of the plans from the Director. Ongoing law establishes a fee for such plan approval of $150 plus 0.35 of 1% of the estimated project cost. Under law retained in part by the act, the fee cannot exceed $20,000 through June 30, 2010, and $15,000 on and after July 1, 2010. The act instead specifies that the $20,000 limit applies to persons applying for plan approval through June 30, 2012, and the $15,000 limit applies to persons applying for plan approval on and after July 1, 2012.

Continuing law establishes two schedules of fees that the Environmental Protection Agency charges for evaluating laboratories and laboratory personnel for compliance with accepted analytical techniques and procedures established under the Safe Drinking Water Law. Under law retained in part by the act, a schedule with higher fees is applicable through June 30, 2010, and a schedule with lower fees is applicable on and after July 1, 2010. The act continues the higher fee schedule through June 30, 2012, and applies the lower fee schedule to evaluations conducted on or after July 1, 2012. The act also continues through June 30, 2012, a provision stating that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the person must pay $1,800 for each additional survey requested.

### Certification of operators of water supply systems or wastewater systems

(R.C. 3745.11(O))

Law retained in part by the act establishes a $45 application fee to take the examination for certification as an operator of a water supply system or a wastewater system through November 30, 2010, and a $25 application fee on and after December 1, 2010. The act continues the higher application fee through November 30, 2012, and applies the lower fee on and after December 1, 2012. Under continuing law, upon approval from the Director that an applicant is eligible to take the examination, the applicant must pay a fee in accordance with a statutory schedule. Under law retained in part by the act, a higher schedule is established through November 30, 2010, and a lower schedule applies on and after December 1, 2010. The act extends the higher fee schedule through November 30, 2012, and applies the lower fee schedule beginning December 1, 2012.

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

(R.C. 3745.11(S))

Law retained in part by the act requires any person applying for a permit, other than a NPDES permit, a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law to pay a nonrefundable fee of $100 at the time the application is submitted through June 30, 2010, and a nonrefundable fee of $15 if the application is submitted on or after July 1, 2010. The act extends the $100 fee through June 30, 2012, and applies the $15 fee on and after July 1, 2012.

Similarly, under law retained in part by the act, a person applying for a NPDES permit through June 30, 2010, must pay a nonrefundable fee of $200 at the time of application. On and after July 1, 2010, the nonrefundable application fee is $15. The act extends the $200 fee through June 30, 2012, and applies the $15 fee on and after July 1, 2012.

## Hazardous waste facility permit modifications

(R.C. 3734.01 (not in the act) and 3734.05)

Continuing law establishes requirements governing the modification of a hazardous waste facility or its operations. "Modification" is defined to mean a change or alteration to a hazardous waste facility or its operations that is inconsistent with or not authorized by its existing permit or authorization to operate. The Director of Environmental Protection is required to adopt rules classifying modifications as either Class 1, Class 2, or Class 3 modifications. Class 1 modifications generally involve the most minor changes to a facility or its operations while Class 3 modifications represent the most significant changes.

Prior law provided that any modification that involved the transfer of a hazardous waste facility installation and operation permit to a new owner or operator was required to be classified as a Class 3 modification. The act instead specifies that any modification that involves the transfer of a hazardous waste facility installation and operation permit to a new owner or operator *for an off-site facility* must be classified as a Class 3 modification. The transfer of a hazardous waste facility installation and operation permit to a new owner or operator for a facility that is not an off-site facility must be classified as a Class 1 modification requiring prior approval of the Director. "Off-site facility" is generally defined under continuing law to mean a facility that is located off the premises where hazardous waste is generated or any such facility that is owned and operated by the generator of the waste and that exclusively disposes of hazardous waste generated at one or more premises owned by the generator.

With respect to permit modification applications for a transfer of a permit to a new owner or operator of a hazardous waste facility, prior law required the Director to make a determination regarding the transferee's compliance with specified federal law related to hazardous waste management, Ohio laws related to hazardous waste management, air pollution control, and water pollution control, and similar laws of other states. The Director was required to determine if the transferee demonstrated sufficient reliability, expertise, and competency to operate a hazardous waste facility in accordance with Ohio law. The act repeals those provisions but retains the continuing definitions of "owner" and "operator" and applies them to the entire statute governing modifications of hazardous waste facilities.

## Natural Resources Damages Fund; Hazardous Waste Clean-up Fund; Environmental Protection Remediation Fund

(R.C. 3734.28, 3734.281, and 3734.282)

The act creates in the state treasury the Natural Resource Damages Fund consisting of money collected by the state for natural resources damages under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Oil Pollution Act, the federal Clean Water Act, or any other applicable federal or state law. Money in the Fund is required to be used only in accordance with the purposes of and the limitations on natural resources damages set forth in those acts or laws.

Correspondingly, the act repeals a provision in prior law that required natural resource damages collected under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to be credited to the Hazardous Waste Clean-up Fund. Continuing law requires the Director of Environmental Protection to use that Fund for hazardous waste remediation activities.

Under law revised by the act, money in the Hazardous Waste Clean-up Fund may be used through October 15, 2005, to fund certain emergency and remedial actions as well as the Voluntary Action Program. The act eliminates the date restriction, thus authorizing money in the Fund to be used for those purposes permanently.

Law unchanged in part by the act creates the Environmental Protection Remediation Fund consisting of any money set aside for the cleanup of the Ashtabula River; money collected from certain settlements made by the Director of Environmental Protection related to enforcement actions under the Construction and Demolition Debris Law, the Solid, Hazardous, and Infectious Waste Law, and the Water Pollution Control Law; and money received under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Money in the Fund is required to

be used by the Environmental Protection Agency for the purposes of conducting environmental remediation at hazardous waste facilities, solid waste facilities, and construction and demolition debris facilities and other sites in the state. The act repeals the provision that required money set aside for the cleanup of the Ashtabula River to be credited to the Fund. In addition, the act clarifies that, except for money credited to the Natural Resource Damages Fund (see above), the Fund must consist of money collected from judgments for the state or settlements with the Director related to enforcement actions under the Construction and Demolition Debris Law, the Solid, Hazardous, and Infectious Waste Law, and the Water Pollution Control Law.

The act authorizes the Director of Environmental Protection to enter into contracts and grant agreements with federal, state, or local government agencies, nonprofit organizations, and colleges and universities for the purpose of carrying out the EPA's and the Director's responsibilities for which money may be expended from the Hazardous Waste Clean-up Fund, the Environmental Protection Remediation Fund, and the Natural Resource Damages Fund.

## Air contaminant source installation permits

(R.C. 3704.03)

Continuing law prohibits the location, installation, construction, or modification of any air contaminant source or any machine, equipment, device, apparatus, or physical facility intended primarily to prevent or control the emission of air contaminants unless an installation permit has been obtained from the Director of Environmental Protection. Continuing law establishes requirements governing the application for and the issuance of an installation permit. The act requires an air contaminant source that is the subject of an installation permit to be installed or modified in accordance with the permit not later than 18 months after the permit's effective date at which point the permit must terminate unless one of the following applies:

(1) The owner or operator has undertaken a continuing program of installation or modification during the 18-month period;

(2) The owner or operator has entered into a binding contractual obligation to undertake and complete within a reasonable period of time a continuing program of installation or modification of the air contaminant source during the 18-month period;

(3) The Director has extended the date by which the air contaminant source that is the subject of the installation permit must be installed or modified;

(4) The installation permit is the subject of an appeal by a party other than the owner or operator of the air contaminant source that is the subject of the installation permit, in which case the date of termination of the permit is not later than 18 months after the effective date of the permit plus the number of days between the date on which the permit was appealed and the date on which all appeals concerning the permit have been resolved; or

(5) The installation permit has been superseded by a subsequent installation permit, in which case the original installation permit terminates on the effective date of the superseding installation permit.

The act declares that the above provisions apply to an installation permit that has not terminated as of the effective date of the act. Further, the act authorizes the Director to adopt rules in accordance with the Administrative Procedure Act for the purpose of establishing additional requirements that are necessary for the implementation of those provisions.

## Environmental Review Appeals Commission: deadlines for the issuance of orders

(R.C. 3745.05)

The Environmental Review Appeals Commission is an appellate review board whose primary statutory duty is to hear and resolve appeals from certain legal actions taken under environmental laws by state and local governmental entities, including the Environmental Protection Agency (EPA), the State Fire Marshal, the State Emergency Response Commission, the Department of Agriculture, and boards of health. The majority of cases heard by the Commission relate to final actions of the EPA. Continuing law establishes requirements governing appeals to the Commission.

The act establishes additional requirements governing the time within which orders concerning appeals to the Commission must be issued. Under the act, the Commission must issue a written order affirming, vacating, or modifying an action pursuant to the following schedule:

(1) For an appeal that was filed with the Commission before April 15, 2008, the Commission must issue a written order not later than December 15, 2009.

(2) For all other appeals that have been filed with the Commission as of October 15, 2009, the Commission must issue a written order not later than July 15, 2010.

(3) For an appeal that is filed with the Commission after October 15, 2009, the Commission must issue a written order not later than 12 months after the filing of the appeal with the Commission.

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## eTECH COMMISSION (ETC)

- Transfers responsibility for developing a state education technology plan from the State Board of Education to the eTech Ohio Commission and requires the Commission to "implement" the plan and to consult with the State Board in the development and modification of the plan.
- Requires the eTech Ohio Commission, with assistance from the Department of Education and the Chancellor of the Board of Regents, to develop and implement a pilot project to provide at least two Advanced Placement and one foreign language interactive distance learning courses.
- Requires the Superintendent of Public Instruction, the Chancellor, and the Commission, by December 31, 2010, to submit a formative evaluation and legislative recommendations regarding the pilot project to the Governor and the General Assembly.

### Background

The eTech Ohio Commission is a state agency that provides financial and technical assistance to school districts, other educational entities, public television and radio stations, and radio reading services for the acquisition and use of educational technology and for the development of educational materials. The Commission consists of 13 members, nine of whom are voting members and four of whom are nonvoting legislative members. The voting members include the Superintendent of Public Instruction (or a designee), the Chancellor of the Board of Regents (or a designee), and the state chief information officer (or a designee).

### State education technology plan

(R.C. 3301.07 and 3353.09)

Under prior law, the State Board of Education was responsible for developing "a state plan to encourage and promote the use of technological advancements in educational settings." The act transfers that responsibility to the eTech Ohio Commission. Further, the act changes the purpose of the plan to "creating an aligned

education technology system that spans preschool to postsecondary education and that complies with federal mandates." Moreover, the act requires the Commission to "implement" the plan.

The Commission must consult with the State Board in the development and modification of the plan.

## Interactive distance learning pilot project

The act requires the eTech Ohio Commission, with assistance from the Department of Education and the Chancellor of the Board of Regents, to establish an interactive distance learning pilot project to provide at least three courses free of charge to high schools. It first creates, in permanent codified law, a program that must serve, free of charge, all high schools operated by school districts. It then narrows eligibility for fiscal years 2010 and 2011 by structuring the program as a limited competitive grant program that complies with restrictions on the federal funds it uses to finance the pilot program during those years. The pilot project must begin offering courses for the 2009-2010 school year. Presumably, unless other provisions are enacted in the meantime, the pilot project will be administered under the broader permanent provision after fiscal year 2011.

### Permanent provision

(R.C. 3353.20(A) to (F))

Under the permanent provision, the Commission must contract for the development of courses to be offered. The Department of Education, in consultation with the Chancellor of the Board of Regents, must select the courses to be offered by the pilot project and develop the standards for the curriculum of each course. Then, the Commission and the Department, jointly, and again in consultation with the Chancellor, must select the teachers who will be paid by the Commission.

The Commission is solely responsible to:

(1) Produce and broadcast the courses;

(2) Except as limited by the temporary provision, provide funds for schools to purchase necessary video conferencing telecommunications equipment and connectivity devices;

(3) Except as limited by the temporary provision, assist schools in arranging for the purchase and installation of telecommunications equipment and connectivity devices;

(4) Except as limited by the temporary provision, pay for up to one school year, the cost of upgrading Internet service for schools that currently have a connection that is capable of transmitting data at only 1.544 Mbits per second or slower;

(5) Offer training in the use of the telecommunications equipment necessary to participate in the pilot project; and

(6) Administer and oversee the operation of the pilot project.

Finally, the Commission, the Department, and the Chancellor, jointly, must notify schools about the pilot project and promote their participation in it.

The act specifies that each school will determine how and where its students will participate in the courses, consistent with specifications for technology and connectivity required by the Commission. The grade for a student enrolled in a course will be assigned by the course teacher and transmitted to the student's high school.[199]

### Temporary provision

(Section 265.30.83)

#### Grants for EETT-eligible entities

Under the temporary provision for fiscal years 2010 and 2011, the Department of Education and the Commission must enter into a memorandum of understanding to use for the pilot project some of the federal education technology funds ("EETT" funds) allocated to Ohio. For the pilot project, the act allocates the lesser of $4.5 million or one-half of the state's regular EETT funds each year.[200] Under federal law, roughly one-half of a state's EETT funds must be paid to Title I schools[201] according to the Title I formula. The other half may be paid for special projects, like the distance learning pilot project, but only to eligible entities and only as competitive grants. EETT-eligible entities are (1) school districts that qualify for Title I funds and have one or more schools in

[199] The act does not specify the manner of transmitting a student's grade or whether the student's school must record that grade and award credit for the completed course.

[200] This amount does not include education technology funds allocated to Ohio under the American Recovery and Reinvestment Act of 2009. "EETT" is an acronym for "Enhancing Education Through Technology." (20 U.S.C. 6751 *et seq.*)

[201] "Title I" refers to a long-standing federal education program providing targeted funds to schools with relatively high concentrations of economically disadvantaged students. The funds generally are paid through the state Department of Education according to a federal formula.

"improvement status," under the federal No Child Left Behind Act,[202] (2) school districts that have substantial need for assistance in acquiring and using technology, and (3) entities in a collaborative partnership with a school district described in (1) or (2).[203]

Thus, the act specifies that the Commission and the Department must operate the distance learning pilot project for fiscal years 2010 and 2011 as a competitive grant program, instead of the entitlement program as otherwise provided under the permanent provision. In doing so, the Department and the Commission must specify in their memorandum of understanding how they will divide administrative duties. But the Commission must have the authority to set the grant criteria and to select the grant recipients, and the Department must have all federal monitoring and compliance responsibilities. Among other things, the memorandum also must specify that the Department and Commission may not use more than 5% of appropriated federal funds for administrative purposes (as permitted under federal law).

Furthermore, the Commission must: (1) issue a request for proposals before or during the 2009-2010 school year, (2) limit the number of grants so that each grant recipient receives an amount sufficient to ensure full participation in the program, (3) solicit all eligible entities to participate in the program, (4) require 25% of any grant award be used for professional development, (5) require that eligible entities use a percentage of their grant awards to contract with a vendor selected by the Commission for the development and offering of interactive distance learning courses, (6) require eligible entities submitting proposals to specify the amount, if any, needed to purchase video conferencing telecommunications equipment and upgraded Internet services, and (7) assist eligible entities in arranging for the purchase and installation of telecommunications equipment.

#### Priority for grants

The act establishes guidelines the Commission must use in awarding grants to eligible entities. Under these guidelines, the Commission must give priority to:

(1) School districts for which Advanced Placement or foreign language course offerings make up less than 1% of the district's total course offerings;

(2) Schools and school districts that without additional assistance lack the necessary connectivity or equipment to offer interactive distance learning courses;

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[202] A school is in "improvement status" under federal law if it has failed to make "adequate yearly progress" for two or more consecutive years. Adequate yearly progress (or "AYP") is an academic performance target set for each school and school district.

[203] 20 U.S.C. 6753 and 6762.

(3) School districts that demonstrate that the course offerings will take place during the regular school day; and

(4) Schools and school districts "that demonstrate commitment to appropriately supporting distance learning offerings," including but not limited to:

(a) Enrolling a minimum number of students to participate in the distance learning classes;

(b) Committing the necessary personnel to facilitate and assist students with distance learning classes; and

(c) Committing the necessary personnel capable of operating distance learning equipment.

#### Limited obligation and participation by non-eligible entities

The act specifies that in the development, administration, and oversight of the program, the Commission is not obligated for more than the amount appropriated. Also, the act states that, in fiscal years 2010 and 2011, no school that is not an EETT-eligible entity is entitled to the goods and services prescribed in the permanent pilot project provision. Nevertheless, it also states that any student, teacher, or other school employee of a public or nonpublic school that is not awarded a grant may participate in the interactive distance learning pilot project, as long as the participation does not impose an additional cost to the state, does not diminish the quality of project outcomes for those entities that are awarded grants, and aligns with federal regulations and guidelines.

### Evaluation of the Pilot Project

(R.C. 3353.20(G); Section 265.30.83(F))

Finally, the act requires the Superintendent of Public Instruction, the Chancellor, and the Commission, by December 31, 2010, to submit to the Governor and General Assembly a formative evaluation of the implementation and results of the interactive distance learning pilot project. They also must include in their report legislative recommendations for changes in the pilot project.

## OFFICE OF THE GOVERNOR (GOV)

- Creates the Service Coordination Workgroup to develop procedures for coordinating services that certain state agencies provide to individuals under age 21 and their families.
- Requires the Workgroup, not later than July 31, 2009, to submit a report to the Governor with recommendations for implementing the procedures.
- Prohibits the Governor from issuing executive orders that have been previously issued and declared as anti-competitive.
- Would have prohibited the Governor's Residence Advisory Commission from using prison labor in exercising its responsibility (1) to provide for the care, provision, repair, and placement of furnishings and other objects and accessories on the grounds and public areas of the first floor of the Governor's Residence and (2) for the care and placement of plants on the grounds (VETOED).
- Would have prohibited the Department of Administrative Services from using prison labor in providing for the general maintenance of the Governor's Residence (VETOED).

### Service Coordination Workgroup

(Section 751.20)

The act creates the Service Coordination Workgroup. The Workgroup is to consist of a representative of each of the following:

(1) The Office of the Governor, appointed by the Governor;

(2) The Department of Alcohol and Drug Addiction Services, appointed by the Director of Alcohol and Drug Addiction Services;

(3) The Department of Education, appointed by the Superintendent of Public Instruction;

(4) The Department of Health, appointed by the Director of Health;

(5) The Department of Job and Family Services, appointed by the Director of Job and Family Services;

(6) The Department of Mental Health, appointed by the Director of Mental Health;

(7) The Department of Developmental Disabilities, appointed by the Director of Developmental Disabilities;

(8) The Department of Youth Services, appointed by the Director of Youth Services;

(9) The Office of Budget and Management, appointed by the Director of Budget and Management;

(10) The Family and Children First Cabinet Council, appointed by the chairperson of the Council.

The representative of the Governor's office is to serve as the Workgroup's chairperson. Members of the Workgroup are to serve without compensation, except to the extent that serving on the Workgroup is considered part of their regular employment duties.

The Workgroup is required to develop procedures for coordinating services that the entities represented on the Workgroup provide to individuals under age 21 and families of those individuals. In developing the procedures, the Workgroup is required to focus on maximizing resources, reducing unnecessary costs, removing barriers to effective and efficient service coordination, eliminating duplicate services, prioritizing high risk populations, and any other matters the Workgroup considers relevant to service coordination. Not later than July 31, 2009, the Workgroup must submit a report to the Governor with recommendations for implementing the procedures. The Workgroup is to cease to exist June 30, 2011.

## Executive orders of the Governor

(R.C. 107.19)

Article III, Section 5 of the Ohio Constitution vests the "supreme executive power" of the state in the Governor, and Article III, Section 6 requires the Governor to "see that the laws are faithfully executed." Inherent in these sections is the ability of the Governor to issue executive orders. The power to issue executive orders does not, however, appear to be absolute. For instance, the Governor cannot issue an executive order that directly conflicts with a statute (*State ex rel. S. Monroe and Son Co. v. Baker* (1925), 112 Ohio St. 356).

The act 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. The act further provides that any such executive order will be considered invalid and unenforceable.

### Prohibition on the use of prison labor at the Governor's Residence (VETOED)

(R.C. 107.40)

Continuing law creates the Governor's Residence Advisory Commission, which is responsible (1) for the care, provision, repair, and placement of furnishings and other objects and accessories on the grounds and public areas of the first floor of the Governor's Residence and (2) for the care and placement of plants on the grounds. The Governor vetoed a provision that would have prohibited the Commission, when exercising this responsibility, from using prison labor.

Continuing law also obliges the Department of Administrative Services to provide for and adopt policies and procedures regarding the use, general maintenance, and operating expenses of the Governor's Residence. The Governor vetoed a provision that would have prohibited the Department from using prison labor in providing for the general maintenance of the Governor's Residence.

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## DEPARTMENT OF HEALTH (DOH)

- Provides confidentiality protection for reports submitted to the Department of Health or a national child death review database by local child fatality review boards.

- Modifies the manner in which child fatality review boards must submit information on child fatalities to the Department.

- Expands the annual report the Department and the Children's Trust Fund Board must jointly make to the General Assembly and local child fatality review boards to also include data from the Department of Health Child Death Review Database or the National Child Death Review Database.

- Requires the Department to use certain appropriated funds to distribute subsidies to counties to implement the Help Me Grow program, and specifies how these funds may be used in conjunction with other departments, funds, and services.

- Specifies requirements for home-visiting programs selected by a county family and children first council to be eligible for funding.

- Codifies the existing Help Me Grow Advisory Council, mirroring the requirements set forth in federal law.

- Eliminates the Governor's Advisory Council on Physical Fitness, Wellness, and Sports.

- Allows any health care provider to conduct an HIV test if an individual has consented to medical or other health care treatment from the provider and the provider determines that the test is necessary for providing diagnosis and treatment.

- Eliminates from statute the express requirement that a person or government entity obtain informed consent from a person prior to conducting an HIV test on the person.

- Eliminates the requirement that a person or government entity, before conducting an HIV test on a person, provide the person with certain information.

- Requires a health care provider conducting an HIV test to provide post-test counseling only when a person's test result is HIV-positive.

- Requires a health care provider to inform an individual of the individual's continuing law right to an anonymous HIV test.

- Exempts certain entities from the requirement to obtain a license from the Department as a freestanding diagnostic imaging center.

- Establishes a limited extension of the Certificate of Need (CON) program's moratorium that expired June 30, 2009, with regard to granting CONs and accepting CON applications to increase the number of long-term care beds.

- Continues a provision of the CON statutes permitting addition of long-term care beds to a facility if the beds either replace existing beds or are relocated from a facility in the same county.

- Requires the Director of Health to accept CON applications for up to 30 nursing home beds in an existing nursing home if the beds are relocated from a contiguous county and beds will remain in the original county.

- Establishes a new CON comparative review process under which long-term care beds may be relocated from a county with excess beds to a county with a bed need, as determined by the Director.

- Requires a facility, when any of its beds are relocated to another county, to remove additional beds from service at the facility, and permits the Director to approve CONs for redistribution of these additional beds in a second phase of the applicable four-year comparative review period.

- Modifies preexisting reasons and establishes new reasons for which the Director must deny a CON application for addition of long-term care beds to an existing facility or for the development of a new facility, particularly by replacing the standard for denial that is based on a long-standing pattern of deficiencies with a standard for denial that is based on citations for deficiencies during the period encompassed by the three most recent standard surveys of the facility.

- Eliminates provisions of the CON statutes concerning health care activities for which a CON is no longer required.

- Revises the Dentist Loan Repayment Program.

- Extends the required length of service in a dental health shortage area to two years (from one).

- Increases the maximum amount of the dentist loan repayment to $25,000 for each of the first two years a dentist participates, and $35,000 for each of the third and fourth years of participation.

- Changes eligibility requirements, application contents, and parties to the Dentist Loan Repayment Program service contract.

- Increases to ten the number of members of the Dentist Loan Repayment Advisory Board.

- Increases to $12 (from $7) the minimum fee that may be charged for the following items or services provided by the State Office of Vital Statistics or a local board of health: (1) a certified copy of a vital record or certification of birth, (2) a search by the Office of Vital Statistics of its files and records pursuant to an information request, and (3) a copy of a record provided pursuant to an information request.

- Requires the Director of Health or a local board of health to transfer $4 of each minimum $12 fee collected to the State Office of Vital Statistics not later than 30 days after the end of each calendar quarter and requires that each $4 transferred be used to support public health systems.

- Would have required the State Registrar of Vital Statistics to review, each month, all death certificates received from local registrars of vital statistics and vital statistics

officials in other states in the preceding month and to report to county boards of elections and county auditors certain information from such certificates regarding adults who resided in the respective counties at the time of their deaths (VETOED).

- Required county boards of elections and county auditors to use the information received from the reports from the Registrar to cancel the voter registrations of the decedents and to verify whether a property where a decedent resided continues to qualify for a reduction in real property taxes under the senior citizen homestead exemption or the 2.5% owner-occupied rollback (VETOED).
- Provides that rules adopted by a board of health establishing fees for specified services are to be adopted, recorded, and certified as are municipal ordinances.
- Reduces to 20 (from 30) the number of days notice that must be provided to an entity affected by a proposed board of health fee, including fees for the licensing of food service operations and retail food establishments.
- Specifies that fees established as an emergency measure are not subject to advance notice and public hearing requirements.
- Establishes a penalty of 25% of the applicable fee for late payment of board of health fees.
- Establishes a quarterly schedule to be followed by boards of health when transmitting to the Director of Health any additional fee amounts imposed by the Public Health Council.
- Revises the definition of "palliative care" used in the laws governing hospice care programs and specifies that nothing in the definition is to be interpreted as meaning that palliative care can be provided only as a component of a hospice care program.
- Increases to $600 (from $300) the maximum amount that the Public Health Council may establish as a license fee or license renewal fee for a hospice care program.
- Increases the application fee and annual renewal licensing and inspection fee for nursing homes and residential care facilities.
- Provides that a statement of neglect added to the Nurse Aide Registry regarding a nurse aide or other individual may be removed, and any accompanying information expunged, by the Director of Health if, in the judgment of the Director, the neglect was a singular occurrence and the employment and personal history of the nurse aide or other individual does not evidence abuse or any other incident of neglect of residents.

- Provides that the petition to remove a statement of neglect from the registry and the Director of Health's notice that the rescission has been granted are not subject to expungement but are not public records.

- Increases to $300 (from $250) the annual fee for renewal of a certificate of registration as a nursing home administrator.

- Prohibits the owner or manager of an adult care facility whose license has been revoked or denied renewal other than for nonpayment of fees from applying for another license until two years have elapsed, and permanently prohibits such a person from applying if the revocation or refusal was based on abuse, neglect, or exploitation of a resident.

- Eliminates temporary licenses for adult care facilities.

- Authorizes the Director of Health to waive any of the adult care facility licensing requirements established by rule, in place of the Director's authority to waive only those requirements pertaining to fire and safety requirements or building standards.

- Eliminates the requirement that proof of insurance be submitted with an application for an adult care facility license.

- Clarifies that an adult care facility is an adult family home or adult group home when supervision is provided to all residents, rather than to three or more residents.

- Increases the fine for operating an adult care facility without a license to $2,000 (from $500) on a first offense and $5,000 (from $1,000) for each subsequent offense, and similarly increases the fines for violating other adult care facility licensing laws.

- Provides that if an inspection is conducted to investigate an alleged violation in an adult care facility that serves residents receiving publicly funded mental health services or Residential State Supplement Program payments, the inspection (1) must be coordinated with the appropriate mental health agency, board of alcohol, drug addiction, and mental health services (ADAMHS board), or PASSPORT administrative agency, and (2) may be conducted jointly with the appropriate entity.

- Eliminates a requirement that the Director prescribe how a violation at an adult care facility is to be corrected and instead requires the facility to submit a plan of correction.

- Requires a court that grants injunctive relief concerning unlicensed operation of an adult care facility to include an order suspending admission of new residents and requiring the facility to assist in relocating its residents.

- Permits, rather than requires, the Director to cancel a penalty for a class II or class III violation if the violation is corrected within the specified time and the facility has not been previously cited for the same violation.

- Eliminates a provision preventing the Director from imposing a penalty for a class I violation if certain requirements are met.

- Prohibits an adult care facility from admitting a resident requiring publicly funded mental health services unless the appropriate ADAMHS board is notified and the facility and the ADAMHS board have entered into a mental health resident program participation agreement.

- Requires the Director of Mental Health to approve a standardized form for mental health resident program participation agreements and, as part of approving the form, to specify the requirements that an adult care facility must meet under the agreement.

- Modifies the Public Health Council's rulemaking authority regarding procedures to be followed by an adult care facility when individuals with mental illness or severe mental disability are referred to the facility.

- Provides that in an emergency, an adult care facility is not required to provide a resident with advance notice of a proposed transfer or discharge.

- Expands the circumstances under which an employee of an ADAMHS board or mental health agency must be permitted to enter an adult care facility that has a resident who is receiving mental health services.

- Adds to the circumstances under which employees of state or local government, ADAMHS boards, mental health agencies, or PASSPORT agencies are prohibited from placing an individual in an adult care facility.

- Specifies that individuals providing skilled nursing care in adult care facilities must be appropriately licensed.

- Requires each adult care facility to post within the facility the telephone number maintained by the Department of Health for accepting complaints.

- Repeals all laws governing community alternative homes.

- Modifies the accreditation requirements for operation of a hospital by requiring the hospital (if it is not Medicare-certified) to be accredited by a national accrediting

organization approved by the Centers for Medicare and Medicaid Services, rather than the Joint Commission or the American Osteopathic Association.

- Clarifies a preexisting requirement that handlers of radioactive material, certain handlers of radiation-generating equipment, and radiation experts are to pay fees established by rule of the Public Health Council.

- Clarifies a preexisting requirement that medical-practitioner handlers of radiation-generating equipment are to pay fees specified in statute, and raises those fees by 20%.

- Requires handlers of radioactive material to pay licensure fees on receipt of an invoice rather than at the time of application for licensure.

- Requires the Director of Health to inspect records and operating procedures of facilities that service sources of radiation.

- Would have required the Department of Health to establish a Disease and Cancer Commission to study the prevalence of colorectal cancer, prostate cancer, triple negative breast cancer, and sickle cell anemia in Ohio (VETOED).

- Would have established the Hemophilia Advisory Council to advise the Director of Health on issues related to hemophilia and related bleeding disorders (VETOED).

- Would have Created the Sickle Cell Anemia Advisory Committee within the Department of Health to assist the Director of Health in fulfilling the Director's duties regarding sickle cell disease (VETOED).

- Would have required the Director of Health to apply for federal funding under the Abstinence Education Program component of the Maternal and Child Health Services Block Grant (VETOED).

- Reenacts provisions of Am. Sub. H.B. 119 of the 127th General Assembly that temporarily suspended the operation of certain provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law and that enacted temporary provisions regarding that Law, and extends the termination of the suspension and the temporary law until January 1, 2010.

- Increases the licensing fees for agricultural camps.

## Confidentiality of child fatality review board reports

(R.C. 149.43, 307.626, and 307.629)

Continuing law excludes from the definition of a "public record" records, certain statements, and work products of a child fatality review board, other than the annual report required to be prepared and submitted to the Department of Health. The act additionally excludes child fatality review data submitted by the child fatality review board to the Department of Health or a national child death review database from the definition of a "public record" and categorizes the data as confidential, making its unauthorized dissemination illegal.

## Child fatality review board annual report

(R.C. 307.626)

Prior law modified by the act required the person convening a child fatality review board to prepare and submit to the Department of Health, by the first day of April each year, a report that included *all* of the following information with respect to *each* child death that was reviewed by the review board in the previous calendar year: (1) the cause of death, (2) factors contributing to death, (3) age, (4) sex, (5) race, (6) the geographic location of death, and (7) the year of death. The act instead requires the review board to submit a report that *summarizes* the information listed above, with respect to *all* of the child deaths that were reviewed by the board in the previous calendar year. The act also requires the board to specify the number of child deaths that were not reviewed in the previous calendar year.

The act requires the child fatality review board to submit individual data with respect to each child death review into the Department of Health Child Death Review Database or the National Child Death Review Database. The individual data must include the information specified in the list described above and any other information the board considers relevant to the review. Individual data related to a child death review that is contained in the Department of Health Child Death Review Database is not a "public record."

## Annual report of the Department of Health and the Children's Trust Fund Board

(R.C. 3701.045)

Continuing law requires the Department of Health, in consultation with the Children's Trust Fund Board and any bodies acting as child fatality review boards on October 5, 2000, to adopt rules in accordance with the Administrative Procedure Act

(R.C. Chapter 119.) that establish a procedure for child fatality review boards to follow in conducting a review of the death of a child. The act requires those rules to also establish guidelines for reporting child fatality review data to the Department or a national child death review database, either of which must maintain the confidentiality of information that would permit a person's identity to be ascertained.

### Help Me Grow program funding

(Section 289.20)

The act permits appropriations made to the Department of Health to distribute subsidies to counties to implement the Help Me Grow program to be used in conjunction with Early Intervention funding from the Department of Developmental Disabilities, and in conjunction with other early childhood funds and services to promote the optimal development of young children and family-centered programs and services that acknowledge and support the social, emotional, cognitive, intellectual, and physical development of children and the vital role of families in ensuring the well-being and success of children.

The act also requires the Department of Health to enter into an interagency agreement with the Department of Education, the Department of Developmental Disabilities, the Department of Job and Family Services, and the Department of Mental Health to ensure that all early childhood programs and initiatives are coordinated and school linked.

### Help Me Grow home-visiting programs

(Section 289.20)

Under the act, if a county family and children first council selects home-visiting programs, the home-visiting program will be eligible for funding only if it serves pregnant women or parents or other primary caregivers and the parent or other primary caregiver's child or children under three years of age, through quality programs of early childhood home visitation. The act also provides that to be eligible for funding, the home visitations must be performed by nurses, social workers, child development specialists, or other well-trained and competent staff, as demonstrated by education or training and the provision of ongoing specific training and supervision in the model of service being delivered.

The act requires eligible home-visiting programs to have outcome and research standards that demonstrate ongoing positive outcomes for children, parents, and other primary caregivers that enhance child health and development, and to conform to a clear consistent home visitation model that has been in existence for at least three years.

The home visitation model must be research-based; grounded in relevant, empirically based knowledge; linked to program-determined outcomes; associated with a national organization or institution of higher education that has comprehensive home visitation program standards that ensure high quality service delivery and continuous program improvement; and have demonstrated significant positive outcomes when evaluated using well-designed and rigorous randomized, controlled, or quasi-experimental research designs, and the evaluation results have been published in a peer-reviewed journal.

### Help Me Grow Advisory Council

(R.C. 3701.611)

The act requires the Governor to create the Help Me Grow Advisory Council in accordance with federal law (20 U.S.C. 1441), which will serve as the State Interagency Coordinating Council for the purposes of that law. Council members must reasonably represent Ohio's population. The Governor must appoint as a member a representative of a board of health of a city or general health district or an authority having those duties.

The Governor may appoint one of the Council's members to serve as chairperson, or the Governor may delegate appointment of the chairperson to the Council. No member of the Council representing the Department of Health may serve as chairperson.

The Council must meet at least once in each quarter of the calendar year. The chairperson may call additional meetings if necessary. A Council member may not vote on any matter that is likely to provide a direct financial benefit to that member or otherwise be a conflict of interest.

The Governor may reimburse Council members for actual and necessary expenses incurred in the performance of their official duties, including child care for the parent representatives.[204] The Governor also may compensate members who are not employed or who must forfeit wages from other employment when performing official Council business.

The act requires the Help Me Grow Advisory Council to do all of the following:

[204] Federal law requires at least 20% of the Council members to be parents of children with disabilities, who have knowledge of, or experience with, programs for infants and toddlers with disabilities (20 U.S.C. 1441(b)(1)(A)).

(1) Advise and assist the Department of Health in the performance of the responsibilities described in federal law relating to a statewide system for the education of people with disabilities (20 U.S.C. 1435(a)(10)), including identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, promotion of formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services and procedures for resolving disputes;[205]

(2) Advise and assist the Department of Health in the preparation and amendment of applications related to the Department's responsibilities;

(3) Advise and assist the Department of Education regarding the transition of toddlers with disabilities to preschool and other appropriate services;

(4) Prepare and submit an annual report to the Governor, before September 30, on the status of early intervention programs for infants and toddlers with disabilities and their families operated within Ohio during the most recent fiscal year.

The act permits the Council to advise and assist the Department of Health and the Department of Education regarding the provision of appropriate services for children age five and younger. The Council may advise appropriate agencies about the integration of services for infants and toddlers with disabilities, and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services.

The act requires the Council to promote family- centered programs and services that acknowledge and support the social, emotional, cognitive, intellectual, and physical development of children and the vital role of families in ensuring the well-being and success of children.

### Governor's Advisory Council on Physical Fitness, Wellness, and Sports

(R.C. 3701.77, 3701.771, and 3701.772 (repealed); Sections 630.10 and 630.11)

Under prior law, the Governor's Advisory Council on Physical Fitness, Wellness, and Sports prepared and recommended to the Director of Health guidelines, programs, and activities related to health and physical fitness and recommended information and educational materials that were prepared and distributed to the public that encouraged wide participation in the recommended programs and activities. The act eliminates the Advisory Council.

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[205] The act designates the Department of Health as the "lead agency" for the purposes of this federal law.

## HIV testing

(R.C. 3701.242)

The act modifies the laws governing the procedures to be followed before and after performing a test on a person for the human immunodeficiency virus (HIV). The table below compares the provisions of former law with the provisions of the act.

| TOPIC | FORMER LAW | THE ACT |
|---|---|---|
| CONSENT | In order to perform an HIV test, the person or agency of state or local government ordering or performing the test had to obtain informed consent from the individual to be tested prior to the test.[206] | The act generally eliminates this requirement. |
| | Consent to be tested was presumed to be valid and effective, and no evidence was admissible in a civil action to impeach, modify, or limit the consent. | The act eliminates this provision. |
| | A minor may also consent to an HIV test; the parents or guardian of the minor are not liable for payment for the test. The consent is not subject to disaffirmance because of minority. | Same as former law, but the act additionally specifies that the parents or guardian of the minor must not be charged for the test. |
| INFORMATION GIVEN TO PERSON TO BE TESTED | The person or agency had to provide the individual to be tested, or the individual's guardian, with an explanation of the following: (1) the test and testing procedures, including the purposes and limitations of the test and the meaning of its results, (2) that the test was voluntary, (3) if the test was performed on an outpatient basis, that consent to be tested could be withdrawn at any time before the individual leaves the premises where blood was taken for the test, or, if the test was performed on an inpatient basis, within one hour after the blood was taken for the test, (4) that the individual or guardian could elect to have an anonymous test, and (5) the | The act eliminates this requirement. |

[206] Consent could have been oral or written (R.C. 3701.242(A)).

| TOPIC | FORMER LAW | THE ACT |
|---|---|---|
| | behaviors known to pose risks for transmission of HIV infection. [207] | |
| COUNSELING | The person or government agency ordering or performing an HIV test was to provide counseling to the individual tested when the individual was (1) told the result of the test or (2) informed of a diagnosis of AIDS or of an AIDS-related condition. The individual was to be given an explanation of the nature of AIDS and AIDS-related conditions, the relationship between the HIV test and those diseases, and a list of resources for further counseling or support. When necessary, the individual was to be referred for further counseling to help cope with the emotional consequences of learning the test result. | The act eliminates this requirement and instead specifies that a health care provider[208] ordering an HIV test must provide post-test counseling for an individual who receives an HIV-positive test result. |
| ANONYMITY | Any individual seeking an HIV test has the right to an anonymous HIV test upon request. A health care facility[209] or health care provider that does not provide anonymous testing must refer the individual to a site where it is available. | The act retains this provision and requires a health care provider to inform the individual of this right when the provider orders an HIV test. |
| EXCEPTIONS | Generally, if the following circumstances exist, the consent, information to be given to the individual being tested, counseling, and anonymity provisions discussed above do not apply:<br><br>(1) When the test is performed in a medical emergency by a nurse or physician and the test results are | The act eliminates the exemption from the informed consent requirement for these circumstances, but retains the exemptions from the minor consent, counseling, and anonymity provisions.<br><br>(1) The act retains this exception but specifies that the post-test counseling must be given if the |

[207] A person or government agency required to provide this information could obtain the signature of the individual to be tested on an informed consent form prepared by the Director of Health in rule as evidence of satisfying this requirement (R.C. 3701.242(A)).

[208] "Health care provider" continues to mean an individual who provides diagnostic, evaluative, or treatment services. The Public Health Council has the authority to adopt rules further defining the scope of the term "health care provider." (R.C. 3701.24(A)(11).)

[209] "Health care facility" continues to mean any facility, except a health care practitioner's office, that provides preventive, diagnostic, therapeutic, acute convalescent, rehabilitation, mental health, mental retardation, intermediate care, or skilled nursing services (R.C. 1751.01(M)).

| TOPIC | FORMER LAW | THE ACT |
|---|---|---|
| | medically necessary to avoid or minimize an immediate danger to the health or safety of the individual to be tested or another individual. However, counseling was to be given to the tested person as soon as possible after the emergency is over. | individual receives an HIV-positive test result, rather than after the emergency. |
| | (2) When the test is performed for the purpose of research if the researcher does not know and cannot determine the identity of the tested individual. | (2) No change. |
| | (3) When the test is performed by a person who procures, processes, distributes, or uses a human body part from a deceased person donated as an anatomical gift, if the test is medically necessary to ensure that the body part is acceptable for its intended purpose. | (3) No change. |
| | (4) When the test is performed on an individual incarcerated in a correctional institution under the control of the Department of Rehabilitation and Correction if the head of the institution has determined, based on good cause, that a test is necessary. | (4) No change. |
| | (5) When the test was performed by or on the order of a physician who, in the exercise of his professional judgment, determined the test to be necessary for providing diagnosis and treatment to the individual to be tested, if the individual or the individual's parent or guardian consented to the medical treatment. | (5) The act instead permits any health care provider, rather than only a physician, to order or perform an HIV test. The act also specifies that the health care provider may perform or order the test if the individual, or individual's parent or guardian, consents to medical *or other health care* treatment. This provision replaces the informed consent requirement eliminated by the act. |
| | (6) When the test is performed on a person after the infection control committee of a health care facility, or other similar body, determines that a health care provider, emergency medical services worker, or peace officer, while rendering health or | (6) No change. |

| TOPIC | FORMER LAW | THE ACT |
|---|---|---|
| | emergency care to the individual, has sustained a significant exposure to the body fluids of that individual, and the individual has refused to give consent for testing.<br><br>(7) When the test was ordered by a court in connection with a criminal investigation. | <br><br><br><br><br>(7) The act eliminates this provision. |
| PUBLIC HEALTH COUNCIL RULES | The Public Health Council was to adopt rules, pursuant to recommendations from the Director of Health and in accordance with the Administrative Procedure Act, specifying the information required to be given to an individual before the individual is given an HIV test, including specifications for an informed consent form that includes the required information and was prepared and distributed by the Director of Health.<br><br>No provision. | The act eliminates the requirement to adopt these rules. (The requirement becomes obsolete under the changes made by the act.)<br><br>The act permits the Public Health Council to adopt rules, pursuant to recommendations from the Director of Health and in accordance with the Administrative Procedure Act, which specify the information to be provided in the post-test counseling required by the act. |

The act also makes conforming changes to the law governing the testing and treatment of sex offenders for HIV and the law permitting certain persons to bring an action in court to compel another person to undergo HIV testing (R.C. 2907.27 and 3701.247).

## Licensure as a freestanding diagnostic imaging center

(R.C. 3702.30)

Continuing law partially changed by the act prohibits certain types of health care facilities from operating without a license issued by the Director of Health. This licensing requirement applies to all of the following: (1) an ambulatory surgical facility, (2) a freestanding dialysis center, (3) a freestanding inpatient rehabilitation facility, (4) a

freestanding birthing center, (5) a freestanding radiation therapy center, and (6) a freestanding or mobile diagnostic imaging center.

The act exempts the following entities from the requirement to obtain a license as a freestanding diagnostic imaging center:

(1) A registered hospital that provides diagnostic imaging;

(2) An entity that is reviewed as part of a hospital accreditation or certification program and that provides diagnostic imaging;

(3) An ambulatory surgical facility that provides diagnostic imaging in conjunction with or during any portion of a surgical procedure.

## Certificate of Need program

(R.C. 3702.51, 3702.52, 3702.524, 3702.525, 3702.53, 3702.532, 3702.54, 3702.544, 3702.55, 3702.57, 3702.59, 3702.592, 3702.593, 3702.594, 3702.60, 3702.61, and 5155.38; 3702.511, 3702.523, 3702.527, 3702.528, 3702.529, and 3702.542 (repealed); Section 289.70)

### Background--long-term care beds

Under continuing law's certificate of need (CON) program, a health care facility may conduct a "reviewable activity" only if a CON is approved by the Director of Health. Reviewable activities include such activities as building or renovating a facility or adding additional beds.

CON requirements for hospital construction and many other activities related to health care facilities were phased out in the late 1990s. The act eliminates provisions dealing with CONs for these activities. The CON program continues to exist for long-term care beds in nursing homes and hospitals.

### Limited extension of the moratorium on new long-term care beds

Since at least 1993, former law had provided for a moratorium on the granting of CONs for new long-term care beds. The moratorium expired on June 30, 2009. The act provides for a limited extension of the moratorium until the act's provisions establishing a new CON comparative review process take effect.

Under the moratorium's extension, the Director of Health is essentially limited to granting CONs for the replacement or relocation of beds within the same county, as was the case under the preexisting moratorium. If a CON is granted, the Director cannot authorize additional beds beyond those being replaced or relocated.

If the Director received a CON application for another purpose between July 1 and July 16, 2009,[210] the Director cannot grant the CON. If the Director receives a CON application for another purpose between July 17 and October 16, 2009,[211] the Director cannot accept the application. In either case, the act requires the Director to return to the applicant both the application and the fee that accompanied the application. The act specifies that these provisions apply to all pending actions regarding applications received before the effective date of the act's provisions establishing a new CON comparative review process.

### Replacement or relocation within the same county

As described above, during the preexisting moratorium, the Director was authorized to grant CONs for new long-term care beds if (1) the increase was attributable solely to a replacement or relocation of existing beds from an existing health care facility to a new or existing facility in the same county and (2) the beds were proposed to be one of the following types of beds:

(1) Beds used in a new or existing health care facility and licensed as nursing home beds;

(2) Beds used in a new or existing county home or county nursing home and certified under Medicare as skilled nursing facility beds or under Medicaid as nursing facility beds;

(3) Beds used in a hospital and registered with the Department of Health as long-term care beds or skilled nursing beds.

Formerly, the express authority to grant CONs for these beds ended when the moratorium expired. The act indefinitely extends the authority to approve CONs for replacement or relocation of long-term care beds within the same county.

### Relocation from a contiguous county

The act requires the Director to accept CON applications for an increase of up to 30 beds in an existing nursing home if all of the following conditions are met:

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[210] July 1, 2009 is the first day after the expiration of the CON moratorium under prior law. July 16, 2009 is the day before the Governor signed the act.

[211] July 17, 2009 is the effective date of the act's limited extension of the CON moratorium. October 16, 2009 is the effective date of the act's provisions establishing a new CON comparative review process.

(1) The proposed increase is attributable solely to a relocation of licensed nursing home beds from an existing nursing home to another existing nursing home in a contiguous county;

(2) After the relocation, existing nursing home beds will remain in the county from which the beds are relocated;

(3) The beds are proposed to be licensed as nursing home beds.

### Comparative review for relocation between counties

The act provides for establishment of a new CON comparative review process under which long-term care beds may be relocated from a county with excess beds to a county with a bed need as determined by the Director of Health. Under this process, the Director may approve relocation from one county to another if the relocated beds are proposed to be one of the following types of beds:

(1) Beds used in a new or existing health care facility and licensed by the Director as nursing home beds;

(2) Beds used in a new or existing county home or county nursing home and certified under Medicare as skilled nursing facility beds or under Medicaid as nursing facility beds;

(3) Beds used in a hospital and registered with the Department of Health as long-term care beds.

The Director is to do all of the following to implement the comparative review:

(1) Determine the long-term care bed supply for each county, which is to consist of all of the following:

--Nursing home beds licensed by the Director;

--Beds certified as skilled nursing facility beds under Medicare or nursing facility beds under Medicaid;

--Beds in a county home or county nursing home that are certified under the act as having been in operation on July 1, 1993, and are eligible for licensure as nursing home beds;[212]

[212] The act requires the operator of each county home and each county nursing home, not later than November 1, 2009, to certify to the Director the number of long-term care beds that were in operation in

--Beds held as approved long-term care beds under a CON approved by the Director.

(2) Determine the long-term care bed occupancy rate for the state at the time the determination is made.

(3) Not later than April 1, 2010, again on April 1, 2012, and every four years thereafter, determine for each county, using the formula developed in rules to be adopted under the act, and publish on the Department's web site, the county's bed need by identifying the number of long-term beds that would be needed in the county for the statewide occupancy rate to be 90% for a projected population aged 65 and older.

The Director's consideration of a CON that would increase the number of beds in a county must be consistent with the county's bed need with two exceptions:

(1) If a county's occupancy rate is less than 85%, the county is to be considered to have no need for additional beds.

(2) Even if a county is determined not to need any additional long-term care beds, if it has a long-term care bed occupancy rate greater than 90%, the Director may approve an increase in beds equal to up to 10% of the county's bed supply.

**Review periods and phases**

The period for each comparative review is to be four years, except that the first period is to be two years, beginning July 1, 2010, and ending June 30, 2012.

CON applications are to be accepted and reviewed from the first day of each review period through April 30 of the following year, which is to be the initial phase of the review period for all review periods except for the first, which is to have only one phase. If the Director determines that there will be acceptance and review of additional CON applications, the second phase of the review period is to begin on July 1 of the third year of the review period. The second phase is to be limited to acceptance and review of applications for redistribution of beds made available as described below.

**Beds taken out of service**

When a CON application is approved during the initial phase of a four-year review period, on completion of the project under which the beds are relocated, that number of beds must cease to be operated in the health care facility from which they were relocated. If the licensure or certification of those beds cannot be or is not

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the home on July 1, 1993. The certification must be accompanied by any documentation requested by the Director. (R.C. 5155.38.)

transferred to the facility to which the beds are relocated, the licensure or certification must be surrendered.

In addition to taking the transferred beds out of service, the health care facility from which the beds were relocated must (1) reduce the number of beds operated in the facility by a number of beds equal to at least 10% of the number of beds relocated and (2) surrender the licensure or certification of those beds. This reduction must occur not later than the date of completion of the project under which the beds were relocated. If, for example, a project is completed under which 20 beds are relocated, an additional two beds must be taken out of service in the facility from which the 20 beds were relocated. These additional beds will be available for redistribution in the second phase of the review period.

**Redistribution of beds**

Once approval of CON applications in the first phase of a four-year review period is complete, the Director must make a new determination of the bed need for each county by reducing the county's bed need by the number of beds approved in that phase for relocation to the county. The new bed-need determination must be made not later than April 1 of the third year of the review period.

If the Director decides to redistribute the additional beds that were taken out of service, the Director may publish on the Department's web site the remaining bed need for counties that will be considered for redistribution of the additional beds. The Director must base the determination of whether to include a county on the web site on all of the following:

(1) The statewide number of additional beds that have ceased or will cease to be operated;

(2) The county's remaining bed need;

(3) The county's bed occupancy rate.

If the Director publishes the remaining bed need for a county, the Director may, beginning on the first day of the second phase of the review period, accept CON applications for redistribution of the additional beds. Any beds not approved for redistribution during the second phase are not available for redistribution at any future time.

**Considerations**

The Director is to consider CON applications in both the first and second phase of the review process in accordance with all of the following:

(1) The number of beds approved for a county may include only beds available for relocation from another county and must not exceed the bed need of the receiving county;

(2) The Director must consider the existence of community resources serving persons who are age 65 or older or disabled that are demonstrably effective in providing alternatives to long-term care facility placement;

(3) The Director may approve relocation of beds from a county only if, after the relocation, the number of beds remaining in the county will exceed the county's bed need by at least 100 beds;

(4) The Director may approve relocation of beds from a health care facility only if, after the relocation, the number of beds within the census tract in which the facility is located if the facility is in a federally designated health professional shortage area, or, if the facility is not in a shortage area, the bed need for the area within a 15-mile radius of the facility, is at least equal to the state bed-need rate.

In determining which applicants should receive preference in the comparative review process, the Director must consider all of the following as weighted priorities:

(1) Whether the beds will be part of a continuing care retirement community;

(2) Whether the beds will serve an underserved population, such as low-income individuals, individuals with disabilities, or individuals who are members of racial or ethnic minority groups;

(3) Whether the project in which the beds will be included will provide alternatives to institutional care, such as adult day-care, home health care, respite or hospice care, mobile meals, residential care, independent living, or congregate living services;

(4) Whether the health care facility's owner or operator will participate in Medicaid waiver programs for alternatives to institutional care;

(5) Whether the project in which the beds will be included will reduce alternatives to institutional care by converting residential care beds or other alternative care beds to long-term care beds;

(6) Whether the facility in which the beds will be placed has positive resident and family satisfaction surveys;

(7) Whether the facility in which the beds will be placed has fewer than 50 long-term care beds;

(8) Whether the health care facility in which the beds will be placed is located within the service area of a hospital and is designed to accept patients for rehabilitation after an in-patient hospital stay;

(9) Whether the health care facility in which the beds will be placed is, or proposes to become, a nurse aide training and testing site;

(10) The rating, under the Centers for Medicare and Medicaid Services'[213] five star nursing home quality rating system, of the health care facility in which the beds will be placed.

### Review procedures

Law modified by the act specifies how the CON review process is to be conducted. Continuing law provides that, except during a public hearing or as necessary to comply with a subpoena, once a notice of completeness has been received, no person may knowingly discuss in person or by telephone the merits of the application with the Director. The act further prohibits making revisions to information that was submitted to the Director before the Director mails the notice of completeness. But, the act authorizes a person to supplement an application after a notice of completeness has been received by submitting clarifying information to the Director.

The act also eliminates two conditions that previously had to be met before the Director could grant a CON. Under one of the conditions, the trustees of the health service agency of the health service area in which the project was to be located had to recommend that the CON be granted. The other condition eliminated by the act specified that the Director must not have received timely written objections to the CON application from any affected person.

Former law generally permitted the Director to grant a CON for all or part of a project, but if the conditions in continuing law listed above were met, the Director was required to approve the entire project. Under the act, the Director may approve part, rather than the entirety, of the project.

[213] CMS is part of the United State Department of Health and Human Services, the federal agency that administers Medicare and Medicaid.

### Reasons for CON denial

Continuing law requires the Director to deny a CON application for addition of long-term care beds or for the development of a new health care facility under certain circumstances. For example, the Director must deny a CON application if the existing health care facility to which beds are being relocated has a waiver for life safety code deficiencies, a state fire code violation, or a state building code violation, and the project identified in the application does not propose to correct such problems.

Under law modified by the act, a CON application was to be denied if, during the 60-month period preceding the filing of the application, a notice of proposed license revocation was issued to certain individuals under the laws governing nursing homes. Previously, the CON application had to be denied if the notice was sent to the operator of the existing facility to which beds were being relocated or to any health care facility owned or operated by the applicant or any principal participant in the corporation or other business. The act requires instead that a CON application be denied if, during the 60-month period preceding the filing of the application, the notice of proposed license revocation was issued for the existing health care facility in which beds are being placed or a nursing home (rather than a health care facility)[214] owned or operated by the applicant or the corporation or other business that operates or seeks to operate the health care facility in which the beds are being placed (rather than the principal participant in the same corporation or other business).

Former law required the Director to deny a CON application if the existing health care facility to which beds were being relocated or any health care facility owned or operated by the applicant or any principal participant in the same corporation or other business had a long-standing pattern of violations of the laws governing CONs or deficiencies that caused one or more residents physical, emotional, mental, or psychosocial harm. The act eliminates this "long-standing pattern of violations or deficiencies" reason to deny a CON application and instead establishes other reasons for which a CON must be denied.

Under the act, a CON application is to be denied if, during the period that precedes the filing of the application and is encompassed by the three most recent standard surveys of the existing health care facility in which the beds are being placed, any of the following occurred:

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[214] Nursing homes are one type of facility included in the continuing definition of "health care facility" but, even though prior law used the term health care facility, this provision applied only to facilities for which a notice of proposed license revocation was issued under state law governing nursing home licensure.

(1) The facility was cited on three or more separate occasions for final, nonappealable deficiencies that, under a federal regulation, either (a) constitute a pattern of deficiencies resulting in actual harm that is not immediate jeopardy or (b) are widespread deficiencies resulting in actual harm that is not immediate jeopardy.

(2) The facility was cited on two or more separate occasions for final, nonappealable deficiencies that, under a federal regulation, either (a) constitute a pattern of deficiencies resulting in immediate jeopardy to resident health or safety or (b) are widespread deficiencies resulting in immediate jeopardy to resident health or safety.

(3) More than two nursing homes operated in Ohio by the applicant or the person who operates the facility in which the beds are being placed or, if the applicant or person operates more than 20 nursing homes in Ohio, more than 10% of those nursing homes, were each cited on three or more separate occasions for final, nonappealable deficiencies that, under a federal regulation, either (a) constitute a pattern of deficiencies resulting in actual harm that is not immediate jeopardy or (b) are widespread deficiencies resulting in actual harm that is not immediate jeopardy.

(4) More than two nursing homes operated in Ohio by the applicant or the person who operates the facility in which the beds are being placed or, if the applicant or person operates more than 20 nursing homes in Ohio, more than 10% of those nursing homes, were each cited on two more occasions for final, nonappealable deficiencies that, under a federal regulation, either (a) constitute a pattern of deficiencies resulting in immediate jeopardy to resident health or safety or (b) are widespread deficiencies resulting in immediate jeopardy to resident health or safety.

The act prohibits the Director, in applying the reasons under continuing and new law to deny a CON application due to deficiencies, from considering deficiencies cited before the current operator began to operate the health care facility at which the deficiencies were cited. The Director is permitted to disregard deficiencies cited after the health care facility was acquired by the current operator if the deficiencies are attributable to circumstances that arose under the previous operator and the current operator has implemented measures to alleviate the circumstances. In the case of an application proposing development of a new health care facility by relocation of beds, the Director is prohibited from considering deficiencies that were solely attributable to the physical plant of the existing health care facility from which the beds are being relocated.

The act also requires the Director to deny a CON application if, during the 60-month period preceding the filing of the application, the applicant has violated state law governing CONs on two or more separate occasions.

## Dentist Loan Repayment Program

(R.C. 3702.87, 3702.89, 3702.90, 3702.91, 3702.92, 3702.93, and 3702.94; Section 289.20)

The Department of Health oversees the Dentist Loan Repayment Program. Under the program, the Department may, subject to available funds, repay an educational loan taken by a dentist in exchange for contractual employment in a dental health resource shortage area.

### Dental health resource shortage areas

Under continuing law, the Director of Health must designate, by rule, dental health resource shortage areas in Ohio. A dental health resource shortage area is an area that experiences special dental health problems and dentist practice patterns that limit access to dental care. The designations may apply to a geographic area, one or more facilities within a particular area, or a population group within a particular area. The act requires the Director to consider for designation any area in Ohio that has been designated by the United States Secretary of Health and Human Services under federal law as a health professional shortage area.

### Eligibility requirements

Under former law, an individual who was not receiving National Health Service Corps tuition or student loan repayment assistance could apply to participate in the Dentist Loan Repayment Program. The act instead specifies that the individual must not have an outstanding obligation for dental service to the federal government, a state, or other entity at the time of participation in the Program. The applicant continues to be required to meet other requirements, but the act eliminates the requirement that the applicant have been practicing dentistry for not more than three years and instead requires that the applicant hold a valid Ohio dentist license.

### Application

Law requires an individual seeking to participate in the dentist loan repayment program to include certain information on the application, including whether the applicant is a dental resident, and if so, the name of the facility or institution where the applicant is a resident. The act further requires an individual who has completed a residency to include the name of the facility or institution of residency and the date of completion of the residency.

### Recruitment efforts

The act eliminates a provision under which an applicant and the applicant's spouse could make one visit to a dental health resource shortage area as part of the

Director's efforts to recruit the applicant to that area and be reimbursed for travel, meals, and lodging. It also eliminates a provision under which the director could refer an applicant to the Ohio Dental Association for recruitment purposes.

### Parties to the loan repayment contract

Under continuing law, once an applicant and Director agree on a placement in a dental health shortage area, they enter into a contract that outlines the conditions of service. Prior law allowed a lending institution to be party to the contract. The act removes the lending institution as a party and instead allows the dentist's employer or other funding source to be a party to the contract.

### Length of service

Under prior law, a program participant was required to provide services in a shortage area for at least one year. The act extends the length of service to two years.

### Repayment amount

Former law provided that the Department of Health would repay all or part of the principal and interest of a program participant's loan, up to $20,000 per year of service. The act instead provides that in the first and second years, repayment cannot exceed $25,000 each year, and in the third and fourth years, $35,000 per year.

### Failure to complete service obligation

Former law specified that the individual must agree to pay the Department the following as damages for failure to complete the service obligation:

--Three times the total amount the Department agreed to repay if the failure occurred during the first two years of the service obligation;

--Three times the remaining amount the Department was obligated to repay if the failure occurred after the first two years of the service obligation.

The act removes these repayment specifications and instead specifies that any repayment for failing to complete the service obligation is an amount to be set in rules adopted by the Director.

### Assignment of duty to repay loans

The act eliminates a provision under which the loan repayment contract could include an assignment to the Department of the individual's duty to pay a government or other loan for dental education expenses.[215]

### Dentist Loan Repayment Advisory Board

Continuing law establishes the Dentist Loan Repayment Advisory Board. The Board includes the following members: (1) a member of the House of Representatives, appointed by the Speaker, (2) a member of the Senate, appointed by the Senate President, (3) a representative of the Board of Regents, appointed by the Chancellor, (4) the Director of Health or the Director's designee, and (5) three dental professionals nominated by the Ohio Dental Association and appointed by the Governor.

The act increases the number of Board members to ten, adding one member of the House, one member of the Senate, and one dental professional, and establishes an appointment schedule for these new members. The two members from each chamber of the General Assembly must be from different political parties.

Continuing law requires Board members to serve without compensation. However, former law allowed Board members to be reimbursed for reasonable and necessary expenses incurred in discharging their duties. The act eliminates the provision allowing members to be reimbursed for these expenses.

Continuing law requires the Board to submit an annual report to the General Assembly describing the operations of the program during the previous calendar year. The act requires the Board to also submit the report to the Governor.

## Vital statistics fees

(R.C. 3705.24 and 3709.09)

Law unchanged by the act requires the Public Health Council to adopt rules prescribing the fees that the Director of Health must charge for various items and services provided by the State Office of Vital Statistics, including fees for certified copies of vital records and certifications of birth, searches by the Office of its files and records pursuant to information requests, and copies of records provided pursuant to information requests. Under prior law, the Director of Health could not charge less

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[215] Under an assignment, the Department could pay the principal and interest of a loan directly instead of giving the dentist the money to pay those expenses.

than $7 for these items and services.[216] Law unchanged by the act also prohibits a board of health of a city or general health district (a "local board of health") from charging a fee for a certified copy of a vital record or a certification of birth that is less than the fee prescribed by the Public Health Council for these items; consequently the fee a local board of health had to charge for a certified copy of vital record or certification of birth under prior law also could not be less than $7. In general, money generated by these fees must be paid into the state treasury to the credit of the Department of Health's General Operations Fund.

The act increases to $12 (from $7) the minimum fee the Director of Health or a local board of health must charge for a certified copy of a vital record or certification of birth, a search by the Office of Vital Statistics of its files and records pursuant to an information request, or a copy of a record provided by the office pursuant to an information request. The act also requires the Director of Health or a local board of health to transfer $4 of each minimum $12 fee collected to the State Office of Vital Statistics not later than 30 days after the end of each calendar quarter, and requires that each $4 transferred be used to support public health systems.

### Vital statistics--reports of deaths to county auditors and boards of elections (PARTIALLY VETOED)

(R.C. 319.24, 3705.03, 3705.031, 3503.18, and 3503.21)

The act eliminates provisions that (1) required the chief health officer of each political subdivision and the Director of Health to file with each county board of elections, at least once each month, the names, dates of birth, dates of death, and residences of all adults who died within the subdivision or within Ohio or another state within such month, and (2) required each county board of elections to use this information to promptly cancel the voter registrations of each deceased elector.

The Governor vetoed provisions that would have required all of the following:

(1) The State Registrar of Vital Statistics to review, in each calendar month, all death certificates received in the preceding month from local registrars of vital statistics pursuant to a requirement in continuing law (R.C. 3705.07), as well as those received from vital statistics officials in other states.

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[216] In addition to the fees that the Public Health Council is authorized to prescribe for various items and services provided by the State Office of Vital Statistics, continuing law permits the following additional fees to be charged for copies of vital records and certifications of birth: fees charged by a local registrar of vital statistics or clerk of court (under R.C. 3705.24(D) and (G)), fees to modernize and automate the vital records system (under R.C. 3705.24(B)), fees charged to benefit the Children's Trust Fund (under R.C. 3109.14), and fees charged to benefit the Family Violence Prevention Fund (under R.C. 3705.242).

(2) The Registrar to determine from each death certificate identified pursuant to the review all of the following information:

(a) The decedent's name, date of birth, date of death, and age on the date of death;

(b) The address of the decedent's residence on the date of death;

(c) The county and state in which the decedent's residence was located.

(3) The Registrar to file, not later than the end of the calendar month in which a review occurred, a report with each county auditor and each county board of elections a report that summarized the information described in (2), above, for each decedent whose residence was located in that county.

(4) Each county auditor, on receipt of a report described in (3), above, to use the information in the report to assist the auditor in verifying whether real property or a manufactured or mobile home was eligible for the senior citizen homestead exemption[217] or the 2.5% rollback in real property taxes that applies to owner-occupied residences.[218]

(5) Each county board of elections, on receipt of a report described in (3), above, to cancel the voter registration of each decedent named in the report.

## Fees for board of health services

(R.C. 3709.09, 3709.092, 3701.344, 3717.07, 3717.23, 3717.25, 3717.43, 3717.45, 3718.06, 3729.07, 3733.04, 3733.25, and 3749.04)

### Background

Continuing law authorizes the board of health of a city or general health district, by rule, to establish a uniform system of fees for services provided and licenses issued by the board. For certain services and licenses, the Public Health Council is required to adopt rules that establish fee categories and, under prior law modified by the act, to establish uniform methodologies for use in determining the cost of the service or

[217] Under the homestead exemption, the property taxes charged against homes, and the manufactured home tax on manufactured or mobile homes, owned and occupied by all of the following are reduced: (1) an owner who is permanently and totally disabled, (2) an owner who is at least 65 years of age, and (3) the surviving spouse (at least 59 years of age but not age 65 or older) of a deceased owner who, at the time of death, was permanently and totally disabled or at least 65 years of age and who applied and qualified for a reduction in taxes in the year of death (R.C. 323.15(A) and 4503.065).

[218] R.C. 323.15(B).

license. Continuing law permits the Public Health Council to also adopt rules adding additional amounts to the fees to be used for administration expenses of the Department of Health. The fees for which the Council may establish methodologies and impose additional amounts are fees for enforcement of rules governing private water system installations; inspection of maternity units, newborn care nurseries, and maternity homes; installation permits for household sewage treatment systems; licenses for recreational vehicle parks, recreation camps, or combined park-camps; tattooing or body piercing licenses; manufactured home park licenses; marina licenses; and public swimming pool, public spa, and special-use pool licenses.

Prior law required the additional amounts imposed by the Public Health Council to be collected and transmitted by the board of health to the Department's, General Operations Fund, and used solely for the purposes for which the amount was collected. A board of health that established or charged a fee for services for which the Public Health Council must adopt rules was required to notify, 30 days before the fee was established, any entity affected by the fee.

Boards of health and other licensors (the Directors of Agriculture and Health) must follow a separate procedure when establishing a fee for a retail food establishment or food service operation license. Continuing law expressly requires the license fee to be based on the cost of regulating the establishment or operation as determined by the Director of Agriculture or Public Health Council. Under prior law the licensor, 30 days before establishing the license fee, was required to hold a public hearing and notify each entity holding a license of the proposed fee. Continuing law permitted additional amounts to be added to the license fee by the Director of Agriculture (for retail food establishments) or the Public Health Council (for food service operators). Prior law required the additional amounts to be transmitted by the licensor to the treasurer of state no later than 60 days after the last day of the month in which a license was issued. The additional amounts are to be used for administering and enforcing the laws governing the establishments and operations.

The act makes changes regarding the establishment of a board of health's uniform system of fees, the additional amounts imposed by the Public Health Council or Director of Agriculture, and penalties assessed on unpaid fees.

#### Establishment of a board of health's uniform system of fees

The act provides that all rules adopted by a board of health establishing a uniform system of fees for services provided by the board are to be adopted, recorded, and certified as are ordinances of municipal corporations.[219] The record of the rules is to

[219] R.C. 731.17 to 731.21.

be given in all courts the same effect as is given ordinances. The advertisement of the rule is to be by publication in one newspaper of general circulation in the applicable health district. The publication is to be made once a week for two consecutive weeks, and the rules are to take effect and be in force ten days from the first date of publication.

### Fee categories (PARTIALLY VETOED)

For the fees for which the Public Health Council is to adopt rules, the act requires that the Public Health Council establish fee categories and "a uniform methodology" rather than "uniform methodologies" for use in calculating the costs of specified services. The Governor vetoed a provision that would have required "a uniform methodology" for license fees for food service operations or retail food establishments.

In establishing a fee for the services for which the Public Health Council is to adopt rules, the act requires the board of health to hold a public hearing and, at least 20 days (rather than 30) before the hearing, give notice of the proposed fee. The act requires the board of health to notify each entity affected by the proposed fee by providing written notice of the hearing and proposed fee and mailing the notice to the last known address of the entity. But, the act permits these fees to be established by emergency measures, in which case the board is not required to hold public hearings.

The act similarly permits licensors of retail food establishments or food service operations to establish licensing fees through emergency measures. Unless adopted as an emergency measure, the licensor is required, to hold a public hearing. Under the act, the notification of the hearing is reduced to 20 days (from 30) before the hearing. No hearing is required if the fee is established as an emergency measure. Notification of a hearing is not changed by the act.

As discussed above, the Public Health Council and Director of Agriculture may impose additional amounts on fees for certain board of health services and on licenses for a retail food establishment or food service operation. The act establishes a transmission schedule for these additional amounts and additional amounts imposed by the Public Health Council on fees for the following: enforcement of rules governing private water system installations; installation permits for a household sewage treatment system; licenses for recreational vehicle parks, recreation camps, or combined park-camps; manufactured home park licenses; marina licenses; and public swimming pool, public spa, or special-use pool licenses.[220] The act requires the additional amounts to be transmitted to the Director of Health for deposit in the state treasury, credit of the

[220] The transmission schedule for extra amounts imposed on the fees for maternity home inspections and tattooing licenses is not included in the act.

General Operations Fund, to be used solely for the purposes for which the fee was collected. The transmission schedule required under the act is:

(1) Not later than May 15th for fees and amounts received by the board of health on or after January 1st but not later than March 31st;

(2) not later than August 15th for fees and amounts received by the board of health on or after April 1st but not later than June 30th;

(3) Not later than November 15th for fees and amounts received by the board of health on or after July 1st but not later than September 30th;

(4) Not later than February 15th for fees and amounts received by the board of health on or after October 1st but not later than December 31st of the preceding year.

#### Late fees

The act establishes fees for late payment of fees established by a board of health. The act also modifies preexisting late fees for retail food establishment or food service operation licenses. The act provides that a fee established under the board's uniform system of fees is late if not received by the day on which payment is due. The penalty is an amount equal to 25% of the original fee.

For a retail food establishment or food service operation license the act likewise establishes a fee of 25% of the original fee. Under prior law, the maximum penalty was $50.

### Definition of palliative care

(R.C. 3712.01)

Under continuing law, any person or public agency seeking to provide a hospice care program is required to be licensed by the Department of Health. One of the services that may be provided by a hospice care program is short-term inpatient care, including palliative care. Prior law defined "palliative care" as treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of a hospice patient and the hospice patient's family as they experience the stress of the dying process rather than treatment aimed at investigation and intervention for the purpose of cure or prolongation of life.

The act redefines "palliative care" as treatment for a patient with a serious or life-threatening illness directed at controlling pain, relieving other symptoms, and enhancing the quality of life of the patient and the patient's family rather than treatment for the purpose of cure. Although the act's definition no longer refers to palliative care

as care that is provided to a hospice patient, the term continues to be used in the context of hospice patients.

The act specifies that nothing in the statutory definitions established for the laws governing hospice care programs is to be interpreted to mean that palliative care can be provided only as a component of a hospice care program.[221]

### Hospice licensing fees

(R.C. 3712.03)

Continuing law authorizes the Ohio Public Health Council to establish a license fee and license renewal fee for hospice care programs. Prior law specified that the fee was not to exceed $300. The act increases the maximum amount to $600.

### Nursing home and residential care facility licensing fees

(R.C. 3721.02)

Under continuing law, the Director of Health is responsible for licensing nursing homes[222] and residential care facilities.[223] The Director must inspect a home or facility at least once before issuing a license and at least once every 15 months thereafter. The Director is required to charge an application fee and an annual renewal licensing and inspection fee. Prior law set the fees at $170 for each 50 persons or part thereof of a home or facility's licensed capacity. The act increases the fees as follows:

(1) For fiscal year 2010, to $220 for each 50 persons or part thereof of the home or facility's licensed capacity;

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[221] The effect of this provision is unclear, since it is not apparent how the statutory definitions established for hospice care programs limit other health care providers from engaging in palliative care if they are authorized to do so under other provisions of the Revised Code.

[222] A nursing home is a home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services but not skilled nursing care (R.C. 3721.01(A)(6)).

[223] A residential care facility is a home that provides (1) accommodations for 17 or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment or (2) accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, certain skilled nursing care (R.C. 3721.01(A)(7)).

(2) For fiscal year 2011, to $270 for each 50 persons or part thereof of the home or facility's licensed capacity;

(3) For each fiscal year thereafter, to $320 for each 50 persons or part thereof of the home or facility's licensed capacity.

## Nurse Aide Registry

(R.C. 1347.08 and 3721.23)

Continuing law requires the Director of Health to receive, review, and investigate allegations of abuse or neglect of a resident by a nurse aide or other individual used by a long-term care facility or residential care facility to provide services to residents. If the Director finds that a nurse aide or other individual has neglected or abused a resident, the Director is to include in the Nurse Aide Registry a statement detailing the findings pertaining to the nurse aide or other individual. The nurse aide or other individual is permitted to include a statement disputing the Director's finding and have the statement included in the Registry along with the Director's findings.

### Removal of name from registry

Federal law requires that a finding of neglect be removed from a nurse aid registry if the neglect was a singular occurrence and the employment and personal history of the nurse aide or individual does not reflect a pattern of abusive behavior or neglect.[224] The act provides that a statement of neglect added to the nurse aide registry regarding a nurse aide or other individual may be removed, and any accompanying information expunged, by the Director of Health if, in the judgment of the Director, the neglect was a singular occurrence and the employment and personal history of the nurse aide or other individual does not evidence abuse or any other incident of neglect of residents.

The Director is to remove and destroy the files and records of the investigation and hearing and ensure that any examination of the files shows no record of the finding of neglect. However, the act provides that the petition to rescind the finding of neglect, and the Director's notice that the rescission has been granted, are not to be expunged. The petition and Director's notice are not public records for purposes of Ohio's law regarding access to public documents.

[224] 42 U.S.C. 1395i-3(g)(1)(D).

## Nursing home administrator annual registration fee

(R.C. 4751.07)

Under continuing law, the Board of Examiners of Nursing Home Administrators licenses nursing home administrators by issuing certificates of registration. Each nursing home administrator must renew the certificate of registration annually and pay a renewal fee. The act increases the renewal fee from $250 to $300.

## Adult care facilities

### Background

Adult care facilities are residential facilities that provide supervision and personal care services to at least some of their residents. They are licensed by the Director of Health and classified as adult family homes (three to five unrelated adults), and adult group homes (six to sixteen unrelated adults). Personal care services that may be provided include assistance with activities of daily living, assistance with self-administration of medication, and preparation of special diets.[225]

The act specifies that a facility is an adult family home or adult group home if (1) supervision is provided to all residents (rather than three or more residents) and (2) as under prior law, three or more residents receive personal care services.

### License to operate adult care facility--application process

(R.C. 3722.02)

Continuing law requires that a person seeking a license to operate an adult care facility submit certain information to the Director of Health. The act eliminates the requirement that a person submit proof of insurance. It adds a requirement that the person submit a statement specifying the facility's intended bed capacity. If the facility will admit persons referred by or receiving services from a board of alcohol, drug addiction, and mental health services (ADAMHS board) or a mental health agency under contract with an ADAMHS board, the facility must also submit a statement regarding the total number of beds anticipated to be occupied as a result of those admissions.

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[225] R.C. 3722.01(A)(6).

### Restrictions on applying for license

(R.C. 3722.022)

The act prohibits a person from applying for an adult care facility license if the person is or has been the owner or manager of a facility for which a license was revoked or not renewed for any reason other than non-payment of the license renewal fee, unless at least two years have elapsed since the Director of Health issued the order revoking or refusing to renew the facility's license. A person is permanently prohibited from applying for another license if the revocation or refusal to renew was based on an act or omission that violated a resident's right to be free from abuse, neglect, or financial exploitation.

### Determining number of residents for license

(R.C. 3722.021)

To determine the license that an adult care facility must obtain, law retained by the act requires the Director of Health to count individuals for whom the facility provides accommodations as one group, unless the facility is both a nursing home[226] and an adult care facility. In that case, individuals in the unit licensed as a nursing home are counted separately from individuals in the unit licensed as an adult care facility.

The act provides that if an adult care facility is also licensed as a nursing home, residential facility,[227] or both, individuals in the unit licensed as a nursing home, residential care facility, or both, are to be counted separately from individuals in the unit licensed as an adult care facility.

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[226] "Nursing home" means a home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services but not skilled nursing care (R.C. 3721.01(A)(6)).

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

### Temporary licenses

(R.C. 3722.04)

Prior law permitted the Director of Health to issue a temporary adult care facility license, if the applicant submitted specified information and a nonrefundable license application fee. A temporary license was valid for 90 days and could be renewed for an additional 90 days. The act eliminates temporary licenses.

### Waiver of licensing requirements

(R.C. 3722.04(D))

Prior law authorized the Director of Health, on written request of a facility, to waive any of the adult care facility licensing requirements established by rule pertaining to fire and safety requirements or building standards. Continuing law provides that a waiver may be granted if the Director determines that strict application of the licensing requirement would cause undue hardship to the facility and that granting the waiver would not jeopardize the health or safety of any facility resident.

The act authorizes the Director, on written request of a facility, to waive any of the adult care facility licensing requirements established by rule, in place of the Director's existing authority to waive only those requirements established by rule pertaining to fire and safety requirements or building standards.

### Restrictions on facility placement

(R.C. 3722.10, 3722.16, 3722.18, and 5119.613)

#### Placement of residents requiring mental health services

The act prohibits an adult care facility from admitting a resident requiring publicly funded mental health services unless both of the following conditions are met: (1) the ADAMHS board serving the ADAMHS district in which the facility is located is notified and (2) the facility and the ADAMHS board have entered into a mental health resident program participation agreement, which the act creates.[228]

The act requires the Director of Mental Health to approve a standardized form to be used by adult care facilities and ADAMHS boards when entering into mental health

[228] A "mental health resident program participation agreement" means a written agreement between an adult care facility and the ADAMHS board serving the alcohol, drug addiction, and mental health service district in which the facility is located, under which the facility is authorized to admit residents who are receiving or are eligible for publicly funded mental health services (R.C. 3722.01(A)(15)).

resident program participation agreements. As part of approving the form, the Director is required to specify the requirements that facilities must meet to admit residents who are receiving or are eligible for publicly funded mental health services.

Under continuing law, before an adult care facility admits a prospective resident with mental illness or severe mental disability, the facility owner or manager is subject to both of the following: (1) if the prospective resident is referred to the facility by a mental health agency or ADAMHS board, the owner or manager must follow procedures established in rules adopted by the Public Health Council, and (2) if the prospective resident is not referred by a mental health agency or ADAMHS board, the owner or manager must offer to assist the prospective resident in obtaining appropriate mental health services and document the offer of assistance. Law retained in part by the act specifies that the Council's rules may provide for any of the following: (1) that the facility owner or manager sign written agreements with the mental health agencies and ADAMHS boards that refer prospective residents to the facility, (2) that the facility owner or manager and the mental health agencies and ADAMHS boards that refer prospective residents to the facility develop and sign a plan for services for each resident referred, and (3) any other process regarding referrals and arrangements for ongoing mental health services.

The act modifies the Public Health Council's rulemaking authority regarding the procedures described above by providing for any of the following: (1) that the facility owner or manager and the appropriate ADAMHS board sign a mental health resident program participation agreement, (2) that the facility owner or manager comply with the requirements of its mental health resident program participation agreement, (3) that the facility owner or manager and the mental health agencies and ADAMHS boards develop and sign a mental health plan for ongoing mental health services for each prospective resident, and (4) any other process established by the Council in consultation with the Director of Health and Director of Mental Health regarding referrals and arrangements for ongoing mental health services for prospective residents with mental illness.

#### Placement of residents by public entities and related agencies

An employee of state or local government, an ADAMHS board, a mental health agency, and a PASSPORT agency is prohibited by the act from placing or recommending placement of a person in a facility if the employee knows any of the following: (1) that the placement would cause the facility to exceed licensed capacity, (2) that an enforcement action initiated by the Director of Health is pending and may result in the revocation of or refusal to renew the facility's license, or (3) that the potential resident is receiving or is eligible for publicly funded mental health services

and the facility has not entered into a mental health resident program participation agreement with the ADAMHS board.

### Inspection of adult care facilities

(R.C. 3722.04(C))

During each licensing period, continuing law requires the Director of Health to make at least one unannounced inspection of an adult care facility[229] and may make additional unannounced inspections as necessary. The act provides that if an inspection is conducted to investigate an alleged violation in an adult care facility that serves residents receiving publicly funded mental health services or Residential State Supplement Program[230] payments, the inspection (1) is to be coordinated with the appropriate mental health agency, ADAMHS board, or PASSPORT[231] administrative agency, and (2) may be conducted jointly with the mental health agency, ADAMHS board, or PASSPORT administrative agency.

### Correcting violations

(R.C. 3722.06)

Continuing law provides that if the Director of Health determines that a facility has violated adult care facility laws, the Director must give the facility an opportunity to correct the violation. The Director must notify the facility of the violation and specify a reasonable time for making corrections. The Director must also state the action the Director will take if corrections are not made within the time specified. The facility's license may be revoked or not renewed if the facility fails to correct the violation within the time specified or the violation jeopardizes the health or safety of residents.

The act eliminates the preexisting requirement that the Director prescribe the steps necessary to correct a violation and instead requires the facility to submit to the Director a plan of correction stating the actions to be taken to correct the violation. The act requires the Director to conduct an inspection to determine whether the facility has corrected the violation in accordance with the plan of correction. If the Director

[229] The required unannounced inspection during each licensing period is in addition to the inspection to determine whether a license should be issued or renewed (R.C. 3722.04(C)).

[230] The Residential State Supplement (RSS) Program provides a cash supplement to payments provided to eligible aged, blind, or disabled adults under the Supplemental Security Income (SSI) program.

[231] The Pre-Admission Screening System Providing Options and Resources Today (PASSPORT) program provides home and community-based services to certain eligible aged and disabled Medicaid recipients as an alternative to care in a nursing facility.

determines that the facility failed to correct a violation, the Director may impose a penalty.

### Fines

(R.C. 3722.99)

Continuing law establishes fines for violating the adult care facility licensing laws. Under prior law, the fine for operating a facility without a license was $500 for a first offense and $1,000 for each subsequent offense. The fine for violating the other licensing laws was $100 for a first offense and $500 for each subsequent offense.

The act increases the fine for operating a facility without a license to $2,000 for a first offense and to $5,000 for each subsequent offense. The act increases the fines for violations of the other licensing laws to $500 for a first offense and to $1,000 for a subsequent offense. These fines are applied to the act's new prohibitions, as well as preexisting prohibitions that were not expressly subject to a fine.

### Civil penalties

(R.C. 3722.08)

Under continuing law, the Director of Health may impose civil penalties on adult care facility owners for violating facility laws. Violations are classified a class I, class II, or class III. The Director determines the classification and penalty amount by considering specified factors.

Prior law required the Director to cancel the penalty for a class II or class III violation if the facility corrected the violation within the time specified, unless the facility has been cited previously for the same violation. Under the act, the Director is permitted, rather than required, to cancel the penalty for a class II or class III violation if these conditions are met.

The act eliminates a provision prohibiting the Director from imposing a penalty for a class I violation if all of the following apply: a resident has not suffered physical harm because of the violation, the violation has been corrected and is no longer occurring, and an inspector discovered the violation by an examination of facility records.

### Injunctions

(R.C. 3722.09)

Continuing law authorizes the Director of Health to file an injunctive action against an adult care facility if the Director determines that the operation of the facility jeopardizes the health or safety of residents or the facility is operating without a license.

If a court grants injunctive relief for operating a facility without a license, the act requires the court to issue, at a minimum, an order enjoining the facility from admitting new residents and an order requiring the facility to assist residents' rights advocates to relocate facility residents. If the facility continues to operate without a license after injunctive relief is granted, the Director is to refer the case to the Attorney General.

### Transfer or discharge of resident

(R.C. 3722.14)

Continuing law permits an adult care facility to transfer or discharge a resident for the following reasons:

(1) Charges for accommodations and services have not been paid within 30 days after they came due;

(2) The resident needs a level of care the facility is unable to provide;

(3) The health, safety, or welfare of the resident or another resident;

(4) The health, safety, or welfare of an individual who resides in the home but is not a resident for whom supervision or personal care services are provided;

(5) The facility's license is revoked or renewal is denied;

(6) The facility is closed by its owner.

The act adds the following reasons for such a transfer or discharge: (a) that the resident is relocated as the result of a court order concerning a facility that is operating without a license, and (b) the resident is receiving publicly funded mental health services and the facility's mental health resident program participation agreement is terminated by the facility or the ADAMHS board.

In most cases, a facility must give a resident 30 days advance notice of a proposed transfer or discharge. The act provides that in an emergency a facility is not required to provide the advance notice if the reason for the proposed transfer or

discharge is any reason other than that charges for accommodations and services have not been paid within 30 days of coming due.[232]

Continuing law establishes a process under which a resident may request, and the Director of Health must conduct, a hearing regarding transfer or discharge. The act provides that the hearing may be requested and conducted if the transfer or discharge is based on one of the reasons listed as (1) through (4) above, therefore no hearing is to be conducted if the reason for relocation or transfer is revocation or denial of renewal of the facility's license or closure of the facility by the owner.[233]

### Authorization to enter facility

(R.C. 3722.15)

Under continuing law, certain individuals are authorized to enter an adult care facility at any time. This includes employees of a mental health agency that has a client residing in the facility. It also includes employees of an ADAMHS board in either of the following circumstances: (1) when acting on a complaint alleging that a resident with a mental illness or severe mental disability is suffering abuse or neglect, and (2) when an individual receiving mental health services provided by the ADAMHS board or a mental health agency under contract with the board resides in the facility.

The act expands the authority to enter an adult care facility at any time to the following:

(1) Employees of a mental health agency, when (a) the agency is acting as an agent of an ADAMHS board other than the board with which it is under contract and (b) there is a mental health resident program participation agreement between the facility and the ADAMHS board with which it is under contract;

(2) Employees of an ADAMHS board, when (a) a resident of the facility is receiving mental health services provided by another board or a mental health agency under contract with another board and (b) there is a mental health resident program participation agreement between the facility and that ADAMHS board.

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[232] Prior law contained statutory cross-reference errors that resulted in ambiguities regarding the advance notice requirements.

[233] Prior law also contained statutory cross-reference errors regarding the circumstances under which a hearing could be requested and had to be conducted.

### Persons authorized to provide skilled nursing care

(R.C. 3722.011(A) and 3722.16)

Continuing law generally prohibits adult care facilities from providing skilled nursing care, unless the care is provided on a part-time, intermittent basis for not more than 120 days in any 12-month period. The care may be provided only by a home health agency, hospice care program, a nursing home on the same site, or an ADAMHS board or mental health agency.

The act specifies that individuals employed by, under contract with, or used by the entities listed above to provide skilled nursing care in adult care facilities must be appropriately licensed. The Public Health Council is to adopt rules specifying what constitutes being appropriately licensed.

### Department of Health complaint number

(R.C. 3722.13)

Continuing law requires each adult care facility to post prominently within the facility a copy of residents' rights and the addresses and telephone numbers of the state long-term care ombudsperson and the regional long-term care ombudsperson program. Under prior law, the facility also had to post the addresses and telephone numbers of the Department of Health's central and district offices. The act eliminates the requirement that each adult care facility post within the facility the addresses and telephone numbers of the Department's central and district offices and instead requires each facility to post the Department's telephone number for accepting complaints.

### Technical changes

The act removes obsolete provisions and makes various technical and conforming changes.

## Community alternative homes

(R.C. Chapter 3724. (repealed); R.C. 173.35, 2317.422, 2903.33, 3313.65, 3701.07, 3721.01, 3722.01, 3722.02, 5101.60, and 5101.61)

Under former law, the Revised Code provided for the licensure and regulation of community alternative homes. A "community alternative home" meant a residence or facility that provided accommodations, personal assistance, and supervision for three to five unrelated individuals who have acquired immunodeficiency syndrome (AIDS) or a condition related to AIDS. The act repeals the law governing licensure and regulation of community alternative homes.

As a result of this repeal, the act eliminates other provisions relating to community alternative homes that pertain to the following:

--A community alternative home resident's eligibility for PASSPORT;

--A community alternative home resident's records being used in court in lieu of testimony;

--The abuse, neglect, or exploitation of a community alternative home resident and adult protective services for such residents;

--The school district of a child whose parent is a community alternative home resident;

--Community alternative home residents' rights advocates registering with the Department of Health;

--Community alternative homes being exempted from the nursing home, residential care facility, and adult care facility laws.

## Hospital accreditation

(R.C. 3727.02; R.C. 3727.03, 3727.05, and 3727.99 (not in the act))

Prior law retained in part by the act prohibited a person or political subdivision, agency, or instrumentality of Ohio from operating a hospital unless it was certified pursuant to federal law governing the Medicare Program or was accredited by the Joint Commission[234] or the American Osteopathic Association.[235] Under continuing law, the Director of Health must adopt, and may amend or rescind, rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) establishing procedures under which hospitals must provide the Department of Health in a timely fashion with proof of the required certification or accreditation and under which the Department must institute proceedings to close a hospital that violates the prohibition. A person or political subdivision, agency, or instrumentality that violates the prohibition is guilty of a misdemeanor of the first degree and is liable for an additional penalty of $1,000 for each

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[234] The Joint Commission, formerly known as the joint Commission on Accreditation of Healthcare Organizations, evaluates and accredits more than 15,000 health care organizations and programs in the United States. It is an independent, not-for-profit organization. *Facts about The Joint Commission*, available at <http://www.jointcommission.org/AboutUs/ Fact_Sheets/joint_commission_facts.htm>.

[235] The American Osteopathic Association (AOA) is a member association representing 64,000 osteopathic physicians (D.O.s). The AOA serves as the primary certifying body for doctors of osteopathic medicine, and is the accrediting agency for all osteopathic medical colleges and health care facilities. *AOA Online Press Kit*, available at <http://www.osteopathic.org/index.cfm? PageID=mc_prskit>.

day of operation that the prohibition is violated. In addition to the criminal penalty, the Director of Health is authorized to petition the common pleas court of the county in which the hospital is located for an order enjoining the entity that operates the hospital from violating this prohibition.

The act modifies only the accreditation component of the prohibition by requiring a hospital (if it is not Medicare-certified) to be accredited by a national accrediting organization approved by the Centers for Medicare and Medicaid Services,[236] rather than the Joint Commission or the American Osteopathic Association.

### Handlers of radioactive material and radiation-generating equipment

(R.C. 3748.01, 3748.04, 3748.07, and 3748.13)

Law modified by the act specified licensing and inspection fees for handlers of radioactive material and registration and inspection fees for handlers of radiation-generating equipment, but provided that the fee amounts applied only until the Public Health Council adopted rules establishing fees. The Council has adopted rules establishing licensing and inspection fees for handlers of radioactive material and inspection fees for handlers of radiation-generating equipment who are not medical practitioners.

The act removes statutory licensing and inspection fee amounts to be paid by handlers of radioactive material and inspection fee amounts to be paid by handlers of radiation-generating equipment if the handlers of radiation-generating equipment are not medical practitioners. Where the act removes statutory fee amounts, it provides that handlers are to pay the appropriate fees established in Council rules.[237]

The act also requires handlers, who are not medical practitioners, of radiation-generating equipment to pay the registration fee amounts established in the Council's rules when those amounts are established. Until then, the act requires those handlers to pay a $262 biennial registration fee, which is 20% higher than the registration fee specified in prior law for handlers of radiation-generating equipment.

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[236] The Centers for Medicare and Medicaid Services is part of the U.S. Department of Health and Human Services.

[237] Prior law included a reference to a fee amount for assembler-maintainer inspections. The act eliminates this reference because assembler-maintainers are handlers of radiation-generating equipment who are not medical practitioners and therefore are required to pay fee amounts established in Council rules.

The act requires that handlers of radioactive material pay licensing fees on receipt of an invoice. Prior law required them to pay the licensing fees at the time of application.

The act eliminates a provision that prohibited the fees established in rules from revising the statutory fees to be paid by handlers of radiation-generating equipment who are medical practitioners. It instead clarifies that the Council is to adopt rules establishing fees for all handlers except handlers of radiation-generating equipment who are medical practitioners. The act increases, by approximately 20%, the statutory licensing and inspection fees to be paid by the medical-practitioner handlers of radiation-generating equipment.

Continuing law permits the Director of Health to review shielding plans or the adequacy of shielding either on request of a licensed handler of radioactive material or radiation-generating equipment or during an inspection. The act clarifies that the Council is required to establish fees for the reviews of shielding plans or the adequacy of shielding that apply to handlers of radioactive material and handlers of radiation-generating equipment who are not medical practitioners.

Under law generally unchanged by the act, the Director of Health is required to inspect all records and operating procedures of facilities that install sources of radiation. The act expands this requirement to encompass the inspection of records and operating procedures of facilities that *service* sources of radiation.

### Radiation experts

(R.C. 3748.12)

Prior law specified fee amounts for the certification and certification renewal of radiation experts, but provided that these fee amounts applied only until the Public Health Council adopted rules establishing certification and certification-renewal fees. As the Council has adopted these rules, the act removes references to the statutory fee amounts.

### Disease and Cancer Commission (VETOED)

(Section 289.30)

The Governor vetoed a provision that would have established in the Department of Health the Disease and Cancer Commission. The Commission was to be composed of representatives of local boards of health in areas that the Director of Health determined have a high prevalence of colorectal cancer, prostate cancer, triple negative breast cancer, or sickle cell anemia. The Commission would have been required to

study these diseases in Ohio and submit, no later than June 30, 2011, a report to the Governor, Speaker and Minority Leader of the House of Representatives, and President and Minority Leader of the Senate. The report was to include policy recommendations to combat the prevalence of the diseases. On submission of the report, the Commission would have ceased to exist.

## Hemophilia Advisory Council (VETOED)

(R.C. 3701.0211)

### Council responsibilities

The Governor vetoed a provision that would have established the Hemophilia Advisory Council in the Department of Health and required the Council to advise the Director of Health on all of the following:

(1) Reviewing the effect of changes to programs and policies for persons with hemophilia and related bleeding disorders;

(2) Developing standards of care and treatment for persons with hemophilia and related bleeding disorders;

(3) Developing programs of care and treatment for persons with hemophilia and related bleeding disorders, including self-administration of medication, home care, medical and dental procedures, and techniques designed to provide maximum control over bleeding episodes;

(4) Reviewing data and making recommendations regarding the ability of persons with hemophilia and related bleeding disorders to obtain appropriate health insurance coverage and access to appropriate care;

(5) Coordinating with other state agencies and private organizations to develop community-based initiatives to increase awareness of hemophilia and related bleeding disorders.

The Council would have been required to submit to the Governor and General Assembly an annual report with recommendations on increasing access to care and treatment and obtaining appropriate health insurance coverage for persons with hemophilia and related bleeding disorders.

### Council membership

The Council was to consist of three nonvoting members and 11 voting members. The nonvoting members would have been (1) the Director of Health or the Director's

designee, (2) the Superintendent of Insurance or the Superintendent's designee, and (3) a representative of the Department of Job and Family Services. The voting members were to be appointed by the Governor with the advice and consent of the Senate. Not more than six were to be of the same political party and were to be appointed as follows:

(1) Two physicians treating patients with hemophilia or related bleeding disorders, one specializing in pediatrics and one specializing in the treatment of adults;

(2) A nurse treating patients with hemophilia or related bleeding disorders;

(3) A social worker treating patients with hemophilia or related bleeding disorders;

(4) A representative of a federally funded hemophilia treatment center;

(5) A representative of a health insuring corporation or sickness and accident insurer;

(6) A representative of an Ohio chapter of the National Hemophilia Foundation that serves the community of persons with hemophilia and related bleeding disorders;

(7) An adult with hemophilia or caregiver of an adult with hemophilia;

(8) A caregiver of a minor with hemophilia;

(9) A person with a bleeding disorder other than hemophilia or caregiver of a person with a bleeding disorder other than hemophilia;

(10) A person with hemophilia who is a member of the Amish sect or a health professional currently treating such persons.

Appointments were to be made not later than 90 days after the act's effective date. Except for the initial members, who were to be appointed for staggered terms of office of two, three, or four years, the terms of appointed members were two years. The Council's voting members were to select a chairperson. Members of the Council were to serve without compensation, but would have been permitted to be reimbursed for actual and necessary expenses incurred in the performance of the Council's duties.

## Sickle Cell Anemia Advisory Committee (VETOED)

(R.C. 3701.136)

The Governor vetoed a provision that would have created the Sickle Cell Anemia Advisory Committee within the Department of Health to assist the Director of Health in fulfilling the Director's preexisting duties regarding sickle cell disease. The Director would have been required to appoint five members familiar with sickle cell anemia, including researchers, health care professionals, and persons personally affected by sickle cell anemia. Members were to serve without compensation, but could have been reimbursed for actual and necessary expenses incurred in the performance of their duties.

The Director was to make initial appointments to the Committee no later than 90 days after the act's effective date. After initial appointments for staggered terms of one, two, and three years, terms of office would have been three years. Members could have been reappointed and vacancies were to be filled in the same manner as original appointments.

The Committee was to annually select from among its members a chairperson. The Committee was to meet at the call of the chairperson, but not less than twice each year. A majority of the members of the Committee constituted a quorum.

## Federal funds for abstinence education (VETOED)

(Section 289.60)

The Governor vetoed a provision that would have required the Director of Health to apply to the United States Secretary of Health and Human Services for funding under the Abstinence Education Program component of the Maternal and Child Health Services Block Grant (Title V of the Social Security Act).[238]

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[238] According to the United States Department of Health and Human Services Administration, Children and Families' Family and Youth Services Bureau, the purpose of the Abstinence Education Program is to "enable States to create or augment existing abstinence education programs and, at the option of the state, provide mentoring, counseling, and adult supervision to promote abstinence from sexual activity with a focus on those groups most likely to bear children out-of-wedlock." Grants are awarded to states based on a statutory formula determined by the proportion of low-income children in a state to the total number of low-income children in all states according to the latest census data. States are required to match 75% of the federal funds. (Information obtained from (www.acf.hhs.gov/programs/fysb/content/abstinence/factsheet.htm).)

## Extension of moratorium regarding the sewage treatment systems program

(Sections 640.20 and 640.21)

Am. Sub. H.B. 119 of the 127th General Assembly suspended until July 1, 2009, the operation of most of the provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law that was enacted by Sub. H.B. 231 of the 125th General Assembly. In addition, Am. Sub. H.B. 119 generally restored until July 1, 2009, the law related to household sewage disposal systems that existed prior to the enactment of Sub. H.B. 231. In order to effectuate the suspension of the Sub. H.B. 231 provisions and the restoration of the law that existed prior to its enactment, Am. Sub. H.B. 119 required the Director of Health, not later than July 2, 2007, to adopt rules related to household sewage disposal systems that were identical to those in effect prior to January 1, 2007, and to rescind the rules adopted pursuant to Sub. H.B. 231. Am. Sub. H.B. 119 also established additional requirements governing the duties of boards of health with respect to the approval or denial of the use of sewage treatment systems and with respect to the inspection of systems. Those requirements were required to be effective until the effective date of new rules to be adopted by the Public Health Council when the suspended provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law became operational again on July 1, 2009. Am. Sub. H.B. 119 prohibited the Director of Health and the Public Health Council from adopting new rules that modify or change the requirements established by Am. Sub. H.B. 119 prior to July 1, 2009. The provisions established by Am. Sub. H.B. 119 that govern household and small flow on-site sewage treatment systems will expire on the effective date of the new rules.

Because legislation was not enacted prior to July 1, 2009, some of the provisions from Am. Sub. H.B. 119 expired and the provisions of Sub. H.B. 231 that were suspended became operational. The act essentially reenacts the provisions of Am. Sub. H.B. 119 that temporarily suspended the operation of provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law and that enacted temporary provisions regarding that Law. Thus, the effect of that reenactment is to extend the termination of the suspension and the temporary law from July 1, 2009, to January 1, 2010. The act also extends the date until which the Director of Health and the Public Health Council are prohibited from adopting rules that modify or change the requirements originally established by Am. Sub. H.B. 119 until January 1, 2010.

## Agricultural labor camp licensing fees

(R.C. 3733.43)

Agricultural labor camps are areas established as temporary living quarters for two or more families, or five or more people, who are engaged in agriculture or food processing. The Department of Health licenses agricultural labor camps. The act increases the following annual license fees for any license issued on or after July 1, 2009:

(1) License to operate an agricultural labor camp, $150 (from $75).

(2) License to operate an agricultural labor camp if the application for the license is made on or after April 15 in any given year, $166 (from $100).

(3) Additional fee for each housing unit, $20 (from $10).

(4) Additional fee for each housing unit if application for the license is made on or after April 15 in any given year, $42.50 per housing unit (from $15).

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# COMMISSION ON HISPANIC-LATINO AFFAIRS (SPA)

- Requires the Speaker of the House of Representatives and the President of the Senate to each appoint two members of their respective chamber, from different political parties, as nonvoting members of the Commission on Hispanic-Latino Affairs.

## Changes in legislative membership of Commission on Hispanic-Latino Affairs

(R.C. 121.31)

Continuing law creates the Commission on Hispanic-Latino Affairs consisting of 11 voting members appointed by the Governor with the advice and consent of the Senate. Under law amended by the act, the Commission also consists of two ex officio, nonvoting members who are members of the General Assembly. Under former law, one ex officio member was to be a House of Representatives member appointed by the Speaker and one ex officio member was to be a Senate member appointed by the President. Formerly, when making their initial appointments, the Speaker was to appoint a House member who was affiliated with the minority political party in the House and the President was to appoint a Senate member who was affiliated with the

majority political party in the Senate; in making subsequent appointments, the Speaker and the President each were to alternate the political party affiliation of the members they appointed to the Commission.

Under the act, the number of ex officio, nonvoting members who are members of the General Assembly increases from two to four. Two ex officio members must be House members appointed by the Speaker and two ex officio members must be Senate members appointed by the President of the Senate. The Speaker must appoint one House member from among the representatives who are affiliated with the political party having a majority in the House and one House member from among the representatives who are affiliated with the political party having a minority in the House. Similarly, the President must appoint one Senate member from among the Senators who are affiliated with the political party having a majority in the Senate and one Senate member from among the senators who are affiliated with the political party having a minority in the Senate.

## OHIO HOUSING FINANCE AGENCY (HFA)

- Requires the Ohio Housing Finance Agency (OHFA), in providing homeownership program assistance, to give preference to grants or loans for activities that provide housing and housing assistance to honorably discharged veterans.
- Creates the Grants for Grads Program, administered by OHFA, to provide grants or other financial assistance or down payment assistance and a reduced mortgage interest rate for the purchase of qualifying first homes to Ohio residents receiving an associate, baccalaureate, master's, doctoral, or other postgraduate degree.
- Creates a lien in the first home and allows for recovery of assistance amounts for failure of a recipient to comply with certain program criteria.

### Housing assistance for honorably discharged veterans

(R.C. 175.052)

The act requires the Ohio Housing Finance Agency (OHFA), in providing homeownership program assistance, to give preference to grants or loans for activities that provide housing and housing assistance to honorably discharged veterans.

## Grants for Grads Program

(R.C. 175.01 and 175.31(A))

The act creates the Grants for Grads Program, administered by OHFA using money available to it, to provide grants or other financial assistance or downpayment assistance to Ohio residents who have received an associate, baccalaureate, master's, doctoral, or other postgraduate degree.

The act defines "down payment assistance" as monetary assistance for down payment, closing costs, and pre-paid expenses directly related to the purchase of a home.[239] Grants or assistance made pursuant to this program must be used by a recipient to pay for the down payment or closing costs on the purchase of a first home.

The Grants for Grads program is not subject to income limits generally applicable to other OHFA programs. OHFA must allow participation in the program by any person who meets the eligibility requirements outlined below.

### Program eligibility

(R.C. 175.30 and 175.31(B) and (C))

Under the act, a graduate is eligible to participate in the program if the graduate meets all of the following conditions:

(1) The graduate received an associate, baccalaureate, master's, doctoral, or other postgraduate degree from an institution of higher education within the 18 months immediately preceding the date of application for the program.

(2) The graduate is able to provide OHFA evidence documenting Ohio residency and graduation from a high school and institution of higher education.

(3) The graduate intends to live and work in Ohio for at least five years after graduation or completion of the degree.

(4) The graduate intends to purchase a first home in Ohio.[240]

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[239] The act retains use of the terms "grant" and "financial assistance" with regards to certain portions of the program and replaces "grantee" with "recipient" regarding the receipt of grants or assistance

[240] The act defines "graduate" as an individual who graduated from an institution of higher education and who is eligible for the program. It defines an "institution of higher education" as a state university or college located in Ohio, a private college or university located in Ohio that possesses a certificate of authorization issued by the Ohio Board of Regents, or an accredited college or university located outside

#### Ineligible graduates

The act specifies that a graduate who has been found by the state to be delinquent in the payment of individual income taxes is not eligible to receive a grant or other assistance. A graduate who is married to an individual who has previously received a grant or financial assistance or down payment assistance under the program is also not eligible to apply.

#### "First home" criteria

Under the act, a "first home" or "home" is the first residential real property located in Ohio to be purchased by a recipient who has not owned or had an ownership interest in a principal residence in the three years prior to the purchase.

#### "Ohio resident" criteria

Under the act, an "Ohio resident" is any of the following: (1) an individual who was a resident of Ohio at the time of the individual's graduation from an Ohio public or nonpublic high school that is approved by the State Board of Education, and who is a resident of Ohio when applying for the program, (2) an individual who was a resident of Ohio at the time of completing, through the 12th grade-level, a home study program approved by the State Board of Education, and who is a resident of Ohio when applying for the program, (3) an individual whose parent was a resident of Ohio at the time of the individual's graduation from high school, and who graduated from either an out-of-state high school that was accredited by a regional accrediting organization recognized by the U.S. Department of Education and met standards at least equivalent to those adopted by the State Board of Education for approval of nonpublic schools in Ohio or from a high school approved by the U.S. Department of Defense.

### Receipt of assistance

(R.C. 175.31(D) and (E))

An eligible graduate is to receive down payment assistance and a reduction in the interest rate of the mortgage offered by OHFA. The down payment assistance must be provided to the recipient when the recipient obtains a qualifying mortgage loan from a participating lender in OHFA's first time home buyer program, which program is already in existence.

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Ohio accredited by an accrediting organization or professional accrediting association recognized by the Board of Regents.

## Lien on first home

(R.C. 175.32)

The act provides that at the time a first home is purchased under the program, OHFA must secure the amount of the down payment assistance by a lien on the home for a period of five years. Such a lien attaches, and may be perfected, collected, and enforced in the same manner as a mortgage lien on the home, and must otherwise have the same force and effect as a mortgage lien on the home. However, the act specifies that the OHFA lien is subordinate to a mortgage lien securing any money loaned by a financial institution for the purchase of the home.

### Failure to comply with first home ownership criteria or use of fraudulent information

The act authorizes enforcement of the lien if OHFA finds that a recipient failed to comply with the first home ownership criteria of the act or otherwise applied for a grant using fraudulent information.

### Failure to reside in first home for at least five years

The act provides that if a recipient becomes a resident of another state and does not reside at least five years in a first home purchased using grant money, OHFA may collect on the lien. The amount collectable in such a circumstance is a function of the time the recipient resided in the first home. If a recipient has resided in the first home for less than 12 months, the act allows collection of 100% of the down payment assistance amount. If a recipient has resided in the first home for 12 months and a day to 24 months the act allows collection of 80% of the down payment assistance amount. If a recipient has resided in the first home for 24 months and a day to 36 months, the act allows collection of 60% of the down payment assistance amount. If a recipient has resided in the first home for 36 months and a day to 48 months, the act allows collection of 40% of the grant amount. And if a recipient has resided in the first home for 48 months and a day to 60 months, the act allows collection of 20% of the down payment assistance amount.[241]

[241] The act uses the construction of "and a day" in demarking the periods of time for which different collectible amount percentages for grant recovery apply. Presumably, for example, the percentage applicable to "24 months and a day" would apply to someone who resided in the home for 24 months and three hours--simply because no other percentage would apply. The act could be made clearer, however, if "and a day" was replaced where appropriate with "or more."

### Extinguishing the lien

The act provides that the five-year lien on the home secured by OHFA in the amount of the down payment assistance is extinguished if money is collected pursuant to the lien because a recipient becomes a resident of another state and does not reside at least five years in a first home purchased using grant money. Such a lien is also extinguished if the recipient, within the five-year period, moves to another residence in Ohio.

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## DEPARTMENT OF INSURANCE (INS)

- Transfers from the Director of Health to the Superintendent of Insurance authority to review a health insuring corporation's capability of providing the health care services for which the corporation is seeking a certificate of authority and other insurance review authority.

- Reduces the minimum number of employees or members of a trade or professional organization, labor union, or other association necessary to qualify for a sickness and accident insurance franchise plan with respect to long-term care insurance or disability income insurance.

- Increases the time period within which a person can request an external view for medical necessity after an internal review from a health insurance corporation and applies the same time limit to sickness and accident insurance and public employee benefit plans.

- Allows the Superintendent of Insurance to notify an "authorized person," instead of the insured person, of the result of the Superintendent's health care service denial review and requires health insuring corporations to cover services that the Superintendent determines are covered services.

- Shifts the burden of initiating an independent, external review of a health care service denial from the insured person to the health insuring corporation, sickness and accident insurer, or public employee benefit plan.

- Incorporates the previously existing Claims Processing Education Fund into the Department of Insurance Operating Fund as a separate account.

- Requires third party payers to pay claims for health care services to a provider electronically under Ohio's Prompt Payment Law when the third party payer receives the claim electronically.

- Clarifies that insurers must file the premium rates for small employer health benefit plans according to the requirements for group policies of a heath insuring corporation or sickness and accident insurer, as applicable.

- Clarifies that policies or certificates of sickness and accident insurance that are sold on the market to individuals are individual policies for the purposes of premium rate review regardless of whether those policies or certificates are issued through group policies.

- Creates the Health Care Coverage and Quality Council to advise the Governor, General Assembly, public and private entities, and consumers on strategies to expand affordable health insurance coverage to more individuals and improve the cost and quality of Ohio's health insurance system and health care system (PARTIALLY VETOED).

- Requires that all health care plans offered in the state that provide coverage for unmarried dependent children extend coverage at the request of the insured, under certain conditions, until the dependent child reaches at least 28 years of age and allows Ohio income tax deductions for coverage of those dependents (PARTIALLY VETOED).

- Makes changes to the open enrollment program, including changes to the number of people who must be accepted for health insurance coverage through open enrollment, the premium rates that can be charged for that coverage, and the effective dates of coverage.

- Reduces the maximum premium rates and contractual periodic prepayments that insurers and health insuring corporations may charge "federally eligible individuals" for individual health insurance contracts or policies that are converted from group contracts and policies.

- Prohibits insurers and health insuring corporations from using health status as a basis for refusing to renew a converted contract.

- Makes permanent the changes made by H.B. 2 of the 128th General Assembly (Transportation budget act) to the law regarding continuation of group health insurance coverage after termination of employment.

- Makes changes to the requirements concerning a sickness and accident insurer's aggregate administrative expenses and annual statement of the insurer's aggregate administrative expenses.

- Requires employers that employ ten or more employees to adopt and maintain a cafeteria plan that allows the employer's employees to pay for health insurance coverage by a salary reduction arrangement.
- Removes the statutory cap on homeowners insurance rates and basic property insurance rates that are established by the Ohio Fair Plan Underwriting Association for urban areas and instead requires that those rates be subject directly to the approval of the Superintendent of Insurance.
- Allows the Ohio Fair Plan Underwriting Association to approve payment of a percentage of the estimated annual premium due, instead of the entire estimated annual premium, before issuing a binder.
- Changes the effective date of a binder issued by the Ohio Fair Plan Underwriting Association from 15 days after the date of application to the day after the Association receives the application.
- Requires property and casualty insurance companies to annually submit to the Superintendent of Insurance specified actuarial documents.
- Places a moratorium on the Department of Insurance's designation of entities to provide investment options under alternative retirement plans established by public institutions of higher education until July 1, 2010.

## Review of health insuring corporation's capability and availability of services--certificate of authority

(R.C. 1751.03, 1751.04, 1751.05, 1751.19, 1751.32, 1751.321, 1751.34, 1751.35, 1751.36, 1751.45, 1751.46, 1751.48, and 1753.09)

Under prior law, when the Superintendent of Insurance received an application for a health insuring corporation certificate of authority, the Superintendent had to give copies of the application and accompanying documents to the Director of Health. Within 90 days of receiving the application and accompanying documents, the Director of Health had to review the applications and accompanying documents and certify to the Superintendent whether or not the health insuring corporation did all of the following:

(1) Demonstrated the willingness and potential ability to ensure that all basic health care services and supplemental health care services described in the evidence of

coverage will be provided to all its enrollees as promptly as is appropriate and in a manner that assures continuity;

(2) Made effective arrangements to ensure that its enrollees have reliable access to qualified providers in those specialties that are generally available in the geographic area or areas to be served by the applicant and that are necessary to provide all basic health care services and supplemental health care services described in the evidence of coverage;

(3) Made appropriate arrangements for the availability of short-term health care services in emergencies within the geographic area or areas to be served by the applicant, 24 hours per day, seven days per week, and for the provision of adequate coverage whenever an out-of-area emergency arises;

(4) Made appropriate arrangements for an ongoing evaluation and assurance of the quality of health care services provided to enrollees, including, if applicable, the development of a quality assurance program, and the adequacy of the personnel, facilities, and equipment by or through which the services are rendered;

(5) Developed a procedure to gather and report statistics relating to the cost and effectiveness of its operations, the pattern of utilization of its services, and the quality, availability, and accessibility of its services.

If the Director found that the health insuring corporation did not meet those five requirements, the Director had to give the health insuring corporation the opportunity for a hearing. A health insuring corporation could not receive a certificate of authority from the Superintendent if the Director did not certify that the health insuring corporation met those five requirements.

Prior law also required the Director to review a health insuring corporation's plan of operation and make a certification to the Superintendent, as described above, every time the application was amended or a health insuring corporation made a request to expand its approved service area. The Director also had to make an examination of health insuring corporations as often as the Director considered it necessary, but not less than every three years, to determine whether the health insuring corporation still met the above five requirements.

The act transfers all of the Director's review authority, as described above, to the Superintendent of Insurance, and removes the 90-day period within which an application for a certificate of authority and accompanying documents must be reviewed to determine whether the applicant meets the five requirements listed above. Under the act, the Superintendent must complete that review and the application

review already under the Superintendent's authority within the Superintendent's continuing time limit of 135 days. Additionally, the act removes the requirement that examination be repeated every three years.

Under prior law, a health insuring corporation had to make copies of its complaints and responses available to the Director and the Superintendent. A health insuring corporation also had to file annual reports and annual audit reports with both the Director and the Superintendent. Under the act, a health insuring corporation would not need to make any records available to the Director or file any reports with the Director. Additionally, the act removes from Health Insuring Corporation Law all authority of the Director to enforce Health Insuring Corporation Law and any requirements that the Superintendent consider any recommendations received from the Director for enforcement of Health Insuring Corporation Law or adoption of rules.

## Franchise plans

(R.C. 3923.11)

A franchise plan is a group of insurance policies issued to individuals in a group rather than to the group as a whole. Under law largely unchanged by the act sickness and accident insurers may issue franchise plans to either of the following:

(1) Five or more employees of any corporation, copartnership, or individual employer, or of any governmental corporation or agency or a department;

(2) Ten or more members of any trade or professional association, or labor union, or any other association having had an active existence for at least two years where the association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance.

In order for the policies to be considered as issued on a franchise plan, under continuing law, the employees or members must be issued the same form of an individual policy, varying only in the amounts and kinds of coverage for which the employees or members apply. Additionally, the premiums may be paid to the insurer periodically by the employer or by the association for its members, or by some designated person acting on behalf of the employer or association.

The act reduces to two or more the number of employees or members of a trade or professional organization, labor union, or other association necessary to qualify for a sickness and accident insurance on a franchise plan with respect to long-term care insurance or disability income insurance.

## Independent, external reviews of health care coverage decisions

(R.C. 1751.831, 1751.84, 1751.85, 3923.66, 3923.67, 3923.68, 3923.75, 3923.76, and 3923.77)

Under continuing law, health insuring corporations, sickness and accident insurers (insurers), and public employee benefit plans (plans) must provide for external reviews of certain health care coverage decisions made by those entities.

### External reviews at the request of the insured person

If a health care coverage decision denies, reduces, or terminates coverage for a particular service on the basis that the service is not medically necessary, continuing law requires the health insuring corporation, insurer, or plan that makes that decision to afford the insured person who has been denied coverage an opportunity for an external review upon that person's request. The same is required if a decision denies, reduces, or terminates coverage for a drug, device, procedure, or other therapy for a terminal condition on the basis that the therapy is experimental or investigatory.

Under prior law, a health insuring corporation could deny an insured person's request for an external review if the request was not made within 60 days after the insured person receives notification of the results of the health insuring corporation's internal review (the internal review is required under continuing law after the initial denial of coverage and upon the insured person's request). Insurers and plans were not afforded this same authority under prior law. The act increases the time during which an insured person can request an external review of a health insuring corporation's adverse decision, from 60 days to 180 days. The act also gives insurers and plans the authority to deny an insured person's request for an external review of an adverse decision if the request is not made within 180 days after the insured person receives notice from the insurer or plan of the adverse decision.

### Automatic external reviews

If a health insuring corporation, insurer, or plan denies, reduces, or terminates coverage for a particular service on the basis that the service is not one that is covered under the insurance contract, policy, or plan, continuing law allows an insured person, or a person authorized to act on behalf of the insured person, to request a review by the Superintendent of Insurance. Upon receiving the request, the Superintendent must consider the denial and determine whether the health care service is a service covered under the terms of the contract, policy, or plan. The Superintendent does not have to make a determination, however, if doing so requires resolution of a medical issue.

Under prior law, when a determination was made, or the Superintendent concluded that a determination could not be made because it required resolution of a

medical issue, the Superintendent had to notify the insured person and the insuring entity of that decision. The act allows the Superintendent to notify an "authorized person" of the decision, instead of the insured person and in addition to the insuring entity. For purposes of insurers and plans, continuing law defines an "authorized person" as a parent, guardian, or other person authorized to act on behalf of an insured person or plan member with respect to health care decisions. The term is not defined for purposes of health insuring corporations.

If the Superintendent determines that the service is not a covered service, continuing law does not require any further action from the health insuring corporation, insurer, or plan. If the Superintendent determines that the service is a covered service, continuing law is silent as to what insurers and plans must do, but prior law required health insuring corporations to either cover the service or afford the enrollee an opportunity for an external review. The act removes the latter option and simply requires that the health insuring corporation cover the service.

If the Superintendent could not make a determination because doing so required the resolution of a medical issue, prior law required the health insuring corporation, insurer, or plan to conduct an external review upon the insured person's request. A health insuring corporation could deny an enrollee's request for this type of external review under prior law if the request was not made within 60 days after the enrollee was first informed of the health insuring corporation's decision to deny the covered service (this decision was made during the health insuring corporation's internal review, which occurred before the Superintendent's review). An insurer or plan could deny an insured person's request for this type of external review if the request was not made within 60 days after the insured person received notice of the Superintendent's decision.

The act requires the health insuring corporation, insurer, or plan to initiate an independent, external review automatically, without a request from the insured person, upon receiving notification from the Superintendent that a determination cannot be made as to whether the service is a covered service under the contract, policy, or plan because that determination requires the resolution of a medical issue. Accordingly, the act removes any language that references an insurer's or plan's authority to deny this type of external review request on the basis that the insured person failed to make the request within a certain time period.

## Insurance prompt payment fines--disposition

(R.C. 3901.3812)

Under continuing law the Superintendent of Insurance may impose monetary penalties for insurers that do not process claims payments to health care providers as required under Ohio's law regulating prompt payments to health care providers. Those fines must be paid into the state treasury as follows: 25% to the Department of Insurance Operating Fund; 65% to the General Revenue Fund; and 10% to the Claims Processing Education Fund. The Superintendent must use the money in the Claims Processing Education Fund to make technical assistance available to third-party payers, providers, and beneficiaries for effective implementation of Ohio's law regulating prompt payments to health care providers. The act eliminates the separate fund status of the Claims Processing Education Fund and instead incorporates it into the Department of Insurance Operating Fund as a separate account.

## Electronic payment of claims

(R.C. 3901.381; Section 812.10)

The act requires third party payers to pay claims for health care services to a provider electronically under Ohio's Prompt Payment Law when the third party payer receives the claim electronically. The act also prohibits providers from refusing to accept those payments on the basis that they were transmitted electronically. Both of these changes become effective 12 months after the act's effective date.

## Health insurance premium rate filing

(R.C. 3923.021 and 3924.06)

Under continuing law, prior to delivering or issuing for delivery a policy or certificate of sickness and accident insurance, insurers must file with the Superintendent of Insurance the policy or certificate, or any endorsement, rider, or application which becomes or which is designed to become a part of any policy or certificate and the premium rates and classification of risks of the policy or certificate. The Superintendent has 30 days to review the filing and determine if it contains any provision which is contrary to the law of Ohio, or contains inconsistent provisions or any question, provision, title, heading, backing, or other indication of its contents, which is ambiguous, misleading, or deceptive, or likely to mislead or deceive the policyholder, certificate holder or applicant. The Superintendent also has the option of withdrawing approval of the filing anytime after the 30 days have expired. (R.C. 3923.02, not in the act.)

Similarly, prior to delivering or issuing for delivery a group policy,[242] continuing law requires a health insuring corporation to file with the Superintendent the contractual periodic prepayment information for the group policy. The Superintendent may reject the filing at any time, with at least 30 days' written notice to a health insuring corporation, if the contractual periodic prepayment is not in accordance with sound actuarial principles or is not reasonably related to the applicable coverage and characteristics of the applicable class of enrollees. (R.C. 1751.12, not in the act.)

The act clarifies that insurers that offer plans to small employers must file their premium rates with the Superintendent in accordance to the requirements above for group policies of sickness and accident insurance or for group policies of a health insuring corporation, as applicable.

Under continuing law, if a policy is an individual policy of sickness and accident insurance, when the insurer files the policy with the Superintendent as required above, the Superintendent must specifically review the premium rates to determine whether the benefits provided are unreasonable in relation to the premium charged. If the Superintendent does not disapprove the filing within 30 days, it is deemed approved. Anytime after the Superintendent approves the filing, the Superintendent, after a hearing, may withdraw approval of the filing.

The act clarifies that policies or certificates of sickness and accident insurance that are sold on the market to individuals are individual policies of sickness and accident insurance for the purposes of the Superintendent's review of premium rates regardless of whether those policies or certificates are issued through group policies to one or more associations or entities.

## Limiting age for dependent child coverage under a health care plan or insurance policy (PARTIALLY VETOED)

(R.C. 1739.05, 1751.14, 3923.24, and 3923.241; Section 803.10)

Continuing law specifically allows a health insurance policy offered by a sickness and accident insurer or a health insuring corporation that offers coverage for unmarried dependent children to place a "limiting age" upon that coverage. However, under continuing law, the attainment of that age may not operate to terminate coverage if the child continues to be both: (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap, and (2) primarily dependent upon the

[242] Continuing law contains similar requirements for filing of contractual periodic prepayment and premium rate for nongroup and conversion policies of a health insuring corporation (R.C. 1751.12, not in the act).

subscriber for support and maintenance. The act expands that requirement to include public employee benefit plans and multiple employer welfare arrangements (hereafter, MEWA).

Additionally, the act stipulates that once an unmarried child has attained the limiting age for dependent children, as provided in the policy or plan, upon the request of the subscriber, the insurer must offer to cover the unmarried child until the child's 28th birthday if all of the following are true: (1) the child is the natural child, stepchild, or adopted child of the subscriber, (2) the child is not employed by an employer that offers the child any "health benefit plan," (3) the child is a resident of Ohio or a full-time student at an accredited public or private institution of higher education, and (4) the child is not eligible for Medicaid or Medicare. The act's requirements apply only to policies and plans delivered, issued for delivery, or renewed on or after July 1, 2010. The Governor vetoed a provision that would have additionally required that the child maintained continuous coverage under any health benefit plan after having attained the limiting age for dependent children in order to be eligible for this expanded coverage.

For the purposes of determining what type of health coverage offered by an employer would disqualify a person from qualifying as a dependent under the act, the act defines a "health benefit plan" as a public employee benefit plan, a health benefit plan as regulated under ERISA, or any hospital or medical expense policy or certificate or any health plan provided by a health insuring corporation, sickness and accident insurer, or MEWA that is delivered, issued for delivery, renewed, or used in Ohio on or after the date occurring six months after November 24, 1995. "Health benefit plan" does not include policies covering only accident, credit, dental, disability income, long-term care, hospital indemnity, medicare supplement, specified disease, or vision care; coverage under a one-time-limited-duration policy of no longer than six months; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical-payment insurance; or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

### Exceptions

(R.C. 1751.14, 3923.24, and 3923.241)

The act specifies that it does not require insurers to offer dependent coverage in general and its requirements do not extend to dependents of dependents. Additionally, the act specifically does not require an employer to offer coverage to the dependents of any employee or to pay for any part of the premium for a dependent child that has already attained the normal limiting age for dependents that is specified in the policy or

plan. The act's requirements would not apply to specified supplemental health care services or specialty health care services.

### Deduction for coverage for older children

(R.C. 5747.01(A)(11))

Federal income tax law excludes the value of employer-paid health coverage from an employee's gross income, so the value of the coverage is not taxable income under the federal or Ohio income tax.[243] But both the federal and Ohio exclusions apply only to plans covering the taxpayer and any spouse or dependents. Federal income tax law defines who qualifies as a "dependent," and Ohio previously applied the same definition in all cases. (The qualification criteria for dependents is described below.) If a child was covered by an employer-paid plan but did not qualify as a dependent under federal income tax law, the value of the policy to the extent of that coverage could not be excluded from taxable income; the coverage of the nondependent was imputed to the taxpayer as taxable income.

Continuing law also authorizes an income tax deduction for amounts paid for medical care insurance and long-term care insurance covering the taxpayer or the taxpayer's spouse or dependents. The medical care insurance deduction may be claimed only to the extent the premiums paid are not offset by premium refunds, reimbursements, or dividends related to the coverage. It is available only for individuals who are not eligible for coverage under an employer-subsidized health plan (either directly or through a spouse's employer) and who are not eligible for Medicare coverage.[244]

The act permits taxpayers to deduct the income imputed to a taxpayer on the basis of an employer-paid plan covering a child who, although not a "dependent" for tax purposes, nevertheless meets requirements for being a "qualifying relative" under the Internal Revenue Code (IRC Sec. 152(d)) except for the income and support requirements. This definition includes the taxpayer's child or descendent of a child, brother, sister, stepbrother, stepsister, father, mother, ancestor of father or mother, stepfather, stepmother, nephew, niece, uncle, aunt, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law, or any other individual who has the same principal place of abode as the taxpayer and is a member of the taxpayer's household. The act also allows taxpayers to claim the medical care insurance deduction

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[243] Internal Revenue Code section 106, 26 U.S.C. 106.

[244] Coverage offered by a former employer--e.g., through a retirement plan--is treated as employer-subsidized coverage.

for coverage of the same qualifying relatives without requiring that those relatives meet any income or support requirements.

### Mandated review by Superintendent of Insurance--exemption

(R.C. 1751.14(A), 3923.24(A), and 3923.241(A))

The act exempts its provisions that require expanded coverage for dependents from the review otherwise required by R.C. 3901.71, which requires the Superintendent of Insurance to hold a public hearing to consider any new health benefit mandate contained in a law enacted by the General Assembly. A new health benefit mandate may not be applied to policies and plans of insurance until the Superintendent determines that the mandate can be fully and equally applied to self-insured employee benefit plans subject to the regulation under the federal Employee Retirement Income Security Act of 1974 (ERISA), and to employee benefit plans established by the state or its political subdivisions, or their agencies and instrumentalities. ERISA generally precludes state regulation of benefits offered by private self-insured, employee benefit plans.

## Mandatory open enrollment period for health insurance coverage

(R.C. 1751.15, 1751.18, 3923.58, 3923.581, and 3923.582)

Continuing law requires health insuring corporations, sickness and accident insurers (insurers), and multiple employer welfare arrangements (MEWAs) to hold an annual open enrollment period during which those carriers are required to accept applicants for health insurance in the order the applicants apply if the carrier issues health benefit plans to individuals or nonemployer groups. During open enrollment, all three types of carriers are required to accept "federally eligible individuals." A "federally eligible individual" is an uninsured person who is not eligible for a group health plan, Medicaid, or Medicare, and who has at least 18 months of previous coverage under a group, government, or church plan. The term is defined under continuing law by cross reference to federal regulations concerning portability, access, and renewability requirements for individual insurance coverage.

Continuing law also requires insuring corporations and insurers to accept non-federally eligible individuals for open enrollment coverage. Under prior law, sickness and accident insurers and MEWAs only had to accept non-federally eligible individuals if the insurer issued health benefit plans to individuals. Under the act, all carriers (health insuring corporation, sickness an accident insurers, and MEWAs must accept non-federally qualified individuals if the carrier offers health benefit plans to individuals and nonemployer groups with the exception of individual policies that are converted from group policies under Ohio law.

Additionally, the act conforms the requirements for health insuring corporation open enrollment coverage of non-federally eligible individuals to the requirements for sickness and accident insurers' and MEWAs' coverage of those individuals including requiring health insuring corporations to accept applicants up to the limits regardless of when they apply (prior law only health insuring corporations to accept non-federal eligible applicants during a one-month open enrollment period).

### Maximum number of required enrollees

Prior law limited the number of people that carriers must accept during open enrollment. With regard to federally eligible individuals, prior law capped the number of those individuals that must be accepted annually for open enrollment at ½% of the carrier's total number of insured individuals and non-employer groups. Insurers were only required to accept non-federally eligible individuals for open enrollment to the extent the number of such individuals did not exceed ½% of the insurer's total number of insured individuals. For health insuring corporations, prior law capped the number of non-federally eligible individuals that must be accepted at 1% of the health insuring corporation's total number of subscribers.

The act phases in an increase in those caps to 4% for federally eligible individuals and 4% for non-federally eligible individuals for calendar years 2010 and 2011 and 8% for each for 2012 and every year thereafter, unless the Superintendent of Insurance determines that act's changes to the open enrollment program have resulted in the market-wide average medical loss ratio for coverage sold to individual insureds and nonemployer group insureds in this state, including open enrollment insureds, to increase by more than 5¼ percentage points during calendar year 2010. If the Superintendent makes that determination, the 2010 and 2011 enrollment limit remains in effect. The Superintendent's determination must be supported by a signed letter from a member of the American Academy of Actuaries.

Under prior law, once an insurer met the open enrollment cap for non-federally eligible individuals, the insurer would be exempt from the requirements for the rest of the calendar year. For federally eligible individuals, prior law required that once all insures met the limit, insurers would have to accept additional open enrollment enrollees up to ½% of the insurer's total individual and non-employer group insures in Ohio. The act allows carriers to be exempt only for as long as the carrier continues to meet the enrollment limit. If the total number of the carrier's current insureds with open enrollment coverage falls below the enrollment limit, the carrier must accept new applicants. The act also allows a carrier to establish a waiting list if the insurer has met the open enrollment limit and must notify the Superintendent if the carrier has a waiting list in effect. For federally eligible individuals, the act requires that once all

carriers meet the limit, carriers must accept additional enrollees up to half of the applicable percentage limit required under the act as described above.

### Rates for open enrollment coverage

In addition to limiting the number of people who must be accepted during open enrollment, prior law limited the premiums that can be charged for open enrollment coverage. Under prior law carriers accepting federally eligible individuals for open enrollment coverage could not charge those individuals more than two times the midpoint rate charged other individuals for similar coverage. "Midpoint rate" was defined in prior law as the arithmetic average of the base premium rate and the corresponding highest premium rate charged to individuals with similar case characteristics and plan design. With regard to non-federally eligible individuals who are accepted for open enrollment, insurers were prohibited from charging more than two and one-half times the highest rate charged any other individual for similar coverage. There was no similar prohibition for health insuring corporations, meaning that health insuring corporations could charge higher premium rates.

The act phases in a reduction in the premium rates that can be charged by carriers for federally eligible and non-federally eligible individuals including applying those rate limitations to health insuring corporations. Under the act, the rate limit for calendar years 2010 and 2011 is an amount that is two times the base rate charged for coverage offered to any other individual to which the carrier is currently accepting new business, and for which similar copayments and deductibles are applied. The rate limit for calendar year 2012 and every calendar year thereafter is an amount that is one and one-half times the base rate for coverage offered to any other individual to which the carrier is currently accepting new business and for which similar copayments and deductibles are applied, unless the Superintendent determines that the act's changes to the open enrollment program have resulted in a market-wide average medical loss ratio for coverage sold to individual insureds and nonemployer group insureds in this state, including open enrollment insureds, to increase by more than 5¼ percentage points during calendar year 2010. If the Superintendent makes that determination, the premium limit for 2010 and 2011 remains in effect. The Superintendent's determination must be supported by a signed letter from a member of the American Academy of Actuaries.

For purposes of open enrollment coverage, the act defines "base rate" as the lowest premium rate for new or existing business prescribed by the carrier for the same or similar coverage under a plan or arrangement covering any individual with similar case characteristics.

### Delay in open enrollment coverage

Under prior law, an insurer did not have to make open enrollment benefits available to non-federally eligible individuals for the first 90 days after enrollment. The act requires an immediate effective date for such benefits when the insured individual had other health care coverage that was terminated by a carrier because the carrier exited the market and the individual was accepted for open enrollment within 63 days of that termination. Under any other circumstance, the act continues to allow the 90-day delay.

### Preexisting conditions

Under ongoing law, open enrollment health benefit plans issued to non-federally eligible individuals may establish preexisting conditions provisions that exclude or limit coverage for a period of up to 12 months following the individual's effective date of coverage and that may relate only to conditions during the six months immediately preceding the effective date of coverage. The act adds that in determining whether a preexisting condition provision applies to an insured or dependent, each plan must credit the time the insured or dependent was covered under a previous policy, contract, or plan if the previous coverage was continuous to a date not more than 63 days prior to the effective date of the new coverage, exclusive of any applicable service waiting period under the plan.

Under continuing law a health insuring corporation may apply a preexisting condition provision for any basic health care service related to a transplant of a body organ if the transplant occurs within one year after the effective date of a non-federally eligible enrollee's coverage under the open enrollment program except with respect to a newly born child. The act maintains this exception for health insuring corporations only.

### Commissions for open enrollment contracts

Prior law required insurers to pay agents a 5% commission for initial open-enrollment health insurance contracts for non-federally eligible individuals and a 4% commission for renewals of those contracts. The act removes the mandatory character of those commissions and, instead, makes them optional while maintaining the Superintendent's rulemaking and enforcement authority. The act also allows health insuring corporations, insurers, and MEWAs issuing health insurance contracts through open enrollment to federally eligible individuals to pay those commissions and extends the Superintendent's rulemaking and enforcement authority to these types of arrangements.

### Exceptions

Under continuing law sickness and accident insurers and MEWAs are not required to accept non-federally eligible individuals if the insurer that is currently in a state of supervision, insolvency, or liquidation. If an insurer demonstrates to the satisfaction of the Superintendent that those open enrollment requirements would place the insurer in a state of supervision, insolvency, or liquidation, the Superintendent may waive or modify either the requirement to accept non-federally eligible individuals or the cap on that number of those individuals the insurer must accept. The act adds the following to the circumstances that would allow the Superintendent to waive or modify those requirements: the requirements would otherwise jeopardize the carrier's economic viability overall or in the individual market. (Continuing law provides a similar exception for open enrollment coverage of federally eligible individuals.)

Additionally, under continuing law, if a carrier offers a health benefit plan in the individual market through a network plan, the carrier may limit the federally eligible individuals that may apply for such coverage to those who live, work, or reside in the service area of the network plan. Within the service area of the network plan, carriers also may deny the coverage to federally eligible individuals if the carrier has demonstrated both of the following to the Superintendent: (1) the carrier will not have the capacity to deliver services adequately to any additional individuals because of the carrier's obligations to existing group contract holders and individuals, (2) the carrier is applying that denial of coverage uniformly to all federally eligible individuals without regard to any health status-related factor of those individuals. A carrier that denies coverage to an individual in the service area of a network plan, may not offer coverage in the individual market within that service area for at least 180 days after the date the coverage is denied. The act applies this same exception to open enrollment coverage of non-federally qualified individuals.

### Rules adopted by the Superintendent

The act allows the Superintendent to adopt rules in accordance with the Administrative Procedures Act (R.C. Chapter 119.) to implement the open enrollment program, including rules relating to both of the following: (1) requirements for adequate notice by carriers to consumers of the availability and premium rates of open enrollment coverage, (2) reporting and data collection requirements for implementation of the open enrollment program and to evaluate the performance of the open enrollment program and the individual health insurance market of this state.

Additionally, on or before June 30, beginning calendar year 2011 and continuing every year thereafter, the act requires the Superintendent to issue a report to the Governor and the General Assembly on the open enrollment program and the

performance of the individual health insurance market in this state. The report must include a determination by the Superintendent, supported by a signed letter from a member of the American Academy of Actuaries, as to whether the amendments by this act the open enrollment program, have caused the market-wide average medical loss ratio for coverage sold to individual insureds and nonemployer group insureds in this state, including open enrollment insureds, to increase and, if so, by how many percentage points.

### Group-to-individual policy conversions

(R.C. 1751.16 and 3923.122)

Under continuing law, every group contract issued by a health insuring corporation or sickness and accident insurer must provide an option for conversion to an individual contract. When a federally eligible individual exercises that option to convert, continuing law, revised in part by the act, prohibits the health insuring corporation or insurer from charging periodic prepayments or premiums that exceed two times the midpoint of the standard rate charged any other individual for similar coverage. "Midpoint of the standard rate" was not a defined term under prior law.

The act phases in a reduction in the premium rates that can be charged by health insuring corporations and sickness and accident insurers carriers for converted policies covering federally eligible individuals including applying those rate limitations to health insuring corporations. Under the act, the rate limit for calendar years 2010 and 2011 is an amount that is two times the base rate charged for coverage offered to any other individual to which the carrier is currently accepting new business, and for which similar copayments and deductibles are applied. The rate limit for calendar year 2012 and every calendar year thereafter, is an amount that is one and one-half times the base rate for coverage offered to any other individual to which the carrier is currently accepting new business and for which similar copayments and deductibles are applied, unless the Superintendent determines that the act's changes to the open enrollment program have resulted in a market-wide average medical loss ratio for coverage sold to individual insureds and nonemployer group insureds in this state, including open enrollment insureds, to increase by more than 5¼ percentage points during calendar year 2010. If the Superintendent makes that determination, the premium limit for 2010 and 2011 remains in effect.

For purposes of converted policies, the act defines "base rate" as the lowest premium rate for new or existing business prescribed by the carrier for the same or similar coverage under a plan or arrangement covering any individual of a group with similar case characteristics.

Additionally, the act prohibits health insuring corporations and sickness and accident insurers from using health status as a basis for refusing to renew a converted policy.

## Continuation of group health insurance coverage

(Section 105.10)

Am. Sub. H.B. 2 of the 128th General Assembly makes the following changes to the law regarding continuation of group health insurance coverage after termination of employment:

(1) The act lengthens the time that the employee would be eligible for continued coverage from six months to 12 months.

(2) The act also eliminates the requirement that an individual be eligible for unemployment compensation in order to be eligible for continued coverage under the individual's group contract after termination of employment and requires only that the individual's employment has not been terminated voluntarily or as a result of any gross misconduct on the part of the individual.

(3) The act removes prescription drug benefits from a list that specifies coverages that the continuation of coverage is not required to include.

(4) The act requires employees to notify the health insuring corporation or insurer if the employee elects continuing coverage and allows the health insuring corporation or insurer to require the employer to provide documentation if the employee elects continuation of coverage and is seeking premium assistance for the continuation of coverage under the American Recovery and Reinvestment Act of 2009. The "Director of Insurance" (presumably, this refers to the Superintendent of Insurance) must publish guidance for employers and health insuring corporations concerning the contents of that documentation.

However, Am. Sub. H.B. 2 also specified that its changes to this law automatically repeal on January 1, 2010, thereby reverting the law to the set of requirements that existed prior to the act's enactment. This act, however, removes the automatic repeal, thereby making the changes enacted in Am. Sub. H.B. 2 permanent.

## Administrative expenses incurred by sickness and accident insurers

(R.C. 3923.022)

Continuing law limits the amount of aggregate administrative expenses an insurer licensed to do the business of sickness and accident insurance may have in any

year to no more than 20% of the premium income of the insurer, based on the premiums received in that year on the sickness and accident insurance business of the insurer. Under the act, the percentage of aggregate administrative expenses would be based upon the premiums "earned" rather than "received."

Prior law defined "administrative expense" as

> The amount resulting from the following: the amount of premiums received by the insurer for sickness and accident insurance business minus the sum of the amount of claims for losses paid; the amount of losses incurred but not reported; the amount paid for state fees, federal and state taxes, and reinsurance; and the costs and expenses related, either directly or indirectly, to the payment of commissions, measures to control fraud, and managed care. "Administrative expense" does not include any amounts collected, or administrative expenses incurred, by an insurer for the administration of an employee health benefit plan subject to regulation by the federal "Employee Retirement Income Security Act of 1974," 88 Stat. 832, 29 U.S.C.A. 1001, as amended.

The act additionally includes in the definition of administrative expenses for the purposes of the cap on sickness and accident insurer's administrative expenses premiums "earned" rather than just "received" (not necessarily equal amounts), the amount of losses recovered from reinsurance coverage, the amount "incurred" for state fees rather than "paid," and the "incurred" costs and expenses related to payment of commissions rather than the actual costs and expenses (not necessarily equal amounts).

Under continuing law, each insurer must submit to the Superintendent of Insurance an annual statement of the insurer's aggregate administrative expenses. However, the act specifies that the statement must itemize and separately detail all of the following information with respect to the insurer's sickness and accident insurance business:

(1) The amount of premiums earned by the insurer both before and after any costs related to the insurer's purchase of reinsurance coverage;

(2) The total amount of claims for losses paid by the insurer both before and after any reimbursement from reinsurance coverage;

(3) The amount of any losses incurred by the insurer but not reported by the insurer in the current or prior year;

(4) The amount of costs incurred by the insurer for state fees and federal and state taxes;

(5) The amount of costs incurred by the insurer for reinsurance coverage;

(6) The amount of costs incurred by the insurer that are related to the insurer's payment of commissions;

(7) The amount of costs incurred by the insurer that are related to the insurer's fraud prevention measures;

(8) The amount of costs incurred by the insurer that are related to managed care;

(9) Any other administrative expenses incurred by the insurer.

Additionally, the statement must include all of the above information separately detailed for the insurer's individual business, small group business, and large group business. However, the act specifies that the statement of aggregate expenses that separately details that information must be considered work papers resulting from the conduct of a market analysis meaning that the statement is not public record but the Superintendent may share aggregated market information that identifies all of the itemized information except for the amount of costs incurred by the insurer for reinsurance coverage. Under the act, "individual business" includes policies or certificates of sickness and accident insurance that are sold on the individual market to individuals regardless of whether those policies or certificates are issued through group policies to one or more associations or entities.

Under continuing law the Superintendent may suspend the license of an insurer if the insurer fails to meet the limits on aggregate administrative expenses. The act also allows the Superintendent to suspend the license of an insurer if the insurer fails to submit the required annual statement.

### Employer-sponsored health insurance coverage

(R.C. 4113.11)

The act requires employers that employ ten or more employees to adopt and maintain a cafeteria plan that allows the employer's employees to pay for health insurance coverage by a salary reduction arrangement under the Internal Revenue Code (IRC). However, the act exempts employers that, through other means, offer health insurance coverage, reimburse for health insurance coverage, or provide employees

with opportunities to pay for health insurance with pre-tax dollars through other salary reduction arrangements. The act refers to the IRC for the definition of "cafeteria plan." The IRC defines a cafeteria plan as a written plan under which all participants are employees, and the participants may choose among two or more benefits consisting of cash and qualified benefits. With specified exceptions, under the IRC, a cafeteria plan does not include any plan that provides for deferred compensation. (IRC Sec. 125.)

### Implementation

The act delays the date on which employers must adopt and maintain the required cafeteria plan as follows: (1) for employers that employ more than 500 employees, by not later than January 1, 2011, or six months after the Superintendent of Insurance adopts rules to implement and enforce the requirement, whichever is later, (2) for employers that employ 150 to 500 employees, by not later than July 1, 2011, or 12 months after the Superintendent adopts rules to implement and enforce the requirement, whichever is later, (3) for employers that employ 10 to 149 employees, by not later than January 1, 2012, or 18 months after the Superintendent adopts rules to implement and enforce the requirement, whichever is later.

Under the act, the Superintendent of Insurance must adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement and enforce the requirement that employers offer a cafeteria plan. Prior to adopting rules, the act requires the Superintendent to consult any federal agency that has oversight of cafeteria plans and employee welfare benefit plans, including the Internal Revenue Service and the United States Department of Labor, and receive written confirmation that the rules adopted will permit employers to establish cafeteria plans in accordance with federal law. The act, additionally, clarifies that its requirements for the adoption and maintenance of a cafeteria plan should not be construed as requiring an employer to establish a cafeteria plan in a manner that would violate federal law, including the Employee Retirement Income Security Act (ERISA) the Consolidated Omnibus Budget Reconciliation Act (COBRA) or the "Health Insurance Portability and Accountability Act (HIPAA).

Additionally, the Health Care Coverage and Quality Council must make recommendations to the Superintendent for the development of strategies to educate, assist, and conduct outreach to employers to simplify administrative processes with respect to creating and maintaining cafeteria plans, including, but not limited to, providing employers with model cafeteria plan documents and technical assistance on creating and maintaining cafeteria plans that conform with state and federal law. The Council also must make recommendations to the Superintendent for the development of strategies to educate, assist, and conduct outreach to employees with respect to finding, selecting, and purchasing a health insurance plan to be paid for through their

employer's cafeteria plan. The rules adopted by the Superintendent must include the strategies recommended by the Council.

### Definitions

The act defines "employer" as "any person who has one or more employees. "Employer" includes an agent of an employer, the state or any agency or instrumentality of the state, and any municipal corporation, county, township, school district, or other political subdivision or any agency or instrumentality thereof."

The act defines "employee" as "an individual employed for consideration who works 25 or more hours per week or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment, except for a public employee employed by a township or municipal corporation." In that case, "employee" means "an individual hired with the expectation that the employee will work more than one thousand five hundred hours in any year unless full-time employment is defined differently in an applicable collective bargaining agreement."

## Health Care Coverage and Quality Council

(R.C. 3923.90 and 3923.91; Section 307.20)

The act creates the Health Care Coverage and Quality Council to advise the Governor, General Assembly, public and private sector entities, and consumers on strategies to expand affordable health insurance coverage to more individuals and improve the cost and quality of Ohio's health insurance system and health care system.

### Council membership

The act provides that the Council is to consist of the following members:

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

(2) The Director of the Executive Medicaid Management Administration;

(3) The Director of Medicaid;

(4) The Director of Health;

(5) The Benefits Administrator of the Office of Benefits Administration in the Department of Administrative Services;

(6) Two members of the House of Representatives, one to be appointed by the Speaker of the House and one to be appointed by the Minority Leader of the House;

(7) Two members of the Senate, one to be appointed by the President of the Senate and one to be appointed by the Minority Leader of the Senate;

(8) The following members to be appointed by the Governor, with the advice and consent of the Senate:

(a) Two representatives of consumers of health care services;

(b) Two representatives of employers that provide health care coverage to their employees;

(c) Two representatives of medical facilities, at least one of whom is a representative of a research and academic medical center;

(d) Two physicians;

(e) Two individuals or representatives of individuals authorized to practice dentistry, optometry, podiatry, or chiropractic;

(f) Two representatives of sickness and accident insurers or health insuring corporations;

(g) Two representatives of organized labor;

(h) One representative of a nonprofit organization experienced in health care data collection and analysis;

(i) One individual with expertise in health information technology and exchange;

(j) One representative of a state retirement system;[245]

(k) One public health professional.

(9) Other members to be appointed by the Superintendent of Insurance.

Appointments to the Council must be made not later than 30 days after the effective date of this provision of the act. The initial legislative members are to be appointed for terms ending three years from the date of appointment.[246] The initial

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[245] The five state retirement systems are the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), School Employees Retirement System (SERS), and State Highway Patrol Retirement System (SHPRS).

[246] Legislative members cease to be Council members on ceasing to be members of the General Assembly.

members appointed by the Governor and the Superintendent of Insurance are to serve staggered terms of one, two, or three years, as selected by the Governor or Superintendent when making appointments to the Council. Thereafter, all appointed members are to serve terms of three years.

The Council is required to hold its first meeting not later than September 1, 2009. The Superintendent of Insurance or the Superintendent's designee is to serve as chairperson of the Council. Members are to serve without compensation, except to the extent that serving on the Council is considered part of their regular employment duties. The Superintendent is authorized by the act to provide staff and other administrative support for the Council to carry out its duties.

### Duties and reports (PARTIALLY VETOED)

The act requires the Council to do all of the following:

(1) Advise the Governor and General Assembly on strategies to improve health care programs and health insurance policies and benefit plans;

(2) Monitor and evaluate implementation of strategies for improving access to health insurance coverage and improving the quality of Ohio's health care system, identify barriers to implementing those strategies, and identify methods for overcoming the barriers;

(3) Catalog existing health care data reporting efforts and make recommendations to improve data reporting in a manner that increases transparency and consistency in the health care and insurance coverage systems;

(4) Study health care financing alternatives that will increase access to health insurance coverage, promote disease prevention and injury prevention, contain costs, and improve quality;

(5) Evaluate systems that individuals use to obtain or otherwise become connected with health insurance and recommend improvements to those systems or the use of alternative systems;

(6) Recommend minimum coverage standards for basic and standard health insurance plans offered by insurance carriers;

(7) Recommend strategies, such as subsidies, to assist individuals in being able to afford health insurance coverage;

(8) Recommend strategies to implement health information technology to support improved access and quality and reduced costs in Ohio's health care system;

(9) Study alternative care management options for Medicaid recipients not required to participate in the Medicaid care management system;

(10) Perform any other duties specified in rules adopted by the Superintendent.

The act authorizes the Superintendent to adopt rules as necessary for the Council to carry out its duties. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). In adopting the rules, the Superintendent may consider recommendations made by the Council.

On or before December 31 each year, the act requires the Council to prepare and issue an annual report, which may include recommendations. The Council may prepare and issue other reports and recommendations at other times that the Council finds appropriate.

The Governor vetoed a provision that would have required the Council to evaluate and recommend strategies pursuant to the recommendations of the former Ohio Medicaid Administrative Study Council[247] to establish an initiative conducted by clinicians in the Office of Ohio Health Plans in the Department of Job and Family Services to do all of the following:

(1) Adopt evidence-based protocols for the prevention and management of disease;

(2) Develop a centralized system for payment of Medicaid claims;

(3) Provide physicians, nurses, and allied health professionals with training on Medicaid claims procedures and payment reforms;

(4) Monitor results for preventive and primary care services.

The Council would have been required not later than June 30, 2010, to submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House.

[247] The Ohio Medicaid Administrative Study Council was created under Am. Sub. H.B. 66 of the 126th General Assembly, the main operating budget for fiscal years 2006 and 2007. The Council ceased to exist after issuing its final report to the Governor, Senate President, and House Speaker in December 2006. (Ohio Medicaid Administrative Study Council, *About the Council*, available at <http://www.medicaidstudycouncil.ohio.gov/description.asp>.)

### Exemption from sunset requirements

Continuing law provides that a board or commission will cease to exist after four years unless legislation is enacted extending its existence. The act exempts the Council from this law.

## The Ohio Fair Plan Underwriting Association

(R.C. 3929.43)

Under continuing law, the Ohio Fair Plan Underwriting Association is charged with making basic property insurance and homeowners insurance available in urban areas to people whose property is insurable in accordance with reasonable underwriting standards but who are unable to get insurance through normal channels. This task is accomplished through a plan of operation, which is approved by the Superintendent of Insurance and implemented by every insurer who is authorized to write basic property insurance in Ohio as members of the Association.

### Rates for basic property insurance and homeowners insurance

Prior law specified that the rates for the basic property insurance offered under the Fair Plan could not exceed those filed with the Superintendent of Insurance by the major rating organization in Ohio. For homeowners insurance rates, the Association could file deviations from the rating organization's rates, but those deviations were subject to the Superintendent's approval. The act eliminates those limitations on rates and instead requires only that all filings of the rates for basic property insurance and homeowners insurance be subject to the approval of the Superintendent.

### Binders for basic property insurance and homeowners insurance

When a person applies for basic property insurance or homeowners insurance under the Plan, continuing law requires issuance of a binder for the coverage sought. In practice, a binder is temporary insurance that is issued until a final agreement for insurance is made. Continuing law does not require issuance of a binder until the applicant has paid the amount of the annual premium due, as estimated by the Association, for the coverage sought. Under prior law, the binder took effect 15 days following the date of application.

The act allows the Association to determine an appropriate percentage of the estimated annual premium that can be paid, instead of the full amount, before a binder must be issued. Additionally, the act changes the binder's effective date to the day after the Association receives the application, provided that the application meets the underwriting standards of the Association.

## Property and casualty insurance reporting requirements

(R.C. 3903.77)

The act requires property and casualty insurance companies that do business in Ohio annually to have a qualified actuary[248] prepare the following documents:

(1) A "Statement of Actuarial Opinion" (an actuarial opinion that certifies to the reasonableness of the insurance company's reserves);

(2) An "Actuarial Opinion Summary" (a summary in support of the Statement of Actuarial Opinion). Except, the act does not require an insurance company licensed but not domiciled in Ohio to include the Actuarial Opinion Summary in its submissions to the Superintendent of Insurance unless requested by the Superintendent.

The act requires insurers to submit those documents to the Superintendent in accordance with the National Association of Insurance Commissioners' (hereafter, NAIC) property and casualty annual statement instructions. However, the act allows the Superintendent to exempt property and casualty insurance companies from the requirement to prepare and submit these documents.

Additionally, the act requires insurers to prepare an actuarial report and underlying work papers to support those documents in accordance with the NAIC's property and casualty statement instructions. The insurance company must make the actuarial report and underlying work papers available to the Superintendent upon request. If an insurer fails to provide the actuarial report or work papers at the request of the Superintendent or the Superintendent determines that the actuarial report or work papers provided are unacceptable, the act allows the Superintendent to contract with a qualified actuary at the expense of the insurer to review the Statement of Actuarial Opinion provided by the insurer. The actuary may review the basis for that opinion and prepare a separate set of actuarial report and work papers.

Except in cases of fraud or willful misconduct on the part of the actuary, the act protects any actuary appointed by an insurer to prepare the Statement of Actuarial Opinion and Actuarial Opinion Summary from liability for damages to any person except the insurer and the Superintendent for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

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[248] Under the act, "qualified actuary" means a person who is a member in good standing of the American Academy of Actuaries and who meets the requirements identified in the NAIC's property and casualty statement instructions.

Under the act, the Statement of Actuarial Opinion is a public document and a public record. However, the Actuarial Opinion Summary, actuarial report, work papers, and any documents, materials or other information provided in support of the Statement of Actuarial Opinion are privileged and confidential, are not a public record, are not subject to subpoena or to discovery, and are not admissible in evidence in any private civil action. The act prohibits the Superintendent, including any person who receives documents, materials, or other information required to be kept confidential while acting under the authority of the Superintendent, from testifying in any private civil action concerning any of the documents, materials, or other information. However, the act specifies that this confidentiality should not be construed to limit the Superintendent's authority to release documents to the Actuarial Board for Counseling and Discipline so long as the documents are necessary for the purpose of professional disciplinary proceedings and the Actuarial Board for Counseling and Discipline establishes procedures satisfactory to the Superintendent for preserving the confidentiality of the documents. Additionally, the act specifies that the confidentiality provisions should not be construed to limit the Superintendent's authority to use documents, materials, nor other information in furtherance of any regulatory or legal action brought as part of the Superintendent's official duties.

In order to assist in the performance of the Superintendent's duties, the act allows the Superintendent to do all of the following:

(1) Share documents, materials, or other information, including any documents, materials, or other information required to be kept confidential, with other state, federal, and international regulatory and law enforcement agencies and with the NAIC including its affiliates and subsidiaries if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality;

(2) Receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, and information from other state, federal, and international regulatory and law enforcement agencies and from the NAIC including its affiliates and subsidiaries. The act additionally specifies that the Superintendent must maintain the confidentiality and privileged status of any document, material, or other information received with notice of confidential and privileged status under the laws of the jurisdiction that is the source of the document, material, or information.

(3) Enter into agreements as described above for the sharing and use of information.

### Providers of investment options under alternative retirement plans

(Section 739.10)

Continuing law requires the Department of Insurance to designate three or more entities to provide investment options under alternative retirement plans established by public institutions of higher education in accordance with Ohio's law governing alternative retirement plans (R.C. Chapter 3305.) and provides specific requirements that, if met, qualify an entity to be a designated provider. The act requires the Department to withhold from designating any additional entities that the Department has not designated prior to the effective date of this provision of the act until July 1, 2010. However, the act allows the Superintendent to approve additions, deletions, substitutions, and other changes to the investment options offered by an entity already designated by the Superintendent.

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## DEPARTMENT OF JOB AND FAMILY SERVICES (JFS)

### I. General

- Permits federal grant funds that are obligated by the Ohio Department of Job and Family Services (ODJFS) for financial allocations to county family services agencies and local workforce investment boards to be available for expenditure for the duration of the federal grant period.

- Creates the ODJFS General Services Administration and Operating Fund.

- Provides for the Treasurer of State to transfer money in the Refunds and Audit Settlements Fund to the ODJFS General Services Administration and Operating Fund after completion of the reconciliation of all final transactions with the federal government regarding a federal grant for a program ODJFS administers and a final closeout for the grant.

- Provides for money in the ODJFS General Services Administration and Operating Fund to be used for expenses of the programs ODJFS administers and ODJFS's administrative expenses.

- Eliminates a requirement that ODJFS collaborate with county departments of job and family services (CDJFSs) to develop training for appropriate CDJFS employees regarding CDJFSs' duties under previous welfare reform legislation and, after the training is developed, collaborate with the CDJFSs on providing the training.

- Provides that a board of county commissioners, county children services board, or child support enforcement agency is not entitled to an administrative review when ODJFS, pursuant to its authority to take various actions against a county regarding a family services duty, performs or contracts with another entity to perform the family services duty if ODJFS determines that an emergency exists.

- Would have required ODJFS to reallocate certain funds to counties when ODJFS was informed that a county would not use the full amount allocated to it for fiscal year 2010 or 2011 or when ODJFS determined through an annual close out or reconciliation of funds that a county had not used the entire amount of the funds (VETOED).

- Revises the law governing the method by which cash assistance is provided under the Ohio Works First (OWF) and Disability Financial Assistance programs by (1) also applying the law to cash assistance provided under the Refugee Assistance Program, (2) eliminating law that permits a board of county commissioners to require a CDJFS to establish a voluntary or mandatory direct deposit system unless the ODJFS Director has provided for the cash assistance to be made by a state electronic benefit transfer system, (3) requiring a CDJFS to establish a direct deposit system and inform applicants for and recipients of the programs that they must choose whether to receive the cash assistance under the county direct deposit system or the state electronic benefit transfer system, (4) eliminating law that (a) requires a CDJFS to determine what type of account will be used for direct deposit, (b) requires a CDJFS to negotiate with financial institutions to determine the charges, if any, to be imposed, and (c) specifies whether a CDJFS must or may pay the charges, (5) eliminating law that permits a recipient to elect to receive cash assistance in the form of a paper warrant, and (6) eliminating law that requires a CDJFS to bear the full cost of the amount of a replacement warrant under certain circumstances.

## II. Child Welfare and Adoption

- Eliminates the requirement that a public children services agency (PCSA) must enter into an agreement with a special needs child's adoptive parent, under certain circumstances, under which the agency must make state adoption maintenance subsidy payments, and instead permits the agency to enter into an agreement if state funds are available.

- Eliminates the requirement that if, after a child's adoption is finalized, a PCSA considers the child to be in need of public care or protective services, the agency must enter into an agreement with the child's adoptive parent under which the agency must make post adoption special services subsidy payments to the extent

state funds are appropriated, and instead permits the agency to enter into an agreement to the extent that state funds are available.

- Eliminates the required listing of all children who are in the permanent custody of an institution or association certified by ODJFS and the required listing of all persons who wish to adopt children and who are approved by an agency empowered to do so.

- Eliminates the requirement that ODJFS compile a report with conclusions regarding the effectiveness of the listing program and submit it to the General Assembly.

- Creates an 18-month pilot program in not more than ten counties, based on an "Alternative Response" approach to reports of child abuse, neglect, and dependency, to be developed and implemented by ODJFS.

- Would have extended from two to four years the period of time within which ODJFS must pass upon the fitness of an institution or association that receives children, or desires to receive and care for children, or places children in private homes, but would have retained the two-year period for individuals who, for compensation, receive or care for children for two or more consecutive weeks (VETOED).

### III. Child Care

- Permits the ODJFS Director to adopt rules that establish a different system for the payment of publicly funded child care.

- Eliminates the requirement that CDJFSs specify the maximum number of days providers of publicly funded child care will be provided certificates of payment for days the provider would have provided publicly funded child care had the child been present.

- Eliminates the requirement that CDJFSs automatically review the fee paid by a caretaker parent for publicly funded child care every six months, and instead requires CDJFSs to adjust the fee if the parent reports changes in income, family size, or both.

- Reduces the number of mandatory inspections given to a child day-care center or type A family day-care home from twice to once during each 12-month period of operation and permits all inspections to be unannounced.

- Specifies that, if a center or type A home has been notified that it is in violation of the Day-care Laws and it fails to timely correct the violation, ODJFS's

commencement of an action to revoke the center's or home's license is sufficient notice that the correction has not been made.

- Requires the parent, guardian, or custodian of each child receiving child care from a type A or type B family day-care home that is not covered by liability insurance to sign a written statement, instead of an affidavit, provided by the licensee of the type A family day-care home or the provider of the type B family day-care home stating that the family day-care home does not carry liability insurance.

- Creates a committee to study publicly funded child care services, which must prepare a report of its findings by June 30, 2010, and provide a copy of the report to the Governor, the Speaker of the House of Representatives, and the President of the Senate.

## IV. Child Support Enforcement

- Requires health insurance providers to send information to the Office of Child Support in ODJFS identifying policy holders and policy information upon request.

- Authorizes a court or child support enforcement agency to transmit a child support withholding or deduction notice to an obligor's payor by secure electronic format instead of by regular mail.

- Requires employers with more than 50 employees to send withholdings and deductions of child support to the Office of Child Support in ODJFS by electronic means.

- Requires payors who submit combined child support withholdings and deductions to the Office of Child Support in ODJFS to provide the case numbers from the income withholding or deduction notice.

- Requires the ODJFS Director to adopt rules for the compromise and waiver of child support arrearages owed to the state and federal governments, consistent with the federal Title IV-D program.

## V. Temporary Assistance for Needy Families (TANF)

- Reenacts prior law that provides for a sanction under the Ohio Works First (OWF) program to continue for the longer of one to six months (depending on the number of previous sanctions) and the date the failure or refusal to comply with a self-sufficiency contract ceases.

- Requires ODJFS to provide an OWF assistance group member who causes a sanction a compliance form the member may complete to indicate willingness to come into full compliance with a provision of a self-sufficiency contract.

- Provides that an OWF member's failure or refusal to comply in full with a provision of a self-sufficiency contract is deemed to have ceased on the date a CDJFS receives the compliance form from the member if the compliance form is completed and provided to the CDJFS in the manner specified in ODJFS's rules.

- Provides that an OWF assistance group must reapply to participate in OWF before resuming participation following a sanction if a CDJFS does not receive the compliance form within a period of time specified in ODJFS rules.

- Eliminates a requirement that ODJFS include, with each cash assistance payment provided under OWF to an assistance group residing in a county in which the Support Enforcement Tracking System is in operation, a notice of the number of months the assistance group has participated in OWF and the remaining number of months the assistance group may participate in OWF under the program's time limits.

- Permits a CDJFS to amend its statement of policies governing its Prevention, Retention, and Contingency (PRC) Program to suspend operation of its PRC Program temporarily.

## VI. Medicaid

- Provides that a parent is not required to undergo an eligibility redetermination for Medicaid more often than once every 12 months unless there are reasonable grounds to believe that circumstances have changed that may affect the parent's eligibility.

- Requires a third party against which ODJFS has a right of recovery for payment of a medical item or service provided to a Medicaid recipient to consider ODJFS's payment to be the equivalent of the recipient having obtained prior authorization for the item or service from the third party.

- Prohibits a third party from denying a claim described above solely on the basis of the Medicaid recipient's failure to obtain prior authorization for the medical item or service.

- Modifies the laws governing ODJFS's use of time-limited Medicaid provider agreements by (1) extending the phase-in period to January 1, 2015 (from January 1, 2011), (2) extending the duration of time-limited agreements to seven years (from

three), and (3) exempting hospitals from the requirement that provider agreements be time-limited.

- Provides that ODJFS is not required to issue an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act when doing any of the following: (1) denying, terminating, or not renewing a Medicaid provider agreement because a provider's owner, officer, authorized agent, associate, manager, or employee has been convicted of an offense that caused the provider agreement to be suspended, (2) terminating or not renewing a Medicaid provider agreement because the provider has not billed or otherwise submitted a Medicaid claim to ODJFS for at least two years, regardless of whether ODJFS has determined that the provider has moved from the address on record with ODJFS without leaving an active forwarding address, or (3) denying, terminating, or not renewing a Medicaid provider agreement because the provider fails to provide to ODJFS the National Provider Identifier assigned to the provider.

- Adds to the offenses that disqualify a person from being a Medicaid provider or employed by a Medicaid provider, and applies the same disqualifying offenses to a provider of home and community-based waiver services and any of its employees.

- Includes, among the additional disqualifying offenses, cruelty to animals, permitting child abuse, menacing, arson, and a violation of any municipal ordinance that is substantially equivalent to the new or existing disqualifying offenses.

- Specifies that the date a person was convicted of, entered a guilty plea to, or was found eligible for intervention in lieu of conviction for an offense that disqualifies the person from being a Medicaid provider, provider of home and community-based services, or an employee of such providers is irrelevant for purposes of determining the person's eligibility to be a provider or an employee.

- Requires ODJFS to prepare an annual Medicaid fraud, waste, and abuse report (PARTIALLY VETOED).

- Requires ODJFS to implement evidence-based, best practice guidelines or protocols and decision support tools for advanced diagnostic imaging services available under the fee-for-service component of the Medicaid program not later than January 1, 2010.

- Requires ODJFS to establish a two-year pilot program under which a CDJFS serving a county with at least 200,000 persons may contract with medical transportation management organizations to manage nonemergency medical transportation

services provided to groups of Medicaid recipients the CDJFS includes in the pilot program.

- Modifies the duties, administration, and membership of ODJFS's Pharmacy and Therapeutics Committee, and requires ODJFS to post certain information regarding the Committee on the ODJFS web site (PARTIALLY VETOED).

- Requires ODJFS, if it studies the issue of funding the Medicaid program through franchise permit fees on providers of health-care services, to submit a copy of a report regarding the study to the General Assembly.

- Terminates the assessment of a Medicaid franchise permit fee on Medicaid health insuring corporations after the calendar quarter ending September 30, 2009, and instead includes the premium rate payments provided under the Medicaid program to an insurance company, including a health insuring corporation, in the computation of the state's annual franchise tax on insurance companies.

- Creates a new formula for determining the franchise permit fee on nursing home beds and hospitals' long-term care beds that is based in part on 5.5% of net patient revenues and a base of $11.95.

- Requires ODJFS to recalculate the franchise permit fee if the amount assessed by the fee for a fiscal year exceeds 5.5% of the actual net patient revenue for all nursing homes and hospital long-term care units for that fiscal year and to credit nursing homes' and hospitals' franchise permit fees for the following fiscal year.

- Requires ODJFS to seek a federal waiver to (1) reduce the nursing home franchise permit fee to zero dollars for two groups of nursing homes and (2) reduce, for each nursing facility with more than 200 Medicaid-certified beds, the franchise permit fee for a number of the nursing facility's beds specified by ODJFS to the amount necessary to obtain approval of the waiver.

- Permits ODJFS to increase uniformly the franchise permit fee for each nursing home and hospital not qualifying for a reduction to an amount that will have the franchise permit fee raise an amount of money that does not exceed the amount the franchise permit fee would raise if not for the waiver.

- Requires ODJFS to determine the amount of the nursing home franchise permit fee for a fiscal year not later than the 15th day of September, rather than August, of that fiscal year and to mail each nursing home and hospital notice of the amount of the franchise permit fee not later than the first day of October, rather than September, of that fiscal year.

- Provides that the first installment payment of the nursing home franchise permit fee for a fiscal year is due not later than 45 days after the last day of October, rather than September, of that fiscal year.

- Creates a formula for determining how much of the money raised by the nursing home franchise permit fee is to be deposited into the Home- and Community-Based Services for the Aged Fund, in place of a statutorily specified percentage.

- Subjects intermediate care facilities for the mentally retarded (ICFs/MR) that the Ohio Department of Developmental Disabilities (ODODD) operates to the ICF/MR franchise permit fee effective August 1, 2009.

- Increases the ICF/MR franchise permit fee from $11.98 per bed per day to $14.75 for all but the first month of fiscal year 2010 and then decreases the fee to $13.55 for all of fiscal year 2011.

- Requires ODJFS to recalculate the ICF/MR franchise permit fee for a fiscal year if the amount assessed by the fee exceeds 5.5% of the actual net patient revenue for all ICFs/MR for that fiscal year and to credit the fee to ICFs/MR for the following fiscal year.

- Provides for the money generated by the ICF/MR franchise permit fee to be deposited as follows: (1) 84.2% in fiscal year 2010 and 79.12% in fiscal year 2011 and thereafter into the Home- and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund and (2) 15.8% in fiscal year 2010 and 20.88% in fiscal year 2011 and thereafter into a new fund created in the state treasury called the ODODD Operating and Services Fund.

- Provides for money in the ODODD Operating and Services Fund to be used for expenses of the programs that ODODD administers and ODODD's administrative expenses.

- Abolishes the Children with Intensive Behavioral Needs Programs Fund.

- Requires ODJFS to begin to use a new index when first redetermining the cost per case-mix unit for the purpose of nursing facilities' direct care costs and to begin to use a new index when first redetermining the rate for ancillary and support costs for the different peer groups used in the calculation of those costs.

- Revises the deadline for a nursing facility to submit corrections to assessment information by providing that ODJFS may not assign a quarterly average case-mix score due to late submission of the corrections unless the nursing facility fails to submit the corrections before the earlier of (1) the 46th (rather than 81st) day after

the end of the calendar quarter to which the information pertains or (2) the deadline established by federal Medicare and Medicaid regulations.

- Provides that the costs of oxygen, rather than only emergency oxygen, are reimbursable as part of a nursing facility's direct care costs.

- Adds the costs of over-the-counter pharmacy products, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech therapists, and audiologists to the costs that are reimbursable as part of a nursing facility's direct care costs.

- Adds wheelchairs and resident transportation to the costs that are reimbursable as part of a nursing facility's ancillary and support costs.

- Sets the Medicaid reimbursement rate paid to nursing facilities for the franchise permit fee at $6.25 per resident per day rather than, as under prior law, the amount of the franchise permit fee per resident per day.

- Prohibits persons, other than nursing facility providers, from billing the Medicaid program for a service provided to a nursing facility resident if the service is included in a Medicaid payment to the nursing facility's provider or in the reimbursable expenses reported on the provider's Medicaid cost report.

- Prohibits a nursing facility provider from submitting a separate Medicaid claim for a service provided to a resident if the service is included in a Medicaid payment made to the provider under the statutory price formula or in the reimbursable expenses on the provider's Medicaid cost report.

- Repeals law that provided, with an exception, that costs of therapy were not allowable costs for nursing facilities for purposes of calculating their reimbursement rate under the statutory price formula and law that established restrictions on nursing facilities' billing for covered therapy services.

- Adjusts the formula used to calculate nursing facilities' Medicaid reimbursement rates for fiscal years 2010 and 2011.

- Would have required ODJFS, not later than December 31, 2010, to issue a report with recommendations for developing a new system for reimbursing nursing facilities' capital costs under the Medicaid program (VETOED).

- Requires, for purposes of Medicaid reimbursement, that the costs of day programming be part of the direct care costs of an ICF/MR as off-site day programming if the area in which the day programming is provided is not certified

as an ICF/MR and regardless of whether (1) the area in which the day programming is provided is less than 200 feet away from the ICF/MR or (2) the provider of the day programming is a related party to the ICF/MR.

- Would have required the Medicaid program to cover oxygen services provided by a medical supplier to a medically fragile child residing in an ICF/MR regardless of certain circumstances (VETOED).

- Eliminates ODJFS's authorization to place limits on the costs for resident meals prepared and consumed outside an ICF/MR when determining whether an ICF/MR's direct care and indirect care costs are allowable.

- Provides for an ICF/MR to be paid for services provided during the period beginning July 17, 2009, and ending July 31, 2009, the rate that the ICF/MR was paid June 29, 2009.

- Adjusts the formula used to calculate ICFs/MR's Medicaid reimbursement rates for the last 11 months of fiscal year 2010 by (1) requiring ODJFS to reduce the Medicaid rates for ICFs/MR if the mean total per diem rate for all ICFs/MR, weighted by May 2009 Medicaid days and calculated as of August 1, 2009, exceeds $278.15, (2) prohibiting, for the remainder of fiscal year 2010, further adjustments otherwise authorized by law governing Medicaid payments to ICFs/MR, and (3) if the federal government requires that the franchise permit fee for ICFs/MR be reduced or eliminated, reducing the payments to ICFs/MR as necessary to reflect the loss of revenue and federal financial participation generated by the fee.

- Adjusts the formula used to calculate ICFs/MR's Medicaid reimbursement rates for fiscal year 2011 by (1) requiring ODJFS to reduce the fiscal year 2011 Medicaid rates for ICFs/MR if the mean total per diem rate for all ICFs/MR, weighted by May 2010 Medicaid days and calculated as of July 1, 2010, exceeds $278.15, (2) prohibiting, for the remainder of fiscal year 2011, further adjustments otherwise authorized by law governing Medicaid payments to ICFs/MR, and (3) if the federal government requires that the franchise permit fee for ICFs/MR be reduced or eliminated, reducing the payments to ICFs/MR as necessary to reflect the loss of revenue and federal financial participation generated by the fee.

- Would have created the ICF/MR Reimbursement Study Council and required the Council to submit a report, not later than July 1, 2010, on its review of the state system for Medicaid reimbursement of ICF/MR services (VETOED).

- Eliminates a requirement that a nursing facility refund to ODJFS the amount of excess depreciation paid to the facility under Medicaid if the facility is sold.

- Would have revised the law governing the collection of a nursing facility or ICF/MR's Medicaid debt when the nursing facility or ICF/MR undergoes a change of operator, closes, or ceases to participate in the Medicaid program (VETOED).
- Permits the ODJFS Director to adopt rules establishing procedures for both of the following: (1) identifying individuals who are eligible and on a waiting list for a Medicaid waiver program that provides home and community-based services, are receiving inpatient hospital services or residing in an intermediate care facility for the mentally retarded or nursing facility, and choose to be enrolled in the waiver program and (2) approving such individuals' enrollment in the waiver program.
- Permits the ODJFS Director to seek federal approval to have home care attendant services covered by the Ohio Home Care Medicaid waiver program and the Ohio Transitions II Aging Carve-Out Medicaid waiver program.
- Establishes requirements an individual must meet to be able to provide home care attendant services under either of the Medicaid waiver programs.
- Places restrictions on a home care attendant's authority to assist a consumer with nursing tasks and self-administration of medication.
- Permits the Director of Budget and Management to seek Controlling Board approval for certain fiscal actions, such as creating new funds and transferring appropriations, in support of any home and community-based services Medicaid waiver program.
- Creates the Money Follows the Person Enhanced Reimbursement Fund into which the Director of Budget and Management is to deposit the federal grant Ohio receives under the Money Follows the Person Demonstration Program.
- Requires the ODJFS Director to seek federal approval to establish a system under which community behavioral health boards obtain federal financial participation for the allowable administrative activities the boards perform in the administration of the Medicaid program (PARTIALLY VETOED).
- Would have provided that a community behavioral health board (1) was required to use state funds provided to the board for the purpose of funding community behavioral health services to pay a provider for Medicaid services administered by the Department of Mental Health or Department of Alcohol and Drug Addiction Services and (2) was permitted to use money raised by a county tax levy to make the payment if using the money for that purpose was consistent with the purpose for which the tax was levied (VETOED).

- Would have provided that the comprehensive annual plan was permitted, rather than required, to certify the availability of unencumbered community mental health local funds to match Medicaid reimbursement funds earned by community mental health facilities (VETOED).

- Imposes an annual assessment on hospitals based on their total facility costs.

- Permits ODJFS to audit a hospital to ensure that the hospital properly pays its assessment and requires ODJFS to take action to recover from a hospital any amount the audit reveals that the hospital should have paid but did not.

- Creates the Hospital Assessment Fund into which the hospital assessments are to be deposited and requires ODJFS to use the money in the fund to pay costs of the Medicaid program, including administrative costs.

- Requires the ODJFS Director to seek federal approval to create the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program for the purpose of making supplemental Medicaid payments to hospitals.

- Specifies that portions of the money raised by the hospital assessment, and available federal matching funds, are to be used to fund the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program.

- Requires ODJFS to take all necessary actions to cease implementation of the hospital assessment and the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program if the United States Secretary of Health and Human Services determines that the assessment is an impermissible health-care related tax under federal Medicaid law.

- Repeals the law governing the hospital assessment effective October 1, 2011.

- For fiscal years 2010 and 2011, (1) requires the ODJFS Director to pay the full cost (100%) of Medicaid cost outlier claims for inpatient admissions at children's hospitals that are less than a threshold amount ($443,463 in 2002, adjusted annually for inflation), rather than just 85% of the cost, but (2) specifies that paying the full cost of such claims must cease and revert back to 85% of the estimated cost when the difference between the total amount the Director has paid at full cost for the outlier claims and the total amount the Director would have paid for such claims at the 85% level exceeds the sum of the state funds made available for the additional cost outlier payments in each fiscal year and the corresponding federal match.

- For fiscal years 2010 and 2011, requires the ODJFS Director to make supplemental Medicaid payments to children's hospitals for inpatient services under a program

modeled after the program that ODJFS was required to create under Am. Sub. H.B. 66 of the 126th General Assembly when the difference between the total amount the Director has paid at full cost for Medicaid outlier claims and the total amount the Director would have paid at the 85% level for the claims does not require the expenditure of all state and federal funds made available for the additional cost outlier payments in the applicable fiscal year.

- Prohibits the ODJFS Director from adopting, amending, or rescinding any rules that would result in decreasing the amount paid to children's hospitals for cost outlier claims.

- Increases, for the period between October 1, 2009 and June 30, 2011, the Medicaid reimbursement rate for hospital inpatient and outpatient services paid under a prospective payment system by 5% over the rate for such services provided on September 30, 2009.

- Requires ODJFS to postpone the recalibration of certain Medicaid rates for hospital services that were to occur on January 1, 2010, and January 1, 2011, to January 1, 2012, and January 1, 2013, respectively.

- Requires the ODJFS Director to reduce the Medicaid reimbursement rates for the following services by at least 3% effective January 1, 2010: advanced practice nursing services, ambulatory surgery center services, chiropractic services, durable medical equipment, home health services, ambulance and ambulette services, physician services, physical therapy services, podiatry services, private duty nursing services, vision services, clinic services (other than rural health clinics and federally qualified health centers), occupational therapy services, dental services, services provided under an ODJFS-administered home and community-based waiver program, and other services the ODJFS Director identifies (other than services for which an Ohio statute sets the Medicaid reimbursement rate).

- Sets the Medicaid dispensing fee for noncompounded drugs at $1.80 for the period beginning January 1, 2010, and ending June 30, 2011.

- Requires ODJFS to submit a report to the General Assembly on Medicaid expenditures for durable medical equipment and make recommendations on strategies to reduce the cost of such equipment.

- Would have created the Prompt Payment Policy Workgroup to research and make policy recommendations for the Medicaid program (VETOED).

## VII. Hospital Care Assurance Program

- Delays the termination of the Hospital Care Assurance Program to October 16, 2011.

## VIII. Children's Health Insurance Program

- Would have provided that a school-based health center could furnish health assistance services covered under the Children's Health Insurance Program if the center met the requirements applicable to other providers of those services (VETOED).

## IX. Children's Buy-In Program

- Provides that an individual's countable family income must exceed 300% of the federal poverty guidelines rather than 250% for the individual to meet the income requirement for the Children's Buy-In Program.

- Revises the eligibility requirements for the Children's Buy-In Program regarding access to creditable coverage.

## X. Disability Medical Assistance

- Abolishes the Disability Medical Assistance Program, which provided medical assistance to those who were medication dependent and ineligible for Medicaid.

## XI. Supplemental Nutrition Assistance Program (Food Stamp Program)

- Consistent with a change made to federal law, renames the Food Stamp Program the Supplemental Nutrition Assistance Program (SNAP) for purposes of state law, but permits the ODJFS Director to refer to the program as the Food Stamp Program or Food Assistance Program in rules and documents.

- Requires ODJFS, immediately following a CDJFS's certification that a household in immediate need of nutrition assistance is eligible for SNAP, to provide for the household to be sent by regular United States mail an electronic benefit transfer card containing the amount of benefits the household is eligible to receive under the program, rather than requiring a CDJFS staff member to personally hand an authorization-to-participate card to a household member or authorized representative.

- Eliminates law that provides that food stamps and any document necessary to obtain food stamps are, except while in the custody of the United States Postal Service, the property of ODJFS from the time ODJFS receives the food stamps from

the federal agency responsible for their delivery until they are received by the household entitled to receive them or by that household's authorized representative.

## XII. Workforce Development

- Includes reimbursements to a county public assistance fund for expenditures made for activities funded by the Workforce Investment Act in the requirement that all expenditures of workforce development activities be made from local workforce development funds.

## XIII. Unemployment Compensation

- Requires unemployment compensation benefits otherwise payable for any week to be reduced by the amount of remuneration or other payments a claimant receives with respect to that week for the determinable value of cost savings days.

- Defines "cost savings day" as any unpaid day off from work in which employees continue to accrue employee benefits that have a determinable value including vacation, pension contribution, sick time, and life and health insurance.

- Specifies that remuneration for personal services includes cost savings days for which employees continue to accrue employee benefits that have a determinable value.

## I. General

### Expenditure of federal grant funds obligated by the Ohio Department of Job and Family Services (ODJFS) for financial allocations to county family services agencies and local workforce investment boards

(R.C. 131.33)

Continuing law generally requires that if an agency has unexpended balances of appropriations at the end of the period for which the appropriations are made, the balances revert to the funds from which the appropriations were made. The act creates an exception to this requirement for federal grant funds obligated by the Ohio Department of Job and Family Services (ODJFS) for financial allocations to county family services agencies and local workforce investment boards. Under the act, if the ODJFS Director so chooses, those federal grant funds may be available for expenditure for the duration of the federal grant period of obligation and liquidation, as follows:

(1) A the end of the state fiscal year, all unexpended county family services agency and local workforce investment board financial allocations obligated from federal grant funds may continue to be valid for expenditure during subsequent state fiscal years.

(2) The financial allocations described in (1), above, must be reconciled at the end of the federal grant period of availability or as required by federal law, regardless of the state fiscal year of the appropriation.

For purposes of this provision, "county family services agency" means a child support enforcement agency, a county department of job and family services (CDJFS), and a public children services agency. "Local workforce investment board" means a local workforce investment board established under the federal "Workforce Investment Act of 1998."

The act permits the ODJFS Director to adopt rules as necessary to implement this provision of the act. If adopted, the rules are to be adopted in accordance with procedures that do not require a public hearing and as if the rules were internal management rules.

## ODJFS General Services Administration and Operating Fund

(R.C. 5101.073)

The act creates in the state treasury the ODJFS General Services Administration and Operating Fund. The ODJFS Director is permitted by the act to submit a deposit modification and payment detail report to the Treasurer of State after completion of the reconciliation of all final transactions with the federal government regarding a federal grant for a program ODJFS administers and a final closeout for the grant. On receipt of the report, the State Treasurer must transfer the money in the Refunds and Audit Settlements Fund[249] that is the subject of the report to the ODJFS General Services Administration and Operating Fund. Money in the ODJFS General Services Administration and Operating Fund is to be used to pay for expenses of the programs ODJFS administers and ODJFS's administrative expenses, including the costs of state hearings, required audit adjustments, and other related expenses.

[249] The Refunds and Audit Settlements Fund is a state fund used as a holding account for checks for which disposition cannot be determined at the time of receipt. The Fund was originally created by Am. Sub. H.B. 238 of the 116th General Assembly but it has never been codified in the Revised Code.

## Collaboration on welfare reform training

(R.C. 5101.072 (repealed))

The General Assembly enacted various welfare reforms in the 1990s, including Sub. H.B. 167 of the 121st General Assembly and Sub. H.B. 408 of the 122nd General Assembly. H.B. 167 predated federal welfare reform legislation that, in part, replaced the Aid to Families with Dependent Children program with the Temporary Assistance for Needy Families (TANF) program. H.B. 408 was enacted after the federal legislation and updated Ohio's public assistance laws to reflect the federal changes.

The act eliminates a requirement for ODJFS to collaborate with CDJFSs to develop training for appropriate employees of the CDJFSs regarding the provisions of H.B. 408 (and of H.B. 167 that were not superseded by H.B. 408) that impose duties on the CDJFSs. Also eliminated is a requirement for ODJFS to collaborate with the CDJFSs on providing the training.

## Action against a county regarding family services duties

(R.C. 5101.24)

Under certain circumstances, continuing law authorizes ODJFS to take various actions against a board of county commissioners, county children services board, or child support enforcement agency (referred to in statute as the responsible county grantee). For example, ODJFS may take over a family services duty, or contract with another to perform the duty, until ODJFS is satisfied that the responsible county grantee ensures that the duty will be performed satisfactorily. (A family services duty is a duty, other than a duty funded by the U.S. Department of Labor, that state law requires or allows a child support enforcement agency, CDJFS, or public children services agency to assume, including financial and general administrative duties.[250]) With certain exceptions, the responsible county grantee may request an administrative review of an action ODJFS proposes to take.

The act creates an additional exception to the right of a responsible county grantee to request an administrative review. Under this exception, an administrative review is not to be available when ODJFS proposes to perform, or contract with another entity to perform, a family services duty if ODJFS determines that an emergency exists.

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[250] R.C. 307.981.

## Reallocation of unused county funds (VETOED)

(Section 309.45.90)

The Governor vetoed a provision that would have required ODJFS to reallocate certain funds when ODJFS was informed that a county would not use the entire amount allocated to it for fiscal year 2010 or 2011 or when ODJFS determined through an annual close out or reconciliation of funds that a county had not used the entire amount of any of the funds allocated to the county for either fiscal year. The following funds would have been subject to reallocation:

(1) Funds ODJFS allocated to a county to meet matching fund requirements or reimburse a county for administrative expenses incurred in the administration of the Disability Financial Assistance Program, Disability Medical Assistance Program,[251] Medicaid, or Supplemental Nutrition Assistance Program (i.e., the Food Stamp Program). Collectively, these funds were referred to as "income maintenance funds."

(2) Funds ODJFS allocated to a county for programs funded with the TANF block grant, such as the Ohio Works First Program and the Prevention, Retention, and Contingency Program. The vetoed provision referred to these funds as "TANF funds."

(3) Funds ODJFS allocated to a county from funds under the TANF block grant that were transferred for use for social services under Title XX of the Social Security Act. The vetoed provision referred to these funds as "TANF Title XX transfer funds."

(4) Funds ODJFS allocated to a CDJFS for social services under Title XX of the Social Security Act. These funds were referred to as "Title XX social services funds."

With respect to the reallocation, ODJFS would have been required to reallocate the portion of the funds the county would or had not used to other counties for the remainder of the fiscal year in which the funds were reallocated or the next fiscal year. In reallocating the funds, ODJFS would have been required to do both of the following:

(1) For each group of funds separately, rank each county by the percentage reduction in allocations of the funds from the fiscal year preceding the fiscal year in which the reallocation was made to the fiscal year in which the reallocation was made, with the county that had the greatest reduction percentage placed at the top of the ranking;

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[251] The act abolishes the Disability Medical Assistance Program. (See "**Disability Medical Assistance Program**" below.)

(2) Reallocate each group of funds separately to counties in the order in which they were ranked in a manner that provided, to the extent funds were available for reallocation, for each county to be, as a result of the reallocation, allocated the same amount of the funds that the county was allocated the previous year, other than the counties that would or had not used the full amount of their allocation of the funds.

## Direct deposit system for cash assistance

(R.C. 329.03 (primary) and 126.35)

Continuing law authorizes ODJFS to make payment or delivery of benefits under programs ODJFS administers, including the Ohio Works First Program (OWF) and Disability Financial Assistance Program, through a state electronic benefit transfer system. Under the state electronic benefit transfer system, ODJFS contracts with an agent to supply debit cards to be used in accessing the programs' benefits.[252]

Prior law permitted the ODJFS Director to require that cash assistance payments under OWF and the Disability Financial Assistance Program be made under the state electronic benefit transfer system. If the ODJFS Director did not require that, a board of county commissioners could adopt a resolution requiring its CDJFS to establish a direct deposit system to distribute the cash assistance payments. The resolution had to specify whether use of the direct deposit system was voluntary or mandatory.

A CDJFS that was required to establish a direct deposit system had to determine what type of account would be used and negotiate with financial institutions to determine the charges, if any, to be imposed by a financial institution for establishing and maintaining the accounts. A CDJFS was permitted to pay the charges under a voluntary direct deposit system and was required to pay the charges under a mandatory system.

An OWF or Disability Financial Assistance applicant or recipient residing in a county with a voluntary direct deposit system was permitted to elect to receive cash assistance payments in the form of a paper warrant. An applicant or recipient residing in a county with a mandatory direct deposit system was allowed to request to receive payments in the form of a paper warrant under certain circumstances.

A CDJFS was required to bear the full cost of the amount of any replacement warrant issued to an OWF or Disability Financial Assistance recipient for whom an authorization form for direct deposit was not obtained within 180 days after the later of (1) the date the board of county commissioners adopted the resolution regarding direct

[252] R.C. 5101.33.

deposit or (2) the date of application for the program. The CDJFS's responsibility to bear the full cost of each replacement warrant continued until the board of county commissioners required the CDJFS to obtain an authorization form from each recipient.

The act eliminates these provisions regarding county direct deposit systems and the option to receive OWF and Disability Financial Assistance cash assistance payments in the form of a paper warrant. Instead, the act requires each CDJFS to establish a direct deposit system under which cash assistance payments to OWF and Disability Financial Assistance recipients who agree to direct deposit are made by electronic transfer to an account in a financial institution the recipient designates. The act also makes this applicable to cash assistance provided under the Refugee Assistance Program.

Each CDJFS is required by the act to inform each OWF, Disability Financial Assistance, and Refugee Assistance applicant or recipient that the applicant or recipient must choose whether to receive cash assistance payments under the county direct deposit system or under the state electronic benefit transfer system. A CDJFS must obtain from each applicant or recipient who is to receive cash assistance payments through direct deposit an authorization form designating a financial institution and account into which the payments are to be made. The act requires a CDJFS to receive from an applicant or recipient who chooses the state electronic benefit transfer system a signed form to that effect. Each CDJFS must inform the applicants and recipients of the conditions under which an applicant or recipient may change the system used to receive the cash assistance payments.

The act retains a requirement that a recipient's designation of a financial institution and account remain in effect until withdrawn in writing or dishonored by the financial institution. Prior law, however, provided that no designation change could be made until the recipient's next eligibility redetermination unless the department[253] felt that good grounds existed for an earlier change. The act provides instead that no designation change may be made until the next eligibility redetermination unless the CDJFS determines that good cause exists for an earlier change or the financial institution dishonors the recipient's account.

An applicant or recipient who does not have an account but is to receive cash assistance payments through a county direct deposit system must designate an account suitable for direct deposit within ten days of receiving the authorization form. Prior law required the department[254] to designate a financial institution and help the recipient

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[253] The statute used the term "department" in this context making it ambiguous as to whether it referred to ODJFS or a CDJFS.

[254] *Id.*

to open an account if the designation was not made by the deadline or the recipient requested that the department make the designation. The act provides instead that a recipient is to receive cash assistance payments under the state electronic benefit transfer system if the recipient fails to make the designation by the deadline.

The act makes changes to the law governing how the Director of Budget and Management makes cash assistance payments to reflect the changes the act makes regarding county direct deposit systems.

## II. Child Welfare and Adoption

### State adoption maintenance subsidy and post adoption special services subsidy

(R.C. 5153.163)

Former law required a PCSA, prior to the finalization of a child's adoption, to enter into an agreement with the child's adoptive parent under which the agency must make state adoption maintenance subsidy payments as needed on behalf of the child when all of the following apply:

(1) The child is a child with special needs.

(2) The child was placed in the adoptive home by a PCSA or a private child placing agency (PCPA) and may legally be adopted.

(3) The adoptive parent has the capability of providing the permanent family relationships needed by the child.

(4) The needs of the child are beyond the economic resources of the adoptive parent.

(5) Acceptance of the child as a member of the adoptive parent's family would not be in the child's best interest without payments on the child's behalf.

(6) The gross income of the adoptive parent's family does not exceed 120% of the median income of a family of the same size, including the child, as most recently determined for this state by the Secretary of Health and Human Services under Title XX of the "Social Security Act," 88 Stat. 2337, 42 U.S.C. 1397, as amended.

(7) The child is not eligible for adoption assistance payments under Title IV-E of the "Social Security Act," 94 Stat. 501 (1980), 42 U.S.C. 671, as amended.

The act eliminates the requirement that a PCSA *must* enter into an agreement with a special needs child's adoptive parent, under the circumstances listed above, under which the agency must make state adoption maintenance subsidy payments, and instead *permits* the agency to enter into an agreement to the extent state funds are available.

Former law also permitted a PCSA that considers a child residing in the county served by the agency to be in need of public care or protective services, to the extent state funds are *appropriated* for this purpose, to enter into an agreement with the child's adoptive parent under which the agency must make post adoption special services subsidy payments on behalf of the child as needed when the child has a physical or developmental handicap or mental or emotional condition that either existed before the adoption petition was filed or developed after the adoption petition was filed and can be directly attributed to factors in the child's preadoption background, medical history, or biological family's background or medical history, and the agency determines the expenses necessitated by the child's handicap or condition are beyond the adoptive parent's economic resources.

The act eliminates this requirement and instead permits the agency to enter into an agreement to the extent that state funds are *available*.

## Listing of children available for adoption and prospective adoptive parents

(R.C. 5103.154 and 5153.163)

Former law required information concerning all children who are in the permanent custody of an institution or association certified by ODJFS to be listed with the Department within 90 days after permanent custody is effective, unless the child had been placed for adoption or unless an application for placement was initiated.

Former law also required all persons who wished to adopt children, and who were approved by an agency empowered to do so, to be listed with the Department within 90 days of approval, unless a person requested in writing that that person's name not be so listed, or previously had a child placed in that person's home in preparation for adoption, or had filed a petition for adoption. Additionally, all persons who wished to adopt a child with special needs and who were approved by an agency empowered to do so, had to be listed separately by the Department within 90 days of approval, unless a person requested in writing that that person's name not be so listed, or previously had a child with special needs placed in that person's home in preparation for adoption, or had filed a petition for adoption.

ODJFS was required to forward information on such children and listed persons at least quarterly to all PCSAs and all certified agencies. The appropriate listed names

were removed when a child was placed in an adoptive home or when a person withdrew an application for adoption.

The act eliminates the required listing of all children who are in the permanent custody of an institution or association certified by ODJFS and the required listing of all persons who wish to adopt children and who are approved by an agency empowered to do so.

Former law also required that, no later than six months after the end of each fiscal year, the Department must compile a report of its conclusions regarding the effectiveness of its actions and of certain restrictions on placement in increasing adoptive placements of children with special needs, together with its recommendations, and submit a copy of the report to the chairpersons of the principal committees of the Senate and the House of Representatives who consider welfare legislation. The act eliminates the requirement that ODJFS compile this report with conclusions regarding the effectiveness of the listing program and submit it to the General Assembly.

## Alternative Response pilot program

(Section 309.45.10)

The act requires ODJFS to develop, implement, oversee, and evaluate a pilot program based on an "Alternative Response" approach to reports of child abuse, neglect, and dependency. The pilot program must be implemented in not more than ten counties that are selected by ODJFS and that agree to participate in the pilot program. The pilot program will last 18 months, not including time expended in preparation for the implementation of the pilot program and any post-pilot program evaluation activity. After the 18-month period, the ten sites may continue to administer the Alternative Response approach uninterrupted, unless ODJFS determines otherwise.

ODJFS is required to assure that the Alternative Response pilot program is independently evaluated with respect to outcomes for children and families, costs, worker satisfaction, and any other criteria ODJFS determines will be useful in the consideration of statewide implementation of an Alternative Response approach to child protection. The measure associated with the 18-month pilot program will, for the purposes of the evaluation, be compared with those same measures in the pilot counties during the 18-month period immediately preceding the beginning of the pilot program period. If the independent evaluation of the pilot program recommends statewide implementation of an Alternative Response approach to child protection, ODJFS may expand the Alternative Response approach statewide through a schedule determined by ODJFS. Prior to statewide implementation, ODJFS must adopt rules, in accordance with the Administrative Procedure Act, as necessary to carry out the purposes of the

Alternative Response program. Until that time, ODJFS may adopt rules, as if they were internal management rules, as necessary to carry out the purposes of the Alternative Response pilot program.

### ODJFS review of associations and institutions (VETOED)

(R.C. 5103.02 and 5103.03)

Under continuing law, except for facilities under the control of the Department of Youth Services, places of detention for children, and child day-care centers, ODJFS is required to pass upon the fitness of every institution and association that receives, or desires to receive and care for children, or places children in private homes every *two* years.

The act would have required ODJFS to pass upon the fitness of every institution and association that receives, or desires to receive and care for children, or places children in private homes every *four* years, but would have retained the two-year period for individuals who, for hire, gain, or reward, receive or care for children for two or more consecutive weeks, unless the individual is related to them by blood or marriage.

## III. Publicly Funded Child Care

### Reimbursements for providers of publicly funded child care

(R.C. 5104.30, 5104.32, 5104.39, and 5104.42)

Continuing law requires the ODJFS Director to adopt rules establishing a payment procedure for publicly funded child care. The rules may provide that ODJFS will either reimburse CDJFSs for payments made to providers of publicly funded child care or make direct payments to providers pursuant to an agreement entered into with a county board of commissioners.

Under the act, these rules may provide that ODJFS will reimburse CDJFSs for payments made to providers of publicly funded child care, make direct payments to providers, or establish another system for the payment of publicly funded child care.

### Certificates of payment for days a child has been absent

(R.C. 5104.32)

Under continuing law, CDJFSs must give individuals eligible for publicly funded child care the option of obtaining certificates for payment that the individual may use to purchase that care. Continuing law states that for each six-month period a provider of

publicly funded child care provides publicly funded child day-care to the child of an individual given certificates for payment, the individual must provide the provider certificates for days the provider would have provided publicly funded child care to the child had the child been present. Under prior law CDJFSs were required to specify the maximum number of days providers would be provided certificates of payment for days the provider would have provided publicly funded child care had the child been present. Under continuing law, the maximum number of days cannot exceed ten days in a six-month period during which publicly funded child care is provided to the child regardless of the number of providers that provide publicly funded child care to the child during that period.

The act eliminates the requirement that CDJFSs specify the maximum number of days providers of publicly funded child care will be provided certificates of payment for days the provider would have provided publicly funded child care had the child been present.

### Eligibility determinations for publicly funded child care

(R.C. 5104.341)

Under former law, the CDJFS had to redetermine the appropriate level of a fee charged to a caretaker parent for publicly funded child care every six months, unless the caretaker parent requested that the fee be reduced due to changes in income, family size, or both and the CDJFS approved the reduction.

The act eliminates the automatic review of this fee every six months, and instead the CDJFS must adjust the level of the fee if the caretaker parent reports changes in income, family size, or both.

### Child day-care center and home inspections and day-care law violations

(R.C. 5104.04)

Former law required ODJFS to inspect a child day-care center or type A family day-care home at least twice during every 12-month period of operation. At least one inspection was required to be unannounced. The act reduces the number of mandatory inspections from twice to once during each 12-month period of operation, and permits all inspections to be unannounced.

The act also makes the Department's commencement of an action to revoke the license of a child day-care center or type A family day-care home for a violation of the Day-care Laws sufficient notice that the correction has not yet been made, and no other notice regarding the correction is required.

## Liability insurance for type A and type B family day-care homes

(R.C. 5104.041)

Former law required the parent, guardian, or custodian of each child receiving child care from a type A or type B family day-care home that is not covered by liability insurance to sign an affidavit, provided by the licensee of the type A family day-care home or the provider of the type B family day-care home, stating that the family day-care home does not carry liability insurance.

Under the act, the parent, guardian, or custodian must only sign a written statement, instead of an affidavit, provided by the licensee of the type A family day-care home or the provider of the type B family day-care home, stating that the family day-care home does not carry liability insurance.

## Committee to study publicly funded child care services

(Section 309.40.70)

The act creates a committee to study publicly funded child care services, including the Early Learning Initiative enacted pursuant to the act and pursuant to changes in the administrative rules governing reimbursement and eligibility for publicly funded child day-care. The study must include the following subjects:

(1) The effects of changing the definitions of full-time and part-time care on children, families, and providers of care, including the effects on the quality of care; the number of children served and the availability and accessibility of subsidized care to caregivers with full-time and part-time jobs; the availability of full-time and part-time care in areas with a high incidence of poverty; private pay rates; closure of centers and center programs; and loss of jobs in the child care industry.

(2) The effects of changes to the Early Learning Initiative on families and children, including the distribution and use of program slots across the state;[255] the effect of mandatory participation in the voluntary child day-care center quality-rating program on program quality; outcomes in terms of school readiness, and other related factors for children who participate in the program.

The committee must consist of the following members:

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[255] The Early Learning Initiative (Section 309.40.60) was vetoed.

(1) Three members of the House of Representatives, two appointed by the Speaker of the House of Representatives and one appointed by the Minority Leader of the House of Representatives;

(2) Three members of the Senate, two appointed by the President of the Senate and one appointed by the Minority Leader of the Senate;

(3) One parent of a child receiving publicly funded child care services, appointed by the President of the Senate;

(4) Two representatives of licensed child care centers serving low-income areas, one appointed by the Speaker of the House of Representatives and one appointed by the President of the Senate;

(5) One representative from the Ohio Association of Child Care Providers, appointed by the President of the Senate;

(6) One representative from the Ohio State Alliance of Young Men's Christian Associations, appointed by the Speaker of the House of Representatives;

(7) One representative from the Department of Job and Family Services, appointed by the Speaker of the House of Representatives; and

(8) One representative from the Department of Education, appointed by the President of the Senate.

The Department of Education must provide the committee meeting space and clerical assistance. The act requires the committee to prepare a report of its findings by June 30, 2010, and to provide a copy of the report to the Governor, the Speaker of the House of Representatives, and the President of the Senate, at which time the committee will cease to exist.

## IV. Child Support Enforcement

### Office of Child Support requests for medical insurance information

(R.C. 3119.371)

The act requires a health insurance provider, upon request of the Office of Child Support in ODJFS and for the purpose of establishing and enforcing orders to provide health insurance coverage, to provide the following information to the Office of Child Support: (1) an individual's name, address, date of birth, and social security number, (2) the group or plan number or other identifier assigned by a health insurance provider to a policy held by an individual or a plan in which the individual participates and the

nature of the coverage, and (3) any other data specified by the ODJFS Director in rules adopted to regulate the enforcement of orders to provide health insurance. For the purposes of this provision, "health insurance provider" means: (1) a person authorized to engage in the business of sickness and accident insurance in Ohio, (2) a person or government 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) any organization, business, or association described in the federal law regulating state grants for medical assistance programs (42 U.S.C. 1396a(a)(25)), or (6) a managed care organization.

### Issuance of income withholding notices

(R.C. 3121.03 and 3121.035)

Continuing law requires a court or child support enforcement agency to issue a child support withholding or deduction notice to an obligor's payor by regular mail. The act authorizes the court or child support enforcement agency to transmit the notice by secure federally managed electronic format instead of by regular mail.

### Mandatory electronic remittance of child support by certain payors

(R.C. 3121.037, 3121.0311, and 3121.19)

Continuing law requires an employer to submit the entire amount withheld from an obligor's income pursuant to a child support withholding or deduction notice to the Office of Child Support in ODJFS immediately, but not later than seven business days, after the withholding or deduction. The act requires an employer who employs more than 50 employees to submit these funds to the Office of Child Support in ODJFS by electronic transfer.

### Remittance of combined child support payments

(R.C. 3121.20)

Under continuing law, a payor or financial institution required to withhold or deduct a specified amount from the income or savings of more than one obligor under a withholding or deduction notice may combine all of the payments to be forwarded to the Office of Child Support in ODJFS into one payment, if the payment is accompanied by a list that clearly identifies: (1) the name of each obligor covered by the payment, and (2) the portion of the payment attributable to each obligor.

The act requires the payor or financial institution forwarding a combined payment to include a list that clearly identifies all of the following: (1) the name of each

obligor covered by the payment, (2) each child support case, numbered as provided on the withholding or deduction notice, that is covered by the payment, and (3) the portion of the payment attributable to each obligor and each case number. The act also requires an employer who employs more than 50 employees and who is thus required to submit any withholdings or deductions by electronic transfer to submit multiple withholdings or deductions in a combined payment, with the same list as described above.

### Waiver and compromise of assigned child support arrearages

(R.C. 3125.25)

The act requires the rules adopted under the Administrative Procedure Act by the ODJFS Director governing the operation of support enforcement by child support enforcement agencies to include provisions for the compromise and waiver of child support arrearages owed to the state and federal government, consistent with Title IV-D of the "Social Security Act," 88 Stat. 2351 (1975), 42 U.S.C. 651 *et seq*., as amended.

## V. Temporary Assistance for Needy Families (TANF)

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

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

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

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

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

Persons who receive assistance funded in part with federal TANF funds are subject to a number of federal requirements, including time limits and work requirements. Federal regulations define "assistance" as including cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs for such things as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. It includes such benefits even when they are provided in the form of payments to individual recipients and conditioned on participation in

work experience, community service, or other work activities provided by federal TANF law. Unless specifically excluded, "assistance" also includes supportive services such as transportation and child care provided to unemployed families.

Ohio has a number of different programs funded with TANF funds, including Ohio Works First (OWF) and the Prevention, Retention, and Contingency (PRC) program. Participants of OWF receive TANF-funded assistance and are therefore subject to the federal TANF requirements applicable to assistance such as time limits and work requirements. Each county is required to develop its own PRC program to provide benefits and services, but not assistance, that individuals need to overcome immediate barriers to achieving or maintaining self sufficiency and personal responsibility.

## Ohio Works First (OWF) sanctions

(R.C. 5107.05, 5107.16, 5107.17, and 5111.01)

Continuing law modified by the act requires a CDJFS to sanction an OWF assistance group if a member fails or refuses, without good cause, to comply in full with a provision of the assistance group's self-sufficiency contract.

The sanctions for not complying with a self-sufficiency contract are tiered. For a first failure or refusal to comply, a CDJFS was required by prior law to deny or terminate the assistance group's eligibility to participate in OWF for one payment month. A second failure or refusal resulted in ineligibility for three payment months. A third or subsequent failure or refusal resulted in ineligibility for six payment months. The act modifies the duration of the sanctions by providing that they are not to end before the failure or refusal ceases. Thus, the sanction for a first failure or refusal is to last one payment month or until the failure or refusal ceases, whichever is longer. The sanction for a second failure or refusal is to last three payment months or until the failure or refusal ceases, whichever is longer. The sanction for a third or subsequent failure or refusal is to last six payment months or until the failure or refusal ceases, whichever is longer. This is how long the sanctions lasted before Am. Sub. H.B. 119 of the 127th General Assembly modified the durations. In other words, the act restores prior law governing the duration of the sanctions.

The act establishes a procedure for a member of an assistance group to indicate willingness to come into full compliance with a provision of a self-sufficiency contract. The ODJFS Director is required to establish in rules a compliance form to be used for this purpose. The ODJFS Director is to provide a compliance form to an assistance group member who fails or refuses, without good cause, to comply in full with a provision of a self-sufficiency contract. The member's failure or refusal to comply in full

with the provision is to be deemed to have ceased on the date a CDJFS receives the compliance form from the member if the compliance form is completed and provided to the CDJFS in a manner the ODJFS Director is to specify in rules.

An assistance group that resumes participation in OWF following a sanction is not required to reapply to participate unless it is the assistance group's regularly scheduled time for an eligibility redetermination. The act provides that an assistance group is also required to reapply following a sanction if a CDJFS does not receive a completed compliance form within a period of time the ODJFS Director is to specify in rules.

### Notices of number of months of OWF Participation

(R.C. 5107.78)

As discussed above, there is a time limit for participating in OWF. In general, an assistance group is ineligible to participate in OWF if the assistance group includes an individual who has participated in OWF for 36 months as an adult head of household, minor head of household, or spouse of an adult or minor head of household. An assistance group that loses eligibility after the 36-month period may reapply for OWF after having been off the program for at least 24 months and, if good cause exists, resume participation for up to an additional 24 months. There are exceptions to both the initial 36-month time limit and the additional 24-month time limit.

The act eliminates a requirement that ODJFS include, with each cash assistance payment provided under OWF to an assistance group residing in a county in which the Support Enforcement Tracking System is in operation, a notice of the number of months the assistance group has participated in OWF and the remaining number of months the assistance group may participate in OWF under the program's time limits.

### Prevention, Retention, and Contingency (PRC) Program Suspensions

(R.C. 5108.04 and 5108.07)

Continuing law requires each CDJFS to adopt a written statement of policies governing the PRC Program for the county it serves. A CDJFS is permitted to amend its statement of policies to modify, terminate, and establish new policies for its PRC Program. The act permits a CDJFS to also amend its statement of policies to suspend operation of its PRC Program temporarily.

Continuing law requires a PRC statement of policies to include the board of county commissioners' certification that the CDJFS complied with state law governing PRC in adopting the statement of policies. A board of county commissioners is to revise

its certification if an amendment to the statement of policies that the board considers to be significant is adopted. The act requires a board of county commissioners to revise its certification if a CDJFS adopts an amendment to the statement of policies to suspend operation of its PRC Program temporarily.

## VI. Medicaid

Medicaid is a health-care program for low-income children and families and for aged, blind, and disabled persons. The program is funded with federal, state, and county funds and was established by Congress in 1965 as Title XIX of the Social Security Act. ODJFS is responsible for the administration of Medicaid. ODJFS, however, contracts with other entities to administer parts of the Medicaid program on ODJFS's behalf and perform certain administrative functions.

### Annual Medicaid eligibility redeterminations for parents

(R.C. 5111.0121 (primary) and 5111.0120)

Continuing law requires the ODJFS Director to seek federal approval to make an individual eligible for Medicaid if the individual is the residential parent of a child under age 19, has family income not exceeding 90% of the federal poverty guidelines, and meets all other eligibility requirements established by ODJFS rules. The act provides that an individual who qualifies for Medicaid under this provision is not required to undergo a redetermination of eligibility for the Medicaid program more often than once every 12 months unless there are reasonable grounds to believe that circumstances have changed that may affect the individual's Medicaid eligibility.

### Medicaid third party liability

#### Background

Congress intended that Medicaid be the payer of last resort; if a Medicaid recipient has another source of payment for health services, that source is to pay instead of Medicaid.[256] Consistent with federal law reflecting this intent, the U.S. Secretary of Health and Human Services has promulgated regulations[257] requiring states to have plans to (1) identify Medicaid recipients' other sources of health coverage, (2) determine the extent of the liability of third parties, (3) avoid payment of third party claims, and

[256] U.S. Government Accountability Office. *Medicaid Third Party Liability: Federal Guidance Needed to Help States Address Continuing Problems* (Sept. 2006), available at <http://www.gao.gov/new.items/d06862.pdf>, at p. 1.

(4) seek reimbursement from third parties for claims paid if the state can reasonably expect to recover more than it spends in seeking the reimbursement.

## Duties of liable third parties

### Federal law

To enhance states' ability to identify and obtain payments from liable third parties, the Deficit Reduction Act of 2005[258] made several changes to the third party liability provisions of federal Medicaid law.[259] Under the federal act, states are required to enact laws requiring health insurers to do all of the following: (1) provide states with coverage, eligibility, and claims data needed to identify potentially liable third parties, (2) honor the assignment to states of Medicaid recipients' rights to payment by insurers for health care items or services, and (3) not deny assignment or refuse to pay claims submitted by state Medicaid agencies based on procedural reasons such as the failure of a recipient to present an insurance card at the point of sale or a state's failure to submit an electronic, as opposed to a paper, claim.[260]

### Ohio law

(R.C. 5101.573)

Consistent with the Deficit Reduction Act's requirements, continuing Ohio law requires a third party to do all or the following: accept ODJFS's right of recovery against third parties and its assignment of rights; not later than three years after the date of provision of a Medicaid item or service, respond to an inquiry by ODJFS regarding a claim for the item or service; pay a claim submitted by ODJFS to the third party within the three-year time frame; and not deny a claim submitted in a timely fashion solely on the basis of the date of submission of the claim, type or format of the claim form, or a failure by the Medicaid recipient to present proper documentation of coverage at the time of service.

In addition to the requirements in continuing law, the act (1) requires a third party to consider ODJFS's payment of a claim for a medical item or service to be the equivalent of the Medicaid recipient having obtained prior authorization for the item or service from the third party and (2) prohibits a third party from denying a claim paid by

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[257] 42 C.F.R. Part 433, subpart D (2005).

[258] Pub. L. 109-171.

[259] Letter from Dennis G. Smith, Director, Center for Medicaid and State Operations, Centers for Medicare & Medicaid Services, U.S. Department of Health & Human Services, to State Medicaid Directors (SMD #06-026) (dated Dec. 15, 2006), available at <http://www.cms.hhs.gov/smdl/downloads/SMD121506.pdf>.

[260] Discussed in letter from Dennis G. Smith, *supra*.

ODJFS solely on the basis of the Medicaid recipient's failure to obtain prior authorization for the medical item or service.

## Time-limited Medicaid provider agreements

(R.C. 5111.028)

Continuing law requires, with some exceptions, that Medicaid provider agreements be "time-limited" in accordance with procedures established in rules adopted by the ODJFS Director. Formerly, ODJFS was to phase in the use of time-limited provider agreements during a period commencing not later than January 1, 2008, and ending three years later on January 1, 2011.

The act extends the phase-in period by four years, moving the end date to January 1, 2015. The act also extends the duration of a time-limited provider agreement from three to seven years. Finally, the act adds hospitals to the list of Medicaid providers that are exempt from the requirement that provider agreements be time-limited.

## Administrative actions relative to Medicaid provider agreements

(R.C. 5111.06)

Generally, ODJFS is required to issue an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act (R.C. Chapter 119.) when refusing to enter into a Medicaid provider agreement or suspending, terminating, or refusing to renew an existing Medicaid provider agreement. There are several exceptions to this requirement however. The act amends two of the exceptions and adds a new exception.

### Exception related to conviction of offense

One exception is that ODJFS is not required to issue an order pursuant to an adjudication when denying, terminating, or not renewing a Medicaid provider agreement because the provider has been convicted of an offense for which continuing law requires a Medicaid provider agreement to be suspended. But, a Medicaid provider agreement must be suspended due to such an offense not only when the offense is committed by the provider but also when an owner, officer, authorized agent, manager, or employee of the provider commits the offense. The act provides that the exception is also to apply when the owner, officer, authorized agent, associate, manager, or employee is convicted of the offense.

### Exception related to not billing for two years

Another exception is that ODJFS is not required to issue an order pursuant to an adjudication when terminating or not renewing a Medicaid provider agreement because the provider has not billed or otherwise submitted a Medicaid claim to ODJFS for two years and ODJFS has determined that the provider has moved from the address on record with ODJFS without leaving an active forwarding address with ODJFS. The act provides that the exception applies without the need for ODJFS to have determined that the provider has moved without leaving an active forwarding address.

### Exception related to National Provider Identifier (PARTIALLY VETOED)

The act creates a new exception that provides for ODJFS to deny, terminate, or not renew a Medicaid provider agreement without issuing an order pursuant to an adjudication when the provider fails to provide ODJFS the National Provider Identifier assigned the provider by the National Provider System under federal law. ODJFS is permitted to deny, terminate, or not renew a Medicaid provider agreement in such a case by sending a notice explaining the proposed action to the provider. The notice must be sent to the provider's address on record with ODJFS. The Governor vetoed a provision that would have required that the notice be sent by certified mail.

## Disqualifying offenses--Medicaid providers and home and community waiver services providers

(R.C. 109.572, 5111.032, 5111.033, and 5111.034)

Except in circumstances specified in rules ODJFS is permitted to adopt under law unchanged by the act, ODJFS is required to terminate a Medicaid provider agreement or independent provider agreement, or deny issuance of such an agreement, if the provider or applicant is subject to a criminal records check and has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for any of a specified list of offenses ("disqualifying offenses"). Similarly, a provider is prohibited from allowing a person to be an employee, owner, officer, or board member of the provider if the person is subject to a criminal records check and has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. Further, a home and community-based waiver services agency is prohibited from employing a person in a position that involves providing home and community-based waiver services if the person has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for any of the same offenses.

The act adds the following crimes as disqualifying offenses: cruelty to animals, permitting child abuse, menacing by stalking, menacing, aggravated arson, arson, disrupting public services, vandalism, soliciting or providing support for an act of

terrorism, making a terroristic threat, terrorism, telecommunications fraud, criminal simulation, defrauding a rental agency or hostelry, tampering with records, personating an officer, unlawful law enforcement emblem display, defrauding creditors, illegal use of food stamps or Women, Infant, and Children (WIC) program benefits, inciting to violence, aggravated riot, riot, inducing panic, interference with custody, intimidation, perjury, escape, aiding escape or resistance to lawful authority, conspiracy, complicity, ethnic intimidation, and any municipal ordinance that is substantially equivalent to the new or existing disqualifying offenses.

The act also specifies that the date a person was convicted of, entered a guilty plea to, or was found eligible for intervention in lieu of conviction for an offense that disqualifies the person from being a Medicaid provider, provider of home and community-based services, or an employee of such providers is irrelevant for purposes of determining the person's eligibility to be a provider or an employee.

## Medicaid fraud, waste, and abuse report (PARTIALLY VETOED)

(R.C. 5111.092)

The act requires ODJFS to prepare an annual report on its efforts to minimize fraud, waste, and abuse in the Medicaid program. The Governor vetoed a provision that would have required each report to include goals and objectives to minimize fraud, waste, and abuse and performance measures for monitoring all state and local activities related to minimizing fraud, waste, and abuse.

The annual reports are to be available on ODJFS's web site and ODJFS is to make copies of the report available to the public on request. In addition, ODJFS is to submit a copy of the reports to the Governor and General Assembly.[261] The first report is to be prepared no later than January 1, 2010.

## Prior authorization for high-technology radiological services

(R.C. 5111.0210)

The act requires ODJFS to implement, not later than January 1, 2010, evidence-based, best practice guidelines or protocols and decision support tools for advanced diagnostic imaging services available under the fee-for-service component of the Medicaid program. "Advanced diagnostic imaging services" is defined as magnetic

[261] In submitting the report to the General Assembly, ODJFS is to provide it to the Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and Director of the Legislative Service Commission (R.C. 101.68(B)).

resonance imaging services, computed tomography services, positron emission tomography services, cardiac nuclear medicine services, and similar imaging services.

## Medicaid nonemergency medical transportation management

(Section 309.32.45)

The act requires ODJFS to establish a Medicaid nonemergency medical transportation pilot program. The pilot program is to be operated for two years.

A CDJFS serving a county with a population exceeding 200,000 persons is allowed to participate in the pilot program. A CDJFS that participates in the pilot program must identify which groups of Medicaid recipients residing in the county are required to participate in the pilot program. A participating CDJFS must also contract with one or more medical transportation management organizations to have the organizations manage Medicaid-covered nonemergency medical transportation services to the groups required to participate. To be eligible to contract with a participating CDJFS, a medical transportation management organization must have experience in coordinating nonemergency medical transportation services.

The act requires a medical transportation management organization that contracts with a participating CDJFS to report monthly to the CDJFS. Each report must contain (1) a description of the transportation services provided to Medicaid recipients participating in the pilot program, including details on the varying modes of transportation used in providing the services and the frequency at which the services were provided, (2) the number of times nonemergency medical transportation providers failed to arrive for an appointment to transport a pilot program participant, (3) the number of times the providers were late for such an appointment and the lengths of the delays, (4) the cost of the services provided in the pilot program, and (5) other quality indicators the CDJFS requests be included in the report.

ODJFS is required, on conclusion of the pilot program, to submit a report regarding the pilot program to the Governor and General Assembly.[262] CDJFSs that participate in the pilot program are to assist with the report. The report must specify the amount of savings, if any, the Medicaid program realized as a result of the pilot program.

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[262] In submitting the report to the General Assembly, ODJFS is to provide it to the Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and the Director of the Legislative Service Commission (R.C. 101.68(B)).

## ODJFS Pharmacy and Therapeutics Committee (PARTIALLY VETOED)

(R.C. 5111.084)

Continuing law establishes the ODJFS Pharmacy and Therapeutics Committee. The act specifies that the Committee must assist ODJFS with developing and maintaining a preferred drug list for the Medicaid program. The Committee must review and recommend, by a majority of a quorum (five members), to the ODJFS Director the drugs that should be included on the preferred drug list. The recommendations must be based on the evaluation of competent evidence regarding the relative safety, efficacy, and effectiveness of prescription drugs within a class or classes of prescription drugs. In the case of a tie, the chairperson must decide the outcome.

The act requires the ODJFS Director to (1) act on the Committee's recommendations not later than 30 days after a Committee recommendation is posted on the ODJFS web site (see below), and (2) if the ODJFS Director does not accept a recommendation, present the basis for this determination not later than 14 days after making the determination or at the next scheduled committee meeting, whichever is sooner. It appears that the Governor intended to veto these requirements. However, the Governor's veto message does not explicitly describe his intention to do so, thus, future amendments are necessary to confirm the Governor's intent.

### Administration

The act requires the Committee to establish guidelines necessary for the committee's operation. The act also permits the Committee to establish one or more subcommittees to investigate and analyze issues consistent with the Committee's duties. The subcommittees may submit proposals regarding the issues to the Committee and the Committee may adopt, reject, or modify the proposals. It appears that the Governor intended to veto these provisions. However, the Governor's veto message does not explicitly describe his intention to do so, thus, future amendments are necessary to confirm the Governor's intent.

The act permits an interested party to make a presentation or submit written materials during a Committee meeting relevant to an issue under consideration by the Committee. Any written material, including a transcript of testimony to be given on the day of the meeting, may be submitted to the Committee in advance of the meeting.

### Membership

Continuing law requires the ODJFS Director to appoint ten members consisting of the following: (1) three licensed pharmacists, (2) two medical doctors and two osteopathic doctors, (3) a licensed registered nurse, (4) a pharmacologist holding a

doctoral degree, and (5) a psychiatrist. The Committee is to elect from one of its members a chairperson.

When selecting the members, the act requires the ODJFS Director to seek recommendations for membership from relevant professional organizations. However, the candidate must have professional experience working with Medicaid recipients. The act also specifies that of the four physician members, one must be a family practice physician.

The Governor vetoed a provision that would have prohibited the ODJFS Director from appointing a member who is employed by ODJFS.

### ODJFS web site

Under the act, ODJFS must post the following on its web site:

--Committee guidelines;[263]

--Detailed committee agendas not later than 14 days prior to the date of a regularly scheduled meeting and not later than 72 hours prior to the date of a special meeting;

--Committee recommendations not later than seven days after the meeting at which the recommendation was approved;

--The ODJFS Director's final determination as to the Committee recommendations.[264]

## Study of Medicaid provider franchise permit fees

(Section 309.31.55)

The act requires ODJFS, if it conducts a study on the issue of funding the Medicaid program through franchise permit fees on providers of health-care services, to submit a copy of a report regarding the study to the General Assembly.[265]

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[263] Future amendment of this provision may be necessary to conform to any amendments confirming the Governor's intent to veto related provisions, as described above.

[264] Future amendment of this provision may be necessary to conform to any amendments confirming the Governor's intent to veto related provisions, as described above.

[265] In submitting the report to the General Assembly, ODJFS is to provide it to the Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and Director of the Legislative Service Commission (R.C. 101.68(B)).

## Medicaid health insuring corporation franchise permit fee

(R.C. 5111.176)

Each health insuring corporation participating in the state's Medicaid care management system is required to pay a franchise permit fee each calendar quarter beginning January 1, 2006. Unless increased or decreased by rule, the fee is equal to 4.5% of the managed care premiums the health insuring corporation receives in the applicable quarter, excluding any amount of any managed care premiums returned or refunded to enrollees, members, or premium payers. ODJFS may adopt rules to decrease the fee or to increase it to not more than 6% of managed care premiums received.

The act terminates the assessment of a Medicaid franchise permit fee on Medicaid health insuring corporations after the calendar quarter ending September 30, 2009, and instead subjects premium amounts received under the Medicaid program to the state's insurance corporation franchise tax (see "**Taxation of Medicaid health insuring corporations**") in the Taxation section. Under the act, insurance corporations participating in the state's Medicaid managed care program are not subject to the Medicaid franchise permit fee, but are subject to the state's insurance corporation franchise tax.

## Nursing home and ICF/MR franchise permit fees

Nursing homes; hospitals with skilled nursing facility, long-term care, or nursing home beds; and intermediate care facilities for the mentally retarded (ICFs/MR) are required to pay an annual franchise permit fee.

### Funds

The money generated by the franchise permit fee on nursing homes and hospitals is required to be deposited into two funds: the Home and Community-Based Services for the Aged Fund and the Nursing Facility Stabilization Fund. ODJFS and the Department of Aging are required to use the money in the Home and Community-Based Services for the Aged Fund for the Medicaid program, including the PASSPORT component of the Medicaid program, and the Residential State Supplement program.[266] ODJFS is required to use money in the Nursing Facility Stabilization Fund to make Medicaid payments to nursing facilities.[267]

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[266] R.C. 3721.56.

[267] R.C. 3721.561.

Money generated by the ICF/MR franchise permit fee is also to be deposited into two funds. One of the funds is named the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund. ODJFS and the Ohio Department of Developmental Disabilities (ODODD) are required to use money in the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund for the Medicaid program and home and community-based services to persons with mental retardation or a developmental disability. Under prior law, the other fund was the Children with Intensive Behavioral Needs Programs Fund. Prior law required that the money in the Children with Intensive Behavioral Needs Programs Fund be used for programs the ODODD Director is to establish for individuals under 21 years of age who have intensive behavioral needs. The act abolishes the Children with Intensive Behavioral Needs Programs Fund and creates a new fund named the ODODD Operating and Services Fund.[268] The new fund is to receive a portion of the money generated by the ICF/MR franchise permit fee and the money in the fund is to be used for the expenses of the programs ODODD administers and ODODD's administrative expenses.

## Changes to nursing home and hospital franchise permit fee

(R.C. 3721.51 (primary), 3721.50, 3721.511, 3721.512, 3721.513, 3721.53, 3721.55, and 3721.56)

### Change in fee

Prior law set the franchise permit fee for nursing homes and hospitals at $6.25 per bed per day. Instead of specifying a specific dollar amount for the fee, the act creates a five-step formula to be used to determine the fee. The fee is to be determined as follows:

(1) Determine the difference between (a) the total net patient revenue, less Medicaid per diem payments, of all nursing homes and hospital long-term care units[269] as shown on Medicaid cost reports for the calendar year immediately preceding the fiscal year for which the fee is assessed and (b) the total net patient revenue, less Medicaid per diem payments, of all nursing homes and hospital long-term care units as

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[268] Although the act abolishes the Children with Intensive Behavioral Needs Programs Fund, the act maintains a requirement for the ODODD Director to establish one or more programs for individuals under age 21 who have intensive behavioral needs which, under prior law, were funded with money in the Children with Intensive Behavioral Needs Programs Fund.

[269] The act defines "hospital long-term care unit" as any distinct part of a hospital in which any of the following are located: (1) beds registered with the Department of Health as skilled nursing facility beds or long-term care beds and (2) beds licensed as nursing home beds.

shown on Medicaid cost reports for the calendar year immediately preceding the calendar year that immediately precedes the fiscal year for which the fee is assessed.

(2) Multiply the amount determined under (1) by 5.5%.

(3) Divide the amount determined under (2) by the total number of days in the fiscal year for which the fee is assessed.

(4) Subtract $11.95 from the amount determined under (3).

(5) Add $11.95 to the amount determined under (4).

If the total amount of the franchise permit fee assessed for a fiscal year using the formula exceeds 5.5% of the actual net patient revenue for all nursing homes and hospital long-term care units for that fiscal year, ODJFS is required by the act to recalculate the assessments using a per bed per day rate equal to 5.5% of actual net patient revenue for all nursing homes and hospital long-term care units for that fiscal year. If ODJFS makes such a recalculation for a fiscal year, ODJFS must refund the difference between the amount of the fee assessed for that fiscal year and the amount so recalculated as a credit against the assessments imposed for the subsequent fiscal year.

**Waiver to reduce fee**

The act requires ODJFS to seek a federal waiver to (1) reduce the franchise permit fee to zero dollars for two groups of nursing homes meeting certain requirements and (2) reduce the franchise permit fee for a number of nursing facility beds located in a nursing facility with more than 200 Medicaid-certified beds. ODJFS must apply for the waiver not later than four months after the effective date of this provision of the act. The waiver's effective date is to be the first day of the calendar quarter beginning after the United States Secretary of Health and Human Services approves the waiver.

The first group that is eligible to have its franchise permit fee reduced to zero consists of nursing homes that (1) are exempt from state taxation, (2) are exempt from federal income taxation, (3) do not participate in Medicaid or Medicare, and (4) provide services for the life of each resident without regard to the resident's ability to secure payment for the services. The second group to have its franchise permit fee reduced to zero consists of nursing homes that (1) have had a written affiliation agreement with a university in Ohio for education and research related to Alzheimer's disease for each of the 20 years preceding the effective date of this provision of the act and have such an agreement on the effective date of this provision of the act, (2) were constructed

pursuant to a certificate of need granted under a provision of legislation from the 116th General Assembly,[270] and (3) do not participate in Medicaid or Medicare.

The amount of the reduction in the franchise permit fee for a nursing facility with more than 200 Medicaid-certified beds is to be the amount necessary to obtain the waiver. ODJFS is to specify the number of such a nursing facility's beds that are to be subject to the reduced franchise permit fee.

ODJFS is required, if the United States Secretary approves the waiver, to reduce the franchise permit fee for each nursing home and hospital that qualifies for a reduction in its franchise permit fee under the waiver. ODJFS is to reduce the franchise permit fee in accordance with the waiver's terms. For purposes of the first fiscal year during which the waiver takes effect, ODJFS must determine the amount of the reduction not later than the waiver's effective date and mail to each nursing home and hospital qualifying for the reduction notice of the reduction not later than the last day of the first month of the calendar quarter that begins after the waiver is approved. For purposes of subsequent fiscal years, ODJFS is to make the determinations and mail the notices in accordance with state law governing regular determinations and notices of the franchise permit fee.

ODJFS is permitted by the act to increase the franchise permit fee for nursing homes and hospitals that do not qualify for the reduction if the United States Secretary approves the waiver. In increasing the franchise permit fee, ODJFS is required to determine how much money the franchise permit fee would have raised in a fiscal year if not for the waiver and uniformly increase the amount of the franchise permit fee for each nursing home and hospital subject to the increase to an amount that will have the franchise permit fee raise an amount of money that does not exceed the amount the franchise permit fee would have raised. If ODJFS increases the franchise permit fee for the first fiscal year during which the waiver takes effect, ODJFS must determine the amount of the increase not later than the waiver's effective date and mail to each nursing home and hospital subject to the increase notice of the increase not later than the last day of the first month of the calendar quarter that begins after the waiver is approved. If ODJFS increases the franchise permit fee for a subsequent fiscal year, ODJFS must make the determinations and mail the notices in accordance with state law governing regular determinations and notices of the franchise permit fee.

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[270] Section 3 of Am. Sub. S.B. 256 of the 116th General Assembly required a certificate of need application for long-term care to be granted if the application met a number of requirements, including a requirement that the application be for the construction or conversion of a nursing home, nursing home wing, or licensed rest home designed to be specially adapted exclusively to care for and treat persons having or suspected of having Alzheimer's disease and to conduct research related to Alzheimer's disease.

#### Deadlines

The act revises various deadlines associated with the franchise permit fee. Prior law required ODJFS to determine the fee for a year not later than August 15th and to mail the notice to each nursing home and hospital not later than September 1st. The act requires ODJFS to determine the fee not later than September 15th and to mail the notice not later than October 1st. Whereas prior law required nursing homes and hospitals to pay the first installment of the fee not later than 45 days after the last day of September, the act sets the deadline as 45 days after the last day of October.

#### Distribution of money into funds

Whereas prior law specified what percentage of the money raised by the franchise permit fee is to be deposited into the Home and Community-Based Services for the Aged Fund (16%), the act creates a formula to be used to determine the percentage. The percentage is to be determined by dividing one by the franchise permit fee rate or, if ODJFS recalculates the amount of the assessments for a fiscal year, the amount of the per bed per day rate so recalculated for that fiscal year. The Nursing Facility Stabilization Fund is to continue to get the remainder.

### Changes to ICF/MR franchise permit fee

(R.C. 5112.30, 5112.31, 5112.37, and 5112.371)

Prior law excluded ICFs/MR that ODODD operates (i.e., developmental centers) from the ICF/MR franchise permit fee. The act makes developmental centers subject to the ICF/MR franchise permit fee effective August 1, 2009.

Under prior law, the ICF/MR franchise permit fee was to be increased effective July 1, 2009, from $11.98 to an amount determined in accordance with a composite inflation factor established in rules. Under the act, the fee is to remain at $11.98 until August 1, 2009. The fee is to be raised to $14.75 for the period beginning August 1, 2009, and ending June 30, 2010. For fiscal year 2011, the fee is to be lowered to $13.55. For each subsequent fiscal year, the fee is to be the rate used for the immediately preceding fiscal year as adjusted in accordance with the composite inflation factor. However, the act provides that if the total amount of the fee assessed for a fiscal year exceeds 5.5% of actual net patient revenue for all ICFs/MR for that fiscal year, ODJFS is required to recalculate the assessments using a rate equal to 5.5% of actual net patient revenue for all ICFs/MR for that fiscal year. If ODJFS must recalculate the assessments for a fiscal year, ODJFS is to refund the difference between the amount of the fee assessed for that fiscal year and the amount recalculated as a credit against the assessments imposed for the subsequent fiscal year.

The following table shows how the money generated by the fee is to be divided among the funds.

| | Prior law | FY 2010 under the act | FY 2011 and thereafter under the act |
|---|---|---|---|
| Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund | 94.28% | 84.2% | 79.12% |
| Children with Intensive Behavioral Needs Programs Fund | 5.72% | N/A | N/A |
| ODODD Operating and Services Fund | N/A | 15.8% | 20.88% |

## Medicaid rates for nursing facilities

The formula for determining the rate nursing facilities are to be paid under the Medicaid program is included in the Revised Code. The formula is divided into several parts sometimes referred to as cost centers or price centers. The price centers in the nursing facility reimbursement formula are direct care costs, ancillary and support costs, tax costs, capital costs, and franchise permit fees.[271] A nursing facility is paid a rate for each price center; there is a separate formula for determining each rate. There is also a quality incentive payment included in the formula. A nursing facility's total rate is the sum of all of the rates and quality incentive payment.

Direct care costs include costs for nurses, direct care staff, medical directors, respiratory therapists, quality assurance, employee benefits, and other costs. A nursing facility's rate for direct care costs is determined in part by calculating a cost per case-mix unit for the nursing facility's peer group.[272]

Ancillary and support costs include costs for activities, social services, pharmacy consultants, habilitation supervisors, incontinence supplies, food, laundry, security,

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

[272] Nursing facilities are placed in one of three peer groups as part of the process of determining their rate for direct care costs. The peer group in which a nursing facility is placed depends on the county in which it is located. For example, the first peer group consists of nursing facilities located in Brown, Butler, Clermont, Clinton, Hamilton, or Warren county. (R.C. 5111.20 and 5111.231.)

travel, dues, subscriptions, and other costs not included with direct care costs or capital costs.[273]

Tax costs are costs for real estate taxes, personal property taxes, corporate franchise taxes, and commercial activity taxes.[274]

Capital costs are a nursing facility's costs of ownership, which is the actual expense incurred for (1) depreciation and interest on capital assets costing $500 or more per item, (2) amortization and interest on land improvements and leasehold improvements, (3) amortization of financing costs, and (4) lease and rent of land, building, and equipment.[275]

The quality incentive payment is based on the number of points a nursing facility earns for such factors as having no health deficiencies on its most recent standard survey and a resident satisfaction above the statewide average. The mean quality incentive payment for fiscal year 2007, weighted by Medicaid days,[276] was set at $3 per Medicaid day.[277]

### Inflation adjustments used in nursing facility rates

(R.C. 5111.231 and 5111.24)

The formulas used to determine nursing facilities' direct care and ancillary and support costs include provisions regarding inflation adjustments. Prior law required ODJFS to use the Employment Cost Index for Total Compensation, Health Services Component, as published by the United States Bureau of Labor Statistics, in calculating the inflation adjustment for direct care costs. ODJFS was required to use the Consumer Price Index for all items for all urban consumers for the North Central Region, as published by the United States Bureau of Labor Statistics, in calculating the inflation adjustment for ancillary and support costs.

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[273] R.C. 5111.20 and 5111.24.

[274] R.C. 5111.242.

[275] R.C. 5111.20 and 5111.25.

[276] "Medicaid days" is defined as all days during which a resident who is a Medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the facility's Medicaid-certified capacity. Therapeutic or hospital leave days for which payment is made are considered Medicaid days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days. (R.C. 5111.20.)

[277] R.C. 5111.244.

Under the act, ODJFS is to begin to use the Employment Cost Index for Total Compensation, Nursing and Residential Care Facilities Occupational Group, published by the United States Bureau of Labor Statistics, when it first redetermines the cost per case-mix unit that is used in part of the calculation of direct care costs.[278] If the Bureau ceases to publish that index, ODJFS is to use the index the Bureau subsequently publishes that covers nursing facilities' staff costs.

In the case of ancillary and support costs, the act requires ODJFS to use the Consumer Price Index for All Items for All Urban Consumers for the Midwest Region, published by the United States Bureau of Labor Statistics, the first time it redetermines the rate for ancillary and support costs for the different peer groups used in the calculation of those costs.[279] If the Bureau ceases to publish that index, ODJFS is required to use the index the Bureau subsequently publishes that covers urban consumers' prices for items for the region that includes Ohio.

### Deadline for nursing facility to submit corrections

(R.C. 5111.232)

ODJFS is required to determine average case-mix scores for nursing facilities as part of the process of determining the facilities' direct care costs. Direct care costs are among the costs included in the total rate paid nursing facilities under the Medicaid program.

Nursing facilities are required to provide the state information used in calculating their case-mix scores. The information must be provided quarterly. If a nursing facility fails to submit the information in time for ODJFS to be able to calculate the nursing facility's case-mix score, or submits incomplete or inaccurate information, ODJFS is authorized to assign the nursing facility a case-mix score that is 5% less than its case-mix score for the previous quarter. The reduced score may be used in calculating the nursing facility's rate for direct care costs for one or more months of the quarter for which the rate will be paid. However, before taking such action, ODJFS must permit the nursing facility a reasonable period of time to correct the information. The act reduces the amount of time by which the information may be corrected before ODJFS may assign the reduced case-mix score.

Prior law provided that ODJFS could not assign the reduced case-mix score unless the nursing facility failed to submit corrected information before the earlier of (1)

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[278] ODJFS is not required to redetermine the cost per case-mix unit more often than once every ten years.

[279] ODJFS is not required to redetermine peer groups' rates for ancillary and support costs more often than once every ten years.

the 81st day after the end of the quarter to which the information pertained or (2) the deadline for submission of corrections established by federal Medicare and Medicaid regulations. This meant that the nursing facility had at most 80 days after the end of a quarter to submit the corrections. The act reduces this to at most 45 days.

### Nursing facilities' direct care costs

(R.C. 5111.20)

The act revises the list of costs that are included in nursing facilities' direct care costs. Whereas prior law included only emergency oxygen, the act includes any oxygen. The act also includes the costs of over-the-counter pharmacy products, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech therapists, and audiologists.

### Nursing facilities' ancillary and support costs

(R.C. 5111.20)

The act includes the costs of wheelchairs and resident transportation among the costs included in nursing facilities' ancillary and support costs.

### Nursing facilities' franchise permit fee rates

(R.C. 5111.243)

As discussed above, the costs of the franchise permit fee on nursing homes is one of the price centers included in the formula for determining nursing facilities' Medicaid rates. Prior law provided that the rate a nursing facility was to be paid for the franchise permit fee was an amount equal to the fee the facility paid. The act provides instead that the rate is to equal $6.25 per resident per day.

### Prohibitions on certain Medicaid billings

(R.C. 5111.262)

The act prohibits anyone, other than a nursing facility, from submitting a claim for Medicaid reimbursement for a service provided to a nursing facility resident if the service is included in a Medicaid payment made to the nursing facility or in the reimbursable expenses reported on a Medicaid cost report for the facility. The act also prohibits nursing facilities from submitting a separate claim for Medicaid reimbursement for a service provided to a resident if the service is included in a Medicaid payment made to the nursing facility or in the reimbursable expenses on the facility's Medicaid cost report.

### Costs of therapy and covered therapy services

(R.C. 5111.263 (repealed))

The act repeals a law regarding Medicaid coverage of therapy services provided to nursing facility residents. The law that is repealed generally provided that the costs of therapy were not allowable costs for the purpose of determining nursing facilities' Medicaid reimbursement rates. (A nursing facility's reasonable costs for rehabilitative, restorative, or maintenance therapy services rendered to residents by nurses or nurse aides, and the facility's overhead costs to support therapy services provided to nursing facility residents, were allowable costs for the purposes of establishing nursing facilities' Medicaid reimbursement rates.) The repealed law also restricted ODJFS's ability to process a claim for covered therapy services rendered to a nursing facility resident. "Covered therapy services" was defined as physical therapy, occupational therapy, audiology, and speech therapy services that were provided by appropriately licensed therapists or therapy assistants and that were covered for nursing facility residents either by Medicare or Medicaid.

### FY 2010 and FY 2011 Medicaid reimbursement rates for nursing facilities

(Sections 309.30.20 and 309.30.25)

Continuing law requires ODJFS to adjust the rates determined under the formulas included in the Revised Code for direct care costs, ancillary and support costs, tax costs, and capital costs as directed by the General Assembly through the enactment of law governing Medicaid payments to nursing facilities.[280] ODJFS must also annually adjust the mean quality incentive payment by the same adjustment factors.[281]

#### Initial adjustments

The act establishes adjustments to the fiscal year 2010 and fiscal year 2011 Medicaid rates for nursing facilities that have a valid Medicaid provider agreement on the day preceding the first day of the fiscal year and a valid Medicaid provider agreement during the fiscal year for which the rate is paid.

A nursing facility's cost per case-mix unit calculated as part of direct care costs, rate for ancillary and support costs, rate for tax costs, and rate for capital costs are to be adjusted as follows:

(1) Increase the cost and rates by 2%.

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[280] R.C. 5111.222.

[281] R.C. 5111.244.

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

(3) Increase the amount calculated above by 1%.

Instead of adjusting the mean quality incentive payment by the same adjustment factors, the act provides that the mean payment is to be $3.03 per Medicaid day and weighted by Medicaid days.

#### Franchise permit fee-related adjustment

After making the initial adjustments discussed above, a nursing facility's rate is to be further adjusted by a percentage ODJFS is to determine in consultation with the Ohio Health Care Association; Ohio Academy of Nursing Homes; and the Association of Ohio Philanthropic Homes, Housing, and Services for the Aging. The percentage is to be based on expending an amount equal to the amount determined as follows:

(1) Determine how much of the revenue to be generated by the nursing home franchise permit fee for the fiscal year for which the rate is paid reflects the first four steps of the calculation of the fee (see "**Changes to nursing home and hospital franchise permit fee**" above);

(2) From the amount determined under (1), subtract the portion to be expended in making Medicaid payments to nursing facilities for the fiscal year that reflects the second step in the calculation regarding the part of the rate known as the consolidated services rate (see "**Consolidated services rate**" below).

#### Stop loss and gain

A nursing facility's rate, as determined with the adjustments discussed above, is then compared to a certain amount to determine whether a downward or upward adjustment is to be made.

For fiscal year 2010, a downward adjustment is to be made if the rate determined for that fiscal year is more than 101.75% of the nursing facility's June 30, 2009 rate. The downward adjustment is to be such that the nursing facility's rate is not more than 101.75% of the nursing facility's June 30, 2009 rate. An upward adjustment is to be made for fiscal year 2010 if the nursing facility's rate is less than 99% of its June 30, 2009 rate. The upward adjustment is to be such that the nursing facility's rate is not less than 99% of its June 30, 2009 rate. The downward or upward adjustment applies only if the nursing facility's rate as determined with the initial adjustments discussed above is more than 101.75% or less than 99% of its June 30, 2009 rate. The nursing facility's rate is not subject to the downward or upward adjustment if another adjustment made during fiscal year 2010 in accordance with the statutory formula governing nursing

facilities' Medicaid rates causes the nursing facility's rate to become more than 101.75% or less than 99% of its June 30, 2009 rate.

For fiscal year 2011, a downward adjustment is to be made if the rate determined for that fiscal year is more than 102.25% of a portion of the nursing facility's June 30, 2010 rate. The portion of the nursing facility's June 30, 2010 rate to which its preliminary fiscal year 2011 rate is compared is the amount of its total June 30, 2010 rate less the portion of that total rate that equals the sum of the parts of the total rate known as the workforce development incentive payment and consolidated services rate (see "**Workforce development incentive payment**" and "**Consolidated services rate**" below). The downward adjustment is to be such that the nursing facility's rate is not more than 102.25% of that portion of the nursing facility's June 30, 2010 rate. An upward adjustment is to be made for fiscal year 2011 if the nursing facility's rate is less than 99% of that portion of its June 30, 2010 rate. The upward adjustment is to be such that the nursing facility's rate is not less than 99% of that portion of its June 30, 2010 rate. However, neither the downward nor the upward adjustment is to be made to the nursing facility's fiscal year 2011 rate if the nursing facility's fiscal year 2010 rate was not subject to a downward or upward adjustment even though its fiscal year 2011 rate, as determined with the initial adjustments discussed above, is more than 102.25% or less than 99% of the applicable portion of its June 30, 2010 rate. As with the fiscal year 2010 rate, the upward or downward adjustment applies only with regard to the initial determination of the rate and not if another adjustment made during fiscal year 2011 in accordance with the statutory formula governing nursing facilities' Medicaid rates causes the nursing facility's rate to become more than 102.25% or less than 99% of the applicable portion of its June 30, 2009 rate.

#### Workforce development incentive payment

Following a stop loss or gain adjustment, if any, a nursing facility's rate is to be increased by a workforce development incentive payment in an amount of $5.70 per Medicaid day. The total amount of the workforce development incentive payment must be used to improve the nursing facility's employee retention and direct care staffing levels, including by increasing wages paid to direct care staff. For fiscal years 2010 and 2011 each, ODJFS is required to issue a report detailing the impact that the workforce development incentive payments have on nursing facilities' employee retention, direct care staffing levels, and direct care staff wages. The fiscal year 2010 report is to be submitted to the Governor and General Assembly not later than September 30, 2011. The fiscal year 2011 report is due by September 30, 2012.

#### Consolidated services rate

A nursing facility's rate is to be further increased by the consolidated services rate. The consolidated services rate is to equal the sum of the following: (1) $3.91 and (2) the amount calculated under the first four steps of the calculation of the nursing home franchise permit fee for the fiscal year for which the rate is paid (see "**Changes to nursing home and hospital franchise permit fee**" above).

#### Deadline for determining rates

ODJFS is required to determine the fiscal year 2010 rates to be paid nursing facilities not later than October 1, 2009. The deadline for fiscal year 2011 is one year later -- October 1, 2010. Until the rates are determined, ODJFS must continue to pay a nursing facility the rate it was paid on the last day of the previous fiscal year. When the rates for a fiscal year are determined, ODJFS is required to pay the rates retroactive to the first day of the fiscal year.

#### Reduction in payments if franchise permit fee is reduced or eliminated

If the United States Centers for Medicare and Medicaid Services requires that the franchise permit fee for nursing facilities be reduced or eliminated, ODJFS is required to reduce the amount it pays nursing facilities for fiscal year 2010 and fiscal year 2011 as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

#### Adjustments to be implemented notwithstanding contrary statutes

The act requires that ODJFS implement the rate adjustments in determining nursing facilities' fiscal year 2010 and fiscal year 2011 Medicaid rates notwithstanding anything to the contrary in the Revised Code governing nursing facilities' Medicaid rates.

### Nursing facility capital costs study (VETOED)

(Section 309.30.30)

The Governor vetoed a provision that would have required ODJFS to issue a report with recommendations for developing a new system for reimbursing nursing facilities' capital costs under the Medicaid program. The report would have been due December 31, 2010. ODJFS would have been required to prepare the report in consultation with the Ohio Academy of Nursing Homes; the Association of Ohio Philanthropic Homes, Housing, and Services for the Aging; and the Ohio Health Care Association. The report would have been submitted to the Governor and General Assembly.

The report's recommendations would have had to focus on (1) resulting in a statewide average per diem rate, weighted by Medicaid days, for capital costs for the first fiscal year the system was implemented that was budget neutral compared to the statewide average per diem rate, weighted by Medicaid days, for capital costs as calculated under continuing law and (2) appropriately recognizing increased costs incurred by nursing facilities for capital improvements to, and replacement of, existing nursing facilities. The report could have included recommendations for changes to other parts of the Medicaid reimbursement system for nursing facilities.

## Medicaid rates for ICFs/MR

The formula for determining the rate ICFs/MR are to be paid under the Medicaid program is also included in the Revised Code. As is the case with the formula for nursing facilities, the formula for ICF/MR rates is divided into several cost centers. The cost centers for the ICF/MR formula differ from the price centers used in the nursing facility formula. The cost centers in the ICF/MR reimbursement formula are direct care costs, other protected costs, capital costs, and indirect care costs. An ICF/MR is paid a rate for each cost center; there is a separate formula for determining each rate. An ICF/MR's total rate is the sum of all of the rates.

Direct care costs include costs for nurses, direct care staff, medical directors, respiratory therapists, quality assurance, employee benefits, and other costs. An ICF/MR's rate for direct care costs is determined in part by calculating a cost per case-mix unit for the ICF/MR.[282]

Other protected costs are costs incurred by an ICF/MR for such things as medical supplies; real estate, franchise, and property taxes; utilities and water; sewage; and refuse.[283]

Capital costs are an ICF/MR's costs of ownership and nonextensive renovation. "Costs of ownership" is defined as the actual expense incurred for (1) depreciation and interest on capital assets costing $500 or more per item, (2) amortization and interest on land improvements and leasehold improvements, (3) amortization of financing costs, and (4) lease and rent of land, building, and equipment. "Costs of nonextensive renovation" is defined as the actual expense incurred by an ICF/MR for depreciation or amortization and interest on renovations that are not extensive renovations.[284]

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[282] R.C. 5111.20(H) and 5111.23.

[283] R.C. 5111.20(R).

[284] R.C. 5111.20(C).

Indirect care costs are all reasonable costs incurred by an ICF/MR that are not direct care costs, other protected costs, or capital costs. Indirect care costs include such costs as habilitation supplies, medical and habilitation records, incontinence supplies, food, housekeeping, security, administration, human resources, dues, license fees, legal services, accounting services, minor equipment, maintenance and repairs, and employee benefits.[285]

### ICF/MR off-site day programming

(R.C. 5111.233)

The act requires that the costs of day-programming be part of the direct care costs of an ICF/MR as off-site day programming if the area in which the day programming is provided is not certified by the Director of Health as an ICF/MR and regardless of either of the following: (1) whether or not the area in which the day programming is provided is less than 200 feet away from the ICF/MR or (2) whether or not the day programming is provided by an individual who, or organization that, is a related party to the provider of the ICF/MR.[286]

### Medicaid coverage of oxygen services for ICF/MR residents (VETOED)

(R.C. 5111.236)

The ODJFS Director has adopted a rule limiting when Medicaid covers oxygen services. Under the rule, oxygen services are covered only for Medicaid recipients with significant hypoxemia in the chronic stable state and only when certain conditions are met, including blood gas or oxygen saturation levels indicating the need for oxygen services. A Medicaid recipient's oxygen saturation levels indicate the need for oxygen services if the recipient has (1) an arterial oxygen saturation at or below 88% when at rest while awake, (2) an arterial oxygen saturation at or below 88% during sleep if the recipient demonstrates an arterial oxygen saturation at or above 89% while awake, (3) a decrease in arterial oxygen saturation of more than 5% during sleep that is associated with symptoms or signs reasonably attributable to hypoxemia, or (4) an arterial oxygen saturation at or below 88% during exercise if the recipient demonstrates an arterial oxygen saturation at or above 89% during the day while at rest.[287]

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[285] R.C. 5111.20(K).

[286] Continuing law defines "related party" as an individual or organization that, to a significant extent, has common ownership with, is associated or affiliated with, has control of, or is controlled by, the provider (R.C. 5111.20).

[287] O.A.C. 5101:3-10-13.

The Governor vetoed a provision that would have required the Medicaid program to cover oxygen services that a medical supplier with a valid Medicaid provider agreement provided to a Medicaid recipient who is a medically fragile child[288] and resides in an ICF/MR. The Medicaid program would have had to cover such oxygen services regardless of any of the following:

(1) The percentage of the Medicaid recipient's arterial oxygen saturation at rest, exercise, or sleep;

(2) The type of system used in delivering the oxygen to the Medicaid recipient;

(3) Whether the ICF/MR in which the Medicaid recipient resides purchased or rented the equipment used in the delivery of the oxygen to the recipient.

The vetoed provision also would have required a medical supplier of an oxygen service to bill ODJFS directly for oxygen services the Medicaid program covers due to this part of the act. An ICF/MR would have been prohibited from including the cost of such an oxygen service in its Medicaid cost report unless it was the medical supplier of the oxygen service.[289]

### Limits on costs of outside ICF/MR resident meals

(R.C. 5111.261)

ODJFS is generally prohibited from placing limits on specific categories of reasonable costs when determining whether the direct care and indirect care costs of an ICF/MR are allowable for purposes of its Medicaid rate. ODJFS may place limits on only the following categories: compensation of owners, compensation of relatives of owners, and compensation of administrators.

Under prior law, ODJFS was also permitted to place limits on costs for resident meals prepared and consumed outside an ICF/MR. The act removes that authority. Thus, ODJFS is no longer authorized to place a limit on such costs when determining whether the direct care and indirect care costs of an ICF/MR are allowable.

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[288] The vetoed provision would have defined "medically fragile child" as an individual under age 18 who requires (1) the services of a physician at least once a week due to instability of the individual's medical condition and (2) the services of a registered nurse on a daily basis.

[289] The Governor's veto message indicates an intent to veto the enactment of R.C. 5111.236 in its entirety and the Governor clearly vetoes the reference to the section in the act's title and enacting clause. However, the veto only shows division (C) of the section, which concerns the billing for oxygen services, as being vetoed.

### FY 2010 Medicaid reimbursement rate for ICFs/MR

(Section 309.30.60)

The act establishes limits on the fiscal year 2010 Medicaid rates for ICFs/MR to which either of the following apply:

(1) There is a valid Medicaid provider agreement for the ICF/MR on June 30, 2009, and a valid Medicaid provider agreement during fiscal year 2010.

(2) The ICF/MR undergoes a change of operator effective July 1, 2009, the exiting (i.e., former) operator has a valid Medicaid provider agreement for the ICF/MR on June 30, 2009, and the entering (i.e., new) operator has a valid Medicaid provider agreement for the ICF/MR during fiscal year 2010.

The Medicaid rate to be paid to such an ICF/MR during fiscal year 2010 is the rate calculated for the ICF/MR in accordance with the formula included in the Revised Code. However, such an ICF/MR is to be paid for services provided during the period beginning July 17, 2009, and ending July 31, 2009, the rate that the ICF/MR was paid June 29, 2009. Also, if the mean total per diem rate for all such ICFs/MR for the period beginning August 1, 2009, and ending July 30, 2010, weighted by May 2009 Medicaid days and calculated as of August 1, 2009, exceeds $278.15, ODJFS must reduce the total per diem rate for each such ICF/MR for that period by a percentage that is equal to the percentage by which the mean total per diem rate exceeds $278.15.

The act provides that the rate so set for an ICF/MR is not subject to any adjustments otherwise authorized by state law governing ICF/MR Medicaid rates during the remainder of fiscal year 2010. And, ODJFS must reduce ICF/MRs' fiscal year 2010 rate as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the ICF/MR franchise permit fee if the United States Centers for Medicare and Medicaid Services requires that the franchise permit fee be reduced or eliminated.

ODJFS is to implement the rate limits notwithstanding anything to the contrary in the Revised Code governing Medicaid rates for ICFs/MR.

### FY 2011 Medicaid reimbursement rate for ICFs/MR

(Section 309.30.70)

The act establishes similar limits for the fiscal year 2011 Medicaid rates for ICFs/MR. The limits are to apply to ICFs/MR to which either of the following apply:

(1) There is a valid Medicaid provider agreement for the ICF/MR on June 30, 2010, and a valid Medicaid provider agreement during fiscal year 2011.

(2) The ICF/MR undergoes a change of operator effective July 1, 2010, the exiting (i.e., former) operator has a valid Medicaid provider agreement for the ICF/MR on June 30, 2010, and the entering (i.e., new) operator has a valid Medicaid provider agreement for the ICF/MR during fiscal year 2011.

The Medicaid rate to be paid to such an ICF/MR during fiscal year 2011 is the rate calculated for the ICF/MR in accordance with the formula included in the Revised Code. However, if the mean total per diem rate for all such ICFs/MR for fiscal year 2011, weighted by May 2010 Medicaid days and calculated as of July 1, 2010, exceeds $278.15, ODJFS must reduce the total per diem rate for each such ICF/MR by a percentage that is equal to the percentage by which the mean total per diem rate exceeds $278.15.

The act provides that the rate so set for an ICF/MR is not subject to any adjustments otherwise authorized by state law governing ICF/MR Medicaid rates during the remainder of fiscal year 2011. And, ODJFS must reduce ICF/MRs' fiscal year 2011 rate as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the ICF/MR franchise permit fee if the United States Centers for Medicare and Medicaid Services requires that the franchise permit fee be reduced or eliminated.

ODJFS is to implement the rate limits notwithstanding anything to the contrary in the Revised Code governing Medicaid rates for ICFs/MR.

## ICF/MR Reimbursement Study Council (VETOED)

(Section 309.30.71)

The Governor vetoed a provision that would have created the ICF/MR Reimbursement Study Council, which would have consisted of the following:

(1) The ODJFS Director;

(2) The Deputy Director of ODJFS's Office of Ohio Health Plans;

(3) The ODODD Director;

(4) One representative of Medicaid recipients residing in ICFs/MR, appointed by the Governor;

(5) Two representatives, each appointed by their respective governing bodies, of the Ohio Provider Resource Association, the Ohio Health Association, and the Ohio Association of County Boards of Mental Retardation and Developmental Disabilities.

The ODJFS Director would have been required to serve as the Council's chairperson. Council members would have served without compensation. The Council would have been required to review the system for reimbursing ICF/MR services under the Medicaid program. When reviewing the system, the Council would have had to use the following principles:

(1) The system should appropriately account for differences in acuity and service needs among individuals in ICFs/MR.

(2) The system should support and encourage quality services, including both of the following elements:

(a) A high level of coverage of direct care costs.

(b) Pay for performance mechanisms.

(3) The system should reflect appropriate recognition that virtually all individuals served in ICFs/MR are Medicaid recipients.

(4) The system should encourage cost-effective service delivery.

(5) The system should encourage innovation in service delivery.

(6) The system should encourage appropriate maintenance, improvement, and replacement of facilities.

The Council would have been required to submit a report of its activities, findings, and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate no later than July 1, 2010.

## Nursing facility refund of excess depreciation

(R.C. 5111.25)

The act repeals a requirement that a nursing facility, after the date on which a transaction of sale is closed, refund to ODJFS the amount of excess depreciation that ODJFS paid to the facility for each year it operated under a Medicaid provider agreement. The amount of the refund was to be prorated according to the number of Medicaid patient days for which the nursing facility received payment. "Excess depreciation" was defined as a nursing facility's depreciated basis, which was the

facility's cost less accumulated depreciation, subtracted from the purchase price net of selling costs but not exceeding the amount paid to the facility for capital costs less any amount paid for interest costs, amortization of financing costs, and lease expenses.[290]

## Medicaid debt collection process (VETOED)

(R.C. 5111.65, 5111.651, 5111.68, 5111.681, 5111.685, 5111.686, 5111.688, 5111.689, 5111.874, and 5111.875)

Continuing law establishes requirements for a nursing facility or ICF/MR that undergoes a change of operator,[291] facility closure,[292] voluntary termination,[293] or voluntary withdrawal of participation.[294] The requirements concern the state collecting debts a nursing facility or ICF/MR owes under the Medicaid program. The Governor vetoed provisions that would have revised these requirements.

### Estimate of Medicaid debt

An operator is required to notify ODJFS of an impending change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation.[295] On receipt of the notice, ODJFS must determine the amount of any overpayments made under the Medicaid program to the operator, including overpayments the operator disputes, and other actual and potential debts the operator owes or may owe under the Medicaid program.[296] A vetoed provision would have clarified that ODJFS was to estimate, rather than determine, this amount and provided that the amount of the

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[290] The act also repeals a requirement that a nursing facility that is sold or that voluntarily terminates participation in the Medicaid program refund any other amount that ODJFS properly finds to be due after an audit. However, continuing law establishes a debt collection process for nursing facilities that undergo a change of operator or cease to participate in Medicaid.

[291] A change of operator occurs when an entering (i.e., new) operator becomes the operator of a nursing facility or ICF/MR in the place of an exiting (i.e., former) operator (R.C. 5111.65(A)).

[292] A facility closure occurs when a building, or part of a building, that houses a nursing facility or ICF/MR ceases to be used as a nursing facility or ICF/MR and all of the facility's residents are relocated (R.C. 5111.65(H)).

[293] A voluntary termination occurs when an operator voluntarily elects to terminate the participation of an ICF/MR in the Medicaid program but the facility continues to provide service of the type provided by a residential facility for persons with mental retardation or a developmental disability (R.C. 5111.65(J)).

[294] A voluntary withdrawal of participation occurs when an operator voluntarily elects to terminate a nursing facility's participation in the Medicaid program but the nursing facility continues to provide service of the type provided by a nursing facility (R.C. 5111.65(K)).

[295] R.C. 5111.66 and 5111.67.

[296] R.C. 5111.68.

estimated debt included any franchise permit fee the operator owes or may owe under the Medicaid program. ODJFS would have been required to use a debt estimation methodology in estimating the operator's actual and potential Medicaid debts. The debt estimation methodology was to be established in rules. A vetoed provision would have eliminated a requirement that ODJFS, if it was unable to determine the amount of Medicaid debts for any period of time before the effective date of the new provider's Medicaid provider agreement in the case of a change of operator or the effective date of a facility closure, voluntary termination, or voluntary withdrawal of participation, make a reasonable estimate of the Medicaid debts for the period using information available to ODJFS, including prior determinations of Medicaid debts.

ODJFS would have been required to provide the operator written notice of ODJFS's estimate of the operator's Medicaid debt not later than 30 days after ODJFS received the notice of the change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation. The notice would have had to include the basis for the estimate.

### Withholding

With a certain exception, ODJFS must withhold a specified amount from payment due the operator under the Medicaid program. A vetoed provision would have permitted rather than required ODJFS to make the withholding, changed the amount to be withheld, eliminated the existing exception to the withholding requirement, and created new circumstances under which the withholding would not occur or be reduced.

ODJFS must withhold the greater of (1) the total amount of any overpayments made under the Medicaid program to the operator, including overpayments the operator disputes, and other actual and potential debts, including unpaid penalties, the operator owes or may owe under the Medicaid program and (2) an amount equal to the average amount of monthly payments to the operator under the Medicaid program for the 12-month period immediately preceding the month that includes the last day the operator's Medicaid provider agreement is in effect or, in the case of a voluntary withdrawal of participation, the effective date of the voluntary withdrawal of participation. The act would have provided instead for the withholding to equal the total amount of the operator's Medicaid debt as specified in the notice the act would have required ODJFS to provide the operator.

ODJFS is permitted to choose not to make the withholding in the case of a change of operator if the new operator (1) enters into a nontransferable, unconditional, written agreement with ODJFS to pay ODJFS the former operator's Medicaid debt and (2) provides ODJFS a copy of the new operator's balance sheet that assists ODJFS in

determining whether to make the withholding. A vetoed provision would have eliminated this provision and established circumstances applicable to a change of operator under which the withholding was not to occur or be reduced and circumstances applicable to a facility closure, voluntary termination, or voluntary withdrawal of participation under which the withholding was not to occur or to be reduced.

In the case of a change of operator, a vetoed provision would have prohibited ODJFS from making the withholding if the new operator or a qualified affiliated operator executed a successor liability agreement to assume liability for the entire amount of the former operator's Medicaid debt as specified in ODJFS's notice to the former operator.[297] ODJFS would have been required to reduce the amount of the withholding if the new operator or qualified affiliated operator executed such a successor liability agreement to assume liability for the portion of the former operator's Medicaid debt that represents the franchise permit fee the former operator owes. The amount of the reduction was to equal that portion of the former operator's Medicaid debt.

In the case of a facility closure, voluntary termination, or voluntary withdrawal of participation, a vetoed provision would have prohibited ODJFS from making the withholding if the former operator or a qualified affiliated operator executed a successor liability agreement to assume liability for the entire amount of the former operator's Medicaid debt. ODJFS would have been required to reduce the amount of the withholding if the former operator or qualified affiliated operator executed a successor liability agreement to assume liability for the portion of the former operator's Medicaid debt that represents the franchise permit fee the former operator owes. The amount of the reduction was to equal that portion of the former operator's Medicaid debt.

A provision vetoed by the Governor would have provided that execution of a successor liability agreement did not waive the former operator's right to contest the amount that ODJFS specified in its notice to the former operator that the operator owes under the Medicaid program.

A vetoed provision would have defined "qualified affiliated operator" as a nursing facility or ICF/MR operator to whom all of the following applied:

(1) The operator was affiliated with either the former operator for whom the affiliated operator was to assume liability for all or part of the former operator's

[297] A successor liability agreement would have had to be executed in a manner ODJFS was to prescribe.

Medicaid debt or the new operator involved in a change of operator with the former operator;

(2) The operator had one or more valid Medicaid provider agreements;

(3) During the 12-month period preceding the month in which ODJFS received notice of the change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation, the average monthly Medicaid payment made to the operator equaled at least 90% of the average monthly Medicaid payment made to the former operator.

### Determination of actual Medicaid debt

ODJFS is required to determine the actual amount of an operator's Medicaid debt by completing all final fiscal audits not already completed and performing all other appropriate actions ODJFS determines to be necessary. ODJFS must issue a debt summary report not later than 90 days after the operator files a properly completed cost report with ODJFS or, if ODJFS waives the requirement for the operator to file a cost report, not later than 90 days after the date ODJFS waives the cost report requirement. A provision the Governor vetoed would have provided for this report to be issued as an initial debt summary report and reduced the number of days ODJFS had to issue it to 60 days following the date the operator filed a properly completed cost report or ODJFS waived the cost report requirement.

The operator and a qualified affiliated operator who executes a successor liability agreement would have been permitted to request an informal settlement conference to contest any of ODJFS's findings included in the initial debt summary report. The request was to be submitted to ODJFS not later than 30 days after the date ODJFS issued the initial debt summary report. If ODJFS had withheld money from payment due the operator under the Medicaid program, ODJFS would have been required to conclude the conference not later than 60 days after the date ODJFS received the timely request unless ODJFS and the operator or qualified affiliated operator agreed to a later conclusion date. The operator and qualified affiliated operator would have been permitted to submit information to ODJFS explaining what was contested before and during the conference, including documentation of the amount of any debt ODJFS owes the operator. ODJFS would have been required to issue a revised debt summary report after the conference's conclusion. If ODJFS had made a withholding, the revised debt summary report was to be submitted not later than 60 days after the conference's conclusion. The revised debt summary was to include ODJFS's findings and the amount of debt ODJFS determined the operator owes under the Medicaid program. ODJFS would have been required to explain its findings and determination in the revised debt summary report.

Only the parts of a debt summary report that are subject to an adjudication under another provision of state Medicaid law are subject to an adjudication under the Administrative Procedure Act (R.C. Chapter 119.).[298] A vetoed provision would have provided instead that the operator or qualified affiliated operator could request an adjudication regarding any part of an initial or revised debt summary report. The adjudication was to be consolidated with any other uncompleted adjudication that concerned a matter addressed in the initial or revised debt summary report. ODJFS would have been required to complete the adjudication not later than 60 days after receiving the request for the adjudication if ODJFS had made a withholding.

### Release of withholding

ODJFS is required to release the amounts ODJFS withholds from an operator, less any amount the operator owes under the Medicaid program, according to the following deadlines:

(1) If ODJFS fails to issue a debt summary report within the required time, 91 days after the date the operator files a properly completed cost report or the date ODJFS waives the cost report requirement;

(2) If ODJFS issues the debt summary report within the required time, not later than 30 days after the operator agrees to a final fiscal audit resulting from the debt summary report.

A vetoed provision would have revised the deadlines for ODJFS to release the amount of the withholding that was to be released. The following would have been the deadlines:

(1) If ODJFS failed to release the initial debt summary report within the required time, 61 days after the date the operator filed the properly completed cost report or ODJFS waived the cost report requirement;

(2) If ODJFS released the initial debt summary report within the required time, not later than the following:

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[298] Law governing this issue may contain an incorrect citation regarding which parts of a debt summary report are subject to an adjudication. Presumably what is meant are the parts of a debt summary report that pertain to (1) an audit disallowance that ODJFS makes as the result of an audit of a Medicaid cost report, (2) an adverse finding that results from an exception review of resident assessment information conducted after the effective date of a nursing facility or ICF/MR's Medicaid rate that is based on the assessment information, (3) a Medicaid payment deemed an overpayment, or (4) an ODJFS-imposed penalty.

(a) Thirty days after the later of the deadline for requesting an informal settlement conference and the deadline for requesting an adjudication regarding the initial debt summary report if the operator and a qualified affiliated operator who executed a successor liability agreement failed to request both the conference and adjudication on or before the deadline;

(b) Thirty days after the deadline for requesting an adjudication regarding a revised debt summary report if the operator or a qualified affiliated operator who executed a successor liability agreement requested an informal settlement conference on or before the deadline but failed to request an adjudication on or before the deadline;

(c) Thirty days after the completion of an adjudication of the initial or revised debt summary report if the operator or a qualified affiliated operator who executed a successor liability agreement requested the adjudication on or before the deadline.

### Medicaid Payment Withholding Fund

A provision vetoed by the Governor would have required that all amounts withheld from a nursing facility or ICF/MR operator be deposited into the existing Medicaid Payment Withholding Fund. Money in the fund would have had to be used to pay an operator when a withholding was released and to pay ODJFS and the federal government the amount an operator owes under the Medicaid program. Amounts paid to ODJFS or the federal government from the fund would have had to be deposited into the appropriate ODJFS fund.

## Home first rules for home and community-based services

(R.C. 5111.85 (primary), 5111.705, and 5111.851)

Continuing law permits the ODJFS Director to adopt rules regarding components of the Medicaid program authorized by a waiver granted by the United States Department of Health and Human Services (i.e., a Medicaid waiver component). For example, the ODJFS Director may adopt rules establishing eligibility requirements for a Medicaid waiver component and rules establishing the type, amount, duration, and scope of services a Medicaid waiver component provides.

The act permits the Director to adopt additional rules regarding Medicaid waiver components under which home and community-based services are provided as an alternative to hospital, nursing facility, or intermediate care facility for the mentally retarded services. The rules may establish procedures for identifying individuals who (1) are eligible for such a Medicaid waiver component and on a waiting list for the component, (2) are receiving inpatient hospital services or residing in a nursing facility or ICF/MR (as appropriate for the component), and (3) choose to be enrolled in the

component. The rules may also establish procedures for approving the enrollment of individuals so identified into a Medicaid waiver component providing home and community-based services. These procedures are popularly known as "home first." Any such home first procedures established in rules for the Medicaid waiver components known as the PASSPORT Program and the Assisted Living Program must be consistent with state law governing home first procedures for those Medicaid waiver components.

## Home care attendant services

(R.C. 5111.88, 5111.881, 5111.882, 5111.883, 5111.884, 5111.885, 5111.886, 5111.887, 5111.888, 5111.889, 5111.8810, and 5111.8811)

The act permits the ODJFS Director to submit requests to the United States Secretary of Health and Human Services to amend the federal Medicaid waivers authorizing the Ohio Home Care program and the Ohio Transitions II Aging Carve-Out program to have those programs cover home care attendant services. Home care attendant services are personal care aide services, assistance with self-administration of medication, and assistance with nursing tasks. If the Secretary approves the waiver amendments, home care attendant services are to be available to consumers enrolled in the Ohio Home Care program or Ohio Transitions II Aging Carve-Out program to whom all of the following apply:

(1) The consumer has a medically determinable physical impairment that is expected to last for a continuous period of not less than 12 months and causes the consumer to require assistance with activities of daily living, self-care, and mobility, including assistance with self-administration of medication, the performance of nursing tasks, or both.

(2) In the case of a consumer who is at least 18 years of age, the consumer is mentally alert and is, or has an authorized representative[299] who is, capable of selecting, directing the actions of, and dismissing a home care attendant.

(3) In the case of a consumer under 18 years of age, the consumer has an authorized representative[300] who is capable of selecting, directing the actions of, and dismissing a home care attendant.

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[299] A consumer who is at least 18 is permitted by the act to select an individual to act on the consumer's behalf for purposes regarding home care attendant services. The individual selected is referred to as an authorized representative. (See "**Selection of authorized representative**" below.)

[300] The parent, custodian, or guardian of a consumer under 18 years of age is to serve as the consumer's authorized representative for purposes related to home care attendant services.

### Requirements for home care attendant service providers

The act requires the ODJFS Director to enter into a Medicaid provider agreement with a qualifying individual to authorize the individual to provide home care attendant services to eligible consumers if the Secretary of Health and Human Services approves a waiver amendment regarding home care attendant services. To qualify to be a provider of home care attendant services, an individual would have to agree to comply with the act's requirements regarding home care attendant services, and any rules the Director adopts regarding the services, and provide the ODJFS Director evidence satisfactory to the Director of all of the following:

(1) That the individual either meets personnel qualifications specified in federal regulations for home health aides[301] or has successfully completed at least (a) a competency evaluation program or training and competency evaluation program approved or conducted by the Director of Health for nurse aides or (b) a training program approved by ODJFS that includes training in certain subjects[302] and provides training equivalent to a training and competency program approved or conducted by the Director of Health for nurse aides or meets requirements set in federal regulations.

(2) That the individual has obtained a certificate of completion of a course in first aid from a first aid course that (a) is not provided solely through the Internet, (b) includes hands-on training provided by a first aid instructor who is qualified to provide such training according to standards set in rules the ODJFS Director is authorized to adopt, and (c) requires the individual to demonstrate successfully that the individual has learned the first aid taught in the course.

(3) That the individual meets any other requirements for the Medicaid provider agreement specified in rules the ODJFS Director is authorized to adopt.

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[301] To meet the personnel qualifications specified in the federal regulations, an individual must have successfully completed (1) a state-established or other training program that meets certain requirements and a competency evaluation program or state licensure program meeting certain requirements or (2) a competency evaluation program or state licensure program meeting certain requirements. An individual is not considered to have completed a training and competency evaluation program or a competency evaluation program if, since the individual's most recent completion of the program, there has been a continuous period of 24 consecutive months during which the individual has not furnished home health services for compensation. (42 C.F.R. 484.4.)

[302] The training program must include training in at least all of the following: (1) basic home safety, (2) universal precautions for the prevention of disease transmission, including hand-washing and proper disposal of bodily waste and medical instruments that are sharp or may produce sharp pieces if broken, (3) personal care aide services, and (4) the labeling, counting, and storage requirements for schedule II, III, IV, and V medications.

An individual issued a Medicaid provider agreement to provide home care attendant services under the Ohio Home Care program or Ohio Transitions II Aging Carve-Out program is required to complete not less than 12 hours of in-service continuing education regarding health care attendant services each year. The individual must provide the ODJFS Director evidence satisfactory to the Director that the individual has satisfied this requirement. The evidence must be submitted to the ODJFS Director not later than the annual anniversary of the issuance of the individual's Medicaid provider agreement.

The act requires that a home care attendant maintain a clinical record for each consumer to whom the attendant provides home care attendant services. The clinical record must be maintained in a manner that protects the consumer's privacy. A home care attendant must also participate in a face-to-face visit every 90 days with each consumer to whom the attendant provides health care attendant services, the consumers' authorized representatives (if any), and a registered nurse. The purpose of the visit is to monitor the consumers' health and welfare. The registered nurse must agree to answer any questions that the home care attendant, consumer, or authorized representative has about consumer care needs, medications, and other issues. The home care attendant is required to document the activities of each visit in the consumer's clinical record with the registered nurse's assistance.

### Assisting with nursing tasks and self-administration of medication

The act places restrictions on a home care attendant assisting a consumer with nursing tasks or self-administration of medication. A home care attendant may provide such assistance only after completing consumer-specific training in how to provide the assistance. The training must be provided by a physician or registered nurse who authorizes the assistance or the consumer or consumer's authorized representative in cooperation with the authorizing physician or registered nurse. A home care attendant may provide the assistance only after successfully demonstrating that the attendant has learned how to provide the assistance to the consumer if the consumer, consumer's authorized representative, or physician or registered nurse who authorizes the assistance requests the demonstration. Also, a home care attendant must comply with both of the following when assisting a consumer with nursing tasks or self-administration of medication:

(1) The written consent of the consumer or consumer's authorized representative;

(2) The written authorization of a physician or registered nurse, including a registered nurse who is an advanced practice nurse.

To consent to a home care attendant assisting a consumer with nursing tasks or self-administration of medication, the consumer or consumer's authorized representative must provide the ODJFS Director a written statement signed by the consumer or authorized representative under which the consumer or authorized representative consents to (1) having the attendant assist the consumer with the nursing tasks or self-administration of medication and (2) assuming responsibility for directing the attendant when the attendant assists the consumer with nursing tasks or self-administration of medication.

To authorize a home care attendant to assist a consumer with nursing tasks or self-administration of medication, a physician or registered nurse must provide the ODJFS Director a written statement signed by the physician or registered nurse that includes all of the following:

(1) The consumer's name and address;

(2) A description of the nursing tasks or self-administration of medication with which the attendant is to assist the consumer, including, in the case of assistance with self-administration of medication, the name and dosage of the medication;

(3) The times or intervals when the attendant is to assist the consumer with the self-administration of each dosage of the medication or nursing tasks;

(4) The dates the attendant is to begin and cease providing the assistance;

(5) A list of severe adverse reactions the attendant must report to the physician or registered nurse should the consumer experience one or more of the reactions;

(6) At least one telephone number at which the attendant can reach the physician or registered nurse in an emergency;

(7) Instructions the attendant is to follow when assisting the consumer with nursing tasks or self-administration of medication, including instructions for maintaining sterile conditions and for storage of task-related equipment and supplies;

(8) The physician or registered nurse's attestation that (a) the consumer or consumer's authorized representative has demonstrated to the physician or registered nurse the ability to direct the attendant and (b) the attendant has demonstrated the ability to provide the assistance and the consumer or authorized representative has indicated to the physician or registered nurse that the consumer or authorized representative is satisfied with the attendant's demonstration.

A physician or registered nurse, when authorizing a home care attendant to assist a consumer with nursing tasks or self-administration of medication, is not permitted to authorize the attendant to do any of the following:

(1) Perform a task that is outside the physician or registered nurse's scope of practice;

(2) Assist the consumer with the self-administration of a medication unless the medication is administered orally, topically, or via a gastrostomy tube[303] or jejunostomy tube;[304]

(3) Assist the consumer with the self-administration of a medication unless the medication is in its original container and the label attached to the container displays (a) the consumer's full name in print, (b) the medication's dispensing date, which must not be more than 12 months before the date the attendant assists the consumer with self-administration of medication, and (c) the exact dosage and means of administration that match the physician or registered nurse's authorization to the attendant;

(4) Assist the consumer with the self-administration of a schedule II, III, IV, or V medication unless (a) the medication has a warning label on its container, (b) the attendant counts the medication in the consumer's or authorized representative's presence when the medication is administered to the consumer and records the count on a form used for the count as specified in rules the act authorizes the ODJFS Director to adopt, (c) the attendant recounts the medication in the consumer's or authorized representative's presence at least monthly and reconciles the recount on a log located in the consumer's clinical record, and (d) the medication is stored separately from all other medications and is secured and locked at all times when not being administered to the consumer to prevent unauthorized access;

(5) Perform an intramuscular injection;

(6) Perform a subcutaneous injection unless it is for a routine dose of insulin;

(7) Program a pump used to deliver a medication unless the pump is used to deliver a routine dose of insulin;

(8) Insert, remove, or discontinue an intravenous access device;

(9) Engage in intravenous medication administration;

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[303] A gastrostomy tube is a percutaneously inserted catheter that terminates in the stomach.

[304] A jejunostomy tube is a percutaneously inserted catheter that terminates in the jejunum, which is the middle portion of the small intestine.

(10) Insert or initiate an infusion therapy;

(11) Perform a central line dressing change.

Use of a metered dose inhaler is permitted when assisting a consumer with self-administration of a medication that is administered orally. Use of an eye, ear, or nose drop or spray or a vaginal or rectal suppository is permitted when assisting a consumer with self-administration of a medication that is administered topically. Transdermal medication is included as a topical medication. A home care attendant may assist with the self-administration of a medication that is administered via a gastrostomy tube or jejunostomy tube only when a pre-programmed pump is used.

### Practice of nursing without a license

The act provides that a home care attendant who provides home care attendant services to a consumer in accordance with a physician or registered nurse's authorization does not engage in the practice of nursing as a registered nurse or in the practice of nursing as a licensed practical nurse in violation of continuing law that generally prohibits persons from engaging in such activities without a license from the Board of Nursing. However, a consumer or consumer's authorized representative is required to report to the ODJFS Director if a home care attendant engages in the practice of nursing as a registered nurse or the practice of nursing as a licensed practical nurse beyond the physician or registered nurse's authorization. The ODJFS Director must forward a copy of each report to the Board of Nursing.

### Selection of authorized representative

An adult consumer is permitted to select an individual to act on the consumer's behalf for purposes regarding home care attendant services. To make a selection, the consumer is to submit a written notice of the selection to the ODJFS Director. The notice must specifically identify the individual the consumer selects. The notice may limit what the authorized representative may do on the consumer's behalf. A consumer is prohibited from selecting the consumer's home care attendant to be the consumer's authorized representative.

### Rules

The act requires the ODJFS Director to adopt rules as necessary for the implementation of the act's provisions regarding home care attendant services. The rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.) and must be consistent with federal and state law.

## Fiscal activities related to Medicaid waiver programs

(Section 309.30.90)

The act permits the Director of Budget and Management to seek Controlling Board approval to do any of the following in support of any home and community-based services Medicaid waiver program:

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

(2) Transfer cash between funds used by affected agencies;

(3) Transfer appropriation between appropriation items within a fund and used by the same state agency.

## Money Follows the Person Enhanced Reimbursement Fund

(Section 309.31.10)

### 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.[305] 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.

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[305] Section 6071 of the Deficit Reduction Act of 2005, Public Law No. 109-171.

The Deficit Reduction Act includes federal appropriations for 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 Secretary. ODJFS submitted an application for a grant in November 2006. Ohio learned in January 2007 that its application was approved.

### The act

The act creates the Money Follows the Person Enhanced Reimbursement Fund in the state treasury. This is a continuation of the Fund as created by Am. Sub. H.B. 562 of the 127th General Assembly. The federal payments made to Ohio under federal law governing Money Follows the Person demonstration projects are to be deposited in the Fund. ODJFS is required to use the money in the Fund for system reform activities related to the demonstration project.

## Community behavioral health boards' administrative costs (PARTIALLY VETOED)

(Section 309.32.40)

The act requires the ODJFS Director to seek federal approval to establish a system under which boards of alcohol, drug addiction, and mental health services, community mental health boards, and alcohol and drug addiction services boards (i.e., community behavioral health boards) obtain federal financial participation for the allowable administrative activities the boards perform in the administration of the Medicaid program. The Governor vetoed a provision that would have required the ODJFS Director to seek federal approval not later than October 1, 2009. The ODJFS Director must implement the system on receipt of federal approval. The ODJFS Director is required by the act to work with the Directors of Alcohol and Drug Addiction Services and Mental Health and representatives of community behavioral health boards when implementing this provision of the act.

## Funding of Medicaid-covered behavioral health services (VETOED)

(Section 309.32.43)

The Department of Mental Health, Department of Alcohol and Drug Addiction Services, and community behavioral health boards are required to pay the nonfederal share of any Medicaid payment to a provider for Medicaid services administered by the Department of Mental Health or Department of Alcohol and Drug Addiction Services pursuant to an interagency agreement with ODJFS. The Governor vetoed a provision that would have required a community behavioral health board to use state funds provided to the board for the purpose of funding community behavioral health services

to make the required payments. The vetoed provision would have permitted a community behavioral health board to use money available to the board that is raised by a county tax levy to make such a payment if using the money was consistent with the purpose for which the tax was levied.

The Medicaid program is required to cover certain mental health services provided by community mental health facilities.[306] The comprehensive annual plan must certify the availability of sufficient unencumbered community mental health state subsidy and local funds to match federal Medicaid reimbursement funds earned by community mental health facilities. The Governor vetoed a provision that would have provided that the comprehensive annual plan[307] was permitted, rather than required, to certify the availability of sufficient unencumbered community mental health local funds.

## Hospital assessments

(R.C. 5112.40, 5112.41, 5112.42, 5112.43, 5112.44, 5112.45, 5112.46, 5112.47, and 5112.48; Sections 125.10 and 309.30.17)

The act imposes an annual assessment on hospitals. A hospital, other than a federal hospital and a hospital that does not charge any of its patients for its services, is to be subject to the assessment if any of the following apply to the hospital:

(1) It is registered with the Department of Health as a general medical and surgical hospital or a pediatric general hospital and provides inpatient hospital services.

(2) It is recognized under the Medicare program as a cancer hospital and is exempt from the Medicare prospective payment system.

(3) It is a psychiatric hospital licensed by the Department of Mental Health.

The assessment is in addition to the assessment imposed under the Hospital Care Assurance Program (HCAP).[308]

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[306] A community mental health facility is a community mental health facility with a quality assurance program accredited by the Joint Commission on Accreditation of Healthcare Organizations or that is certified by the Department of Mental Health or ODJFS.

[307] Continuing law does not specify what is meant by the "comprehensive annual plan."

[308] See "**Hospital Care Assurance Program (HCAP)**" below for a discussion of that program.

### Amount of assessment

The amount of a hospital's assessment for a year is to equal a percentage of the hospital's total facility costs for a certain period of time. A hospital's total facility costs are the hospital's total costs for all care provided to all patients, including the direct, indirect, and overhead costs to the hospital of all services, supplies, equipment, and capital related to the care of patients, regardless of whether patients are enrolled in a health insuring corporation. However, total facility costs exclude all of the following costs: skilled nursing services provided in distinct-part nursing facility units; home health services; hospice services; ambulance services; renting durable medical equipment; and selling durable medical equipment.[309] And, the ODJFS Director is permitted to adopt rules to exclude any of the following from a hospital's total facility costs for the purpose of the assessment: (1) a hospital's costs associated with providing care to Medicaid recipients, Medicare beneficiaries, Disability Financial Assistance Program recipients, Disability Medical Assistance Program recipients,[310] recipients of the Program for Medically Handicapped Children, and recipients of services provided under the federal Maternal and Child Health Services Block Grant and (2) any other category of hospital costs the Director deems appropriate under federal law and regulations governing the Medicaid program. The amount of a hospital's total facility costs is to be derived from cost-reporting data for the hospital submitted to ODJFS for purposes of HCAP. The cost-reporting data used to determine a hospital's assessment is subject to the same type of adjustments made to the data under HCAP.

The percentage of a hospital's total facility costs that is to be the hospital's assessment for the first year of the assessment is 1.52%. The percentage to be used for the second and successive years is 1.61% unless ODJFS obtains federal approval to establish a tiered assessment. The period of time for which a hospital's total facility costs are counted for purposes of the assessment is the hospital's cost reporting period[311] that ends in the state fiscal year that ends in the federal fiscal year that precedes the federal fiscal year that precedes the year for which the assessment is imposed. For the first assessment to be imposed, this means that the period of time for which a hospital's total facility costs is counted will be the period covered by its cost reporting period that ended in state fiscal year 2008 (July 1, 2007, to June 30, 2008). This is because state fiscal year 2008 ended during federal fiscal year 2008 (October 1, 2007, to November 30, 2008),

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[309] These costs are to be shown on cost-reporting data ODJFS is to use for purposes of determining the hospital's assessment.

[310] The act abolishes the Disability Medical Assistance Program. (See "**Disability Medical Assistance Program**" below.)

[311] A cost reporting period is the period of time used by a hospital in reporting costs for purposes of the Medicare program.

federal fiscal year 2008 preceded federal fiscal year 2009, and federal fiscal year 2009 precedes the year (i.e., the period from October 1, 2009, to November 30, 2010) for which the first assessment is to be imposed.

### Notice of assessments

ODJFS is required to mail to each hospital the preliminary determination of the amount that the hospital is assessed for a year. The notice must be sent by certified mail, return receipt requested before or during each assessment program year. An assessment program year is the 12-month period beginning the first day of October of a calendar year and ending that last day of September of the following calendar year.

Unless a hospital requests that ODJFS reconsider the preliminary determination, the preliminary determination becomes the final determination 15 days after the preliminary determination is mailed to the hospital. To request a reconsideration, a hospital must submit to ODJFS a written request not later than 14 days after the preliminary determination is mailed. The request must be accompanied by written materials setting forth the basis for the reconsideration. On receipt of the timely request, ODJFS must reconsider the preliminary determination and may adjust the preliminary determination on the basis of the written materials accompanying the request. The result of the reconsideration is the final determination of the hospital's assessment.

ODJFS must mail to each hospital a written notice of the final determination of its assessment. A hospital may appeal the final determination to the Franklin County Court of Common Pleas. While a judicial appeal is pending, the hospital must pay any amount of its assessment that is not in dispute.

### Paying assessments

Unless the ODJFS Director adopts rules establishing a different payment schedule, each hospital is to pay its assessment as follows:

(1) 28% of a hospital's assessment for a year is due on the last business day of October;

(2) 31% is due on the last business day of February;

(3) 41% is due on the last day of May.

### Hospital audits

The act permits ODJFS to audit a hospital to ensure that the hospital properly pays the amount it is assessed. ODJFS must take action to recover from a hospital any amount the audit reveals that the hospital should have paid but did not pay.

### Hospital Assessment Fund

The act creates in the state treasury the Hospital Assessment Fund. All installment payments that hospitals make in paying the assessment and all recoveries ODJFS makes pursuant to an assessment-related audit are to be deposited into the fund. The fund's investment earnings are to be credited to the fund. ODJFS is required to use money in the fund to pay for costs of the Medicaid program, including the program's administrative costs.

### Hospital Inpatient and Outpatient Supplemental UPL Program

The ODJFS Director is required by the act to seek federal approval to create the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program. If federal approval is obtained, the program is to make supplemental Medicaid payments to hospitals for Medicaid-covered inpatient and outpatient services. Children's hospitals are excluded from the program. A portion of the money raised by the hospital assessment, and federal matching funds available for the program, are to be used for the program. The act specifies that 9.16% of the money raised by the hospital assessment for the first year of the assessment is to be used for the program. Of the money raised by the hospital assessment for the second year, 10.29% is to be used for the program.

### Federal issues

Federal law places restrictions on federal financial participation for the Medicaid program when a state receives revenue generated by health-care related taxes.[312] A health-care related tax is a licensing fee, assessment, or other mandatory payment that is related to (1) health care items or services, (2) the provision of, or the authority to provide, health care items or services, or (3) the payment for health care items or services.[313] The federal financial participation that a state receives for its Medicaid program is to be reduced by the sum of any revenue received during a fiscal year from health-care related taxes that are deemed impermissible.[314] To avoid being deemed

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[312] 42 U.S.C. 1396b(w).

[313] 42 C.F.R. 433.55.

[314] 42 U.S.C. 1396b(w)(1)(A).

impermissible, a health-care related tax must meet three requirements: it must be broad based, it must be uniformly imposed, and it cannot violate a hold harmless prohibition.[315] A state may obtain a federal waiver of aspects of the broad-based and uniform requirements but not the hold harmless prohibition.[316]

The act requires the ODJFS Director to implement the hospital assessment in a manner that does not cause a reduction in federal financial participation for the Medicaid program. However, if the United States Secretary of Health and Human Services determines that the hospital assessment is an impermissible health care-related tax under federal Medicaid law, the ODJFS Director is required to take all necessary actions to cease implementation of the assessment and the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program. Additionally, the ODJFS Director must promptly refund to each hospital the amount of money in the Hospital Assessment Fund at the time the refund is to be made that the hospital paid, plus any corresponding investment earnings on that amount.

### Rules

The act authorizes the ODJFS Director to adopt, amend, and rescind rules as necessary to implement the hospital assessment. The ODJFS Director is to follow the Administrative Procedure Act (R.C. Chapter 119.) when adopting, amending, or rescinding the rules.

### Sunset

The act repeals the law governing the hospital assessment (i.e., sunsets) effective October 1, 2011.

## Cost outlier and supplemental payments to children's hospitals

(Section 309.30.15)

### Background

Ohio pays hospitals for Medicaid inpatient admissions under a prospective payment system that includes pre-established, fixed amounts for each admission based on diagnosis-related group (DRG) codes. ODJFS makes additional payments to hospitals, called "cost outlier payments" and "exceptional outlier payments," to supplement base DRG payments for certain high- and extraordinarily high-cost inpatient admissions. The outlier payment policy is intended to promote access to care

[315] 42 C.F.R. 433.68(b).

[316] 42 U.S.C. 1396b(w)(3)(E) and 42 C.F.R. 433.72(b)(3).

for patients with more costly claims.[317] The reimbursement methodology for cost outlier and exceptional outlier cases is in an administrative rule adopted by the ODJFS Director (Ohio Administrative Code 5101:3-2-07.9).

### The act

Am. Sub. H.B. 119 of the 127th General Assembly, the biennial appropriations act, created an alternative outlier payment methodology for children's hospitals during fiscal years 2008 and 2009. The act re-establishes this methodology for fiscal years 2010 and 2011.

Under the act, notwithstanding continuing law's cost outlier payment, the ODJFS Director must pay the full cost (100%) of Medicaid cost outlier claims for inpatient admissions at children's hospitals[318] that are less than a threshold amount ($443,463 in 2002, adjusted annually for inflation), rather than just 85% of the cost, as under continuing law. The act requires that the practice of paying the full cost of such claims cease and revert back to 85% of the estimated cost when the difference between the total amount the Director has paid at full cost for the outlier claims and the total amount the Director would have paid children's hospitals for such claims at the 85% level exceeds the sum of the state funds made available for the additional cost outlier payments in each fiscal year and the corresponding federal match. The amount of state funds made available for this purpose for fiscal year 2010 is $6 million plus an additional $4.4 million from funds in the Hospital Assessment Fund.[319] In fiscal year 2011, a total of $10 million of state funds is made available for this purpose, of which $4 million is to come from funds in the Hospital Assessment Fund.

In addition, the act requires the ODJFS Director, for fiscal years 2010 and 2011, to make supplemental Medicaid payments to children's hospitals for inpatient services under a program modeled after the program that ODJFS was required to create under

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[317] U.S. Department of Health and Human Services, Office of Inspector General. *Review of Ohio's Medicaid Hospital Outlier Payments for State Fiscal Years 2000 through 2003* (March 2006) (last visited April 10, 2009), available at <http://oig.hhs.gov/oas/reports/region5/50400064.pdf>.

[318] The act defines "children's hospital" as a hospital that primarily serves patients 18 years of age and younger and is excluded from Medicare prospective payment in accordance with federal regulations (42 U.S.C. 412.23(d)).

Under continuing law, the cost for an inpatient case is determined by multiplying the allowed charges for the claim by the hospital-specific cost-to-charge ratio. As directed by paragraph (A)(6) of O.A.C. 5101:3-2-07.9, ODJFS pays the full estimated cost (100%) for a case where the cost exceeds an amount ($443,463) that is adjusted annually for inflation. For cases where the cost does not meet or is equal to $443,463 adjusted annually for inflation, ODJFS pays 85% of the estimated cost.

[319] See "**Hospital assessments**," above.

Section 206.66.79 of Am. Sub. H.B. 66 of the 126th General Assembly when the difference between the total amount the Director has paid at full cost for Medicaid outlier claims and the total amount the Director would have paid at the 85% level for the claims does not require the expenditure of all state and federal funds made available for the additional cost outlier payments in the applicable fiscal year. The program may be the same as the program the Director used for making supplemental payments to children's hospitals for fiscal years 2008 and 2009 under Am. Sub. H.B. 119 of the 127th General Assembly.

Further, the act prohibits the ODJFS Director from adopting, amending, or rescinding any rules that would result in decreasing the amount paid to children's hospitals for cost outlier claims.

### Increase in Medicaid rates for hospital inpatient and outpatient services

(Section 309.30.73)

The act requires the ODJFS Director to amend Medicaid rules as necessary to increase, for the period beginning October 1, 2009, and ending June 30, 2011, the Medicaid reimbursement rates for Medicaid-covered hospital inpatient and outpatient services that are paid under a prospective payment system. The rates are to be increased to rates that result in an amount that is 5% higher than the amount resulting from the rates in effect on September 30, 2009.

### Postponement of recalibration for hospitals

(Section 309.30.18)

The ODJFS Director has adopted rules regarding a Medicaid prospective payment system for hospital inpatient services. Included in the rules is a provision regarding weights that are applied in setting rates under the payment system. One of the rules requires, effective for discharges on or after January 1, 2010, and every calendar year thereafter, that relative weights be determined on an annual basis.[320] The act requires the ODJFS Director to amend this rule to postpone to January 1, 2012, the recalibration that otherwise would occur on January 1, 2010, and to postpone to January 1, 2013, the recalibration that otherwise would occur on January 1, 2011.

[320] O.A.C. 5101:3-2-07.3.

### Reduction in Medicaid rates for community provider services

(Section 309.30.75)

The act requires the ODJFS Director to amend rules governing Medicaid services as necessary to reduce, effective January 1, 2010, the Medicaid reimbursement rates for certain Medicaid-covered services to rates that result in an amount that is at least 3% lower than the amount resulting from the rates in effect on December 31, 2009. The rate reduction applies to the following services:

(1) Advanced practice nursing services;

(2) Ambulatory surgery center services;

(3) Chiropractic services;

(4) Durable medical equipment;

(5) Home health services;

(6) Ambulance and ambulette services;

(7) Physician services;

(8) Physical therapy services;

(9) Podiatry services;

(10) Private duty nursing services;

(11) Vision services;

(12) Clinic services, other than rural health clinics and federally qualified health centers;

(13) Occupational therapy services;

(14) Dental services;

(15) Services provided under a Medicaid waiver program of home and community-based services administered by ODJFS;

(16) Other services the ODJFS Director identifies, other than services for which an Ohio statute sets the Medicaid reimbursement rate.

## Medicaid dispensing fee for noncompounded drugs

(Section 309.30.76)

The act sets the Medicaid dispensing fee for each noncompounded drug covered by the Medicaid program at $1.80 for the period beginning January 1, 2010, and ending June 30, 2011.

## Durable medical equipment study

(Section 309.32.70)

The act requires ODJFS to prepare and submit a report on expenditures for durable medical equipment by the Medicaid program to the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate. ODJFS is to do all of the following in preparing the report:

(1) Identify the types of durable medical equipment that represent, in total, greater than 50% of the state's total Medicaid expenditures for durable medical equipment;

(2) Consult with durable medical equipment suppliers to identify cost-saving strategies;

(3) Evaluate opportunities for competitive purchasing procedures for durable medical equipment.

The report is to include recommendations on strategies to reduce the Medicaid program's costs for durable medical equipment and must be submitted not later than July 1, 2010.

## Prompt Payment Policy Workgroup (VETOED)

(Section 751.30)

The Governor vetoed a provision that would have created the Prompt Payment Policy Workgroup and given the Workgroup the following duties: (1) to recommend one set of regulations to govern prompt payment policies for Medicaid managed care plans, (2) to research and analyze prompt payment policies related to aged medical claims within the health insurance industry and the Medicaid program, (3) to review general payment rules, payment policies related to electronic and paper claims, definitions of clean and unclean claims, late payment penalties, auditing requirements, and any other issues related to Medicaid prompt payment policy identified by the Workgroup, and (4) to review statistical data on the compliance rates of current policies.

The Workgroup would have been made up of the following members: (1) one representative of the Office of Budget and Management, appointed by the Director of Budget and Management, (2) three representatives of the Department of Insurance, appointed by the Superintendent of Insurance, (3) four representatives of the Office of Ohio Health Plans in ODJFS, appointed by the ODJFS Director, (4) two representatives of Ohio's Medicaid managed care plans, appointed by the Executive Director of Ohio's Care Coordination Plans, (5) two representatives from the community of provider associations, one appointed by the Speaker of the House of Representatives and one appointed by the President of the Senate, (6) two members of the Ohio House of Representatives, one appointed by the Speaker of the House of Representatives and one appointed by the Minority Leader, and (7) two members of the Ohio Senate, one appointed by the President of the Senate and one appointed by the Minority Leader.

The act would have designated the ODJFS Director, or the Director's designee, as chairperson of the Workgroup and specified that members of the Workgroup are to serve without compensation, except to the extent that serving on the Workgroup is considered part of the members' regular employment duties.

Not later than February 1, 2010, the act would have required the Workgroup to submit a report containing prompt payment policy recommendations for Ohio's Medicaid program to the Governor and the majority and minority leadership in both Houses of the Ohio General Assembly. The Workgroup would have ceased to exist on February 28, 2010.

## VII. Hospital Care Assurance Program (HCAP)

Under the Hospital Care Assurance Program (HCAP), (1) hospitals are annually assessed an amount based on their total facility costs and (2) government hospitals make annual intergovernmental transfers to ODJFS. ODJFS distributes to hospitals money generated by the assessments and intergovernmental transfers along with federal matching funds generated by the assessments and transfers. A hospital compensated under HCAP must provide, without charge, basic, medically necessary, hospital-level services to Ohio residents who are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty guidelines.

### Delay of termination of HCAP

(Sections 640.10 and 640.11)

Under prior law, HCAP was scheduled to terminate on October 16, 2009. The act delays the termination date of the program until October 16, 2011.

## VIII. Children's Health Insurance Program

The Children's Health Insurance Program (CHIP) is a health-care program for uninsured, low-income children. It is funded with federal, state, and county funds and was established by Congress in 1997 as Title XXI of the Social Security Act. ODJFS administers the program. Federal and state law permits ODJFS to implement CHIP as a separate program, as part of the Medicaid program, or a combination of both. ODJFS has chosen to implement CHIP as part of the Medicaid program. State law provides for CHIP to have three parts. CHIP Part I covers uninsured individuals under age 19 with family incomes not exceeding 150% of the federal poverty guidelines. CHIP Part II covers uninsured individuals under age 19 with family incomes above 150% but not exceeding 200% of the federal poverty guidelines. CHIP Part III is to cover individuals under age 19 with family incomes above 200% but not exceeding 300% of the federal poverty guidelines. ODJFS has not implemented CHIP Part III to date.

### School-based health centers as CHIP providers (VETOED)

(R.C. 5101.504, 5101.5110, and 5101.5210 (primary); 173.71, 5101.26, 5101.50, 5101.5111, and 5101.571)

The federal "Children's Health Insurance Program Reauthorization Act of 2009"[321] provided that nothing in federal law is to be construed to limit the ability of states to furnish health assistance services covered under the Children's Health Insurance Program through school-based health centers.[322] The Governor vetoed a provision that would have specified that a school-based health center was permitted to furnish health assistance services that CHIP Part I, II, or III covers if the center met the requirements applicable to other providers providing those services. The vetoed provision would have permitted the ODJFS Director to adopt rules pertaining to the billing, reimbursement, and data collection for school-based health centers.

## IX. Children's Buy-In Program

The Children's Buy-In Program is a state-funded health care program for individuals under 19 years of age who have countable family income exceeding a certain amount and meet other eligibility requirements, including requirements

[321] Public Law 111-3.

[322] Under federal law, a "school-based health center" is defined as a health clinic that (a) is located in or near a school facility of a school district or board or of an Indian tribe or tribal organization, (b) is organized through school, community, and health provider relationships, (c) is administered by a sponsoring facility, (d) provides through health professionals primary health services to children in accordance with state and local law, and (e) satisfies other requirements as a state may establish for the operation of a health clinic (42 U.S.C. 1397jj (c)(9).

regarding access to creditable coverage. Individuals participating in the program are subject to premiums and co-payments.

## Eligibility requirements

(R.C. 5101.5212 and 5101.5213)

Prior law provided that an individual's countable family income must have exceeded 250% of the federal poverty guidelines to meet the income requirement for the Children's Buy-In Program. The act raises this to 300% of the federal poverty guidelines.

Other eligibility requirements for the Children's Buy-In Program concern access to creditable coverage. "Creditable coverage" is a federal term meaning all of the following: (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 (10 U.S.C. Chapter 55), (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 (5 U.S.C. Chapter 89), (9) a public health plan, or (10) a health plan available under the Peace Corps (22 U.S.C. 2504(e)). For purposes of state law governing the Children's Buy-In Program, medical assistance available under the Children's Buy-In Program or the Program for Medically Handicapped Children is not considered to be creditable coverage.

The act revises the eligibility requirements for the Children's Buy-In Program regarding access to creditable coverage. Under prior law, an individual was ineligible for the program unless the individual had not had creditable coverage for at least six months before enrolling in the program, unless the individual lost the only creditable coverage available to the individual because the individual exhausted a lifetime benefit limitation. Also, one or more of the following had to apply to the individual:

(1) The individual must have been unable to obtain creditable coverage due to a preexisting condition of the individual;

(2) The individual must have lost the only creditable coverage available to the individual because the individual exhausted a lifetime benefit limitation;

(3) The premium for the only creditable coverage available to the individual must have been greater than 200% of the premium applicable to the individual under the Children's Buy-In Program;

(4) The individual must have participated in the Program for Medically Handicapped Children.

Instead of those eligibility requirements regarding access to creditable coverage, the act provides that an individual must not have had creditable coverage for at least three, rather than six, months before enrolling in the Children's Buy-In Program. And, the three-month requirement does not apply if at least one of the requirements from Column I and at least one of the requirements from Column II apply:

| Column I | Column II |
|---|---|
| The individual's parents must be involuntarily unemployed. | The cost of the least expensive creditable coverage available to the individual must be greater than 10% of the individual's countable family income. |
| At least one of the individual's parents must be unable to find work due to a disabling condition. | The premium for the creditable coverage with the lowest premium available to the individual must be greater than 150% of the premium applicable to the individual under the Children's Buy-In Program. |
| At least one of the individual's parents must have involuntarily lost creditable coverage for the individual. | The individual must be unable to obtain creditable coverage due to a preexisting condition of the individual. |
| The individual must have creditable coverage under COBRA continuation coverage. | The individual must have lost the only creditable coverage available to the individual because the individual exhausted a lifetime benefit limitation. |
| | The individual must participate in the Program for Medically Handicapped Children. |

## X. Disability Medical Assistance Program

### Disability Medical Assistance Program abolished

(R.C. 5115.10 to 5115.14 (primary), 9.24, 127.16, 131.23, 173.71, 173.76, 323.01, 329.04, 329.051, 2305.234, 2744.05, 3111.04, 3119.54, 3702.74, 4123.27, 4731.65, 4731.71, 5101.16, 5101.181, 5101.26, 5101.31, 5101.36, 5101.571, 5101.58, 5112.03, 5112.08, 5112.17, 5115.20, 5115.22, and 5115.23)

Under former law, ODJFS was required to establish and administer the Disability Medical Assistance Program, a state-funded program that generally provided medical assistance to persons who were medication dependent and not eligible for Medicaid. For a person to be considered "medication dependent," a licensed physician had to

certify that the person was subject to ongoing treatment for a chronic medical condition of sufficient severity (including severe pain) such that the absence of continuous prescription medication could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, serious dysfunction of any bodily organ or part, or death. The medical condition could include physical or mental impairment and must have lasted or could have been expected to last for a continuous period of at least 12 months. In addition to being medication dependent and ineligible for Medicaid, the applicant had to meet certain residency, income, and citizenship requirements. Covered services included certain inpatient and outpatient physician services, prescription drugs, certain medical supplies, certain laboratory and x-ray services, and dental extractions and related x-rays.[323]

The act abolishes the Disability Medical Assistance Program.

## XI. Supplemental Nutrition Assistance Program (Food Stamp Program)

### Name of Food Stamp Program changed

(R.C. 176.05, 329.042, 329.06, 955.201, 2913.46, 3119.01, 3121.898, 3123.952, 3770.05, 4141.162, 5101.11, 5101.16, 5101.162, 5101.33, 5101.47, 5101.54, 5101.541, 5101.542, 5101.544, 5101.84, 5502.01, 5502.14, 5502.15, and 5739.02; Section 309.40.20)

The Food, Conservation, and Energy Act of 2008 (Pub. Law 110-246) renamed the Food Stamp Program the Supplemental Nutrition Assistance Program (SNAP). The act also renamed the federal law that authorizes the program. Previously, the federal law was called the Food Stamp Act of 1977. Now it is called the Food and Nutrition Act of 2008.

The act makes corresponding changes to state law. References to the Food Stamp Program are replaced with references to SNAP and references to the Food Stamp Act of 1977 are replaced with references to the Food and Nutrition Act of 2008. References to food stamps and food stamp coupons are replaced with references to SNAP benefits. However, the act permits the ODJFS Director to refer to the program as the Food Stamp Program or the Food Assistance Program in rules and documents of ODJFS. ODJFS is not required to amend rules regarding the program to change its name to SNAP.

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[323] O.A.C. 5101:1-42-01 and 5101:3-23-01.

## Issuance of SNAP benefits

(R.C. 5101.54)

Prior law required that when a household was determined to be in immediate need of food assistance, the document referred to as the "authorization to participate card" (the card that shows the face value of the benefits an eligible household is entitled to receive) had to be issued immediately upon certification. A CDJFS staff member was required to personally hand the card to the member of the household in whose name application was made or that member's authorized representative. The act requires instead that, immediately following a CDJFS's certification that a household determined to be in immediate need of nutrition assistance is eligible for SNAP, ODJFS must provide for the household to be sent by regular United States mail an electronic benefit transfer card containing the amount of benefits the household is eligible to receive. The card must be sent to the member of the household in whose name application for the program was made or that member's authorized representative.

The act eliminates law that provides that food stamps and any document necessary to obtain food stamps are, except while in the custody of the United States Postal Service, the property of ODJFS from the time ODJFS receives the food stamps from the federal agency responsible for their delivery until they are received by the household entitled to receive them or by that household's authorized representative.

## XII. Workforce Development

(R.C. 6301.03)

Continuing law requires all expenditures for activities funded by the Workforce Investment Act (29 U.S.C. § 2801, *et seq*.) to be made from the workforce development funds established by local areas and subrecipients of local areas. The act includes reimbursements to a county public assistance fund for expenditures made for activities funded by the Workforce Investment Act in the expenditures that must be made from the local workforce development funds.

## XIII. Unemployment Compensation

## Reduction of unemployment compensation benefits

(R.C. 4141.01 and 4141.31)

Under continuing law, an individual is "partially unemployed" in any week if, due to involuntary loss of work, the total remuneration payable to the individual for that week is less than the individual's weekly benefit amount. The Director of Job and Family Services calculates unemployment compensation benefits for partial

unemployment in accordance with a formula specified in continuing law (R.C. 4141.30, not in the act). Additionally, continuing law reduces unemployment compensation benefits otherwise payable for any week by the amount of remuneration or other payments a claimant receives with respect to such week as follows:

- Remuneration in lieu of notice;
- Compensation for wage loss under Ohio's Workers' Compensation Law (R.C. 4123.56, not in the act) or a similar provision under the workers' compensation law of any state or the United States;
- Payments in the form of retirement, or pension allowances as provided under the Unemployment Compensation Law (R.C. 4141.312, not in the act);
- Except for specified types of military benefits, remuneration in the form of separation or termination pay paid to an employee at the time of the employee's separation from employment;
- Vacation pay or allowance payable under the terms of a labor-management contract or agreement, or other contract of hire, which payments are allocated to designated weeks.

The act adds an additional reason by which an individual's unemployment compensation benefits may be reduced as described above: the determinable value of cost savings days. Under the act, a "cost savings day" means any unpaid day off from work in which employees continue to accrue employee benefits which have a determinable value including, but not limited to, vacation, pension contribution, sick time, and life and health insurance. Additionally, under the act, remuneration for personal services includes cost savings days, as defined under the act, for which employees continue to accrue employee benefits that have a determinable value. Any unemployment compensation benefits that may be payable as a result of cost savings days must be reduced as provided under the act and continuing law. These provisions appear to apply to both private and public sector employees.

## JOINT LEGISLATIVE ETHICS COMMITTEE (JLE)

- Creates the Joint Legislative Ethics Committee Investigative Fund and requires that all receipts that the Joint Legislative Ethics Committee receives from the payment of financial disclosure statement filing fees be deposited into the fund.

- Requires a state agency that employs an officer or employee who actively advocates in a fiduciary capacity as a representative of that agency to pay the officer's or employee's registration fee as a legislative agent.

### Creation of the Joint Legislative Ethics Committee Investigative Fund

(R.C. 101.34 and 102.02)

Prior law required that the Joint Legislative Ethics Committee (JLEC) deposit into the state General Revenue Fund all money it receives as regular and late filing fees from public officers and employees who must file annual financial disclosure statements with JLEC. The act requires instead that JLEC deposit these fees into the Joint Legislative Ethics Committee Investigative Fund, which the act creates in the state treasury. Money in the fund must be used solely for the operations of JLEC in conducting investigations. Investment earnings of the fund must be credited to the fund.

### Payment of legislative agent registration fees by the state agency that employs legislative agents

(R.C. 101.72)

Continuing law generally requires the payment of a registration fee of $25 for filing an initial registration statement with JLEC as a legislative agent, but not if the registrant is an officer or employee of a state agency who actively advocates in a fiduciary capacity as a representative of that state agency. The act eliminates this exemption from paying the registration fee, but requires the state agency that employs the officer or employee who actively advocates in a fiduciary capacity as a representative of that state agency to pay the officer's or employee's registration fee.

## JUDICIARY, SUPREME COURT (JSC)

- Specifies that scheduled, increased salaries are payable to the Supreme Court Chief Justice and justices, appeals court judges, common pleas court judges, full- and part-time municipal court judges, and county court judges, not each calendar year, but each year.

- Eliminates the requirement that the Supreme Court reimburse a county for the compensation of a substitute municipal court judge who is not appointed by the Chief Justice of the Supreme Court and for the compensation of a substitute county court judge.

- Changes the pay period for the clerks of municipal courts other than those of Auglaize, Brown, Hamilton, Holmes, Lorain, Portage, and Wayne counties to either semimonthly or biweekly, as determined by the payroll administrator.

- Provides that, as of September 29, 2009, the judge of the Lorain County Court of Common Pleas, Division of Domestic Relations, whose term began on February 9, 2009, is the probate judge of the Lorain County Probate Court and that the successors to that judge must be elected as the judge of the probate division of that court.

- Provides that in Lorain County, all proceedings that are within the jurisdiction of the Lorain County Probate Court that are pending before a judge of the Domestic Relations Division of the Lorain County Court of Common Pleas on the effective date of the act will remain with that judge of the Domestic Relations Division of the Lorain County Court of Common Pleas.

- Provides that in Lorain County, all proceedings that are within the jurisdiction of the Domestic Relations Division of the Lorain County Court of Common Pleas that are pending before the probate judge of the Lorain County Probate Court on September 29, 2009, remain with that probate judge of the Lorain County Probate Court.

- Increases from $40 to $100 the filing fee charged by the Clerk of the Supreme Court for each case entered upon its docket.

- Provides that the filing fees so charged and collected are in full for each case filed in the Supreme Court under the Rules of Practice of the Supreme Court, instead of listing the types of cases or motions filed and the types of court functions covered by the fees under prior law.

- Precludes charging a filing fee or security deposit to an indigent party upon the Supreme Court's determination of indigency pursuant to the Rules of Practice of the Supreme Court.

- Repeals provisions specifically exempting a prosecutor under specified circumstances from being charged the filing fee upon its motion to dismiss an indigent defendant's appeal for lack of prosecution.

- Requests the Supreme Court to modify its Rules of Practice regarding filing fees and security deposits to be consistent with the act's provisions.

- Provides that the additional filing fees collected by the clerks of the municipal court, county court, and court of common pleas in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies

that operate within the state and to support the office of the State Public Defender and that must be transmitted to the State Treasurer do not include an amount equal to up to 1% of those moneys retained to cover administrative costs.

- Provides that if the court fails to transmit to the State Treasurer the moneys the court collects for the additional filing fees described in the preceding dot point in a manner prescribed by the State Treasurer or the Ohio Legal Assistance Foundation the court must forfeit the moneys the court retains to cover administrative costs and must transmit to the State Treasurer all moneys collected, including the forfeited amount retained for administrative costs, for deposit in the Legal Aid Fund.

- Expands the definition of "peace officer" that applies to the prohibition against impersonating a peace officer and the provision allowing a peace officer to file a request with the BMV to prohibit the disclosure of the officer's residence address contained in BMV motor vehicle records.

- Expands the definition of "law enforcement officer" that applies to the prohibition against an insurer considering the circumstance that an applicant or policyholder has been involved in a motor vehicle accident while in the pursuit of the applicant's or policyholder's official duties as a law enforcement officer, and applies that prohibition to an investigator of BCII.

- Would have allowed a gasoline purchase card with a value not exceeding $10 to be awarded as a prize for playing a skill-based amusement machine even if the machine was not located at a gasoline station or if the card was not redeemable at the location of, or at the time of playing, the machine (VETOED).

- Changes from mandatory to permissive the requirement that the cost of electronic monitoring for indigents subject to a protection order under R.C. 2903.14 be paid out of the Reparations Fund, limits the amount that may be paid out of the Fund for such purposes, and authorizes the Attorney General to adopt rules governing these payments.

- Would have specified that the *perfection* of an appeal, *including an administrative-related appeal*, does not operate as a stay of execution until a stay of execution has been obtained pursuant to the Rules of Appellate Procedure or in another applicable manner, and a supersedeas bond is executed under continuing law subject to the next dot point (VETOED).

- Would have required that an appellant who obtains a stay of execution pending the appeal of a final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political

subdivision of the state, simultaneously execute a supersedeas bond to the appellee, with sufficient sureties and in a sum equal to specified costs and expenses or the reasonable value of the matter at issue in the final order, adjudication, or decision, and would have required that bond to be conditioned as provided in continuing law (VETOED).

- Would have specified that an appellant is not required to give a supersedeas bond in connection with the *perfection of* an appeal by certain persons specified in continuing law, or the *perfection of* an administrative-related appeal of a final order that is not for the payment of money (VETOED).

## Annual compensation of judges

(R.C. 141.04)

Continuing law provides for the payment from the state treasury of all or a portion of the annual salaries of the Supreme Court Chief Justice, Supreme Court justices, appeals court judges, common pleas court judges, full- and part-time municipal court judges, and county court judges. These payments are made in equal monthly installments, except that the Supreme Court Chief Justice, Supreme Court justices, appeals court judges, and common pleas court judges must be paid biweekly if they deliver a written request for biweekly payment to the Administrative Director of the Supreme Court.

Prior law provided that increased salaries were payable to the justices and judges mentioned above each calendar year from 2002 through 2008. The act specifies instead that the increased salaries are payable, not each "calendar year," but each "year" from 2002 through 2008. Generally in statutory usage, a "calendar year" is the 12-month period January through December; a "year," by contrast, is a period of 12 consecutive months.

## Reimbursement of compensation of substitute judges in municipal and county courts

(R.C. 1901.121 and 1907.14)

Continuing law provides that a judge appointed as substitute judge under certain specified circumstances, a judge of another municipal court or county court designated as an additional judge of a municipal court because of the volume of cases pending in the municipal court, and a retired judge who has been assigned to active duty on the municipal court is entitled, on a per diem basis, to the compensation paid to

the incumbent judge of the municipal court in which the judge is appointed or designated to serve. Continuing law requires the treasurer of the county in which a municipal court is located to pay the compensation to which those judges are entitled. Continuing law requires the treasurer of a county that is required to pay any compensation to which the acting judges, judges, or retired judges are entitled to submit to the Administrative Director of the Supreme Court quarterly requests for reimbursements of the per diem amounts so paid. The administrative Director must then cause reimbursements for those amounts to be paid to the county. The act limits those reimbursements to reimbursements paid for judges who are appointed or designated by the Chief Justice of the Supreme Court.

Continuing law also provides that when a judge of a county court is temporarily absent, incapacitated, or otherwise unavailable, the judge may appoint a substitute having the qualifications required by law or may appoint a retired judge of a court of record in the state who is a qualified elector and a resident of the county court district. Prior law required the treasurer of a county that is required to pay any compensation to which the acting judges, judges, or retired judges are entitled to submit to the Administrative Director of the Supreme Court quarterly requests for reimbursements of the per diem amounts so paid. The reports had to include verifications of the payment of those amounts. The Administrative Director was required to cause the reimbursements of those amounts to be issued to the county if the Administrative Director verified that those amounts were, in fact, so paid. The act removes this procedure for the reimbursement of the county of amounts paid for those acting judges, judges, or retired judges who serve in county courts.

### Pay period for certain municipal court clerks

(R.C. 1901.31)

Under prior law, the clerks of municipal courts other than those of Auglaize, Brown, Hamilton, Holmes, Lorain, Portage, and Wayne counties were paid in semimonthly installments. The act changes the pay period for the clerks of municipal courts other than those of Auglaize, Brown, Hamilton, Holmes, Lorain, Portage, and Wayne counties to either semimonthly or biweekly, as determined by the payroll administrator, and reiterates the continuing provision in R.C. 1901.31(A)(2)(d) that the clerk of the Columbiana County Municipal Court be paid either semimonthly or biweekly, as determined by the payroll administrator.

## Lorain County Court of Common Pleas

(R.C. 2101.01, 2301.02, and 2301.03)

Under prior law, the Lorain County Court of Common Pleas had ten judges that are elected pursuant to R.C. 2301.02: six judges of the general division and four judges of the domestic relations division. The four judges of the domestic relations division, and their successors, have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of Lorain County Court of Common Pleas and are elected and designated as the judges of the Court of Common Pleas, Domestic Relations Division. They have all of the powers relating to the juvenile courts, and all cases under R.C. Chapters 2151. and 2152., all parentage proceedings over which the juvenile court has jurisdiction, and all divorce, dissolution of marriage, legal separation, and annulment cases are assigned to them, except cases that for some special reason are assigned to some other judge of the court of common pleas. Under the act, from February 9, 2009, through *September 28, 2009*, the judge of the Lorain County Court of Common Pleas whose term begins on February 9, 2009, has all the powers relating to juvenile courts, and cases under R.C. Chapters 2151. and 2152., parentage proceedings over which the juvenile court has jurisdiction, and divorce, dissolution of marriage, legal separation, and annulment cases are assigned to that judge, except cases that for some special reason are assigned to some other judge of the Court of Common Pleas. Under the act, the other three judges of the Domestic Relations Division retain the above-described jurisdiction without limitation.

Prior law provided that on and after January 1, 2006, the judges of the Court of Common Pleas, Division of Domestic Relations, in addition to the powers and jurisdiction described above, had jurisdiction over matters that are within the jurisdiction of the probate court. Prior law also provided that on and after February 9, 2009, "probate court" meant the Domestic Relations Division of the Court of Common Pleas, and "probate judge" meant each of the judges of the Court of Common Pleas who are judges of the Domestic Relations Division. The act provides that from January 1, 2006, through *September 28, 2009,* the judges of the Court of Common Pleas, Division of Domestic Relations, have jurisdiction over matters that are within the jurisdiction of the probate court. The act also provides that the above-described definitions of "probate court" and "probate judge" are operative from February 9, 2009, through *September 28, 2009*, that the judge of Lorain County Court of Common Pleas, Division of Domestic Relations, whose term begins on February 9, 2009, and successors, is the probate judge beginning September 29, 2009, and is elected and designated as judge of the Court of Common Pleas, Probate Division, and specifies that there are nine judges of the Lorain County Court of Common Pleas that are elected pursuant to R.C. 2301.02 and one judge elected pursuant to R.C. 2101.01.

Prior law also provided that the judge of the Court of Common Pleas, Division of Domestic Relations, whose term began on February 9, 2009, was the successor to the probate judge who was elected in 2002 for a term that began on February 9, 2003. On and after February 9, 2009, with respect to Lorain County, all references in law to the probate court was required to be construed as references to the Court of Common Pleas, Division of Domestic Relations, all references to the probate judge were required to be construed as references to the judges of the Court of Common Pleas, Division of Domestic Relations, and all references in law to the clerk of the probate court were required to be construed as references to the judge who is serving pursuant to Rule 4 of the Rules of Superintendence for the Courts of Ohio as the administrative judge of the Court of Common Pleas, Division of Domestic Relations (R.C. 2301.03(C)(2)(b) and (c).) Prior law specified that the judges of the Domestic Relations Division of the Lorain County Court of Common Pleas elected pursuant to R.C. 2301.02 also perform the duties and functions of the judge of the probate division. The act provides that after September 28, 2009, the judge of the Lorain County Court of Common Pleas, Division of Domestic Relations, whose term begins on February 9, 2009, is the probate judge, that the references in law to the probate court, probate judge, and the clerk of the probate court that are described above are operative from February 9, 2009 through *September 28, 2009*, and that the judges of the Domestic Relations Division of the Lorain County Court of Common Pleas also perform the duties and functions of the judge of the probate division *from February 9, 2009, through September 28, 2009*.

The act specifies in uncodified law that in Lorain County, all proceedings that are within the jurisdiction of the Probate Court under R.C. Chapter 2101. and other provisions of the Revised Code that are pending before a judge of the Domestic Relations Division of the Lorain County Court of Common Pleas on the effective date of the act remain with that judge of the Domestic Relations Division of the Lorain County Court of Common Pleas. It also specifies that all proceedings that are within the jurisdiction of the Domestic Relations Division of the Lorain County Court of Common Pleas under R.C. Chapter 2301. and other provisions of the Revised Code that are pending before the probate judge of the Lorain County Probate Court on September 29, 2009, remain with that probate judge of the Lorain County Probate Court and that the successors to the judge of the Lorain County Court of Common Pleas who was elected pursuant to R.C. 2301.02 in 2008 for a term that began on February 9, 2009, must be elected in 2014 and thereafter pursuant to R.C. 2101.02 as judges of the Probate Division of the Lorain County Court of Common Pleas.

## Supreme Court filing fee

(R.C. 2503.17)

### General provision

Former law generally required the Clerk of the Supreme Court to charge and collect $40, as a filing fee, for each case entered upon the *minute book, including, but not limited to, original actions in the Court, appeals filed as of right, and cases certified by the courts of appeals for review on the ground of conflict of decisions; and for each motion to certify the record of a court of appeals or for leave to file a notice of appeal in criminal cases docket*. The filing fees so charged and collected were in full for *docketing the cases or motions, making dockets from term to term, indexing and entering appearances, issuing process, filing papers, entering rules, motions, orders, continuances, decrees, and judgments, making lists of causes on the regular docket for publication each year, making and certifying orders, decrees, and judgments of the court to other tribunals, and the issuing of mandates*. The party invoking the action of the Court was required to pay the filing fee to the Clerk before the case *or motion* was docketed. Continuing law requires the filing fee to be taxed as costs and recovered from the other party if the party invoking the action of the court succeeds, unless the court otherwise directs.

The act requires the Clerk of the Supreme Court to charge and collect $100 (instead of $40) for each case entered in the *docket* (instead of minute book). The filing fees so charged and collected are in full for each case filed in the Supreme Court under the Rules of Practice of the Supreme Court (henceforth Rules of Practice). The act deletes all of the italicized language in the discussion of former law above, retains the last sentence in the preceding paragraph. It further provides that no filing fee or security deposit may be charged to an indigent party upon determination of indigency by the Supreme Court pursuant to the Rules of Practice.[324]

### Exception

Prior law precluded the Clerk of the Supreme Court from charging to and collecting from a prosecutor the $40 filing fee described above when all of the following circumstances applied:

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[324] Under existing Rule XV, section 3 of the Rules of Practice of the Supreme Court, an affidavit of indigency may be filed in lieu of filing fees or security deposits. The party on whose behalf the affidavit is filed must execute it within six months prior to it being filed in the Supreme Court. The affidavit must state the specific reasons for the party not having sufficient funds to pay the filing fees or security deposit. The Supreme Court may review and determine the sufficiency of the affidavit at any stage in the proceeding. Counsel appointed by a trial or appellate court to represent an indigent party may file a copy of the entry of appointment in lieu of an affidavit of indigency.

(1) In accordance with the Rules of Practice, an indigent defendant in a criminal action or proceeding files in the appropriate court of appeals a notice of appeal within 30 days from the date of the entry of the judgment or final order that is the subject of the appeal.

(2) The indigent defendant fails to file or offer for filing in the Supreme Court within 30 days from the date of the filing of the notice of appeal in the court of appeals, a copy of the notice of appeal supported by a memorandum in support of jurisdiction and other documentation and information as required by the Rules of Practice.

(3) The prosecutor or a representative of the prosecutor associated with the criminal action or proceeding files a motion to docket and dismiss the appeal of the indigent defendant for lack of prosecution as authorized by the Rules of Practice.

(4) The prosecutor states in the motion that the $40 filing fee does not accompany the motion because of the applicability of this provision, and the Clerk of the Supreme Court determines that this provision applies.

The act repeals the above provisions.

### Modification of Rules of Practice

(Section 313.20)

The act states in temporary law that the General Assembly respectfully requests the Supreme Court to modify Rule XV of the Rules of Practice of the Supreme Court pursuant to its authority under the Ohio Constitution to make that Rule consistent with the amendments made by this act to R.C. 2503.17.[325]

### Administrative costs for collecting additional filing fees to assist legal aid societies

(R.C. 1901.26(C), 1907.24(C), and 2303.201(C))

Continuing law states that the municipal court, in all its divisions except the small claims division, the county court, in all its divisions except the small claims division, and the court of common pleas must collect the sum of $26 as additional filing

[325] Existing Rule XV, section 1 provides for the $40 filing fee imposed under preexisting R.C. 2503.17 and requires the fee to be paid before a case is filed for each of the following: filing a notice of appeal, filing a notice of cross-appeal, filing an order of a court of appeals certifying a conflict, and instituting an original action. Section 2 of Rule XV provides that original actions also require a deposit of $100 as security for costs. The security deposit must be paid before the case is filed. In extraordinary circumstances, the Supreme Court may require an additional security deposit at any time during the action.

fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state and to support the office of the State Public Defender. The clerk of the court must transmit the moneys collected on or before the 20th day of the following month to the State Treasurer in a manner prescribed by the State Treasurer or by the Ohio Legal Assistance Foundation.

The act provides that the moneys collected by the clerk of the court that must be transmitted to the State Treasurer do not include an amount equal to up to 1% of those moneys retained to cover administrative costs. The act also provides that if the court fails to transmit to the State Treasurer the moneys the court collects in a manner prescribed by the State Treasurer or by the Ohio Legal Assistance Foundation, the court must forfeit the moneys the court retains to cover the administrative costs, including the hiring of any additional personnel necessary to implement this provision, and must transmit to the State Treasurer all moneys collected under R.C. 1901.26(C), 1907.24(C), and 2303.201(C), including the forfeited amount retained for administrative costs, for deposit in the Legal Aid Fund.

## Impersonating a peace officer--definition of "peace officer"

(R.C. 2921.51)

Continuing law prohibits the following: (1) any person from impersonating a "peace officer," private police officer, federal law enforcement officer, or investigator of BCII, (2) any person, by impersonating a "peace officer," private police officer, federal law enforcement officer, or investigator of BCII, from arresting or detaining any person, searching any person, or searching the property of any person, (3) any person, with purpose to commit or facilitate the commission of an offense, from impersonating a "peace officer," private police officer, federal law enforcement officer, officer, agent, or employee of the state, or investigator of BCII, and (4) any person from committing a felony while impersonating a "peace officer," private police officer, federal law enforcement officer, officer, agent, or employee of the state, or investigator of BCII. Prohibition (1) is a misdemeanor of the fourth degree. Prohibition (2) is a misdemeanor of the first degree. Prohibition (3) is a misdemeanor of the first degree or a felony of the fourth degree. Prohibition (4) is a felony of the third degree. For each prohibition, the term "peace officer" means a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is employed by a political subdivision of Ohio, a member of a police force employed by a metropolitan housing authority, a member of a police force employed by a regional transit authority, a state university law enforcement officer, a veterans' home police officer, a special police officer employed by a port authority, or a state highway patrol trooper whose primary duties are to preserve the peace, to protect life and

property, and to enforce the laws, ordinances, or rules of the state or any of its political subdivisions.

The act expands the definition of "peace officer" described in the preceding paragraph to include an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within limits of that statutory duty and authority.

### Disclosure of peace officer's residence address in BMV records--definition of "peace officer"

(R.C. 4501.271)

Continuing law provides that a "peace officer," correctional employee, or youth services employee may file a written request with the Bureau of Motor Vehicles to prohibit disclosure of the officer's or employee's residence address as contained in motor vehicle records of the Bureau, provide a business address to be displayed on the officer's or employee's driver's license or certificate of registration, or both. Procedures regarding the filing and granting of this request are specified in R.C. 4501.271. Continuing law defines "peace officer" to mean those persons described in R.C. 109.71(A)(1), (2), (4), (5), (6), (9), (10), (12), or (13), the house sergeant at arms appointed under R.C. 101.311(B)(1), and any assistant sergeant at arms appointed under R.C. 101.311(C)(1). "Peace officer" includes state highway patrol troopers but does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

The act expands the definition of "peace officer" described in the preceding paragraph to include a member of a police force employed by a regional transit authority under R.C. 306.35(Y), an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority, and an investigator of the Bureau of Criminal Identification and Investigation as defined in R.C. 2903.11.

## Prohibition against insurers considering certain motor vehicle accidents of specified employees

(R.C. 3937.41)

Continuing law provides that an insurer may not consider the circumstance that an applicant or policyholder has been involved in a motor vehicle accident while in the pursuit of the applicant's or policyholder's official duties as a "law enforcement officer," firefighter, or operator of an emergency vehicle or ambulance, while operating a vehicle engaged in mowing or snow and ice removal as a county, township, or Department of Transportation employee, or while operating a vehicle while engaged in the pursuit of the applicant's or policyholder's official duties as a member of the motor carrier enforcement unit of the state highway patrol under R.C. 5503.34, as a basis for doing either of the following: (1) refusing to issue or deliver a policy of insurance upon a private automobile, or increasing the rate to be charged for such a policy, or (2) increasing the premium rate, canceling, or failing to renew an existing policy of insurance upon a private automobile. Continuing law also sets forth an appeal procedure that any applicant or policyholder affected by an action of an insurer in violation of the prohibition described above may utilize. It also sets forth procedures by which the employer of a person protected by the prohibition must certify to the appropriate office or agency that the person was engaged in the performance of the person's official duties at the time of the accident.

The act applies the prohibitions and procedures explained in the preceding paragraph to an investigator of the Bureau of Criminal Identification and Investigation as defined in R.C. 2903.11. Additionally, the act redefines "law enforcement officer" for purposes of the preceding two paragraphs. Under continuing law, "law enforcement officer" is defined as a sheriff, deputy sheriff, constable, marshal, deputy marshal, municipal or township police officer, state highway patrol trooper, police officer employed by a qualified nonprofit police department pursuant to R.C. 1702.80, or police officer employed by a proprietary police department or security department of a hospital operated by a public hospital agency or nonprofit hospital agency pursuant to R.C. 4973.17. The act expands this definition to also include (1) a police officer of a joint township police district, (2) a member of a police force employed by a metropolitan housing authority under R.C. 3735.31(D), (3) an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority, (4) a veterans' home police officer appointed under R.C. 5907.02, and (5) a member of a police force employed by a regional transit authority under R.C. 306.35(Y).

## Award of a gasoline purchase card for playing a skill-based amusement machine (VETOED)

(R.C. 2915.01)

A person is prohibited from establishing, promoting, or operating, or from knowingly engaging in conduct that facilitates, any scheme of chance and punishes a violation as a first degree misdemeanor (R.C. 2915.02(A)(2) and (F), not in the act). "Scheme of chance" means a slot machine, lottery, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit. Thus, playing a skill-based amusement machine does not violate the prohibition described above.

A "skill-based amusement machine" is a mechanical, video, digital, or electronic device that rewards the player or players, if at all, only with merchandise prizes or with redeemable vouchers redeemable only for merchandise prizes, provided that, with respect to rewards for playing the game, all of the following apply:

(1) The wholesale value of a merchandise prize awarded as a single play of a machine does not exceed $10.

(2) Redeemable vouchers awarded for any single play of a machine are not redeemable for a merchandise prize with a wholesale value of more than $10.

(3) Redeemable vouchers are not redeemable for a merchandise prize that has a wholesale value of more than $10 times the fewest number of single plays necessary to accrue the redeemable vouchers required to obtain that prize.

(4) Any redeemable vouchers or merchandise prizes are distributed at the site of the skill-based amusement machine at the time of play.

The Governor vetoed a provision that would have specified that a card for the purchase of gasoline is a redeemable voucher for purposes of the definition above even if the skill-based amusement machine for the play of which the card is awarded is located at a place where gasoline may not be legally distributed to the public or the card is not redeemable at the location of, or at the time of playing, the skill-based amusement machine.

## Cost of electronic monitoring devices

(R.C. 2903.214)

Under prior law, if a court ordered electronic monitoring of a respondent in response to a request for a protection order under R.C. 2903.214 (menacing by stalking protection order or sexually oriented offense protection order) and determines that the respondent is indigent, the cost of the installation and monitoring of the electronic monitoring device was required to be paid out of funds from the Reparations Fund created under R.C. 2743.191.

The act changes the requirement that the cost of installing and monitoring an electronic monitoring device for indigent respondents be paid out of the Reparations Fund from mandatory to permissive. The act limits the total amount of costs paid under this provision for the installation and monitoring of electronic monitoring devices to $300,000 per year. The act permits the Attorney General to promulgate rules to govern such payments from the Reparations Fund and provides that the rules may include reasonable limits on the total cost paid per respondent, the amount of the $300,000 allocated to each county, and how invoices may be submitted by a county, court, or other entity.

## Appeals

(R.C. 2505.09, 2505.12, and 2505.122)

### Execution of supersedeas bond (VETOED)

Under the Appeals Law, with certain exceptions, an appeal does not operate as a stay of execution until a stay of execution has been obtained pursuant to the Rules of Appellate Procedure or in another applicable manner, and a supersedeas bond is executed by the appellant to the appellee, with sufficient sureties and in a sum that is not less than, if applicable, the cumulative total for all claims covered by the final order, judgment, or decree and interest involved, except that the bond cannot exceed $50 million excluding interest and costs, as directed by the court that rendered the final order, judgment, or decree that is sought to be superseded or by the court to which the appeal is taken. The act would have specified that the above provision applies to *the perfection of* an appeal, *including an administrative-related appeal*.[326] It would have provided that the amount of the bond is subject to the following paragraph.

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[326] An "administrative-related appeal" means an appeal to a court of the final order of an administrative officer, agency, board, department, tribunal, commission, or other instrumentality (R.C. 2505.01(B)--not in the act).

The act would have required that an appellant who obtains a stay of execution pending the appeal of a final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state simultaneously execute a supersedeas bond to the appellee, with sufficient sureties and in a sum equal to the cost of delay, increased cost of construction, legal expenses, loss of anticipated revenues, or the reasonable value of the matter at issue in the final order, adjudication, or decision, including any reasonable investment-backed expectations of the appellee. That bond would have been conditioned as provided in R.C. 2505.14 (the condition that the appellant must abide and perform the appellate court's order, judgment, or decree and pay all money, costs, and damages that may be required of or awarded against the appellant upon the final determination of the appeal and any other conditions that the court provides).

#### Exceptions to execution of supersedeas bond (VETOED)

Under continuing law, an appellant is not required to give a supersedeas bond in connection with any of the following: (1) an appeal by an executor, administrator, guardian, receiver, trustee, or trustee in bankruptcy who is acting in that person's trust capacity and who has given bond in this state, with surety according to law, by the state or any political subdivision of the state, or by any public officer of the state or of any of its political subdivisions who is suing or is sued solely in the public officer's representative capacity as that officer, or (2) an administrative-related appeal of a final order that is not for the payment of money. The act would have specified that an appellant is not required to give a supersedeas bond in connection with the *perfection of* an appeal by the persons described in (1), above, or the *perfection of* an administrative-related appeal of a final order that is not for the payment of money.

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## LEGAL RIGHTS SERVICE COMMISSION (LRS)

- Requires the Legal Rights Service Commission to study the potential transition of the Legal Rights Service from a public entity to a nonprofit organization.

### Legal Rights Service Commission Transition Study

(Section 317.20)

The Ohio Legal Rights Service (OLRS) is Ohio's designated protection and advocacy system and client assistance program for children and adults with mental disabilities. For Ohio to receive federal funds for services to persons who are mentally

disabled, the state is required by federal law to have a protection and advocacy system.[327] OLRS administers several federally funded programs to protect and advocate for the rights of persons with mental illness, mental retardation, developmental disabilities, or other disabilities.

OLRS is administered by the Legal Rights Service Commission. The Commission is composed of seven members appointed by the Chief Justice of the Supreme Court, the Speaker of the House of Representatives, and the President of the Senate.

The act requires the Commission to conduct a study on the potential transition of OLRS from a public entity to a nonprofit organization.[328] The study is to include an analysis of all of the following:

(1) The feasibility of a transition to a nonprofit organization;

(2) The potential effects on service delivery, including client service and access to required resources, and any other service delivery advantages or disadvantages that might result from the transition to a nonprofit organization;

(3) Potential organizational effects, including cost savings and non-state funding sources, and any other organizational advantages or disadvantages that might result from the transition to a nonprofit organization;

(4) The approximate amount of time necessary to achieve a transition to nonprofit status.

The Commission must also develop a process plan by which a transition to a nonprofit organization could be implemented by July 1, 2011. The Commission is required, not later than six months after the act's effective date, to provide a written report of the results of the study and a copy of the process plan to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate.

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[327] 42 U.S.C. 15041 *et seq.*; the specific requirement is in 42 U.S.C. 15043.

[328] Federal law provides certain requirements for the redesignation of an agency administering funds for the protection of persons with mental illness, mental retardation, developmental disabilities, or other disabilities. The protection agency may not be redesignated unless (1) there is good cause, (2) the Governor gives the agency 30 days notice of the intention to make the redesignation and an opportunity to respond to the assertion that good cause has been shown, (3) individuals with disabilities or their representatives have timely notice of the redesignation and an opportunity for public comment, and (4) the agency has the opportunity to appeal to the United States Rehabilitation Services Administration Commissioner (29 U.S.C. 732(c)(1)(B)(i) and 42 U.S.C. 15043(a)(4)). Certain programs provide exceptions to these requirements (29 U.S.C. 732(c)(1)(B)(ii)).

## LEGISLATIVE SERVICE COMMISSION (LSC)

- Broadens the use of the House and Senate Telephone Usage Fund to include reimbursements and expenditures on account of telephone calls made by the Joint Legislative Ethics Committee and any other legislative agency specified by the 14-member Legislative Service Commission.

### Changes in the House and Senate Telephone Usage Fund

(R.C. 103.24; Section 321.10)

Early in 2007 the Controlling Board created the House and Senate Telephone Usage Fund. The Legislative Information Systems Office used the fund to pay the monthly telephone bills it received for calls made from House and Senate telephones and deposited reimbursements the Office received for such calls to the credit of the fund.

The act creates the fund anew in statute, expands its use, and renames it the Legislative Agency Telephone Usage Fund. Money collected for telephone calls made from not only House and Senate telephones, but also those of the Joint Legislative Ethics Committee and any other legislative agency specified by the 14-member Legislative Service Commission, is to be credited to the fund. The fund is to be used to pay the telephone carriers for all such telephone calls.

## STATE LIBRARY BOARD (LIB)

- Creates the Bill and Melinda Gates Foundation Grant Fund for use by the State Library Board.

### Bill and Melinda Gates Foundation Grant Fund

(R.C. 3375.79)

The act creates in the state treasury the Bill and Melinda Gates Foundation Grant Fund, which consists of grants awarded to the State Library Board by the foundation. The Fund must be used for the improvement of public library services, interlibrary

cooperation, or other library purposes. All investment earnings of the fund must be credited to the fund.

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## LIQUOR CONTROL COMMISSION (LCO)

- Authorizes a D-5l liquor permit to be issued in a municipal corporation or township in which the number of D-5 permits equals the number of those permits that may be issued in the municipal corporation or township under the population quota restrictions established by law.

- Changes local option elections on Sunday sales of intoxicating liquor allowing sales between 1 p.m. and midnight to instead allow sales between 11 a.m. and midnight.

- Authorizes certain Sunday liquor sales to begin at 11 a.m. even if the sales previously were approved by the voters to commence at 1 p.m., but allows voters to hold an election to revert the time of commencement to 1 p.m. in accordance with certain conditions.

- Makes other changes in the law governing local option elections on Sunday sales of beer and intoxicating liquor at or in election precincts, parts of a precinct, specific locations, and community facilities.

- Requires a D-6 liquor permit to be issued to any of specified liquor permit holders that are authorized to sell intoxicating liquor at retail for on and off premises consumption, rather than only a D-5j liquor permit holder as in former law, for a permit premises that is located in a specified type of community entertainment district to allow sale under the permit between 10 A.M. and midnight on Sunday whether or not that sale has been approved by local option election.

- Would have allowed the serving or consumption of beer or intoxicating liquor in a facility that was owned or leased by the state and that was used by visiting foreign military units for training, provided that such serving or consumption is done according to policies and procedures agreed upon by specified foreign and domestic military personnel (VETOED).

## Number of D-5l permits that may be issued in a municipal corporation or township

(R.C. 4303.181)

Continuing law allows the D-5l liquor permit to be issued to the owner or operator of a retail food establishment or a food service operation licensed under state law to sell beer and intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold and to sell beer and intoxicating liquor in the same manner and amounts not for consumption on the premises where sold as may be sold by the holders of D-1 (beer) and D-2 (wine) permits. A D-5l permit holder may exercise the same privileges and must observe the same hours of operation as the holder of a D-5 (night club) permit.

A D-5l permit can be issued only to a premises that (1) has gross annual receipts from the sale of food and meals that constitute not less than 75% of its total gross annual receipts, (2) is located in a revitalization district established by a municipal corporation or township, (3) is located in a municipal corporation or township in which the number of D-5 permits issued *exceeds* the number of those permits that may be issued in a municipal corporation or township under the population quota restrictions established by law, and (4) is located in a county with a population of 125,000 or less according to population estimates certified by the Department of Development for calendar year 2006. The act changes item (3) above to specify that a D-5l permit can only be issued in a municipal corporation or township in which the number of D-5 permits issued *equals or exceeds* the number of those permits that may be issued in the municipal corporation or township under the population quota restrictions established by law.

## Overview of law governing Sunday sales of beer, wine and mixed beverages, or intoxicating liquor

(R.C. 4301.22 (not in the act) and 4303.182)

Continuing law generally prohibits the sale of intoxicating liquor on Sunday after 2:30 a.m. by a permit holder unless the sale has been approved in a local option election held in the election precinct in which the premises is located. Questions may be submitted to the voters at a primary or general election to allow the sale of beer, wine and mixed beverages, or intoxicating liquor on Sundays between specified hours as discussed below. The question or questions submitted may govern sales in an election

precinct, in a specific area of an election precinct, at a particular location, or at a community facility.[329]

## Changing Sunday sale of intoxicating liquor questions from between 1 p.m. and midnight to between 11 a.m. and midnight

(R.C. 4301.351, 4301.354, 4301.361, 4301.364, 4301.37 (not in the act), and 4303.182; Sections 743.10 and 743.11)

### Law generally retained by the act

Under law generally retained by the act, seven questions govern the Sunday sale of intoxicating liquor that may be legally sold in an election precinct or part of an election precinct on days of the week other than Sunday. Four of the questions for election precincts and three of the questions for parts of election precincts pertain to sales between the hours of 1 p.m. and midnight, and three of the questions for both election precincts and their parts pertain to sales between 10 a.m. and midnight. One question from each time period pertains to sales of wine and mixed beverages for off-premises consumption, another question from each time period pertains to sales of intoxicating liquor for on-premises consumption, and a final question from each time period pertains to sales of intoxicating liquor for on-premises consumption at premises where the sale of food and other goods and services exceeds 50% of the total gross receipts of the permit holder at the premises. A seventh question for election precincts pertains to intoxicating liquor sales between the hours of 1 p.m. and midnight for on-premises consumption at an outdoor performing arts center. The latter question may be presented to the voters of a precinct in which an outdoor performing arts center is located only by the legislative authority of the municipal corporation in which, or by the board of trustees of the township in which, the center is located and only within a specified period of time.

Continuing law specifies how the results of local option elections affect the sale of intoxicating liquor at locations wishing to sell intoxicating liquor on Sundays in election precincts or parts of election precincts. If the voters of a precinct or part of a precinct, whichever applies, approve the sale of intoxicating liquor on Sundays,

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[329] "Community facility" means either of the following: (1) any convention, sports, or entertainment facility or complex, or any combination of these, that is used by or accessible to the general public and that is owned or operated in whole or in part by the state, a state agency, or a political subdivision of the state or that is leased from, or located on property owned by or leased from, the state, a state agency, a political subdivision of the state, or a convention facilities authority created under continuing law, or (2) an area designated as a community entertainment district pursuant to continuing law (R.C. 4301.01(B)(19), not in the act).

locations within the precinct or part of a precinct are authorized to sell intoxicating liquor.

## Changes made by the act

### Certain Sunday sale hours and D-6 permits

Under the act, the questions governing the Sunday sale of intoxicating liquor are substantively the same as those discussed above, except that the act changes the questions governing the hours of Sunday sale of intoxicating liquor between 1 p.m. and midnight to apply to Sunday sale of intoxicating liquor between 11 a.m. and midnight. The act also generally requires that the sale of intoxicating liquor be permitted between the hours of 11 a.m. and midnight on Sunday under a D-6 permit (Sunday liquor sales) if the sale of intoxicating liquor between the hours of 1 p.m. and midnight was approved at a local option election before the act's effective date, except for the exception discussed below. Finally, the act requires that a D-6 permit be issued to the holders of specified liquor permits if Sunday sales are allowed as the result of an election in or at an election precinct, a specific area of a precinct, a particular location, or a community facility during specified hours.

### Exception special election

The act allows the electors in a precinct in which the commencement time is changed by its operation to 11 a.m. (see above) to hold an election to revert that time to 1 p.m. The election must be held under the following conditions:

- At the first general election that occurs after the effective date of the act's applicable provisions unless that general election will be held less than 135 days after that date, in which case the election must be held at the immediately following general election;

- Under one of the "11 a.m. to midnight" questions (other than the question pertaining to outdoor performing arts centers), as amended by the act, that seeks approval of Sunday sales of intoxicating liquor in an election precinct or part of an election precinct, as applicable, except that the starting time for sales under the question must be stated as 1 p.m. rather than 11 a.m.;

- In accordance with the applicable requirements and election provisions that govern those questions and that are established under the Liquor Control Law.

Not later than 45 days after the effective date of the act's applicable provisions, the Superintendent of Liquor Control must publish notice of the special election provisions in a newspaper of general circulation in each county of the state.

#### Permitted hours of sale and effective period of election

The act specifies that locations in a precinct or part of a precinct, whichever applies, generally are only authorized to sell intoxicating liquor on Sunday during the hours specified in the relevant questions--either 10 a.m. to midnight or 11 a.m. to midnight. As under law unchanged by the act, the results of elections on the Sunday liquor sales questions remain in effect until another election is held on the same question for the precinct or part of the precinct, but no election can be held on the same question for the precinct or part of the precinct more than once every four years.

#### Validity of pending petitions

Under the act, if a petition seeks the holding of an election on Sunday liquor sales on or after the effective date of the act's applicable provisions under the questions seeking approval of Sunday sales for an election precinct, a specific area of a precinct, a specified location, or a community facility (which question formerly generally referred to "1 p.m. to midnight," but the act changes to "11 a.m. to midnight") and the petition contains signatures that were placed on it before that date, the petition is not invalid merely because the question or questions sought to be submitted to the voters and contained in the petition state that Sunday liquor sales will commence beginning at 1 p.m. rather than 11 a.m.

## Changes in procedure for local option elections on liquor sales at a particular location

(R.C. 4301.323 (not in the act), 4301.333, 4301.355, 4301.365, and 4303.182)

### Change in the petition requirements and in the wording of the questions on the ballot

#### Petition

Law retained by the act allows a local option election to be held in an election precinct on the sale of beer, wine and mixed beverages, or intoxicating liquor at a particular location within the precinct if the petitioner for the election is one of the following: (1) an applicant for the issuance or transfer of a liquor permit at, or to, a particular location within the precinct, (2) the holder of a liquor permit at a particular location within the precinct, (3) a person who operates or seeks to operate a liquor agency store at a particular location within the precinct, or (4) the designated agent for such an applicant, permit holder, or liquor agency store.

The petition for the election described above must contain all of the following: (1) a notice that the petition is for the submission of a question or questions seeking an election on sales of beer, wine and mixed beverages, or intoxicating liquor at a particular location, (2) the name of the applicant for the issuance or transfer, or the holder, of the liquor permit or, if applicable, the name of the liquor agency store, including any trade or fictitious names under which the applicant, holder, or liquor agency store either intends to do or does business at the particular location, and (3) the address and proposed use of the particular location within the election precinct to which the results of the question or questions will apply. The act specifies that a petition that seeks approval of Sunday sales at a particular location also must contain a statement indicating whether the hours of sale sought are between 10 a.m. and midnight or between 11 a.m. and midnight.

#### Ballot

Under law unchanged by the act, the wording of a Sunday liquor sales question that is placed on the ballot must state whether beer, wine and mixed beverages, or intoxicating liquor is to be sold under the permit sought for, or under the permit issued to, the particular premises, or is to be sold at the liquor agency store, that is the subject of the election. Under the act, the question also must specify that the sale of beer, wine and mixed beverages, or intoxicating liquor on Sunday will be either between the hours of 10 a.m. and midnight or 11 a.m. and midnight.

### Effect of election concerning Sunday liquor sales

Continuing law specifies how the results of a local option election concerning Sunday sales at a particular location affect the sale of beer, wine and mixed beverages, or intoxicating liquor at the location. If the voters in a precinct approve the Sunday sale of beer, wine and mixed beverages, or intoxicating liquor at a particular location, the location is allowed to sell whichever was the subject of the election. The act adds that the location specified in a question generally is only authorized to sell beer, wine and mixed beverages, or intoxicating liquor during the hours authorized under the act and approved in the local option election.

Under law revised in part by the act , if a question is submitted to the electors of a precinct proposing to authorize the sale of beer, wine and mixed beverages, or spirituous liquor between the hours of 10 a.m. and midnight at a particular location at which the sale of beer, wine and mixed beverages, spirituous liquor, or intoxicating liquor is already allowed between the hours of 1 p.m. and midnight and the question submitted is defeated, the sale of beer, wine and mixed beverages, spirituous liquor, or intoxicating liquor between the hours of 1 p.m. and midnight must continue at that particular location. Under the act, if the question allowing sales between 10 a.m. and

midnight is defeated and if the particular location is already allowed to sell beer, wine and mixed beverages, spirituous liquor, or intoxicating liquor either between the hours of 11 a.m. and midnight or between the hours of 1 p.m. and midnight, the particular location is allowed to continue to sell beer, wine and mixed beverages, spirituous liquor, or intoxicating liquor between the hours of 11 a.m. and midnight or 1 p.m. and midnight, as applicable.

## Changes in procedure for local option elections on liquor sales at a community facility

(R.C. 4301.334, 4301.356, 4301.366, and 4303.182)

### Change in the petition requirements and in the wording of the questions on the ballot

#### Petition

Law revised in part by the act allows a local option election to be held in a municipal corporation or the unincorporated area of a township on the sale of beer and intoxicating liquor at a community facility located within the municipal corporation or unincorporated area if the petitioner for the election presents a petition and other specified information to the board of elections of the county in which the community facility is located. The petition must contain both of the following: (1) a notice that it is for the submission of a question authorizing the sale of beer and intoxicating liquor on all days of the week except Sunday and between the hours of 1 p.m. and midnight on Sunday at a particular community facility, and (2) the name and address of the community facility and, if the community facility is a community entertainment district, the boundaries of the district. The act specifies that the petition also must include a statement indicating whether the hours of Sunday sales sought in the local option election are between 10 a.m. and midnight or between 11 a.m. and midnight.

#### Ballot

Under law changed in part by the act, the question for a local option election authorizing the Sunday sale of beer and intoxicating liquor at a community facility specifies that the sale can only occur on days of the week other than Sunday and between the hours of 1 p.m. and midnight on Sunday. The act changes the hours of Sunday sale specified on the ballot question from between 1 p.m. and midnight to between 10 a.m. and midnight or between 11 a.m. and midnight, whichever time period is sought.

### Effect of election concerning Sunday liquor sales

Under law largely unchanged by the act, if a majority of the voters approve the sale of beer and intoxicating liquor at a community facility, the community facility is authorized to sell beer and intoxicating liquor for the use specified in the question. The act provides that the sale of beer and intoxicating liquor is allowed on Sunday at a community facility generally only during the hours approved by the voters, either between 10 a.m. and midnight or between 11 a.m. and midnight.

## Liquor permits in certain community entertainment districts

(R.C. 4303.182)

Under law revised in part by the act, a D-6 liquor permit (Sunday liquor sales) must be issued to a D-5j liquor permit holder (retail food establishment and food service operation in a community entertainment district) for a permit premises that is located in a community entertainment district that was approved by the legislative authority of a municipal corporation between October 1 and October 15, 2005, to allow sale under the permit between 10 A.M. and midnight on Sunday whether or not that sale has been approved by local option election.[330] The act instead requires a D-6 liquor permit to be issued to any liquor permit holder that is authorized to sell intoxicating liquor at retail for on and off premises consumption for a permit premises that is located in such a community entertainment district.

## Serving or consumption of alcohol on state property (VETOED)

(R.C. 4301.85)

The Governor vetoed a provision that would have allowed the serving or consumption of beer or intoxicating liquor in a facility that was owned or leased by the state and that was used by visiting foreign military units for training, provided that such serving or consumption of beer or intoxicating liquor was done according to the policies and procedures agreed upon by the commanding officers of the foreign military

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[330] "Community entertainment district" means a bounded area that includes or will include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments within close proximity to some or all of the following types of establishments within the district, or other types of establishments similar to these: (1) hotels, (2) restaurants, (3) retail sales establishments, (4) enclosed shopping centers, (5) museums, (6) performing arts theaters, (7) motion picture theaters, (8) night clubs, (9) convention facilities, (10) sports facilities, (11) entertainment facilities or complexes, and (12) any combination of the establishments described above that provide similar services to the community (R.C. 4303.182(J) by reference to R.C. 4301.80(A), not in the act).

units, the Adjutant General, and the United States Department of Defense liaisons or their designated representatives to the foreign military units.[331]

## LOCAL GOVERNMENT (LOC)

- Modifies the makeup of a financial planning and supervision commission and the qualifications of commission members.
- Specifies the number of commission members necessary to constitute a quorum and to constitute an affirmative vote.
- Requires that a member of the board of county commissioners be a member of the county board of revision, and removes the requirement that the president of the board of county commissioners be a member.
- Reduces, from fifteen to ten, the minimum number of days for bidding when a nonchartered municipal corporation sells personal property by Internet auction.
- Authorizes a certain nonprofit corporation to create a special improvement district governed by the corporation's existing board.
- Authorizes a board of county commissioners for a sewer district, and a board of trustees for a regional water and sewer district, to offer discounts or reductions on water and sewer rates, rentals, or charges to certain persons 65 years of age or older who are eligible for the homestead exemption or qualify as low-and moderate-income persons.
- Extends the time from October 15, 2009, to October 15, 2010, during which local governments may enter enterprise zone agreements.
- Authorizes the formation of a County Land Reutilization Corporation (CLRC) at any time, rather than on or before April 7, 2010.

[331] "Beer" includes all beverages brewed or fermented wholly or in part from malt products and containing 0.5% or more, but not more than 12%, of alcohol by volume (R.C. 4301.85(B) by reference to R.C. 4301.01(B)(2), not in the act). "Intoxicating liquor" and "liquor" include all liquids and compounds, other than beer, containing 0.5% or more of alcohol by volume which are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called, and whether they are medicated, proprietary, or patented. "Intoxicating liquor" and "liquor" include wine even if it contains less than 4% of alcohol by volume, mixed beverages even if they contain less than 4% of alcohol by volume, cider, alcohol, and all solids and confections which contain any alcohol. (R.C. 4301.85(B) by reference to R.C. 4301.01(A)(1), not in the act.)

- Eliminates the restriction prohibiting a CLRC from acquiring real property and tax certificates more than two years after a CLRC is formed.

- Authorizes the county treasurer in a county that has formed a CLRC to charge interest on delinquent taxes at a rate of 12% per year or 1% per month.

- Expressly authorizes a convention facilities authority to acquire or construct hotels as part of the auxiliary facilities of a convention, entertainment, or sports facility.

- Increases the amount of each fee that a clerk of a court of common pleas retains for issuing a certificate of title for a watercraft or outboard motor, motor vehicle, off-highway motorcycle, or all-purpose vehicle when there is no lien or security interest noted on the certificate.

- Prohibits the state and political subdivisions from using Internet reverse auctions to purchase supplies or services if the contract concerns the design, construction, alteration, repair, reconstruction, or demolition of a building, highway, road, street, alley, drainage system, water system, waterworks, ditch, sewer, sewage disposal plant, or any other structure or works of any kind.

- Increases certain fees that a sheriff charges for the service and return of certain writs and orders and for transporting convicted felons to state correctional institutions.

- Requires a charge of $4 for accident reports, and permits a local law enforcement agency to charge a higher fee for accident reports or photographs or any other "electronic format" related to accident reports if, in the future, the State Highway Patrol is authorized to charge a fee in excess of $4 for any of these items and the board of county commissioners of the county in which the local law enforcement agency is located approves that same higher fee.

- Would have required a definitive charge of $4 for photographs or any other "electronic format" related to an accident report (VETOED).

- Would have specified that, for purposes of statutes and regulations requiring counties to make second and later publications of a notice, advertisement, list, or other information in a newspaper of general circulation, the second and later publication requirement would have been satisfied by complying with specified Internet posting requirements (VETOED).

- Would have required a board of county commissioners of a county with a population between 800,000 and 900,000 to conduct a pilot project authorizing commercial advertising on a county web site, and would have specified the

information that must be included in the resolution authorizing the advertising (VETOED).

- Authorizes a county appointing authority to establish a mandatory cost savings program for its employees who are not subject to a collective bargaining agreement that includes a loss of pay or loss of holiday pay of not more than 80 hours during each of state fiscal years 2010 and 2011.

- Authorizes a county appointing authority to establish a mandatory cost savings program for such employees after June 30, 2011, in the event of a fiscal emergency.

- Provides that mandatory cost savings days for these county employees is not a modification or reduction in pay that can be appealed to the State Personnel Board of Review.

- Authorizes a special improvement district to undertake special energy improvement projects to create a solar photo voltaic project or solar thermal energy project.

- Authorizes a municipal corporation to establish a program to make low-cost loans to residents of the municipal corporation so that they can install solar panels in their residences.

- Specifies that port authorities are required to prepare a plan for future development, construction, and improvement only for maritime facilities; limits the effect of the plan on port authority financial instruments and contracts; and revises notification requirements.

- Includes townships among the current entities authorized to commence a civil action to abate a public nuisance.

- Changes the definition of "small wind farm" within the county zoning law to conform to definitions of small wind farm in township and municipal zoning laws.

- Adds that the Ohio Commission on Local Government Reform and Collaboration, in developing its recommendations, must consider making annual financial reporting across local governments consistent for ease of comparison and aligning regional planning units across state agencies.

## Financial planning and supervision commissions

(R.C. 118.05; Section 701.20)

Upon the occurrence and determination of a fiscal emergency in any municipal corporation, county, or township, a financial planning and supervision commission for the municipal corporation, county, or township is established. Such a commission consists of the following seven voting members: four ex officio members[332] or their designees and three members nominated by the municipal corporation, county, or township and appointed by the Governor with the advice and consent of the Senate.

The act makes a distinction in the number of commission members depending upon the population of the municipal corporation, county, or township involved in the fiscal emergency. If the municipal corporation, county, or township has a population of at least 1,000, the commission must have seven members as described above. If, however, the municipal corporation, county, or township has a population of less than 1,000, the commission must have five members, four being the ex officio members and one being nominated by the municipal corporation, county, or township and appointed by the Governor with the advice and consent of the Senate as follows:

The mayor and presiding officer of the legislative authority of the municipal corporation, the board of county commissioners, or the board of township trustees must, within ten days after the determination of the fiscal emergency by the Auditor of State, submit in writing to the Governor the nomination of three persons agreed to by them and meeting the necessary qualifications for appointment. If the Governor is not satisfied that at least one of the nominees is well qualified, the Governor must notify the mayor and presiding officer, or the board of county commissioners, or the board of township trustees to submit in writing, within five days, additional nominees agreed upon by them, not exceeding three. The Governor must appoint one member from all the submitted, agreed-upon nominees or must fill the position by appointment of any other person meeting the qualifications for appointment. The appointed member serves during the life of the commission, but is subject to removal by the Governor for misfeasance, nonfeasance, or malfeasance in office. In the event of the death, resignation, incapacity, removal, or ineligibility to serve of the appointed member, the Governor, pursuant to the process for original appointment, must appoint a successor.

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[332] Two of the four ex officio members of a financial planning and supervision commission are the Treasurer of State and the Director of Budget and Management. The other two ex officio members are, if a municipal corporation is involved, the mayor and presiding officer of the legislative authority of the municipal corporation; if a county is involved, the president of the board of county commissioners and the county auditor; or if a township is involved, a member of the board of township trustees and the county auditor.

To qualify to be appointed as a member of a financial planning and supervision commission, an individual must:

(1) Have knowledge and experience in financial matters, financial management, or business organization or operations, including at least five years of experience in the private sector in the management of business or financial enterprise or in management consulting, public accounting, or other professional activity;

(2) Have residence, an office, or a principal place of professional or business activity situated within the municipal corporation, county, or township;

(3) Have not, at any time during the five years preceding the date of appointment, held any elected public office. An appointed member of a financial planning and supervision commission must not become a candidate for elected public office while serving as a member of the commission.

The act removes the specific experience requirement and the restriction on previous election from the qualifications. In other words, a member of a financial planning and supervision commission no longer will have to have had at least five years experience in the private sector in the management of a business or financial enterprise or in a management consulting, public accounting, or other professional activity. And a member will no longer be disqualified if the member was elected to a public office during the five years preceding the member's appointment to the commission. The act, however, retains the rule disqualifying a member who becomes a candidate for elected public office while serving as a member of a commission.

Under prior law, five members of the commission constituted a quorum and the affirmative vote of five members was necessary for any action taken by vote of the commission. Under the act, for a commission for a municipal corporation, county, or township with a population of at least 1,000, four members constitute a quorum of the commission and the affirmative vote of a majority of the members is necessary for any action taken by vote of the commission. For a commission for a municipal corporation, county, or township with a population of less than 1,000, three members constitute a quorum of the commission and the affirmative vote of a majority of the members is necessary for any action taken by vote of the commission. The act also specifies for any commission established before the act's general effective date, four members constitute a quorum and the affirmative vote of a majority of the members is necessary for any action taken by vote of the commission.

## County board of revision

(R.C. 5715.02)

Prior law required the President of a board of county commissioners to be a member of the county board of revision. The act removes this requirement and requires a member of the board of county commissioners, selected by the board of county commissioners, to be a member of the county board of revision.

## Minimum bidding period for certain sales of personal property by Internet auction

(R.C. 721.15)

A nonchartered municipal corporation is authorized to sell personal property that is unneeded, obsolete, or unfit for use by a variety of means, including a sale by Internet auction. The legislative authority must adopt a resolution on an annual basis expressing its intent to sell the property in this manner. Under prior law, the property must be available on the Internet for bidding for at least 15 days, including Saturdays, Sundays, and legal holidays.

The act reduces, from fifteen to ten, the minimum number of days for bidding when a municipal corporation sells personal property by Internet auction.

## Special improvement districts

(R.C. 1710.01, 1710.02, 1710.03, 1710.04, 1710.06, 1710.10, and 1710.13)

The act authorizes the creation of a special improvement district by a certain preexisting nonprofit corporation, and provides for the governance of the district by the corporation's governing board instead of the creation of a new board. Under continuing law, special improvement districts may be created by property owners to provide public improvements or services funded by local government bonds and special assessments levied on property in the district. The improvements that the district may provide are those for which a municipal corporation may levy special assessments, and the services are those that a municipal corporation may provide or for which special assessments may be levied under the general law governing special assessments (R.C. Chapter 727.).

To create a special improvement district (SID) under the act, a nonprofit corporation must exist before the district is created, must have certain specified purposes, and must have created a police department under law authorizing the establishment of a police department by certain nonprofit corporations (R.C. 1702.80). The specified purposes include: the acquisition of real property within a specified area

for the subsequent transfer to its members exclusively for charitable, scientific, literary, or educational purposes, or holding and maintaining and leasing such property; planning for and assisting in the development of its members; providing for the relief of the poor and distressed or underprivileged in the area and adjacent areas; combating community deterioration and lessening the burdens of government; providing or assisting others in providing housing for low- or moderate-income persons; and assisting its members by the provision of public safety and security services, parking facilities, transit service, landscaping, and parks.

Under continuing law governing special improvement districts (R.C. Chapter 1710.), a SID is created by property owners within a contiguous area. A nonprofit corporation must be created specifically for the purpose of the SID, and the corporation's board of trustees is the governing board of the SID. Before a SID may be created, the corporation's articles of incorporation must be filed for approval by the township or municipal corporation where the district would be located. The articles must be accompanied by a petition signed by the owners of either 75% of the area to be in the SID or 60% of the front footage in the SID (in either case excluding churches and governments that do not specifically request inclusion). If the township or municipal corporation approves the petition and articles, the district is created, all owners of property in the district become members of the district, and their property becomes subject to any assessment that may be levied, except for the state or federal government, and except for any local government or church that does not specifically request to be a member. The SID board of directors is composed of at least five members, including the municipal corporation's chief executive (or designee) if the SID is in a municipal corporation, and an appointee by the legislative body of the township or municipal corporation where the SID is located. The remaining directors are elected by a majority vote of the members of the SID.

If a preexisting nonprofit corporation creates a SID under the act's new authority, the corporation need only file a copy of its existing articles of incorporation for approval by the township or municipal corporation. The corporation need not file a petition signed by property owners. If the articles are approved by the township or municipal corporation, the membership is composed of all property owners except those excepted from SIDs under continuing law, but any church that is a member of the preexisting nonprofit corporation is a member of the SID. The preexisting corporation's board of trustees would be the SID board of directors. The election of directors otherwise required by ongoing law would not be required, and the requirement that a municipal executive and appointees of the legislative authorities be members of the district's board of directors may be satisfied by the membership on the corporation's board of representatives of the municipal corporation or township; or, the requirement may be waived if approved by the municipal corporation or township. Several governance and

procedural provisions of ongoing law applicable to SID boards do not apply to the preexisting nonprofit corporation's board to the extent they are not consistent with its regulations, including the appointment of proxies or designees, notices of meetings, the election of officers, and annual reporting. In the case of inconsistency, the preexisting corporation's regulations govern.

Prior SID law required that any law enforcement or fire protection services to be provided by the SID be provided only by contract with the township or municipal corporation. Under the act, a SID created by a preexisting nonprofit corporation may provide its own law enforcement service without such a contract, in view of the fact that a preexisting nonprofit corporation qualified to create a SID under the act is qualified under ongoing law to establish its own police department.

Continuing law provides procedures for the dissolution of a SID and the disposition of its assets and liabilities. This provision does not apply to a SID created by a preexisting nonprofit corporation under the act's authority.

### Authority of special improvement districts to undertake special energy improvement projects

(R.C. 1710.01, 1710.02, 1710.06, and 1710.07)

Continuing law authorizes a special improvement district to be created within the boundaries of any one municipal corporation or township, or any combination of contiguous municipal corporations and townships, for the purpose of developing and implementing plans for public improvements and public services that benefit the district. Continuing law defines "public improvement" to mean the planning, design, construction, reconstruction, enlargement, or alteration of any facility or improvement, including the acquisition of land, for which a special assessment may be levied under the Municipal Special Assessments Act.

The act defines "public improvement" also to include any special energy improvement project. A "special energy improvement project" is any property, device, structure, or equipment necessary for the acquisition, installation, equipping, and improvement of any real or personal property used for the purpose of creating a solar photo voltaic project or solar thermal energy project, whether the real or personal property is publicly or privately owned.

Continuing law generally requires that all territory in a special improvement district be contiguous. The act, however, allows territory in a special improvement district to be noncontiguous if at least one special energy improvement project is designated for each parcel of real property included within the district. Additional territory may be added to the district for the purpose of developing and implementing

plans for special energy improvement projects if at least one special energy improvement project is designated for each parcel of real property included within the additional territory and the addition of territory is authorized by the initial plan for public services or public improvements in the district or by a plan adopted by the board of directors of the district.

Continuing law generally requires that the articles of incorporation for a nonprofit corporation governing a special improvement district be accompanied by a petition signed by the owners of either at least 60% or 75% of the front footage of all real property in the proposed district, depending on whether publicly-owned or church-owned property is to be included in the district. Under the act, if a special improvement district is being created to develop and implement plans for special energy improvement projects, the petition must be signed by 100% of the owners of all real property located within the proposed district and at least one special energy improvement project must be designated for each parcel of property within the district.[333] The district may include any number of parcels of real property as determined by the legislative authority of each participating political subdivision in which the proposed district is to be located. The act specifies that the acquisition, installation, equipping, and improvement of a special energy improvement project does not supersede any local zoning, environmental, or similar law or regulation.

Continuing law provides that after the initial plan for a special improvement district is approved by all municipal corporations and townships to which it is submitted for approval and the district is created, each participating subdivision must levy a special assessment within its boundaries to pay for the cost of the initial plan. The levy must be for not more than ten years from the date of the approval of the initial plan. The act provides, however, that if the proceeds of the levy are to be used to pay the costs of a special energy improvement project, the levy of a special assessment must be for not more than 25 years from the date of approval of the initial plan. If additional

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[333] When a petition is for the purpose of developing and implementing plans for special energy improvement projects, the act deems the petition to be in furtherance of the purposes stated in Ohio Constitution, art. VIII, § 2o. Art. VII, § 2o states that conservation and revitalization are proper public purposes of the state and local governments. "Conservation" means conservation and preservation of natural areas, open spaces, and farmlands and other lands devoted to agriculture, 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, and land, forest, water, and other natural resource management projects. "Revitalization" means providing for and enabling the environmentally safe and productive development and use or reuse of publicly or privately owned lands, including lands in urban areas, by the remediation or clean up of contamination, or addressing, by clearance, land acquisition or assembly, infrastructure, or otherwise, contamination 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 lands.

territory is added to the district, the special assessment to be levied with respect to the additional territory must commence not later than the date the territory is added and must be for not more than 25 years from that date.

Under the act, the board of directors of a special improvement district, acting as agent and on behalf of a participating political subdivision, may sell, transfer, lease, or convey any special energy improvement project owned by the participating political subdivision upon a determination by its legislative authority that the project is not required to be owned exclusively by the participating political subdivision for its purposes, for uses determined by the legislative authority as those that will promote welfare of the people of the participating political subdivision; to improve the quality of life and general and economic well-being of the people of the participating political subdivision; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources. The legislative authority of each participating political subdivision must specify the consideration for, and any other terms of, the sale, transfer, lease, or conveyance. Any determinations made by the legislative authority of a participating political subdivision are conclusive.

Any sale, transfer, lease, or conveyance of a special energy improvement project by a participating political subdivision or board of directors of a special improvement district may be made without advertising, receipt of bids, or other competitive bidding procedures applicable to the participating political subdivision or district under the state Public Works Act, the Municipal Public Service Act, the law governing the award of contracts by special improvement districts, or other representative provisions of the Revised Code.

Under the act, plans for public improvements or public services of a special improvement district may include provisions for, and may include the costs associated with, the sale, lease, lease with an option to purchase, conveyance of other interests in, or other contracts for the acquisition, construction, maintenance, repair, furnishing, equipping, operation, or improvement of any special energy improvement project by the special improvement district, between a participating political subdivision and the district, or between the district and any owner of real property in the district on which a special energy improvement project has been acquired, installed, equipped, or improved.

## Discounts or reductions on water and sewer service for certain persons 65 years of age or older

(R.C. 6103.01, 6103.02, 6117.01, 6117.02, 6119.011, and 6119.091)

A board of county commissioners is authorized to create a sewer district and provide water and sewer services in the district. Similarly, the board of trustees of a regional water and sewer district may provide water and sewer services in the district under the Regional Water and Sewer Districts Law. The board of county commissioners is required to fix reasonable water and sewer rates and other charges. The board of trustees of a regional water and sewer district is authorized to charge rentals and other charges for water and sewer services.

The act authorizes such a board of county commissioners and board of trustees to establish discounted rates, rentals, or charges, or to establish another mechanism for providing a reduction in rates, rentals, or charges, for persons who are 65 years of age or older and meet additional eligibility requirements. A board is required to establish eligibility requirements for a discounted or reduced rate, rental, or charge in addition to the recipients being 65 years of age or older. One of those requirements must be that a recipient qualify as a low- and moderate-income person under guidelines adopted by the Housing Finance Agency or that a recipient be eligible for the homestead exemption, which provides real property tax reductions to elderly persons who own real property.

## Enterprise zone agreements

(R.C. 5709.62, 5709.63, and 5709.632)

Counties and municipal corporations may designate areas within the county or municipal corporation as "enterprise zones." After designating an area as an enterprise zone, the county or municipal corporation must petition the Director of Development for certification of the designated enterprise zone. If the Director certifies a designated enterprise zone, the county or municipal corporation may then enter into an enterprise zone agreement with a business for the purpose of fostering economic development in the enterprise zone. Under an enterprise zone agreement, the business agrees to establish or expand within the enterprise zone, or to relocate its operations to the zone, in exchange for tax relief and other incentives.

Prior law authorized local governments to enter into enterprise zone agreements through October 15, 2009. The act extends the time during which local governments may enter these agreements to October 15, 2010.

## County land reutilization corporations

(R.C. 323.121, 323.73, 323.74, 323.77, 323.78, 1724.02, 1724.04, 5721.32, 5721.33, 5722.02, 5722.04, 5722.21, and 5723.04)

Sub. S.B. 353 of the 127th General Assembly authorized the creation of a type of "community improvement corporation" known as a "county land reutilization corporation" (CLRC) under R.C. 1724.04 in counties with a population of greater than 1.2 million. The purpose of CLRCs is to assist other entities in assembling, clearing, and clearing title of property in a coordinated manner and to promote economic and housing development in the county or region. (For more information regarding what authority is granted to CLRCs, see the LSC final analysis for Sub. S.B. 353.)

Prior law prohibited the formation of a County Land Reutilization Corporation (CLRC) after April 7, 2010, which is one year after the effective date of Sub. S.B. 353 of the 127th General Assembly, which originally authorized creation of CLRCs. Prior law also prohibited a CLRC from acquiring real property and tax certificates more than two years after the CLRC was formed.

The act authorizes CLRCs to form and to acquire real property and tax certificates at any time.

Prior law required the county treasurer in a county that formed a CLRC to charge interest on delinquent taxes at a rate of 1% per month.

The act authorizes the treasurer of such a county to charge interest at a rate of 12% per year or 1% per month.

## Convention facilities authority

(R.C. 351.01)

Continuing law authorizes counties to create convention facilities authorities with the authority to administer convention, entertainment, or sports facilities, including "parking facilities, walkways, and other auxiliary facilities," located within their respective territories.

The act expressly authorizes convention facilities authorities to acquire or construct hotels as part of the auxiliary facilities of a convention, entertainment, or sports facility.

## Clerk of courts titling fees

(R.C. 1548.10, 4505.09, and 4519.59)

Am. Sub. H.B. 2 of the 128th General Assembly generally increased the fee that a clerk of a court of common pleas charges for issuing a certificate of title for a watercraft or outboard motor, motor vehicle, off-highway motorcycle, or all-purpose vehicle from $5 to $15. The act revises the amount of the fee that the clerk retains when there is no lien or security interest noted on the certificate of title, as follows: (1) $12 for each watercraft or outboard motor, rather than $10.50 as under Am. Sub. H.B. 2 and (2) $12.25 for each motor vehicle, off-highway motorcycle, or all-purpose vehicle, rather than $11.50 as under Am. Sub. H.B. 2.

As a result of the clerk keeping these additional funds: (1) the Chief of the Division of Watercraft will receive $3 rather than $4.50 as under Am. Sub. H.B. 2 for each watercraft or outboard motor certificate of title when there is no lien or security interest noted on the certificate and (2) the Registrar of Motor Vehicles will receive $2.75, rather than $3.50 as under Am. Sub. H.B. 2 for each motor vehicle, off-highway motorcycle, or all-purpose vehicle certificate of title when there is no lien or security interest noted on the certificate. For the Registrar, the reduction in fees per certificate of title with no lien or security interest notation results in the Registrar distributing $.75 less for each such certificate to the State Bureau of Motor Vehicles Fund.

## Limitation on state and political subdivision use of Internet reverse auctions

(R.C. 9.314 and 9.317)

Whenever any political subdivision[334] determines that the use of a reverse auction[335] is advantageous to the political subdivision, the political subdivision, in accordance with this Ohio law and the political subdivision's rules, can purchase supplies or services by reverse auction. Also, whenever the Director of Administrative Services determines that the use of a reverse auction is advantageous to the state, the Director, in accordance with rules the Director adopts, can purchase supplies or services by reverse auction. The Director also can authorize a state agency that is authorized to purchase supplies or services directly to purchase them by reverse auction. (R.C. 125.072, not in the act.)

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[334] "Political subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities only in geographic areas smaller than Ohio and also includes a contracting authority.

[335] "Reverse auction" means a purchasing process in which offerors submit proposals in competing to sell supplies or services in an open environment via the Internet.

The act prohibits a political subdivision and a state agency[336] from purchasing supplies or services by reverse auction if the contract concerns the design, construction, alteration, repair, reconstruction, or demolition of a building, highway, road, street, alley, drainage system, water system, waterworks, ditch, sewer, sewage disposal plant, or any other structure or works of any kind.

## Changes in certain fees charged by a sheriff and by a law enforcement agency for accident reports

(R.C. 311.17, 2949.17, and 5502.12)

### Sheriff's fees

The sheriff is required to charge various fees for the service and return of specified writs and orders. The act increases from $20 to $30 the fee charged for a writ or order of execution when money is paid without levy or when no property is found. The act also increases from $10 to $20 the fee charged for an arrest warrant, for each person named in the warrant. And the act increases from $6 to $10 the fee charged for a subpoena, for each person named in the subpoena in either a civil or criminal case.

The sheriff formerly was required to charge for serving each summons, writ, order, or notice a fee of $1 per mile for the first mile, and 50¢ per mile for each additional mile, going and returning, with the actual mileage to be charged on each additional name. The act increases these amounts from $1 to $2 and from 50¢ to $1.

When the sheriff transports indigent convicted felons to a state correctional institution, the county formerly was entitled to reimbursement in an amount equal to (1) 10¢ a mile from the county seat to the state correctional institution and return for the sheriff and each of the guards involved and (2) 5¢ a mile from the county seat to the state correctional institution for each prisoner. The act changes the amount of this reimbursement to not less than $1 a mile from the county seat to the state correctional institution and return for each prisoner.

### Accident report fees (PARTIALLY VETOED)

Continuing law requires law enforcement agencies to submit motor vehicle accident reports to the Director of Public Safety for purposes of statistical, safety, and other studies. Under continuing law, the law enforcement agency that submits such a report must furnish a copy of the report and associated documents to any person claiming an interest arising out of a motor vehicle accident or to the person's attorney.

[336] "State agency" means any organized body, office, agency, institution, or other entity established by the laws of Ohio for the exercise of any function of state government (R.C. 9.23, not in the act).

Prior law set the report cost at a nonrefundable fee that could not exceed $4. The act sets the amount of this fee at $4.

Continuing law further provides that the cost of photographs is in addition to the nonrefundable $4 fee for the accident report. The Governor vetoed a provision that would have set the cost of photographs or any other "electronic format" at $4, in addition to the nonrefundable $4 fee for the accident report, whether the report was submitted by the State Highway Patrol or another law enforcement agency.

The act provides that if, after the act's general effective date, the State Highway Patrol is authorized to charge a fee in excess of $4 for an accident report relating to an accident investigated by the State Highway Patrol and all related reports and statements or a fee in excess of $4 for photographs or other electronic formats related to an accident report, a local law enforcement agency may charge that same fee for an accident report relating to an accident investigated by that law enforcement agency and all related reports and statements or for photographs or other electronic formats related to an accident report investigated by that law enforcement agency upon approval of the board of county commissioners of the county in which that law enforcement agency is located.

### Satisfaction of multiple publication requirements through Internet postings (VETOED)

(R.C. 305.20)

Many sections of statutory law, for a variety of purposes, require counties and other political subdivisions to give notice by publication in a newspaper of general circulation in the county or other political subdivision. Often multiple publications may be required.

The Governor vetoed a section of law that would have specified, for purposes of any such statute or regulation pertaining to a county, the second and subsequent publications were satisfied by posting the notice, advertisement, list, or other information on the county's Internet web site if the newspaper publication stated that the notice, advertisement, list, or other information is posted on the county's web site, provided the county's Internet address on the worldwide web, and included instructions for accessing the notice, advertisement, list, or other information on the county's web site. The Internet web site posting would have been required to provide the same information as is otherwise required for the newspaper publication.[337] If a

[337] The information in the newspaper notice about accessing the county's web site does not have to be included.

county did not operate and maintain, or ceased to operate and maintain, an Internet web site, it would not have been authorized to use this authority and would have been required to comply with the statutory publication requirements that otherwise applied to the notice, advertisement, list, or other information.

The act would have defined "county" to mean a board of county commissioners, a county elected official, or any contracting authority. Contracting authorities would have included any board, department, commission, authority, trustee, official, administrator, agent, or individual that had authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board of the county.

### Commercial advertisements on county web sites (VETOED)

(Section 703.10)

The Governor vetoed a section of law that would have required a board of county commissioners of a county with a population of not less than 800,000 and not more than 900,000, as determined by the most recent federal decennial census, to conduct a pilot project authorizing commercial advertisements to be placed on county web sites.[338] Only "internet advertising," including banners and icons that could have contained links to commercial Internet web sites, would have been allowed. Spyware, malware, or any viruses or programs considered to be malicious would not have been allowed.

The majority of the board of county commissioners would have initiated the pilot project by adopting a resolution. The resolution would have been required to include all the following:

(1) A statement authorizing county officials[339] to place commercial advertisements on web sites of county offices under those county officials;

(2) Requirements and procedures for making requests for proposals to place commercial advertising on county web sites; and

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[338] A "county web site" would have meant any web site, internet page, or web page of a county office, with respective internet addresses or subdomains, that was intended to provide to the public information about services offered by a county office, including relevant forms and searchable data.

[339] The county officials who would have received such an authorization would have included the County Auditor, County Treasurer, County Engineer, County Recorder, County Prosecuting Attorney, County Sheriff, County Coroner, Board of County Commissioners, Clerk of the Probate Court, Clerk of the Juvenile Court, Clerk of Court for all divisions of the Court of Common Pleas, Clerk of a county-operated Municipal Court, and Clerk of a County Court.

(3) Any other requirements or limitations necessary to authorize commercial advertising on county web sites.

The board of county commissioners would have been required to send a copy of the resolution to each county official. After receiving the resolution, the county official would have been required to determine if the official intended to implement the resolution.

A county official who determined to implement the resolution would have been authorized to make requests for proposals in the manner specified by the resolution for the purpose of identifying advertisers who, and whose advertisements would, meet any criteria specified in the request for proposals and any requirements and limitations specified in the resolution. The county official would have been authorized to enter into a contract with such an advertiser whereby the advertiser places an advertisement on the office's web site and pays a fee in consideration to the county general fund. Any such contract would have been required to be concluded not later than December 31, 2011.

A county web site on which commercial advertising was placed would have been limited to one used exclusively to provide information from a county office to the public. A county web site on which commercial advertising was placed could not have been used as a public forum.

The pilot program would have concluded on December 31, 2011. Not later than 30 days after conclusion of the pilot project, the board of county commissioners would have been required to submit a report to the Governor, the Speaker and Minority Leader of the House, and the President and Minority Leader of the Senate regarding the operation of the pilot project, including the board's recommendations on whether commercial advertising on county web sites should be continued and expanded to other counties.

## Mandatory cost savings program for county exempt employees

(R.C. 124.393)

The act authorizes a county appointing authority to establish a mandatory cost savings program applicable to its county exempt employees. A "county exempt employee" is a permanent full-time or permanent part-time county employee who is not subject to a collective bargaining agreement between a public employer and an exclusive representative.

Each county exempt employee must participate in the program of mandatory cost savings for not more than 80 hours, as determined by the employee's appointing

authority, in each of state fiscal years 2010 and 2011. The program may include, but is not limited to, a loss of pay or loss of holiday pay. The program may be administered differently among employees based on their classifications, appointment categories, or other relevant distinctions.

The act specifies that cost savings days are not a modification or reduction in pay that can be appealed to the State Personnel Board of Review if an employee affected thereby is in the classified civil service.

After June 30, 2011, a county appointing authority may implement mandatory cost savings days as described above that apply to its county exempt employees in the event of a fiscal emergency. A "fiscal emergency" is any of the following: (1) a fiscal emergency declared by the Governor under the act, (2) a lack of funds as defined in the Layoff Law, or (3) reasons of economy as described in the Layoff Law.

A county appointing authority must issue guidelines concerning how the appointing authority will implement the mandatory cost savings program.

### Authority for municipal corporations to make loans to their residents so that they can install solar panels in their homes

(R.C. 717.25)

The act authorizes the legislative authority of a municipal corporation to establish a low-cost solar panel revolving loan program to assist residents of the municipal corporation to install solar panels at their residences. If the legislative authority decides to establish such a program, the legislative authority must adopt an ordinance that provides for all the following:

(1) Creation in the municipal treasury of a residential solar panel revolving loan fund;

(2) A source of money, such as gifts, bond issues, real property assessments, or federal subsidies, to seed the fund;

(3) Facilities for making loans from the fund, including an explanation of how municipal residents may qualify for loans from the fund, a description of the solar panels and related equipment for which a loan can be made from the fund, authorization of a municipal agency to process applications for loans and otherwise to administer the low-cost solar panel revolving loan program, a procedure whereby loans can be applied for, criteria for reviewing and accepting or denying applications for loans, criteria for determining the appropriate amount of a loan, the interest rate to be

charged, the repayment schedule, and other terms and conditions of a loan, and procedures for collecting loans that are not repaid according to the repayment schedule;

(4) A specification that repayments of loans from the fund may be made in installments and, at the option of the resident repaying the loan, the installments may be paid and collected as if they were special assessments paid and collected in the manner specified in the Municipal Special Assessments Act and as specified in the ordinance;

(5) A specification that repayments of loans from the fund are to be credited to the fund, that the money in the fund is to be invested pending its being lent out, and that investment earnings on the money in the fund is to be credited to the fund; and

(6) Other matters necessary and proper for efficient operation of the program as a means of encouraging use of renewable energy.

The interest rate charged on a loan from the fund must be below prevailing market rates. The legislative authority may specify the interest rate in the ordinance or may, after establishing a standard in the ordinance whereby the interest rate can be specified, delegate authority to specify the interest rate to the administrator of loans from the fund.

The fund must be seeded with sufficient money to enable loans to be made until the fund accumulates sufficient reserves through investment and repayment of loans for revolving operation.

### Port authority plan for future development

(R.C. 4582.07, 4582.08, 4582.32, and 4582.33; Section 745.50)

Chapter 4582. regulates port authorities. Sections 4582.01 to 4582.20 apply exclusively to a port authority in existence on July 9, 1982. Sections 4582.21 to 4582.59 apply exclusively to a port authority created after July 9, 1982, and to a port authority in existence on that date if all subdivisions that created the port authority elect to operate under those sections. The act affects both parts of the law governing port authorities in the same way.

All port authorities are required to prepare a plan for future development, construction, and improvement of the port and its facilities. The plan must include maps, profiles, and other data and descriptions as necessary to describe the location and character of the work to be undertaken. Plans and proposed plans by a port authority also must contain a description of any and all financing under bonds, leases, or otherwise, and a description of any and all related tax abatements, tax credits, tax

increment financing, emoluments, subsidies, grants, loans, and financial participation. When the plan is completed, the port authority board of directors must give specified notice in each county in which there is a political subdivision participating in the creation of the port authority, and must serve notice upon any owners of the uplands contiguous to any submerged lands affected by the plan. The board must permit the inspection of the plan at its office by all interested persons. The notice must fix the time and place for a hearing of all objections to the plan, which must be not less than 30 nor more than 60 days after the last publication of the notice and after service of notice upon the owners of any uplands. Any interested person may file written objections to the plan.

The board of directors, from time to time after the adoption of an official plan, may modify, amend, or extend the plan, but the board must give notice and conduct a hearing. Additionally, the board may consider, implement, modify, amend, or extend any proposal for any type of financing related to the plan as described above, but the board must give notice and conduct a hearing on any proposal. The plan and any change to the plan, when adopted by the board of directors after notice and hearing, is final and conclusive and its validity must be conclusively presumed.

The act requires a plan only for any future development, construction, and improvement of the "maritime facilities" of a port authority, which the act defines as "docks, wharves, warehouses, piers, and other terminal and transportation buildings or structures used in connection with the transport, storage, or distribution of commercial goods on, over, or across the waterways or shorelines of this state, or buildings or structures for the construction, rehabilitation, maintenance, or repair of commercial vessels used for such purposes, which facilities are or are expected to be owned or leased by a port authority, operated by or on behalf of a port authority, or publicly owned and financed by a port authority."

A plan for future maritime facilities must include a then-current good faith estimate of the cost of the proposed facilities and must contain the port authority's proposal for payment of the cost of maritime facilities, including revenues, grants, subsidies, loans, and financing, rather than the plan containing a description of any and all financing.

The act specifies that the plan and any payment proposal do not affect the legality, validity, or enforceability of any of the following: (1) bonds, notes, leases, certificates, or other financing instruments, (2) any real estate, (3) operating or management contracts or instruments, or (4) any taxes, tax abatements or exemptions, tax credits, tax increment financing, assessments, or other financial participation related to maritime facilities or the plan.

Upon completing a plan for maritime facilities, the act requires the board of directors to give notice by publication as to each county in which there is a political subdivision that participated in the creation of the port authority and removes a requirement for notice to be served upon the owners of the uplands contiguous to any affected submerged lands. The act defines "notice by publication" as publication once in a newspaper of general circulation in the county or counties where such publication is required and the posting of the notice on the web site, if any, of the port authority and specifies that notice is complete on the later of the date of posting or the date of newspaper publication. The hearing of comments on the plan must be held not less than 30 nor more than 60 days after completion of the publication. Under the act, the hearing must allow for comments on the plan, rather than hearing objections to the plan.

In regard to the power to modify, amend, or extend a plan for maritime facilities, the act requires notice by publication and a hearing prior to making a change to the plan. Boards have the power to modify, amend, or supplement any proposal for any type of financing related to the plan and must change the plan prior to undertaking any financing not identified in the plan; however, the board must give the prescribed notice and conduct a hearing on the that proposal. As with the original plan, changes or proposed changes to the plan expressly do not affect the legality, validity, or enforceability of financing instruments, any real estate, operating or management contracts or instruments, or any taxes, tax abatements or exemptions, tax credits, tax increment financing, assessments, or other financial participation related to maritime facilities, the plan, or the proposal.

The act specifies that it does not require a port authority to amend a plan, publish a notice, or hold a public hearing except to add or delete maritime facilities to the plan, to describe changes or deletions in the location or character of the maritime facilities covered by the plan, or to add, change, or delete financings not previously identified in the plan or cost projection changes not previously identified in the plan.

In an uncodified provision, the act states that all those changes are intended to eliminate unintended effects that unintentionally burdened the process by which Ohio port authorities promote their authorized purposes, including activities that enhance, foster, aid, provide, or promote transportation, economic development, housing, recreation, education, governmental operation, culture, or research, and the creation and preservation of jobs and employment opportunities. Therefore, the act continues, the changes apply to work commenced or to be commenced, and to proceedings occurring after the effective date of the changes. Moreover, insofar as the changes are applicable to, support, or facilitate any financing proceedings that are pending, in progress, or completed on that effective date, the changes apply to those financing

proceedings. Any such financing proceeding is deemed to have been taken, and any securities authorized or issued pursuant to those financing proceedings are deemed to have been authorized, sold, issued, delivered, and validated, in conformity with the changes insofar as they are applicable.

### Township authority to initiate a civil action to abate a public nuisance

(R.C. 3767.41)

The Public Nuisance Act, R.C. Chapter 3767., authorizes specified entities to initiate a civil action to abate a public nuisance. A public nuisance action may be initiated by a municipal corporation, neighbor, tenant, or nonprofit corporation. The action may be commenced in specified courts to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to buildings. The act includes a township among the entities allowed to initiate a public nuisance action to enforce its resolutions applicable to buildings. If a property is a public nuisance, the judge may issue an injunction ordering the owner to abate the nuisance, appoint a receiver, or order the sale of the property.

The act provides that nothing in the provision of law authorizing a civil action to abate a public nuisance is to be construed to limit or prohibit a municipal corporation or township that has adopted an ordinance or resolution to participate in the fire loss claims program[340] from receiving insurance proceeds under that program. Under the fire loss claims program, a portion of fire insurance proceeds are deposited with a municipal corporation or township to cover the cost of removing, repairing, or securing structures.

### County zoning of small wind farms

(R.C. 303.213)

County, township, and municipal zoning laws may address the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of a small wind farm.[341] "Small wind farm" means a wind farm designed for, or capable of, operation at an aggregate capacity of less than five megawatts. In township and municipal zoning law definitions unchanged by the act, "small wind farm" refers to wind turbines and associated facilities "with a single interconnection to the electrical grid." The county zoning law formerly defined small wind farm differently as wind turbines and associated facilities that are "interconnected with a

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[340] R.C. 3929.86--not in the act.

[341] See also R.C. 519.213 and 713.081 (not in the act).

medium voltage power collection system and communications network." The act changes the county zoning law definition of "small wind farm" to conform with the township and municipal zoning law so that it refers to wind turbines and associated facilities with a single interconnection to the electrical grid.

## Ohio Commission on Local Government Reform and Collaboration

(Section 610.30)

Am. Sub. H.B. 562 of the 127th General Assembly (Section 701.20) created the Ohio Commission on Local Government Reform and Collaboration to develop recommendations on ways to increase the efficiency and effectiveness of local government operations, to achieve cost savings for taxpayers, and to facilitate economic development in Ohio. The commission must issue a report of its findings and recommendations to the President of the Senate, the Speaker of the House of Representatives, and the Governor not later than July 1, 2010. In developing the recommendations, the commission must consider, but is not limited to, the following:

(1) Restructuring and streamlining local government offices to achieve efficiencies and cost savings for taxpayers and to facilitate local economic development;

(2) Restructuring and streamlining special taxing districts and local government authorities authorized by the Ohio Constitution or Ohio laws to levy a tax of any kind or to have a tax of any kind levied on its behalf, and of local government units, including schools and libraries, to reduce overhead and administrative expenses;

(3) Restructuring, streamlining, and finding ways to collaborate on the delivery of services, functions, or authorities of local government to achieve cost savings for taxpayers;

(4) Examining the relationship of services provided by the state to services provided by local government and the possible realignment of state and local services to increase efficiency and improve accountability; and

(5) Ways of reforming or restructuring constitutional, statutory, and administrative laws to facilitate collaboration for local economic development, to increase the efficiency and effectiveness of local government operations, to identify duplication of services, and to achieve costs savings for taxpayers.

The act requires the commission also to consider the following:

(1) Making annual financial reporting across local governments consistent for ease of comparison; and

(2) Aligning regional planning units across state agencies.

## STATE LOTTERY COMMISSION (LOT)

- Specifically authorizes the State Lottery Commission to operate video lottery terminal games and to adopt rules the Commission determines necessary for the operation of these games, including the establishment of any fees, fines, or payment schedules and the level of minimum investments that must be made in the buildings and grounds in which video lottery terminals will be located.
- Prohibits any license or excise tax or fee not in effect on the video lottery terminal provisions' effective date from being assessed upon or collected from a video lottery terminal licensee by any political subdivision that has authority to assess or collect a tax or fee, by reason of video lottery related conduct, except for municipal income taxes and horse racing taxes.
- Grants the Ohio Supreme Court exclusive, original jurisdiction over any claim that the act's provisions dealing with video lottery terminal games, or rules adopted under those provisions, are unconstitutional.
- Authorizes the transfer of a horse-racing permit to another location under specified conditions.
- States that it is the General Assembly's intent to address political contribution issues by the end of the 128th General Assembly.

### Authority of State Lottery Commission to conduct video lottery terminal games

(R.C. 3770.03 and 3770.21)

Continuing law requires the State Lottery Commission to promulgate rules under which a statewide lottery may be conducted. These rules must be promulgated pursuant to the state Administrative Procedure Act, except that instant game rules must be promulgated pursuant to the abbreviated rule-making procedure that does not require notice or a public hearing.

The act specifies that the rules under which a statewide lottery may be conducted include, and since the original enactment of the Commission's authority to adopt these rules has included, the authority for the Commission to operate video lottery terminal

games.[342] The act further specifies that any reference in the State Lottery Act to "tickets" must not be construed in any way to limit the Commission's authority to operate video lottery games and that nothing in the State Lottery Act restricts the authority of the Commission to promulgate rules related to the operation of games utilizing video lottery terminals.

The act also authorizes the Commission, in exercising its rule-making authority, to deal with any subjects the Commission determines are necessary for the operation of video lottery terminal games, including the establishment of any fees, fines, or payment schedules and the level of minimum investments that video lottery terminal licensees must make in the buildings and grounds at the facilities, including temporary facilities, in which the terminals will be located, along with any standards and timetables for these investments. The act provides that the State Anti-Gambling Act does not apply to, affect, or prohibit lotteries conducted under the State Lottery Act.

Under the act, no license or excise tax or fee that is not in effect on the video lottery terminal provisions' effective date can be assessed upon or collected from a video lottery terminal licensee by any county, township, municipal corporation, school district, or other political subdivision of the state that has authority to assess or collect a fee or tax by reason of the video lottery terminal related conduct the act authorizes, except that the act does not prohibit the imposition of municipal income taxes or horse-racing taxes.

The act specifies that the Ohio Supreme Court has exclusive, original jurisdiction over any claim asserting that (1) the act's provisions dealing with video lottery terminal games, or any portion of those provisions, or any rule adopted under those provisions, violates any provision of the Ohio Constitution, (2) any action taken by the Governor or the State Lottery Commission pursuant to those provisions violates any provision of the Ohio Constitution or the Revised Code, or (3) any portion of newly enacted R.C. 3770.21 (video lottery terminals) violates any provision of the Ohio Constitution. If any claim over which the Supreme Court is granted this exclusive, original jurisdiction is filed in any lower court, the claim must be dismissed by the court on the ground that the court lacks jurisdiction to review it.

The act provides that should any portion of the provisions authorizing video lottery terminal games be found to be unenforceable or invalid, that portion must be severed and the remaining portions remain in full force and effect.

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[342] "Video lottery terminal" means any electronic device approved by the State Lottery Commission that provides immediate prize determinations for participants on an electronic display (R.C. 3770.21(A)).

## Transfer of a horse-racing permit

(Section 737.10)

The act provides that, notwithstanding any other provision to the contrary in the Horse Racing Act, for a period of two years after the provision's effective date, any person holding a permit to conduct live horse-racing meetings at a facility owned by a political subdivision may apply for, and the State Racing Commission may grant, a permit to conduct horse-racing meetings at a location at which such meetings have not previously been conducted, if the permit application is accompanied by a resolution adopted by the board of county commissioners of the county of the proposed location, and of the local legislative authority, whether a municipal corporation or township, of the proposed location, requesting that the Commission grant the permit. The Commission may only grant such an application if the proposed location is in the same or a contiguous county and is within 50 miles of the current location associated with the permit, but is not in the same county as another location at which live horse-racing meetings are conducted.

## Political contribution issues

(Section 735.10)

The act states that it is the General Assembly's intent to address political contribution issues by the end of the 128th General Assembly.

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# MANUFACTURED HOMES COMMISSION (MHC)

- Transfers the licensing and regulatory authority of manufactured housing brokers, dealers, and salespersons from the Registrar of Motor Vehicles to the Manufactured Homes Commission, effective July 1, 2010.

- Transfers the inspection authority for manufactured homes located in manufactured home parks from the Department of Health to the Manufactured Homes Commission, effective January 1, 2010.

- Makes changes to the law regarding application for certificate of title for manufactured and mobile homes.

## Manufactured housing dealers, brokers, and salespersons

### Licensure

(R.C. 4505.062, 4505.20, 4517.01, 4517.02, 4517.03, 4517.052, 4517.27, 4517.30, 4517.33, 4517.43, 4781.01, 4781.02, 4781.05, 4781.16, 4781.17, 4781.18, 4781.19, 4781.20, 4781.21, and 4781.23; Sections 745.20, 745.30, 745.40, and 812.10)

Effective July 1, 2010, the act transfers the authority of and responsibility for licensure of manufactured housing dealers, brokers, and salespersons from the Registrar of Motor Vehicles to the Manufactured Homes Commission and specifically allows the Executive Director of the Commission to review applications for manufactured housing licensure. Except as provided below, the act maintains continuing law's licensure requirements and processes, including license renewal and maintenance requirements, confidentiality requirements, and grounds for refusal to issue or renew, suspension, and revocation of a license:

(1) The act adds to the definition of a salesperson any person employed by a manufactured home broker in addition to a person employed by a dealer.

(2) The act's licensure requirements eliminate the possibility that a person licensed as a motor vehicle dealer or salesperson could do the business of a manufactured housing dealer or salesperson without separate licensure to do so.

(3) The act removes the requirement that applicants for a manufactured housing broker license submit a separate application for each location at which the business is to be conducted and, instead requires them to submit a separate application for each county as is required for dealer licenses.

(4) The act removes a reference to applicants for initial licensure submitting an application "annually."

(5) Under former law, when a manufactured housing salesperson applied to have his or her license reinstated, transferred, or registered under a new dealer, the person had to pay a $2 fee. Rather than specifying the fee, the act requires the Commission to establish the fee for the reinstatement or transfer of those licenses.

(6) Under continuing law, all appeals resulting from the Registrar's refusal to issue any license upon proper application must be taken within 30 days from the date of the order, or the order is final and conclusive. The act applies that 30-day time limit to requests for adjudication hearings for any person whose manufactured housing dealer, broker, or salesperson's license is revoked, suspended, denied, or not renewed by the Commission.

### Regulation

(R.C. 4781.04, 4781.05, 4781.16, 4781.22, 4781.24, 4781.25, and 4781.99; Sections 745.10 and 812.10)

Effective July 1, 2010, the act also transfers the authority of and responsibility for regulation of manufactured housing dealers, brokers, and salespersons from the Registrar of Motor Vehicles to the Manufactured Homes Commission. In addition to the Commission's responsibilities under continuing law regarding manufactured housing installers, the act requires the Commission to adopt rules governing the training, experience, and education requirements for manufactured housing dealers, brokers, or salespersons; to govern the investigation of and investigate complaints concerning any violation of manufactured homes law or complaints involving the conduct of any licensed manufactured housing dealer, broker, or salesperson; and conduct audits and inquiries for manufactured housing dealers and brokers. Under the act, the Executive Director of the Commission is responsible for notifying manufactured housing dealers, brokers, and salespersons of any changes in the laws and regulations that govern them.

The act maintains continuing law's regulation in all of the following areas:

(1) Prohibited acts for manufactured housing dealers including soliciting the sale of a manufactured home or mobile home person other than a licensed salesperson in the employ of the dealer; paying any commission or compensation in connection with the sale of a manufactured home or mobile home except a salesperson in the employ of the dealer; and failing to immediately notify the Commission upon termination of the employment of a licensed salesperson;

(2) Written contracts for every retail sale of a manufactured home or mobile home;

(3) Bonds for manufactured housing brokers;

(4) Penalties for violation of the laws governing manufactured housing dealers, brokers, and salespersons.

Former law regulating motor vehicle dealers, which included manufactured housing dealers, prohibited signing contracts, taking deposits, or completing sales at the location of a motor vehicle show. Before July 1, 2010, when the authority for licensure of manufactured housing dealers transfers from the Registrar to the Commission, the act expressly allows dealers to sign contracts, take deposits, and complete sales at the location of a motor vehicle show if the motor vehicles are new manufactured homes.

On and after July 1, 2010, the act's proposed regulation of manufactured housing dealers is silent on the point.

Additionally, law largely unchanged by the act prohibits a motor vehicle dealer, including a manufactured home dealer, from selling, displaying, offering for sale, or dealing in motor vehicles (including manufactured or mobile homes) at any place except an established place of business that is used exclusively for the purpose of selling, displaying, offering for sale, or dealing in motor vehicles (including manufactured or mobile homes). Manufactured housing brokers are prohibited also from engaging in the business of brokering manufactured or mobile homes at any place except an established place of business that is used exclusively for the purpose of brokering manufactured or mobile homes.

The act clarifies those prohibitions as they apply to manufactured housing dealers and brokers. Under the act, a place of business used for the brokering or sale of manufactured or mobile homes is considered to be used exclusively for brokering, selling, displaying, offering for sale, or dealing in manufactured or mobile homes (or motor vehicles, including manufactured or mobile homes, prior to July 1, 2010) even though industrialized units are brokered, sold, displayed, offered for sale, or dealt at the same place of business. Effective July 1, 2010, the act also adds places of business used for dealing in manufactured or mobile homes to the above clarification.

Under the act, if a licensed new or used motor vehicle dealer, before July 1, 2010, or a licensed manufactured housing dealer, on or after that date, also is a licensed manufactured home park operator, all of the following apply:

(1) An established place of business that is located in the operator's manufactured home park and that is used for selling, leasing, and renting manufactured homes and mobile homes in that manufactured home park is considered to be used exclusively for that purpose even though rent and other activities related to the operation of the manufactured home park take place at the same location or office as the sales and leasing activities.

(2) The dealer's established place of business in the manufactured home park must be staffed by someone licensed and regulated under the law governing manufactured housing dealers, brokers, and salespersons who could reasonably assist any retail customer with or without an appointment, but such established place of business need not satisfy office size, display lot size, and physical barrier requirements applicable to other used motor vehicle dealers.

(3) The manufactured and mobile homes being offered for sale, lease, or rental by the dealer may be located on individual rental lots inside the operator's manufactured home park.

### Compliance with installation and other standards

(R.C. 3733.02, 4781.04, 4781.06, and 4781.07)

Continuing law requires the Manufactured Homes Commission to adopt rules that govern the inspection of the installation of manufactured housing and the design, construction, installation, approval, and inspection of foundations and the base support systems for manufactured housing located in manufactured home parks. However, under former law, those inspections were completed by the Department of Health or a licensor, as determined by the Department. Effective January 1, 2010, the act transfers the authority for inspections to the Commission or to any building department or personnel or any department, any licensor or personnel of any licensor, or any third party that is certified by the Commission.

### Application for certificate of title of a manufactured or mobile home

(R.C. 4505.01, 4505.06, 4505.111, and 4505.181)

Except as provided below, the act maintains continuing law in regards to titling manufactured and mobile homes:

First, under former law, every motor vehicle that was assembled from component parts by a person other than the manufacturer had to be inspected by the State Highway Patrol prior to the issuance of title to the motor vehicle. The act exempts manufactured homes and mobile homes from that requirement.

Second, under continuing law, manufactured and mobile homes must have certificates of title through the Registrar of Motor Vehicles, and those applications for certificate of title must be filed in the same way as an application for certificate of title of a motor vehicle is filed within 30 days after the delivery of the manufactured or mobile home. The act clarifies the deadlines by which a motor vehicle or manufactured housing dealer must file for a certificate of title for a new or used manufactured or mobile home. Under the act, the delivery date for a manufactured or mobile home is the date on which an occupancy permit for the manufactured or mobile home is delivered to the purchaser. Additionally, if a certificate of title for a used manufactured or mobile home was issued to the dealer, the same 30-day requirement applies. If the dealer does not have a certificate of title because the dealer is displaying the home on behalf of a secured party and the dealer complies with the requirements below, the application for certificate of title must be filed within 30 days after the dealer obtains the

certificate of title from the secured party or within the normal 30-day period beginning on the date on which an occupancy permit for the manufactured or mobile home is delivered to the purchaser, whichever is later.

Third, former law allowed a motor vehicle or manufactured housing dealer to display, offer for sale, or sell a used motor vehicle, used manufactured home, or used mobile home without first obtaining a certificate of title in the name of the dealer if the dealer satisfied specified requirements including possessing a bill of sale and posting a bond or a deposit in a sum based upon the number of years that the dealer has been licensed. The act specifies that a motor vehicle dealer has this authority with respect to used motor vehicles while a manufactured housing dealer has this authority with respect to used manufactured homes and used mobile homes. The act adds the requirement that the bill of sale be available for inspection by the Manufactured Homes Commission and, in addition to the Attorney General and the Registrar, the dealer notify the Manufactured Homes Commission when the dealer cancels the required bond.

Fourth, under continuing law, if a retail purchaser purchases a motor vehicle or a manufactured or mobile home from a dealer that did not have a certificate of title as described above and the dealer does one of the following, the purchaser may rescind the transaction and receive a full refund: (1) the dealer does not obtain the title within 40 days after the sale, (2) the dealer did not disclose that the vehicle is a rebuilt salvage vehicle, or (3) the dealer makes an inaccurate odometer disclosure. The act adds the following to that list: (4) if the motor vehicle is a used manufactured home or used mobile home that has been repossessed, but a certificate of title for the repossessed home has not yet been transferred by the repossessing party to the dealer on the date the retail purchaser purchases the used (repossessed) manufactured home or used mobile home from the dealer, and the dealer fails to obtain a certificate of title on or before 40 days after the dealer obtains the certificate of title for the home from the repossessing party or the date on which an occupancy permit for the home is delivered to the purchaser by the appropriate legal authority, whichever occurs later.

## MEDICAL BOARD (MED)

- Requires the State Medical Board to provide verification of licensure in Ohio, rather than certify an application, for persons applying to practice in another state.
- Requires the Board to issue duplicate certificates of registration for a $35 fee.
- Permits Board vouchers to be approved by any person the Board authorizes, rather than only the Board's president or executive secretary.

### Licensure verification

(R.C. 4731.10)

Under former law, the State Medical Board was required to certify an application for licensure in another state on the request of a person licensed to practice medicine and surgery, osteopathic medicine and surgery, podiatry, massage therapy, cosmetic therapy, naprapathy, or mechanotherapy. The fee for certification was $50. The act instead requires the Board to provide verification of a certificate to practice in Ohio on the request of a certificate holder seeking licensure in another state. The fee for verification is $50.

### Certificate duplication

(R.C. 4731.26)

Continuing law requires the Board to issue a duplicate certificate to practice as a physician, osteopath, podiatrist, massage therapist, cosmetic therapist, naprapath, or mechanotherapist, upon application, to replace one that is missing or damaged, to reflect a name change, or for any other reasonable cause. The fee for the duplication is $35. The act specifies that the fee for duplication applies not only to the duplicate certificate (evidence of being licensed by the Board) but also when the Board issues a duplicate certificate of registration (evidence of biennial licensure renewal).

### Voucher approval

(R.C. 4731.38)

Under continuing law, all Board vouchers must be approved by either the Board president or the executive secretary, or both, as authorized by the Board. Under the act, the president retains the authority to approve the vouchers. However, the act also allows the executive director (rather than the executive secretary), or another person authorized by the Board, to approve the vouchers.

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## MEDICAL TRANSPORTATION BOARD (AMB)

- Exempts from requirements pertaining to ambulette services an entity that is not certified by the Department of Aging but provides ambulette services under a contract or grant agreement with the Department.

### Ambulette licensure

(R.C. 4766.09; R.C. 4766.01, 4766.03, and 4766.14 (not in the act))

Continuing law requires the Ohio Medical Transportation Board to adopt rules specifying requirements relating to the licensure and operation of ambulettes. Ambulettes are generally defined as motor vehicles specifically designed, equipped, and intended to be used for transporting persons who require wheelchairs. The Board must specify requirements for a nonemergency medical service organization to qualify for (1) a permit for an ambulette and (2) a license for an ambulette service. The Board also must specify requirements relating to inspections of ambulettes, equipment that must be carried by ambulettes, eligibility requirements for ambulette drivers, the level of care that each type of nonemergency medical service organization may provide, and other requirements that the Board determines appropriate.

Continuing law exempts from these requirements an entity certified to provide community-based long-term care services under a program administered by the Department of Aging, or a vehicle owned by an entity that is so certified. To qualify for the exemption, the entity or vehicle must not provide ambulette services that are reimbursed under the state Medicaid plan, and the entity must meet four basic requirements: (1) provide all of its ambulette drivers with a means of two-way communication, (2) equip every ambulette with an isolation and biohazard disposal kit, (3) obtain certain required information from potential ambulette drivers, and (4) not employ an ambulette driver with six or more points on the driver's driving record.

The act expands the exemption to (1) an entity that provides community-based long-term care services *under a contract or grant agreement* with the Department of Aging and (2) a vehicle owned by an entity that provides community-based long-term care services *under a contract or grant agreement* with the Department. To qualify for the exemption, these entities and vehicles must meet the same requirements as entities certified by the Department and vehicles owned by entities certified by the Department, including the requirement of not providing ambulette services that are reimbursed under the state Medicaid plan.

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## DEPARTMENT OF MENTAL HEALTH (DMH)

- Permits, rather than requires, the Ohio Department of Mental Health (ODMH) to provide certain goods and services, including drugs and services related to them, to certain state departments and other state, county, and municipal agencies, and eliminates the specific process a director of a state department or managing officer of

a state, county, or municipal agency that receives goods and services through ODMH must use to attempt to resolve unsatisfactory service.

- Requires each board of alcohol, drug addiction, and mental health services (ADAMHS board) to submit annual reports to ODMH specifying how the board used state and federal funds allocated to it for administrative functions in the year preceding each report's submission.

- Expressly authorizes ODMH to develop and operate more than one community mental health system (rather than one system), and expressly authorizes the Ohio Department of Alcohol and Drug Addiction Services (ODADAS), in consultation with ODMH, to establish and maintain more than one information system (rather than one system) to aid in formulating a comprehensive statewide alcohol and drug addiction services plan and determining the effectiveness and results of alcohol and drug addiction services.

- Changes the prohibition on the collection of information by ODMH and ODADAS from ADAMHS boards to specify that the prohibition is on the collection of personal information except as permitted or required (rather than just required) by state or federal law and adds that it must be for purposes relating to payment, health care operations, program and service evaluation, reporting activities, research, system administration, and oversight.

- Requires the ODMH Director, ODADAS Director, and ODJFS Director to convene a group to develop recommendations regarding the amount, duration, and scope of publicly funded community behavioral health services that should be available through Ohio's community behavioral health system.

- Permits a care coordination agency to provide certain information to the Ohio Family and Children First Cabinet Council regarding care coordination for at-risk individuals, and permits the Council to give incentives to encourage care coordination agencies to provide the information to the Council and to use the information to help improve care coordination for at-risk individuals throughout Ohio.

- Specifies that the prohibition against disclosing, without patient consent, certain documents related to a patient's hospitalization for a psychiatric condition or criminal trial when the patient is alleged to be insane does not apply when the exchange is between (1) ODMH hospitals, institutions, or facilities, or community mental health agencies, and (2) other providers of treatment and health services for a patient.

## ODMH purchasing program

(R.C. 5119.16 and 5120.09)

Former law required the Ohio Department of Mental Health (ODMH) to provide certain goods and services for the following state departments and other state, county, and municipal agencies when ODMH determined it was in the public interest and advisable: ODMH, the Department of Mental Retardation and Developmental Disabilities, the Department of Rehabilitation and Correction, and the Department of Youth Services. The goods and services ODMH was designated to provide included procurement, storage, processing, and distribution of food and professional consultation on food operations; procurement, storage, and distribution of medical and laboratory supplies, dental supplies, medical records, forms, optical supplies, and sundries; procurement, storage, repackaging, distribution, and dispensing of drugs, provision of professional pharmacy consultation and drug information services; and other goods and services. If the goods and services were not satisfactorily provided by ODMH to a department or agency, prior law required the director or managing officer of the department or agency to follow a specific process to attempt to resolve the unsatisfactory service.

The act permits, rather than requires, ODMH to provide the goods and services specified above and eliminates the specific process that had to be used under prior law to attempt to resolve unsatisfactory service.

## Annual reports on use of state and federal funds for administrative functions

(R.C. 5119.621)

Continuing law requires each board of alcohol, drug addiction, and mental health services (ADAMHS board)[343] to establish an annual community mental health plan (R.C. 340.03, not in the act). The plan lists the district's community mental health needs and the institutional and community mental health services that are or will be in operation in the district to meet those needs. Each board's plan is subject to the ODMH Director's approval.

On the ODMH Director's approval of the community mental health plan of an ADAMHS board, law unchanged by the act requires the Director to authorize the payment of funds to the board from funds appropriated for such purpose by the General Assembly (R.C. 5119.62, not in the act). The funds must be distributed to the

[343] References to ADAMHS boards also refer to community mental health boards.

board consistent with continuing law governing payments to the boards, other Ohio statutes and administrative rules, federal statutes and regulations, and the approved community mental health plan. The Director is required to develop and review annually a methodology for distributing and allocating funds to boards, including a formula for allocating to the boards appropriations from the state General Revenue Fund for the purpose of local management of mental health services.

The act requires each ADAMHS board to submit annual reports to ODMH specifying how the board used state and federal funds allocated to it (according to the formula developed by the ODMH Director) for administrative functions[344] in the year preceding each report's submission. The act requires the Director to establish the date by which the report must be submitted each year.

### Information systems maintained by ODMH and ODADAS

(R.C. 5119.61 (primary), 340.033, and 3793.04)

Under prior law, ODMH was required to develop and operate a single community mental health information system. Similarly, the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) had to establish and maintain a single information system to aid it in formulating a comprehensive statewide alcohol and drug addiction services plan. ADAMHS boards[345] were required to provide certain information for these systems, but ODMH and ODADAS were prohibited from collecting from the ADAMHS boards any information for the purpose of identifying by name any person who received a service through a board, except when the collection was required by state or federal law to validate appropriate reimbursement.

The act expressly authorizes ODMH to develop and operate more than one community mental health information system (rather than just one system). The act also expressly authorizes ODADAS, in consultation with ODMH, to establish more than one information system (rather than just one system).

The act specifies that the prohibition on the collection of information by ODMH and ODADAS from ADAMHS boards is on the collection of *personal information* about persons who receive ADAMHS board services, except when personal information

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[344] The act defines an "administrative function" as a function related to one or more of the following: continuous quality improvement, utilization review, resource development, fiscal administration, general administration, and any other function related to administration that is required by the laws governing ADAMHS boards.

[345] References to ADAMHS boards also refer to community mental health boards and alcohol and drug addiction services boards.

collection is *permitted or* required (rather than just required) by state or federal law. The act adds that the collection of personal information by ODMH and ODADAS must be for purposes relating to payment, health care operations, program and service evaluation, reporting activities, research, system administration, and oversight.[346]

## Community behavioral health services study

(Section 751.13)

The act requires the ODMH Director, ODADAS Director, and ODJFS Director to convene a group to develop recommendations regarding the amount, duration, and scope of publicly funded community behavioral health services that should be available through Ohio's community behavioral health system. The recommendations are to include recommendations regarding the conditions under which the services should be available.

The group is to consist of representatives of all of the following:

(1) ODMH, ODADAS, and ODJFS;

(2) ADAMHS boards;[347]

(3) Providers of community behavioral health services;

(4) Consumers of community behavioral health services and advocates of such consumers.

Members of the group are to serve without compensation, except to the extent that serving on the group is considered part of their regular employment duties.

[346] Regulations regarding health information privacy promulgated under the federal Health Insurance Portability and Accountability Act (HIPAA) permit a covered entity that is a health oversight agency (such as ODMH and ODADAS) to use and disclose protected health information for treatment, payment, health care operations, health oversight activities, and research activities, as long as the use and disclosure otherwise comports with HIPAA regulations. For example, if use or disclosure is made for research purposes, HIPAA requires the covered entity, if it does not want to obtain patient authorization for the use or disclosure, to seek permission from an Institutional Review Board (IRB) or privacy board composed of members specified in the regulations to alter the form of authorization or to waive the authorization requirement. (45 C.F.R. 164.512.)

[347] The reference to ADAMHS boards also refers to community mental health boards and alcohol and drug addiction services boards.

The group is required to prepare a report with its recommendations and submit the report to the Governor and General Assembly not later than June 30, 2011.[348] The group is to cease to exist on submission of the report.

## Care coordination agency information

(R.C. 121.375)

The act permits a care coordination agency to provide certain information to the Ohio Family and Children First Cabinet Council regarding at-risk individuals.[349] Specifically, a care coordination agency may provide the following information:

(1) The types of individuals the agency identifies as being at-risk individuals;

(2) The total per-individual cost to the agency for care coordination services provided to at-risk individuals;

(3) The administrative cost per individual for care coordination services provided to at-risk individuals;

(4) The specific work products the agency purchased to provide care coordination services to at-risk individuals;

(5) The strategies the agency uses to help at-risk individuals access available health and social services;

(6) The agency's success in helping at-risk individuals access health and social services;

(7) The mechanisms the agency uses to identify and eliminate duplicate care coordination services.

The act authorizes the Council to give incentives to encourage care coordination agencies to provide information to the Council. The Council is also permitted to use the

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[348] In submitting the report to the General Assembly, the group is to provide it to the Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and the Director of the Legislative Service Commission (R.C. 101.68(B)).

[349] The act defines "care coordination agency" as an individual, private entity, or government entity that assists at-risk individuals access available health and social services the at-risk individuals need. An "at-risk individual" is defined as an individual at great risk of not being able to access available health and social services due to barriers such as poverty, inadequate transportation, culture, and priorities of basic survival.

information from care coordination agencies to help improve care coordination for at-risk individuals throughout Ohio.

### Disclosure of hospital psychiatric records

(R.C. 5122.31)

All certificates, applications, records, and reports made for purposes of continuing law governing the hospitalization of the mentally ill and criminal trials of persons alleged to be insane that identify a patient or former patient, or a person whose hospitalization for mental illness has been sought under the law governing hospitalization of the mentally ill, must be kept confidential and not be disclosed by any person unless the patient has consented to the disclosure. A number of exceptions to this confidentiality requirement exist, however, including one that permits hospitals, ADAMHS boards, and community mental health agencies to release necessary medical information to insurers to obtain payment for goods and services furnished to a patient and one that permits ODMH hospitals, institutions, and facilities to exchange certain psychiatric records and information with (1) other ODMH hospitals, institutions, and facilities, and (2) community mental health agencies and ADAMHS boards with which ODMH has a current agreement for patient care or services.

The act expands the list of exceptions to this confidentiality requirement by permitting ODMH hospitals, institutions, and facilities and community mental health agencies to exchange psychiatric records and other pertinent information regarding a patient with other providers of treatment and health services. The act specifies that the purpose of the exchange must be to facilitate the patient's continuity of care. The act requires, however, that the custodian of records of an ODMH hospital, institution, or facility, or of a community mental health agency, attempt to obtain patient consent before a document is disclosed.

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## DEPARTMENT OF DEVELOPMENTAL DISABILITIES (DMR)

- Permits the Ohio Department of Developmental Disabilities (ODODD) and the Ohio Department of Job and Family Services (ODJFS) to use money in their respective administration and oversight funds for Medicaid administrative costs in general, rather than just the administrative and oversight costs of Medicaid case management services and ODODD-administered home and community-based Medicaid waiver services.

- Establishes conditions under which a nursing home seeking licensure as a residential facility for up to 25 persons with mental retardation and developmental disabilities is not required to obtain approval of a development plan.

- Provides that neither an applicant for an initial license for a residential facility for persons with mental retardation and developmental disabilities nor an applicant for a modification of an existing license is required to obtain approval of a development plan if (1) the facility or modification of the facility is to serve individuals with diagnoses or special care needs for which a special Medicaid reimbursement rate is set, (2) the ODJFS and ODODD Directors determine that there is a need under the Medicaid program for the facility or modification and that approving the application is fiscally prudent for the Medicaid program, and (3) the OBM Director agrees with the ODJFS and ODODD Directors' determination.

- Provides that an intermediate care facility for the mentally retarded (ICF/MR) is not required to have received approval of a development plan to be eligible for Medicaid payments if, under the act, the ICF/MR obtains licensure as a residential facility without having to obtain approval of a development plan.

- Provides that ODODD is not responsible for the state share of a Medicaid claim for ICF/MR services even though the ICF/MR receives initial certification as an ICF/MR after June 1, 2003, if the ICF/MR, pursuant to the act, obtains licensure as a residential facility without having to obtain approval of a development plan.

- Revises the law governing the rules ODODD must adopt regarding the failure of a county property tax levy for services for individuals with mental retardation and developmental disabilities.

- Specifies that the prohibition against disclosure of the identity of a person who is eligible for or requests programs or services from a county board of developmental disabilities (county DD board), or an entity under contract with a county DD board, does not apply if disclosure is needed for the treatment of or payment for services provided to an eligible person.

- Eliminates the requirement that a county DD board, or entity under contract with a county DD board, that either discloses the identity of a person who requests board programs or services or discloses a record or report regarding an eligible person maintain a record of when and to whom the disclosure or release was made.

- Revises the conditions by which a county DD board may satisfy the requirement to have a business manager and Medicaid services manager.

- Requires a county DD board to include with each individualized service plan a summary page, agreed to by the board, provider, and individual, clearly outlining the amount, duration, and scope of service to be provided under the plan.

- Requires the ODODD Director to submit a plan to the ODJFS Director with recommendations for actions to be taken addressing the fiscal sustainability of home and community-based services provided under Medicaid waiver programs that ODODD administers.

- Requires the ODODD Director to establish a methodology to be used in fiscal years 2010 and 2011 to estimate the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible.

- Authorizes the ODODD Director to withhold from a county DD board that fails to make the full payment by the time it is due money the Director would otherwise provide the board under one or more state subsidies.

- Permits a developmental center to provide services to persons with mental retardation or other developmental disability who live in the community or to providers of services to such persons.

## References to the Department and county boards

Sub. S.B. 79 of the 128th General Assembly renamed the Department of Mental Retardation and Developmental Disabilities and county boards of mental retardation and developmental disabilities. The new names are, respectively, the Department of Developmental Disabilities and county boards of developmental disabilities. Sub. S.B. 79 was signed by the Governor on July 7, 2009, with an effective date of October 6, 2009.

Because Am. Sub. H.B. 1 was enacted at nearly the same time as S.B. 79, H.B. 1 contains provisions of preexisting law that continue to identify the Department and the county boards by their former names. The provisions of H.B. 1 consisting of new law, however, reflect the new names.

For purposes of this analysis, the Department and county boards are both described by using the names established under S.B. 79, regardless of whether the description pertains to provisions of preexisting law or new law. Specifically, the analysis uses the following names and acronyms: the Ohio Department of Developmental Disabilities (ODODD) and county boards of developmental disabilities (county DD boards).

## ODODD and ODJFS Administration and Oversight Funds

(R.C. 5123.0412)

Continuing law requires ODODD to charge each county DD board an annual fee on Medicaid paid claims for ODODD-administered home and community-based Medicaid waiver services provided to individuals eligible for services from the county DD boards. The fees are to be deposited into two funds: the ODODD Administration and Oversight Fund and the Ohio Department of Job and Family Services (ODJFS) Administration and Oversight Fund. ODODD and ODJFS are required to enter into an interagency agreement regarding how to divide the fees among the two funds.

Continuing law specifies the purposes for which the money in the ODODD and ODJFS Administration and Oversight Funds is to be used. Prior law provided that one of the purposes is the administrative and oversight costs of Medicaid case management services and ODODD-administered home and community-based Medicaid waiver services. The act expands this purpose to Medicaid administrative costs in general, rather than just administrative and oversight costs.

## Residential facility exemption from development approval

(R.C. 5123.193 (primary), 5111.21, 5111.211, 5123.19, and 5123.197; Section 337.40.30)

### Licensure issues

Continuing law prohibits a private or governmental entity from operating a residential facility that serves individuals with mental retardation or a developmental disability unless the facility is licensed by ODODD.[350] An applicant for a residential facility license must provide ODODD a copy of a development plan for the proposed residential facility that has been approved by a county DD board.

The act creates two exceptions to the requirement for a residential facility license applicant to provide ODODD a copy of an approved development plan. Under the first exception, a license applicant is not required to obtain a county DD board's approval for the proposed facility if all of the following apply:

(1) The facility for which the license is sought is licensed as a nursing home on the effective date of this provision of the act and the nursing home license authorizes the facility to have 50 nursing home beds.

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[350] R.C. 5123.20.

(2) The facility was previously certified as an intermediate care facility for the mentally retarded (ICF/MR) before July 1, 1992.

(3) The facility is operated as a nonprofit organization exempt from federal income taxation.

(4) The facility's governing board has passed a resolution to close the facility unless a residential facility is obtained for the facility.

(5) The license application seeks authorization to operate a residential facility with not more than 25 beds on the same site where the nursing home is located.

(6) The applicant applies to the Director of Health to have the facility certified as an ICF/MR.

(7) The applicant agrees to have the facility's licensed capacity as a nursing home reduced to not more than 25 nursing home beds effective on the date ODODD issues the residential facility license and agrees to surrender the nursing home license, ending the applicant's right to have any nursing home beds in the facility, effective on the date the Director of Health certifies the facility as an ICF/MR.

(8) The applicant provides ODODD assurances that the applicant will cooperate with ODJFS in having each resident of the facility who needs a greater or lesser level of care than ICFs/MR provide relocated to another facility or residence that is authorized to provide the level of care the resident needs and is willing to accept the resident's placement in the facility or residence.

(9) The applicant submits the application for the residential facility license to ODODD not later than 120 days after the effective date of this provision of the act.

Under the second exception, which applies to an applicant for an initial residential facility license and an applicant for a modification of an existing residential facility license, a license applicant is not required to obtain a county DD board's approval for the proposed or modified residential facility if all of the following apply:

(1) The new residential facility or modification to the existing residential facility is to serve individuals who have diagnoses or special care needs for which a special Medicaid reimbursement rate is set;[351]

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[351] Continuing law requires the ODJFS Director to adopt rules that establish a methodology for calculating prospective rates for ICFs/MR, and discrete units of ICFs/MR, that serve residents who have diagnoses or special care needs that require direct care resources that are not measured adequately by the

(2) The ODJFS Director and ODODD Director determine that there is a need under the Medicaid program for the proposed new residential facility or modification to the existing residential facility and that approving the application is fiscally prudent for the Medicaid program;

(3) The Director of Budget and Management notifies the ODJFS Director and ODODD Director that the Director agrees with their determination.

### Medicaid issues

An ICF/MR must meet certain conditions to be eligible for Medicaid payments. One of the conditions is that the ICF/MR must comply with all applicable state and federal laws and rules. The act provides that an ICF/MR is eligible for Medicaid payments even though the ICF/MR does not meet a state rule that requires an ICF/MR to have obtained a county DD board's approval of a development plan if the ICF/MR meets either of the act's conditions for obtaining a residential facility license without having to obtain a county DD board's approval of a development plan.

ODODD is required to pay the nonfederal share of claims for Medicaid-covered services provided by an ICF/MR initially certified as an ICF/MR on or after June 1, 2003. The act provides that this requirement does not apply to claims submitted by an ICF/MR that, under the act, obtains a residential facility license without having to obtain a county DD board's approval of a development plan.

## County DD board levy failure

(R.C. 5123.0413 (primary), 5123.049, 5126.0512, and 5126.19)

Prior law required ODODD to adopt rules establishing a method of paying for extraordinary costs, including extraordinary costs for services to individuals with mental retardation or other developmental disability, and ensure the availability of adequate funds in the event a county property tax levy for services for those individuals failed. The rules could provide for using and managing the State MR/DD Risk Fund, the State Insurance Against MR/DD Risk Fund, or both. ODJFS was prohibited from requesting federal approval to increase the number of slots for ODODD-administered home and community-based services until the rules were in effect.

The act replaces this provision of law with a provision that requires ODODD to adopt rules to establish both of the following in the event a county property tax levy for services for individuals with mental retardation or other developmental disability fails:

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applicable assessment instrument used in setting the regular Medicaid reimbursement rates (R.C. 5111.258).

(1) A method of paying for ODODD-administered home and community-based services;

(2) A method of reducing the number of individuals a county DD board would otherwise be required to ensure are enrolled in a Medicaid waiver program under which ODODD-administered home and community-based services are provided.[352]

As was required when adopting the rules under prior law, ODODD is required to adopt the rules required by the act in consultation with ODJFS, the Office of Budget and Management, and county DD boards.

The act abolishes the State MR/DD Risk Fund and the State Insurance Against MR/DD Risk Fund. Prior law required that government providers of ODODD-administered home and community-based services be paid the federal share of the Medicaid allowable payment, less (1) the amount withheld as a fee the state charges county DD boards for Medicaid paid claims for such services provided to individuals eligible for county DD board services and (2) any amount that may be required by ODODD rules regarding county property tax failures to be deposited into the State MR/DD Risk Fund. With the abolishment of the State MR/DD Risk Fund, a government provider is to be paid the federal share less only the amount withheld as the fee. Continuing law authorizes the ODODD Director to grant temporary funding from the Community MR/DD Trust Fund[353] based on allocations to county DD boards. Because of the abolishment of the State MR/DD Risk Fund and the State Insurance Against MR/DD Risk Fund, the act eliminates law that permitted the ODODD Director to use money available in the Community MR/DD Trust Fund for the same purposes that ODODD rules provided for money in the two abolished funds to be used.

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[352] Each county DD board is required to ensure, for each Medicaid waiver program under which ODODD-administered home and community-based services are provided, that the number of individuals eligible for county DD board services who are enrolled in such a Medicaid waiver program is no less than the sum of (1) the number of individuals eligible for county DD board services who are enrolled in such a Medicaid waiver program on June 30, 2007, and (2) the number of slots for such Medicaid waiver programs the county DD board requested before July 1, 2007, that were assigned to the county DD board before that date but in which no individual was enrolled before that date. Under the act, a county DD board's responsibility under this requirement is to be reduced in accordance with the ODODD rules regarding county property tax levy failures

[353] Sub. S.B. 79 of the 128th General Assembly renames the Community MR/DD Trust Fund the Community Developmental Disabilities Trust Fund effective October 6, 2009.

## Identity disclosure--county DD programs

(R.C. 5126.044)

In general, continuing law prohibits the disclosure of the identity of, or release of a record or report regarding, a person who is eligible for or requests programs or services from a county DD board or an entity under contract with a county DD board. This prohibition does not apply, however, when (1) disclosure of the individual's identity or release of the record or report is at the request, or with the approval, of the person or person's guardian or parent or (2) disclosure is needed for approval of a direct services contract or to ascertain that the board's waiting lists for programs or services are being maintained in accordance with ongoing law.

The act adds another exception to the prohibition against identity disclosure. Specifically, the act provides that the prohibition does not apply when disclosure is needed for treatment of, or payment for services provided to, an eligible person. The act defines "treatment" as the provision, coordination, or management of services provided to an eligible person. An "eligible person" is a person eligible to receive services from a county DD board or from an entity under contract with a county DD board. The act defines "payment" as activities undertaken by a service provider or governmental entity to obtain or provide reimbursement for services to an eligible person.

The act eliminates the requirement that a county DD board, or an entity under contract with a county DD board, that discloses an individual's identity or releases a record or report regarding an eligible person maintain a record of when and to whom the disclosure or release was made.

## County DD board business and Medicaid services managers

(R.C. 5126.054)

Continuing law requires each county DD board to develop a three-calendar year plan that includes three components. One of the components is to provide for the implementation of Medicaid case management services and ODODD-administered home and community-based services for individuals who begin to receive the services on or after the date the county DD board's plan is approved by ODODD. This component must include assurances that the county DD board makes regarding a business manager and a Medicaid services manager.

Under prior law, a county DD board had to assure that it would (1) employ a business manager who was either a new employee who had earned at least a bachelor's degree in business administration or a current employee who had the equivalent

experience of a bachelor's degree in business administration and (2) employ or contract with a Medicaid services manager who was either a new employee who had earned at least a bachelor's degree or a current employee who had the equivalent experience of a bachelor's degree. If a county DD board was to employ a new employee as the business manager or Medicaid services manager, the board had to include in the component of the plan a timeline for employing the employee. Two or three county DD boards with a combined total enrollment in county DD board services not exceeding 1,000 individuals could satisfy the requirement to have a Medicaid services manager by sharing the services of a Medicaid services manager or by using the services of a Medicaid services manager employed by or under contract with a regional council of county DD boards.

The act revises the conditions by which a county DD board may satisfy the requirement to have a business manager and Medicaid services manager. Under the act, a county DD board may satisfy the requirement by employing or contracting with a business manager or Medicaid services manager, as appropriate, or entering into an agreement with another county DD board that employs or contracts with a business manager or Medicaid services manager to have the business manager or Medicaid services manager, as appropriate, serve both counties. A county DD board is prohibited by the act from having the board's superintendent serve as the business manager or Medicaid services manager. The act eliminates provisions specifying the minimum education or equivalent experience requirements that had to be met to serve in either position.

### Individual service plan summary page

(R.C. 5126.055)

Under continuing law, county DD boards are given Medicaid local administrative authority to perform certain tasks for individuals seeking or receiving ODODD-administered home and community-based services. Included in these tasks is the requirement to develop, with the individual receiving services and the provider of the individual's services, an individualized service plan that includes coordination of services.

The act requires that each individualized service plan include a summary page, agreed to by the county DD board, provider of services, and individual receiving services, that clearly outlines the amount, duration, and scope of services to be provided under the plan.

## Fiscal plan for home and community-based Medicaid waiver services

(Section 337.30.40)

The act requires the ODODD Director to submit a plan to the ODJFS Director with recommendations for actions to be taken addressing the fiscal sustainability of home and community-based services provided under Medicaid waiver programs that ODODD administers. The deadline for the plan is December 31, 2009. The plan may include recommendations for all of the following:

(1) Changing the ranges in the amount the Medicaid program will pay per individual for the services;

(2) Establishing one or more maximum amounts that the Medicaid program will pay per individual for the services;

(3) Modifying the methodology used in establishing payment rates for providers, including the methodology's components that reflect (a) wages and benefits for persons providing direct care and (b) training and direct supervision of those persons.

## County share of Medicaid home and community-based services

(Section 337.30.60)

With certain exceptions, continuing law requires a county DD board to pay the nonfederal share of Medicaid expenditures for the following home and community-based services provided to an individual with mental retardation or other developmental disability who the board determines is eligible for board services:

(1) Home and community-based services provided by the county DD board to such an individual;

(2) Home and community-based services provided by a provider other than the county DD board to such an individual who is enrolled as of June 30, 2007, in the Medicaid waiver program under which the services are provided;

(3) Home and community-based services provided by a provider other than the county DD board to such an individual who, pursuant to a request the board makes, enrolls in the Medicaid waiver program under which the services are provided after June 30, 2007;

(4) Home and community-based services provided by a provider other than the county DD board to such an individual for whom there is in effect an agreement between the board and the ODODD Director.[354]

The act requires the ODODD Director to establish a methodology to be used in fiscal years 2010 and 2011 to estimate the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible. Each quarter, the Director must submit to the board written notice of the amount for which the board is responsible. The notice must specify when the payment is due.

The act authorizes the ODODD Director to withhold money from a county DD board that fails to make the full payment by the time it is due. The Director may withhold the amount the board fails to pay from one or more state subsidies that ODODD would otherwise provide to the board.

### Developmental center services

(Section 337.31.20)

The act permits a residential center for persons with mental retardation or other developmental disability operated by ODODD (i.e., a developmental center) to provide services to persons with mental retardation or developmental disabilities who live in the community or to providers of services to such persons. ODODD is permitted to develop a method for recovery of all costs associated with the provision of the services.

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## COMMISSION ON MINORITY HEALTH (MIH)

- Adds the Director of Alcohol and Drug Addiction Services, or the Director's designee, and two representatives of the Lupus Awareness and Education Program to the Commission on Minority Health.

### Commission membership

(R.C. 3701.78)

The Commission on Minority Health is required to promote health and the prevention of disease among members of minority groups and to distribute grants to

[354] R.C. 5126.0510.

community-based health groups for that purpose.[355] The Commission has the following 18 members:

(1) Nine members appointed by the Governor from among health researchers, health planners, and health professionals;

(2) Two members of the House of Representatives appointed by the House Speaker;

(3) Two members of the Senate appointed by the Senate President; and

(4) The following five executive agency heads or their designees: the Director of Health, Director of Mental Health, Director of Mental Retardation and Developmental Disabilities, Director of Job and Family Services, and the Superintendent of Public Instruction.

The act provides for the Commission to have 21 members by adding the Director of Alcohol and Drug Addiction Services or the Director's designee, and two representatives of the Lupus Awareness and Education Program.

## DEPARTMENT OF NATURAL RESOURCES (DNR)

- Renames the Division of Soil and Water Conservation as the Division of Soil and Water Resources, and transfers most of the duties and responsibilities of the Division of Water, which is abolished by the act (see below), to the renamed Division, including the administration of the Water Management Fund, responsibility for well construction logs and well sealing reports, issuance of construction permits for dams and levees, inspection of dams, dikes, and levees, floodplain management activities, and responsibility for water resource inventories.

- Abolishes the Division of Water, transfers most of its duties and responsibilities to the renamed Division of Soil and Water Resources as discussed above, and transfers to the Division of Parks and Recreation its authority, duties, and responsibilities concerning canals, canal lands, and canal reservoirs owned by the state.

- Abolishes the Division of Real Estate and Land Management, transfers its duties and responsibilities concerning the geographic information system needs of the Department of Natural Resources to the Director of Natural Resources, transfers to

[355] "Minority group" is defined as any of the following economically disadvantaged groups: Blacks, American Indians, Hispanics, and Orientals.

the Division of Engineering its duties concerning the coordination and conduct of all real estate functions for the Department, the duties to assist the Department and its Divisions in comprehensive planning, capital improvements planning, and other similar planning, and other duties and responsibilities, and transfers to the Division of Parks and Recreation its duties and responsibilities concerning the statewide recreational trails system.

- Revises the authority, duties, and responsibilities of the Director to reflect the abolishment and transfer of duties and responsibilities of the Division of Real Estate and Land Management under the act.

- Revises the authority, duties, and responsibilities of the Chief Engineer of the Division of Engineering to reflect the changes discussed above, and requires the Chief Engineer to carry out all of the Chief Engineer's duties with the approval of the Director.

- Makes other changes to facilitate the renaming of the Division of Soil and Water Conservation, the abolishment of the Divisions of Water and of Real Estate and Land Management, and the transfers of authority, duties, and responsibilities.

- Transfers the administration of state programs governing wild, scenic, and recreational river areas from the Division of Natural Areas and Preserves to the Division of Watercraft, authorizes the Chief of the Division of Watercraft to adopt rules for the administration of those areas, and generally retains the statutory requirements and procedures governing the programs.

- Authorizes the Chief to adopt rules establishing fees and charges for the conducting of stream impact reviews of planned or proposed development for purposes of those state programs.

- By operation of law, requires money in the Waterways Safety Fund that is used for the purposes of the Watercraft and Waterways Law to be used to administer the state programs for wild, scenic, and recreational river areas rather than the Natural Areas and Preserves Fund as in former law.

- Revises the purposes for which money in the Scenic Rivers Protection Fund must be used by requiring the money to be used to help finance specified activities regarding wild, scenic, and recreational river areas rather than activities only related to scenic rivers as in former law, and authorizes the Chief of the Division of Watercraft to expend money in the Fund for the acquisition of wild, scenic, and recreational river areas and for other specified purposes concerning those areas.

- By operation of law, requires law enforcement officers of the Division of Watercraft to enforce the laws and rules governing the state programs for wild, scenic, and recreational river areas rather than preserve officers as in former law.

- Expands the authority of the Waterways Safety Council by adding that it may advise and make recommendations to the Chief of the Division of Watercraft regarding wild, scenic, and recreational river areas.

- Expands the duties of the Division of Watercraft by requiring the Division to provide wild, scenic, and recreational river area conservation education and provide for specified projects in those areas, and requires the Division to provide for and assist in the development, maintenance, and operation of marine docks, harbors, and recreational and launching facilities for the benefit of public navigation, recreation, or commerce if the Chief of the Division determines that they are in the best interests of the state.

- Imposes a waterways conservation assessment fee on watercraft that are not powercraft.

- Requires a person constructing a potable water well for use in a private or public water system to pay a well log filing fee of $20 or an amount established in rules, whichever is applicable; requires the Chief of the Division of Soil and Water Resources to adopt rules governing the payment and collection of the fee; and requires boards of health and the Environmental Protection Agency to collect the fee on behalf of the Division and submit the proceeds of the fee to the Division quarterly.

- Amends the statutory fee schedule with respect to the annual fee that generally is required to be paid by the owner of a dam that is required to be inspected by increasing most of the fee amounts and by requiring that the fee be based not only on the height of a class I, class II, or class III dam, but also on the linear foot length of the dam and the per-acre foot of volume of water impounded by the dam, and establishes fee amounts using the new criteria.

- Requires rules adopted by the Chief of the Division of Soil and Water Resources regarding the annual fees to be subject to the prior approval of the Director.

- Establishes a compliant dam discount program that allows for certain discounts of the annual fee if the owner of a dam is in compliance with specified safety and maintenance requirements and has developed an emergency action plan.

- Requires the Division of Wildlife, if the Division establishes a system for the electronic submission of information regarding deer or wild turkey that are taken, to

allow the owner and the children of the owner of lands in this state to use the owner's name or address for purposes of submitting that information electronically via that system.

- Creates the "Ohio Nature Preserves" license plate, and requires the Department of Natural Resources to use contributions that persons pay when obtaining the license plate to help finance nature preserve education, nature preserve clean-up projects, and nature preserve maintenance, protection, and restoration.

- Requires the Director of Natural Resources and the organization Farmers and Hunters Feeding the Hungry to enter into a memorandum of understanding that prescribes a method by which the organization may donate venison to Ohio's food banks and methods that encourage private persons to make matching donations in money or food to Ohio's food banks that are equal or greater in value to the donated venison.

- Requires the Director to enter into a memorandum of understanding with the Southeastern Ohio Port Authority to develop the former Marietta State Nursery property, and establishes provisions that must be included in the memorandum.

## Reorganization of certain divisions

(R.C. 121.04, 307.79, 504.21, 903.082, 903.11, 903.25, 1501.01, 1501.05, 1501.07, 1501.30, 1504.01 (repealed), 1504.02 (repealed), 1504.03 (repealed), 1504.04 (repealed), 1506.01, 1507.01, 1511.01, 1511.02, 1511.021, 1511.022, 1511.03, 1511.04, 1511.05, 1511.06, 1511.07, 1511.071, 1511.08, 1514.08, 1514.13, 1515.08, 1515.183, 1519.03, 1520.02, 1520.03, 1521.02 (repealed), 1521.03, 1521.031, 1521.04, 1521.05, 1521.06, 1521.061, 1521.062, 1521.063, 1521.064, 1521.07, 1521.10, 1521.11, 1521.12, 1521.13, 1521.14, 1521.15, 1521.16, 1521.18, 1521.19, 1523.01, 1523.02, 1523.03, 1523.04, 1523.05, 1523.06, 1523.07, 1523.08, 1523.09, 1523.10, 1523.11, 1523.12, 1523.13, 1523.14, 1523.15, 1523.16, 1523.17, 1523.18, 1523.19, 1523.20, 1541.03, 3701.344, 3718.03, 6109.21, and 6111.044; Sections 515.30, 515.40, and 515.50)

### General organization

Continuing law creates in the Department of Natural Resources various Divisions to administer the Department's programs and establishes the authority of each Division and its duties and responsibilities. Under former law, those Divisions included the Division of Water, the Division of Soil and Water Conservation, and the Division of Real Estate and Land Management. Under continuing law, the Divisions include the Division of Parks and Recreation and the Division of Engineering.

### Renaming of the Division of Soil and Water Conservation; transfer of duties to renamed Division

The act renames the Division of Soil and Water Conservation as the Division of Soil and Water Resources and retains its duties and responsibilities established in continuing law. In addition, the act transfers to the Division most of the duties and responsibilities of the Division of Water, which is abolished by the act (see below). The transferred duties and responsibilities include the administration of the Water Management Fund, responsibility for well construction logs and well sealing reports, issuance of construction permits for dams and levees, inspection of dams, dikes, and levees, floodplain management activities, and responsibility for water resource inventories.

### Abolishment of the Division of Water and transfer of its duties

As discussed above, the act abolishes the Division of Water and transfers most of its duties and responsibilities to the renamed Division of Soil and Water Resources. However, the act transfers the Division of Water's authority, duties, and responsibilities concerning canals, canal lands, and canal reservoirs owned by the state to the Division of Parks and Recreation.

### Abolishment of the Division of Real Estate and Land Management and transfer of its duties

The act abolishes the Division of Real Estate and Land Management and transfers its duties and responsibilities concerning the geographic information system needs of the Department of Natural Resources to the Director of Natural Resources. In addition, the act transfers to the Division of Engineering the Division of Real Estate and Land Management's duties concerning the coordination and conduct of all real estate functions for the Department, the duties to assist the Department and its Divisions in comprehensive planning, capital improvements planning, and other similar planning, and other duties and responsibilities. Finally, the act transfers to the Division of Parks and Recreation the Division of Real Estate and Land Management's duties and responsibilities concerning the statewide recreational trails system.

### Duties of the Director of Natural Resources

The act revises the authority, duties, and responsibilities of the Director of Natural Resources to reflect the abolishment and transfer of the duties and responsibilities of the Division of Real Estate and Land Management as discussed above.

### Duties of the Chief Engineer

The act revises the authority, duties, and responsibilities of the Chief Engineer of the Division of Engineering to reflect the changes discussed above. In addition, the act requires the Chief Engineer to carry out all of the Chief Engineer's duties with the approval of the Director of Natural Resources. The act also revises the qualification requirements for the Chief Engineer by specifying that if the Chief Engineer is a professional architect who is certified under the Architects Law, the Chief Engineer also must be registered under that Law.

### Miscellaneous

The act makes other statutory changes to facilitate the renaming of the Division of Soil and Water Conservation, the abolishment of the Divisions of Water and of Real Estate and Land Management, and the transfers of authority, duties, and responsibilities under the act. In addition, the act provides for the necessary transfer of assets and liabilities and provides that legal actions initiated under former law by a renamed or abolished Division are to be continued by the appropriate Division as specified by the act.

## Transfer of state programs for wild, scenic, and recreational river areas

### Administration of wild, scenic, and recreational river areas

(R.C. 505.82, 1514.10, 1517.02, 1517.14 (1547.81), 1517.15 (repealed), 1517.16 (1547.82), 1517.17 (1547.83), 1547.01, 1547.02, 1547.52, 1547.86, 1547.87, and 3714.03)

#### Former law

Former law required the Chief of the Division of Natural Areas and Preserves in the Department of Natural Resources to administer wild, scenic, and recreational river areas.[356] In addition, the Chief was authorized to supervise, operate, protect, and maintain such areas as designated by the Director of Natural Resources. The Chief was authorized to cooperate with federal agencies administering any federal program concerning wild, scenic, or recreational river areas. The Chief was required to adopt

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[356] Continuing law defines "wild river areas" to include those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted, representing vestiges of primitive America. "Scenic river areas" include those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads. "Recreational river areas" include those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past. (R.C. 1547.01.)

rules for the use, visitation, and protection of lands that were owned or managed and administered by the Division and that were within or adjacent to any wild, scenic, or recreational river area. Finally, the Chief or the Chief's representative was authorized to participate in watershed-wide planning with federal, state, and local agencies in order to protect the values of wild, scenic, and recreational river areas.

Former law also authorized the Chief to administer federal financial assistance programs for wild, scenic, and recreational river areas. The Chief was authorized to expend funds for the acquisition, protection, construction, maintenance, and administration of real property and public use facilities in wild, scenic, and recreational river areas when the funds were appropriated by the General Assembly. The Chief could condition the expenditures, acquisition of land or easements, or construction of facilities within a wild, scenic, or recreational river area upon adoption and enforcement of adequate floodplain zoning rules.

As a result of the transfer described below, the act revises the Chief's authority by authorizing the Chief to participate in watershed planning activities with other states or federal agencies.

**The act**

The act retains the state programs governing wild, scenic, and recreational river areas, but transfers their administration from the Chief of the Division of Natural Areas and Preserves to the Chief of the Division of Watercraft. To effectuate the transfer, the act requires the Chief of the Division of Watercraft to administer the state programs for such areas. The Chief may cooperate with federal agencies administering any federal program concerning wild, scenic, or recreational river areas and may participate in watershed-wide planning with federal, state, and local agencies in order to protect the values of such areas. In accordance with the Administrative Procedure Act, the Chief may adopt rules governing the use, visitation, protection, and administration of such areas.

The act also authorizes the Chief to adopt rules, in accordance with the Administrative Procedure Act and subject to the prior approval of the Director, establishing fees and charges for the conducting of stream impact reviews of any planned or proposed construction, modification, renovation, or development project that may potentially impact a watercourse within a designated wild, scenic, or recreational river area.

The act authorizes the Chief of the Division of Watercraft to accept and administer state and federal financial assistance for the maintenance, protection, and administration of wild, scenic, and recreational river areas and for construction of

facilities within those areas. The Chief, with the approval of the Director, may expend for the purpose of administering the state programs for wild, scenic, and recreational river areas money that is appropriated by the General Assembly for that purpose, money that is in the ongoing Scenic Rivers Protection Fund (see "**Scenic Rivers Protection Fund**," below), and money that is in the Waterways Safety Fund (see "**Natural Areas and Preserves Fund; Waterways Safety Fund**," below) as determined to be necessary by the Division of Watercraft not to exceed $650,000 per fiscal year. The Chief may condition any expenditures, maintenance activities, or construction of facilities on the adoption and enforcement of adequate floodplain zoning or land use rules.

The act states that any action taken by the Chief under the act's provisions concerning wild, scenic, and recreational river areas cannot be deemed in conflict with certain powers and duties conferred on and delegated to federal agencies and to municipal corporations under the Constitution's home rule provisions or under certain provisions of the Sale or Lease of Property Law.[357]

In addition, the act authorizes the Division, in carrying out the act's provisions concerning wild, scenic, and recreational river areas, to accept, receive, and expend gifts, devises, or bequests of money, lands, or other properties in accordance with continuing law.

The act makes other conforming and technical changes necessary to effectuate the transfer of the state program for wild, scenic, and recreational river areas to the Division of Watercraft, including the relocation of statutory language.

### Declaration of wild, scenic, and recreational river areas

(R.C. 1517.14 (1547.81); Section 715.10)

Under continuing law, the Director of Natural Resources or the Director's authorized representative is authorized to make a declaration to create a wild, scenic, or recreational river area. Ongoing law establishes procedures and requirements that the Director must follow in making such declarations. The act retains the authority, procedures, and requirements concerning the Director's declaration of an area as a wild, scenic, or recreational river area, but relocates the applicable statutes to the Division of Watercraft Law. The act also states that a wild, scenic, or recreational river area that was declared as such by the Director prior to the effective date of the act's applicable provisions retains its declaration as a wild, scenic, or recreational river area.

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[357] Section 7 of Article XVIII, Ohio Constitution.

### Natural Areas and Preserves Fund; Waterways Safety Fund

(R.C. 1517.11 and 1547.75 (not in the act))

Former law required money in the Natural Areas and Preserves Fund to be used for specified purposes such as the acquisition of new or expanded wild, scenic, and recreational river areas; facility development in wild, scenic, and recreational areas; and special projects related to such areas. The act eliminates the requirement that money in the Fund be used for wild, scenic, and recreational river area purposes. Instead, by operation of law as a result of the transfer of the wild, scenic, and recreational river area programs to the Division of Watercraft, money in the Waterways Safety Fund, which must be used for the purposes of the Watercraft and Waterways Law, is required to be used to administer the state programs for wild, scenic, and recreational river areas.

### Scenic Rivers Protection Fund

(R.C. 4501.24)

Law revised in part by the act creates the Scenic Rivers Protection Fund that consists of money paid to the Registrar of Motor Vehicles for scenic rivers license plates. The money in the Fund must be used by the Department of Natural Resources to help finance scenic river conservation education, scenic river corridor protection and restoration, scenic river habitat enhancement, and clean-up projects along scenic rivers. The act revises how money in the Fund must be used by requiring the Department to use the money to help finance wild, scenic, and recreational river areas conservation, education, corridor protection, restoration, and habitat enhancement and clean-up projects along rivers in those areas. In addition, the act adds that the Chief of the Division of Watercraft may expend money in the Fund for the acquisition of wild, scenic, and recreational river areas, for the maintenance, protection, and administration of such areas, and for construction of facilities within those areas.

### Watercraft officers to enforce laws governing wild, scenic, and recreational river areas

(R.C. 1517.10 and 1547.521 (not in the act))

Former law authorized a preserve officer to enforce all laws and rules governing land and waters on lands that were owned or administered by the Division of Natural Areas and Preserves and that were within or adjacent to any wild, scenic, or recreational river area. The act eliminates the authority of preserve officers to enforce such laws and rules in a wild, scenic, or recreational river area. Instead, by operation of law as a result of the transfer of the wild, scenic, and recreational river area program to the Division of Watercraft, law enforcement officers of the Division of Watercraft must

enforce the laws and rules governing the state programs for wild, scenic, and recreational river areas.

### Wild, scenic, and recreational river area advisory councils

(R.C. 1517.18 (1547.84); Section 715.10)

Law largely unchanged by the act requires the Director of Natural Resources to appoint an advisory council for each wild, scenic, or recreational river area. Each council must advise the Chief on the acquisition of lands and easements and on the lands and waters that should be included in a wild, scenic, or recreational river area and other specified issues. A council must be composed of not more than ten persons who are representative of local government and local organizations and interests in the vicinity of the wild, scenic, or recreational river area. The Chief or the Chief's representative must serve as an ex officio member of each council. The act retains the advisory councils and the duties of the councils, but replaces the Chief of the Division of Natural Areas and Preserves as an ex officio member of each council with the Chief of the Division of Watercraft. In addition, the act states that an advisory council for a wild, scenic, or recreational river area that was appointed by the Director prior to the effective date of the act's applicable provisions continues as the advisory council for the applicable river area.

### Waterways Safety Council

(R.C. 1547.73)

Ongoing law creates a Waterways Safety Council in the Division of Watercraft composed of five members appointed by the Governor. The Council is authorized to advise the Chief and make recommendations on specified topics. The act adds that the Council may advise with and recommend to the Chief as to plans and programs for the acquisition, protection, construction, maintenance, and administration of wild river areas, scenic river areas, and recreational river areas.

## Participation in federal programs for protection of certain selected rivers and regarding certain other waters

(R.C. 1547.85)

The act authorizes the Director of Natural Resources to participate in the federal program for the protection of certain selected rivers that are located within the boundaries of the state as provided in the federal Wild and Scenic Rivers Act. In addition, the Director may authorize the Chief of the Division of Watercraft to participate in any other federal program established for the purpose of protecting,

conserving, or developing recreational access to waters in Ohio that possess outstanding scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values.

### Duties of Division of Watercraft

(R.C. 1547.51)

Law largely retained by the act requires the Division of Watercraft to administer and enforce all laws relative to the identification, numbering, registration, titling, use, and operation of vessels operated on the waters in this state and, with the approval of the Director of Natural Resources, educate and inform the citizens of the state about, and promote, conservation, navigation, safety practices, and the benefits of recreational boating. The act eliminates the requirement that the Division obtain the Director's approval for educating and informing the citizens about and promoting recreational boating. In addition, the act adds that the Division also must do both of the following: (1) provide wild, scenic, and recreational river area conservation education and provide for corridor protection, restoration, habitat enhancement, and clean-up projects in wild river areas, scenic river areas, and recreational river areas, and (2) provide for and assist in the development, maintenance, and operation of marine recreational facilities, docks, launching facilities, and harbors for the benefit of public navigation, recreation, or commerce if the Chief of the Division of Watercraft determines that they are in the best interests of the state.

### Fees for watercraft and livery registrations

(R.C. 1547.531, 1547.54, 1547.542, and 1547.99)

Ongoing law establishes fees for the issuance of triennial watercraft registration certificates and issuing agents' fees. The act also imposes on watercraft that are not powercraft a waterways conservation assessment fee of $5.[358] The fee must be collected at the time of the issuance of a triennial watercraft registration under continuing law and deposited in the state treasury and credited to a distinct account in the Waterways Safety Fund.

Under continuing law, when the ownership of a watercraft changes and a new certificate of registration is issued by the Chief of the Division of Watercraft, the issuance fee (writing fee under the act) is $3. Former law did not specify where the fee was to be deposited. The act specifies that the fee is to be deposited to the credit of the Fund as is the case in continuing law for other issuance (writing) fees paid to the Chief.

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[358] Continuing law defines "powercraft" as any vessel propelled by machinery, fuel, rockets, or similar device (R.C. 1547.01(B)(4)).

Continuing law also establishes fees for the issuance of annual livery registration certificates and issuing agents' fees. The fee for each watercraft that is included in an annual livery registration is one-third of the triennial watercraft registration fee for individual watercraft. The act imposes on watercraft that are included in a livery that are not powercraft a waterways conservation assessment fee. The fee must be collected at the time of the issuance of an annual livery registration and is $1.50 for each watercraft included in the registration. The fee must be deposited in the state treasury and credited to a distinct account in the Fund.

## Well log filing fees

(R.C. 1521.05, 3701.344, and 6109.21)

Law largely retained by the act requires any person that constructs a water well to keep a careful and accurate log of the construction of the well and to file the log with the Division of Water (Division of Soil and Water Resources under the act--see above). The log must be filed within 30 days after the completion of the construction of the well on forms prescribed and prepared by the Division.

The act requires a person or entity that constructs a well for the purpose of extracting potable water as part of a private water system or a public water system to pay a well log filing fee. Under continuing law, private water systems are regulated by boards of health, and public water systems are regulated by the EPA. The well log filing fee must be paid in accordance with rules adopted under the act. The act requires the fee to be levied at a rate of $20 per well log filed or, if the Chief of the Division of Soil and Water Resources has adopted an alternative fee amount in rules (see below), the fee amount established in rules. A board of health or the EPA, as applicable, must collect well log filing fees on behalf of the Division of Soil and Water Resources. After collection, the fees must be transferred quarterly to the Division in accordance with rules. Proceeds of well log filing fees must be used by the Division for the purposes of acquiring, maintaining, and dispensing digital and paper records of well logs that are filed with the Division.

The act requires the Chief to adopt rules establishing procedures and requirements governing the payment and collection of water well log filing fees. The rules must establish the amount of any filing fee to be imposed as an alternative to the $20 filing fee established by the act and establish procedures for the quarterly transfer of filing fees by boards of health and the EPA.

## Annual dam inspection fee and compliant dam discount program

(R.C. 1521.063)

Law retained in part by the act specifies that, except for the federal government, the owner of any dam that is required to be inspected must pay to the Division of Water (Division of Soil and Water Resources under the act--see above) an annual fee that is based on the height of the dam. The fee is due on or before June 30 of each year, and the amount of the fee is prescribed in a statutorily established fee schedule. However, the Chief of the Division is required to adopt rules in accordance with the Administrative Procedure Act that establish an annual fee schedule in lieu of the statutorily established fee schedule. The statutorily established fee schedule in former law was as follows:

(1) For any dam classified as a class I dam under rules adopted by the Chief, $30 plus $10 per foot of height of dam;

(2) For any dam classified as a class II dam under those rules, $30 plus $1 per foot of height of dam; and

(3) For any dam classified as a class III dam under those rules, $30.

The act applies the fee requirement to the owner of a dam that is classified as a class I, class II, or class III dam under rules adopted by the Chief of the Division of Soil and Water Resources. It then amends the statutory fee schedule that establishes the annual fee by increasing most of the fee amounts and by requiring that the fee be based not only on the height of a dam, but also on the linear foot length of the dam and the per-acre foot of volume of water impounded by the dam. Thus, the new fee schedule established in the act is as follows:

(1) For any dam classified as a class I dam, $300 plus $10 per foot of height of dam, 5¢ per foot of length of the dam, and 5¢ per acre foot of water impounded by the dam;

(2) For any dam classified as a class II dam, $90 plus $6 per foot of height of dam, 5¢ per foot of length of the dam, and 5¢ per acre foot of water impounded by the dam; and

(3) For any dam classified as a class III dam, $90 plus $4 per foot of height of the dam, 5¢ per foot of length of the dam, and 5¢ per acre foot of volume of water impounded by the dam.

The act retains the requirement that the Chief adopt rules for the establishment of an annual fee schedule in lieu of the fee schedule established in statute. However, it provides that the adoption of those rules is subject to the prior approval of the Director of Natural Resources.

The act then establishes a compliant dam discount program to be administered by the Chief of the Division of Soil and Water Resources. Under the program, the Chief may reduce the amount of the annual fee that an owner of a dam is required to pay under the statutorily established fee schedule if the owner is in compliance with specified statutorily required safety and maintenance requirements and has developed an emergency action plan pursuant to standards established in rules adopted by the Chief. The Chief is not permitted to discount an annual fee by more than 25% of the total annual fee that is due. In addition, the Chief cannot discount the annual fee that is due from the owner of a dam who has been assessed a penalty for failure to pay the annual fee.

## Deer and wild turkey hunting

(R.C. 1533.11)

Continuing law prohibits anyone from hunting deer or wild turkey on lands of another without obtaining an annual deer or wild turkey permit, as applicable. It specifically allows the owner and the children of the owner of lands in this state to hunt deer or wild turkey on them without such a permit and allows the tenant and children of the tenant to hunt deer or wild turkey on lands where they reside without such a permit. The act requires the Division of Wildlife, if the Division establishes a system for the electronic submission of information regarding deer or wild turkey that are taken, to allow the owner and the children of the owner of lands in this state to use the owner's name or address for purposes of submitting that information electronically via that system.

## "Ohio Nature Preserves" license plate and the Ohio Nature Preserves Fund

(R.C. 4501.243 and 4503.563)

Under the act, the owner or lessee of any passenger car, noncommercial motor vehicle, recreational vehicle, or other vehicle of a class approved by the Registrar of Motor Vehicles may apply to the Registrar for the registration of the vehicle and issuance of "Ohio Nature Preserves" license plates. The application for "Ohio Nature Preserves" license plates may be combined with a request for a special reserved license plate provided in continuing law. Upon receipt of the completed application and compliance with the act's requirements, the Registrar is required to issue to the applicant the appropriate vehicle registration and a set of "Ohio Nature Preserves"

license plates with a validation sticker or a validation sticker alone when required by continuing law.

In addition to the letters and numbers ordinarily inscribed on license plates, "Ohio Nature Preserves" license plates must be inscribed with identifying words or markings designed by the Department of Natural Resources and approved by the Registrar. "Ohio Nature Preserves" license plates must bear county identification stickers that identify the county of registration by name or number.

"Ohio Nature Preserves" license plates and validation stickers are issued upon payment of a contribution (see below), the regular taxes prescribed in ongoing law, any applicable local motor vehicle tax, a Bureau of Motor Vehicles (BMV) administrative fee of $10, and the applicant's compliance with all other applicable laws relating to the registration of motor vehicles. If the application for "Ohio Nature Preserves" license plates is combined with a request for a special reserved license plate provided in continuing law, the applicant must also pay the applicable additional special reserved license plate fee.

For each application for registration and registration renewal received under the act, the Registrar is required to collect a contribution in an amount not to exceed $40, as determined by the Department. The Registrar must transmit the contribution to the Treasurer of State for deposit into the Ohio Nature Preserves Fund, which the act creates. The Fund consists of the contributions that are paid by persons who obtain "Ohio Nature Preserves" license plates. The act requires the Department to use that money to help finance nature preserve education, nature preserve clean-up projects, and nature preserve maintenance, protection, and restoration. All investment earnings of the Fund must be credited to the Fund. The act requires the Registrar to deposit the $10 BMV administrative fee, the purpose of which is to compensate the BMV for additional services required in issuing "Ohio Nature Preserves" license plates, into the State Bureau of Motor Vehicles Fund.

## Donations of venison by Farmers and Hunters Feeding the Hungry

(Section 751.40)

The act requires the Director of Natural Resources to enter into a memorandum of understanding with the organization Farmers and Hunters Feeding the Hungry. The memorandum must prescribe a method by which, during the period from July 1, 2009, through June 30, 2011, Farmers and Hunters Feeding the Hungry may donate venison to Ohio's food banks. The memorandum also must prescribe methods that encourage private persons to make matching donations in money or food to Ohio's food banks that

are equal or greater in value to the venison that is donated by Farmers and Hunters Feeding the Hungry.

### Sale of Marietta State Nursery land

(Section 753.10)

The act requires the Director of Natural Resources to enter into a memorandum of understanding with the Southeastern Ohio Port Authority to develop the future use of the property that formerly comprised the Marietta State Nursery. The memorandum must provide for the sale of the property for highest and best use, sale and usage of the property that is compatible with neighboring properties, maximum financial return for the Department, and expeditious sale of parcels of the property.

Additionally, the memorandum must require contracted professional engineering services to provide both of the following:

(1) A phase 1 environmental site assessment; and

(2) A master plan for property development, including an inventory of site features and assets; collection of public input through a meeting and comment period; identification of site usage areas; lot lines and parcel sizes in concept; means of ingress and egress from State Route 7 and interior site access that are delineated in concept; identification of utility services, locations, and capacities; plans for compliance with subdivision regulations; recommendations for possible deed restrictions; an evaluation of permits that must be obtained and other regulatory requirements that must be satisfied for purposes of the development of the property; and any necessary maps.

The memorandum must require the Port Authority to do all of the following: (1) manage the formulation of the master plan, (2) create a master plan brochure and sales brochures, (3) market the property by mail, signage, and the web sites *www.pioneerspirit.us* and *www.Ohiosites.com*, (4) respond to sales leads, (5) screen inquiries regarding the property, (6) negotiate sales based on pricing guidelines established by the Department, and (7) present qualified purchase offers to the Department.

Under the act, the memorandum must specify that the Department owns the property, that it may sell the property in lots to the Port Authority, and that the Port Authority then may sell the lots to individual private buyers. The memorandum also must specify that the Department is responsible for paying for the environmental, engineering, graphic design, signage, and printing costs as invoices for those costs are received. The act requires the Department and the Port Authority to agree to a cap for each of those invoices. Finally, the memorandum must specify that as parcels of the

property are transferred to private buyers, the Port Authority retains 5% of the sale price of each parcel as a fee for services provided by the Port Authority.

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## STATE BOARD OF PHARMACY (PRX)

- Requires the drug repository program established by the State Board of Pharmacy to (1) accept donations of orally administered cancer drugs that are not controlled substances and do not require refrigeration, freezing, or storage at a special temperature, regardless of whether the drugs are in original sealed and tamper-evident unit dose packaging, and (2) dispense the cancer drugs to persons who are eligible to receive them.

- Requires the Board to adopt rules regarding standards and procedures a drug repository site must use to determine, based on a basic visual inspection, that orally administered cancer drugs that are not in original sealed and tamper-evident unit dose packaging appear to be unadulterated, safe, and suitable for dispensing.

- Extends the timeframes established by Sub. S.B. 203 of the 127th General Assembly for compliance with its requirements to become a qualified pharmacy technician.

- Specifies that any examination materials the Board requires a person that develops or administers a pharmacy technician examination to submit to the Board for approval are not public records.

- Corrects erroneous cross-references in provisions regarding the distribution of results of criminal records checks conducted of persons wishing to become a qualified pharmacy technician.

### Drug repository program--acceptance of certain cancer drugs

(R.C. 3715.87, 3715.871, and 3715.873; R.C. 3715.872 (not in the act))

#### Background

Law unchanged by the act requires the State Board of Pharmacy to establish a drug repository program for the collection and redistribution of drugs donated by drug manufacturers, health care facilities, and others to Ohio residents who meet eligibility standards established by the Board in rules. Drugs that may be donated and dispensed under the program must meet the following requirements: (1) they must be in their original sealed and tamper-evident unit dose packaging, (2) the packaging must be

unopened (except that drugs packaged in single unit doses may be accepted and dispensed when the outside packaging is opened, provided that the single unit dose packaging is undisturbed), (3) there can be no reason to believe that the drugs are adulterated, and (4) the drugs cannot bear an expiration date that is less than six months from the date the drugs are donated.[359] In the absence of bad faith, the Board, drug donors, and drug repository sites (pharmacies, hospitals, and nonprofit clinics that have elected to participate in the program and meet eligibility requirements established by the Board) are immune from criminal and civil liability as well as professional disciplinary action for matters related to the acceptance or dispensing of the donated drugs.

The Board is required to adopt rules governing the drug repository program. In adopting the rules, the Board must establish standards and procedures for drug repository sites to inspect donated drugs to determine that the original unit dose packaging is sealed and tamper-evident and that the drugs are unadulterated, safe, and suitable for dispensing. For drugs donated or given to the program by individuals or health care facilities, the rules must include lists of drugs, arranged either by category or by individual drug, that the program will accept and will not accept from individuals and health care facilities.

### Cancer drugs

Subject to rules adopted by the Board, the act creates an exception to the drug donation and dispensing requirements discussed above. That is, the act permits the drug repository program to accept and dispense orally administered cancer drugs, regardless of whether they are in original sealed and tamper-evident unit dose packaging, as long as the drugs are not controlled substances and do not require refrigeration, freezing, or storage at a special temperature. The act requires the Board to adopt rules establishing standards and procedures for drug repository sites to determine, based on a basic visual inspection, that orally administered cancer drugs that are not in original sealed and tamper-evident unit dose packaging appear to be unadulterated, safe, and suitable for dispensing. The act specifies that the Board's rules establishing lists of drugs that will and will not be accepted under the program must comply with the act's provisions regarding acceptance of orally administered cancer drugs.

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[359] Additional requirements regarding eligible drugs are specified in O.A.C. 4729-35-04, including requirements for storage, packaging, and removal of confidential patient information.

## Qualified pharmacy technicians

(R.C. 4729.42)

### Timeframes to meet qualified technician criteria

Sub. S.B. 203 of the 127th General Assembly established, among other things, criteria to be met for an individual to be considered a "qualified pharmacy technician." Sub. S.B. 203 also specified timeframes in which these criteria had to be met.

The act extends these timeframes as follows:

| Topic | Prior Law | The Act |
| --- | --- | --- |
| **Individuals employed as pharmacy technicians on the effective date of Sub. S.B. 203 (April 1, 2009)** | Not later than April 1, 2010 | Not later than October 1, 2010 |
| **Individuals employed as pharmacy technicians after April 1, 2009** | Not later than 210 days after initial employment | Not later than one year after initial employment |
| **Individuals who complete a pharmacy technician program operated by a vocational school** | Not later than 210 days after completing the program | Not later than one year after completing the program |

### Examination materials

Under Ohio's Public Records Law (R.C. 149.43), a "public record" is a record kept by any public office, including state, county, city, village, township, and school district units. On request and within a reasonable period of time, a public office or person responsible for public records generally must make copies available at cost.

The act specifies that if, pursuant to the Board's rulemaking authority under continuing law (R.C. 4729.26), the Board requires a person that develops or administers a pharmacy technician examination to submit examination materials to the Board for approval, such materials are not public records.

## Pharmacy technician--cross-reference corrections

(R.C. 4729.99 and 4776.02)

The act corrects three erroneous cross-references in provisions of Am. Sub. H.B. 2 of the 128th General Assembly that clarified the distribution of results of criminal

records checks conducted of persons wishing to become a qualified pharmacy technician.

## OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND ATHLETIC TRAINERS BOARD (PYT)

- Permits the Occupational Therapy Section of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board to charge any or all of the fees that prior law required the Section to charge, additionally permits the Section to charge fees for initial license applications and license verifications, and expressly permits the Section to charge fees for late license renewal applications and for reviewing continuing education activities but limits the amounts of these two fees to the actual costs the Section incurs.
- Requires that the Occupational Therapy Section's fee amounts be established in rules adopted by the Section.

### Occupational therapist fees

(R.C. 4755.06 and 4755.12)

Former law required the Occupational Therapy Section of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board to charge fees for examinations, initial licensure, biennial license renewal, and limited permits. The act permits the Section to charge any or all of these fees.

Former law permitted the Section to adopt rules establishing fees for late license renewal applications and the administrative costs of reviewing continuing education activities. The act permits the Section to charge fees (not just establish fee amounts) for these services.

The act also permits the Section to charge fees for the following additional purposes: (1) initial license applications and (2) license verifications.

The act specifies that the amounts of fees that the Section is authorized to charge must be established in rules adopted by the Section. If the Section adopts rules relating to the amounts of the fees the Section may charge for the late renewal of licenses and the review of continuing education activities, the act prohibits the Section from

establishing fees for these services that exceed the actual costs the Section incurs in providing the services.

## PUBLIC DEFENDER COMMISSION (PUB)

- Adds to the sources of the Indigent Defense Support Fund by establishing a bail surcharge, increasing additional court costs for criminal offenses, and increasing driver's license reinstatement fees and by requiring that the money collected be credited to the Fund.
- Authorizes the State Public Defender Office to use up to 10% of the money in the Indigent Defense Support Fund to support the present operations of the Office.

### Indigent Defense Support Fund

(R.C. 120.08, 2937.22, 2949.091, 2949.111, 4507.45, 4509.101, and 4510.22)

Under prior law, the Indigent Defense Support Fund consisted solely of specified fine money paid into the Fund under R.C. 4511.19 (DUI) and additional court costs imposed under R.C. 2949.094 (moving violations). The State Public Defender Office used the money to reimburse counties for costs incurred in running their public defender programs. The act adds to the sources of money for the Fund by (1) establishing a surcharge of $25 to be paid when a person posts bail and, if the person is convicted, pleads guilty, or forfeits bail, requiring that the surcharge be deposited into the Fund, (2) increasing, from $15 to $30 for a felony offense and to $20 for a misdemeanor offense other than a traffic offense that is not a moving violation, the additional court cost traditionally used for public defender support and requiring that it be credited to the Fund, (3) imposing a $10 additional court cost for a traffic offense that is neither a moving violation nor a parking violation and requiring that the money collected as the additional court costs be credited to the Fund, and (4) increasing the general driver's license reinstatement fee (from $30 to $40), the reinstatement fee for a financial responsibility violation (from $75 to $100 for a first violation, from $250 to $300 for a second violation, and from $500 to $600 for a third violation), and the reinstatement fee for a person who commits a specified traffic offense, motor vehicle equipment offense, or motor vehicle crime that is a misdemeanor other than a minor misdemeanor and whose license is forfeited for failing to appear in court to answer the charge or pay the fine (from $15 to $25) and requiring that the amounts of the increases collected be credited to the Fund.

Prior law required the State Public Defender Office to make disbursements from the Fund in each state fiscal year to reimburse counties for a portion of the costs of their county or joint county public defender systems or county appointed counsel systems. The act requires the Office to use at least 90% of the money in the Fund to reimburse counties for their public defender systems, requires that disbursements be made at least once per year, allows disbursements to be used to support contracted public defender services and selected and appointed counsel, and authorizes the Office to use up to 10% of the money in the Fund to support the present operations of the Office.

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## DEPARTMENT OF PUBLIC SAFETY (DPS)

- Reclassifies four traffic offenses as unclassified misdemeanors on a first offense, with specified permissive fines and community service.
- Reclassifies 28 traffic offenses as minor misdemeanors, regardless of prior offenses.
- Provides that no certificate of registration is required for an all-purpose vehicle that is used primarily for agricultural purposes when the owner qualifies for the current agricultural use valuation credit, unless it is to be used on any public land, trail, or right-of-way.
- Permits owners of certain off-highway motorcycles and all-purpose vehicles to register the motorcycles or vehicles by presenting an affidavit of ownership rather than requiring the owners to obtain first certificates of title for the off-highway motorcycles or all-purpose vehicles.
- Applies the enhanced penalty provisions of the state criminal trespass statute (doubling of the fine and impoundment of the certificate of registration) to state criminal trespass violations that are committed using snowmobiles and off-highway motorcycles.
- Removes the minimum age requirement of 12 years for operation of snowmobiles, off-highway motorcycles, and all-purpose vehicles on state-controlled land under Department of Natural Resources jurisdiction when such a minor is accompanied by a parent or guardian who is a licensed driver and is 18 years of age or older and when permitted by the Department.
- Specifies that the rules the Registrar of Motor Vehicles must adopt by October 1, 2009, to permit multi-year registration of up to five years of commercial trailers and semitrailers must permit a person who owns or leases only one such trailer or semitrailer to be eligible for such multi-year registration, thus eliminating the

requirement that a person must own at least two such vehicles in order to be eligible for multi-year registration.

- Authorizes reimbursement from the State Law Enforcement Assistance Fund for the cost of annual continuing professional training for each of a public appointing authority's officers or troopers who completes the training in a timely manner, whether or not the public appointing authority receives an extension for the officers and troopers who do not timely complete the training.

- Eliminates the prohibition against carrying a firearm during the course of official duties or the performance of functions by a peace officer or trooper who has not completed continuing professional training.

- Specifies that a person who has a valid driver's or commercial driver's license cannot be required to have a motorcycle operator's endorsement to operate a three-wheel motorcycle with a motor of not more than 50 cubic centimeters piston displacement.

- Allows the Registrar to determine by rule the manner to use to indicate the expiration of a validation sticker issued for an all-purpose vehicle (three-year registration period) or for a trailer or semitrailer (up to a five-year registration period).

- Creates the Rehabilitation Employment Fund to be used by the Rehabilitation Services Commission to fund employment-related services and requires each applicant for a "handicapped" removable windshield placard or license plate who is walking-impaired to be asked whether the person wishes to contribute $2 to the fund.

- Requires the Registrar to determine the feasibility of implementing an electronic commercial fleet licensing and management program enabling commercial tractor, trailer, and semitrailer owners to conduct electronic transactions by July 1, 2010, or sooner.

- Provides that the increases in the fees for initial reserve license plates and personalized license plates enacted in the Transportation Appropriations Act apply to each registration renewal with an expiration date on or after October 1, 2009, and to each initial registration application received on or after that date.

- Clarifies (1) that the $1 fee for a replacement certificate of registration must be deposited into the State Bureau of Motor Vehicles Fund and (2) that $5.50 of each fee collected for a set of two replacement license plates, a single replacement license plate, or a replacement validation sticker is to be deposited into the State Highway

Safety Fund and that the remaining portion of each such fee is to be deposited into the State Bureau of Motor Vehicles Fund.

- Reduces the $15 fee for each placard the Registrar issues to a dealer that took effect July 1, 2009, which had been $7, to $2 and does not require any of the $2 fee to be deposited into the State Highway Safety Fund, and requires deputy registrars to transmit placard fees to the Registrar at the time and in the same manner as motor vehicle registration fees.

- Corrects a cross-reference to clarify that payment of the $7.50 fee for a duplicate driver's license does not apply to a disabled veteran who has a service-connected disability rated at 100% by the Veterans Administration (Department of Veterans Affairs).

- Permits the State Board of Emergency Medical Services to issue a certificate of accreditation for an emergency medical services training program or certificate of approval for an emergency medical services continuing education program for up to five years, rather than for three years; permits a provisional certificate to be issued for the length of time established by the Board, rather than one year; allows the Board to renew provisional certificates; and allows a certificate of accreditation to be for more than one emergency medical services training program.

- Requires the Board to establish certification cycles for the expiration of certificates to teach in an emergency medical services training program or an emergency medical services continuing education program and certificates to practice as a first responder, and to establish a common expiration date for these certificates and fire service training program certificates.

- Creates the "combat infantryman badge" license plate.

- Would have provided that no angled parking space that is located on a state route within a municipal corporation is subject to elimination, irrespective of whether there is or is not at least 25 feet of unoccupied roadway width available for free-moving traffic at the location of that angled parking space, unless the municipal corporation approves of the elimination of the angled parking space (VETOED).

## Reclassification of traffic law violations

(R.C. 4507.02, 4510.11, 4510.12, 4510.16, 4513.021, 4513.03, 4513.04, 4513.05, 4513.06, 4513.07, 4513.071, 4513.09, 4513.11, 4513.111, 4513.12, 4513.13, 4513.14, 4513.15, 4513.16,

4513.17, 4513.171, 4513.18, 4513.19, 4513.21, 4513.22, 4513.23, 4513.24, 4513.242, 4513.28, 4513.60, 4513.65, 4513.99, 4549.10, and 4549.12)

### Driver's license violations

The act reclassifies four driver's license violations as unclassified misdemeanors on a first offense, with a permissive fine up to $1,000 and an additional permissive term of community service of up to 500 hours; subsequent offenses are as described below. Also as described below, the act also modifies the penalty for operating a motor vehicle without a valid license if the offender's license was expired and for driving in violation of a license restriction.

| Description of offense (R.C. section) | Prior penalty | Penalty under the act |
|---|---|---|
| Permitting the operation of a motor vehicle by an unlicensed driver (§ 4507.02) | First degree misdemeanor | Unclassified misdemeanor, with a permissive fine and term of community service on a first or second offense and a first degree misdemeanor with two or more previous offenses within three years |
| Driving under suspension for failure to pay child support and failure to appear or pay court fines (§ 4510.11(C)(1)) | First degree misdemeanor, with a license suspension for a definite period not to exceed one year | Unclassified misdemeanor, with a permissive fine and term of community service on a first or second offense and a first degree misdemeanor with two or more previous offenses within three years; no required license suspension |
| Driving in violation of a license restriction (§ 4510.11(C)(2)) | First degree misdemeanor, with a license suspension for a definite period not to exceed one year | First degree misdemeanor; no required license suspension |
| Operating a motor vehicle without a valid license if the offender has never held a valid license (§ 4510.12(B)(1)) | First degree misdemeanor | Unclassified misdemeanor, with a permissive fine and term of community service |
| Operating a motor vehicle without a valid license if the offender's license was expired (§ 4510.12(B)(2)) | Minor misdemeanor if expired for not more than six months, a fourth degree misdemeanor if expired for more than six months, a third degree misdemeanor if the offender had such a violation in the past three years, a second degree misdemeanor if the | Minor misdemeanor, but a first degree misdemeanor if the offender had three or more such violations in the past three years |

| Description of offense (R.C. section) | Prior penalty | Penalty under the act |
|---|---|---|
| | offender had two such violations in the past three years, and a first degree misdemeanor if the offender had three or more such violations in the past three years | |
| Driving under financial responsibility suspension or cancellation (§ 4510.16) | First degree misdemeanor | Unclassified misdemeanor, with a permissive fine and term of community service on a first or second offense and a first degree misdemeanor with two or more previous offenses within three years |

### Vehicle equipment and other violations (PARTIALLY VETOED)

In addition, the act reclassifies the following 28 traffic offenses, generally equipment violations, as minor misdemeanors, regardless of prior similar offenses. The Governor vetoed one reclassification related to bumper heights, vehicle modifications, and suspension system disconnections (R.C. 4513.021). Unless otherwise noted in the chart, under prior law, each offense was a minor misdemeanor on a first offense, a fourth degree misdemeanor on a second offense within one year, and a third degree misdemeanor on each subsequent offense within one year.

| R.C. Section | Description of offense |
|---|---|
| 4513.03 | Display of lighted lights |
| 4513.04 | Required headlights |
| 4513.05 | Required tail lights and illumination of rear license plate |
| 4513.06 | Required red reflectors |
| 4513.07 | Safety lighting for commercial vehicles |
| 4513.071 | Required stop lights on rear of vehicle |
| 4513.09 | Required red light or flag for extended load |
| 4513.11 | Required equipment for animal-drawn and slow-moving vehicles |
| 4513.111 | Lights for multi-wheel agricultural tractors and farm machinery |

| R.C. Section | Description of offense |
|---|---|
| 4513.12 | Spotlights and auxiliary driving lights |
| 4513.13 | Cowl, fender, and back-up lights |
| 4513.14 | Display of two lighted lights |
| 4513.15 | Headlight illumination standards |
| 4513.16 | Speed restriction for vehicles with less intense lights |
| 4513.17 | Number of lights permitted; flashing light restrictions |
| 4513.171 | Lights on coroner's vehicle |
| 4513.18 | Lights on snow removal equipment and oversize vehicles |
| 4513.19 | Focus and aim of headlights |
| 4513.21 | Horns, sirens, and warning devices |
| 4513.22 | Muffler requirements |
| 4513.23 | Rear view mirrors |
| 4513.24 | Windshields and wipers |
| 4513.242 | Security decal display |
| 4513.28 | Warning devices displayed on disabled vehicles |
| 4513.60 | Vehicles on private property without permission (First offense, minor misdemeanor; subsequent offenses, third degree misdemeanor) |
| 4513.65 | Willfully leaving a junk motor vehicle uncovered (First offense, minor misdemeanor; second offense, fourth degree misdemeanor; subsequent offenses, third degree misdemeanor) |
| 4549.10 | Operating manufacturer vehicle without placard (First offense, minor misdemeanor; subsequent offenses, fourth degree misdemeanor) |
| 4549.12 | Resident operating a vehicle with number issued by other state (First offense, minor misdemeanor; subsequent offenses, fourth degree misdemeanor) |

## Driver's license vision screening fee

(R.C. 4507.24)

Am. Sub. H.B. 2 of the 128th General Assembly increased the fee charged for vision screening of a driver's license applicant by $1.75 (to a total of $2.75). The act directs that the entire amount of the increase be paid into the State Highway Safety Fund, rather than $1 of the increase as Am. Sub. H.B. 2 required.

## State Highway Safety Fund

(R.C. 4501.06)

The act updates the cross-referencing list of fees deposited into the State Highway Safety Fund to include fees from the cost of replacing a license plate and obtaining an initial or personalized license plate, which were added to the fees being deposited into that Fund by Am. Sub. H.B. 2 of the 128th General Assembly.

## Registration exemption for certain all-purpose vehicles

(R.C. 4519.02)

Under continuing law, no person may operate a snowmobile, off-highway motorcycle, or all-purpose vehicle within this state unless it is registered and numbered, subject to certain exceptions. One exception provides that no registration is required for a snowmobile, off-highway motorcycle, or all-purpose vehicle that is operated exclusively upon lands owned by the owner of the snowmobile, off-highway motorcycle, or all-purpose vehicle, or on lands to which the owner has a contractual right.

Under provisions contained in the Transportation Appropriations Act that became effective July 1, 2009, no registration is required for an all-purpose vehicle that is used primarily on a farm as a farm implement.

The act eliminates the phrase "on a farm as a farm implement" and provides that no registration is required for an all-purpose vehicle that is used primarily for agricultural purposes when the owner qualifies for the current agricultural use valuation credit, unless it is to be used on any public land, trail, or right-of-way. An all-purpose vehicle that is exempted from registration under this provision and is operated for agricultural purposes may use public roads and rights-of-way when traveling from one farm field to another when such use does not violate the law governing the operation of all-purpose vehicles on public roads and rights-of-way.

## Affidavit of ownership when obtaining a certificate of registration for certain off-highway motorcycles and all-purpose vehicles

(R.C. 4519.03)

Under former law, if a person owned an off-highway motorcycle or all-purpose vehicle prior to July 1, 1999, the person was not required to obtain a certificate of title for the motorcycle or vehicle so long as the person did not sell or otherwise transfer ownership of the motorcycle or vehicle. In addition, if, since that date, the person operated the off-highway motorcycle or all-purpose vehicle only on lands the person owned or to which the person had a contractual right, the person also was not required to obtain a certificate of registration for the motorcycle or vehicle.

Law generally retained by the act provides that no certificate of registration or renewal of a certificate of registration may be issued for an off-highway motorcycle or all-purpose vehicle unless a certificate of title (physical or electronic) has been issued for that motorcycle or vehicle. The certificate of title must be presented to the Registrar or deputy registrar when the application for the initial certificate of registration for the motorcycle or vehicle is submitted.

As an exception to the law generally described above, the act provides that in the case of an off-highway motorcycle or all-purpose vehicle that was purchased prior to October 1, 2005, and for which a certificate of title has not been issued, the owner is not required to present a physical certificate of title or memorandum certificate of title or an electronic certificate of title for the motorcycle or vehicle. The owner instead may present a signed affidavit of ownership in a form prescribed by the Registrar at the time of application for the certificate of registration. The affidavit must include, at a minimum, the date of purchase, make, model, and vehicle identification number (VIN) of the off-highway motorcycle or all-purpose vehicle. If no VIN has been assigned to the motorcycle or vehicle, then its serial number must be presented at the time of application.

## Identifying markers for snowmobiles and off-highway motorcycles

(R.C. 4519.04)

Under prior law, when a person registered a snowmobile, off-highway motorcycle, or all-purpose vehicle, the Registrar or deputy registrar issued to the owner a certificate of registration and a registration sticker. The Registrar determined the sticker color and size, the combination of numerals and letters displayed on it, and placement of the sticker on the snowmobile, off-highway motorcycle, or all-purpose vehicle. The owner of a snowmobile also was required to paint or otherwise attach upon each side of the forward cowling of the snowmobile the identifying registration

number, in block characters not less than two inches in height and of a color that is distinctly visible and legible.

Under provisions contained in the Transportation Appropriations Act that became effective July 1, 2009, owners of all-purpose vehicles are not issued a registration sticker; rather, they are issued one license plate and a validation sticker or a validation sticker alone if the registration is a renewal. The license plate and validation sticker must be displayed on the all-purpose vehicle so that they are distinctly visible, in accordance with rules the Registrar must adopt.

Under the act, when a person registers a snowmobile or off-highway motorcycle, the Registrar or deputy registrar must issue to the owner a certificate of registration and two decal registration stickers. The Registrar must determine the color and size of the stickers and the combination of numerals and letters displayed on them. One sticker must be placed on each side of the forward cowling or fuel tank of the snowmobile or off-highway motorcycle.

## Addition of snowmobiles and off-highway motorcycles to the enhanced penalty provisions of the trespassing statute

(R.C. 2911.21)

The trespassing statute prohibits any person, without privilege to do so, from knowingly entering or remaining on the land or premises of another. Whoever commits trespassing is guilty of criminal trespass, a fourth-degree misdemeanor (punishable by a fine of not more than $250, a jail term of not more than 30 days, or both).

Under provisions contained in the Transportation Appropriations Act that became effective July 1, 2009, if a person uses an all-purpose vehicle in committing criminal trespass, the court must impose a fine of two times the usual amount imposed for such a violation. If the offender previously has been convicted of or pleaded guilty to two or more state or local criminal trespass violations and the offender, in committing each violation, used an all-purpose vehicle, the court, in addition to or independent of all other penalties imposed for the violation, may impound the certificate of registration and license plate of that all-purpose vehicle for not less than 60 days. The court must send the impounded certificate and license plate to the Registrar, who must hold them for the impoundment period, and the clerk of the court must pay the fine to the State Recreational Vehicle Fund.

The act adds snowmobiles and off-highway motorcycles to the enhanced penalty provisions of the state criminal trespass statute (doubling of the fine and impoundment of the certificate of registration). As a result, the enhanced penalty provisions apply not

only to criminal trespass violations that are committed using all-purpose vehicles but also to state criminal trespass violations that are committed using snowmobiles and off-highway motorcycles.

## Operation of snowmobiles, off-highway motorcycles, and all-purpose vehicles by minors on state-controlled land under DNR jurisdiction

(R.C. 4519.44)

Continuing law prohibits a person who is less than 16 years of age from operating a snowmobile, off-highway motorcycle, or all-purpose vehicle on any land or waters other than private property or waters owned or leased by the person's parent or guardian unless the person is accompanied by another person who is at least 18 years of age and is a licensed driver. Under prior law, the Department of Natural Resources (DNR) could permit a person who is less than 16 years of age but is at least 12 years of age to operate a snowmobile, off-highway motorcycle, or all-purpose vehicle on state-controlled land under DNR jurisdiction if the person was accompanied by a parent or guardian who was at least 18 years of age and was a licensed driver.

The act eliminates the "12 years of age" minimum age requirement, thereby allowing DNR to permit any minor who is less than 16 years of age and is accompanied by a parent or guardian who is at least 18 years of age and is a licensed driver to operate a snowmobile, off-highway motorcycle, or all-purpose vehicle on state-controlled land under DNR jurisdiction.

## Multi-year registration of motor vehicles

(R.C. 4503.103)

### Commercial trailers and semitrailers

Prior law required the Registrar of Motor Vehicles to adopt rules to permit any person or lessee who owns or leases two or more commercial trailers or semitrailers to register them for up to five succeeding registration years. At the time of such registration, the person had to pay all annual taxes and fees for each year of registration. Prior law did not set a deadline for the adoption of such rules by the Registrar, however, and the Registrar did not adopt any such rules. Under a provision contained in the Transportation Appropriations Act that became effective July 1, 2009, the Registrar is required to adopt these rules not later than October 1, 2009.

The act retains the October 1, 2009, deadline enacted by the Act, but it specifies that the rules must permit any person who owns or leases a commercial trailer or semitrailer to register it for up to five years, thus eliminating the requirement that a

person must own at least two such vehicles in order to be eligible for this multi-year registration. The act also requires a person who registers a trailer or semitrailer under this multi-year registration provision to pay for each year of registration the additional registration fee of $30 that the Transportation Appropriations Act that became effective July 1, 2009, levied on the registration of commercial cars such as commercial tractors (which are part of tractor-trailer units). The act requires the person to pay one single deputy registrar service fee or one single Bureau of Motor Vehicles service fee regardless of the number of years for which the person is registering.

## Multi-year vehicle registration stickers

(R.C. 4503.191)

In general, a vehicle license plate is issued for a multi-year period as determined by the Director of Public Safety and the validity of a current registration is indicated by a validation sticker attached to the license plate. The validation sticker indicates the expiration of the registration period, which, for a passenger vehicle is typically one year, but may be two years. The validation stickers must be different colors each year.

The act allows the Registrar of Motor Vehicles, by rule, to determine the manner by which specified multi-year validation stickers may indicate the expiration of the registration period. The act applies to validation stickers issued for an all-purpose vehicle, which is a three-year registration, and to validation stickers for those trailers or semitrailers that may be registered for up to five years under the International Registration Plan (TRP, a registration reciprocity agreement among states of the United States, the District of Columbia, and provinces of Canada providing for payment of license fees on the basis of fleet distance operated in various jurisdictions).

## Effects of not completing annual continuing professional training by peace officers and troopers

(R.C. 109.802 and 109.803)

Under prior law, a public authority that appoints peace officers or troopers could be reimbursed from the State Law Enforcement Assistance Fund for the cost of annual continuing professional training for each of the authority's officers or troopers only if all of the authority's officers or troopers complete the training or the public authority receives because of emergency circumstances an extension for one or more of its officers or troopers to obtain the training. If such an extension was granted, the public authority was entitled to reimbursement for the officers or troopers who timely completed the training. The act authorizes reimbursement for each officer or trooper who completes the training in a timely manner, even if other officers or troopers have not completed the training and the appointing authority has not obtained an extension

for those officers and troopers to obtain the training, provided the appointing authority has complied with R.C. 109.761 (employee reporting requirements). Prior law prohibited a peace officer or trooper who had not completed continuing professional training from carrying a firearm during the course of official duties or the performance of a peace officer's or trooper's functions. The act eliminates the prohibition.

### Operation of small three-wheel motorcycles

(R.C. 4507.03)

In general, no person may operate a motor vehicle on public property or private property open to the public unless the operator of the vehicle has a valid driver's license and no person may operate a motorcycle without having a valid license as a motorcycle operator, usually in the form of a motorcycle operator's endorsement on the person's driver's license. Continuing law establishes exemptions to this general requirement, including the operation of certain road machinery and agricultural tractors. The act allows a person who has a valid driver's or commercial driver's license to operate a three-wheel motorcycle with a motor of not more than 50 cubic centimeters piston displacement without being required to have a motorcycle operator's endorsement.

### Voluntary donation to Rehabilitation Services Commission from applicants for license plates and placards for the walking-impaired

(R.C. 4503.44)

The act requires the Registrar of Motor Vehicles or a deputy registrar to ask each person applying for a removable windshield placard or temporary removable windshield placard or duplicate removable windshield placard or license plate ("handicapped" plates and placards) issued to a person who is walking-impaired, whether the person wishes to make a $2 voluntary contribution to support rehabilitation employment services. The voluntary contribution is in addition to any fee for issuance of the placard or license plate. The act requires a deputy registrar to transmit the contributions to the Registrar in the time and manner prescribed by the Registrar and requires the Registrar to transmit the contributions to the Treasurer of State for deposit into the Rehabilitation Employment Fund, which the act creates in the state treasury.

The contributions in the Rehabilitation Employment Fund must be used by the Rehabilitation Services Commission to purchase services related to vocational evaluation, work adjustment, personal adjustment, job placement, job coaching, and community-based assessment from accredited community rehabilitation program facilities.

## Online commercial fleet licensing and management program

(R.C. 4503.10)

The act requires the Registrar to determine the feasibility of implementing an electronic commercial fleet licensing and management program. The program must enable the owners of commercial tractors, commercial trailers, and commercial semitrailers to conduct electronic transactions by July 1, 2010, or sooner. If the Registrar determines that implementing the program is feasible, the Registrar must adopt new rules or amend existing rules as necessary in order to respond to advances in technology.

Additionally, if the International Registration Plan (IRP, a registration reciprocity agreement among states of the United States, the District of Columbia, and provinces of Canada providing for payment of license fees on the basis of fleet distance operated in various jurisdictions) allows member jurisdictions to permit applications for registrations to be made via the Internet, the rules the Registrar adopts for electronic transactions must permit Internet registration of IRP-registered vehicles.

## Fees for certain special and replacement license plates

(R.C. 4503.19, 4503.40, and 4503.42)

### Fees for field or initial reserve and personalized license plates

The Bureau of Motor Vehicles produces a number of special license plates. Among them are two license plates known as "initial reserve" or "field reserve" license plates and "personalized" license plates. Initial reserve license plates are license plates that bear any of a number of certain specified combinations of letters, numbers, or letters and numbers and carry an extra fee of $10. Of that $10 fee, $7.50 compensates the Bureau for additional services required in issuing the license plates and $2.50 is deposited into the state treasury to the credit of the State Highway Safety Fund. Personalized license plates bear numbers, letters, or numbers or letters that are not normally produced by the Bureau (unlike standard issue license plates and initial reserve license plates) and carry an extra fee of $35. Of that $35 fee, $5 compensates the Bureau for additional services required in issuing the license plates and $30 is credited to the Fund.

Under provisions contained in the Transportation Appropriations Act that became effective July 1, 2009, the additional fee for initial reserve license plates increased from $10 to $25. Of that $25 fee, $7.50 compensates the Bureau for additional services required in issuing the license plates (unchanged from prior law) and $17.50 is credited to the Fund. The additional fee for personalized license plates increased on

that date from $35 to $50. Of that $50 fee, $5 compensates the Bureau for additional services required in issuing the license plates (unchanged from prior law) and $45 is to be credited to the Fund.

The act provides that, in the case of initial reserve license plates, for each registration renewal with an expiration date before October 1, 2009, and for each initial application for registration received before that date, the Registrar is allowed a fee not to exceed $10. For each registration renewal with an expiration date on or after October 1, 2009, and for each initial registration application received on or after that date, the Registrar is allowed a fee of $25. The act specifies that $7.50 of each such fee (unchanged from prior law), whether it be $10 or $25, compensates the Bureau for additional services required in issuing the license plates and that the remaining portion of the fee is to be credited to the Fund.

In the case of personalized license plates, the act similarly provides that for each registration renewal with an expiration date before October 1, 2009, and for each initial application for registration received before that date, the Registrar is allowed a fee not to exceed $35. For each registration renewal with an expiration date on or after October 1, 2009, and for each initial registration application received on or after that date, the Registrar is allowed a fee of $50. The act specifies that $5 of each such fee (unchanged from prior law), whether it be $35 or $50, compensates the Bureau for additional services required in issuing the license plates and that the remaining portion of the fee is to be credited to the Fund.

### Fees for replacement license plates

Continuing law prescribes a fee of $1 for a replacement certificate of registration, a fee of $7.50 for a set of two replacement license plates, and a fee of $6.50 for a single replacement license plate or a replacement validation sticker. Prior law did not specify the disposition of the $1 fee, but $5.50 of each $7.50 fee and $5.50 of each $6.50 single replacement license plate fee had to be credited to the State Highway Safety Fund.

Under the act, the $1 fee for a replacement certificate of registration must be credited to the State Bureau of Motor Vehicles Fund. Commencing with each request made on or after October 1, 2009, or in conjunction with replacement license plates issued for renewal registrations expiring on or after October 1, 2009, the fee for a set of two replacement license plates is $7.50 and the fee for a single replacement license plate or replacement validation sticker is $6.50. The act requires the Registrar to credit $5.50 of each $7.50 fee collected to the State Highway Safety Fund and the remaining $2 to the State Bureau of Motor Vehicles Fund. Of each $6.50 fee collected, the act requires the Registrar to credit $5.50 to the State Highway Safety Fund and the remaining $1 to the State Bureau of Motor Vehicles Fund.

### Temporary license placard fees

(R.C. 4503.182; Section 812.20)

Continuing law permits the Registrar of Motor Vehicles to issue to motorized bicycle dealers and motor vehicle dealers temporary license placards, which in turn are issued to purchasers for use on vehicles the dealer sells. The fee for each placard issued by the Registrar to a dealer is $7, of which $5 must be deposited into the State Highway Safety Fund.

In addition, since October 1, 2003, when the Registrar or a deputy registrar issues a temporary license placard, the Registrar or deputy registrar also is required to collect an additional $5 fee. The purpose of this fee is to defray the costs the Department of Public Safety incurs in administering and enforcing the state's motor vehicle and traffic laws.

The Transportation Appropriations Act of the 128th General Assembly increased the fee for each placard issued by the Registrar to a dealer from $7 to $15 and required $13 of the $15 to be deposited into the State Highway Safety Fund. This change took effect July 1, 2009. In addition, the Act increased the additional placard fee from $5 to $13, effective October 1, 2009.

The act reduces the $15 fee for each placard the Registrar issues to a dealer that took effect July 1, 2009, to $2 and does not require any of the $2 fee to be deposited into the State Highway Safety Fund. The act also requires deputy registrars to transmit placard fees to the Registrar at the time and in the same manner as motor vehicle registration fees. These changes took effect when the Governor signed the act.

### Driver's license fees and disabled veterans

(R.C. 4507.23; Section 812.20)

Under continuing law, a disabled veteran who has a service-connected disability rated at 100% by the Veterans Administration (Department of Veterans Affairs) may apply to the Registrar of Motor Vehicles or a deputy registrar for the issuance to that veteran, without the payment of any fee, of any of the following items:

(1) A temporary instruction permit and examination;

(2) A new, renewal, or duplicate driver's or commercial driver's license;

(3) A motorcycle operator's endorsement;

(4) A motorized bicycle license or duplicate of such a license;

(5) Lamination of a driver's license, motorized bicycle license, or temporary instruction permit identification card.

These provisions were located in division (I) of Revised Code section 4507.23. The Transportation Appropriations Act of the 128th General Assembly imposed a late fee of $20 for the late issuance of a driver's license or motorcycle endorsement. This late fee was inserted into R.C. 4507.23 as division (H) of that section, and existing divisions (H) and (I) were redesignated in that act as divisions (I) and (J), respectively. Accordingly, a number of cross-references within R.C. 4507.23 to division "(I)" were changed to "(J)." All these changes took effect July 1, 2009.

The Transportation Appropriations Act failed, however, to change from "(I)" to "(J)" the internal cross-reference in the duplicate driver's license provision. Because this cross-reference was incorrect, it could have brought into question whether a disabled veteran who has a service-connected disability rated at 100% by the Department of Veterans Affairs still was exempt from having to pay the $7.50 fee for a duplicate driver's license on and after July 1, 2009. The act corrects the incorrect cross-reference, thus clarifying that a disabled veteran who has a service-connected disability rated at 100% by the Department of Veterans Affairs indeed remains exempt from having to pay the $7.50 fee for a duplicate driver's license, and made the clarification effective when the Governor signed the act.

## Certificates of accreditation and certificates of approval

(R.C. 4765.11, 4765.17, 4765.23, and 4765.30)

Under continuing law, the State Board of Emergency Medical Services issues certificates of accreditation and certificates of approval to applicants who meet the statutory requirements to receive such certificates. The former type of certificate enables the applicant to conduct an emergency medical services training program while the latter enables the applicant to conduct an emergency medical services continuing education program. The Board must grant or deny both types of certificates within 120 days of receipt of the application, and it may issue either such certificate on a provisional basis to an applicant who is of good reputation and is in substantial compliance with the applicable requirements. The act permits the Board not only to issue either type of certificate on a provisional basis but also to renew both types on a provisional basis.

Prior law generally provided that a certificate of accreditation or certificate of approval was valid for three years and could be renewed by the Board pursuant to procedures established in rules the Board had adopted. The act provides that both

types of certificates are valid for up to five years and may be renewed by the Board pursuant to procedures and standards established in the Board's rules.

Under prior law, a certificate of accreditation or certificate of approval that was issued on a provisional basis was valid for one year and could not be renewed by the Board. The act provides that if either type of certificate is issued on a provisional basis, it is valid for the length of time the Board establishes.

Prior law provided that a certificate of accreditation was valid only for the emergency medical services training program for which it was issued, and the operator of an accredited or approved program could offer courses from the program at more than one location. The act provides that a certificate of accreditation is valid only for the emergency medical services training program or programs for which it is issued. The act also provides that the holder of a certificate of accreditation may apply to operate additional training programs in accordance with rules the Board may adopt. Any additional training programs expire on the expiration date of the applicant's current certificate. The holder of a certificate of accreditation or certificate of approval may offer courses at more than one location in accordance with rules adopted by the Board.

Under prior law, the Board also issued to qualified applicants certificates to teach in an emergency medical services training program or an emergency medical services continuing education program. Such a certificate was valid for two years and could be renewed by the Board pursuant to procedures established in the Board's rules. The act provides that a certificate to teach must have a certification cycle established by the Board and may be renewed by the Board pursuant to the Board's rules.

Similarly, prior law provided that a certificate to practice as a first responder (emergency medical technician or paramedic) was valid for three years and could be renewed by the Board pursuant to procedures established in the Board's rules. Not later than 60 days prior to the expiration date of an individual's certificate to practice, the Board was required to notify the individual of the scheduled expiration and furnish the individual with a renewal application.

The act provides that a certificate to practice as a first responder must have a certification cycle established by the Board and may be renewed by the Board pursuant to the Board's rules. The act also eliminates the requirement that the Board furnish such a certificate holder with a renewal application.

Consistent with these provisions, the act requires the Board to adopt rules establishing certification cycles for certificates to teach in an emergency medical services training program or an emergency medical services continuing education program, as

well as for certificates that are issued to first responders and to those who teach in fire service training programs.

### "Combat infantryman badge" license plate

(R.C. 4503.548)

Under the act, any person who was awarded the combat infantryman badge may apply to the Registrar of Motor Vehicles for the registration of any passenger car, noncommercial motor vehicle, recreational vehicle, or other vehicle of a class approved by the Registrar of Motor Vehicles that the person owns or leases. The application must be accompanied by such documentary evidence in support of the award of the combat infantryman badge as the Registrar may require by rule, and may be combined with a request for a special reserved license plate provided in continuing law.

Upon receipt of the completed application and the required taxes and fees, compliance with the act's requirements, and presentation by the applicant of the required supporting evidence of the award of the combat infantryman badge, the Registrar is required to issue to the applicant the appropriate vehicle registration and a set of license plates with a validation sticker, or a validation sticker alone when required by continuing law.

In addition to the letters and numbers ordinarily inscribed on license plates, license plates issued to persons who were awarded the combat infantryman badge must be inscribed with the words "combat infantryman badge" and a reproduction of the combat infantryman badge. License plates must bear county identification stickers that identify the county of registration by name or number.

Combat infantryman badge license plates and validation stickers are to be issued upon payment of the regular taxes prescribed in continuing law, any applicable local motor vehicle tax, and the applicant's compliance with all other applicable laws relating to the registration of motor vehicles. If the application for the license plate is combined with a request for a special reserved license plate provided in continuing law, the applicant must also pay the applicable additional special reserved license plate fee.

The act prohibits any person who is not a recipient of the combat infantryman badge from willfully and falsely representing that the person is a recipient of the combat infantryman badge for the purpose of obtaining the license plate the act creates. The act also prohibits any person from owning a motor vehicle bearing the license plate the act creates unless the person is eligible to be issued the license plate.

Under continuing law, certain enumerated special license plates and generally all special license plates created since August 21, 1997, are subject to a minimum

registration requirement and to termination and revival procedures. Specifically, the Registrar is not required to implement any legislation that creates a new license plate until the Registrar receives written statements from at least 500 persons indicating that they intend to apply for and obtain the special license plate. (R.C. 4503.78, not in the act.) If, during any calendar year, the total number of new and renewal motor vehicle registrations involving such a special license plate totals less than 500, the issuance of that special license plate may cease as of December 31 of the following year. A special license plate whose issuance is so ended may be revived if certain conditions are met. (R.C. 4503.77, not in the act.)

The act exempts combat infantryman badge license plates from both the minimum registration requirement and the termination and revival procedures. This is consistent with the law's treatment of the military-related special license plates that existed at the time of enactment of the special license plate minimum requirement and the military-related special license plates that have been created since the enactment of those provisions.

### Angle parking on state routes within municipal corporations (VETOED)

(R.C. 4511.69)

Continuing law permits local authorities, by ordinance, to permit angle parking on any roadway under their jurisdiction, except that angle parking is not permitted on a state route within a municipal corporation unless an unoccupied roadway of at least 25 feet is available for free-moving traffic. The Governor vetoed a provision that would have made this 25-foot angle parking restriction subject to the following: on and after the act's general effective date, no angled parking space that is located on a state route within a municipal corporation would be subject to elimination, irrespective of whether there is or is not at least 25 feet of unoccupied roadway width available for free-moving traffic at the location of that angled parking space, unless the municipal corporation approved the elimination of the angled parking space. Replacement, repainting, or any other repair performed by or on behalf of the municipal corporation of the lines that indicate the angled parking space would not have constituted an intent by the municipal corporation to eliminate the angled parking space.

## PUBLIC UTILITIES COMMISSION (PUC)

- Declares that if a shipment of a highway route controlled quantity of certain radioactive materials that is subject to certain notification requirements has been the subject of a United States Department of Transportation Level VI inspection and has passed the inspection, the shipment is not otherwise subject to inspection by state

officials unless such inspection is determined to be necessary by the state; would have declared that the shipment also was not subject to inspection by local officials; would have provided that a state or local inspection had to be determined to be necessary by the State Highway Patrol; requires the Public Utilities Commission to establish procedures for the reduction of the fee governing such shipments to incorporate police escort services only; and provides that the procedures must require the payment of the fee only after the police escort has been completed (PARTIALLY VETOED).

## Radioactive shipment inspections (PARTIALLY VETOED)

(R.C. 4905.801)

Am. Sub. H.B. 2 of the 128th General Assembly, the transportation budget bill, included provisions requiring a person shipping certain radioactive material within, into, or through Ohio to provide the Emergency Management Agency with notice of the shipment and to pay the Public Utilities Commission a fee for each shipment of $2,500 for each shipment by motor carrier and $4,500 per cask plus $3,000 for each additional cask shipped by rail by the same entity in the same shipment.

The act declares that if a shipment of a highway route controlled quantity of radioactive material that is subject to the above notification requirements has been the subject of a United States Department of Transportation Level VI inspection and has passed the inspection, the shipment is not otherwise subject to inspection. The act declares that the shipment is not subject to inspection by state or local officials; however, the Governor vetoed the provision declaring that the shipment is not subject to inspection by local officials. The act further would have provided that such a shipment could be inspected if the inspection was determined to be necessary by the State Highway Patrol. However, the Governor vetoed the reference to the Highway Patrol, and, thus, the shipment may be inspected only if the inspection is determined to be necessary by the state. Under the act, the Public Utilities Commission must establish procedures for the reduction of the fee governing such shipments to incorporate police escort services only. The act provides that the procedures must require the payment of the fee only after the police escort has been completed.

# BOARD OF REGENTS (BOR)

## Ohio College Opportunity Grants (OCOG)

- Eliminates statutory grant tables and establishes statutory guidelines for determining grant amounts for the Ohio College Opportunity Grant (OCOG) Program.
- For fiscal years 2010 and 2011, disqualifies students of for-profit institutions from receiving OCOG grants.
- For fiscal years 2010 and 2011, requires the Chancellor of the Board of Regents to devise "at-risk" and "academic performance" components for determining OCOG eligibility, if the appropriated funds are insufficient to distribute grants to all eligible students.
- For fiscal years 2010 and 2011, requires OCOG-eligible institutions of higher education to collect "at-risk" and "performance" data on eligible students, report that information to the Chancellor, and make recommendations on students considered most "at-risk."
- For fiscal years 2010 and 2011, allows (and may actually require) the Chancellor to require institutions of higher education to provide matching funds for students receiving OCOG awards.
- For fiscal years 2010 and 2011, requires the Chancellor first to subtract prior year's OCOG and OIG obligations, and allows the Chancellor also to subtract funds for renewals of Ohio Academic Scholarships, from the OCOG appropriation before distributing OCOG awards.
- For fiscal years 2010 and 2011, prohibits the Chancellor from obligating or committing to be distributed an amount greater than that which is appropriated for OCOG.

## Other student aid programs

- Repeals the Student Choice Program, which provided grants to Ohio resident undergraduates at nonprofit private institutions.
- Specifies that the criteria the Chancellor uses in awarding grants under the Choose Ohio First Scholarship program include the extent to which a grant proposal will increase the number of women participating in the program.

- Allows the Chancellor to authorize institutions of higher education to award Choose Ohio First Scholarships in amounts greater than the statutory maximum to (1) undergraduate students enrolled in a program leading to a teaching profession in science, technology, engineering, math, or medicine (STEMM), or (2) graduate students in STEMM fields or STEMM education.

- Eliminates the requirement that a private Ohio institution of higher education, in order to submit a proposal for Choose Ohio First Scholarships, must collaborate with a state university or college, and permits a private Ohio institution of higher education to submit a proposal for the Ohio Research Scholars Program.

- Requires that the Governor's designation of the single nonprofit education loan secondary market operation for Ohio be made annually and pursuant to competitive selection, and specifies that the current designation expires December 31, 2009.

- Changes allocation of 25% of the Nurse Education Assistance Fund from loans to students in prelicensure education programs for licensed practical nurses to loans to students in any nurse education programs, as determined by the Chancellor, and requires the Chancellor to give preference to programs aimed at increasing enrollment in an area of need.

### Institutions of higher education

- For fiscal years 2010 and 2011, limits the increase in in-state undergraduate instructional and general fees for state-assisted institutions of higher education to 3.5% over the previous year.

- Requires state institutions of higher education to charge in-state tuition and fees to nonresident students who are members of the Ohio National Guard and to their spouses and dependent children.

- Permits the board of trustees of a state university, university branch, state community college, community college, technical college, or the Northeastern Ohio Universities College of Medicine to adopt a policy providing for mandatory furloughs of employees, including faculty, to reduce institutional budget deficits.

- Removes the specific dates the board of trustees of Central State University must meet for regular session. (The Board must still meet at least twice a year.)

- Modifies the law that permits Rio Grande Community College to contract with the University of Rio Grande for operation of the community college.

- Defines the "University System of Ohio" as the collective group of state institutions of higher education, and "member of the University System of Ohio" as any individual state institution of higher education.

- Replaces the "course applicability system" with an information system the Chancellor selects, contracts for, or develops to assist and advise transfer students at state institutions of higher education.

### Eastern Gateway Community College

- Adds Columbiana, Mahoning, and Trumbull counties to the Jefferson County Community College District to create a new four-county Eastern Gateway Community College District.

- Abolishes the Jefferson County Community College board of trustees and establishes an 11-member board of trustees composed of residents of the four-county territory appointed entirely by the Governor with the advice and consent of the Senate.

### Entrepreneurial projects

- Declares it is the public policy of the state for state institutions of higher education to facilitate and assist with establishing and developing entrepreneurial projects to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the state pursuant to Section 13 of Article VIII of the Ohio Constitution and determines that entrepreneurial projects qualify as property, structures, equipment, and facilities under that constitutional provision.

- Authorizes board of a state institution of higher education to (1) enter into an agreement to develop entrepreneurial projects, (2) acquire stock or other ownership in entrepreneurial projects or related legal entities, or (3) make or guarantee loans and borrow money and issue bonds, notes, or other evidence of indebtedness to provide money for entrepreneurial projects.

- Requires that the bond proceeding law governing the issuance of bonds, notes, and other obligations by a state institution of higher education for housing and dining facilities, auxiliary facilities, or education facilities also govern bonds, notes, and other evidence of indebtedness issued by a state institution of higher education for entrepreneurial projects.

## Bond intercept program

- Permits the board of any community college district, state community college district, or technical college district, when issuing bonds or other obligations, to enter into an intercept agreement with the Chancellor that would authorize the Chancellor, in the event debt service payments on the obligations are not made in full and on time, to withhold state funds otherwise due the district and use those funds to make the debt service payments.

- Authorizes the Ohio Building Authority to issue revenue obligations on behalf of a community or technical college district if the board of trustees of that district has entered into an intercept agreement with the Chancellor.

## Water and energy conservation measures

- Either through competitive bidding or requests for proposals, authorizes state universities, the Northeastern Ohio Universities College of Medicine, and community colleges, state community colleges, university branches, and technical colleges to implement water conservation measures in their buildings and on surrounding grounds, and authorizes the Director of Administrative Services to implement such measures at the institution's request pursuant to competitive bidding or an RFP.

- Revises the laws governing implementation and financing of energy conservation measures at public institutions of higher education.

## Ohio College Opportunity Grants (OCOG)

(R.C. 3333.122; Section 371.50.50)

The act modifies the Ohio College Opportunity Grant (OCOG) Program, which is a state program of needs-based assistance to Ohio residents in nursing degree and undergraduate programs. The changes are two-fold: (1) amendments to the permanent, codified law authorizing and governing OCOG and (2) uncodified requirements pre-empting much of the codified law for fiscal years 2010 and 2011.

### Fiscal years 2010 and 2011

(Section 371.50.50)

For fiscal years 2010 and 2011, the act (1) excludes students of for-profit institutions, limiting eligibility to students of public and private, nonprofit institutions,

(2) requires the Chancellor of the Board of Regents to specify eligibility award criteria if the Chancellor determines that the funds appropriated for OCOG are insufficient to distribute grants to all eligible students, (3) authorizes (and may require) the Chancellor to impose matching fund requirements on higher education institutions, and (4) authorizes disbursements of OCOG appropriations to programs other than OCOG.

#### Eligibility and award criteria

If the Chancellor determines that the amounts appropriated for fiscal year 2010 or 2011 for OCOG are inadequate to make awards to all eligible students, the act requires the Chancellor to create a formula to distribute the available funds. The formula is subject to approval by the Controlling Board and must be established before the start of the 2010-2011 academic year. It must include an "at-risk component" and an "academic performance component" for determining distribution priority. The act defines "at-risk" as including first-generation college students, non-traditional aged adult students, graduates of low-achieving high schools, and any other factors the Chancellor may determine. The Chancellor may use the academic performance component (which the act does not define) to increase an award if a student does well on or completes a course for credit, or for any other academic performance factor determined by the Chancellor. The Chancellor, however, must determine which at-risk and performance components are most appropriate to apply to each type of institution (state college or university, community college, state community college, university branch, technical college, or private, nonprofit institution) and devise a formula for each type of institution based on the appropriate components.

Institutions that enroll OCOG-eligible students must collect at-risk and performance data for each eligible student and report that information to the Chancellor by a deadline set by the Chancellor. Each institution's report must include "a recommendation of eligible students considered most at-risk."

The Chancellor must establish award tables based on the Chancellor's formula and post them on the Board of Regents' web site. Further, the Chancellor must notify students and institutions of any reductions in awards under the act's provisions.

#### Matching funds

The act authorizes the Chancellor to require institutions to provide matching funds for students receiving OCOG grants. But after authorizing the Chancellor to do so, it then mandates that the Chancellor recommend a required match for each institution that takes into account the institution's capacity to meet the match. This recommendation must be included in the eligibility and award formula submitted to the Controlling Board. Whether the recommended match is subject to the Controlling

Board's approval may not be clear. The act is silent with respect to potential consequences for students if an institution fails to meet its required match.

#### Other uses of appropriation

Before determining OCOG awards, the act requires the Chancellor in fiscal year 2010 to use the OCOG appropriation to pay the prior year's Ohio College Opportunity Grant and Ohio Instructional Grant obligations. The act also permits the Chancellor to use OCOG funds to pay for renewals or partial renewals of Ohio Academic Scholarships for fiscal years 2010 and 2011.[360] To pay for prior year obligations and scholarships, the Chancellor must deduct funds proportionately from the two separate sectors allocated OCOG funds: (1) state institutions of higher education[361] and (2) eligible private nonprofit institutions of higher education. In other words, if state institutions of higher education were allocated 60% of the total OCOG appropriation, 60% of the funds used to pay for prior year's obligations and scholarship renewals would come from the funds allocated to state institutions of higher education.

The act expressly prohibits the Chancellor from distributing, obligating, or committing to be distributed an amount greater than what is actually appropriated for OCOG.

### Codified provisions

(R.C. 3333.12)

The act's revisions to the codified OCOG law apply in fiscal years 2010 and 2011 to the extent not pre-empted by the uncodified measure described above. The revised codified law would apply in full after fiscal year 2011, unless pre-empted again by future legislation.

#### Eligible students

Under the modified codified law, eligible students are Ohio residents enrolled in undergraduate or nursing diploma programs at any (1) state-assisted, accredited institution of higher education in Ohio that meets federal Title VI nondiscrimination requirements, (2) nonprofit private institution with a certificate of authorization from the Board of Regents, or (3) for-profit private institution registered with, or exempt from regulation by, the Board of Career Colleges and Schools, but holding a certificate of

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[360] The Ohio Academic Scholarship Program awards renewable scholarships based on high academic achievement. (See R.C. 3333.21 and 3333.22, not in the act.)

[361] "State institution of higher education" includes state colleges and universities, community colleges, state community colleges, university branches, and technical colleges.

authorization from the Board of Regents. (However, students described in (3) are ineligible in fiscal years 2010 and 2011, which cover the 2009-2010 and 2010-2011 academic years; see above). Grants will continue to be awarded through the institution of enrollment, and the institution must still report to the Chancellor all students who received OCOG grants but are no longer eligible for all or part of the grants. The law continues to require refunding of grants made to ineligible students.

#### Grant awards

The act preserves the student need standard of a $2,190 expected family contribution (EFC), which is a measure of a family's financial strength based on the Free Application for Federal Student Aid (FAFSA) form. But it removes the statutory tables that previously specified award amounts based on particular EFC ranges. Instead, the act generally prohibits an OCOG grant from exceeding the "total state cost of attendance," as defined in rule by the Chancellor (an exception exists for foster youth, discussed in the next paragraph), and it establishes formulas for OCOG grant awards. That is, an OCOG grant must equal the student's remaining "state cost of attendance" at the student's school after the student's Pell Grant and EFC are applied to the instructional and general charges for the undergraduate program. But for students enrolled in a state university, the Northeastern Ohio Universities College of Medicine, or a university branch, the Chancellor may provide that the grant equals the *student's* remaining instructional and general charges for the undergraduate program after the student's Pell Grant and EFC are applied. But in no case may the grant for such a student exceed any maximum that the Chancellor may set by rule. The Chancellor may specify by rule the maximum grant amounts for a third semester or fourth quarter. The act preserves the limitation on receiving an OCOG grant for no more than ten semesters, fifteen quarters, or the equivalent of five academic years.

The act makes one exception to the prohibition that an OCOG grant may not exceed the total state cost of attendance. If a student is enrolled in a two-year institution of higher education and is eligible for an Education and Training Voucher through the Ohio Education and Training Voucher Program that receives funding under the federal John H. Chafee Foster Care Independence Program, the OCOG grant may exceed the total state cost of attendance to additionally cover housing costs. To be eligible for an Education and Training Voucher, a student must be age 18, 19, or 20 at the time of first application; a U.S. citizen or qualified non-citizen; accepted into or enrolled in a degree, certificate, or other accredited program at a college, university, technical or vocational school; have less than $10,000 worth of personal assets; and must fall into at least one of the following categories: (1) the student was in foster care on the student's 18th birthday and aged out at that time, (2) the student's foster care case will be closed between the ages of 18 and 21, or (3) the student was adopted from foster care with adoption finalization after the student's 16th birthday.

Notwithstanding these statutory grant amount standards, if there is inadequate funding for any academic year, the Chancellor must either (1) give preference in the payment of grants based on EFC, beginning with the lowest EFC category and proceeding to the highest EFC category, (2) proportionately reduce each individual grant, or (3) use an alternate formula approved by the Controlling Board.

## Student Choice Grants

(Repealed R.C. 3333.27; conforming changes in R.C. 3315.37, 3333.04, 3333.28, 3333.38, and 3345.32)

The act abolishes the Student Choice Grant program. The program provided grants to full-time Ohio resident students enrolled in bachelor's degree programs at Ohio nonprofit private institutions. For 2008-2009 (fiscal year 2009), the program awarded each eligible student $310.

## Choose Ohio First Scholarships and Ohio Research Scholars programs

### Background

The Ohio Innovation Partnership is a multi-pronged grant program designed to attract students and scholars in the fields of science, technology, engineering, mathematics, and medicine (STEMM) to state universities and the Northeastern Ohio Universities College of Medicine (NEOUCOM). It comprises the Choose Ohio First Scholarship Program, the Ohio Research Scholars Program, and the Ohio Co-op/Internship Program.

Under the Choose Ohio First Scholarship Program, the Chancellor may award competitive grants to institutions of higher education to fund scholarships for qualified students. The scholarships are awarded to each participating student as a grant to the institution the student is attending and must be reflected on the student's tuition bill.

The Ohio Research Scholars Program awards grants to recruit scientists to college faculties. The grants must be deposited in new or existing endowment funds.

### Award criteria

(R.C. 3333.62)

Continuing law lists several criteria for the Chancellor to use in awarding Choose Ohio First grants to institutions. The act adds as a new criterion for the Chancellor to consider: the extent to which a proposal will increase the number of women participating in the Choose Ohio First Scholarship Program.

### Scholarship amounts

(R.C. 3333.66)

Under former law, no student could receive a Choose Ohio First scholarship in an amount more than half of the highest in-state undergraduate tuition charged by all state universities. The act however allows the Chancellor to authorize an institution of higher education to award a scholarship for more than that amount to either (1) an undergraduate student is enrolled in a program leading to a teaching profession in a STEMM field or (2) a graduate student in a STEMM field or STEMM education. (The act retains the stipulation that Choose Ohio First scholarships may be awarded to graduate students only as part of an initiative to recruit Ohio residents enrolled outside Ohio to return to Ohio to study in a STEMM field or STEMM education.)

### Participation of private institutions

(R.C. 3333.61)

Also under prior law, a nonpublic four-year Ohio institution of higher education could submit a proposal for Choose Ohio First scholarships if the proposal was a collaboration with a state university or NEOUCOM. The act eliminates this requirement and allows nonpublic institutions of higher education to submit proposals on their own. It also allows nonpublic institutions to submit proposals for a grant from the Ohio Research Scholars Program. As under continuing law, if the Chancellor awards a nonpublic institution scholarships or grants, the nonpublic institution must comply with all the rules and requirements that apply to public institutions.

## Nonprofit education loan secondary market operation

(R.C. 3351.07)

Federal law authorizes each state, as part of its educational loan efforts, to designate one nonprofit secondary market operation.[362] Ohio law authorizes the Governor to make that designation. Also under Ohio law, the designated nonprofit operation may be awarded state tax-exempt private activity bonds for issuance of student loan notes.[363]

The act stipulates that the Governor's designation in effect on the provision's effective date expires on December 31, 2009, and that designations after the effective date (1) must be made by competitive selection and (2) are valid for one year. The act

[362] 20 U.S.C. 1085(d).

[363] R.C. 133.021, not in the act.

prohibits the Controlling Board from waiving this requirement for competitive selection.

## Nurse Education Assistance Loan Program

(R.C. 3333.28)

Under prior law, between July 1, 2005, and January 1, 2012, the Chancellor was required to distribute funds in the Nurse Education Assistance Loan Program as follows:

(1) 50% of the funds as loans to registered nurses enrolled in post-licensure education programs;

(2) 25% as loans to students enrolled in prelicensure education programs for registered nurse education programs; and

(3) 25% as loans to students enrolled in prelicensure education programs for licensed practical nurses.

The act eliminates the specific allocation to prelicensure licensed practical nurse education programs in (3), and instead directs the Chancellor to allocate 25% of the funds as loans to students in any nurse education program the Chancellor determines. However, the Chancellor must give preference to "programs aimed at increasing enrollment in an area of need." Presumably, the Chancellor would determine the areas of need.

## Cap on undergraduate tuition increases

(Section 371.20.90)

For fiscal years 2010 and 2011 (the 2009-2010 and 2010-2011 academic years), the act requires the boards of trustees of state-assisted institutions of higher education to limit increases in in-state undergraduate instructional and general fees to 3.5% over what the institution charged the previous year. As in previous biennia when the General Assembly capped tuition increases, this 3.5% cap does not apply to increases required to comply with institutional covenants related to the institution's obligations or to meet unfunded legal mandates or legally binding obligations incurred or commitments made prior to the act's effective date, such as bond obligations. Further, the Chancellor may modify the limitations, with Controlling Board approval, to respond to exceptional circumstances as the Chancellor identifies.

### Resident tuition rates for members of the Ohio National Guard

(R.C. 3333.42)

The act requires state institutions of higher education to charge in-state tuition and fees to a nonresident student who is a member of the Ohio National Guard, or who is the spouse or dependent child of such a student.

### Employee furloughs at public colleges and universities

(Section 371.70.20)

The act authorizes the board of trustees of a state university, state community college, community college, technical college, or the Northeastern Ohio Universities College of Medicine and the managing authority of a university branch district to adopt a policy that provides for mandatory furloughs of employees to reduce spending due to institutional budget deficits. The act specifies that faculty may be furloughed.

### Central State University

(R.C. 3343.04)

Prior law required the board of trustees of Central State University to meet for regular session on the third Thursday in June and the first Thursday in November. The act removes the specific dates when the Board must meet. However, the Board must still meet at least twice a year for regular session.

### Rio Grande Community College

(R.C. 3354.26)

Rio Grande Community College is a public two-year institution of higher education, and the University of Rio Grande is a private nonprofit institution of higher education. The two institutions share facilities. Prior law permitted the boards of trustees of the community college and the university to enter into a contract providing for the university to operate the community college. In addition, the community college could have its president also serve as president of the university in accordance with the terms of the contract between the two institutions, but the salary, benefits, and other compensation paid to the joint president had to be the sole responsibility of the community college.

The act modifies the authority of the community college to contract with the university in several ways. First, it specifies that the community college board may enter into one or more contracts with the university for "any services for the operation

of the community college," except the services of a treasurer or other fiscal officer. Second, through those contracts, the community college "may acquire the services of the president of the university and other personnel," rather than have the community college president serve as the university president. Third, the community college board retains exclusive authority to employ and make personnel decisions regarding the college's treasurer or other fiscal officer and other employees whom the board determines are necessary. Finally, the community college board, by a majority vote of its membership, may terminate any contract with the university, if the community college board determines that the contract is no longer in the best interests of the college. Each contract must include a termination provision.

### University System of Ohio

(R.C. 3345.011)

The act formally defines the "University System of Ohio" and "member of the University System of Ohio" within the Revised Code. The "University System of Ohio" is defined as the collective group of all state institutions of higher education. Under continuing law, "state institution of higher education" includes all state universities,[364] the Northeastern Ohio Universities College of Medicine, community colleges, state community colleges, university branches, and technical colleges. The act defines a "member of the University System of Ohio" as any individual institution listed above.

### College transfer policies

(R.C. 3333.16)

Under prior law, all state institutions of higher education were required to fully implement the "course applicability system" (CAS) to assist and advise transfer students. The act removes the specific reference to the course applicability system, and instead requires all state institutions to fully implement "the information system for advising and transferring selected by, contracted for, or developed by the Chancellor."

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[364] University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, The Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University.

## Eastern Gateway Community College District

(R.C. 3354.24; Section 515.10)

The act adds Columbiana, Mahoning, and Trumbull counties to the Jefferson County Community College District to form a new four-county district renamed the Eastern Gateway Community College District. The new district is to be governed by a new board of trustees composed of residents of the four-county territory. The powers, duties, obligations, liabilities, employees, and property of the board of trustees of the Jefferson County Community College District will be assigned to the board of trustees of the Eastern Gateway Community College District.

### Taxes and bonds

Under continuing law, community college districts may seek voter approval of property tax levies. According to the Jefferson County Auditor's office, the Jefferson County Community College District currently levies a tax of 1 mill per dollar. The act would divide the Eastern Gateway Community College District into two taxing subdistricts, with Jefferson County constituting one subdistrict and Columbiana, Mahoning, and Trumbull counties (CMT) constituting the other subdistrict. The new board of trustees may levy separate taxes in each subdistrict with the approval of the voters in that subdistrict. Each subdistrict's tax revenue must be used for the benefit of its residents only. Revenue from each subdistrict's tax may be used for students attending Eastern Gateway Community College but residing in the respective subdistrict territory. The revenue may be spent for student tuition subsidies and student scholarships, and for instructional facilities, equipment, and support services within the respective subdistrict. Revenue also may be used for any other voter-approved purpose. Taxes from each subdistrict must be deposited into separate funds from all other district revenues and budgeted separately.

The new board of trustees may issue bonds to finance buildings and other facilities under the continuing bond issuance authority, but may limit the issuance (and the associated tax) to one of the subdistricts. If the issuance is so limited, the board may limit use of the bond-financed facilities to the residents of that subdistrict.

### Tuition for Columbiana, Mahoning, and Trumbull county residents

Until a community college tax is levied in the CMT subdistrict, residents of that subdistrict must continue to be charged higher tuition than Jefferson County residents, in an amount equal to the tuition charged other Ohio residents who live outside Jefferson County. After a tax is approved in the CMT subdistrict, the board of trustees may use the revenues to subsidize tuition for CMT subdistrict residents and reduce their tuition rates.

### Trustees' voting powers

Until the CMT taxing subdistrict approves a tax levy that is equal to the tax levy of Jefferson County, the Jefferson County trustees have sole authority to vote on Jefferson County's tax levy, expenditure of revenue from that levy, and tax-subsidized tuition rates. Once the CMT subdistrict approves an equivalent levy, the restrictions on trustee voting power do not apply. For this purpose, an equivalent tax levy is one that is determined jointly by the county auditors of the four counties to satisfy either of the following:

(1) In the first tax year, the levy yields per-capita revenue equal to or exceeding the per-capita yield of community college taxes levied in Jefferson County; or

(2) In the first tax year, the levy is imposed at a millage rate that equals or exceeds the effective community college tax rate in Jefferson County.

### Board of trustees membership

The act abolishes the nine-member Jefferson County board of trustees and establishes an 11-member board of trustees to be appointed by the Governor with the advice and consent of the Senate.[365] Three trustees must be residents of Jefferson County, one appointed for a one-year term, one for a three-year term, and one for a five-year term. Initially, the Governor must select three of the Jefferson County trustees to continue to serve until their respective terms expire. The other eight trustees must be residents of Columbiana, Mahoning, or Trumbull counties. Terms of those trustees are as follows: one one-year term, two two-year terms, two three-year terms, two four-year terms, and one five-year term. Thereafter, each successor trustee will be appointed for a five-year term. If a vacancy occurs and at that time the Jefferson County tax has expired, or the Eastern Gateway Community College District has converted to a state community college (see below), the Governor may fill the vacancy with a resident of any of the four counties.

### Conversion to state community college

The act requires the new board of trustees of the four-county community college district to submit a proposal to the Chancellor to convert the district to a state community college if the Jefferson County tax expires and is not renewed, and the CMT taxing subdistrict does not levy a tax. If the Chancellor approves, the board must enter into a transition agreement with the Chancellor following statutory procedures and

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[365] For all other community college districts, appointment of trustees is split between the Governor and the county commissioners of the constituent counties. (R.C. 3354.05 and 3354.25, neither in the act.)

terms governing the conversion of a technical college into a state community college (R.C. 3358.05, not in the act).

## Entrepreneurial projects

(R.C. 3345.36 and 3345.12)

The act authorizes the board of trustees of each state institution of higher education to pursue methods of establishing and developing certain "entrepreneurial projects" generally for the purpose of improving the economy of the state.

The act defines "entrepreneurial project" as an effort to develop or commercialize technology through research or technology transfer or investment of 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 institution of higher education or by others.

### Purpose and methods of developing entrepreneurial projects

(R.C. 3345.36)

Section 13 of Article VIII of the Ohio Constitution provides a means to create or preserve jobs and employment opportunities and improve the economic welfare of the people of the state, by declaring it to be in the public interest and a proper public purpose to make or guarantee loans and to borrow money and issue bonds or other obligations to provide moneys for the acquisition, construction, enlargement, improvement, or equipment, of property, structures, equipment and facilities for industry commerce, distribution, and research. The Constitution permits the enactment of laws to carry out these purposes and to authorize the borrowing of money and the issuance of bonds or other obligations provided that tax moneys are not obligated or pledged for the payment of bonds or obligations issued or guarantees made pursuant to those laws.

The act declares that, pursuant to that provision of the Constitution, it is the public policy of the state for state institutions of higher education to facilitate and assist with establishing and developing entrepreneurial projects or to assist and cooperate with any governmental agency in achieving this purpose in order to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of Ohio. Under the act, an entrepreneurial project is determined to qualify as "property, structures, equipment, and facilities" described in Art. VIII, Sec. 13.

In pursuit of this stated public policy to create and preserve jobs and improve the state's economic welfare, the act authorizes a board of trustees of an institution of higher education to do any of the following by resolution:

(1) Enter into an agreement with persons and with governmental agencies to induce such persons to acquire, construct, reconstruct, rehabilitate, renovate, enlarge, improve, equip, furnish, or otherwise develop entrepreneurial projects;

(2) Acquire stock or other ownership in an entrepreneurial project or a legal entity formed in connection with a project; and

(3) Make or guarantee loans and borrow money and issue bonds, notes, or other evidence of indebtedness to provide moneys for the acquisition, construction, enlargement, improvement, equipment, maintenance, repair, or operation of entrepreneurial projects.

The act states that bonds, notes, or other evidence of indebtedness issued under this provision do not constitute debt for which the full faith and credit of the state or an instrumentality or political subdivision of the state may be pledged and moneys raised by taxation cannot be obligated or pledged for their repayment.

### Applicability of bond proceeding law to entrepreneurial projects

(R.C. 3345.12)

The act applies the law governing bonds, notes, and other obligations issued by state institutions of higher education for housing and dining facilities, auxiliary facilities, or education facilities to the bonds, notes, and other evidence of indebtedness issued for entrepreneurial projects. The act refers to these new obligations as "assurances" to fund the costs of entrepreneurial projects in order to distinguish them from the obligations described under the bond proceeding law.

## Community and Technical College Bond Intercept Program

(R.C. 152.09, 152.10, 152.12, 152.15, 3333.90, and 3345.12(C))

### Intercept agreements

Preexisting law authorizes the board of trustees of a community college district, state community college district, or technical college district to issue bonds or other obligations.[366] The act permits a board of trustees, in connection with an issuance of obligations, to adopt a resolution requesting the Chancellor to enter into an agreement

[366] See R.C. 3354.12, 3354.121, 3357.11, 3357.112, and 3358.10, not in the act.

with the district (and the primary paying agent or fiscal agent for the obligations) that provides for the withholding and deposit of funds otherwise due the district or the community or technical college it operates as its allocated state share of instruction, for the payment of bond service charges on the obligations.

Upon review of a request received from a community or technical college district, the Chancellor, with the advice and consent of the Director of Budget and Management (and the Ohio Building Authority, in cases in which the Authority will issue obligations), must approve the request if all of the following conditions are met:

(1) Approval of the request will enhance the marketability of the obligations for which the request is made;

(2) The Chancellor and the Office of Budget and Management (OBM) have no reason to believe the requesting district or the community or technical college it operates will be unable to pay when due the bond service charges on the obligations for which the request is made;

(3) Any other pertinent conditions established in rules adopted under this portion of the act (see below).

If the Chancellor approves the request, the Chancellor must enter into a written agreement with the district and the primary paying agent or fiscal agent for the obligations.[367] This intercept agreement is to provide for the withholding of funds for the payment of bond service charges on the obligations. The agreement may also include (1) provisions for certification by the district to the Chancellor, prior to the deadline for payment of the applicable bond service charges, whether the district and the community or technical college it operates are able to pay those bond service charges when due and (2) requirements that the district or the community or technical college it operates deposits amounts for the payment of those bond service charges with the primary paying agent or fiscal agent prior to the date on which the bond service charges are due to the owners or holders of the obligations.

In the event a district or the community or technical college it operates notifies the Chancellor that it will not be able to pay the bond service charges when they are due, or the paying agent or fiscal agent notifies the Chancellor that it has not timely received from a district or from the college it operates the full amount needed for payment of the bond service charges when due to the holders or owners of the obligations, the Chancellor must immediately contact the district or college and the

[367] The paying agent or fiscal agent cannot be an officer or employee of the district or the community or technical college it operates (R.C. 3333.90(G)).

paying agent or fiscal agent to confirm that the district and the college are not able to make the required payment by the date it is due. If the Chancellor so confirms, and the payment will not be made pursuant to a credit enhancement facility,[368] the Chancellor must promptly pay to the paying agent or fiscal agent the lesser of (1) the amount due for bond service charges or (2) the next periodic distribution scheduled to be made to the district or college as its allocated state share of instruction. If this amount is insufficient to pay the total amount then due the agent, the Chancellor must continue to pay to the agent from each periodic distribution thereafter the lesser of the remaining amount due the agent for bond service charges or the amount of the next periodic distribution scheduled to be made to the district or college as its allocated state share of instruction.

Any amount received by a paying agent or fiscal agent is to be applied only to the payment of bond service charges on the obligations of the district or college or to the reimbursement of the provider of a credit enhancement facility that has paid the bond service charges.

The Chancellor may make payments to paying agents or fiscal agents during any fiscal biennium of the state *only from and to the extent that* money is appropriated by the General Assembly for distribution during the biennium for the state share of instruction *and only to the extent that* a portion of the state share of instruction has been allocated to the community or technical college district or community or technical college.[369]

The act permits the Chancellor, with the advice and consent of OBM, to adopt reasonable rules for the implementation of the intercept program. The rules must include criteria for the evaluation and approval or denial of community or technical college district requests for withholding under the program.

### Issuance of bonds by the Ohio Building Authority

As part of this intercept program, the power of the Ohio Building Authority to issue revenue bonds under Article VIII, Section 2i of the Ohio Constitution is expanded. Specifically, the act permits the Authority to issue obligations on behalf of a community or technical college district if the issuance is subject to an intercept agreement.

The proceeds of the obligations are to be applied to the cost of community or technical college capital facilities. "Community or technical college capital facilities"

[368] For the definition of credit enhancement facility, see R.C. 133.01.

[369] Because ongoing law prohibits the use of money raised by taxation and state appropriations to secure obligations issued by institutions of higher education, the act makes an exception for obligations issued in conjunction with the intercept program (R.C. 3345.12(C)).

generally means auxiliary facilities, education facilities, and housing and dining facilities,[370] and includes site improvements, utilities, machinery, furnishings, and any separate or connected buildings, structures, improvements, sites, open space and green space areas, or equipment to be used in, or in connection with the operation or maintenance of, the facilities. The "cost of community or technical college capital facilities" includes the costs of acquiring, constructing, reconstructing, rehabilitating, remodeling, renovating, enlarging, improving, equipping, or furnishing the facilities (such as the cost of clearance and preparation of the site and of any land to be used in connection with the facilities, the cost of any indemnity and surety bonds and premiums on insurance, all related direct administrative expenses and allocable portions of direct costs of the Authority and of the college or district, cost of engineering, architectural services, design, plans, specifications and surveys, legal fees, fees and expenses of trustees, depositories, bond registrars, and paying agents for the obligations, cost of issuance of the obligations and expenses of financial advisers and consultants in connection with the issuance, and all other expenses necessary or incident to planning or determining feasibility or practicability with respect to the facilities.

The bond service charges, and all other payments required to be made by the trust agreement or indenture securing the obligations, are to be payable solely from available community or technical college receipts pledged to their payment. "Available community or technical college receipts" generally means all money received by a community or technical college or community or technical college district, including income, revenues, and receipts from the operation, ownership, or control of facilities, grants, gifts, donations, and pledges, receipts from fees and charges, the allocated state share of instruction, and the proceeds of the sale of obligations. The available community or technical college receipts pledged and thereafter received by the Authority are immediately subject to the lien of the pledge, which lien is binding against all parties having claims of any kind against the Authority. Every pledge may be extended to the benefit of the owners and holders of the obligations for the further securing of the payment of bond service charges.

The obligations may be issued at one time or from time to time, and each issue is to mature at the time the Authority determines, but not more than 40 years from the date of issue. The Authority must also determine the form of the obligations, fix their denominations, establish their interest rate or rates, and establish a place of payment of bond service charges. The act authorizes the Authority to issue obligations for the refunding of obligations previously issued by a community or technical college district to pay the costs of capital facilities.

[370] For a definition of those terms, see R.C. 3345.12.

Under ongoing law, obligations for the refunding of prior obligations may be issued by the Authority only for specified purposes. Formerly those purposes included "as an incident to providing funds for reconstructing, equipping, furnishing, improving, extending, or enlarging" any capital facility of the Authority. The act replaces that purpose with "to fund, or to refund any obligations issued to refund, capital facilities."[371]

### Obligations not a debt of the state

The act states that obligations issued by a community or technical college district or the Ohio Building Authority in conjunction with the intercept program do not constitute a debt or a pledge of the faith, credit, or taxing power of the state, and the holders or owners of the obligations have no right to have excises or taxes levied or appropriations made by the General Assembly for the payment of bond service charges on the obligations. It also states that the agreement for or the actual withholding and payment of money pursuant to an intercept agreement does not constitute the assumption by the state of any debt of a community or technical college district or community or technical college.

## Water and energy conservation measures

(R.C. 156.01 to 156.04 and 3345.61 to 3345.66)

Continuing law authorizes a state university, the Northeastern Ohio Universities College of Medicine, and any community college, state community college, university branch, or technical college to implement specified energy conservation measures in existing buildings to reduce their energy consumption and operating costs. To do so, the institution can issue notes to finance those measures and any attendant architectural and engineering consulting services.

In general, the act allows any such institution also to implement specified water conservation measures. It also authorizes the Director of Administrative Services to implement water conservation measures at such institutions. Additionally, the act makes certain changes in the authority of an institution or the Director to implement energy conservation measures. (The act does not (1) alter the Director's authority to implement energy conservation measures in other state buildings, or (2) allow the Director to implement water conservation measures in those other buildings.)

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[371] See R.C. 152.12(B)(2).

## Water conservation measures

### Allowable measures

Under the act, an institution can, in the manner of energy conservation measures, purchase, lease-purchase, lease with an option to buy, or make an installment purchase of water conservation measures to reduce water consumption in existing buildings or on surrounding grounds owned by the institution. To do so, the institution can issue notes to finance the measures and any attendant architectural and engineering consulting services. The act also authorizes the Director of Administrative Services to implement water conservation measures at an institution.

A "water conservation measure" includes any (1) water-conserving fixture, appliance, or equipment, or the substitution of a nonwater-using fixture, appliance, or equipment, (2) water-conserving, landscape irrigation equipment, (3) landscaping measure that reduces storm water runoff demand and capture and hold applied water and rainfall, including landscape contouring such as the use of a berm, swale, or terrace and including the use of a soil amendment, including compost, that increases the water-holding capacity of the soil, (4) rainwater harvesting equipment or equipment to make use of water collected as part of a storm water system installed for water quality control, (5) equipment for recycling or reuse of water originating on the premises or from another source, including treated, municipal effluent, (6) equipment needed to capture water for nonpotable uses from any nonconventional, alternate source, including air conditioning condensate or gray water, and (7) any other modification, installation, or remodeling approved by the institution's board of trustees as a water conservation measure.

### Contract for a report on measures

Similar to energy conservation measures, an institution, and the Director upon request of the institution, can contract with a water services company, architect, professional engineer, contractor, or other person experienced in the design and implementation of water conservation measures for a report containing an analysis, cost estimates, and recommendations pertaining to the implementation of measures meeting the act's standard.

### Allowable contracts

Contracts to implement one or more water conservation measures can include installment payment contracts or other types of contracts. The contract process for implementation of the measures for both an institution and the Director is similar insofar as proposals generally will be obtained through either competitive bidding or a request for proposal (RFP).

### Approval standards for contracts implementing measures

The act provides that an institution, when using an RFP process, must select the proposal that is most likely to result in the greatest savings when the proposal's cost is compared to the resultant water or wastewater cost savings, operating cost savings, or avoided capital costs. Too, an institution cannot award a water conservation installment payment or other contract pursuant to an RFP unless the contract's cost is not likely to exceed the amount of water or wastewater savings, operating cost savings, and avoided capital costs over not more than 15 years. Neither of those costs-versus-savings standards apply to a contract entered into by an institution pursuant to competitive bidding.

If the Director uses an RFP process, the Director must select one or more proposals that are most likely to result in the greatest water or wastewater savings, operating cost savings, and avoided capital costs created. As with energy conservation measures, the Director also must evaluate a proposal as to the availability of funds to pay for the water conservation measure or measures either with current appropriations or by financing through an installment payment contract.

Under the act, "avoided capital costs" is defined as a measured reduction in the cost of future equipment or other capital purchases resulting from implementation of one or more water conservation measures, when compared to an established baseline for previous such cost. "Operating cost savings" means a measured reduction in the cost of stipulated operation or maintenance created by the installation of new equipment or implementation of a new service, when compared with an established baseline for previous such stipulated costs. And, "water or wastewater cost savings" means a measured reduction in the cost of water consumption, wastewater production, or stipulated operation or maintenance resulting from implementation of one or more water conservation measures, when compared to an established baseline for previous such costs.

### Terms of contracts implementing measures

A water conservation installment payment contract entered into by an institution must require repayment on the following terms: (1) not less than one-fifteenth of the contract's costs will be paid within two years from the date of purchase, and (2) the remaining balance will be paid within 15 years from the date of purchase. The act establishes this same requirement for both water conservation installment payment and other contracts entered into by the Director.

A water conservation installment payment contract entered into by the Director is subject to additional restrictions. The contract must provide that all payments, except payments for repairs and obligations on termination of the contract prior to its

expiration, must be a stated percentage of the measure's calculated water or wastewater cost savings, operating costs, and avoided capital costs over a defined time period and must be made only to the extent that those savings and avoided costs are realized. Too, no such contract can require any additional capital investment or contribution of funds, other than funds available from state or federal grants, or a payment term longer than 15 years.

### Energy conservation measures

Under prior law, an institution could purchase, lease-purchase, lease with an option to buy, or make an installment purchase of energy conservation measures to reduce energy consumption, in existing buildings owned by the institution and could issue notes to do so. The Director could implement those measures at an institution. The act conforms prior law as needed to the new water conservation provisions of the act.

#### Contract for a report on measures

Under prior law, an institution or the Director could contract with a company, architect, professional engineer, contractor, or other person experienced in the design and implementation of energy conservation measures for a report containing an analysis, cost estimates, and recommendations regarding the implementation of energy conservation measures that would significantly reduce energy consumption and operating costs in a building owned by the institution. The act changes this standard to require the report to focus on measures that result in energy cost savings, operating cost savings, or avoided capital costs for the institution. The terms "operating cost savings" and "avoided capital costs" are defined for energy conservation measures similarly to the definitions applicable to water conservation measures, as described above. The act defines "energy cost savings" as a measured reduction in the cost of fuel, energy consumption, or stipulated operation or maintenance resulting from the implementation of one or more energy conservation measures when compared to an established baseline for previous such costs.

#### Contracts implementing measures

Under prior law, an energy conservation installment payment contract entered into by an institution had to require that (1) not less than one-tenth of the costs of the contract be paid within two years from the date of purchase, and (2) the remaining balance of the costs of the contract must be paid within ten years from the date of purchase or, in the case of a cogeneration system, within five years. The act changes these repayment requirements to mirror the requirements applicable to water conservation measures, so that not less than one-fifteenth of the contract costs for all types of energy conservation measures must be repaid within two years from the date

of purchase and so that the remaining balance of a contract must be paid within 15 years of the date of purchase.

Additionally, the act requires the Director to select one or more proposals for energy conservation measures most likely to result in the greatest energy savings, operating cost savings, and avoided capital costs created for implementation under an installment payment contract or other contract. It also requires that an energy conservation installment payment contract or other contract entered into by the Director contain the following terms: (1) not less than one-fifteenth of the contract's costs will be paid within two years from the date of purchase, and (2) the remaining balance will be paid within 15 years from the date of purchase.

An energy conservation installment payment contract entered into by the Director is subject to additional restrictions. The contract must provide, similar to prior law, that all payments, except payments for repairs and obligations on termination of the contract prior to its expiration, must be a stated percentage of the measure's calculated energy cost savings, operating costs, and avoided capital costs over a defined time period and must be made only to the extent that those savings and avoided costs are realized. Too, no such contract can require any additional capital investment or contribution of funds, other than funds available from state or federal grants, or a payment term longer than 15 years.

**Miscellaneous changes**

The act eliminates the distinction between cogeneration systems that are energy conservation measures and other energy conservation measures with respect to the repayment terms of installment payment contracts for such measures entered into by institutions or by the Director on their behalf. Under prior law, the repayment terms for cogeneration systems were five years, and for other energy conservation measures were ten years. The act changes them to 15 years. The act also changes the amount that must be paid in the first two years for installment payment contracts entered into by an institution from one-tenth to one-fifteenth.

The act additionally changes the limitations relating to the cost of the measures versus the savings likely to result from the measures. Under prior law, an institution or the Director could not contract for implementation of a cogeneration system as an energy conservation measure if the cost of the contract would likely exceed the cost savings over five years. With respect to all other conservation measures, the prior law period was ten years. The act eliminates the distinction between cogeneration systems and other types of energy conservation measures regarding the comparison of costs versus savings for institution-implemented measures with the result that the comparison relates to a 15-year period. With respect to the Director-implemented

measures, the act simply makes the cost-versus-savings contract limitation inapplicable to all energy savings measures for institutions.

## DEPARTMENT OF REHABILITATION AND CORRECTION (DRC)

- Would have permitted DRC to develop, oversee, and evaluate a two-year pilot project for the provision of comprehensive correctional health care services by private contractors to inmates of state correctional facilities (VETOED).
- Permits instead of requires DRC to develop and implement intensive program prisons for male and female prisoners and, if any such prison is established for male and female prisoners sentenced to a mandatory prison term for a third or fourth degree felony OVI offense, permits instead of requires DRC to contract for the private operation and management of the initial prison so established.
- Repeals the Revised Code section that: (1) banned in some state correctional institutions and restricted in all other state correctional institutions smoking and other tobacco-related activities, (2) imposed duties on DRC with respect to the restrictions, and (3) generally required DRC to provide smoking and tobacco usage cessation programs for prisoners.

### Pilot project for the contractual provision of health care services to inmates of state correctional facilities (VETOED)

(Section 375.20)

The act would have authorized the Department of Rehabilitation and Correction (DRC) to develop, oversee, and evaluate a pilot project for the provision of comprehensive correctional health care services through private correctional health care contractors to complement the current system for the provision of health care services to inmates of state correctional facilities. Comprehensive correctional health care services would have been medical, dental, and mental health care services comparable to those provided by DRC to inmates at and outside of state correctional facilities. If DRC were to develop the pilot project, it would have been required to develop and implement the pilot project by January 1, 2010, for a period of two years, and the pilot project would have been required to be conditioned upon a private contractor offering a minimum of 10% savings from DRC's projected costs for comprehensive correctional health care services during the period of the project. The cost comparison would have been

required to include all on-site and off-site healthcare costs, including all personnel, benefit, administrative, overhead, and transportation costs.

The act would have specified that, if DRC were to develop a pilot project, private correctional health care contractors would have been required to be selected through a request for proposal process. DRC would have been required to determine the method for requesting proposals, the form of the request-for-proposal, and criteria for the provision of comprehensive correctional health care services under the pilot project. DRC would have been required to determine the award of contracts based upon written criteria prepared by DRC.

A pilot project under the authorization would have been required to include a minimum of 20% of the current inmate population and be designed to include a representative sample of the inmate population in order to promote a realistic comparison of services and costs. DRC would have been required to control inmate participation in the pilot project based on current standard operating procedures and the need to maintain the representative sample of the inmate population. DRC would have been required to determine the locations for the pilot project and in making that determination must give consideration to the geographic proximity of medical facilities in order to promote economies of scale. The locations would have been required to include a representative sample of current facilities, the facilities' missions, and medical acuity. The mix of facilities would have been required to remain consistent throughout the pilot project in order to promote a realistic comparison of costs and services.

## Intensive program prisons

(R.C. 9.06, 5120.032, and 5120.033)

Formerly, DRC was required, no later than January 1, 1998, to develop and implement intensive program prisons for male and female prisoners other than prisoners in any category specified as being ineligible (generally, those who committed the most serious offenses). Preexisting law retained by the act specifies that the intensive program prisons must include institutions at which imprisonment consisting of a military style combination of discipline, physical training, and hard labor and substance abuse education, employment skills training, social skills training, and psychological treatment is provided and prisons that focus on educational achievement, vocational training, alcohol and other drug abuse treatment, community service and conservation work, and other intensive regimens or combinations of intensive regimens.

Formerly, DRC also was required, within 18 months after October 17, 1996, to develop and implement intensive program prisons for male and female prisoners

sentenced to a mandatory prison term for a third or fourth degree felony OVI offense. Preexisting law retained by the act specifies that prisoners in specified categories are ineligible (generally, those who committed the most serious offenses) and that the intensive program prisons must include prisons with the same focus as the prisons described in the preceding paragraph. Formerly, DRC was required to contract pursuant to R.C. 9.06 for the private operation and management of the required intensive program prison and was authorized to contract for the private operation and management of other intensive program prisons of this nature.

Preexisting law retained by the act provides procedures for determining whether a prisoner who is eligible to be placed in either type of intensive program prison may be so placed, generally authorizes the reduction of the stated prison term of a prisoner placed in an intensive program prison who successfully completes the period of the placement, and provides for an intermediate, transitional type of detention followed by a period of post-release control for a prisoner whose term is so reduced.

The act permits (instead of requires) DRC to develop and implement intensive program prisons under the provisions described in the two preceding paragraphs. If, under the act, DRC establishes any intensive program prison for prisoners sentenced for a third or fourth degree felony OVI offense, the act permits (instead of requires) DRC to contract for the private operation and management of the initial prison so established.

### Smoking and other tobacco-related activities in prisons

(R.C. 5145.32 (repealed))

The act repeals the Revised Code section (R.C. 5145.32) that: (1) banned in some state correctional institutions and restricted in all other state correctional institutions smoking and other tobacco-related activities, (2) imposed duties on DRC with respect to the restrictions, and (3) generally required DRC to provide smoking and tobacco usage cessation programs for prisoners.

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## REHABILITATION SERVICES COMMISSION (RSC)

- Provides that if the total of all funds from nonfederal sources to support the Rehabilitation Services Commission (RSC) does not comply with federal law or would cause the state to lose federal funding, RSC must solicit additional funds from, and enter into agreements with, private or public entities until the total funds available are sufficient for RSC to receive federal funding at the maximum amount possible.

- Specifies that services provided under an agreement between RSC and an entity providing the solicited additional funds must be provided by a person or government entity that meets accreditation standards established in rules adopted by RSC.

### Rehabilitation Services Commission funding

(R.C. 3304.16, 3304.181, and 3304.182)

The Rehabilitation Services Commission (RSC) is Ohio's designated agency providing vocational rehabilitation services under the federal Rehabilitation Act of 1973. While the majority of funds are provided through the federal government, a state is required to make expenditures that match the federal funds and meet maintenance of effort (MOE) requirements.[372] If a state fails to meet its MOE requirement, the state will not receive the entire amount of federal funding allotted to the state and may face penalties. A state may use local government and, if certain conditions are met, private funding in meeting MOE requirements.[373] Federal law provides that, if any state fails to meet its MOE or otherwise fails to make expenditures necessary to receive the state's entire federal vocational rehabilitation services allotment, other states may seek a reallotment of those funds to provide services.[374]

The act provides that, if the total of all funds available from nonfederal sources to support RSC's activities does not comply with the expenditure requirements of federal law, or would cause the state to lose an allotment of federal funds or a potential reallotment of federal funds, RSC is required to solicit additional funds from private or public entities. RSC must continue to solicit additional funds until the total funding available is sufficient for RSC to receive federal funds at the maximum amount and in the most advantageous proportion possible.[375]

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[372] 34 C.F.R. 361.60 and 361.62.

[373] 34 C.F.R. 361.60.

[374] 34 C.F.R. 361.65.

[375] RSC established the Pathways II Program in FY 2009. Under the program, RSC enters into contracts with local government agencies for the agencies to provide funds and services and draw down additional federal funding. (Legislative Service Commission, "LSC Redbook: Rehabilitation Services Commission," p. 10.)

When soliciting funds, the act requires RSC to enter into an agreement with the private or public entity providing the funds.[376] The agreement may permit RSC to receive a percentage, not greater than 13% of the total funds available under the agreement, for administration expenses. The agreement is to last for a minimum of six months. RSC is to notify the private or public entity at least three months before discontinuing an agreement and may discontinue an agreement only for good cause. The act requires that any services provided under an agreement be provided by a person or government entity that meets accreditation standards established by RSC in rules.

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## RETIREMENT (RET)

- Removes members of the Unemployment Compensation Advisory Council from the Public Employees Retirement System (PERS).
- Makes the preexisting requirement that a state institution or state employing unit establish a retirement incentive plan if it proposes to close or to lay off, within a six-month period, the lesser of 50 or 10% of its employees applicable only to actions taken before July 17, 2009.

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[376] Federal law places certain restrictions on a state's use of funds from private entities to meet the requirement to match the federal share of funds provided for vocational rehabilitation services. Specifically, 34 C.F.R. 361.60 provides that private funds may be used if the funds are earmarked for the following:

(1) Meeting in whole or in part the state's share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes;

(2) Particular geographic areas within the state for any purpose under the state rehabilitation services plan, in accordance with the following criteria: (a) before funds that are earmarked for a particular geographic area may be used as part of the non-federal share, the state must notify the federal government that the state cannot provide the full non-federal share without using these funds, (b) funds that are earmarked for a particular geographic area do not require a waiver of statewideness under federal law, and (c) all federal funds are used on a statewide basis, unless a waiver of statewideness is obtained;

(3) Any other purpose under the state plan. The expenditures must not benefit in any way the donor of the funds, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest. Federal law does not consider a donor's receipt from the state a grant, subgrant, or contract with such funds allotted to be a benefit if the grant, subgrant, or contract is awarded under the state's regular competitive procedures.

- Requires a state institution or state employing unit to establish a PERS retirement incentive plan if, on or after July 17, 2009, it proposes to close or to lay off, within a six-month period, the lesser of 350 or 40% of its employees.

- Exempts state employing units with 50 or fewer employees from establishing a PERS retirement incentive plan under the following circumstances: (1) prior to July 17, 2009, the employing unit proposed to close or lay off, within a six-month period, the lesser of 50 or 10% of its employees, or (2) on or after July 17, 2009, the employing unit proposed to close or lay off, within a six-month period, 40% of its employees.

- Provides that the employer contribution under the State Highway Patrol Retirement System (SHPRS) is to be 26.5% of members' salaries.

- Requires the Ohio Retirement Study Council to (1) annually review the adequacy of SHPRS employee and employer contribution rates and the contribution rates recommended in a report prepared by the SHPRS actuary for the upcoming year and (2) make recommendations to the General Assembly as necessary for the proper financing of SHPRS benefits.

- Provides for the confidentiality of certain records maintained by the Ohio Public Employees Deferred Compensation Board on an individual who is a participating employee or continuing member, including personal history records, medical records, and tax information.

- Specifies the circumstances under which otherwise confidential records may be released, such as pursuant to a court order or an administrative subpoena.

- Requires, when an individual becomes employed in a position paid by warrant of the Director of Budget and Management, that the individual's employer provide materials to the employee regarding the benefits of deferred compensation and to secure, in writing or by electronic means, the employee's acknowledgement form regarding the employee's desire to participate or not participate in the Deferred Compensation Program.

- Requires such an election to be filed with the program not later than 45 days after the employee's employment begins.

- Specifies that the Treasurer of State is the custodian of contributions into the Ohio Public Employees Deferred Compensation Receiving Account, but that the account is not part of the state treasury.

## Removal of Unemployment Compensation Advisory Council Members from the Public Employees Retirement System

(R.C. 145.012 and 4141.08; Section 309.50.30)

Under prior law, the members of the Unemployment Compensation Advisory Council were considered "public employees" for purposes of the Public Employees Retirement System law (R.C. Chapter 145.). The act removes the Council members from the definition of "public employee" under that law, thus removing these Council members from the Public Employees Retirement System (PERS). The act specifies that the intent of the General Assembly in removing these members is to provide that service as a member of the Council on or after the provision's effective date is not service as a public employee for purposes of the PERS law and that the General Assembly does not intend this removal to prohibit the use of such service for calculation of benefits under the PERS law for service prior to the provision's effective date.

Continuing law requires Council members to be paid $50 per day and actual and necessary expenses while engaged in the performance of their duties as Council members. The act specifies that the $50 per day is a "meeting stipend."

## PERS retirement incentive plans

(R.C. 145.298)

Prior law, partially changed by the act, required a state institution[377] or state employing unit[378] to establish a PERS retirement incentive plan if the institution or employing unit proposed to close or to lay off, within a six-month period, the lesser of 50 or 10% of its employees. Under a plan, the institution or employing unit purchases service credit for eligible PERS members in return for an agreement to retire within 90 days of receiving the credit. To be eligible to participate, a PERS member must be eligible to retire or be made eligible by the service credit purchased by the institution or employing unit. The plan must go into effect at the time the proposed closing is announced and is to remain in effect at least until the date of the closing.

The act establishes different requirements under which an institution or employing unit must establish a retirement incentive plan depending on the date the

[377] "State institution" means a state correctional facility, a state institution for the mentally ill, or a state institution for the care, treatment, and training of the mentally retarded. (R.C. 145.298(A).)

[378] "State employing unit" means any entity of the state including any department, agency, institution of higher education, board, bureau, commission, council, office, or administrative body or any part of such entity that is designated by the entity as an employing unit. (R.C. 145.297(A)(2).)

institution or employing unit proposes to close or to lay off employees. Under the act, the institution or employing unit continues to be required to establish a plan if, prior to July 17, 2009, it proposed to close or to lay off, within a six-month period, the lesser of 50 or 10% of its employees. The institution or unit must establish a plan if, on or after July 17, 2009, it proposes to close or to lay off, within a six-month period, the lesser of 350 or 40% of its employees. However, the act exempts state employing units with 50 or fewer employees from establishing a retirement incentive plan under the following circumstances: (1) prior to July 17, 2009, the employing unit proposed to close or lay off, within a six-month period, the lessor of 50 or 10% of its employees, or (2) on or after July 17, 2009, the employing unit proposes to close or lay off, within a six-month period, 40% of its employees.

### SHPRS contribution rates

(R.C. 5505.15 and 5505.152)

Continuing law requires public employers and their employees to contribute to one of five state retirement systems: the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), School Employees Retirement System (SERS), and State Highway Patrol Retirement System (SHPRS). SHPRS members must contribute to SHPRS an amount equal to 10% of their salaries. Under prior law, the employer (the State Highway Patrol) was required to contribute to SHPRS an amount equal to a "certain percentage" of members' salaries (not in statute, but was 25.5%).[379] The act requires the employer to contribute to SHPRS an amount equal to 26.5% of members' salaries.

The act requires the Ohio Retirement Study Council to do the following: (1) annually review the adequacy of SHPRS employee and employer contribution rates and the contribution rates recommended in a report prepared by the SHPRS actuary for the upcoming year and (2) make recommendations to the General Assembly as necessary for the proper financing of SHPRS benefits. The actuarial calculations used by the actuary are to be based on the entry age normal actuarial cost method,[380] and the adequacy of the contribution rates is to be reported on the basis of that method.

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[379] Continuing law provides that the SHPRS employer contribution must not be lower than 9% of members' salaries and not exceed three times the SHPRS member contribution (10%), which is 30% of members' salaries. (R.C. 5505.15(B).)

[380] "Entry age normal actuarial cost method" means an actuarial cost method under which the actuarial present value of the projected benefits of each individual included in the valuation is allocated on a level basis over the earnings or service of the individual between the entry age and the assumed exit age, with the portion of the actuarial present value that is allocated to the valuation year to be the normal cost and

## Deferred Compensation Program for public employees

### Access to records

(R.C. 148.05 and 3105.87)

Continuing law provides for the confidentiality of various records in the possession of the state retirement systems. This confidentiality did not formerly apply to the records maintained by the Ohio Public Employees Deferred Compensation Board. The act generally applies similar confidentiality provisions to the records maintained by the Board.

Under the act, records of the Board generally are open to public inspection, except that the following records are not open to public inspection without the written authorization of the individual concerned:

- Information pertaining to an individual's participant account;
- The individual's personal history record. An individual's "personal history record" means information maintained by the Board on an individual who is a participating employee or continuing member that includes the address, telephone number, social security number, record of contributions, records of benefits, correspondence with the Ohio public employees deferred compensation program, or other information the board determines to be confidential.

Additionally, all medical reports, records, and recommendations of a participating employee or a continuing member that are in the Board's possession are privileged. And, all tax information of a participating employee, continuing member, or former participant or member that is in the Board's possession is confidential to the extent that the information is confidential under the Tax Law or any other provision of the Revised Code.

Notwithstanding this general confidentiality, the Board may furnish information as follows:

- If a participating employee, continuing member, or former participant or member is subject to an order for restitution to the victim of a crime or is convicted of or pleads guilty to a charge of theft in office, or, on written request of a prosecutor, the Board must furnish to the prosecutor the

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the portion of the actuarial present value not provided for at the valuation date by the actuarial present value of future normal costs to be the actuarial accrued liability. (R.C. 5505.152(A).)

information requested from the individual's personal history record or participant account.

- Pursuant to a court or administrative order issued pursuant to the Child Support Law, the Board must furnish to a court or child support enforcement agency the required information.
- Pursuant to an administrative subpoena issued by a state agency, the Board must furnish the information required by the subpoena.
- The board must comply with orders issued by a court to provide information necessary to make an award of spousal support. The act authorizes a court to order the Board to provide information from a participant's personal history record to determine the amount of the award.

The act specifies that a statement that contains information obtained from the program's records that is signed by the executive director or the director's designee and to which the Board's official seal is affixed, or copies of the program's records to which the signature and seal are attached, must be received as true copies of the Board's records in any court or before any officer of the state.

### New employees

(R.C. 148.04)

The act establishes a process for new employees to be notified of their option to participate in the Deferred Compensation Program and for those employees to choose whether or not they wish to participate.

Whenever an individual becomes employed in a position paid by warrant of the Director of Budget and Management, the individual's employer must do both of the following at the time the employee completes the employee's initial employment paperwork: (1) provide to the employee informational materials regarding the benefits of long-term savings through deferred compensation, and (2) secure, in writing or by electronic means, the employee's acknowledgement form regarding the employee's desire to participate or not participate in a deferred compensation program offered by the Board. The Board must provide employers with the informational materials and the acknowledgement form.

An election regarding participation must be made in the manner and form as is prescribed by the Deferred Compensation Program and must be filed with the Program. The employer must forward each acknowledgement form to the Deferred

Compensation Program not later than 45 days after the date on which the employee's employment begins.

#### Miscellaneous changes

(R.C. 148.02 and 148.04)

The act specifies that the Ohio Public Employees Deferred Compensation Receiving Account is in the custody of the Treasurer of State, But is not part of the state treasury.

Prior law listed various options for possible investment of deferred funds, including life insurance, annuities, variable annuities, pooled investment funds managed by the Board, or other forms of investment approved by the Board. The act eliminates these specific types of investments and instead requires the Board to offer a program of deferred compensation, including a reasonable number of options to the employee for the investment of deferred funds.

Prior law required the state retirement system serving an eligible employee to serve as collection agent for compensation deferred by any of its members and to account for and deliver those amounts to the board. The act eliminates this requirement.

## SCHOOL FACILITIES COMMISSION (SFC)

- Extends until December 31, 2009, the deadline for a school district that was conditionally approved for a project under the Classroom Facilities Assistance Program (CFAP) in July 2008 to pass a levy to raise its share of the project cost.
- Reduces by 1% the local share of a CFAP project for a school district that passed a levy in fiscal year 2008 based on an estimated share that was 1% lower than the actual share required due to the district's percentile ranking on the finalized equity list.
- Would have revised the method for computing the percentile rankings of school districts that have relatively higher percentages of tangible personal property valuation (VETOED).
- Specifies that priority for assistance under CFAP for a school district participating in the Expedited Local Partnership Program is based on the district's percentile ranking on the equity list at the time it entered into its agreement for the Expedited Program.

- Changes the ½-mill maintenance levy requirement for a school district participating in the Accelerated Urban Program that has divided its project into separate segments so that levy must run for 23 years from the date the initial segment was undertaken, instead of 23 years after the last segment is undertaken.

- Permits the School Facilities Commission to approve a project under the Exceptional Needs Program in fiscal year 2010 for a school district that (1) initially applied for the program in fiscal year 2008 and (2) is ranked higher than 360 on the equity list for fiscal year 2009.

- Limits a school district's share of a classroom facilities project under the Extreme Environmental Contamination Program to 50% of the project cost.

- Authorizes the School Facilities Commission to make allocations and reallocations with respect to the national qualified school construction bond limitation.

- Specifies that any part of a school district income tax allocated for the project cost, debt service, or maintenance set-aside associated with a state-assisted classroom facilities project is not considered a "current expense" to be included in calculating a district's tuition rate for nonresident students or whether the district has met its obligation to levy at least 20 mills for operating expenses.

- Specifies that bonds issued by a joint vocational school district to pay for the district's share of the project cost, and that are payable from a property tax for general permanent improvements, are not counted toward the district's unvoted debt limit.

- Requires the Executive Director of the School Facilities Commission to advise the Superintendent of Public Instruction, upon request, of new demands upon and issues related to classroom facilities that may arise due to expenditure and reporting standards adopted by the Superintendent.

- Requires the Executive Director of the Commission to survey spaces included in state-assisted classroom facilities projects that are used for activities, services, and programs shared between schools and other public and private entities in their communities.

## Background: school facilities assistance programs

The Ohio School Facilities Commission administers several programs that provide state assistance to school districts and community schools in building

classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP) is designed to provide each 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 share of the total cost of the project, and its priority for funding, are based on the district's relative wealth, as indicated on an annual percentile ranking of all districts known as the "equity list." The lowest wealth 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. For most districts, the portion of the project cost paid by the district is equal to its percentile ranking. Besides raising its share of the cost of its project, generally through issuing bonds, each district must levy at least ½ mill for 23 years (or its equivalent, generated and set aside through other means) to pay for maintenance of the new facilities. The Commission also operates a number of other similar programs designed to meet the immediate or special needs of particular types of districts.

## Temporary extension of deadline to raise local share of a CFAP project

(Section 385.70)

A school district participating in CFAP ordinarily must pass a levy to raise its share of the project cost within one year after the School Facilities Commission certifies its conditional approval of the project. If the district fails to meet this deadline, the conditional approval lapses and the state funds encumbered for the project are released.[381]

The act grants a five-month extension for passing a levy to school districts undertaking CFAP projects conditionally approved by the Commission in July 2008. They have until December 31, 2009, to pass levies for their local shares before their project approval lapses and the state funds are released. With the extension, these districts will have an additional opportunity to seek passage of levies at the general election in November 2009.

## Adjustment of local share for certain CFAP projects

(Section 385.90)

Under continuing law, if a school district has a net gain in interdistrict open enrollment students equal to at least 10% of the district's formula ADM (average daily membership), the net gain is added to the district's "valuation per pupil" to determine its ranking on the equity list. This provision was enacted in Am. Sub. H.B. 119 of the 127th General Assembly (the main operating budget for the 2008-2009 biennium) and

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[381] R.C. 3318.05, not in the act. Nevertheless, when the district is able to raise its local share, it has first priority for state funding as those funds become available.

would have first affected funding determinations for school districts in fiscal year 2010. Subsequently, Am. Sub. H.B. 562 of the 127th General Assembly (the capital budget for the 2009-2010 capital biennium) applied the provision retroactively to funding determinations in fiscal year 2009.

The act adjusts the local share of a CFAP project for a school district that passed a levy to raise its portion of the project cost in fiscal year 2008 and then became eligible for the retroactive application of the open enrollment provision under H.B. 562, *if* the district based its levy amount on its projected share derived from a preliminary equity list and later was ranked one percentile higher on the finalized equity list, resulting in a 1% higher actual share. Since the district's levy amount may be insufficient to cover the higher share, the act directs the School Facilities Commission to reduce the district's share by 1% to equal the projected share from the preliminary equity list.

### Accounting for reductions in tangible personal property valuation (VETOED)

(R.C. 3318.011; Section 385.93)

The Governor vetoed a provision that would have changed the way the average adjusted valuation per pupil is computed for school districts with significant amounts of tangible personal property valuation that is not public utility personal property. Adjusted valuation per pupil, averaged over three years, is used in calculating the wealth percentiles of districts for the School Facilities Commission's programs.

The tax on tangible personal property that is not public utility personal property is being phased out; therefore, each district's tangible personal property tax valuation is declining over time. All other things being equal, this decline also reduces the district's total valuation per pupil, which for some districts will eventually lower the wealth percentile and increase the amount of state funding available for school facilities projects. But since the valuation is averaged over three years when calculating wealth percentiles, a sudden reduction in tangible personal property tax valuation from one year to the next may not affect a district's *average* adjusted valuation and its percentile ranking for some time thereafter.

The act would have addressed this delay by specifying that, if a school district's tangible personal property valuation minus its public utility personal property valuation made up 20% or more of its total taxable value for tax year 2005, then its three-year "average taxable value" used in determining the wealth percentiles must include only its real property and public utility personal property tax valuations, and not its other tangible personal property tax valuation. Since the Department of Education had already certified the equity list for fiscal year 2009 to determine funding

under the School Facilities Commission's programs for fiscal year 2010, the act also would have required the Department to calculate and certify a new, alternate equity list for use in fiscal year 2010 using the revised definition of "average taxable value."

## Priority for CFAP for Expedited Local Partnership districts

(R.C. 3318.36)

The Expedited Local Partnership Program allows school districts that have not yet been served under CFAP to spend local funds on a discrete part of their classroom facilities needs and then apply those expenditures toward their share of a district-wide project when they become eligible for CFAP. The local share of the CFAP project is generally based on the district's percentile ranking at the time it entered into an agreement under the Expedited Program, regardless of changes in that ranking before the district becomes eligible for CFAP. In other words, the district is able to "lock in" its project share at that time. However, under prior law, the district's priority for CFAP, or the time when it will be served under that program, continued to be based on the district's most recent percentile ranking.

The act locks in a school district's priority for CFAP in the same way it locks in its project share. Therefore, the district's percentile ranking at the time of its agreement under the Expedited Program will determine when it becomes eligible for CFAP. For example, a district ranked at the 63rd percentile when it enters the Expedited Program will be served under CFAP when the 63rd percentile becomes eligible, even if the district drops to the 65th percentile in the intervening period. This provision also works the other way. If a district moves into a lower percentile after entering the Expedited Program, it will not be eligible for CFAP until CFAP serves its original, higher percentile.

## Maintenance tax for Accelerated Urban districts

(R.C. 3318.061 and 3318.38; Section 385.30)

Another program operated by the Commission is the Accelerated Urban School Building Assistance Program, which provides CFAP funding for six urban districts with very large, long-term projects earlier than they would otherwise be served through CFAP based on their wealth percentiles. It serves Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo. Under this program, a district may divide its project into separate segments with the district share of each segment financed separately.

Under former law, the maintenance levy requirement for an Accelerated Urban district that has segmented its project ran for 23 years after the district's last segment is undertaken. The act changes this requirement to run for 23 years from the date the

*initial* segment was undertaken, as is required for all other districts undertaking CFAP projects.

### Eligibility for Exceptional Needs Program

(Section 385.85)

The Exceptional Needs School Facilities Assistance Program provides low-wealth and geographically large school districts with funding in advance of their district-wide CFAP projects to construct single buildings in order to address acute health and safety issues. A district that is reasonably expected to be eligible for CFAP within three fiscal years after its application for assistance under the Exceptional Needs Program is generally ineligible for the program.[382]

The act temporarily permits participation in the Exceptional Needs Program for certain school districts that otherwise would be disqualified due to their proximity to CFAP eligibility. Under the act, in fiscal year 2010 only, the School Facilities Commission may approve an Exceptional Needs project for a district that (1) initially applied for the program in fiscal year 2008 and (2) is ranked higher than 360 on the equity list for fiscal year 2009. Based on data available at the time this analysis was written, Greenville City School District in Darke County would become eligible for assistance under this provision.

### Local share under the Environmental Contamination Program

(Section 385.50)

The Extreme Environmental Contamination Program, which is a sub-program of the Exceptional Needs Program, provides state assistance to school districts for the relocation or replacement of a single facility damaged by extreme environmental contamination.[383] As required by the Exceptional Needs Program, a school district's share of a project to address a contaminated facility is equal to its percentile ranking on the equity list. However, the act caps a district's maximum share at 50%. Therefore, if a district with a ranking higher than the 50th percentile on the equity list participates in the program, it would pay just 50% of the project cost. The cap applies only to the Environmental Contamination Program. It does not affect a district's share of a later

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[382] R.C. 3318.37, not in the act. The only exception is for a district that entered into an agreement under the Expedited Local Partnership Program during the first two years of that program's existence and whose entire classroom facilities plan consists of one building for grades K to 12 (R.C. 3318.37(A)(2)).

[383] The program is established in uncodified law. It was first authorized in 1999 and has been renewed in each biennial budget act since.

project under any of the other classroom facilities assistance programs, including the Exceptional Needs Program.

Based on data available at the time this analysis was written, Three Rivers Local School District in Hamilton County would benefit from this provision, as it has a 95% local share and is eligible for participation in the program.

## Qualified school construction bond allocations

### Background--federal authorization

"Qualified school construction bonds" are authorized by the federal American Recovery and Reinvestment Act of 2009. Instead of paying interest, the bonds provide bond holders with federal tax credits. This reduces the bond issuers' cost of borrowing for school construction projects. The federal law provides for an allocation of the bonds to each state, plus separate allocations for large educational agencies (school districts). According to the School Facilities Commission's web site, Ohio's allocation is $267,112,000 in calendar year 2009 and should be about the same in calendar year 2010. The state's role is to authorize school districts to issue the bonds for public school projects within the state's allocation, based on assurances they meet federal criteria. Additional allocations totaling $151,671,000 for 2009 were made directly to Ohio's five largest urban districts.[384]

### The act

(R.C. 133.022)

The act states that in order to provide for the orderly and prompt issuance of school construction bonds, the School Facilities Commission, in consultation with the Director of Budget and Management, must (1) allocate Ohio's portion of the national limit on qualified school construction bonds among issuers authorized to issue the bonds, (2) establish procedures for making allocations, including those from any carryover of Ohio's portion, and (3) adopt guidelines to carry out the purposes of the act regarding the bonds. The act also provides that the Commission may accept, from any large local educational agency, the allocation received directly by that agency under federal law and reallocate it to any issuer or issuers authorized to issue obligations, including any such agency. The factors the Commission must consider when making allocations or reallocations include the interests of the state with regard to education and economic development and the need and ability of each issuer to issue obligations.

[384] www.osfc.state.oh.us/Programs/QualifiedSchoolConstructionBondsQSCB/tabid/156/Default.aspx, visited August 4, 2009.

Under the act, "qualified school construction bond" is defined as per federal law and means any bond (1) whose proceeds are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which the facility is to be constructed with part of the proceeds, (2) issued by a state or local government within the same jurisdiction as the school, and (3) designated by the issuer as a bond for purposes of the federal law. The "national limit" is defined as the limitation on the aggregate amount of qualified school construction bonds that may be issued by the states each calendar year under federal law. Finally, "large local educational agency" includes a local educational agency (school district) that is either among the 100 local educational agencies with the largest numbers of children age 5 through 17 from families living below the poverty level, or one of not more than 25 local educational agencies the U.S. Secretary of Education determines are in particular need of assistance based on various factors.

### Consideration of school district income tax levies allocated for school facilities projects

(R.C. 3317.021(D), 3317.0216(A), and 3317.08)

The law on school finance requires the Tax Commissioner annually to report the amount of a school district's income tax, if it has one, that is apportioned for the current expenses of the district. This information is used to set the amount of tuition that a district must charge nonresident students[385] and to determine whether a district has met its obligation to levy at least 20 mills for the current expenses of the district.[386] The act specifies that any part a school district income tax allocated for the project cost, debt service, or maintenance set-aside associated with a state-assisted classroom facilities project is not considered a "current expense" to be included in these calculations.

### JVSD funding source for OSFC-aided project

(R.C. 133.06 and 3318.44)

Continuing law authorizes joint vocational school districts to finance their portion of the cost of School Facilities Commission-aided projects by one or more of several revenue sources, including bonded indebtedness, permanent improvement tax levies, and locally donated contributions. They also may issue bonds payable from a tax levy for general permanent improvements if revenue from the levy may lawfully be

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[385] The tuition amount for a student who is a resident of Ohio but is not a resident of the school district is the per pupil amount of the district's taxes charged and payable (R.C. 3317.08).

[386] Each city, exempted village, and local school district must levy at least 20 mills of property tax for current expenses; however, the amount of a district's income tax that is for current expenses counts toward this requirement (R.C. 3306.01 and 3317.01).

used to pay general construction, renovation, repair, or maintenance expenses. The bond issuance does not have to be approved by voters if the revenue from the levy may lawfully be used for the purpose of paying the bond debt charges. The bonds are to be issued under the "uniform" public securities law codified as Chapter 133. of the Revised Code.

The act specifies that such bonds are not to be counted toward a joint vocational school district's unvoted debt limit if the district's board formally covenants to continue collecting the tax in sufficient amounts to pay the bonds (including associated financing costs), even if voters or the school board act to reduce the levy's rate. Under continuing law, school districts (presumably including joint vocational school districts) may incur indebtedness of up to 0.1% of its taxable property value without voter approval, subject to certain exceptions.

A similar provision already applies to other kinds of school districts.

## Advice on effect of new spending and reporting standards

(R.C. 3318.312)

The act requires the Executive Director of the School Facilities Commission to advise the Superintendent of Public Instruction, at the Superintendent's request, of the demands upon, and other issued related to, existing classroom facilities that may arise due to new operating standards specified in the Superintendent's rules for the expenditure and reporting of state operating funds paid to school districts. (Separately, the act requires the state Superintendent to adopt rules for expenditure and reporting of state operating funds paid to school districts under the act's evidence based funding model. See "**Rules for expenditure and reporting**" under "**DEPARTMENT OF EDUCATION**" above.)

## Survey of shared community spaces

(Section 385.40)

The act requires the Executive Director of the Commission to survey classroom facilities projects financed by the Commission, and compile descriptions of how spaces within those facilities are used for activities, services, and programs shared between schools and other public and private entities in their communities. The survey must identify and describe such spaces included in current or completed projects and recommend best practices for enhancing opportunities for including shared community spaces in future projects. The Executive Director must submit the survey and recommendations to the Commission by December 31, 2009.

## SECRETARY OF STATE (SOS)

- Designates voting machines, marking devices, and automatic tabulating equipment as state capital facilities for which the Ohio Building Authority is authorized to issue revenue obligations, and specifies that county boards of elections are state agencies having jurisdiction over those state capital facilities.

- Establishes the County Voting Machine Revolving Lease/Loan Fund to finance a portion of the acquisition cost of voting machines, marking devices, and automatic tabulating equipment by boards of county commissioners.

- Requires the Secretary of State to administer the County Voting Machine Revolving Lease/Loan Fund, to adopt rules for the lease program's implementation, and to approve purchases of voting machines, marking devices, and automatic tabulating equipment using moneys from the Fund.

- Specifies that voting machines, marking devices, and automatic tabulating equipment are to be leased by participating counties until all lease payments have been made, at which time ownership transfers to the counties.

- Establishes the Board of Elections Reimbursement and Education Fund in the state treasury, which is to be used by the Secretary of State to reimburse boards of elections for various purposes, including reimbursements for special elections to fill vacancies in Congress, and to provide training and educational programs for employees and members of boards of elections.

- Permits the fund to receive transfers of cash pursuant to Controlling Board action and also to receive revenues from fees, gifts, grants, donations, and other similar receipts.

- Establishes the Statewide Ballot Advertising Fund, which is to be used by the Secretary of State to pay advertising costs for required advertising of statewide ballot issues.

## Acquisition of voting machines, marking devices, and automatic tabulating equipment; County Voting Machine Revolving Lease/Loan Fund

(R.C. 111.26 and 152.33)

The act declares that it is a public purpose and function of the state to facilitate the conduct of elections by assisting boards of elections in acquiring voting machines, marking devices, and automatic tabulating equipment.

### Use of Ohio Building Authority bond proceeds for specified election equipment; designation of boards of elections as state agencies

The act designates voting machines, marking devices, and automatic tabulating equipment as capital facilities under the Ohio Building Authority Law. Capital facilities, as defined in the Building Authority Law, generally are buildings and other structures for housing branches and agencies of state government. Therefore, the act also declares both of the following: (1) that voting machines, marking devices, and automatic tabulating equipment financed under the act's provisions are capital facilities for the purpose of housing agencies of state government, their functions and equipment and (2) that boards of elections, due to their responsibilities related to the proper conduct of elections under state law, are state agencies having jurisdiction over those state capital facilities.

The act authorizes the Ohio Building Authority to issue revenue obligations under the Building Authority Law to pay all or part of the cost of voting machines, marking devices, and automatic tabulating equipment. A county acquires use of the voting machines, marking devices, and automatic tabulating equipment by lease from the Secretary of State, as described more completely below.

### County Voting Machine Revolving Lease/Loan Fund

The act creates the County Voting Machine Revolving Lease/Loan Fund in the state treasury. The fund consists of the net proceeds of obligations issued under the Building Authority Law to finance voting machines, marking devices, and automatic tabulating equipment, as needed to ensure sufficient moneys to support appropriations from the fund. Lease payments from counties acquiring voting machines, marking devices, and automatic tabulating equipment financed from the fund and interest earnings on the balance in the fund also must be credited to the fund. The fund also may receive any other authorized transfers of cash.

Moneys in the fund are required to be used for the purpose of acquiring a portion of the voting machines, marking devices, and automatic tabulating equipment used by a county, at the request of the applicable board of elections. Acquisitions made

under the act must provide not more than 50% of the estimated total cost of a board of county commissioners' purchase of voting machines, marking devices, and automatic tabulating equipment. Participation in the fund by a board of county commissioners must be voluntary.

The Secretary of State is required to administer the Fund in accordance with the act and must enter into any lease or other agreement with the Department of Administrative Services, the Ohio Building Authority, or any board of elections that is necessary or appropriate to accomplish the act's purposes.

#### County lease of voting equipment acquired through the fund

Counties must lease the voting machines, marking devices, and automatic tabulating equipment financed in part from the County Voting Machine Revolving Lease/Loan Fund from the Secretary of State, and may enter into any agreements required under the applicable bond proceedings. A county acquiring voting machines, marking devices, and automatic tabulating equipment through a lease from the fund is required to contribute to the cost of that equipment. As previously mentioned, acquisitions made under the act must provide not more than 50% of the estimated total cost of a board of county commissioners' purchase of voting machines, marking devices, and automatic tabulating equipment. All voting machines, marking devices, and automatic tabulating equipment purchased through the fund remain the property of the state until all payments under the applicable county lease have been made, at which time ownership transfers to the county. Costs associated with the maintenance, repair, and operation of the voting machines, marking devices, and automatic tabulating equipment purchased through the fund are the responsibility of the participating boards of elections and boards of county commissioners.

The voting machines, marking devices, and automatic tabulating equipment lease may obligate the counties, as state agencies using capital facilities, to operate the voting machines, marking devices, and automatic tabulating equipment for such period of time as may be specified by law and to pay such rent as the Secretary of State determines to be appropriate. Notwithstanding any other provision of the Revised Code to the contrary, any county may enter into such a lease, and any such lease is legally sufficient to obligate the county for the term stated in the lease.

Any such lease constitutes an agreement for the purpose of the Building Authority Law and is not indebtedness on behalf of the county. Any lease of voting machines, marking devices, or automatic tabulating equipment authorized by the act, the rentals of which are payable in whole or in part from appropriations made by the General Assembly, is governed by the rental provisions of the Building Authority Law.

The rentals constitute available receipts as defined in that law and may be pledged for the payment of bond service charges.

### Adoption of rules

The Secretary of State is required to adopt rules for the implementation of the voting machines, marking devices, and automatic tabulating equipment acquisition and revolving lease/loan program established under the act. The rules must require that the Secretary of State approve any acquisition of voting machines, marking devices, and automatic tabulating equipment using money made available under the act. An acquisition for any one board of county commissioners must not exceed $5 million, and must be made only for voting machines, marking devices, or automatic tabulating equipment purchased on or after March 31, 2008. Any costs incurred on or after January 1, 2008, may be considered as the county cost percentage for the purpose of an acquisition made through the act.

## Board of Elections Reimbursement and Education Fund

(R.C. 111.27)

The act establishes the Board of Elections Reimbursement and Education Fund in the state treasury. The fund is to receive transfers of cash pursuant to Controlling Board action and also is to receive revenues from fees, gifts, grants, donations, and other similar receipts. The Secretary of State is required to use the fund for both of the following:

(1) To reimburse boards of elections for various purposes, including reimbursements for special elections to fill vacancies in Congress; and

(2) To provide training and educational programs for employees and members of boards of elections.

## Statewide Ballot Advertising Fund

(R.C. 3501.17(G)(2))

The Ohio Constitution requires information regarding statewide ballot issues, including the arguments for and against those issues, to be published in newspapers of general circulation throughout the state. Under continuing law, appropriations made to the Controlling Board are used to reimburse the Secretary of State for all expenses the Secretary of State incurs for that advertising.

The act establishes the Statewide Ballot Advertising Fund in the state treasury. The fund receives transfers approved by the Controlling Board and must be used by the

Secretary of State to pay the costs of advertising statewide ballot issues. Any transfers may be requested from and approved by the Controlling Board prior to placing the required advertising, in order to facilitate the timely provision of the advertising.

## BOARD OF TAX APPEALS (BTA)

- Eliminates the requirement that all Board of Tax Appeals decisions be sent by certified mail and instead permits the Board to send its decisions by regular mail.
- Allows a person appealing to the Board to request that the Board's decision or order be sent by certified mail at the person's expense.

### Board of Tax Appeals notices

(R.C. 5705.341, 5705.37, 5715.251, 5717.03, and 5717.04)

The Board of Tax Appeals hears and determines appeals arising under Ohio's tax law, including appeals from actions of a county budget commission, appeals by a county auditor, appeals from decisions of a county board of revision, appeals from decisions of a municipal board of appeals, and appeals from final determinations by the tax commissioner.

Under prior law, the Board was required to send its decisions rendered on these appeals by certified mail.

The act eliminates the requirement that the Board send its decisions on appeals by certified mail. Instead, the Board must "send" its decisions, presumably by regular mail. However, the act allows a person appealing to the Board to request that the decision be sent by certified mail at the person's own expense.

## DEPARTMENT OF TAXATION (TAX)

### I. Property Tax

- Authorizes school districts levying current expense taxes with an aggregate residential/agricultural effective tax rate exceeding 20 mills to suspend future application of the "H.B. 920" tax reduction factor on 20 mills by converting the millage in excess of 20 mills, with voter approval, to a single levy to raise a specified amount of money.

- Requires the state to reimburse a school district levying a conversion tax for tax revenue lost from nonresidential/agricultural real property and public utility personal property due to the conversion.

- Phases out that reimbursement over 13 years or less in increments equal to 50% of the annual inflationary revenue growth from residential/agricultural property resulting from the suspension of the H.B. 920 reduction.

- Requires tangible personal property tax reimbursement for conversion levies to continue until the levy expires.

- Authorizes a conversion tax to be levied for a fixed period up to ten years or for a continuing period of time.

- Authorizes voters to repeal a conversion levy that originally was imposed for a continuing period of time, and terminates conversion levy reimbursement if the levy is repealed.

- Would have made permanent the levy loss reimbursement for local taxing units, including school districts, for the phase-out of taxes on business personal property and telecommunications property (VETOED).

- Individual tax levies that were in effect in 2004 or 2005 (and voted on before September 1, 2005) would have been reimbursed at 100% until their expiration (VETOED).

- Would have eliminated the phase-down of the existing reimbursement for property tax-related county fees, but retained the scheduled 2017 termination of that reimbursement (VETOED).

- Raises the fee for administering property taxes that the state excises from property tax distributions to local taxing units.

- Consolidates into one annual payment the semiannual state reimbursement of local governments for the 10% and 2.5% property tax reductions for manufactured and mobile homes.

- Requires the compensation paid to county auditors for additional expenses associated with the recent expansion of homestead exemption eligibility to be paid on a semi-annual, instead of annual, basis.

- Authorizes the exemption and remittance of taxes paid or abatement of unpaid taxes on airport property leased by a port authority that was precluded from exemption

because the port authority did not own the property, as required under prior law, at the time it submitted the application for exemption.

- Requires the rate of a tax levied to compensate a school district for reductions in state funding due to property value increases to reflect the declining charge-off rate effected by the act, from 2.3% to 2.0%.

## II. Sales and Excise Taxes

- Modifies the computation for determining the tax liability of a commercial or industrial purchaser electing to self-assess the Kilowatt Hour Tax, beginning January 1, 2011, from one based on both a per-kilowatt hour rate and a percentage of the price paid, to one based solely on a per-kilowatt hour rate.

- Includes Medicaid premiums received by insurance companies within the insurance companies' franchise tax base.

- Subjects to sales and use tax health care services provided or arranged by a Medicaid health-insuring corporation for Medicaid enrollees residing in Ohio.

- Specifies that the proposed extension of sales and use tax to Medicaid health insuring corporations is not among the taxes of which the franchise tax is in lieu.

- Increases annual licensing fees for tobacco product distribution licenses from $100 to $1,000 for each place of business, wholesale cigarette licenses from $200 to $1,000, and retail cigarette licenses from $30 to $125.

- Requires the $125 retail license fee and the $1,000 wholesale license fee to be paid for each place of business instead of for all places of business.

- Eliminates the authority of a wholesale or retail licensee to assign such a license to another person.

- Increases the retail license replacement fee from 50¢ to $5 and the transfer fee, from one place of business to another, for such licenses from $1 to $5.

- Increases the wholesale license replacement fee from 50¢ to $25 and the transfer fee, from one place of business to another, for such licenses from $1 to $25.

- Imposes a $25 fee to replace a tobacco product distribution license and to transfer such a license from one place of business to another place of business of the same licensee.

- Increases the percentage of wholesale cigarette license fees paid into the Cigarette Tax Enforcement Fund from 47.5% to 100% of the amount collected.

- Redistributes amounts collected from retail cigarette licenses as follows: 30% (decreased from 62.5%) to the municipal corporation or township where the business is located, 10% (decreased from 22.5%) to the county general fund, and 60% (increased from 15%) to the Cigarette Tax Enforcement Fund.

- Transfers from county auditors to the Tax Commissioner the responsibility for issuing wholesale cigarette licenses.

- Requires late cigarette license fees collected by county auditors to be sent to the Treasurer of State by the last day of the month following the month in which the money was collected, rather than by December 31.

- Specifies that the cigarette and tobacco product licensing provisions take effect January 1, 2010.

- Authorizes a convention facilities authority in a certain county to levy a lodging tax of up to 3% to finance the construction, operation, and maintenance of a convention, entertainment, or sports facility, subject to approval by the board of county commissioners and referendum petition.

- Extends to natural gas distributors with 70,000 or fewer customers the authority currently held by natural gas distributors with 50,000 or fewer customers to aggregate all of the natural gas distributed by the company in the state when determining the tax rate.

- Permits local authorities to modify the definition of which hotels are subject to local lodging taxes.

- Requires 100% of severance tax revenue from salt extraction to be used for the Geological Mapping Fund.

## III. Tax Credits

- Authorizes up to a total of $10 million of tax credits annually for insurance companies and financial institutions for purchasing and holding securities issued by low-income community development organizations to finance investments in qualified active low-income community businesses in Ohio, in accordance with the federal New Markets Tax Credit law.

- Increases the total amount of credits that may be issued for investments in small Ohio businesses engaged in research and development or technology development from $30 million to $45 million.

- Changes the basis of job retention tax credits from tax withholdings from employees filling full-time employment positions to withholdings from all employees.

- Expands job retention credit eligibility to foreign and domestic insurance companies.

- Reduces the minimum qualifying employment threshold to the equivalent of 500 full-time employees.

- Reduces the minimum qualifying investment threshold to $50 million over three years if the business activity at the project site is primarily manufacturing, or $20 million if the business activity consists significantly of corporate administrative functions.

- Relaxes the intrastate job relocation prohibition by permitting a business to relocate jobs to the project from another Ohio facility if the business notifies the local jurisdiction from which the positions will be removed.

- Limits the total credit that may be granted annually to $13 million for 2010; for each year thereafter until year 2024, increases the annual limit by $13 million per year; for 2024 and thereafter, the annual limit is $195 million.

- Changes the basis of job creation tax credits from tax withholdings from new full-time employees to annual aggregate tax withholdings from full- and part-time employees that exceed withholdings for a base year adjusted for an assumed rate of payroll growth attributable to pay increases.

- Requires a business to maintain operations at the project location for the greater of seven years, or the term of the credit plus three years, instead of twice the term of the tax credit.

- Relaxes the intrastate job relocation prohibition by permitting a business to relocate Ohio jobs to the project from another Ohio facility if the business notifies the local jurisdiction from which the positions will be removed.

- Authorizes the Director to request a complete or partial refund of job creation credits if the business does not maintain operations at the project site for the term of the credit or a period equal to the greater of seven years or the term of the credit plus three years.

- Authorizes a refundable, nontransferable credit against the corporation franchise tax or the income tax for motion pictures produced at least partly in Ohio, subject to approval by the Director of Development.

- Credit equals 25% of expenditures for goods and services purchased and consumed in Ohio directly for the production.

- Requires Ohio production expenditures to exceed $300,000 before a credit is authorized.

- Limits total motion picture credits allowed to $20 million per fiscal biennium ($30 million in FY 2010-2011), not more than $10 million of which may be allowed in the first year of a biennium, and $5 million per production.

- Creates the Motion Picture Tax Credit Program Operating Fund and authorizes fund money to be used for Ohio Film Office expenses and to pay the costs of administering the credit.

- Permits a pass-through entity claiming a historic preservation tax credit to allocate the credit among its owners in any proportions elected by the entity.

## IV. Commercial Activity Tax

- Requires the Tax Commissioner to notify a taxpayer by certified mail the first time the taxpayer bills or invoices another person for the taxpayer's commercial activity tax liability and requires the Commissioner to impose a $500 fine for each subsequent violation.

- Permits billing or invoicing of the tax when a lesser bills or invoices a lessee for the tax under a written lease agreement.

- Creates the Tax Reform System Implementation Fund to defray the costs of administering the Commercial Activity Tax and to implement tax reform measures.

- Permits a levy "substituted" for a school district emergency levy to be treated as a continuation of the emergency levy for purposes of state reimbursement for business personal property taxes from CAT revenue.

- Adds a new base exclusion for payroll deductions by an employer to reimburse the employer for advances made on an employee's behalf to a third party.

- Excludes from the CAT gross receipts base the proceeds from any insurance policy, not just life insurance, unless the insurance reimburses for business revenue losses.

- Narrows the CAT base exclusion for membership dues so that such dues are excluded only if they are for membership in a trade, professional, homeowners', or condominium association.

- Reorganizes certain CAT base exclusions regarding bad debts, discounts, returns, and accounts receivable.

- Recharacterizes charitable and public entities as "excluded persons" (i.e., nontaxpayers) instead of nonpersons.

- Eliminates the initial CAT registration fee exemption for new companies starting business after November 30 or generating more than $150,000 for the year but not before December 1.

- Permits companies that registered for or paid the CAT for 2005 or 2006 in error to have their registrations cancelled and their tax payment refunded.

- Permits groups of affiliated companies that have elected to be treated as a consolidated group to change the ownership test on which the initial election was made.

- Specifies that the $150,000 exemption from the CAT applies to members of a group of companies affiliated through majority ownership that do not elect to be treated as a consolidated group.

- Postpones the commercial activity tax annual return filing date from February 9 to May 10.

- Changes the quarterly return filing due date from the fortieth day after the quarter's end to the tenth day of the second month after the quarter's end.

## V. Income Taxes

- Changes the conditions under which taxpayers must pay a personal income tax assessment when they file a petition for reassessment, requiring payment only if the petition is not based on numerical computations or an assertion of lack of nexus with the state.

- Authorizes a school district to combine two or more expiring income tax levies into a single renewal levy.

- Authorizes only the City of Columbus and the municipal corporation of residence to levy an income tax on the income of the Chief Justice and the justices of the Ohio Supreme Court received as a result of services rendered as a justice.

- Authorizes only the municipal corporation of residence to levy a tax on the income of a judge sitting by assignment of the Chief Justice, or a judge of a district court of appeals sitting in multiple locations within the district, received as a result of services rendered as a judge.

## VI. Miscellaneous Tax Provisions

- Incorporates into Ohio's tax law changes made to federal tax law since December 30, 2008, and permits a taxpayer whose taxable year ends after that date, but before the effective date of the incorporated changes, to elect to apply federal law as it existed before that date.

- Revises procedural requirements governing how the Department of Taxation is to send notices to taxpayers, including procedures for when mail is returned undeliverable, and creates a presumption of constructive service.

- Permanently authorizes any county to use money in its Delinquent Tax and Assessment Collection (DTAC) Fund to fund residential mortgage foreclosure prevention efforts and to address foreclosure-related problems.

- Authorizes the Department of Taxation to disclose information to the Department of Job and Family Services, Industrial Commission, and Bureau of Workers' Compensation that is necessary to verify employer compliance with Ohio law administered by those agencies.

- Technical change to include the Department of Taxation as an entity authorized to determine how money in the Department of Taxation Enforcement Fund is to be used for the Department's law enforcement purposes.

## I. Property Tax

### School district conversion levies

(R.C. 5705.214, 5705.219, 5705.2110, 5705.29, 5751.20, and 5751.21)

The act authorizes the board of education of a city, local, or exempted village school district to convert existing current expense property tax millage in excess of 20 mills per dollar into a new "conversion" levy that raises a fixed amount of revenue. The conversion option applies to any school district in which the aggregate fixed-rate current expense effective tax rate for residential/agricultural real property ("Class I") is greater than 20 mills per dollar. The board of education may adopt the resolution

proposing the conversion on or after January 1, 2010, but before January 1, 2015. The conversion requires voter approval at a primary or general election.

The conversion is effected by repealing current expense effective millage in excess of 20 mills and re-levying some or all of that millage as a fixed-sum levy. This new conversion levy is for a fixed amount of money each year equal to the money that would be raised from the repealed millage re-levied if that millage were levied on all taxable property, including Class I real property, all other real property ("Class II"), and public utility tangible personal property.

A conversion levy could be levied permanently, or for a specified number of years up to ten years. A conversion levy originally imposed permanently may be reduced or repealed by voter initiative.

### H.B. 920 limitation and 20-mill floor

The effect of adopting a conversion levy is to reduce the current expense millage to the 20-mill threshold or "floor" at which the H.B. 920 tax limitation no longer operates. Under continuing law, when a school district's current expense millage is effectively raising no more than the equivalent of 2% of the taxable property value (i.e., 20 mills per dollar), the H.B. 920 tax reduction factors no longer prevent inflationary increases in property values from causing proportionate increases in tax revenue: the revenue raised equals 2% of whatever the taxable property value happens to be each year, including inflationary appreciation. (R.C. 319.301(E)(2); Article XII, Section 2a(D), Ohio Constitution.)

Some levies are not considered in determining whether a district's current expense millage equals or exceeds the 20-mill threshold even though the revenue may be used for current expenses: so-called "emergency" levies, "substitute" levies, "incremental" levies, and "charge-off" levies (R.C. 5705.194, 5705.199, 5705.213, and 5705.211, respectively). When one of more of these levies is in effect, total current expense millage can exceed 20 mills but the school district is considered to be levying only the minimum 20 mills for the purposes of the H.B. 920 limitation, and therefore revenue from the 20 mills is permitted to increase in response to property value appreciation.

Conversion levies also are not considered in determining whether a school district's current expense millage equals or exceeds 20 mills. Therefore, the conversion of existing levies, which are counted toward the 20-mill floor, into a single levy that is not counted, permits revenue from the unconverted 20 mills to begin increasing in pace with property value appreciation.

### Levy adoption procedure

(R.C. 5705.219)

If a school board adopts a conversion levy resolution, it must certify it to the Tax Commissioner. The Commissioner is required to certify to the board the amount of money the levy will raise (assuming the board will re-levy all of the repealed millage), the estimated tax rate (which will equal the Class I effective millage in excess of 20 mills), and the levies or portion of a levy that would be repealed. The act requires levies to be repealed in reverse chronological order. The Commissioner also must certify a base-year revenue loss for the school district representing the loss from repealing millage on Class II real property and public utility personal property to the extent the effective tax rate on that property exceeds the effective tax rate on Class I real property (addressed below under "**Revenue loss and reimbursement**"). If the school board wants the conversion levy to raise less than the amount certified by the Commissioner, the board may request the Commissioner to re-determine the estimated tax rate for the amount the board specifies. This request may be made only once by each school board. The Commissioner must certify the new estimated tax rate within ten days after receiving the request.

The act specifies the language that must be in the resolution and in the notice of election, the process for certifying the resolution to the board of elections, and the form of the ballot. Among other items, the ballot must specify the amount of revenue to be raised. Submission of a conversion levy question to the electors is limited to not more than three elections during a calendar year, as are most other school levies. Conversion levies may be renewed.

### Revenue loss and reimbursement

(R.C. 5705.219(B)(4) and 5705.2110)

In most school districts eligible to levy a conversion levy, the conversion is likely to cause some degree of initial revenue loss from repealing existing millage, even if all of the repealed millage is re-levied. The loss is caused by the difference between the effective rates on Class I, Class II, and public utility personal property. Under the conversion, the number of mills that must be repealed is determined solely by the difference between 20 mills and the effective rate on Class I real property. The Class I effective rate typically differs from the effective rate on Class II property (in most districts the Class I effective rate is less than the Class II effective rate because the H.B. 920 reductions for Class I tend to accumulate more rapidly than for Class II). The Class I effective rate will be less than the rate on public utility personal property, which is the full voted rate because the H.B. 920 reduction does not apply to personal property.

Therefore, in many districts the repeal of existing levies forces a reduction in the effective rate on Class II property and in the rate on public utility personal property, whereas the effective rate on Class I property remains relatively unchanged initially.[387]

To the extent the effective rate on Class II property and on public utility personal property is reduced in the conversion, a school district will lose some amount of local revenue, with the magnitude of the loss depending on the value of such property in the district and the discrepancy between the Class I effective rate and the rates on Class II and public utility personal property.

The act provides for temporary state reimbursement to be paid for some of this loss. Revenue loss and reimbursement is determined as if school districts were required to re-levy all the millage that is repealed. In the first year of reimbursement, the school district's total reimbursement equals the loss as certified by the Tax Commissioner. In subsequent years, the reimbursement is phased out. The reimbursement for each succeeding year equals the prior year's reimbursement less approximately one-half of the additional Class I tax revenue generated from inflationary appreciation in that property as a result the suspension of the H.B. 920 reduction.

Reimbursements will be paid for 13 years, unless the reimbursement amount for a year equals zero or the levy is repealed. If a school district re-levied all repealed millage and later reduces the amount of the levy, the reimbursement payments are reduced proportionally. Reimbursement payments are required to be made on or before the last day of April and October. Each payment equals one-half of the total reimbursement for the year. The Tax Commissioner must certify a school district's total reimbursement amount for each year to the Department of Education on or before February 28.

### Business personal property tax loss reimbursement

(R.C. 5751.20(F) and (I) and 5751.21(E))

Under continuing law, school districts are compensated for tax losses resulting from a phase-out of business personal property taxes. Losses from fixed-sum levies are reimbursed through 2010, and thereafter reimbursed until the levy expires or, if they are renewed, until the renewal levy expires, but not after fiscal year 2018.

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[387] The repeal of existing levies must be applied uniformly across Class I and Class II real property to conform with the constitutional uniformity requirement whereby all real property must be taxed "by uniform rule." Article XII, Section 2, Ohio Constitution. The differing effective rates for Class I and Class II property that exist at any time result from the exception to the uniform rule permitted solely for the purpose of computing separate H.B. 920 tax reduction factors. Article XII, Section 2a, Ohio Constitution.

Losses from fixed-rate levies are reimbursed in full through fiscal year 2011, and then in declining amounts through the end of fiscal year 2018. Fixed-rate levies expiring after fiscal year 2010, however, are not reimbursed for any year after their expiration. The rate of decline in the reimbursement for fiscal years 2011 and 2012 is 3/17 per year of the computed fixed-rate loss; the rate of decline for fiscal years 2013 through 2018 is 2/17 per year. In fiscal year 2018, the last 1/17 is paid, and no reimbursement is paid thereafter.

Under the act, a school district adopting a conversion levy will no longer receive fixed-rate levy reimbursement for the millage that was repealed and converted. Instead, the district will receive fixed-sum reimbursement for the conversion levy in the same manner provided by law for the reimbursement of fixed-sum levy losses--i.e., the reimbursement will continue in the full amount of the business personal property tax loss until the levy or its renewal expires.

## Permanent reimbursement for tangible personal property tax phase-out

(R.C. 5751.20 to 5751.22)

Continuing law earmarks revenue from the commercial activity tax to reimburse school districts and other local taxing units for the phase-out of taxes from business tangible personal property. Initially, revenue from the tax is to be credited to the Commercial Activities Tax Receipts Fund, and thence divided between the GRF and the newly created School District Tangible Property Tax Replacement Fund (SDRF) and Local Government Tangible Property Tax Replacement Fund (LGRF) in specified proportions until the end of fiscal year 2018, as follows:

| Division of CAT revenue | | | |
|---|---|---|---|
| **Fiscal Year** | **GRF** | **SDRF** | **LGRF** |
| 2006 | 67.7% | 22.6% | 9.7% |
| 2007 | 0% | 70.0% | 30.0% |
| 2008 | 0% | 70.0% | 30.0% |
| 2009 | 0% | 70.0% | 30.0% |
| 2010 | 0% | 70.0% | 30.0% |
| 2011 | 0% | 70.0% | 30.0% |
| 2012 | 5.3% | 70.0% | 24.7% |
| 2013 | 10.6% | 70.0% | 19.4% |
| 2014 | 14.1% | 70.0% | 15.9% |
| 2015 | 17.6% | 70.0% | 12.4% |
| 2016 | 21.1% | 70.0% | 8.9% |

| Division of CAT revenue | | | |
|---|---|---|---|
| Fiscal Year | GRF | SDRF | LGRF |
| 2017 | 24.6% | 70.0% | 5.4% |
| 2018 | 28.1% | 70.0% | 1.9% |
| 2019 and thereafter | 30% | 70% | 0% |

### School district reimbursement changes (VETOED)

(R.C. 5751.20 and 5751.21)

Under continuing law, the 70% of CAT revenue earmarked for school district reimbursement is used initially to reimburse school districts solely on the basis of their individual tax losses from their "qualifying" levies (i.e., levies in effect in 2004 or 2005, so long as the levy was approved before September 1, 2005). As the reimbursement is phased down between FY 2012 and 2018, the portion of that 70% needed to pay reimbursement declines accordingly. During that phase-down period, the portion of the 70% not needed to reimburse districts on the basis of their individual tax losses is scheduled to be appropriated for as-yet unspecified "school purposes." After the phase-down ends, all of the 70% is scheduled to be used for such school purposes.

The Governor vetoed amendments that would have retained the 70% earmarking of CAT revenue for school district reimbursement, but eliminated the reimbursement phase-down scheduled to begin in FY 2012. Reimbursement would have continued for each of a district's qualifying levies until the levy expired at 100% of the district's computed tax loss. Payments would have continued to be made thrice annually, in August, October, and May. Until the end of FY 2011, the Director of Budget and Management would have been authorized to transfer any money not needed for reimbursement to the GRF (as under continuing law). After FY 2011, no such transfer would have been authorized.

### Local taxing unit reimbursement changes (VETOED)

(R.C. 5751.20 and 5751.22)

Under continuing law, the portion of CAT revenue earmarked for reimbursing local (nonschool) taxing units begins to decline in FY 2012 as their reimbursement amounts are phased down. The portion of CAT revenue earmarked for the General Revenue Fund increases accordingly. Beginning in FY 2019, no reimbursement is to be paid to local taxing units and the 30% not appropriated for school purposes is to be paid into the GRF.

The Governor vetoed amendments that would have permanently earmarked 30% of the CAT to permanently reimburse local taxing units for their individual computed tax losses. Payments would have continued for each qualifying levy for as long as the levy remained in effect. Payments would have continued to be made thrice annually, in August, October, and May. If the 30% of CAT revenue earmarked for local taxing unit reimbursement had exceeded the amount required to pay total reimbursements, the Director of Budget and Management would have been authorized to transfer the excess to the GRF (as under continuing law).

### Reimbursement for county administrative fee losses (VETOED)

(R.C. 5751.23)

Continuing law compensates county auditors and treasurers for the loss of administrative fees payable on the basis of property tax collections. A percentage of taxing units' reimbursable revenue loss is used to reimburse the county auditors, county treasurers, and real estate assessment funds for the loss of these fees. The percentage is 1.1159% if the county's 2004 tax collections from all tax duplicates (other than the estate tax list) were $150 million or less, and 0.9659% if the county's 2004 collections were more than $150 million. The fee reimbursement compensation is phased out according to the reimbursement phase-out schedule for local taxing units, and currently is scheduled to end in 2017.

The Governor vetoed amendments that would have eliminated the phase-out of the county fee reimbursement so that the reimbursement amount each year throughout 2017 would not decline incrementally each year. Reimbursement would have ended in 2017, as under continuing law.

## Property tax administration fund

(R.C. 5703.80)

Under continuing law, the state collects a fee for administration of property taxes. The fee is excised from property tax distributions to local taxing units. It is based upon two percentages: a percentage of the total tax reduction due to the 10% rollback for real property for the previous year, and a percentage of the taxes charged for the previous tax year against public utility personal property and against business personal property of multi-county taxpayers. The Department of Taxation is responsible for ensuring that real property is properly valued for tax purposes by reviewing county auditors' valuations. The Department also is responsible for assessing public utility personal property and the tangible personal property of businesses having such property in more than one county (although the final year for most business property assessment was 2008).

Under prior law, the percentage of the 10% rollback tax reduction for real property excised for the Property Tax Administration Fund was 0.35%. The act raises this percentage for fiscal year 2010 to 0.42%, and for 2011 and thereafter to 0.48%.

The percentage of public utility and business personal property taxes excised for the administration fund previously was 0.725%. The act raises the percentage for fiscal year 2010 to 0.8% and for 2011 and thereafter to 0.951%.

### Manufactured home tax reduction reimbursement

(R.C. 319.302, 321.24, 323.156, and 4503.068)

Continuing law requires the state to reimburse local governments for the 10% and 2.5% homestead property tax reductions, which are available to manufactured and mobile homes as well as residential real estate. Prior law required the county treasurer, within 30 days after the April and September tax settlements, to certify the amount of the semiannual tax reductions to the Tax Commissioner. Upon receipt of the certification, the Commissioner was required to provide for payment to the treasurer for distribution to taxing units.

The act consolidates the semiannual reimbursements into one annual payment. The county treasurer is required to certify the annual tax reduction to the Commissioner on or before the second Monday in September of each year. Within 90 days after receipt of the certification, the Commissioner must provide for payment to the treasurer for distribution to taxing units.

### Homestead exemption: reimbursement of county auditors

(R.C. 319.54(B))

Am. Sub. H.B. 119 of the 127th General Assembly expanded eligibility for the homestead exemption by eliminating the former income eligibility criteria. H.B. 119 reimbursed county auditors for the increased number of homestead applications that were filed because of the expanded eligibility. The increased reimbursement equals 1% of the total homestead tax reductions in the county; this 1% reimbursement is in addition to the preexisting 2% reimbursement paid to county auditors and treasurers. Whereas the 2% reimbursement is made on a semi-annual basis, the 1% reimbursement is made annually, on August 1 each year.

The act requires that the additional 1% reimbursement to county auditors be made at the same time as the original 2% reimbursements that are paid on a semi-annual basis.

## Exemption: port authority

(Section 757.10)

Under continuing law, property that is owned by an airport and leased to a port authority for an initial period of at least 30 years may be exempted from real property taxation. Before R.C. 5715.27 was amended by Sub. H.B. 160 of the 127th General Assembly, it required the applicant for exemption to own the property for which it sought exemption. Sub. H.B. 160 was precipitated by an Ohio Supreme Court holding that a petitioner who did not own property did not have standing to petition the Tax Commissioner for exemption under R.C. 5715.27 where the petitioner did not hold legal title to the property as formerly required under that section. *Performing Arts Sch. of Metro. Toledo, Inc. v. Wilkins*, 104 Ohio St.3d 284 (2004).

The act authorizes the exemption and abatement of unpaid taxes or remittance of taxes paid on airport property that is leased to a port authority for the time that it was precluded from exemption because the port authority did not own the property, as required under prior law, at the time it submitted the application for exemption. The application for exemption and abatement or remittance must be submitted by the current owner of the property to the Tax Commissioner on or before January 1, 2010. The application must include a copy of the Tax Commissioner's final determination dismissing the previous application for exemption and a certificate issued by the county treasurer stating the amount of taxes that have been paid or that are owed on the property for which exemption is sought.

## School district property tax to offset funding formula charge-off increases

(R.C. 5705.211)

The state's share of a school district's total per-pupil funding amount depends in part on the district's "recognized valuation," which is the aggregate taxable value of property in the school district. The state's share is determined by multiplying district's recognized valuation by a percentage and subtracting the product (called the "charge-off") from the district's total funding amount. (Under prior law, the percentage was 2.3%. The act phases in a reduction of the percentage over five years to 2.0%. See R.C. 3306.13(C).)

Increases in property values are added to a district's recognized valuation in one-third increments over the three-year property reassessment cycle. As a district's recognized valuation increases or decreases in response to changes in property values, the charge-off increases or decreases accordingly, which in turn causes a district's per-pupil funding to decrease or increase by a factor of 2.3% (under prior law) of the change

in recognized valuation. (In many instances, a district's recognized valuation will increase without a corresponding increase in the district's property tax revenue.)

Continuing law authorizes a school district, with voter approval, to levy a property tax designed to raise an amount of revenue in the first year approximately equal to the reduction in state funding caused by a district's increased recognized valuation. The rate of the levy is to be adjusted each year so the levy raises an amount equal to a percentage (e.g., 2.3%) of the appreciation in real property values insofar as that appreciation is reflected in the charge-off.

The act conforms the levy computation to the act's reduction in the charge-off percentage from 2.3% to 2.0%. Under the act, the levy rate adjustment must yield an amount ultimately equal to 2.0% of the real property value increase; during the charge-off phase-in period, the rate adjustment must reflect the declining charge-off rate.

## II. Sales and Excise Taxes

### Kilowatt-hour tax for self assessing purchasers

(R.C. 5727.81)

Continuing law permits a commercial or industrial purchaser of electricity that receives more than 45 million kilowatt hours of electricity per year at a single location in Ohio to self-assess the kilowatt-hour tax, in lieu of the electricity distributor assessing the tax. Under prior law, the tax was computed on the basis of both volume and price: $.00075 per kilowatt hour on the first 504 million kilowatt hours distributed to the location during the registration year, plus 4% of the total price of the electricity distributed to the location through the meter reading period that includes June 30, 2008, and 3.5% of the total price beginning for the meter reading period including July 1, 2008, and thereafter.

The act modifies the computation for meter reading periods including January 1, 2011, and thereafter by basing the self-assessor tax solely on volume and establishing a graduated volumetric rate schedule: the new rates are $.00257 per kilowatt-hour for the first 500 kilowatt hours, and $.001832 per kilowatt hour for each kilowatt hour in excess of 500 million.

## Taxation of Medicaid health insurance companies

### Insurance corporation franchise tax

(R.C. 5725.18, 5725.25, and 5729.03)

Continuing law requires insurance companies to pay an annual franchise tax based on the amount of premiums received by the corporation. The tax is 1.0% of the premiums received by a health-insuring corporation, and 1.4% of premiums received by any other insurance company. Under prior law, the franchise tax premiums base excluded amounts received under the Medicare program administered by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services and amounts received under the state's Medicaid care management system. Instead, health-insuring corporations that participated in the state's Medicaid care management system were required to pay a franchise permit fee equal to 4.5% of the managed care premiums received by the corporation.

Beginning October 1, 2009, the act eliminates the franchise permit fee, and includes Medicaid premiums received by insurance companies on and after that date within the companies' franchise tax base. (See "**Medicaid health insuring corporation franchise permit fee.**")

### Sales tax

(R.C. 5725.25, 5739.01, 5739.03, 5739.033, and 5739.051)

Under ongoing law, in addition to the franchise tax, insurance companies are required to pay tax on real estate. But the franchise tax is "in lieu of" all other taxes on the property and assets of domestic insurance companies, except for tangible personal property taxed under Chapter 5711. Under prior law, services provided by a health insuring corporation were not subject to the sales and use taxes under Chapters 5739. and 5741.

Beginning October 1, 2009, the act subjects to sales taxation all health care services provided or arranged by a Medicaid health-insuring corporation for Medicaid enrollees residing in Ohio under the corporation's contract with the state (R.C. 5739.01(B)(11)(a)), unless the taxation of those services is determined to be an "impermissible health-care related tax" that reduces the state's Federal Financial Participation under federal law (discussed below). The act designates the corporations as the consumers of the services, rather than the individual receiving the services. As the consumer, a corporation is liable for and must pay the tax on services it provides or arranges for Medicaid enrollees residing in Ohio. The corporations will be issued direct payment permits allowing them to remit the tax directly to the state. Payment must be

made monthly. The act situses these sales at the "location of the enrollee" for whom the corporation receives premium payments. The "price" of the transactions for which a corporation incurs sales tax liability is the amount of monthly managed care premiums the corporation receives.

### Impermissible health care-related tax

Under federal Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services law, a state's Medicaid Federal Financial Participation (federal Medicaid assistance received by the states) is reduced by the amount of revenues generated by impermissible "health care-related taxes." A tax is considered to be related to health care if at least 85% of the burden of the tax falls on health care providers. A health care-related tax is "permissible" if the tax is "broad-based" and "uniformly imposed."

A tax is "broad based" if it is imposed on all health care items or services in a class, or if it is imposed on all providers of such items or services of a class furnished by all nonfederal and nonpublic providers and it is imposed uniformly.[388] A health care-related tax is considered to be imposed uniformly if, among other possibilities, the tax is imposed at a uniform rate on revenues or receipts for all services or items in the class, or is otherwise found by federal authorities to be imposed equally on all service providers. The criteria for permissible health care-related taxes are specified in 42 U.S.C. 1396b and 42 C.F.R. 433.55 *et seq*.

The act specifies that the proposed extension of sales and use tax to Medicaid health-insuring corporations is not a tax that the franchise tax is in lieu of.

## Cigarette and tobacco dealer licensing

(R.C. 5743.15 and 5743.61)

### License fees

Continuing law requires manufacturers, importers, and wholesale and retail businesses wishing to engage in the trafficking of cigarettes in Ohio to first obtain a license to do so. Under prior law, those licenses were obtained from the county auditor of the county in which the manufacturer, importer, wholesaler, or retailer wished to conduct business. Distributors of other tobacco products were also required to obtain a license for each place of business.

[388] Among the separate classes defined by federal law are inpatient hospital services; outpatient hospital services; nursing facility services; physician services; home health care; and services of a Medicaid managed care organization.

To obtain a license, an applicant was required to file annually with the Tax Commissioner for a tobacco product distributor license or with the county auditor for a wholesale or retail cigarette license. A license was and continues to be valid for one year. Annual licensing fees were $100 for a tobacco product distributor license, $200 for a cigarette wholesale license, and $30 for each cigarette retail license for the first five retail places of business and $25 for each additional retail place of business. Wholesale and retail licenses were assignable to another person in the same county upon application to the county auditor. Failure to obtain a license is a fourth-degree misdemeanor.

The act transfers responsibility for issuing wholesale cigarette licenses from the county auditor to the Tax Commissioner, and increases the annual fees for tobacco product distribution licenses to $1,000, wholesale cigarette licenses to $1,000, and retail cigarette licenses to $125 for each place of business. If a license is issued for less than one year, the fee is reduced proportionately to the remainder of the year, but not to less than $25 for a retail license or $200 for a wholesale cigarette or tobacco product distributor license. The act eliminates the authority of cigarette wholesale and retail licensees to assign such licenses to another person, and increases the transfer fees (from one place of business to another) from $1 to $5 for retail licenses and from $1 to $25 for wholesale licenses. The act increases the retail license replacement fee from 50¢ to $5 and the wholesale license replacement fee from 50¢ to $25. It also imposes $25 fees for replacing and transferring (from one place of business to another place of business of the same licensee) a tobacco product distribution license.

### Fee distribution

Under prior law, of the fees collected from cigarette wholesale licenses, 37.5% was distributed to the municipal corporation or township where the business was located, 15% to the county general fund, and 47.5% to the Cigarette Tax Enforcement Fund. (The Cigarette Tax Enforcement Fund is used to pay the state's expenses in enforcing the cigarette and tobacco products excise taxes and the Unfair Cigarette Sales Act (R.C. 1333.11 to 1333.21), which generally prohibits selling cigarettes at less than cost with intent to lessen competition.) Of the fees collected from retail cigarette licenses for the first five places of business, 62.5% was distributed to the municipal corporation or township treasury where the business was located, 22.5% to the county general fund, and 15% to the Cigarette Tax Enforcement Fund. Of the fees from licenses for additional retail places of business, 75% was paid to the municipal corporation or township, and 25% to the county general fund.

The act increases the percentage of cigarette wholesale license fees paid into the Cigarette Tax Enforcement Fund to 100%. The act also increases the percentage of cigarette retail license fees paid to the Cigarette Tax Enforcement Fund to 60%. Thirty

per cent is distributed to the municipal corporation or township treasury where the business is located, and 10% to the county general fund. The act requires late cigarette license fees collected by county auditors to be sent to the Treasurer of State by the last day of the month following the month in which the money was collected, rather than by December 31, as was required under prior law.

The changes made to the cigarette and tobacco product licensing provisions take effect January 1, 2010.

### Natural gas distribution tax

(R.C. 5727.811; Section 803.50)

Under continuing law, there is an excise tax on natural gas distribution companies for the purpose of raising revenue for public education and state and local government operations. The tax is levied on every natural gas distribution company for all natural gas volumes billed by, or on behalf of, the company and distributed through the "meter of an end user in this state."[389] (If there is no meter used to measure the gas, then the tax applies to the estimated quantity of gas distributed to the unmetered location.) Distribution is measured by 1,000 cubic feet of natural gas, or "MCF." For purposes of the MCF tax, a "natural gas distribution company" is a natural gas company or a combined natural gas and electric company that is subject to the natural gas company gross receipts tax and that distributes natural gas through a meter of an end user in this state.

The MCF tax is levied quarterly, at a rate that decreases as more natural gas is distributed. Except for natural gas distribution companies with 50,000 customers or less or "flex" customers, for the first 100 MCF per month distributed to an end user, the rate is $.1593 per MCF; for the next 101 to 2,000 MCF per month, the rate is $.0877; and for 2,001 MCF per month and above, the rate is $.0411.

For a natural gas distribution company with 50,000 customers or less, the rate is lower. Such a company may elect to apply the three rate brackets to the aggregate of the natural gas distributed by the company through the meters of all its customers in this state, and upon that election, this method must be used to determine the amount of tax to be paid by the company.

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[389] The "meter of an end user in this state" is the last meter used to measure the MCF of natural gas distributed by a natural gas distribution company to a location in this state, or the last meter located outside of this state that is used to measure the natural gas consumed at a location in this state.

The act extends to natural gas distributors with 70,000 or fewer customers the authority to aggregate all of the natural gas distributed by the company in the state when determining the tax rate. The tax rate varies according to the volume distributed to each customer (a lower rate on higher volumes), so aggregating reduces the total tax due.

## Lodging tax for convention facilities authority

(R.C. 351.021(C)(2))

The act authorizes a convention facilities authority (CFA) in a county with a 2000-census population between 100,000 and 135,000, and containing entirely within its boundaries a city with a 2000-census population of more than 50,000, to levy a lodging tax of up to 3% to finance the construction, operation, and maintenance of a convention, entertainment, or sports facility. The CFA board of directors may adopt a resolution levying the tax only if the board of county commissioners adopts a resolution authorizing the CFA to levy the tax. The CFA's resolution must be adopted on or before November 1, 2009.

The CFA's authority to levy the tax is subject to referendum if a valid petition signed by 10% of county electors is filed within 30 days after the board of county commissioners adopts its resolution authorizing the CFA to proceed with the tax levy. The board of commissioners' resolution authorizing the tax levy is the subject of the referendum. If a referendum is to be held, the CFA may adopt its resolution before the election occurs, but the resolution and the tax does not take effect unless the commissioners' resolution is approved at the referendum election.

## Lodging tax

(R.C. 5739.01(M) and 5739.09(G))

Continuing law authorizes counties, townships, and municipal corporations to levy lodging taxes subject to various restrictions on the rate and purpose of the tax. If a tax is levied, it applies to any "hotel," which prior law defined as any "establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether the rooms are in one or several structures." Continuing law authorizes the taxing authorities to modify the definition of "hotel" for local tax purposes by applying the tax to establishments with fewer than five guest rooms.

The act authorizes local authorities to further modify the definition of which hotels are subject to local lodging taxes by specifying both of the following: (1) that the

five-room minimum threshold is to be determined regardless of whether each room is accessible through its own keyed entry or several rooms are accessible through the same keyed entry, and (2) in determining the number of rooms, all rooms are included regardless of the number of structures in which the rooms are situated or the number of parcels of land on which the structures are located if the structures are under the same ownership and the structures are not identified in advertisements of the accommodations as distinct establishments. For this purpose, the act specifies that two or more structures are under the same ownership if they are owned by the same person, or if they are owned by two or more persons the majority of the ownership interests of which are owned by the same person. (In this context, "person" is used in its legal sense and not in reference only to individuals. It includes all forms of business associations. R.C. 5701.01.)

### Salt severance tax revenue

(R.C. 5749.02(B))

Continuing law levies an excise tax on the severance of minerals, including salt. Under prior law, with respect to the severance of salt, 15% of revenues are credited to the Geological Mapping Fund, and the remainder is credited to the Unreclaimed Lands Fund. (Money in the Unreclaimed Lands Fund is used for the purpose of reclaiming land affected by mining or for controlling mine drainage and for paying the expenses and compensation of the Council on Unreclaimed Strip Mined Lands, which gathers information regarding eroded or strip mined lands and makes recommendations for future use.)

The act requires all salt severance tax revenue to be credited to the Geological Mapping Fund. Money in that fund is used for purposes of performing necessary field, laboratory, and administration tasks to map and make public reports on the geology and mineral resources of each county.

## III. Tax Credits

### New Markets Tax Credit

(R.C. 5725.33, 5725.98, 5729.16, 5729.98, 5733.01, 5733.58, and 5733.98)

The act creates a nonrefundable tax credit with a four-year carryforward against the Insurance Corporation and Financial Institution Franchise taxes for insurance companies and financial institutions that purchase and hold securities issued by low-income community organizations to finance investments in qualified active low-income community businesses in Ohio, in accordance with the federal New Markets Tax Credit law.

### Federal credit

Federal law provides a tax credit against the federal income tax, totaling 39% of the cost of the investment at original issue, for making qualified equity investments in investment vehicles known as Community Development Entities (CDEs). A CDE is a United States corporation or partnership with the primary mission of serving or providing investment capital for low-income communities or low-income persons, that maintains accountability to residents of low-income communities through representation by them on the CDE's governing board or an advisory board, and that is certified as a CDE by the Secretary of the Treasury.

A qualified equity investment is the purchase of capital stock or capital interest in a partnership. The credit provided to the investor is applied over a seven-year period. Substantially all of the taxpayer's investment must in turn be used by the CDE to make qualified investments in "low-income communities." The federal credits are awarded by the Community Development Financial Institutions (CDFI) Fund, which is responsible for administering the federal New Markets Tax Credit. A limited amount of federal tax credits is available for allocation among CDEs throughout the United States: $3.5 billion was made available for allocation in 2008 and 2009 (and none thereafter), but the recently enacted federal economic "stimulus" bill increased the amount to $5 billion for each of those years ("American Recovery and Reinvestment Act of 2009," H. Res. 1, Section 1403). Under the federal act, the additional $1.5 billion made available for 2008 is to be allocated among CDEs that applied for a 2008 allocation but did not receive one or received less than they applied for. No allocation has been made for 2010 or thereafter. The federal credit is governed by Section 45D of the Internal Revenue Code (26 U.S.C. 45D).

For the purposes of the credit, a low-income community (LIC) is any population census tract where either: (1) the poverty rate is at least 20%, or (2) the median family income does not exceed 80% of statewide median family income (in the case of a tract not located within a metropolitan area[390]), or, if within a metropolitan area, 80% of the greater of statewide median family income or the metropolitan area median family income.

### Ohio credit

The act's Ohio New Markets Tax Credit totals 39% of the "adjusted purchase price" of qualified equity investments in qualified active low-income community

[390] Metropolitan area means a statistical area, as defined by the Director of the Office of Budget and Management, with a population of 250,000 or more, and any other area designated as such by the appropriate Federal financial supervisory agency.

businesses. To obtain the Ohio credit, a person must have qualified for the federal credit by holding a qualified equity investment. Under the Federal program, a CDE can make qualified investments in any state. For purposes of the Ohio credit, the "adjusted purchase price" of qualified investments is the percentage of those investments that are made in businesses located in Ohio. A qualified equity investment is an equity investment in a qualified CDE. It must be acquired after the act's effective date (October 16, 2009), for cash, and at least 85% of the purchase price must be used by the issuer to make qualified low-income community investments. The investment may be transferred, so long as the transferee's holding would qualify if the transferee were the purchaser at the original issuance.

Beginning January 1, 2010, credits must be applied over a seven-year period. For the first two years no credit may be applied, 7.0% may be applied for the third year, and 8.0% for each of the last four years. The amount of qualified low-income community investments is the total amount of investments that are invested in qualified active low-income community businesses, not exceeding $2,564,000 per business, for a maximum credit of $1 million.

A "qualified active low-income community businesses" is any partnership or corporation that derives less than 15% of its annual revenue from the rental or sale of real property (except for certain special purpose entities owned by the business and created for the purpose of renting or selling the property back to the tenant) and that, for any tax year, satisfies all of the following:

(1) At least 50% of total gross income of the entity is derived from the active conduct of qualified business within a low-income community;

(2) A substantial portion of the use of the tangible property of the entity (whether owned or leased) is within a low-income community;

(3) A substantial portion of the services performed for the entity by its employees are performed in a low-income community;

(4) Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to collectibles (other than collectibles held primarily for sale in the ordinary course of business);

(5) Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to nonqualified financial property.[391]

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[391] Nonqualified financial property is financial property (debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar

The Ohio Department of Development may award a combined maximum of $10 million of tax credits annually (disregarding credit carry-forwards).

### Recapture; rule-making

The act requires an insurance company or financial institution to repay credits if the issuing CDE is no longer a "qualified" CDE, substantially all of the cash is not used by the CDE to make qualified low-income community investments, or the investment is redeemed before the end of the seven-year credit period (except that in the seventh year, only 75% of the purchase price must be used for qualified low-income community investments).

The act gives rule-making authority to the Director of Development to determine how credits are to be awarded and recaptured, if necessary. Under continuing law, there is a three-year statute of limitations on assessing unpaid tax. The act specifies that the statute of limitations does not apply to tax assessments related to the recapture of the credit.

The act authorizes the Director to charge fees to cover expenses of administering the tax, and it establishes the New Markets Tax Credit Operating Fund for that purpose.

## Technology investment tax credit increase

(R.C. 122.151(D)(2))

Continuing law authorizes a tax credit against certain state taxes for a person who invests in an Ohio business with annual gross revenue or a net book value under $2.5 million that is engaged primarily in research and development, technology transfer, bio-technology, information technology, or the application of new technology developed through research and development or acquired through technology transfer. The credit may be claimed by persons subject to the income tax, corporation franchise tax, dealers in intangibles tax, or the gross receipts excise taxes on natural gas companies and certain other public utilities.

Prior law limited the total amount of tax credits that may allowed to not more than $30 million.

The act raises this limit to $45 million.

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property) that is not working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less; or accounts or notes receivable acquired in the ordinary course of business for services rendered, or from the sale of stock or inventory in the taxpayer's ordinary course of business.

## Job retention tax credit

(R.C. 122.171, 5725.98, and 5729.98)

### Credit base

(R.C. 122.171(A) and (B))

Continuing law establishes a job retention grant program administered by the Tax Credit Authority (TCA) under which an eligible business may receive nonrefundable tax credits against specified taxes for retaining full-time employment positions and investing minimum amounts in a facility "project site." Under prior law, the credit equaled a percentage, up to 75%, of annual Ohio income tax withholdings from employees filling full-time employment positions. Generally, a "full-time employment position" was a position for consideration for at least an average of 35 hours a week that had been filled for at least 180 days immediately preceding the date the eligible business filed its application for the credit. (For purposes of this analysis, employees filling such positions are referred to as full-time employees.)

The act eliminates the use of Ohio income tax withholdings from full-time employees as the base for determining the credit amount. Under the act, the credit base is comprised of Ohio income tax withholdings from all employees employed in the project, regardless of when they were hired, except those whose withholdings have been used as a basis for the job creation tax credit.

### Eligible business

(R.C. 122.171(A)(2))

Prior law required a business seeking job retention credits to meet certain criteria, two of which are as follows. The business must have invested in the project at least $200 million, or $100 million if the average wage for full-time employees at the project site was greater than 400% of the federal minimum wage, over the three preceding years. The amount invested could include lease payments made to the business (except by a "related member," discussed below) for a lease lasting at least 20 years. The business also was required to employ an average of at least 1,000 full-time employees during the 12 months preceding the date of credit application.

The act reduces the investment threshold and the minimum number of employees, and it permits part-time employees to count toward the employee quota; it reduces the required investment to not less than $50 million if the business is engaged at the project site primarily as a manufacturer, or $20 million if the business is engaged primarily in significant corporate administrative functions, over the three preceding

years; and it reduces the employee threshold to not less than 500 "full-time equivalent employees" as of the date the TCA grants the tax credit. A "full-time equivalent employee" is an employee whose hours of compensation, standing alone or when combined with those of another employee, totals 2080 hours for the year. The employee, however, may not be one whose withholdings formed the basis for a job creation tax credit.

### Related member

(R.C. 122.171(A)(2))

The act adds as an "eligible business" the eligible business' "related members." Generally, a related member is a corporate or non-corporate entity that substantially owns, or is substantially owned by, the business, either through direct ownership or through a chain of other business entities. The effect of including a business' related members is not clear. The only other use of the term is in connection with an eligible business's minimum required investment: payments by the eligible business to a related member do not qualify as an investment in the project for purposes of the minimum required investment.

### Applicable taxpayers

(R.C. 122.171(B), 5725.98, and 5729.98)

Prior law limited credit eligibility to taxpayers under the corporation franchise tax, the income tax, and, for corporations converting from the franchise tax, the commercial activity tax.

The act expands eligibility to domestic and foreign insurance companies and, when applicable, requires the Superintendent of Insurance to administer the credit.

### Credit limits

(R.C. 122.171(M))

The act limits the annual amount of tax credits that may be allowed. For year 2010 the limit is $13 million. In years 2011 through 2023, the limit increases by $13 million each year. For years 2024 and thereafter, the limit is $195 million. The limit applies only to credits for projects approved on or after July 1, 2009.

### Tax credit agreement

(R.C. 122.171(D) and (E))

Prior law authorized the TCA and the business to enter into a tax credit agreement if the TCA determined, among other matters, that the political subdivisions in which the project is located agreed to provide substantial financial support to the project. The act removes this condition.

Under prior law, a business was required to maintain a negotiated number of full-time employees at the project site (at least 1,000) for the term of the credit. The act replaces the minimum of 1,000 actual full-time employees with a minimum of 500 full-time equivalent employees.

Under prior law, a credit was not allowed for any year in which the total number of full-time employees for each day of the calendar year divided by 365 is less than 90% of the negotiated number of full-time employees. The act removes this prohibition.

Prior law required the agreement to prohibit the business from relocating any Ohio jobs to the project location unless the Director determined their current location was inadequate to meet market and industry conditions or other business considerations.

Under the act, the agreement must provide that the business may not relocate a "substantial number" of employment positions unless the Director determines the business has notified the local jurisdiction from the employment positions will be relocated. The inadequacy condition is eliminated.

Under prior law, a business was required to maintain operations at the project site for at least the greater of (a) the term of the credit plus three years, or (b) seven years. If the business failed to do so, the TCA could require the business to reimburse the state for up to 100% of the credit allowed and actually received if the business maintained operations at the project location for less than the term of the credit, and up to 50% of the credit allowed if business maintained operations for the term of the credit or more.

Under the act, if the business maintains operations at the project site for at least the term of the credit but less than the greater of seven years or the term of the credit plus three years, the TCA may require the business to reimburse the state for up to 75% of the credit allowed and actually received.

Under prior law, a business was required to provide to the Director information regarding full-time employment positions and related withholdings.

Under the act, a business must provide such employment, tax withholding, and investment information as is necessary to enable the Director to verify compliance with the agreement. The agreement also must state the anticipated income tax revenue to be generated.

### Agreement noncompliance

(R.C. 122.171(F) and (J))

Under prior law, if a business failed to comply with the agreement, the TCA could amend the agreement to reduce the percentage or term of the tax credit. The reduction could take effect in the taxable year immediately following the taxable year in which the TCA amended the agreement, or in the first tax period beginning in the calendar year immediately following the calendar year in which the TCA amended the agreement. The reduction also could take effect in the taxable year immediately following the taxable year in which the Director of Development notified the business in writing of such failure, or in the first tax period beginning in the calendar year immediately following the calendar year in which the Director notified the business in writing of such failure. If the business failed to annually report information required under the agreement within the time required by the Director, the reduction of the percentage or term of the tax credit could take effect in the current taxable year.

The act provides that, in the event of any noncompliance, the percentage or credit term reduction may take effect in the current taxable or calendar year.

Prior law prohibited a business that relocated employment positions in violation of the agreement from claiming any allowed credits. The act eliminates this prohibition. A relocation of employment, therefore, could constitute a failure to comply with the agreement with the associated possibility of having the credit term or percentage reduced.

### Director's report

(R.C. 122.171(L))

Prior law required the Director to report to the Governor, the Speaker of the House, and the President of the Senate on the tax credit program on or before March 31 of each year. The act changes this date to August 1.

### Additional credit for call centers

(R.C. 122.171(M))

The act removes statutory references to an additional credit available to an "applicable corporation," which is defined generally as a business engaged in call center operations.

## Job creation tax credit

(R.C. 122.17)

### Credit base

(R.C. 122.17(A) and (B))

Continuing law establishes a job creation grant program administered by the Tax Credit Authority (TCA) under which a business may receive refundable tax credits against specified taxes for creating new full-time employment positions. Under prior law, the credit amount was based on annual state and school district income tax withholdings from new full-time employees. Generally, a "full-time employee" was an individual who is employed for consideration for at least an average of 35 hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

The act eliminates the use of withholdings only from new full-time employment positions as a base for determining the credit amount. Under the act, the credit base is comprised of incremental increases in withholdings from all employees employed in the project. The credit amount equals a percentage of the growth in tax withholdings from a base year to the year for which credit is claimed ("excess income tax revenue"). The base year is the 12 months immediately preceding the date the TCA approves the business' credit application. The base year withholding amount is adjusted by an annual pay increase factor determined by the TCA. This adjusted base year amount becomes the starting base year amount for the next year. A job creation credit may not be claimed on the basis of tax withholdings from any employee whose withholdings are the basis for a job retention tax credit (if a business were to have both a job creation and job retention credit agreement).

The credit may be based only on amounts withheld after the business became eligible for the credit. If the business first becomes eligible for a credit midway through the first year of its credit eligibility, the first year's withholding base is adjusted proportionately.

### Tax credit agreement

(R.C. 122.17(D) and (K))

Prior law authorized the TCA and the business to enter into a tax credit agreement if the TCA determined, among other matters, that the business' project would create new jobs in Ohio.

The act eliminates the explicit job creation condition and substitutes a requirement that the TCA determine whether a business' project will increase payroll and income tax revenue.

Under prior law, a business was required to maintain operations at the project site for at least twice the term of the credit. If the business failed to do so, the TCA could require the business to reimburse the state for up to 25% of the credit allowed if the business maintained operations at the project location for one and one-half times the term of the credit or more; up to 50% of the credit allowed if business maintained operations for the term of the credit or more; and up to 100% of the credit allowed if the business failed to maintain operations for the term of the credit.

Under the act, the agreement must require the business to maintain operations at the project site for the greater of (1) seven years or (2) the term of the credit plus three years. If the business fails to do so, the act authorizes the TCA to require the business to reimburse the state for up to 75% of the credit allowed and actually received if the business maintained operations at the project location for at least the term of the credit but less than the greater of seven years or the term of the credit plus three years. If the business fails to maintain operations at the project location for at least the term of the credit, the TCA may require the business to reimburse the state for 100% of the credit allowed and received.

Prior law required the agreement to prohibit the business from relocating any Ohio jobs to the project location unless the Director determined their current location was inadequate to meet market and industry conditions or other business considerations.

Under the act, the agreement must provide that the business may not relocate a "substantial" number of employment positions unless the Director determines the business has notified the local jurisdiction from which the employment positions will be relocated. The inadequacy condition is eliminated.

Under prior law, a business was required to provide to the Director information regarding new full-time employment positions and related withholdings, and required

the Director to verify the business' compliance with the agreement and certify such verification to the business.

Under the act, a business must provide such employment, tax withholding, and investment information as is necessary to enable the Director to verify compliance with the agreement. The Director's certification must state the credit amount allowed.

The agreement must state the pay increase factor to be applied to the base year withholding amount.

### Agreement noncompliance

(R.C. 122.17(E))

Under prior law, if a business failed to comply with the agreement, the TCA could amend the agreement to reduce the percentage or term of the tax credit. The reduction could take effect in the taxable year immediately following the taxable year in which the TCA amended the agreement, or in the first tax period beginning in the calendar year immediately following the calendar year in which the TCA amended the agreement. The reduction also could take effect in the taxable year immediately following the taxable year in which the Director of Development notified the business in writing of such failure, or in the first tax period beginning in the calendar year immediately following the calendar year in which the Director notified the business in writing of such failure. If the business failed to annually report information required under the agreement within the time required by the Director, the reduction of the percentage or term of the tax credit could take effect in the current taxable year.

The act provides that, in the event of any noncompliance, the percentage or credit term reduction may take effect in the current taxable or calendar year.

Prior law prohibited a business that relocated employment positions in violation of the agreement from claiming any allowed credit. The act makes this prohibition part of the agreement and modifies it so that a relocation is not in violation of the agreement if the Director determines that the business notified the local government from which the positions were moved. A relocation of employment, therefore, could constitute a failure to comply with the agreement with the associated possibility of having the credit term or percentage reduced.

### Director's report

(R.C. 122.17(L))

Prior law required the Director to report to the Governor, the Speaker of the House, and the President of the Senate on the tax credit program on or before March 31 of each year. The act changes this date to August 1.

## Movie and television production tax credit

(R.C. 122.85, 5733.59, 5733.98, 5747.66, and 5747.98)

The act authorizes a refundable credit against the corporation franchise tax or the income tax for a motion picture company that produces at least part of a motion picture in Ohio. The credit may be claimed against the corporation franchise tax even if the corporation is no longer subject to the tax due to the phase-out and cessation of the tax for nonfinancial corporations. Because the tax no longer applies to nonfinancial corporations, in effect the credit is not subtracted from any tax liability; it is essentially a means of awarding the credit amount in the form in which a refundable tax credit would be paid if the tax still applied. To receive the credit, a corporation must file a return as if it were still subject to the tax.

For purposes of the income tax, pass-through entity allocation is permitted for individuals who own all or part of a motion picture company organized as a pass-through entity.

### Credit amount; overall limit

A credit is available only if the lesser of budgeted or actual eligible production expenditures exceeds $300,000. The credit equals 25% of the lesser eligible production expenditure amount (excluding budgeted or actual expenditures for resident cast and crew) plus 35% of budgeted or actual expenditures for resident cast and crew. Not more than $20 million in credits may be allowed per fiscal biennium ($30 million for the FY 2010-2011 biennium), not more than $10 million of which may be allowed in the first year of a biennium. Not more than $5 million in credits may be allowed per production.

### Eligible productions and expenditures

"Motion picture" is defined as "entertainment content" created partly or wholly in Ohio for distribution or exhibition to the general public. It includes feature-length films; documentaries; television series, miniseries, and specials; interactive web sites; sound recordings; videos; music videos; interactive television; interactive games; videogames; commercials; any format of digital media; and any trailer, pilot, video

teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in either a product or a motion picture by any means and media in any digital media format, film, or videotape, provided the motion picture qualifies as a motion picture. It excludes sexually explicit productions for which records must be maintained under 18 U.S.C. 2257 and television news, weather, sports, market reports, award shows and galas, fundraisers, "infomercials," political advertising, and in-house advertising.

"Eligible production expenditures" is defined to mean expenditures made after June 30, 2009, for goods or services (including payroll) purchased and consumed in Ohio directly for the production. It includes costs of crew accommodations, set construction and operation, editing, photography, sound synchronization, lighting, wardrobe, makeup, film processing, sound mixing, special and visual effects, music, location fees, and equipment or facility purchase or rental.

### Application for production certification and credit certificate

To be eligible to receive a credit, a motion picture company must first apply to the Director of Development for certification of the motion picture as a tax credit-eligible production. The Director determines the manner and form of application. The application must include the following information, among other things:

(1) A list of the scheduled first preproduction date through the scheduled last production date in Ohio;

(2) The total production budget;

(3) The total budgeted eligible production expenditures and the percentage that amount is of the total production budget;

(4) The total percentage of the motion picture being shot in Ohio;

(5) The level of employment of cast and crew who reside in Ohio;

(6) A synopsis of the script and the shooting script;

(7) A creative elements list that includes the names of the principal cast and crew, and the producer and director;

(8) The motion picture's distribution plan, including domestic and international distribution, and sales estimates for the picture;

(9) Documentation of financial ability to undertake and complete the motion picture;

(10) Estimated tax credit amount.

If the Director of Development certifies the motion picture as a tax credit-eligible production, the motion picture company must submit "sufficient evidence of reviewable progress" to the Director within 90 days of the certification, and at any time thereafter upon the Director's request. If the company fails to do so, the Director may rescind the certification. If the Director rescinds the certification, the company may reapply.

If a motion picture company's production has been certified as a tax-credit eligible production, the company may apply for a tax credit certificate on or after July 1, 2009. The form and manner of the application are determined by the Director in consultation with the Tax Commissioner.

### Examination of expenditures

Before a credit certificate may be issued, the production must be complete, and the company must hire, at its own expense, an independent certified public accountant (CPA) to determine the production expenditures that qualify as eligible production expenditures. The CPA must issue a report certifying the eligible production expenditures to the Director of Development and to the motion picture company, and must provide to the Director any additional information the Director requires.

After receiving the report, the Director may disallow any expenditure certified by the CPA that the Director determines is not an eligible production expenditure. If the Director disallows an expenditure, the Director must issue a written notice to the motion picture company stating that the expenditure is disallowed and the reason for the disallowance. Upon examination of the CPA's report and denial of any eligible production expenditures, the Director must determine, for purposes of computing the credit, the lesser of total budgeted eligible production expenditures as stated in the application for certification, or the actual eligible production expenditures. After making that determination, and so long as the applicable eligible production expenditures amount is greater than $300,000, the Director must determine the credit amount and issue a tax credit certificate to the motion picture company. The credit amount is not subject to adjustment unless the Director determines an error was made in the computation of the credit amount.

### Credit certificate

The credit certificate must contain a unique identifying number and state the credit amount and the amount of the eligible production expenditures on which the credit is based. The certificate information must be recorded in a register maintained by the Director of Development. Upon issuance of a certificate, the Director must certify the Tax Commissioner the name of the applicant, the amount of eligible production

expenditures shown on the certificate, and any other information required under rules adopted to administer the credit program.

### Administrative rules

The act requires the Director of Development, in consultation with the Tax Commissioner, to adopt rules pursuant to Chapter 119. to administer the tax credit program. The rules must address what constitutes a tax credit-eligible production and eligible expenditures, activities that constitute the production of a motion picture, reporting sufficient evidence of reviewable progress, a competitive process for approval of credits, and geographical distribution of credits.

### Motion Picture Tax Credit Program Operating Fund

The Director of Development may require applicants for certification and applicants for tax credits to pay a "reasonable" fee to pay administrative costs of the tax credit. Fee proceeds must be credited to the Motion Picture Tax Credit Program Operating Fund, which the act creates. Fund money may include the fee proceeds, grants, gifts, and contributions, and must be used for administering the tax credit program, for marketing and promoting the motion picture industry in Ohio and funding the Department of Development's Ohio Film Office.

### Use of state's name in credits

The act specifies that the state reserves the right to refuse the use of its name in the credits of any tax credit-eligible production.

## Historic rehabilitation tax credit

(R.C. 5733.47 and 5747.76)

The act permits companies entitled to claim the historic rehabilitation tax credit to allocate the company's credit among the company's equity owners in amounts or proportions other than their pro rata ownership shares if the company is organized as a partnership or other form of pass-through entity (e.g., limited liability company or S corporation). Generally, a pass-through entity's income items for tax purposes (including credits) are distributed among the entity's owners in proportion to each owner's ownership share unless the owners' entity agreement provides otherwise (see Internal Revenue Code sec. 704).

The rehabilitation tax credit is available for owners of historic buildings that rehabilitate the buildings according to standards prescribed by the U.S. Department of the Interior and whose rehabilitation project is approved for the credit by the Director of Development. (See R.C. 149.311.) The credit equals 25% of the qualifying

expenditures. It may be claimed against the income tax, corporation franchise tax, and dealers in intangibles tax.

## IV. Commercial Activity Tax

### Penalty: billing or invoicing for the tax

(R.C. 5751.06)

Under continuing law, a person subject to the commercial activity tax is expressly prohibited from billing or invoicing another person for the tax under R.C. 5751.02(B), but is explicitly permitted to recover the tax by including the tax in the price of a good or service. Under prior law, there was no civil penalty for violating this provision, but violations were punishable by a criminal fine of up to $500 or imprisonment for up to 30 days (R.C. 5751.99(B)).

The act authorizes a lessor to bill or invoice a lessee for the commercial activity tax under a written lease agreement, but under all other circumstances requires the Tax Commissioner to notify a taxpayer by certified mail the first time the taxpayer bills or invoices another person for the taxpayer's commercial activity tax liability. For each subsequent violation the Commissioner is required to impose a $500 civil penalty. The Tax Commissioner may, but is not required to, impose a penalty of up to $500 for the taxpayer's first violation. The penalty is in addition to any criminal fine.

### Personal property tax reimbursement

(R.C. 5751.20(E)(2))

Under continuing law, the state is required to reimburse school districts for losses due to the phase-out of business personal property taxes. Losses are divided into two categories: losses for taxes levied at a specified rate ("fixed-rate levy losses") and losses for taxes levied to raise a specific amount of money ("fixed-sum levy losses"). Losses from fixed-sum levies--"emergency" school district levies, for example--are reimbursed through 2010, and thereafter reimbursed until the levy expires or, if they are renewed or otherwise succeeded by another emergency levy, until the successor expires, until 2017. Levies qualifying for reimbursement are those that were levied in tax year 2004, or in 2005 if on the ballot before September 1, 2005. Levies enacted after 2005 are not reimbursed unless they renew such a "qualifying" levy.

Recently, school districts were authorized to levy a "substitute" levy, which may be levied only to replace an expiring emergency levy.

The act requires property tax loss reimbursement for a substitute levy replacing an emergency levy that qualified for reimbursement. Reimbursement continues under the same terms as if the substitute levy were a renewal of an expiring emergency levy: i.e., through the earlier of 2017 or the last year of the substitute levy, and only if the substitute levy raises the same amount of revenue as the expiring emergency levy less the 2006 reimbursement for the emergency levy.

## Tax Reform System Implementation Fund

(R.C. 5751.20(B))

Under continuing law, 100% of commercial activity tax revenue is credited to the Commercial Activities Tax Receipts Fund and thereafter credited to funds that reimburse school districts and local governments for losses due to the phase-out of business personal property taxes. Beginning in 2012, an increasing percentage of Fund money will be credited to the General Revenue Fund as the percentage needed to reimburse local governments is phased down. (The percentage of CAT revenue earmarked for school districts remains at 70% on a permanent basis.)

The act creates the Tax Reform System Implementation Fund, which will receive 0.85% of commercial activity tax revenue. Money in the fund must be used to defray the costs of administering the CAT and to implement "tax reform measures," which the act does not further define.

## Excluded persons and taxable gross receipts

(R.C. 5751.01 (E) and (F))

The commercial activity tax (CAT) applies to taxable gross receipts, which is the portion of a taxpayer's total gross receipts sitused to Ohio under the CAT situsing provisions. Total gross receipts is defined broadly to include the total amount realized by a person, without deduction for the cost of goods sold or other expenses, that contributes to the production of that person's gross income. It includes the fair market value of any property and any services received and any debt transferred or forgiven as consideration. The CAT law also specifies certain examples of gross receipts.

Continuing law provides some exclusions from gross receipts, including, among others, proceeds on the account of payments from life insurance policies; gifts or charitable contributions, membership dues, and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; fundraising receipts if excess receipts are donated or used exclusively for charitable purposes; and proceeds received by a nonprofit organization, including those proceeds realized with regard to its unrelated business taxable income.

Under the act, there is a new exclusion for payroll deductions by an employer to reimburse the employer for advances made on an employee's behalf to a third party. The act expands the exclusion for insurance policies so that proceeds from any insurance policy are excluded, not just life insurance, unless the insurance reimburses for business revenue losses. The act also narrows the exclusion for membership dues so that they are excluded only if they are for membership in a trade, professional, homeowners', or condominium association.

Under prior law, certain bad debts, cash discounts, returns and allowances, and accounts receivable are deducted when calculating taxable gross receipts. The act excludes them from the broader definition of gross receipts instead of treating them as a deduction from gross receipts.

Besides changes to the exclusions from taxable gross receipts, the act also re-characterizes nonprofit organizations and the state, its agencies, instrumentalities, and political subdivisions as "excluded persons" (nontaxpayers) instead of excluding them from the broader definition of "person."

### Registration and fee

(R.C. 5751.04 and 5751.08; Section 399.20)

Under continuing law, every legal person subject to the CAT must register with the Tax Commissioner within 30 days after first becoming subject to the tax. A one-time $15 registration fee is payable if the person registers electronically; if registration is not done electronically, the fee is $20. The fee is credited toward the first tax payment due. If a person pays the fee after the date by which the person is required to register, an additional fee of up to $100 per month may be charged (up to a maximum of $1,000), which the Tax Commissioner may abate; the additional fee is not credited against the tax due. Under prior law, persons that would otherwise be subject to the tax but that begin business after November 30 in any year were exempt from the fee, as were persons that did not surpass the $150,000 taxable gross receipts threshold as of December 1.

The act eliminates the initial CAT registration fee exemption for new companies starting business after November 30 or surpassing the $150,000 threshold only after December 1. The act also permits companies that registered for or paid the tax for 2005 or 2006 in error to have their registrations cancelled, and their tax payment refunded, if the company was not subject to the tax either because they did not have nexus with the state or did not have $150,000 of taxable gross receipts; failed to cancel their registration before May 10, 2006; cancelled registration before February 10, 2007; and were not required to file returns or pay the minimum tax due February 9 of 2007, 2008, or 2009.

## Consolidated elected taxpayer group

(R.C. 5751.01(R), 5751.011, 5751.013, and 5751.014)

Continuing law permits a group of commonly owned or controlled persons (including the common owner) to elect to file and pay the tax on a consolidated basis in exchange for excluding otherwise taxable gross receipts arising from transactions with other members of the group. For purposes of the election, common ownership or control means at least an 80% interest, or a 50% interest, as chosen by the group, but prior law permitted each group to apply only one of the percentage-ownership tests. Foreign corporations may be included in a group if they satisfy the group's chosen ownership test, but the group must include either all such foreign corporations or none.

Once made, the consolidation election means the group must file as a single taxpayer for at least the next eight consecutive calendar quarters so long as at least two members satisfy the ownership and control criteria. If a person is no longer under common ownership or control with the group, the person must report and pay the tax as a separate taxpayer, as part of a combined taxpayer group (see below), or as a member of a different consolidated taxpayer that is eligible to file and pay tax on a consolidated basis. If a person is added to the group after the election, the person must be added to the consolidated group for the purpose of paying and reporting the tax on a consolidated basis, and the group must notify the Tax Commissioner of the addition with the next return filed. The exemption for taxpayers having taxable gross receipts of $150,000 or less does not apply to a company that is a member of a consolidated elected taxpayer group.

The act permits groups of affiliated companies that have elected to be treated as a consolidated group to change the ownership test on which the initial election was made. A group that made its initial election on the basis of the 80% ownership test, by written request to the Tax Commissioner, may change its election so that its consolidated elected taxpayer group is formed on the basis of the 50% ownership test. It may do so if, when the initial election was made, the group did not include any person satisfying the 50% ownership test; if one or more of the initial members subsequently acquired an ownership interest satisfying the 50% ownership test but not the 80% ownership test, and the acquired person satisfies the criteria that would require it to be included in a combined taxpayer group under R.C. 5751.012; and if the group has not previously changed its election.

The act defines "reporting person" as a person included in a consolidated elected taxpayer or combined taxpayer group and designated by the group to legally bind the group for all CAT filings and tax liabilities and to receive all CAT-related legal notices. "Reporting person" also includes a separate taxpayer that is not a member of such a

group for CAT reporting purposes. Each member of a consolidated elected taxpayer group remains jointly and severally liable for the group's tax and any associated penalty and interest, and is individually subject to assessment, as under prior law (only the pertinent language is moved).

## Combined taxpayer group

(R.C. 5751.01, 5751.012, 5751.013, and 5751.014)

Under continuing law, all persons subject to the CAT that have more than 50% of their ownership interests owned or controlled by common owners, but that do not elect to be treated as consolidated elected taxpayers, are treated, together with their common owners, as "combined taxpayers." Like a consolidated elected taxpayer, a combined taxpayer must report and pay the tax as a single taxpayer. A combined taxpayer must register as a group and is subject to the same $20 per-member registration fee as a consolidated elected taxpayer, up to a maximum of $200. If a person is added to the combined taxpayer group, the group must notify the Tax Commissioner of the addition with the next return filed. The exemption for taxpayers having taxable gross receipts of $150,000 or less does not apply to a company that is a member of a combined taxpayer group. However, unlike members of a consolidated elected taxpayer, members of a combined taxpayer may not exclude receipts arising from transactions between the members.

The act specifies that the $150,000 exemption from the CAT applies to members of a group of companies affiliated through majority ownership that do not elect to be treated as a consolidated elected taxpayer group. Like members of a consolidated elected taxpayer, each member of a combined taxpayer group remains jointly and severally liable for the group's tax and any associated penalty and interest and is individually subject to assessment.

## Tax periods

(R.C. 5751.03, 5751.04, 5751.05 and 5751.051)

The commercial activity tax is computed on the basis of "tax periods," which are either calendar quarters or calendar years for each taxpayer depending on the taxpayer's level of taxable gross receipts. Taxpayers generating annual taxable gross receipts of $1 million or more are required to pay the tax on a quarterly basis. Such taxpayers are referred to as "calendar quarter taxpayers." They must report and pay the tax within 40 days after the end of each quarterly period, which corresponds with the calendar quarters: January through March, April through June, July through September, and October through December. The fourth-quarter report is considered to be the annual report, and must reflect quarterly underpayments or overpayments for

the year. The Tax Commissioner is authorized to approve alternative filing and payment schedules for a taxpayer if the taxpayer shows the need for an alternative.

Under prior law, taxpayers having estimated annual taxable gross receipts of $1 million or less could report and pay the tax on a calendar year basis, but only if the taxpayers made an election to do so. Such taxpayers are referred to as "calendar year taxpayers." (All other taxpayers are, by default, calendar quarter taxpayers.) The tax report and payment is due within 40 days after the end of the calendar year. Once a calendar year taxpayer's annual taxable gross receipts exceed $1 million, the taxpayer must begin to report and pay on a quarterly basis in the following year, and must continue to do so until the taxpayer again qualifies for annual reporting and payment and receives written approval to do so from the Tax Commissioner.

Under the act, taxpayers with taxable gross receipts of less than $1 million must report and pay the tax on a calendar year basis, and register as calendar year taxpayers, rather than "electing" that status as under prior law. Taxpayers that anticipate taxable gross receipts of more than $1 million must notify the Tax Commissioner on the taxpayer's initial registration form, and file and pay on a quarterly basis.

The act also changes commercial activity tax return filing dates. Previously, returns had to be filed within 40 days after the end of the quarterly or annual reporting period. Under the act, calendar year taxpayers must file and pay the tax by the tenth day of May following the end of each calendar year. For calendar quarter taxpayers, the due date is the tenth day of the second month after the end of each calendar quarter.

## V. Income Taxes

### Income tax petition for reassessment

(R.C. 5747.13(E))

Prior law required a taxpayer, an employer required to withhold income tax from employees, and a qualifying pass-through entity or trust to pay some or all of an assessment under the personal income tax upon filing a petition for reassessment contesting an assessment of liability by the Tax Commissioner.[392] Whether all or some part of the assessment was to be paid depended on several conditions, including the reason for the assessment, the basis of the taxpayer's objection, and whether a return was filed.

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[392] A qualifying pass-through entity or trust is a pass-through entity or trust with a nonresident owner or beneficiary on behalf of whom the entity or trust is required by law to withhold income tax to ensure payment by the owner or beneficiary.

The act eliminates the various conditions and corresponding payment requirements, and requires payment of the entire amount assessed if any of the following circumstances exist:

(1) A person files a tax return reporting Ohio adjusted gross income, less personal exemptions, of less than one cent for reasons other than the required computations of taxable income;

(2) A person files a tax return that the Tax Commissioner determines to be incomplete, false, fraudulent, or frivolous;

(3) A person does not file a tax return, and the failure is for some reason other than that the person asserts it is not subject to Ohio taxation due to a lack of nexus with the state, or that the computations to determine a taxpayer's tax liability, or application of allowed credits, result in a tax liability of less than $1.01.

## School district income tax

(R.C. 5748.02 and 5748.03)

Continuing law allows a board of education to propose a resolution to renew an expiring school district income tax levy, so long as the tax rate that will be imposed by the new levy is not higher than that of the expiring levy. Under these circumstances, the resolution may describe the new levy as a "renewal tax" instead of an "additional" tax.

The act authorizes multiple school district income tax levies that expire on the same date to be combined into a single renewal levy, so long as the total tax rate being proposed by the new levy is not higher than the total tax rate of those that are expiring.

## Municipal income taxation of justices and judges

(R.C. 718.04; Section 803.20)

Under continuing law, a municipal corporation may levy a tax on the income of a nonresident only if taxation of the nonresident is consistent with the Due Process Clause of the Fourteenth Amendment of the United States Constitution:

> "Th[e] test is . . . whether the taxing power exerted by the [local government] bears fiscal relation to protection, opportunities and benefits given by the [government]. The . . . question is whether the [local government] has given anything for which it can ask return.

*Wisconsin v. J. C. Penney Co.* (1940), 311 U.S. 435, 444; and *Angell v. Toledo* (1950), 153 Ohio St. 179. Under Section 13, Article XVIII of the Ohio Constitution, the General Assembly has authority to further limit the taxing jurisdiction of municipal corporations.

The act provides that only the City of Columbus and the municipal corporation of residence are authorized to levy an income tax on the income of the Chief Justice and the justices of the Ohio Supreme Court received as a result of services rendered as a justice. The act further provides that only the municipal corporation of residence is authorized to levy a tax on the income of a judge sitting by assignment of the Chief Justice, or of a judge of a district court of appeals sitting in multiple locations within the district, and received as a result of services rendered as a judge. The act first applies these amendments to taxable years beginning on or after January 1, 2010.

## VI. Miscellaneous Tax Provisions

### Incorporation of changes to the Internal Revenue Code

(R.C. 5701.11)

Ohio's tax laws incorporate some provisions of federal law, and because federal law is susceptible to being amended frequently, ongoing Ohio law specifies the version of federal law that is incorporated. Specifically, under prior law, a reference in the tax title (Title 57) of the Ohio Revised Code to the Internal Revenue Code (IRC) or other laws of the United States meant those laws as they existed on December 30, 2008, unless the Revised Code section contains a date certain that specifies the day, month, and year. (December 30, 2008, is the effective date of H.B. 458 of the 127th General Assembly, which is the most recent act to incorporate federal tax law changes.)

The act incorporates into Ohio tax law references to the IRC or United States Code all changes to the IRC or United States Code between December 30, 2008, and R.C. 5701.11's effective date (which is the 91st day after the Governor signs the act and files it with the Secretary of State). The principle federal act whose tax law changes are incorporated is The American Recovery and Reinvestment Act of 2009--the federal "stimulus" bill. As under prior law, this incorporation does not apply to references to the IRC or federal laws as of a date certain specifying the day, month, and year.

Prior law authorized a taxpayer whose taxable year ended after December 21, 2007, and before December 30, 2008, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable year. The election was available to taxpayers subject to the corporation franchise tax or personal income tax and to electric companies subject to municipal income tax.

The act revises this election so that it may be made for a taxpayer's taxable year ending after December 30, 2008, but before R.C. 5701.11's effective date. The act retains the provision specifying that similar elections made under prior versions of R.C. 5701.11 remain effective for the taxable years to which the previous elections applied.

## Service of tax-related notices and orders

(R.C. 4303.331, 5703.37, 5728.12, 5739.131, 5747.16, 5749.12, and 5751.09)

The act modifies the means by which the Tax Commissioner notifies persons of alleged outstanding tax liabilities or orders persons to take some action. Prior law required the Commissioner to serve such notices or orders by sending a certified copy by certified mail or by delivering it personally. One particular circumstance in which notice is made in this manner is when the Tax Commissioner issues an assessment, which is a formal notification of tax due; the issuance of an assessment initiates a person's opportunity to appeal the assessment, and establishes when the 60-day appeal filing period begins and when the statute of limitations for collection begins. Prior law required a person who received such an order to notify the Department of Taxation whether the person accepts the terms of the order and would obey it; the person's reply had to be made by personal service, certified mail, or one of several kinds of delivery services specified by law and approved by the Commissioner.

The foregoing notice and mailing provisions (as modified by the act) apply to the existing notices and orders issued by the Tax Commissioner under ongoing law, and are also extended by the act to notices provided to nonresident taxpayers and taxpayers whose whereabouts are not known with respect to the motor fuel excise tax, sales and use taxes, income tax, natural resource severance tax, commercial activity tax, and the tax on alcoholic beverage distributors. Previously, process or notice for such a person had to be served upon the Secretary of State by leaving a copy of the process or notice at the Secretary of State's office at least 15 days before the return day, and by sending a copy by certified mail to the person's address listed in the registration or last known address.

The act eliminates the requirement that a person receiving an order must notify the Department whether the order is accepted and will be obeyed. The act eliminates the requirement that the copy of a notice or order be a "certified" copy. The act also specifies that mailings by certified mail be such that they notify the Tax Commissioner of the delivery date (presumably this refers to certified mail with return receipt requested).

The act authorizes the Tax Commissioner to enter a written agreement with a person affected by a notice or order, whereby the notice or order is delivered by alternative means, including secure electronic mail.

The act prescribes courses of action for when a mailing by the Tax Commissioner is returned, either because of an undeliverable address or some other reason (e.g., the addressee declines to accept delivery). When certified mail is returned because of an "undeliverable address," the Tax Commissioner is required to use "reasonable means" to obtain a new last known address of the person, including through an address service offered by the U.S. Postal Service. For purposes of the act, "undeliverable address" does not include the situation when an addressee fails to acknowledge or accept a mailing.

For the purposes of certifying a debt to the Attorney General for collection, assessments will be deemed final 60 days after a notice or order that is sent by certified mail is first returned to the Commissioner. (Under continuing law, the date when an assessment becomes final determines when the statute of limitations on collections begins.) Certification of an assessment by the Commissioner to the Attorney General is deemed to be prima-facie evidence that delivery is complete and that the notice or order has been served. Even if a notice or order has been certified to the Attorney General for collection, a person has 60 days in which to file a petition for reassessment after an initial contact is made with the person by the Commissioner, Attorney General, or either's designee.

If a notice or order that is sent by certified mail is returned for some reason other than an undeliverable address, the act requires the Commissioner to resend it, by ordinary mail, showing the date on which the notice or order is sent, and including a statement that the notice or order is deemed to be served ten days from the date shown, and that the time within which an appeal may be filed apply from and after that date. The mailing is deemed to be prima-facie evidence that delivery of the notice or order was completed ten days after the Commissioner sent the notice or order by ordinary mail, and that the notice or order was served. If the mailing by ordinary mail is returned because of an undeliverable address, the Commissioner must proceed as when a certified mailing is returned because of an undeliverable address, as described above.

If the notice delivery requirements are satisfied, the act prescribes that there is a presumption of delivery and service, and that the presumption can be rebutted by a preponderance of the evidence that the address to which the notice or order was sent was not an address with which the person was "associated" at the time the Commissioner originally mailed the notice or order by certified mail.

A person is associated with an address at the time the Commissioner originally mailed the notice or order if, at that time, the person was residing, receiving legal

documents, or conducting business at the address; or if, before that time, the person had conducted business at the address and, when the notice or order was mailed, the person's agent or the person's affiliate was conducting business at the address. A person's affiliate is any other person that, at the time the notice or order was mailed, owned or controlled at least 20%, as determined by voting rights, of the addressee's business.

If a person elects to protest an assessment certified to the Attorney General for collection, the person must do so within 60 days after the Attorney General's initial contact with the person. Then, the Attorney General can either enter into a compromise with the person under ongoing law authorizing the compromise of tax claims, or send the person's petition for reassessment to the Tax Commissioner for consideration as any other petition for reassessment under the applicable law.

## Use of DTAC Fund for Foreclosure Prevention, Nuisance Abatement

(R.C. 321.261)

Under continuing law, a Delinquent Tax and Assessment Collection (DTAC) Fund is established in each county treasury. The fund receives 5% of collections of delinquent property taxes, manufactured home taxes, and special assessments. In most counties, the fund may be used only to pay the expenses of the county prosecuting attorney and the county treasurer in collecting additional delinquent taxes and assessments. In any county with a 2006 population of more than 100,000, the treasurer and prosecuting attorney may spend any DTAC money not needed for delinquent tax collection to assist townships and municipal corporations to abate "foreclosed residential nuisances;" the prosecuting attorney also may spend excess DTAC money to prosecute violations of "criminal and civil laws governing real estate and related transactions." The total amount spent for purposes other than delinquent tax collection may not exceed $3 million per year. In Cuyahoga County, which is the only county authorized to create a county land reutilization corporation (see R.C. Chapter 1724.), DTAC money may be used to fund the corporation.

The act authorizes the treasurer or prosecuting attorney of any county to use money in the DTAC to fund residential mortgage foreclosure prevention efforts and to address foreclosure-related problems. Specifically, the DTAC money may be used to "provide financial assistance in the form of 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 program. " The amount spent for those purposes in any year may not exceed the amount that would result in the DTAC Fund reserve falling below 20% of the amount spent the preceding year on collecting delinquent taxes. DTAC money also may be spent to assist cities, villages,

and townships in nuisance abatement of "deteriorated residential buildings in foreclosure" or vacant, abandoned, tax-delinquent, or blighted real property.

The act prohibits the treasurer or prosecuting attorney of any county from spending DTAC money for "land reutilization" unless the county's investment advisory committee authorizes such spending. (A county investment advisory committee is composed of either two county commissioners and the county treasurer, or three county commissioners, the county treasurer, and the clerk of the court of common pleas.) It is not clear whether "land reutilization" refers to foreclosure prevention and related problems or to some other activity or process.

### Disclosure of information: employer compliance

(R.C. 5703.21(B)(12) and 5747.18)

Continuing law generally prohibits agents and employees of the Department of Taxation from disclosing taxpayer information. There are various exceptions to this general rule, most of which authorize information to be disclosed to other governmental bodies for governmental purposes.

The act expressly authorizes the Department of Taxation to disclose information to the Department of Job and Family Services, Industrial Commission, and Bureau of Workers' Compensation solely to enable those agencies to identify employers that misclassify employees as independent contractors or that do not properly report and pay employer taxes. The act expressly limits the release of information to only such information that is necessary to verify employer compliance with Ohio law administered by those agencies.

### Forfeiture proceeds of Department of Taxation

(R.C. 2981.13(C)(2))

Sub. H.B. 120 of the 127th General Assembly added references to the Department of Taxation and its Enforcement Division and related funds in the appropriate places in the forfeiture law (R.C. Chapter 2981.). This was done to retain the Department's preexisting authority to obtain forfeiture and use the property or the proceeds, which had been inadvertently omitted in prior legislation.

The act makes a technical change to include an omitted reference to the Department of Taxation as the entity authorized to determine how money in the Department's Enforcement Fund is to be used for the Department's law enforcement purposes.

## DEPARTMENT OF TRANSPORTATION (DOT)

- Creates a Division, and a Deputy Director of, Equal Employment Opportunity in the Department of Transportation.
- Would have required ODOT to permit the construction of a curb cut on State Route 91 in Lake County (VETOED).

### Division and Deputy Director of Equal Employment Opportunity in the Department of Transportation

(R.C. 5501.04)

The act creates a Division of Equal Opportunity in the Department of Transportation. The division is headed by a deputy director. The division ensures that minority groups and all groups protected by state and federal civil rights laws are afforded equal opportunity to be recruited, trained, and work in the employment of, or on projects of, the Department of Transportation, and to participate in any contracts the department awards. The Director of Transportation must report each year to the Governor and General Assembly on the division's activities and accomplishments.

### Curb cut on State Route 91 (VETOED)

(Section 503.95)

The act would have required the Director of Transportation to permit the construction of a curb cut on State Route 91, near Vine Street, in Lake County.

## TUITION TRUST AUTHORITY (TTA)

- Places the Ohio Tuition Trust Authority within the office of the Chancellor of the Board of Regents.
- Renames the 11-member panel that formerly constituted the Authority as the Ohio Tuition Trust Authority Board, limits its powers and duties, and requires the Ohio Tuition Trust Authority within the Chancellor's office to perform all other duties and responsibilities under the College Savings Program Law that the act does not assign to the new Board.

- Requires the Authority to obtain the Board's advice and consent in the hiring of its executive director, and authorizes only the Board to remove the executive director, which it may do at any time, subject to the advice and consent of the Chancellor.
- Requires the Authority, by December 31, 2009, to conduct a study of guaranteed tuition plans and report recommendations for a new guaranteed tuition plan to the General Assembly and the Governor.
- Authorizes the Authority to establish and administer more than one plan for the sale of tuition units, including plans in which the risks are shared among institutions of higher education, the state, the Authority, and investors.
- Authorizes the Board to contract with any business, entity, or governmental agency to perform the Board's investment powers.

## Background

Under section 529 of the Internal Revenue Code, states may establish and maintain a state tuition program under which a person (1) may purchase credit toward tuition on behalf of a designated beneficiary that entitles the beneficiary to the waiver or payment of qualified higher education expenses or (2) may make contributions to an account set up for the purpose of meeting the qualified higher education expenses of a designated beneficiary. These programs receive favorable federal and state tax treatment for their assets and distributions to beneficiaries. In Ohio, the "Ohio Tuition Trust Authority" operates two college savings programs that correspond to the types permitted by federal law: (1) a guaranteed savings program and (2) a variable savings program. Each program allows beneficiaries to acquire savings toward the future payment of college tuition. Under former law, the Authority was an independent agency of state government, but the act makes the Authority part of the office of the Chancellor of the Board of Regents.

Contributors to the Guaranteed College Savings Program could purchase tuition credits on behalf of a designated beneficiary at approximately 1% of the weighted average tuition charged at public four-year universities in Ohio for the year the credits are purchased. (But the actual cost could be higher if a price adjustment was necessary to maintain the actuarial soundness of the program.) Tuition credits under the Guaranteed Program are backed by the full faith and credit of the State of Ohio. The sale of new credits under the Guaranteed Program has been suspended since 2003.

Under the Variable College Savings Program, rather than purchasing tuition credits, an individual contributes money to an investment account managed by the

state, or its agent, for the benefit of the beneficiary. Assets of the Variable Program are invested in savings accounts, life insurance or annuity contracts, securities, bonds, or other investment products. Because the program is market-based, it generally provides a variable rate of return and contributors assume all investment risk.

## Administrative restructuring

(R.C. 3334.03, 3334.08, 3334.11, and 3334.12; Section 733.10)

The act places the Ohio Tuition Trust Authority "within the office of the Chancellor of the Ohio Board of Regents." It renames the 11-member panel that under former law constituted the Authority as the "Ohio Tuition Trust Authority Board," and limits its powers and duties. Accordingly, the powers and duties specified in law that the act does not specifically assign to the Board are to be exercised by "the Authority." Presumably, this leaves the Authority's remaining powers and duties to its executive director and staff, with the Chancellor ultimately responsible for oversight of activities no longer under the Board's purview. But precise lines of responsibility may not be clear.

### Ohio Tuition Trust Authority Board

(R.C. 3334.03)

The act renames the 11-member Ohio Tuition Trust Authority as the "Ohio Tuition Trust Authority Board." Under former law, this panel consisted of six members appointed by the Governor with the advice and consent of the Senate, two state senators appointed by the Senate President, two state representatives appointed by the Speaker of the House, and the Chancellor. The act keeps the 11-member format but permits the Chancellor to designate another to represent the Chancellor on the Board.[393] The Chancellor remains a voting member.

[393] Of the Governor's appointees, under both former law and the act, one must represent state institutions of higher education, one must represent private nonprofit colleges and universities in Ohio, one must have experience in the field of marketing or public relations, and one must have experience in the field of information systems design or management. Also, two members appointed by the Governor must have experience in the field of banking, investment banking, insurance, or law.

## Board powers and duties

### Employment and dismissal of executive director

(R.C. 3334.03(B)(2) and (3) and 3334.08(A)(11))

Under the act, the Authority, not the Board, is responsible for employing an executive director and other personnel. Therefore, it may not be clear which state officer is specifically authorized to hire these staff persons. One possible interpretation could be that the Chancellor is responsible for hiring the executive director and the executive director is responsible for hiring other staff. In any event, the act requires that the official who hires the executive director obtain the advice and consent of the Board, in the form of a majority vote of the Board in favor of the hiring.

The act permits only the Board to remove the executive director, which it may do "at any time," but subject to the advice and consent of the Chancellor (who is a voting member of the Board).

### Other powers and duties

(R.C. 3334.03(B)(2))

Under the act, the Board largely retains its prior investment and fiduciary responsibilities pertaining to college savings programs. However:

(1) With respect to college savings bonds, the Authority must exercise administrative responsibilities, including marketing, promoting, and advertising.

(2) With respect to expenditures under both the Guaranteed and Variable savings programs, the Board must consult with the Chancellor prior to changing the order of priority from, first, payments on behalf of beneficiaries; second, refunds; and third, payment of investment fees and costs.

(3) The Board must consult with the Chancellor prior to entering into a contract with a firm to exercise the Board's investment powers (see "**Investment contractors**" below).

(4) The Board must consult with the Chancellor prior to establishing a partnership, trust, limited liability company, corporation, or any other legal entity to transact business.

## New guaranteed programs; study

(R.C. 3334.07)

### Background--constitutional pledge of state's full faith and credit

Ohio Constitution, Article VI, Section 6, which the voters adopted in 1994, declares it "a public purpose for the state to maintain a program for the sale of tuition credits such that the proceeds of such credits . . . shall be guaranteed to cover a specified amount when applied to the cost of tuition" of an institution of higher education. Section 6 also declares that a college tuition credit program is "backed by the full faith and credit and taxing power of the state," and requires the General Assembly to "appropriate money sufficient to offset any deficiency that occurs in the Ohio Tuition Trust Fund, at any time necessary to make payment of the full amount of any tuition payment or refund that would have been required by a tuition payment contract, except for the contract's limit of payment to money available in the Trust Fund." This pledge appears to apply to any tuition credit program the state might establish, and not merely the Guaranteed Savings Program.

### The act

The act authorizes the Authority, not the Board, to establish and administer more than one plan for the sale of tuition credits within the Ohio Tuition Trust Fund. The plans may use "similar principles" specified in law for the Guaranteed College Savings Program or may be "modeled after a plan that was included in the study" required by the act (see below). This would appear to permit the Authority to proceed with new guaranteed tuition plans without the need for further legislation. If the Authority establishes and administers more than one plan for the sale of tuition units, the money received under each plan must be segregated within the Ohio Tuition Trust Fund.

### Study

The act requires the Authority, not the Board, to study guaranteed tuition program plans and make recommendations for a new guaranteed tuition plan. Not later than December 31, 2009, the Authority must submit a report to the Speaker of the House, the President of the Senate, and the Governor. The Authority's report must include "consideration of a guaranteed tuition program plan in which the risks of the plan are shared equitably among institutions of higher education, the state, the Ohio Tuition Trust Authority,[394] and the investors in the program."

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[394] The intent, if any, for differentiating between "the state" and the Authority may not be clear.

The extent to which a plan that involves selling tuition credits could partition investment risk may not be clear, given the constitutional pledge of the state's full faith, credit, and taxing power to secure the guarantees of any tuition credit program. While a new program might not guarantee that new tuition credits will cover 100% of future tuition, the constitutional pledge would appear to commit the state to bear all risk of providing at least the level of return that the program does guarantee.

### Investment contractors

(R.C. 3334.11(E))

Under former law, the Authority could approve the Public Employees Retirement Board to exercise the Authority's investment powers. The act revises this provision to permit the Tuition Trust Authority Board to enter into an agreement with any business, entity, or governmental agency to perform the Board's investment powers. As under prior law, the contractor must exercise these powers in a manner agreed upon by the Board "that maximizes the return on investment and minimizes the administrative expenses."

## OHIO TURNPIKE COMMISSION (TPC)

- Would have made the Ohio Turnpike Commission responsible for the major maintenance and repair and replacement of grade separations at intersections of any turnpike project with county and township roads in a county that, as of January 1, 2009, had closed one or more roads as a result of grade separation failure, and would have made the appropriate board of county commissioners or the board of township trustees responsible for routine maintenance of such a grade separation (VETOED).

### Major maintenance and repair and replacement at grade separations of the Ohio Turnpike and county and township roads (VETOED)

(R.C. 5537.051)

The Governor vetoed a provision that would have made the Ohio Turnpike Commission responsible for the major maintenance and repair and replacement of grade separations at intersections of any turnpike project with county and township roads in any county that, as of January 1, 2009, had closed one or more roads as a result of grade separation failure. The appropriate board of county commissioners or the

board of township trustees would have been responsible for routine maintenance of such grade separations.

## DEPARTMENT OF VETERANS SERVICES (DVS)

- Removes language exempting from competitive selection or Controlling Board approval reimbursements for pharmaceutical and patient supply purchases that are paid to the United States Department of Veterans Affairs on behalf of the Ohio Veterans' Home Agency and instead exempts the Department of Veterans Services purchase of goods and services in accordance with contracts entered into by the United States Department of Veterans Affairs.

### Purchasing without competitive selection or Controlling Board approval

(R.C. 127.16)

Every state agency generally is required to make any purchase from a particular supplier that would amount to $50,000 or more by competitive selection or with Controlling Board approval. Prior law exempted from this requirement reimbursements paid to the United States Department of Veterans Affairs for pharmaceutical and patient supply purchases made on behalf of the Ohio Veterans' Home Agency. The act removes the language exempting from competitive selection or Controlling Board approval the reimbursements for pharmaceutical and patient supply purchases and instead permits the Department of Veterans Services to purchase goods and services in accordance with contracts entered into by the United States Department of Veterans Affairs without competitive selection or Controlling Board approval.

## DEPARTMENT OF YOUTH SERVICES (DYS)

- Modifies the amount of money the Department of Youth Services must withhold from future payments to a county's Felony Delinquent Care and Custody Fund and enacts a mechanism for determining the amount to be so withheld from a county that is linked to the *maximum balance carry-over* (defined in the act) that is permitted at the end of the previous fiscal year from funds allocated to the county during that previous fiscal year.

## County Felony Delinquent Care and Custody Fund

(R.C. 5139.43(B))

Under continuing law, the Department of Youth Services (DYS), with the advice of the RECLAIM advisory committee, allocates annual operational funds to juvenile courts for juvenile felony delinquent care and custody programs and grants state subsidies to counties to be used for unruly or delinquent children under the Youth Services Law. Each county must create a Felony Delinquent Care and Custody Fund, and the funds and subsidies received by a county are deposited in the county's Fund. Former law provided that beginning June 30, 2008, at the end of each fiscal year, the balance in the Fund in any county could not exceed the total moneys, i.e., the aforementioned operational funds and state subsidies, allocated to it during the previous fiscal year, unless the county was granted an exemption by DYS. DYS was required to withhold from future payments to a county an amount equal to any moneys in the county's Fund that exceeded the total moneys allocated to the county during the preceding fiscal year, and to reallocate the amount withheld.

The act modifies the amount of moneys DYS must withhold from future payments to a county for deposit into the county's Felony Delinquent Care and Custody Fund and enacts a mechanism for determining the amount that must be so withheld. Under the act, the *maximum balance carry-over* at the end of each respective fiscal year in the Fund in any county from the operational funds allocated and state subsidies granted to the county in the previous fiscal year cannot exceed an amount calculated as provided in the formula described in the next sentence, unless the county is granted an exemption by DYS. Beginning June 30, 2008, the *maximum balance carry-over* at the end of each respective fiscal year must be determined by the following formula: for fiscal year 2008, the maximum balance carry-over is 100% of the fiscal year 2007 allocation, to be applied in determining the fiscal year 2009 allocation; for fiscal year 2009, it is 50% of the fiscal year 2008 allocation, to be applied in determining the fiscal year 2010 allocation; for fiscal year 2010, it is 25% of the fiscal year 2009 allocation, to be applied in determining the fiscal year 2011 allocation; and for each fiscal year subsequent to fiscal year 2010, it is 25% of the immediately preceding fiscal year's allocation, to be applied in determining the allocation for the next immediate fiscal year. DYS is required to withhold from future payments to a county in any fiscal year an amount equal to any moneys in the county's Fund that exceed the *maximum balance carry-over* that applies for that county for the fiscal year in which the payments are being made, and to reallocate the amount withheld.

## MISCELLANEOUS (MSC)

- Requires a state agency director to request that the Controlling Board increase the agency's capital appropriations if the director and the Controlling Board determine such an increase is needed for the agency to receive and use funds under the federal American Recovery and Reinvestment Act of 2009.

- Provides that payments received by or on behalf of a public issuer under the federal Build America Bond program may be credited to the fund or account in which those proceeds are held or to the general fund or other fund or account as the public issuer authorizes.

- Provides that income from the investment of proceeds of public obligations or fractionalized interests in public obligations, in addition to payments received under the Build America Bond program, may also be credited to the fund or account from which debt charges on those public obligations are paid.

- Expressly includes non-interest bearing government-issued obligations among the "public obligations" local governments may issue.

- Provides that the estimated interest rate for local government general obligation bonds be expressed as a net average based on factors that include "existing market conditions," expected direct payments from the U.S. government, and the effect of expected federal tax credits related to the bonds.

- Specifies that continuing law's substantially equal principal payment requirement for securities issued in multiple installments or series by a political subdivision for the same purpose may be applied with reference to either each installment or series, or all installments or series on a consolidated basis.

- Authorizes a taxing authority to fund or refund outstanding securities from a source other than new securities.

- Permits, rather than requires, the Residential Construction Advisory Committee to model a recommended building code on a code issued by a national model code organization.

- Permits the Committee to provide the Board of Building Standards with any rule the Committee recommends to update or amend the state residential building code.

- Makes various changes to the procedure by which the Committee recommends rules to the Board.

- Allows any person to petition the Committee to recommend a rule to the Board regarding the Ohio Residential Building Code.
- Adds four new members to the Board.
- Adds as members of the Ohio Family and Children First Cabinet Council the Directors of Aging and of Rehabilitation and Correction.
- Would have modified the requirements that a newspaper or newspaper of general circulation must comply with for purposes of any legal publication that is required by law to be made in such a newspaper circulated in a political subdivision, and that would have permitted any notice required to be so published to appear on an insert placed in the newspaper (VETOED).
- Authorizes a licensed funeral director who sells preneed funeral contracts and who also sells preneed cemetery merchandise and services contracts to meet the annual preneed cemetery contract reporting requirement by filing the necessary documentation with the Board of Embalmers and Funeral Directors along with or as part of the annual preneed funeral contract report.
- Authorizes a cemetery company or association that sells preneed cemetery merchandise and services contracts and that also sells preneed funeral contracts to meet the annual funeral contract reporting requirement by filing the necessary documentation with the Division of Real Estate of the Department of Commerce along with or as part of the annual preneed cemetery contract report.
- Creates the Budget Planning and Management Commission to complete a study and make recommendations designed to provide relief to the state during the current difficult fiscal and economic period.
- Requires the Commission, in developing recommendations, to develop a strategy for balancing the state budget for fiscal years 2012 and 2013.
- Requires the Commission to submit its written report of recommendations not later than November 30, 2010, after which the Commission ceases to exist.
- Includes investigators of the Bureau of Criminal Identification and Investigation among the protected individuals whose residential and familial information is not a public record for purposes of the Public Records Law.
- Includes investigators of the Bureau of Criminal Identification and Investigation among the protected individuals who may request the county auditor to remove the person's name from the general tax list of real and public utility property and the

general duplicate and use the person's initials instead as the name that appears on a deed.

- Requires a county auditor, upon the request of a protected individual, to use the person's initials, not only on the general tax list and duplicate, but also on any record made available to the general public on the Internet or a publicly accessible database.

- Requires the Ohio Venture Capital Authority to give equal consideration, in selecting program administrators, to certain minority owned and controlled firms, firms owned and controlled by women, and ventures involving minority owned and controlled firms and firms owned and controlled by women.

- Requires the Ohio Venture Capital Authority, the Chancellor of the Board of Regents, and the Administrator of Workers' Compensation to submit an annual report containing information regarding the minority or women-owned businesses with which it contracts as program administrators or investment managers.

- Designates August as "Ohio Military Family Month."

- Creates the Ohio Legislative Commission on the Education and Preservation of State History; requires it to review organizations that provide services and instructions on Ohio's history and that have received specified state funding, make recommendations regarding those organizations, and identify alternative funding sources for them; and requires it to issue a report on its findings and recommendations by July 1, 2010.

- Authorizes conveyance of the state interest in real estate situated in Fairfield in Butler County to Fairfield Village Realty, LLC.

- Authorizes the conveyance of state-owned real estate in Jackson County to the Jackson City Schools Board of Education.

- Authorizes the Governor to execute a Governor's Deed conveying to the Dayton Public School District/Dayton Board of Education, and its successors and assigns, all of the state's right, title, and interest in certain real estate located in Montgomery County.

- Authorizes the conveyance of state-owned real estate in Hamilton County to the City of Cincinnati.

## Controlling Board authority to increase capital appropriations

(Section 245.10)

The act requires a state agency director to request that the Controlling Board increase the amount of the agency's capital appropriations if the director determines such an increase is necessary for the agency to receive and use funds under the federal American Recovery and Reinvestment Act of 2009. The act authorizes the Board to make such increase up to the exact amount necessary under the federal act if the Board concurs that the increase is necessary.

## Disposition of Build America Bond payments by the state or local governments

(R.C. 133.02)

Under prior law, the income from the investment of proceeds of public obligations or fractionalized interests in public obligations of a public issuer could be credited to the fund or account in which those proceeds are held or to the general fund or other fund or account as the public issuer authorizes. Such income was to be used for the purposes of the relevant fund or account. The act provides that such income may also be credited to the fund or account from which debt charges on those public obligations are paid.

The act also provides that any payments received by or on behalf of a public issuer pursuant to the federal Build America Bond program may be credited in the same manner as income from investment of proceeds of public obligations and fractionalized interests in public obligations of a public issuer. The Build America Bond program is a program authorized under the federal American Recovery and Reinvestment Act of 2009 to allow state and local governments to issue taxable bonds in 2009 and 2010 for eligible projects and to receive a payment from the federal government to defray a portion of the borrowing costs (*see* 26 U.S.C. 6431).

## Government issued securities and obligations

### Public obligation: definition

(R.C. 133.01(GG)(2))

Under prior local government public securities law definitions, "public obligations" included government-issued securities and other obligations that are interest-bearing. Obligations that did not bear interest were not included in the definition of "public obligation." The act includes obligations among "public obligations" regardless of whether the obligations bear interest.

### Estimated interest rate of bonds

(R.C. 133.18(B))

Under continuing law, local governments, when issuing general obligation bonds, are required to state the estimated interest rate and maximum maturity of the bonds.

The act provides that the interest rate be expressed as an "estimated net average" interest rate that is determined by the taxing authority based on existing market conditions, adjustments for anticipated payments from the U.S. government, the effect of anticipated federal tax credits for owners of the bonds, among other factors.

### Securities: payment of principal

(R.C. 133.21)

Under continuing law, principal payments for securities issued by political subdivisions must be made in substantially equal annual or semi-annual installments or in amounts such that the total principal and interest payments in any fiscal year is not more than three times the amount of those payments in any other fiscal year.

The act specifies that the substantially equal payment requirement for securities issued in multiple installments or series for the same purpose may be applied with reference to either each installment or series, or all installments or series on a consolidated basis.

### Sources of funding securities

(R.C. 133.34)

Under prior law, a taxing authority could fund or refund outstanding securities only by issuing new securities.

The act expressly authorizes a taxing authority to fund or refund outstanding securities and public obligations from sources other than new securities if authorized to do so by law or the Ohio Constitution.

## Ohio Residential Building Code

(R.C. 3781.10)

Continuing law requires the Board of Building Standards to adopt a state residential building code that governs one-, two-, and three-family dwellings. Rules that govern those residential buildings are uniform requirements for residential

buildings in any area certified to enforce the Ohio Residential Building Code. No local code or regulation can differ from the Ohio Residential Building Code unless that code or regulation addresses subject matter not addressed by the Ohio Residential Building Code.

### Adoption of the Ohio Residential Building Code

(R.C. 3781.10 and 4740.14)

Law largely unchanged by the act requires the Residential Construction Advisory Committee to recommend to the Board of Building Standards a building code for residential buildings. Under prior law, the Committee had to recommend a code that it modeled on a residential building code issued by a national model code organization, with adaptations necessary to implement the code in Ohio. The act permits, rather than requires, the Committee to model the recommended code on a code issued by a national model code organization.

Under continuing law, the Committee must consider all of the following in making its recommendation to the Board:

(1) The impact that the Ohio Residential Building Code may have upon the health, safety, and welfare of the public;

(2) The economic reasonableness of the Ohio Residential Building Code;

(3) The technical feasibility of the Ohio Residential Building Code;

(4) The financial impact that the Ohio Residential Building Code may have on the public's ability to purchase affordable housing.

If the Board decides not to adopt a code recommended the Committee, the Committee must revise the rejected code and resubmit it until the Board adopts a code the Committee recommends as the Ohio Residential Building Code. Correspondingly, the Board is required to adopt rules establishing a code as the Ohio Residential Building Code upon receiving a recommended code from the Committee that is acceptable to the Board.

The act allows the Committee to provide the Board with any rule the Committee recommends to update or amend the Ohio Residential Building Code or any rule that the Committee recommends to update or amend the Ohio Residential Building Code after receiving a petition (see "**Petitions for Changes to the Ohio Residential Building Code**," below). The act allows the Board to either accept or reject the proposed rule. If the Board does not act to accept or reject the proposed rule within 90

days after receiving the proposed rule from the Committee, the proposed rule becomes part of the Ohio Residential Building Code.

Under the act, the Committee must provide the Board with a written report of the Committee's findings for each consideration required under continuing law, as described above. Additionally, the act prohibits the Committee from making any recommendation to the Board that relates to the Ohio Residential Building Code, rules that update or amend the Ohio Residential Building Code, certification of building officials who enforce the Ohio Residential Building Code, or the interpretation of the Ohio Residential Building Code until the Committee has considered the matters required under continuing law, as described above.

### Petitions for changes to the Ohio Residential Building Code

(R.C. 3781.12 and 4740.14)

Continuing law permits any person to petition the Board of Building Standards to adopt, amend, or annul a rule adopted as part of the Ohio Commercial or Residential Building Code and specifies certain procedures to be followed by the petitioner and the Board upon the filing of such a petition. The act additionally permits any person to petition the Residential Construction Advisory Committee to recommend a rule to the Board that the Board adopts regarding the Ohio Residential Building Code. The Committee must provide the Board with any rule the Committee recommends after receiving such a petition and considering the matters described in "**Adoption of the Ohio Residential Building Code**" (above).

### Board of Building Standards

(R.C. 3781.07; Section 747.10)

Law largely unchanged by the act has established the Board of Building Standards within the Department of Commerce. Formerly, the Board consisted of only 11 members appointed by the Governor. Those members included the following:

(1) One attorney admitted to the Ohio bar;

(2) Two registered architects;

(3) Two professional engineers, one in the field of mechanical and one in the field of structural engineering, each of whom must be duly licensed to practice that profession in Ohio;

(4) One person of recognized ability, broad training, and 15 years experience in problems and practice incidental to the construction and equipment of certain buildings;

(5) One person with recognized ability and experience in the manufacture and construction of industrialized units;

(6) One member of the fire service with recognized ability and broad training in the field of fire protection and suppression;

(7) One person with at least ten years of experience and recognized expertise in building codes and standards and the manufacture of construction materials;

(8) One general contractor with experience in residential and commercial construction;

(9) One mayor of a municipal corporation in which the Ohio Residential and Nonresidential Building Codes are being enforced in the municipal corporation by a certified building department.

Under continuing law, the mayoral member described in (8), above, must be chosen from a list of three names the Ohio Municipal League submits to the Governor.

The act adds four new members to the Board. Those members include the following:

(1) Two general contractors who have recognized ability in the construction of residential buildings;

(2) One person with recognized ability and experience in the use of advanced and renewable energy in the construction of commercial and residential buildings;

(3) One person with recognized ability and experience in the use of energy conservation in the construction of commercial and residential buildings.

The general contractors described in (1), immediately above, must be chosen from a list of ten names the Ohio Home Builders Association submits to the Governor.

The act requires the Governor to appoint these new members within 60 days after the effective date of the section. The initial terms of the general contractor-members expire October 13, 2012. The initial term of the member with recognized ability and experience in the use of advanced and renewable energy in the construction of commercial and residential buildings expires on October 13, 2011. The initial term of the member who has recognized ability and experience in the use of energy

conservation in the construction of commercial and residential buildings expires on October 13, 2010. Upon the expiration of these initial terms, all successive appointments must be made as provided for under continuing law and must last for four years, as provided for under continuing law.

### Ohio Family and Children First Cabinet Council

(R.C. 121.37)

The Ohio Family and Children First Cabinet Council helps families seeking government services by streamlining and coordinating existing government services. The Council is composed of the Superintendent of Public Instruction and the Directors of Youth Services, Job and Family Services, Mental Health, Health, Alcohol and Drug Addiction Services, Mental Retardation and Developmental Disabilities, and Budget and Management. The chairperson of the Council is the Governor or the Governor's designee.

The act adds the Directors of Aging and of Rehabilitation and Correction as members of the Council.

### Newspapers qualified for publication of legal notices--requirements (VETOED)

(R.C. 7.12 and 5721.01)

The law prescribes the requirements that a newspaper or newspaper of general circulation in a political subdivision must meet to qualify for publication of legal notices required by law. In addition to all other requirements, such a newspaper or newspaper of general circulation must be a publication bearing a title or name, regularly issued as frequently as once a week for a definite price or consideration paid for by not less than 50% of those to whom distribution is made, having a second class mailing privilege, being not less than four pages, published continuously during the immediately preceding one-year period, and circulated generally in the political subdivision in which it is published.[395] The publication must be of a type to which the general public resorts for passing events of a political, religious, commercial, and social nature, current happenings, announcements, miscellaneous reading matter, advertisements, and other notices.

[395] Apparently a newspaper is not required to meet these qualifications, yet nevertheless qualifies to publish legal notices, if it is a legal newspaper that publishes court calendars and has done so for at least one year preceding the publication in the newspaper of any other sort of legal notice.

With respect to publications pertaining to tax collections, continuing law requires a newspaper or newspaper of general circulation to be a publication that meets the requirements identical to those described in the preceding paragraph.

The Governor vetoed all the amendments the act made to these qualifications. One vetoed amendment would have removed from the qualifications described above the requirement that a newspaper or newspaper of general circulation be a publication that is regularly issued for a definite price or consideration paid for by not less than 50% of those to whom distribution is made and have a second class mailing privilege. The effect of the veto is to leave these qualifications in the law. Another, related veto removed a new qualification that would have required a newspaper or newspaper of general circulation to have at least 25% editorial, nonadvertising content, exclusive of inserts, measured relative to total publication space, and an audited circulation to at least 50% of the households in the newspaper's retail trade zone as defined by the audit. This new qualification would have replaced the new qualification described above that, but for the first veto, would have been removed from the law. A third veto removed a seemingly general amendment that would have specified that any notice required to be published in a newspaper or newspaper of general circulation could have appeared on an insert placed in such a newspaper. And a final veto removed yet another seemingly general amendment that would have required a responsible party who was required to publish a notice in a newspaper or a newspaper of general circulation to consider various advertising media to determine which media might reach the intended public most broadly. A responsible party would have been required to publish the notice in only one qualified medium to meet the requirements of law.

## Reporting of preneed cemetery and preneed funeral contracts

(R.C. 1721.211 and 4717.31)

A person who sells preneed cemetery contracts is required to file an annual reporting affidavit with the Division of Real Estate. And a person who sells preneed funeral contracts is required to file an annual report with the Board of Embalmers and Funeral Directors. Under the act, a licensed funeral director who sells both preneed funeral contracts and preneed cemetery contracts is deemed to have met the annual preneed cemetery contract reporting duty if the funeral director submits the annual preneed cemetery contract affidavit to the Board of Embalmers and Funeral Directors along with or as part of the funeral director's annual preneed funeral contract report. Similarly, a cemetery company or association that sells both preneed cemetery contracts and preneed funeral contracts is deemed to have met the annual preneed funeral contract reporting duty if the cemetery company or association submits the annual preneed funeral contract report to the Division of Real Estate along with or as part of the company's or association's annual preneed cemetery contract affidavit.

## Budget Planning and Management Commission

(Section 509.10)

The act creates the Budget Planning and Management Commission consisting of six members. The Speaker of the House of Representatives appoints three members of the House, not more than two of whom may be members of the same political party, and the President of the Senate appoints three members of the Senate, not more than two of whom may be members of the same political party. Initial appointments to the Commission must be made not later than 90 days after the effective date and vacancies are filled in the same manner as the original appointments. The Commission must appoint two of its members as co-chairpersons: one must be a member of the majority party of the House, and one must be a member of the majority party of the Senate. The act specifies that Commission meetings take place at the call of the co-chairpersons and that the Commission must conduct its meetings during the period of July 1, 2009, through November 30, 2010. The act requires the Legislative Service Commission to provide technical, professional, and clerical support necessary for the Budget Planning and Management Commission to perform its duties.

Under the act, the Commission must complete a study and make recommendations that are designed to provide relief to the state during the current difficult fiscal and economic period. In developing the recommendations, the Commission must develop a strategy for balancing the state budget for fiscal years 2012 and 2013.

The Commission must submit a written report of its recommendations to the Speaker of the House, the President of the Senate, and the Governor not later than November 30, 2010. Upon submission of its report, the Commission ceases to exist.

## Protected public record status for investigators of the Bureau of Criminal Identification and Investigation

(R.C. 149.43, 149.45, 319.28, and 319.54)

Under Ohio's Public Records Act, the residential and familial information of specified protected individuals is excluded from the definition of a public record. The individuals afforded this protected status include peace officers, parole officers, prosecuting attorneys, assistant prosecuting attorneys, correctional employees, youth services employees, firefighters, and EMTs. The residential address, social security number, bank information and the like of such a protected individual therefore is not public information.

Protected individuals also are authorized to request that a public office other than a county auditor redact the person's address from any record made available to the general public on the Internet.

Similarly, protected individuals may submit a written request by affidavit to the county auditor requesting the auditor to remove the name of the protected individual from the general tax list of real and public utility property and the general duplicate and insert the initials of the protected individual instead of the name that appears on a deed. The county auditor is prohibited from charging a fee to a protected individual who requests the use of initials.

The act adds investigators of the Bureau of Criminal Identification and Investigation to the class of protected individuals for purposes of the provisions described above. It also requires a county auditor, when requested, to use the initials of a protected individual, not only on the general tax list and duplicate, but also on any record made available by the county auditor to the general public on the Internet or a publicly accessible database.

## Minority and women-owned investment managers and agents

### Ohio Venture Capital Authority

(R.C. 150.05)

Under ongoing law, the Ohio Venture Capital Authority, after soliciting and evaluating requests for proposals, must select, as program administrators, not more than two private, for-profit investment funds to acquire loans for the program fund and to invest money in the program fund as prescribed in the investment policy established or modified by the Authority.

The act requires the Authority to give equal consideration, in selecting these program administrators, to minority owned and controlled investment funds, to funds owned and controlled by women, to ventures involving minority owned and controlled funds, and to ventures involving funds owned and controlled by women that otherwise meet the policies and criteria established by the Authority.

## Annual report--minority or women-owned businesses

(R.C. 150.051, 3334.111, and 4123.446)

The act requires the Ohio Venture Capital Authority, the Chancellor of the Board of Regents (for the Ohio College Savings Plan), and the Administrator of Workers'

Compensation to submit annually to the Governor and to the General Assembly[396] a report containing the following information:

(1) The name of each program administrator or investment manager that is a minority business enterprise[397] or a women's business enterprise[398] with which the Authority, Chancellor, or Administrator contracts;

(2) The amount of assets managed by program administrators or investment managers that are minority business enterprises or women's business enterprises, expressed as a percentage of assets managed by program administrators or investment managers with which the Authority, Chancellor, or Administrator has contracted; and

(3) Efforts by the Authority, Chancellor, or Administrator to increase utilization of program administrators or investment managers that are minority business enterprises or women's business enterprises.

## Designation of August as "Ohio Military Family Month"

(R.C. 5.2265)

The act designates August as "Ohio Military Family Month."

## Ohio Legislative Commission on the Education and Preservation of State History

(Section 701.05)

The act creates the Ohio Legislative Commission on the Education and Preservation of State History consisting of the following members:

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[396] Whenever any statute requires that a report be submitted to the General Assembly, the requirement is fulfilled by the submission of a copy of the report, recommendation, or document to the Director of the Legislative Service Commission, the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives (R.C. 101.68, not in the act).

[397] "Minority business enterprise" means an individual who is a United States citizen and owns and controls a business, or a partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, which citizen or citizens are Ohio residents and are members of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians.

[398] "Women's business enterprise" means a business, or a partnership, corporation, limited liability company, or joint venture of any kind, that is owned and controlled by women who are United States citizens and Ohio residents.

(1) Three members of the Senate appointed by the President of the Senate, one of whom must be from the minority party and be recommended by the Minority Leader of the Senate;

(2) Three members of the House of Representatives appointed by the Speaker of the House of Representatives, one of whom must be from the minority party and be recommended by the Minority Leader of the House of Representatives; and

(3) Three members appointed by the Governor who must have specific knowledge regarding museum or archive management.

The Commission may appoint nonvoting members to the Commission who represent state agencies, educational institutions, or private organizations and who have expertise in museum or archive management. Appointments must be made to the Commission not later than 30 days after the act's effective date. A member of the Senate appointed by and so designated by the President of the Senate must be the chairperson of the Commission, and a member of the House of Representatives appointed by and so designated by the Speaker of the House of Representatives must be the vice-chairperson.

The Commission must meet as often as necessary to carry out its duties and responsibilities. Members of the Commission serve without compensation. The Legislative Service Commission must provide professional and technical support that is necessary for the Ohio Legislative Commission on the Education and Preservation of State History to perform its duties.

The act requires the Ohio Legislative Commission on the Education and Preservation of State History to do all of the following:

(1) Review the overall delivery of services and instruction on Ohio's history by organizations that have individually received in the previous two bienniums a total of at least $1,000,000 in funding through legislative appropriation for their operations. The review must include a needs assessment with regard to each organization for historic sites owned or managed by the organization, archives owned or maintained by the organization, programs offered by the organization, the governance structure of the organization, and a comparison of the organization's operations with the operations of organizations that are located inside and outside the state and that have similar functions.

(2) Following the review, make recommendations on improving the efficiency of the organizations, alternative methods for the performance or discharge of state-mandated functions and other functions by the organizations, best practices regarding

governance structures for the organizations, and any other recommendations that the Commission determines to be necessary; and

(3) Identify alternative public and private funding sources to support the organizations.

The Commission must issue a report of its findings and recommendations to the President of the Senate, the Speaker of the House of Representatives, and the Governor not later than July 1, 2010. Upon submission of the report, the Commission ceases to exist.

## Conveyance of state land in Butler County

(Section 753.40)

The act authorizes the Governor to execute a Governor's quitclaim deed[399] in the name of the state conveying to Fairfield Village Realty, LLC ("grantee"), an Ohio limited liability company, and its successors and assigns, all of the state's right, title, and interest in real estate situated in the City of Fairfield in Butler County. The real estate is to be conveyed as an entire tract and not in parcels. Any personal property located on the real estate is to be transferred to the grantee through a bill of sale.

Consideration for conveyance of the real estate is $450,000. As additional consideration, the grantee and Empowering People, Inc. ("EPI"), an Ohio corporation and the licensed operator of the facility on the real estate, have executed and delivered to the Department of Developmental Disabilities, a cognovit promissory purchase note,[400] dated June 30, 2008, for $5,000,000. The grantee and EPI are entitled to credits against the note for certain completed improvements and development obligations defined in the "Improvement Plan" in the "Definitive Agreement" dated June 30, 2008, and signed by the grantee and EPI. The balance of the note is to be forgiven if the grantee and EPI complete all development obligations set forth in the "Definitive Agreement," the "Improvement Plan," and the note.

The deed is to contain restrictions that prohibit, within five years from the date of closing, the grantee from transferring the real estate to a third party, and from assigning its interest in the real estate to a third party, without the prior written approval of the

399 A quitclaim deed issued in the name of the state is a deed that transfers the state's complete interest in the real property described in the deed, whatever it may be. Such a quitclaim deed neither asserts nor warrants that the state's title to the interest conveyed is valid. Black's Law Dictionary 446 (8th ed.)

400 A cognovit promissory note contains a clause that confesses judgment on the note. Such a clause allows a court to enter judgment for payment of the note without prior judicial proceedings to establish liability on the note. Black's Law Dictionary 227 (8th ed.)

Department of Developmental Disabilities. But if a transfer or assignment involves a reduction or termination of the level of services provided to individuals with mental retardation and developmental disabilities, the Department is not to approve the transfer or assignment unless the reduction or termination is otherwise required by law, including a judicial proceeding, so long as any such judicial proceeding was not caused by any act or omission of the grantee. Prior approval of a transfer or assignment is not required if the transfer or assignment is due to the death or disability of the grantee's owner.

Before the execution of the deed, possession of the real estate is to be governed by an existing interim lease between the Department of Administrative Services and the grantee, the operating license between the Department of Developmental Disabilities and EPI, and the "Definitive Agreement" between the grantee, EPI, and the Department of Developmental Disabilities.

The consideration is to be paid by the grantee to the state at the closing, according to an executed Offer to Purchase Real Estate Agreement that was reached between the state, through the Department of Administrative Services, and the grantee.

The Auditor of State, with the assistance of the Attorney General, is to prepare the deed to the real estate. The deed must state the consideration and the restrictions. The Governor is to execute the deed in the name of the State. The deed then is to be countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee is to present the deed for recording in the Office of the Butler County Recorder. The grantee is to pay the costs of the conveyance, including the costs of recording the deed.

This conveyance authorization expires two years after its effective date.

## Jackson County land conveyance

(Section 753.50)

The act authorizes the Governor to convey, in the name of the state, two tracts of land in Franklin Township in Jackson County to the Jackson City Schools Board of Education in exchange for a tract of land in Lick Township in Jackson County. The School Board must pay the costs of the conveyance. Upon the conveyance of the tract from the School Board, the Auditor of State, with the assistance of the Attorney General, must prepare a deed to the two tracts of state land. The deed must state the consideration. The deed must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the School

Board. The School Board must present the deed for recording in the Office of the Jackson County Recorder.

The authority for this land exchange expires one year after its effective date.

## Land conveyance from state to Dayton Public Schools

(Section 753.60)

The act authorizes the Governor to execute a Governor's Deed in the name of the state conveying to the Dayton Public School District/Dayton Board of Education ("grantee"), and its successors and assigns, all of the state's right, title, and interest in 45.3599 acres of real estate situated in the City of Dayton in Montgomery County. The 45.3599 acres must be conveyed as an entire tract and not in parcels.

Consideration for conveyance of the 45.3599 acres is the transfer by the grantee to the state at no cost of 8.9874 acres adjacent to the remaining Twin Valley Behavioral Healthcare/Dayton Campus, subject to the following conditions:

(1) Within 180 days after conveyance of the 45.3599 acres, the grantee at its own cost must complete construction of a new western extension off Mapleview Avenue to provide a new entrance roadway to the remaining Twin Valley Behavioral Healthcare/Dayton Campus and provide an easement to the state for full utilization of the roadway for the benefit of the remaining Twin Valley Behavioral Healthcare/Dayton Campus until the 8.9874 acres is transferred to the state.

(2) Within 340 days after the occupancy of the New Belmont High School, the grantee must demolish and environmentally restore the 8.9874 acres.

In lieu of the transfer of the 8.9874 acres, if the Director of Mental Health determines that the grantee has insufficiently performed the construction, demolition, and environmental restoration obligations contemplated by the conditions described above, the grantee must pay as consideration a purchase price of $1,175,000 to the state, which is the appraised value of the 45.3599 acres less the cost of demolition, site, and utility work.

Upon transfer of the 8.9874 acres to the state or payment of the purchase price, the Auditor of State, with the assistance of the Attorney General, must prepare a deed to the 45.3599 acres. The deed must state the consideration and must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee must present the deed for recording in the Office of the Montgomery County Recorder.

The grantee must pay all costs associated with conveyance of the 45.3599 acres, including recordation costs of the deed.

If the payment of $1,175,000 is made in lieu of the transfer of the 8.9874 acres to the state, the proceeds of the conveyance of the 45.3599 acres must be deposited into the state treasury to the credit of the Department of Mental Health Trust Fund and the easement to the state for full utilization of the roadway for the benefit of the remaining Twin Valley Behavioral Healthcare/Dayton Campus becomes a permanent easement.

The act prohibits the grantee, during any period that any bonds issued by the state to finance or refinance all or a portion of the 45.3599 acres are outstanding, from using any portion of the 45.3599 acres for a private business use[401] without the prior written consent of the state.

Authority to make the conveyance described above expires two years after the effective date of the section of law in which it is expressed.

## Hamilton County Land Conveyance

(Section 753.70)

The act authorizes the Governor to execute a deed in the name of the state conveying to the City of Cincinnati ("grantee"), its successors and assigns, all of the state's right, title, and interest in 12.956 acres of real estate located in Mill Creek Township in the City of Cincinnati, Hamilton County. The grantee must pay $1,230,000 to the state as consideration for the conveyance. The real estate must be sold as an entire tract and not in parcels.

The act prohibits the grantee from using, developing, or selling the real estate such that it will interfere with the quiet enjoyment of the adjacent state-owned land.

Upon payment of the purchase price, the Auditor of State, with the assistance of the Attorney General, must prepare a Governor's Deed to the real estate. The Governor's Deed must state the consideration and the condition. The deed must be

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[401] "Private business use" means use, directly or indirectly, in a trade or business carried on by any private person other than use as a member of, and on the same basis as, the general public. Any activity carried on by a private person who is not a natural person is presumed to be a trade or business. "Private person" means any natural person or any artificial person, including a corporation, partnership, limited liability company, trust, or other entity, including the United States or any agency or instrumentality of the United States, but excluding any state, territory, or possession of the United States, the District of Columbia, or any political subdivision thereof that is referred to as a "State or local governmental unit" in Treasury Regulation § 1.103-1(a) and any person that is acting solely and directly as an officer or employee of or on behalf of any such governmental unit.

executed by the Governor in the name of the State, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee must present the deed for recording in the Office of the Hamilton County Recorder.

The grantee must pay all costs associated with the purchase and conveyance of the real estate, including deed recordation costs. The net proceeds of the sale must be deposited in the State Treasury to the credit of the Department of Mental Health Trust Fund.

The authority for this land conveyance expires two years after the authorization's effective date.

## NOTE ON EFFECTIVE DATES

(Sections 809.10 to 812.50)

Section 1d, Article II of the Ohio Constitution states that "[l]aws providing for tax levies [and] appropriations for the current expenses of the state government and state institutions *** shall go into immediate effect," and "shall not be subject to the referendum." R.C. 1.471 implements this provision with respect to appropriations, providing that a codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if (1) it is an appropriation for current expenses, (2) it is an earmarking of the whole or part of an appropriation for current expenses, or (3) its implementation depends upon an appropriation for current expenses that is contained in the act. The statute states that the General Assembly is to determine which sections go into immediate effect.

The act includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section in the act is subject to the referendum and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The act also includes many exceptions to the default provision, some of which provide that specified provisions are not subject to the referendum and go into immediate effect. For example, many of the act's provisions that provide for or are essential to the implementation of a tax levy go into immediate effect. Provisions that are or relate to an appropriation for current expenses also go into immediate effect.

The act also specifies that an item that composes the whole or part of an *uncodified* section contained in the act (other than an amending, enacting, or repealing clause) has no effect after June 30, 2011, unless its context clearly indicates otherwise.

## HISTORY

| ACTION | DATE |
| --- | --- |
| Introduced | 02-12-09 |
| Reported, H. Finance & Appropriations | 04-28-09 |
| Passed House (53-45) | 04-29-09 |
| Reported, S. Finance & Financial Institutions | 06-02-09 |
| Passed Senate (20-11) | 06-03-09 |
| House refused to concur in Senate amendments (1-98) | 06-10-09 |
| Senate requested conference committee | 06-10-09 |
| House acceded to request for conference committee | 06-10-09 |
| House agreed to conference committee report (54-44) | 07-13-09 |
| Senate agreed to conference committee report (17-15) | 07-13-09 |

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