Ohio Legislative Service Commission

Bill Analysis

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Rep. Sykes

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ADJUTANT GENERAL (ADJ)

- Requires proceeds from the sale or lease of vacated armories or 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.

- 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)

Under current law, 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 bill provides that the sale or lease of other facilities and land owned by the Adjutant General must also be credited to the Armory Improvements Fund. Moneys in the 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 to be credited to the General Revenue Fund.

Community Match Armories Fund

(R.C. 5911.11)

The bill 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 to be credited to the fund.

Camp Perry/Buckeye Inn Operations Fund

(R.C. 5913.09)

Under current law, 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 bill 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 to be used to support the facility operations of the Camp Perry Clubhouse and the Buckeye Inn. Investment earnings of the fund are to be credited to the General Revenue Fund.

National Guard Service Medal Fund

(R.C. 5919.20)

The bill 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 to be credited to the fund.

Ohio National Guard Facility Maintenance Fund

(R.C. 5919.36)

The bill 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 to be credited to the General Revenue Fund.

Payment of Adjutant General's workers' compensation costs

(R.C. 5923.141)

Under current law, upon receipt of a certification from the Administrator of the Bureau of Workers' Compensation, the Adjutant General is 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 bill repeals this provision.

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.
- Reduces by 4%, 4.5%, or 5%, during fiscal years 2010 and 2011, the compensation of state exempt employees paid in accordance with Salary Schedules E-1 and E-2.
- Returns the pay for these employees to the fiscal year 2009 level at the beginning of fiscal year 2012.
- Makes the Department generally responsible for administering civil service examinations only for positions in the classified civil service of the state.
- 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 the Director of Administrative Services, in consultation with the Director of Budget and Management, to establish mandatory or voluntary furlough programs for any employee paid by warrant of the Director of Budget and Management as necessary to reduce state expenditures in the event of a fiscal emergency declared by the Governor.

- Specifies that reductions in pay made as the result of a furlough 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.

- Authorizes the Governor to declare a fiscal emergency if the Governor ascertains that the available revenue receipts and balances for any fund or across any funds will in all probability 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, furloughs.

- 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.

- Adds boards and commissions to the list of boards and commissions for which the Central Service Agency must perform support services.

- Modifies the duties of the Central Service Agency from performing routine support for the specified boards and commissions to performing and providing support for those boards and commissions.

- Requires the Central Service Agency, in consultation with the Director of Budget and Management, to review the support services the Agency performs on behalf of the boards and commissions and the fiscal condition of the boards and commissions, and to provide recommendations regarding consolidation of administrative functions to achieve cost savings and efficiency.

- Eliminates a provision that states that the Central Service Agency does not have authority to initiate or deny personnel or fiscal actions for the boards and commissions, and, for at least the fiscal biennium, allows the Agency to initiate or

deny certain personnel or fiscal actions and to require boards and commissions to enter into agreements to share office equipment, office space, or other assets.

- Generally prohibits the bill from being interpreted as grant of authority to the Central Service Agency to supersede or replace the boards or commissions in the performance of their respective statutory duties, or to appoint, remove, or demote the executive directors of the boards or commissions.

- Specifies that the Director of Budget and Management can take actions made necessary by administrative reorganization for the purpose of cost savings and efficiency by making budget changes, transferring programs, creating new funds, and consolidating funds.

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

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

- Directs 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.

Leasing space by Department of Administrative Services

(R.C. 123.01)

Under current 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 bill expands this power of the Department 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)

Under current law, the powers, duties, and functions of the Department of Administrative Services not specifically vested in and assigned to, or to be performed by, the State Personnel Board of Review are vested in and assigned to, and must be performed by, the Director of Administrative Services. Current law lists some powers, duties, and functions that are assigned to the Director of Administrative Services, as they are not specifically assigned to the State Personnel Board of Review, but the list is not exhaustive. The bill requires the Director of Administrative Services to administer a state equal employment opportunity program in an addition to the list previously described.

Department's agreements with political subdivisions to provide personnel services

(R.C. 124.07)

Under current law, 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 bill 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.

Current law requires that all money the Department receives as a reimbursement for payroll, merit program, or other human resource services performed and facilities furnished to political subdivisions be paid into the state treasury to the credit of the Human Resources Services Fund. The bill 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)

Current law requires the Director of Administrative Services, 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 bill instead merely authorizes the Director to do so and authorizes the

Director to assess a county agency that chooses to use the classification plan a usage fee the Director determines. All usage fees the Department of Administrative Services receives must be paid into the state treasury to the credit of the Human Resources Fund. (R.C. 124.14(A)(5).)

Department's supervision of county personnel departments

(R.C. 124.14)

Current law authorizes each board of county commissioners 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 (R.C. 124.14(G)(1) and (2)(a)). The bill 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 (R.C. 124.14(G)(2)(a) and (b)).

Under existing law, 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 bill 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. (R.C. 124.14(G)(3).)

Current law provides that 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 bill 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. (R.C. 124.14(G)(4).)

Current law specifies that 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 bill 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. (R.C. 124.14(G)(5).)

The bill authorizes, rather than requires as under current 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. 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 current law. All money the Department receives for these audits must be paid into the state treasury to the credit of the Human Resources Fund. (R.C. 124.15(G)(6).)

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.

Pay reduction for certain state employees during fiscal years 2010 and 2011

(R.C. 124.152)

Current law provides for the compensation of exempt employees in accordance with Salary Schedules E-1 and E-2. "Exempt employees" are (1) permanent full-time and permanent part-time state employees who are paid by warrant of the Director of Budget and Management, are included in the Job Classification Plan established by the Director of Administrative Services, and are exempt from the Public Employees Collective Bargaining Law and (2) permanent full-time and permanent part-time state employees of the Secretary of State, Auditor of State, Treasurer of State, or Attorney General who have not been placed in an appropriate bargaining unit by the State Employment Relations Board.

The bill reduces the compensation of exempt employees in the pay ranges of Salary Schedules E-1 and E-2, beginning on the first day of the pay period that includes July 1, 2009, in the following manner:

- 4 % in pay ranges 4 through 7 of Salary Schedule E-1 and in the minimum amount for pay range 41 of Salary Schedule E-2.
- 4.5% in pay ranges 8 through 11 of Salary Schedule E-1 and in the minimum amount for pay ranges 42 through 44 of Salary Schedule E-2.
- 5% in pay ranges 12 through 18 of Salary Schedule E-1 and in the minimum amount for pay ranges 45 through 49 of Salary Schedule E-2.

The compensation of employees in pay ranges 1 through 3 of Salary Schedule E-1 is not reduced.

Beginning on the first day of the pay period that includes July 1, 2011, the employees whose compensation the bill reduces will be restored to the compensation level in effect immediately preceding the first day of the pay period that included July 1, 2009.

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

(R.C. 124.23)

Under current law, 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 bill 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.

Current law gives the Director control of all civil service examinations. The bill instead gives the Director 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.

Current law also generally requires 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 bill limits this notice to examinations the Director conducts for positions in the service of the state.

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

(R.C. 124.321)

Current 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 bill 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.

Existing law authorizes 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 bill 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)

Current 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.

Existing law requires the Director of Administrative Services to verify the calculation of the retention points of all employees. The bill 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 bill 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)

Current law requires 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 bill 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 bill 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.

Furlough of state employees during fiscal emergencies

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

Current 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 this program.

The bill eliminates the provisions described in the preceding paragraph and enacts in their place a requirement that the Director of Administrative Services, in consultation with the Director of Budget and Management, establish mandatory or voluntary furlough programs for any employee paid by warrant of the Director of Budget and Management, regardless of funding source, as necessary to reduce state expenditures in the event of a fiscal emergency declared by the Governor. The Director

must adopt rules under the Administrative Procedure Act to administer these programs.

The bill authorizes the Governor to declare a fiscal emergency if the Governor ascertains that the available revenue receipts and balances for any fund or across any funds will in all probability be less than the appropriations for the year, and to such 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 furlough programs described above.

The bill specifies that modifications or reductions in pay made as the result of a furlough 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.

Current 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. The bill 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 furloughed on that work day.

Health Care Spending Account Fund

(R.C. 124.821)

The bill 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. All investment earnings on money in the fund must be credited to the fund.

Dependent Care Spending Account Fund

(R.C. 124.822)

The bill creates the Dependent Care Spending Account Fund in the state treasury and requires the Director of Administrative Services 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 bill authorizes DAS to establish and obtain OBM approval of charges for employee educational development programs undertaken pursuant to specific collective bargaining agreements identified in uncodified law. For this budget bill, 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 programs. Money collected from the charges, and interest earned on that money, must be deposited into the new Employee Educational Development Fund created by the bill 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.

Central Service Agency: expanded functions

(R. C. 125.22; Section 207.10.90)

Under continuing law, the Department of Administrative Services must establish the Central Service Agency to perform routine support for several boards and commissions. The bill removes from the agency's charge the Ohio Commission on African American Males and adds to the agency's charge the State Medical Board, the Board of Nursing, the State Board of Pharmacy, the Ohio Medical Transportation Board, the Ohio Athletic Commission, the Board of Motor Vehicle Collision Repair, the Manufactured Homes Commission, the Board of Orthotics, Prosthetics, and Pedorthics, and the State Board of Career Colleges and Schools.

Currently, the Agency must perform several routine support services for the boards and commissions unless the Controlling Board exempts a board or commission from this requirement on the recommendation of the Director of Administrative Services. The Agency must determine the fees to be charged to the boards and commissions and the board or commission must pay these fees to the Agency.

The bill modifies the duties of the Agency from performing routine support for the specified boards and commissions to performing and providing support for those boards and commissions. More specifically, one of the Agency's continuing support duties is preparing and processing payroll and other personnel documents for the boards and commissions. The bill directs the Agency also to make recommendations regarding payroll and other personnel documents of the boards and commissions.

The bill also eliminates a provision that states that Ohio law does not grant the Agency authority to initiate or deny personnel or fiscal actions for the boards and commissions.

Under the bill, notwithstanding any contrary provision of law, on July 1, 2009, or as soon as possible thereafter, the Agency, in consultation with the Director of Budget and Management, must review the support services the Agency performs on behalf of the boards and commissions (except for the Commission on Hispanic-Latino Affairs) and the fiscal condition of those boards and commissions. Thereafter, the Agency must provide recommendations regarding consolidation of finance, human resources, legal, procurement, and other administrative functions to achieve administrative cost savings and efficiency. Additionally, for at least the fiscal biennium, the Agency is allowed to initiate or deny personnel or fiscal actions for the boards and commissions if doing so would result in administrative cost savings and efficiency among the boards and commissions. To this end, the Agency can require the boards and commissions to enter into agreements to share office equipment, office space, or other assets to the extent such an agreement would create efficiencies or savings in rental, lease, or contractual expenses.

Except with respect to the authority of the boards or commissions to employ additional employees to perform professional, technical, clerical, or other duties, the bill specifies that it must not be interpreted as a grant of authority to the Agency to supersede or replace the boards or commissions in the performance of their respective statutory duties, or to appoint, remove, or demote the executive directors of the boards or commissions.

The bill also specifies that the Director of Budget and Management can take actions made necessary by administrative reorganization for purposes of cost savings and efficiency by making budget changes, transferring programs, creating new funds, and consolidating funds.

MARCS Administration Fund

(R.C. 4501.29)

The bill 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 bill 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 bill directs 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 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 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.

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.

- Creates the Residential State Supplement Workgroup and requires the Workgroup to examine solely the issue of which state agency is the most appropriate to administer the RSS program.

- 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.

- Provides that, in lieu of the criminal fines that may be imposed under current law 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, the Director of Aging may impose civil fines in accordance with the Administrative Procedure Act.

- Provides regarding the retaliation offense that action against each resident or recipient constitutes a single offense and for both offenses that each day the offense continues constitutes a separate offense.

- Requires the Attorney General to bring and prosecute to judgment a civil action to collect any fine described above that remains unpaid 30 days after the violator's final appeal is exhausted.

- 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 the Department's designee to provide community-based long-term care services.

- Expressly requires the Director of Aging to adopt rules governing grant agreements regarding the services.

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

- Requires that a long-term care consultation be provided to each resident of a nursing facility, in place of the current requirement that is based on a resident's potential eligibility for Medicaid.

- 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.

- Requires that a consultation be provided to an individual identified by the Department of Aging or 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.

- 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 provisions that exempt certain individuals from having a consultation.

- Eliminates the requirement that a written summary of each long-term care consultation be provided.
- 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 or retaining 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.
- Permits the Department of Aging to adopt additional rules for the implementation of the Long-Term Care Consultation Program.
- 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 PACE program in accordance with priorities established in rules if it is determined that the program is appropriate for the individual and the individual would rather participate in the program than continue residing in the nursing facility.
- Discontinues the Ohio's Best Rx Program and requires the Director of Aging to wind up the program's affairs by January 1, 2010.
- Adds the Director of Aging to the Brain Injury Advisory Committee.
- 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.
- When appointing an executive director for the council, requires the council to do so with the advice and consent of the Governor.
- Removes the Department of Aging as the council's fiscal agent, and instead requires the council, with the Governor's advice and consent, 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.

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.[1]

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 bill specifies, in an uncodified section, 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.[2] 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;[3]

(2) $927 for a resident of an adult group home;[4]

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[1] R.C. 173.35.

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

[3] 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)).

[4] 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)).

(3) $824 for a resident of an adult foster home;[5]

(4) $824 for a resident of an adult family home;[6]

(5) $824 for a resident of an adult community alternative home;[7]

(6) $824 for a resident of an adult residential facility;[8]

(7) $618 for a person receiving adult community mental health housing services.[9]

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[5] 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).

[6] 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)).

[7] An adult community alternative home is a residence or facility that provides accommodations, personal assistance, and supervision for three to five unrelated individuals who have acquired immunodeficiency syndrome or a condition related to acquired immunodeficiency syndrome (R.C. 3724.01(B)).

[8] 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)).

[9] 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)).

Residential State Supplement Workgroup

(Section 209.30)

The bill creates the Residential State Supplement Workgroup. The Workgroup is 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 is required to serve as the Workgroup's chairperson. Members 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 charged with examining solely the issue of which state agency is the most appropriate to administer the RSS program. Not later than December 31, 2009, the Workgroup must submit written recommendations on this issue to the Governor and General Assembly.[10] The Workgroup is to cease to exist on submission of its recommendations.

Unified Long-Term Care Budget Workgroup

(Section 209.40)

The bill creates the Unified Long-Term Care Budget Workgroup,[11] consisting of the following members:

(1) The Director of Aging;

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[10] In submitting the report to the General Assembly, the Residential State Supplement Workgroup is 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)).

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

(2) Consumer advocates, representatives of the provider community, 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;

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

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

(4) Assuring the state has a system that is cost effective and links disparate services across agencies and jurisdictions.[12]

Progress report on unified long-term care budget

The bill 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[13]

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

[13] 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).

describing the progress towards establishing, or if already established, the effectiveness of the unified long-term care budget.[14]

Transfer of appropriations

The Director of Budget and Management is authorized by the bill 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.[15]

Civil penalties against long-term care providers

(R.C. 173.28)

Current 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[16] or recipient of community-based long-term care services[17] to any form of retaliation, reprisal, discipline, or discrimination for providing information

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

[15] 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 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.

[16] 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 Mental Retardation and Developmental Disabilities (R.C. 173.14(A)).

[17] "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)).

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. A person who violates this prohibition is subject to a fine not to exceed $1,000 per violation.

Current 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. A person who violates this prohibition is subject to a fine not to exceed $500 per violation.

Current 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 under current law (R.C. 2901.02(G) and 2901.03). Current 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 current law for violations of the prohibitions discussed above, the bill permits the Director of Aging to impose civil fines in accordance with the Administrative Procedure Act (R.C. Chapter 119.) for such violations. The bill 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 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 (R.C. 173.28(A)(1)).

(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 bill 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 of Aging described above that remains unpaid 30 days after the violator's final appeal is exhausted. All such fines imposed by the Director of Aging 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[18] under a program the Department administers unless the person or government entity is certified by the Department or the Department's designee.[19] An exception applies if (1) the person or government entity has a contract with the Department or the Department's designee to provide the services, (2) the contract includes detailed conditions of participation for providers of services under a program the Department administers 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 component of the Medicaid program.

The bill 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 the Department's designee to provide the services in accordance with a grant agreement, (2) the grant agreement includes detailed conditions of participation for providers of services under a program the Department administers and service standards that the person or government entity is required to satisfy, (3) the 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 component of the Medicaid program.

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[18] 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).

[19] R.C. 173.39.

Current law permits the Director of Aging to adopt rules governing (1) contracts between the Department and persons and government entities regarding community-based long-term care services provided under a program the Department administers and (2) the Department's payment for community-based long-term care services provided under such a contract. The bill permits the Director also to adopt rules expressly governing grant agreements between the Department and persons and government entities regarding community-based long-term care services provided under a program the Department administers. The bill provides that the Director's rule-making authority also applies to contracts and grant agreements between the Department's designee and persons and government entities regarding such services.

Long-Term Care Consultation Program

(R.C. 173.42)

Background

Current law requires the Ohio 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 of Aging 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. The bill makes various changes to the Program.

Provision of consultations

Rather than current requirements that a consultation be based on a nursing facility resident's potential eligibility for Medicaid, the bill provides that a long-term consultation must be provided to each resident of a nursing facility.[20] The Department of Aging or program administrator is required to also 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 bill 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

[20] Under the bill, a nursing facility is a facility, or a distinct part of a facility, that is certified as a nursing facility for purposes of the Medicaid program. Such a facility may admit both Medicaid recipients and persons who are not Medicaid recipients.

of its residents.[21] The Department of Health, Department of Job and Family Services, or nursing facility holding the data is required, under the bill, to grant access to the data on receipt of a request from the Department or administrator.

The bill removes a provision of current 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 current law, an individual is not forced to have a consultation. However, under the bill, an individual is not required to be provided a consultation if the individual "refuses to cooperate" rather than, under current law, the individual "chooses to forego" participation.

At the conclusion of the consultation, existing law requires that the Department of Aging or program administrator provide a written summary of options and resources available to meet the individual's needs. The bill eliminates this requirement.

Program administration

Under the bill, 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;

(5) Procedures for monitoring the provision of health and long-term care services and supports, including quality and cultural competence;

(6) Priorities for using resources efficiently and effectively.

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[21] The bill 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).

The bill 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

Current law authorizes the Director of Aging to fine a nursing facility if the facility admits or retains an individual without evidence that a long-term care consultation occurred. The bill requires that the Director provide notice and an opportunity for a hearing prior to issuing a fine. The bill also permits the Director to issue a fine for 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, or denies the Department or program administrator access as necessary to administer the Program. As under current law, the fine is to be an amount determined by rules adopted by the Director.

Home first process for PACE

(R.C. 173.50 and 173.501)

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).[22] The state agency administering the PACE component 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 component.

[22] 42 U.S.C. 1396u-4.

The medical services available under the PACE component 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 the Medicare program. 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 component, 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 component is available, and (4) meet all other eligibility requirements included in a PACE agreement with a provider.[23] A PACE enrollee may maintain eligibility despite no longer requiring a nursing facility level of care if losing eligibility for PACE would 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 Ohio Department of Aging is required to carry out the day-to-day administration of the program pursuant to an agreement with the Ohio Department of Job and Family Services, which administers Ohio's Medicaid program.[24]

Home first process

The bill 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

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[23] The PACE component is also available to Medicare recipients.

[24] R.C. 173.50.

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 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 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.

The bill requires that the Director of Aging, not later than the last day of each calendar year, submit to the General Assembly a report regarding the number of individuals enrolled in the PACE program pursuant to the home first process. The report must include the costs incurred and savings achieved as a result of the enrollments.

Ohio's Best Rx Program

(R.C. 173.71 to 173.91 (repealed); Section 209.50)

Current law establishes 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 are ineligible for the program. Drug manufacturers who seek to participate in the program may enter into agreements with the Department of Aging to make payments to the program when their drugs are dispensed under the program. Effective January 1, 2010, the bill repeals all statutes governing the program.

The bill requires the Director of Aging to wind up the program's affairs by January 1, 2010. For this purpose, the bill establishes the following timeline for discontinuing program activities: (1) on the bill's effective date, acceptance of new applications for program enrollment cards and consideration of pending applications will cease, (2) on November 15, 2009, previously issued enrollment cards will no longer be valid, (3) pharmacies may not dispense drugs under the program on or after November 15, but the program's mail order system may process orders placed before that date, and (4) drug manufacturers may not enter into new program agreements on or after November 15, but must continue to make payments in accordance with agreements in effect before that date. The bill requires that program accounts continue

to be reconciled as necessary until January 1, 2010, when the accounts are to be closed and are not subject to further reconciliation.

Brain Injury Advisory Committee

(R.C. 3304.231)

Under current law, the Brain Injury Advisory Committee is to advise the Administrator of the Rehabilitation Services Commission and the Brain Injury Program regarding the needs of brain-injury survivors. The Committee's membership is currently required to include 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 bill adds the Director of Aging to the Committee.

Ohio Community Service Council

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

Under current law, the Ohio Community Service Council consists of 21 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,[25] 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 bill adds the Director of the Governor's Office of Faith-based and Community Initiatives as a nonvoting ex officio member of the council.

The council appoints an executive director for the council. Under the bill, the appointment of the executive director must be with the advice and consent of the Governor.

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

Under current law, beginning on July 1, 1997, the Department of Aging serves as the council's fiscal agent.[26] The council retains any validation, cure, right, privilege, remedy, obligation, or liability. And currently, the council, or its designee, has the following authority and responsibility relative to fiscal matters:

(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;

(c) Responsibility to cooperate with and inform the Department of Aging as fiscal agent to ensure that the department is fully apprised of all financial transactions.

The bill requires the council, with the advice and consent of the Governor, to enter into an agreement in writing with "another state agency" to serve as the council's 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. 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

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[26] Currently, "fiscal agent" means technical support and includes the following technical support services:

(1) Preparing and processing payroll and other personnel documents that the council executes as the appointing authority. The Department cannot 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 cannot 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 consider appropriate to achieve efficiency.

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

The bill removes the 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.

The bill requires the council to work in conjunction and consultation with the fiscal agent in regard to the foregoing authorities and responsibilities. In addition to following all state procurement requirements as in current law, the bill requires the council to follow all state fiscal, human resources, statutory, and administrative rule requirements.

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

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 has 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 bill 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 has been credited to the Pesticide Program Fund under the Pesticides Law to be credited to the renamed 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 bill rather than to the Pesticide Program Fund or the General Revenue as under current 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 bill.

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

- Includes certain 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 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 under the Livestock Dealers Law to be credited to the renamed Animal and Consumer Analytical Laboratory Fund rather than to the General Revenue Fund.

- 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.

- Applies the existing $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 vehicle that is used for those purposes, and establishes a $10 per-vehicle fee for late renewal applications; 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.

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

- Requires a person proposing to operate a commercially used weighing and measuring device to obtain from the Director of Agriculture an annual permit for the operation of the device.

- Requires the proceeds of fees associated with the issuance of commercially used weighing and measuring device permits to be credited to the renamed Metrology and Scale Certification and Device Permitting Fund, which provides funding for the administration of the weights and measures program.

- Establishes specific rulemaking requirements for the motor fuel quality testing program to be adopted by the Director, and creates the Fuel Quality Testing Fund to be used to implement the motor fuel quality testing program and the weights and measures program as well as to pay overhead costs of the Department of Agriculture.

- Makes other changes to the Weights and Measures Law.

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

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

Sustainable Agriculture Program Fund

(R.C. 901.041)

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

Under existing law, money collected from license, permit, registration, sales report, and inspection fees and penalties under the Agricultural Seed and Livestock Feeds Laws is credited to the Commercial Feed, Fertilizer, and Lime Inspection and Laboratory Fund. As noted above, the bill eliminates that Fund. It credits the money that previously has been so credited to that Fund to the Commercial Feed and Seed Fund created by the bill. The bill 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.

Current law specifies that money collected from registration, license, inspection, and late renewal fees, specified proceeds, penalties, fines, costs, and damages that are collected in consequence of violations under the Pesticides Law is credited to the Pesticide Program Fund. The bill renames the Fund the Pesticide, Fertilizer, and Lime Program Fund and requires the money that previously has been so credited to the Pesticide Program Fund to be credited to the renamed Fund. The bill 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 current law for the Commercial Feed, Fertilizer, and Lime Inspection and Laboratory Fund, the bill 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.

Finally, the bill changes the name of the existing 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)

Current law 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 bill increases or eliminates fees under that Law as follows:

License, certificate, inspection, agreement, and per acre fee	Current fee	Proposed 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
Phyto sanitary certificate for those collectors or dealers licensed under the Nursery Stock Law	$ 25	Same as current law
Phyto sanitary certificate for all others	$ 25	$ 100
Compliance agreements	$ 20	$ 40
Solid wood packing certificate	$ 20	No fee

Under existing 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 are credited to the Pesticide Program Fund, and the remainder of the fees discussed above, fines, and assessments collected under that Law are credited to the General Revenue Fund. The bill instead requires all of the money to be credited to the Plant Pest Program Fund created by the bill 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 bill makes necessary conforming changes.

Gypsy Moth Suppression Program

(R.C. 927.701)

Existing 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. To determine the amount of payment that is due from a landowner, the Department first must determine the projected cost per acre to the Department of gypsy moth suppression activities for the year in which the landowner's request is made. The cost must be calculated by determining the total expense of aerial spraying for gypsy moths 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 must multiply the cost per acre by the number of acres that the landowner requests to be sprayed. The Department must add to that amount any administrative costs that it incurs in billing the landowner and collecting payment. The amount that the landowner must pay to the Department cannot exceed 50% of the resulting amount.

The bill revises the funding formula for allocating costs to landowners who want to participate in the Program. The bill 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. As in current law, the Department must add to that amount any administrative costs that it incurs in billing the landowner and collecting payment. The bill 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 existing law, money collected under the Program is credited to the Pesticide Program Fund. The money so credited must be used for the suppression of gypsy moths. As indicated above, the bill 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 bill and retains the requirements that money so credited be used for the suppression of gypsy moths.

Central Support and Indirect Costs Fund

(R.C. 901.91)

The bill 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 bill 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)

Existing law requires an applicant for an annual license to operate a meat processing establishment or a poultry processing establishment to pay $50 fee to the Director of Agriculture before the Director issues the license. The bill increases the fee to $100.

Livestock Dealers Law

Changes in definitions and fees

(R.C. 943.01 and 943.04)

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

Under current law, "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 bill adds poultry to the 500-head threshold regarding activities performed by a dealer or broker. It also clarifies that the activities occur during a calendar year rather than a year.

Existing law excludes certain persons or entities from the definition of "dealer" or "broker." The bill adds to the exclusions any poultry dealer that is certified by the Animal and Plant Health Inspection Service in the United States Department of Agriculture as a participant in the National Poultry Improvement Plan. In addition, the bill excludes those poultry dealers from the licensure requirements of dealers and brokers.

Current law establishes fees for the issuance of livestock dealer or broker licenses and livestock weigher licenses under the Livestock Dealers Law. The bill increases or adds fees under that Law as follows:

License fee	Current fee	Proposed 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 bill 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 calendar year.

The bill establishes similar license application requirements and procedures for small dealers as those in current law for livestock dealers and brokers, except that it does not require them to provide 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 bill 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 bill applies to small dealers existing 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 for livestock dealers or brokers or their employees.

Other provisions

(R.C. 943.04)

The bill 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 current law, the money that is collected under the Livestock Dealers Law is credited to the General Revenue Fund. The bill requires the money collected under that Law to instead be credited to the renamed Animal and Consumer Analytical Laboratory Fund (see "**Miscellaneous provisions**," below).

Miscellaneous provisions

(R.C. 901.43, 942.02, and 953.23)

Existing 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 a fee of $50 per year. The bill 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. Current law does not specify to which fund the money collected from the license fees is to be credited. The bill credits the license fees to the Animal and Consumer Analytical Laboratory Fund (see below).

With specified exemptions, current law 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 bill applies the existing license fee to each vehicle that is used for those purposes and establishes a $10 per-vehicle fee for late renewal applications that are received after November 30. Existing 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 of $100 for each plant. The bill increases the license fee to $300 for each plant and establishes a $100 fee for late renewal applications that are received after November 30. Current law does not specify to which fund the money collected from the license fees is to be credited. The bill requires all money that is so collected to be credited to the Animal and Consumer Analytical Laboratory Fund (see below).

Existing law creates the Animal Health and Food Safety Fund in the state treasury consisting of money from specified sources. 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 bill changes the name of the Animal Health and Food Safety Fund to the Animal and Consumer Analytical Laboratory Fund.

Division of Weights and Measures

Commercially used weighing and measuring device permit program

(R.C. 1327.501)

Under current law, the Director of Agriculture is required to administer the weights and measures program. The Director's duties include establishing standards of weight and measure, conducting tests and investigations, approving weights and measures for use, and performing other duties prescribed by law.

The bill establishes a new permit requirement as part of the weights and measures program. Under the bill, a person operating a commercially used weighing and measuring device in Ohio must obtain a permit issued by the Director of Agriculture or the Director's designee. The permitting requirement applies on and after the date on which rules adopted by the Director that govern the permit program are effective (see below). The bill defines "commercially used weighing and measuring device" to mean a device described in the National Institute of Standards and Technology Handbook 44 or its supplements and revisions and any other weighing and measuring device designated by rules adopted under the bill.

An application for a permit must be submitted to the Director on a form that the Director prescribes and provides. The applicant must include with the application any information that is specified on the application form as well as the application fee established in rules adopted under the bill. Upon receipt of a completed application and the required fee from an applicant, the Director or the Director's designee must issue or deny the permit to operate the commercially used weighing and measuring device that was the subject of the application.

A permit issued under the bill expires on June 30 of the year following its issuance and may be renewed annually on or before July 1 of that year upon payment of a permit renewal fee established in rules. If a permit renewal fee is more than 60 days past due, the Director may assess a late penalty in an amount established by rules.

The Director must adopt rules in accordance with the Administrative Procedure Act that do all of the following:

(1) Establish procedures and requirements governing the issuance or denial of commercially used weighing and measuring device permits;

(2) Designate weighing and measuring devices for which a permit is required in addition to those devices specified in the National Institute of Standards and Technology Handbook 44 or its supplements and revisions;

(3) Establish application fees required to be paid by applicants for permits;

(4) Establish permit renewal fees required to be paid by permittees; and

(5) Establish late penalties to be assessed for the late payment of a permit renewal fee and fees for the replacement of lost or destroyed permits.

All money collected through the payment of fees and the imposition of penalties related to commercially used weighing and measuring device permits must be credited to the renamed Metrology and Scale Certification and Device Permitting Fund.

Other changes to weights and measures program

(R.C. 1327.46, 1327.50, 1327.51, 1327.511, 1327.52, 1327.54, 1327.57, 1327.58, 1327.60, and 1327.62)

The Weights and Measures Law refers throughout to items that are kept, offered, or exposed for sale. For example, current law specifies that the Director of Agriculture must inspect and test weights and measures that are kept, offered, or exposed for sale. The bill instead uses the term "sold" throughout the Weights and Measures Law and defines it as keeping, offering, and exposing for sale. Thus, for example, the Director is now required to inspect and test weights and measures that are sold.

Currently, the Weights and Measures Law authorizes the Director of Agriculture to take various actions under that Law and includes within its scope specified statutes. For example, the Director is required to enforce the Weights and Measures Law. However, as currently delineated, the references to the Weights and Measures Law do not include the statutes comprising the motor fuel testing program (see below). The bill incorporates the motor fuel testing program statutes into the range of statutes comprising the Weights and Measures Law.

Current law requires the Director of Agriculture, in conjunction with the National Institute of Standards and Technology, to operate a type evaluation program for the certification of weighing and measuring devices as part of the national type evaluation program. The bill also requires the Director to operate a metrology laboratory program. Current law also requires the Director to establish a schedule of

fees for services rendered by the Department of Agriculture for type evaluation services. The bill instead requires the Director to establish a schedule of fees for the type evaluation program and the metrology laboratory program.

Current law creates the Metrology and Scale Certification Fund and requires the Fund to consist of all money collected as fees for type evaluation services. The bill renames the Fund the Metrology and Scale Certification and Device Permitting Fund and requires it to consist of money collected as fees for the type evaluation program and the metrology laboratory program as well as fees collected under the commercially used weighing and measuring device permitting program (see above). Current law also specifies that money in the Fund must be used to pay the operating costs of the Department of Agriculture in administering the weights and measures program. The bill instead specifies that money in the Fund must be used to pay the operating costs of the Department in administering the Division of Weights and Measures, including administrative costs incurred by the Division.

Current law requires any weights and measures official elected or appointed for a county or municipal corporation to have certain concurrent duties with the Department of Agriculture such as the following:

(1) The duty to inspect and test weights and measures that are sold;

(2) The duty to inspect and test certain commercially used weights and measures to ascertain if they are correct;

(3) The duty to test all weights and measures used in checking the receipt or disbursement of supplies in every institution; and

(4) The duty to approve for use, and mark, such weights and measures that are determined to be correct and reject and mark as rejected such weights and measures that are determined to be incorrect.

The bill clarifies that county or municipal weights and measures officials do not have the authority to weigh, measure, or inspect packaged commodities sold or in the process of delivery to determine whether they contain the amounts represented; to participate in the commercially used weighing and measuring device permitting program and the motor fuels quality testing program; and to administer certain other provisions of the Weights and Measures Law.

Motor fuel quality testing program

(R.C. 1327.50, 1327.70 and 1327.71)

Under current law, the Director of Agriculture may adopt rules in accordance with the Administrative Procedure Act establishing a motor fuel[27] quality testing program that is uniform throughout the state. The bill requires the rules to do all of the following:

(1) Establish fuel quality requirements that are modeled on the uniform laws and regulations in National Institute of Standards and Technology handbook 130;

(2) Incorporate standards for motor fuel based on the standards developed by the American Society for Testing and Materials Committee D02 on petroleum products;[28]

(3) Establish requirements governing the standards and identity of fuels and petroleum and the advertising, posting of prices, and labeling of products; and

(4) Establish any other procedures and requirements that are necessary to implement the program, including the imposition of fees.

The bill then requires the Director to administer the fuel quality testing program in accordance with the bill's requirements.

The bill also creates the Fuel Quality Testing Fund consisting of the proceeds of any fees levied in rules adopted under the bill as discussed above. Money in the Fund must be used to pay the costs incurred by the Department of Agriculture in implementing and administering the motor fuel quality testing program and the weights and measures program and to pay overhead costs of the Department.

Civil and criminal penalties

(R.C. 1327.62 and 1327.99)

Current law authorizes the Director of Agriculture to conduct hearings and impose civil penalties regarding violations of the Weights and Measures Law. The

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[27] The bill defines "motor fuel" as any liquid or gaseous matter that is used individually or blended for the generation of power in an internal combustion engine.

[28] The bill defines "petroleum products" as products that are obtained from the distilling and processing of crude oil and refinery blend stocks.

hearings must be conducted in accordance with the Administrative Procedure Act. By including additional statutes in the references to that Law (see above), the bill authorizes the Director to conduct hearings and impose civil penalties concerning violations of the commercially used weighing and measuring device permit program and the motor fuel quality testing program. The bill also clarifies that criminal penalties apply to violations of the bill concerning commercially used weighing and measuring device permits and the motor fuel quality testing program. Finally, the bill applies civil and criminal penalties to violations of rules adopted under the Weights and Measures Law, including rules adopted for the motor fuel quality testing program.

Amusement ride inspections

(R.C. 1711.58)

Under current law, the Governor, in submitting a state budget to the General Assembly, must 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 bill eliminates that requirement.

Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43)

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

AIR QUALITY DEVELOPMENT AUTHORITY (AIR)

- Requires the Ohio Air Quality Development Authority to establish the Energy Strategy Development Program for the purpose of developing energy initiatives, projects, and policy for the state.

- Codifies the Energy Strategy Development Fund, which is to be used for purposes of the Program.

Energy Strategy Development Program

(R.C. 3706.04 and 3706.35)

The bill requires the Ohio Air Quality Development Authority 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 Air Quality Development Authority Law (R.C. Chapter 3706.). The bill also codifies 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.

DEPARTMENT OF ALCOHOL AND DRUG ADDICTION SERVICES (ADA)

- Adds the ODADAS Director, or the Director's designee, to the Commission on Minority Health and the Ohio Commission on Fatherhood.
- Requires ODADAS to make a warning sign regarding anabolic steroids available on its internet web site rather than print and distribute the sign.
- Requires ODADAS annually to set a limit on the state and federal funds provided by ODADAS that may be used by boards of alcohol, drug addiction, and mental health services (ADAMHS boards) for administrative functions.
- Permits ODADAS to deny state or federal funds to an ADAMHS board that exceeds the limit for administrative functions.
- Permits the ODADAS Director to waive the limit on the use of funds for administrative functions if an ADAMHS board submits a prior request and a waiver is warranted.
- Requires each ADAMHS board to establish a local indigent drivers alcohol treatment fund for its region and requires the money in all existing county indigent drivers alcohol treatment funds, county juvenile indigent drivers alcohol treatment funds, and municipal indigent drivers alcohol treatment funds to be transferred to the new local indigent drivers alcohol treatment funds.

ODADAS representation on two commissions

(R.C. 3701.78 and 5101.34)

Commission on Minority Health

The Commission on Minority Health is required to promote health and the prevention of disease among members of minority groups and distribute grants to community-based health groups for that purpose.[29] Current law provides for the Commission to have 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;

(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 bill provides for the Commission on Minority Health to have 19 members by adding the ODADAS Director or the Director's designee.

Ohio Commission on Fatherhood

The Ohio Commission on Fatherhood 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 initiatives to (1) build fathers' parenting skills, (2) provide employment-related services for low-income, noncustodial fathers, (3) prevent premature fatherhood, (4) provide services to fathers who are inmates in or have just been released from imprisonment in a state correctional institution or other detention facility so that they are able to maintain or reestablish their relationships with their families, (5) reconcile fathers with their families, and (6) increase public awareness of the critical role fathers play. Current law provides for the Commission to have the following 19 members:

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[29] "Minority group" is defined as any of the following economically disadvantaged groups: Blacks, American Indians, Hispanics, and Orientals.

(1) Four members of the House of Representatives appointed by the House Speaker;

(2) Two members of the Senate appointed by the Senate President;

(3) The Governor or the Governor's designee;

(4) One representative of the judicial branch of government appointed by the Supreme Court Chief Justice;

(5) The following five executive agency heads or their designees: the Director of Health, Director of Job and Family Services, Director of Rehabilitation and Correction, Director of Youth Services, and Superintendent of Public Instruction;

(6) One representative of the Ohio Family and Children First Cabinet Council appointed by the Council chairperson;

(7) Five representatives of the general public appointed by the Governor who have extensive experience in issues related to fatherhood.

The bill provides for the Ohio Commission on Fatherhood to have 20 members by adding the ODADAS Director or the Director's designee.

Anabolic steroid warning sign

(R.C. 3793.02)

Continuing law requires that a warning about anabolic steroids be posted in certain locker rooms. The board of education of each school district must require the warning to be conspicuously posted in the locker rooms of each of the district's school buildings that include any grade higher than sixth grade. The board of trustees of each state university or college must require the warning to be conspicuously posted in locker rooms of recreational and athletic facilities operated by the university or college for use by students. The warning must also be conspicuously posted in each locker room of every athletic facility.[30] 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,

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[30] 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.)

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."

ODADAS is required by current law to print and distribute the warning sign. The bill requires ODADAS to make the warning sign available on its internet web site rather than print and distribute it.

Administrative funds provided to ADAMHS boards

(R.C. 3793.21)

Current law requires ODADAS to establish a comprehensive, statewide alcohol and drug addiction services plan (R.C. 3793.04, not in the bill). The plan is to 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).[31] Each board is required to submit a plan to ODADAS that is to serve as an application for funds (R.C. 3793.05, not in the bill). ODADAS is to distribute funds to a board if it approves of the plan.

The bill adds an additional requirement regarding funds provided to ADAMHS boards. It requires ODADAS to annually establish a limit on the amount or portion of state and federal funds provided by ODADAS that may be used for administrative functions of an ADAMHS board. Administrative functions may include the functions of continuous quality improvement, utilization review, resource development, fiscal administration, general administration, and any other administrative function of a board.

ODADAS is authorized by the bill to deny state or federal funds to an ADAMHS board that exceeds the limit established by ODADAS. The ODADAS Director may waive the limit if, based on a board's prior written request, the ODADAS Director determines that an exception to the limit is warranted. Each board is required to submit an annual report to ODADAS detailing the board's use of state and federal funds for the administrative functions of the board.

Current law provides that a portion of any state and federal funds provided to an ADAMHS board is dependent on the ratio of the state's population served by the board. The bill requires that any state or federal funds used by a board for administrative functions is to be from the funds allocated to the board based on this ratio.

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

Indigent drivers alcohol treatment funds

(R.C. 2949.094, 4503.235, 4510.14, 4510.45, 4511.19, 4511.191, and 4511.193)

Current law

There exists in the state treasury the Indigent Drivers Alcohol Treatment Fund. Pursuant to current 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. The state fund consists 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.

ODADAS distributes 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 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 bill

To avoid future confusion, the bill renames the Indigent Drivers Alcohol Treatment Fund that currently exists in the state treasury the State Indigent Drivers Alcohol Treatment Fund. The bill requires each ADAMHS board[32] to establish a local indigent drivers alcohol treatment fund for its region. The bill then requires the money in every county indigent drivers alcohol treatment fund, county juvenile indigent drivers alcohol treatment fund, and municipal indigent drivers alcohol treatment fund to be transferred to the local indigent drivers alcohol treatment fund established by the ADAMHS board for the applicable region where that county, county juvenile, or municipal fund is located. When that occurs, every county indigent drivers alcohol treatment fund, county juvenile indigent drivers alcohol treatment fund, and municipal indigent drivers alcohol treatment fund ceases to exist.

The bill makes one change from current law in the revenue sources for the State Indigent Drivers Alcohol Treatment Fund and the local indigent drivers alcohol treatment funds: it requires the $50 vehicle immobilization fee that is imposed in certain cases involving the immobilization of a motor vehicle to be paid to the appropriate local indigent drivers alcohol treatment fund created by the local ADAMHS board instead of to the State Indigent Drivers Alcohol Treatment Fund. While the local funds are under the control of their respective boards, expenditures from the local funds are still made upon the order of a county, juvenile, or municipal court judge.

Disposition of a surplus in a local indigent drivers alcohol treatment fund

Current law provides that if a county, juvenile, or municipal court determines, in consultation with the ADAMHS board that serves the alcohol, drug addiction, and mental health district in which the court is located, that the funds in the county indigent drivers alcohol treatment fund, the county juvenile indigent drivers alcohol treatment fund, or the municipal indigent drivers alcohol treatment fund under the control of the court are more than sufficient to satisfy the fund's purposes, the court may declare a surplus in the fund. If the court declares a surplus in the fund, the court may expend the amount of the surplus in the fund for certain specified purposes.

The bill provides that if an ADAMHS board that serves the district in which a county, juvenile, or municipal court is located determines in consultation with any such court that the funds in the local indigent drivers alcohol treatment fund are more than

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

sufficient to satisfy the fund's purposes, the board may declare a surplus in the fund. If the ADAMHS board declares a surplus in the fund, the board may expend the amount of the surplus in the fund for the same purposes specified in current law.

Annual reports by ADAMHS boards

The bill requires each ADAMHS board to submit to ODADAS an annual report of its local indigent drivers alcohol treatment fund. The report, which must be submitted not later than 60 days after the end of the state fiscal year, must itemize each payment that was made from the fund and identify the program or service for which that payment was made. If a surplus is declared in the fund, the report also must itemize each payment that was made from the surplus money and identify the program or service for which that payment was made. In addition to submitting its annual report to ODADAS, each ADAMHS board must submit a copy of its report to each court that utilized that board's local indigent drivers alcohol treatment fund during the prior fiscal year.

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 martial arts or wrestling promoter's license issued by the Commission.

Expansion of Ohio Athletic Commission licensing authority

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

Current law requires that 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 bill expands this licensing requirement also to cover private competitions, and public or private competitions 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)

Existing law requires that an application for a promoter's license be accompanied by a cash bond, certified check, bank draft, or surety bond of not less than $5,000. The bill requires instead that the applicant submit only a surety 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 bill 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)

Current law requires that each boxing or wrestling promoter's license issued by the Ohio Athletic Commission bear the date of issue, a serial number designated by the Commission, and the signature of the Commission chairperson. The bill, reflecting other amendments that expand the licensing authority to include martial arts, instead requires that each boxing or martial arts or wrestling 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.

ATTORNEY GENERAL (AGO)

- Abolishes the Domestic Violence Shelters Fund and directs money currently required to be deposited in that fund to the Reparations Fund created by R.C. 2743.191.

- Permits the Reparations Fund to be used for providing assistance to domestic violence shelters.

Domestic Violence Shelters Fund

(R.C. 2743.191 and 3113.37; Section 223.10)

The bill abolishes the Domestic Violence Shelters Fund. Under current law, if in any calendar year a board of county commissioners does not allocate all of the funds collected in that year under R.C. 3113.34 or 2303.201(D) to a shelter for victims of domestic violence that applied for them, or if a board receives no application in that year from a shelter that is qualified to receive funds as determined under R.C. 3113.36, the funds must be deposited, on or before December 31 of that year, in the state treasury to the credit of the D*omestic Violence Shelters Fund, created by R.C. 3113.37. The fund must be administered by the Attorney General for the purpose of providing financial assistance to shelters.* The bill eliminates the italicized language and instead directs funds described in this paragraph to the Reparations Fund created in R.C. 2743.191. The bill also authorizes the Reparations Fund to be used for the purpose of providing financial assistance to domestic violence shelters. Continuing law requires a shelter located in Ohio to apply to the Attorney General for such funds.

OFFICE OF BUDGET AND MANAGEMENT (OBM)

- Authorizes the Governor, during the period from July 1, 2009, through June 30, 2011, to impose a moratorium on the receipt of holiday pay on any holiday by employees paid by warrant of the Director of Budget and Management, if the Governor declares a fiscal emergency.

- Provides that employees required to work on a holiday by their appointing authority be paid at their regular rate of pay.

- Authorizes exemptions from the moratorium on the receipt of holiday pay for employees of the judicial and legislative branches and the Secretary of State, Auditor of State, Treasurer of State, and Attorney General.

- Authorizes the Director of Budget and Management 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.

- Authorizes the Director to enter into contracts relating to the consolidation of statewide financing functions and common transactional processes.

- Changes the purpose of the OAKS Support Organization Fund to paying the operating expenses incurred by providing information technology services in support of the state's enterprise resource planning system.

- Permits a state agency to enter into one or more interagency agreements with another state agency or agencies for the purposes of achieving administrative cost savings and greater efficiency.

- Authorizes the Director to take any steps regarding budget or fund changes or program transfers necessary due to the reorganization or consolidation of agency resources or personnel.

- Permits the Director 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.

Moratorium on state employee holiday pay

(R.C. 124.18 and 124.19)

Except as described below, if the Governor declares a fiscal emergency, the Governor may place a moratorium, during the period from July 1, 2009, through June 30, 2011, on the receipt of pay by employees paid by warrant of the Director of Budget and Management for any of the ten state paid holidays listed in current law.

The moratorium applies to employees of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General who receive the paid holidays, unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General chooses to exempt the office's employees from the moratorium and so notifies the Director of Administrative Services in writing not later than 30 days before the date of the unpaid holiday.

The moratorium does not apply to the following:

- Officers and employees of the judicial branch who receive the paid holidays, unless the Chief Justice of the Supreme Court determines that these officers and employees will be subject to the moratorium and so notifies the Director of Administrative Services in writing, in accordance with guidance established by the Director, not later than 30 days before the date of the unpaid holiday.

- Employees of the General Assembly and legislative agencies who receive the paid holidays, unless the House Speaker and Senate President jointly determine that these officers and employees will be subject to the moratorium and so notify the Director of Administrative Services in writing, in accordance with guidance established by the Director, not later than 30 days before the date of the unpaid holiday. (R.C. 124.19(A)(2)(a).)

Current law requires that employees required to work on a holiday by their appointing authority receive their regular rate of pay plus an amount equal to one and one-half times their regular rate of pay (R.C. 124.18(B)(6)). During the period from July 1, 2009, through June 30, 2011, those employees who are subject to any moratorium declared by the Governor and who are required by their appointing authorities to work on a holiday must be paid at their regular rate of pay for any such time worked on the holiday, subject to any applicable overtime provisions of the Federal Fair Labor Standards Act of 1938 (R.C. 124.19(A)(2)(b)).

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

(R.C. 126.21)

The bill authorizes the Director of Budget and Management 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.

The bill also explicitly authorizes the Director to enter into contracts relating to the consolidation of statewide financing functions and common transactional processes.

OAKS Support Organization Fund

(R.C. 126.24)

Under current law, the state treasury's OAKS Support Organization Fund exists for paying the operating expenses of the state's enterprise resource planning system. The bill changes the purpose of this Fund. The Fund's new purpose is paying the operating expenses incurred by providing information technology services in support of the enterprise resource planning system.

State agency administrative cost savings and efficiency

(Section 512.90)

The bill permits a state agency to enter into one or more agreements with another state agency or agencies to achieve administrative cost savings and greater efficiency. Subject to laws governing the laying off of state employees, an agency may identify employees to transfer to another state agency for the purpose of consolidating finance, human resources, legal, or other administrative functions. State agencies may also choose to share office equipment, office space, or other agency assets if such an arrangement would create savings in rental, lease, or other contractual expenses.

Current law requires the Director of Budget and Management to maintain accounts and keep records of state finance. In accordance with this law, the bill permits the Director to take any actions with regard to state budget changes, program transfers, the creation of new funds, or the consolidation of funds as necessary due to an agency's reorganization or consolidation of resources or personnel.

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

(Section 521.70)

The bill permits the Director of Budget and Management to issue guidelines to any agency applying for federal money made available to Ohio 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. It 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. The bill states that this federal money cannot be used as a match for the state's share of Medicaid.

- Expands the category of persons who may request that the Civil Rights Commission issue subpoenas from only the respondents to any party to the administrative proceeding (thereby authorizing complainants and aggrieved persons who have become parties to request issuance of subpoenas).
- Delays the point in time at which the respondents (expanded to all parties under the bill) may request the Commission to issue a subpoena to after the person becomes a party to an administrative hearing.
- Authorizes the complainant and any aggrieved person to intervene as a matter of right in the civil action, if the complainant or respondent, or any aggrieved person, involved in an administrative proceeding to enforce certain fair housing provisions in the Civil Rights Law elects to have the alleged unlawful discriminatory practices addressed in a civil action instead of the pending administrative proceeding, with respect to the issues to be determined in the civil action.
- Defines "aggrieved person" for the purposes of who may participate in certain fair housing civil rights proceedings to include: (1) persons who have been or may be injured by the discrimination and (2) certain other individuals and organizations who investigate and enforce Fair Housing Law.

Fair Housing Law

(R.C. 4112.01(A)(23), 4112.04(B)(3)(a), and 4112.051(A)(2)(e))

Existing law

Fair housing laws

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

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

(2) The refusal to consider without prejudice the combined income of both husband and wife for the purpose of extending mortgage credit to a married couple or either member of a married couple;

(3) Including in any transfer, rental, or lease of housing accommodations any restrictive covenant, or honor or exercise, or attempt to honor or exercise, any restrictive covenant;

(4) Coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of that person's having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Fair Housing Law;

(5) Discriminating against any person 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).)

The Fair Housing Law is enforced either through the filing of a charge with the Ohio Civil Rights Commission (OCRC) or through a private civil action.

Enforcement through Ohio Civil Rights Commission

If a charge is filed with the OCRC, the OCRC conducts a preliminary investigation and, if discrimination is found, tries informal methods of eliminating the unlawful discriminatory practice. If those informal methods fail, the OCRC issues a complaint and holds an administrative hearing. The hearing must be held not less than 30 days after the service of the complaint upon the complainant, the aggrieved persons other than the complainant on whose behalf the complaint is issued, and the respondent, unless one of these persons elects to proceed in a private civil action described below. The complaint also must notify the complainant, an aggrieved person, and the respondent of their right to instead proceed with a private civil action. (R.C. 4112.05.) Existing law does not define "aggrieved person" for the purposes of the Fair Housing Law.

Upon written application by a respondent, the OCRC must issue subpoenas in its name to the same extent and subject to the same limitations as other subpoenas issued by the OCRC. Subpoenas issued at the request of a respondent must show on their face the name and address of the respondent and state that they were issued at the respondent's request. (R.C. 4112.04(B)(3).)

Private civil action

Aggrieved persons also may enforce the Fair Housing Law by filing a civil action in the court of common pleas of the county in which the alleged unlawful discriminatory practice occurred within one year after it allegedly occurred, without filing a complaint with the OCRC.

But, if the OCRC issues a complaint as described above, the complainant, any aggrieved person on whose behalf the complaint is issued, or the respondent may elect to have the alleged unlawful discriminatory practices covered by the complaint addressed in a civil action instead of the administrative proceeding. Upon receipt of a timely mailed election to have the alleged unlawful discriminatory practices addressed in a civil action, the OCRC must authorize the Office of the Attorney General to commence and maintain the civil action in the court of common pleas of the county in which the alleged unlawful discriminatory practices occurred. The Attorney General must commence the civil action within 30 days after the receipt of the OCRC's authorization. Upon commencement of the civil action, the OCRC must dismiss the complaint in the pending administrative matter. (R.C. 4112.051.)

Operation of the bill

Subpoenas

The bill changes the issuing of subpoenas in two ways:

(1) It expands the categories of persons who may request subpoenas from merely respondents to any party (thereby including complainants and aggrieved persons who have become parties).

(2) It delays the point in time at which the respondents (expanded to all parties under the bill) may request the Commission to issue a subpoena to after the person becomes a party to an administrative hearing. (R.C. 4112.04(B)(3).)

Intervention in private civil action

Under the bill, if the complainant or respondent, or any aggrieved person, elects to have the alleged unlawful discriminatory practices addressed in a civil action instead of the pending administrative proceeding, with respect to the issues to be determined in the civil action, the complainant and any aggrieved person may intervene as a matter of right in that civil action (R.C. 4112.051(A)(2)(e)).

Definition of "aggrieved person"

The bill defines "aggrieved person" to mean both of the following:

(1) Any person who claims to have been injured by, or who believes that the person will be injured by, any unlawful discriminatory practice violating Fair Housing Law;

(2) Any individual, fair housing enforcement organization as defined in 42 U.S.C. 3616a, other private nonprofit fair housing enforcement organization, or nonprofit group performing investigations and enforcement activities designed to identify, eliminate, and remedy the unlawful discriminatory practices that violate Fair Housing Law (R.C. 4112.01(A)(23)).

DEPARTMENT OF COMMERCE (COM)

- Increases the application and renewal fees for a mortgage broker certificate of registration from $350 to $500, and removes the provision exempting persons registered under the Mortgage Loan Law from having to pay such fees when applying for or renewing a mortgage broker certificate of registration.
- Increases the application and renewal fees for a loan officer license from $100 to $150.
- Grants rule-making authority to the Director of Commerce to carry out the Video Service Authorization Law, which is amended by the bill.
- Adds to that law's current funding sources authority for the Director to impose an annual, proportional, and competitively neutral assessment to be used by Commerce to carry out the Law.
- Provides that the assessment is levied on video service authorization franchisees, except any that are exempted by rule issued by the Director based on the scope of a video service subscriber base or the purpose of the video service.
- Increases certain license, annual renewal, and filing fees for securities dealers, investment advisers, and other related license holders.
- In the case of a transfer of a securities dealer's license and the licenses of its salespersons to a successor entity, increases (from $10 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 (from $10 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 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.

- 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.

- Modifies the Real Estate Brokers Law as follows:

  --Limits a member of the Ohio Real Estate Commission to holding office for no more than two consecutive terms.

--Increases various licensing fees and makes various such fees nonrefundable.

--Reduces the amount of licensing fees that must be contributed to the Real Estate Education and Research Fund.

--Makes changes to the provisions regarding returned checks.

--Permits, instead of requires as provided in current law, the transfer of excess funds from the Division of Real Estate Operating Fund to the Real Estate Education and Research Fund.

--Makes changes to the education requirements for licensees.

--Makes changes to the provisions regarding brokers and salespersons who place their licenses on deposit to participate in the armed forces.

--Requires real estate brokers to maintain records of unclaimed funds reports.

--Permits a licensee to disclose confidential information if the disclosure is to a registered appraiser for specified reasons.

--Makes changes to the regulation of advertisements of salespersons and brokers.

--Prohibits a salesperson from assigning the salesperson's interest in a commission.

--Makes changes to the provisions regarding complaints against licensees and complaints against unlicensed individuals.

--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.

--Requires the Real Estate Commission to impose sanctions upon any licensee found guilty of having an unsatisfied lien in any court of record against the licensee.

--Removes all provisions of the Real Estate Brokers Law regarding the sale of cemetery lots and commissions earned therefrom.

--Changes all occurrences in the Real Estate Brokers Law of "physically handicapped" to "disabled."

--Makes various other changes to the Real Estate Brokers Law.

- 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.

--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.

Mortgage broker and loan officer license fees

(R.C. 1322.03, 1322.031, 1322.04, and 1322.041)

Under current law, an applicant for a certificate of registration as a mortgage broker, and an applicant for an annual renewal of that certificate, must 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, do not have to pay this fee when applying for or renewing a mortgage broker certificate of registration. The bill increases the application and renewal fee to $500 for each office location, and eliminates the exemption for registrants under the Mortgage Loan Law.

Applicants for a loan officer license, and applicants for an annual renewal of that license, currently must pay a $100 fee. The bill increases that fee to $150.

Rulemaking and assessments for video service authorizations

(R.C. 1332.24 and 1332.25)

The Video Service Authorization Law 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 law, 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 VSA franchisee 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 bill authorizes the Director to adopt rules to carry out the Video Service Authorization Law. It also adds to current law's funding sources–consisting of application fees and civil penalties–authority for the Director to impose an annual, proportional, and competitively neutral assessment, to be used by the Commerce to carry out its duties under the law. The assessment is to be paid by VSA franchisees. Under the bill, however, the Director, by rule, can exempt any class of such franchisees from assessment, based solely upon the scope of a video service subscriber base or the purpose of the video service. As with an application fee currently, a subscriber bill cannot refer to any such assessment charged to a franchisee.

The Director must determine the total amount to be so assessed based upon, and not exceeding, Commerce's actual, current fiscal year administrative costs in carrying out the law. That amount must be allocated proportionately among the affected franchisees, using a competitively neutral formula established by rule. The franchisee must pay its assessment within 14 days of receiving notice (the notice must be sent on or about July 1 of each year). Each year, the Director must reconcile the amount collected with the costs Commerce incurred and either charge each assessed franchisee its respective proportion of any insufficiency or proportionately credit the franchisee's next assessment for any excess collected.

Securities license and filing fee increases

(R.C. 1707.17)

The bill increases certain license, annual renewal, and filing fees for securities dealers, investment advisers, and related license holders. 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.

(5) Investment adviser representative's license and annual renewal fee--from $35 to $50.

Fees associated with the transfer of a securities dealer or investment adviser license

(R.C. 1707.18)

Under existing 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. The fee for the transfer of every salesperson's or investment adviser representative's license is $10. The bill increases that $10 fee to $15.

Similarly, under current 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 fee for the transfer of every salesperson's or investment adviser representative's license is $10. The bill increases that $10 fee to $15.

State Fire Marshal's Fund

(R.C. 3737.71; R.C. 3731.06, 3743.57, and 3901.86, not in the bill)

Under current law, the State Fire Marshal's Fund in the state treasury is comprised of: (1) fines and certain license and permit fees collected by the State Fire Marshal, (2) certain premium receipts from insurance companies doing business in Ohio related to insurance against fire, and (3) certain taxes, fines, penalties, license fees, deposits of money, securities, or other obligations collected from foreign insurance companies.

Generally, money in the fund must be used to maintain and administer the Office of the Fire Marshall and the Ohio Fire Academy. But the Director of Commerce--upon certifying to the Director of Budget and Management that the cash balance in the fund exceeds the amount needed to pay ongoing operating expenses--may use the excess for certain real property and facilities expenses of the State Fire Marshal and the Ohio Fire Academy.

The bill provides that the Director of Commerce may use the excess in the fund for the real property and facilities expenses described above with the approval of the Director of Budget and Management. Furthermore the bill 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 in the Department of Commerce

(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 241.20)

The Division of Labor and Worker Safety and the Division of Industrial Compliance

Currently, the Division of Labor and Worker Safety and the Division of Industrial Compliance exist as separate divisions within the Department of Commerce and have separate duties as specified in law. Current law states that the Division of Labor and Worker Safety have all powers and perform all duties vested by law in the Superintendent of Labor and Worker Safety. Wherever powers are conferred or duties

imposed upon the Superintendent of Labor and Worker Safety, those powers and duties are construed as vested in the Division of Labor and Worker Safety. The Division of Labor and Worker Safety is under the control and supervision of the Director of Commerce and is administered by the Superintendent of Labor and Worker Safety. The Superintendent of Labor and Worker Safety must 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) (R.C. Chapters 4109., 4111., and 4115., respectively).

Under current law, the Superintendent of Industrial Compliance must 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 Division of Industrial Compliance to be paid into the state treasury to the credit of the Industrial Compliance Operating Fund. 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 in the Department of Commerce

The bill 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 bill 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 bill, 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 bill. The bill also renames the Industrial Compliance Operating Fund the Labor Operating Fund.

The bill 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 bill 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 bill, 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 bill 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 bill, 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 bill 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 bill, 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 has 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 bill, 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)

Continuing law generally requires all boilers to be inspected when installed and prohibits them from being operated until an appropriate certificate of operation has been issued by the Superintendent of Industrial Compliance (changed to Superintendent of Labor--see "**Creation of Division of Labor in the Department of Commerce**"). 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 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 is currently $50. The bill increases this fee to $150.

Continuing law requires a person to obtain a license as a low pressure boiler operator, a high pressure boiler operator, or a stationary steam engineer, as applicable, 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 is $50. The license fee for each original or renewal steam engineer, high pressure boiler operator, or low pressure boiler operator license is $35. The bill increases these fees to $75 and $50, respectively.

Continuing law prohibits any person from making any installation or major repair or modification of any boiler without first obtaining a permit to do so from the Division of Industrial Compliance (changed to Division of Labor). The application permit fee is $50. The bill increases the permit application fee to $100.

Under continuing law, 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 Industrial Compliance (changed to Superintendent of Labor) for inspections required upon installation of a boiler and to maintain a certificate of operation. The bill increases those fees as follows:

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

Current law requires a renewal fee of $45 be paid to the Treasurer of State before the renewal of any certificate of operation for a boiler. The bill eliminates this requirement.

Changes to the fees charged for elevator inspections

(R.C. 4105.17)

Generally, under existing law, an elevator must be inspected prior to its operation. General or special inspectors conduct these inspections. Every inspector must forward to the Superintendent of Industrial Compliance (changed to Superintendent of Labor--see "**Creation of the Division of Labor in the Department of Commerce**") 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.

Current law specifies that the 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 Industrial Compliance (changed to Division of Labor), is not successfully completed by a general inspector conducted at any of the following times is $20 plus $10 for each floor where the elevator stops:

(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 bill 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 Law. The bill also increases the fee for an inspection conducted at any of the times described above from $20 to $120.

The Superintendent, under continuing law may assess an additional fee of $125 plus $5 for each floor where an elevator stops 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. The bill decreases the base fee for reinspection from $125 to $120, but increases the per floor reinspection fee from $5 to $10.

Under current law, the fee for issuing or renewing a certificate of operation under the Elevator Law for an elevator that is inspected every six months in accordance with continuing law is $200 plus $10 for each floor where the elevator stops, except where the elevator has been inspected by a special inspector. The bill increases this base fee to $220 and increases the per floor fee to $12 per floor.

The Real Estate Brokers Law

Ohio Real Estate Commission

(R.C. 4735.03)

Current law allows a member of the Ohio Real Estate Commission to hold office indefinitely. The bill limits a member of the Commission from holding office for more than two consecutive terms.

Superintendent of Real Estate and Professional Licensing

(R.C. 4735.05)

Current law both requires and allows the Superintendent of Real Estate and Professional Licensing to fulfill specified duties. The bill, in addition to the duties stated in current law, allows the Superintendent to issue advisory letters in conjunction with the enforcement of the Real Estate Brokers Law.

Licensing--generally

(R.C. 4735.02 (not in the bill) and 4735.10)

Current law prohibits a person, partnership, association, limited liability company, limited liability partnership, or corporation from acting as a real estate broker or real estate salesperson, or advertising or assuming to act as such, without first being

licensed as provided by the Real Estate Brokers Law (R.C. Chapter 4735.). The bill allows the Ohio Real Estate Commission to adopt rules clarifying the activities that require a license under the Real Estate Brokers Law.

Licensing--fees

(R.C. 4735.06, 4735.09, 4735.13, 4735.15, 4735.182, and 4735.211)

The bill 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 $75.
- 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 $75 for each year of the licensing period.
- The fee assessed to the brokerage if a real estate broker has not less than 11 nor more than 20 real estate salespersons associated with the broker from $64 to $75 for each year of the licensing period.
- The fee assessed to the brokerage for every ten real estate salespersons associated with a real estate brokers in excess of 20 from $37 to $40 for each year of the licensing period.
- The fee for the renewal of a real estate salesperson's license--from $39 to $60 for each year of the licensing period.

Current law provides that if an applicant for a real estate broker's license or real estate salesperson's license is not admitted and a waiver is not involved, one half of the application fee will be retained by the Superintendent to cover the expenses of processing the application and the other half will be returned to the applicant. The bill removes this provision and instead makes the application fee for both licenses nonrefundable. The bill also makes nonrefundable the fees for reactivation and transfer of a license and for branch office licenses, license renewals, late filings, and foreign real estate dealer and salesperson licenses.

Current law is silent as to what constitutes the initial year of the licensing period to which the application fee for a real estate broker's license or a real estate salesperson's license applies. The bill provides that the initial year of the licensing period commences at the time the license is issued and ends on the applicant's first birthday thereafter.

The bill 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 bill 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 fees that are assessed only once every three years, and from $12 to $3 for each triennial fee.

Current law specifies that if a check or other draft instrument used to pay any fee required by the Real Estate Brokers Law is returned to the Superintendent for insufficient funds, the Superintendent must notify the licensee that the check or other draft instrument was returned for insufficient funds and that the licensee's license will be suspended unless the licensee, within 15 days after the mailing of the notice, resubmits the fee and an additional $100 fee to the Superintendent. If the licensee does not submit both fees within that time period, or if any check or other draft instrument used to pay either of those fees is returned to the Superintendent for insufficient funds, the license must be suspended immediately without a hearing and the licensee must cease activity as a licensee under the Real Estate Brokers Law. The bill changes these provisions to apply to checks or draft instruments returned unpaid by the financial institutions upon which they are drawn for any reason, as opposed to insufficient funds as specified under current law. The bill also expands the returned check provisions to apply to applicants and providers, in addition to licensees as provided under current law, and requires that if the check or other draft instrument was remitted by an applicant for licensure, the applicant's application automatically must be rejected.

Current law requires all fees, except those paid to the Real Estate Education and Research Fund and Real Estate Recovery Fund, as provided in the Real Estate Brokers Law, to be paid into the state treasury to the credit of the Division of Real Estate Operating Fund. Current law requires the Director of Commerce to pay the excess funds, if funds in the Division of Real Estate Operating Fund are determined by the Director to be in excess of the funds necessary to fund all the expenses of the Division in

any biennium, to the Real Estate Education and Research Fund. The bill permits, instead of requires, the transfer of excess funds.

Licensing--experience required to obtain a license

(R.C. 4735.07)

Current law requires an applicant for a real estate broker's license to establish to the satisfaction of the Superintendent of Real Estate and Professional Licensing that the applicant has fulfilled specified criteria prior to taking the broker's examination. One such requirement is that the applicant has been a licensed real estate broker or salesperson for at least two years and during at least two of the five years preceding the applicant's application, the applicant has worked as a licensed real estate broker or salesperson for an average of at least 30 hours per week. Additionally, the applicant must fulfill one of the following criteria:

(1) Has completed at least 20 real estate transactions, in which property was sold for another by the applicant while acting in the capacity of a real estate broker or salesperson;

(2) Has completed such equivalent experience as defined in rules adopted by the Ohio Real Estate Commission.

The bill changes this requirement to state that the applicant must fulfill either of the following criteria:

(1) Has been a licensed real estate broker or salesperson for at least two years, during at least two of the five years preceding the person's application, has worked as a licensed real estate broker or salesperson for an average of at least 30 hours per week, and has completed at least 20 real estate transactions in which property was sold for another by the applicant while acting in the capacity of a real estate broker or salesperson;

(2) Has such equivalent experience to the requirements described immediately above as defined in rules adopted by the Commission or as otherwise ordered by the Commission.

Licensing--education required for licensees

(R.C. 4735.07, 4735.09, 4735.10, and 4735.141)

New licensees

Current law requires a licensed real estate broker, no later than 12 months after the date of issue of the license to the licensee, to submit proof satisfactory to the Superintendent of Real Estate and Professional Licensing, on forms made available by the Superintendent, of the completion of ten hours of classroom instruction in real estate brokerage at an institution of higher education or any other institution that is approved by the Ohio Real Estate Commission. That instruction must include, but is not limited to, current issues in managing a real estate company or office. The bill changes this requirement to require a licensed real estate broker, no later than 12 months after the date of issue of the license to the licensee, to submit proof satisfactory to the Superintendent, on forms made available by the Superintendent, of the completion of ten hours of classroom instruction that must be completed in schools, seminars, and educational institutions approved by the Commission. The Commission must approve the curriculum and providers by adopting rules in accordance with the Real Estate Brokers Law.

Similarly, current law requires a licensed real estate salesperson, no later than 12 months after the date of issue of the license to the licensee, to submit proof satisfactory to the Superintendent, on forms made available by the Superintendent, of completion, at an institution of higher education or any other institution approved by the Commission, of ten hours of classroom instruction in real estate courses that cover current issues regarding consumers, real estate practice, ethics, and real estate law. The bill changes this requirement to require a licensed real estate salesperson, no later than 12 months after the date of issue of the license to the licensee, to submit proof satisfactory to the Superintendent, on forms made available by the Superintendent, of the completion of ten hours of classroom instruction that must be completed in schools, seminars, and educational institutions approved by the Commission. The Commission must approve the curriculum and providers by adopting rules in accordance with the Real Estate Brokers Law.

Existing licensees

Generally, current law requires all persons licensed as real estate brokers or real estate salespersons to submit proof satisfactory to the Superintendent that the licensee has satisfactorily completed 30 hours of continuing education, as prescribed by the Commission, on or before the licensee's birthday occurring three years after the licensee's date of initial licensure, and on or before the licensee's birthday every three

years thereafter. The bill requires a licensee to submit the proof with the licensee's notice of renewal in the manner provided by the Superintendent.

Disabled licensees

Current law permits any licensee who is a physically handicapped licensee at any time during the last three months of the third year of the licensee's continuing education reporting period to receive an extension of time to submit proof to the Superintendent that the licensee has satisfactorily completed the required 30 hours of continuing education. The bill permits the extension for any licensee who is a disabled licensee at any time during the last three months of the third year, instead of physically handicapped. The bill limits the Superintendent to granting extensions of not more than six months to any disabled licensee and permits the Superintendent to grant only one extension.

Failure to comply with continuing education requirements

If the continuing education requirements are not met by an existing licensee within the period specified, current law requires the licensee's license to be suspended automatically. The Superintendent, under current law, is required to notify the licensee of the license suspension. The bill requires that such notification must be sent to the personal residence address of the licensee that is on file with the Division of Real Estate and Professional Licensing.

Under current law, if the license of a real estate broker is suspended for failure to comply with the continuing education requirements, the license of a real estate salesperson associated with that broker correspondingly is suspended. The bill requires a sole broker to notify affiliated salespersons of the suspension in writing within three days of receiving the notice from the Superintendent. Current law provides that the suspended license of the associated real estate salesperson must be reactivated and no fee may be charged or collected for that reactivation if all of the following occur:

(1) That broker subsequently submits proof to the Superintendent that the broker has complied with the continuing education requirements and requests that the broker's license as a real estate broker be reactivated.

(2) The Superintendent then reactivates the broker's license as a real estate broker.

(3) The associated real estate salesperson intends to continue to be associated with that broker, has complied with the continuing education requirements, and otherwise is in compliance with the Real Estate Brokers Law.

Under current law, any person whose license is reactivated as described above must submit proof satisfactory to the Superintendent that the person has completed 30 hours of continuing education, as prescribed by the Commission, on or before the third year following the licensee's birthday occurring immediately after reactivation.

The bill provides that the license of a real estate salesperson associated with a suspended real estate broker must be reactivated and no fee may be charged or collected for that reactivation if that broker subsequently submits proof to the Superintendent that the broker has complied with the continuing education requirements and requests that the broker's license as a real estate broker be reactivated, and the Superintendent then reactivates the broker's license as a real estate broker. The bill additionally provides, if the real estate salesperson submits an application to leave the association of the suspended broker in order to associate with a different broker, the suspended license of the associated real estate salesperson must be reactivated and no fee may be charged or collected for that reactivation. The bill permits the Superintendent to process such an application regardless of whether the licensee's license is returned to the Superintendent. The bill requires any person whose license is reactivated pursuant to the procedure described to comply with the continuing education requirements and otherwise be in compliance with the Real Estate Brokers Law.

If a licensee fails to comply with the continuing education requirements for existing licensees, the bill prohibits the Superintendent from renewing the licensee's license, and requires the licensee to pay the penalty fee provided for under current law, which is 50% of the renewal fee.

Commission's authority to adopt rules regarding education

Current law permits the Ohio Real Estate Commission to adopt rules specifying standards for the approval of courses of study required for licenses, or offered in preparation for license examinations, or required as continuing education for licenses. The bill allows the Commission also to adopt rules specifying standards for the approval of the ten hour postlicensure courses required for newly licensed real estate brokers and real estate salespersons as discussed above in "**New licensees**."

Licensing--placing of brokers licenses on deposit

(R.C. 4735.10)

Current law allows the Commission to adopt reasonable rules in accordance with the Administrative Procedure Act, necessary for implementing the provisions of the Real Estate Brokers Law relating, but not limited to, approval of applications of brokers

to place their licenses on deposit and to become salespersons. The bill changes the terminology to refer to placing the license "in an inactive status" instead of "on deposit."

Licensing--members of the armed forces

(R.C. 4735.13)

Current law allows a real estate broker or salesperson who has entered the armed forces to place the broker's or salesperson's license "on deposit" with the Ohio Real Estate Commission. The licensee is not required to renew the license until the renewal date that follows the date of discharge from the armed forces. Current law requires a licensee whose license is on deposit for participation in the armed forces and who fails to meet the continuing education requirements because of such participation to comply with the continuing education requirements within 12 months of the licensee's discharge from the armed forces. The bill changes this requirement to require compliance with the continuing education requirements within 12 months of the licensee's first birthday after discharge.

Current law requires the Commission to notify the licensee of the licensee's obligations under the continuing education requirements at the time the licensee applies for reactivation of the licensee's license after discharge. The bill instead places this duty upon the Superintendent of Real Estate and Professional Licensing.

Licensee duties

(R.C. 4735.13, 4735.14, 4735.16, 4735.17, 4735.18, 4735.21, 4735.55, 4735.58, 4735.71, 4735.72 and 4735.74)

Renewal

Current law requires the Superintendent to mail a notice of renewal to the most current personal residence address of each broker or salesperson as filed with the Superintendent by the licensee and the place of business address of the brokerage two months prior to the filing deadline. The bill instead requires the Superintendent to mail the notice of renewal two months prior to the filing deadline only to the personal residence address of each broker or salesperson that is on file with the Division. The bill prohibits the licensee from renewing the licensee's license any earlier than two months prior to the filing deadline.

Notification of convictions and other violations

Current law requires any licensee who is convicted of a felony or a crime involving moral turpitude or of violating any federal, state, or municipal civil rights law pertaining to discrimination in housing, or any court that issues a finding of an

unlawful discriminatory practice pertaining to housing accommodations as described in the Civil Rights Law (R.C. Chapter 4112.) or that convicts a licensee of a violation of any municipal civil rights law pertaining to housing discrimination, to notify the Superintendent of the conviction or finding within 15 days. The bill instead requires any licensee who fits into any of the following categories of misconduct to notify the Superintendent of such fact in writing within 15 days of satisfying the criteria:

(1) Conviction of a felony;

(2) Conviction of a crime involving moral turpitude;

(3) Being found to have violated any federal, state, or municipal civil rights law pertaining to discrimination in housing;

(4) Being found to have engaged in an unlawful discriminatory practice pertaining to housing accommodations described in the Civil Rights Law;

(5) Conviction of violating any municipal civil rights law pertaining to housing discrimination;

(6) Being subject of an order revoking or permanently surrendering any professional license, certificate, or registration by any public entity other than the Division of Real Estate.

Business location

Current law requires a real estate broker to prominently display the broker's license in the office or place of business of the broker. The bill, however, moves the requirement that every real estate broker licensed under the Real Estate Brokers Law have and maintain a definite place of business in Ohio and further specifies that a post office box address is not a definite place of business for purposes of that requirement. Additionally, current law requires a broker to give notice in writing to the Superintendent of any change of business location. The bill removes the requirement that the notice be in writing and specifies that the notice be given to the Superintendent on a form prescribed by the Superintendent within 30 days after the change of location.

Licensees as members and officers of entities

Current law prohibits a real estate broker who is licensed as a real estate broker and is a member or officer of a partnership, association, limited liability company, limited liability partnership, or corporation from performing any acts as a real estate broker other than as the agent of the partnership, association, limited liability company, limited liability partnership, or corporation, and the broker is prohibited from having any real estate salespersons associated with the broker. The bill changes the prohibition

to require that the broker only act as a real estate broker for the partnership, association, limited liability company, limited liability partnership, or corporation for which the broker is a member or officer. The bill also removes the prohibition against the broker from having any real estate salespersons associated with the broker.

Recordkeeping

Current law requires the Real Estate Commission to impose sanctions upon any licensee who fails to keep complete and accurate records of all transactions for a period of three years from the date of the transaction, including copies of listing forms, earnest money receipts, offers to purchase and acceptances of them, records of receipts and disbursements of all funds received by the licensee as broker and incident to the licensee's transactions as such, and records pertaining to affiliated licensees, and any other instruments or papers related to the performance of any of the acts set forth in the definition of real estate broker. The bill adds that, notwithstanding the record keeping requirements discussed above, any broker required to file a report of unclaimed funds or a negative unclaimed funds report pursuant to the Unclaimed Funds Law (R.C. Chapter 169.) must retain all records designated by the Superintendent of Unclaimed Funds as applicable for five years beyond the relevant time period provided in the Unclaimed Funds Law or until completion of an audit conducted pursuant to the Unclaimed Funds Law, whichever occurs first.

Agency disclosure statements

Current law requires a licensee who is a purchaser's agent or seller's subagent working with a purchaser to present the agency disclosure statement described in the Real Estate Brokers Law to the purchaser and request the purchaser to sign and date the statement. The bill requires the licensee to indicate the accurate agency relationship on the agency disclosure statement.

Termination of duties

Current law terminates the duty of a licensee to a client after performance of all duties or after any contract has terminated or expired, unless otherwise agreed in writing. The licensee, however, still must provide the client with an accounting of all moneys and property relating to the transaction and must keep confidential all information received during the course of the transaction. The bill permits the licensee to disclose confidential information received during the course of the transaction if the disclosure is regarding sales information requested by a registered appraiser assistant or a licensed or certified appraiser for the purposes of performing an appraisal.

Advertising

Current law requires any licensed real estate broker or salesperson who advertises to buy, sell, exchange, or lease real estate, or to engage in any act regulated by the Real Estate Brokers Law, including, but not limited to, any licensed real estate broker or salesperson who advertises to sell, exchange, or lease real estate that the licensee owns to be identified in the advertisement by name and by indicating the licensee is a real estate broker or real estate salesperson. A real estate salesperson who advertises the sale, exchange, or lease of real estate that the salesperson owns and that is not listed for sale, exchange, or lease with a real estate broker, any real estate salesperson who advertises also must indicate in the advertisement the name of broker under whom the salesperson is licensed and the fact that the salesperson's broker is a real estate broker. The name of the broker must be displayed in equal prominence with the name of the salesperson in the advertisement.

Instead the bill requires any licensed real estate broker or salesperson who advertises to buy, sell, exchange, or lease real estate, or to engage in any act regulated by this chapter, with respect to property the licensee does not own, to be identified in the advertisement by name and indicate the name of the brokerage with which the licensee is affiliated. The bill also requires any licensed real estate broker or salesperson who advertises to sell, exchange, or lease real estate, or to engage in any act regulated by the Real Estate Brokers Law, with respect to property that the licensee owns, to be identified in the advertisement by name and indicate that the property is agent owned, and if the property is listed with a real estate brokerage, the advertisement must also indicate the name of the brokerage with which the property is listed. The bill requires the name of the brokerage to be displayed in equal prominence with the name of the salesperson in the advertisement. The bill defines "brokerage" for purposes of the advertising requirements to mean the name under which the real estate company or sole broker is doing business, or if the real estate company or sole broker does not use such a name, the name of the real estate company or sole broker as licensed.

Agency agreements

Current law requires all written agency agreements to contain a copy of the United States Department of Housing and Urban Development Equal Housing Opportunity logotype, as set forth in 24 C.F.R. 109.30. The bill removes the reference to the Code of Federal Regulations provision, but otherwise retains the requirement.

Prohibitions

Current law prohibits a real estate salesperson or foreign real estate salesperson from collecting any money in connection with any real estate or foreign real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise,

except in the name of and with the consent of the licensed real estate broker or licensed foreign real estate dealer under whom the salesperson is licensed. The bill adds the specification that the broker or dealer who must consent is the broker or dealer under whom the salesperson was licensed at the time the salesperson earned the commission. The bill also prohibits a salesperson licensed under the Real Estate Brokers Law from assigning the salesperson's interest in a commission or any portion thereof.

The bill prohibits a salesperson or broker licensed under the Real Estate Brokers Law from participating in a dual agency relationship in which the licensee is a party to the transaction, either personally or as an officer or member of a partnership, association, limited liability company, limited liability partnership, or corporation that has an interest in the real property that is the subject of the transaction.

The bill prohibits a sole broker from representing either the buyer or the seller individually when the brokerage is a dual agent.

Complaints against licensees

(R.C. 4735.051)

Current law requires the Superintendent of Real Estate to acknowledge receipt of a complaint and send a notice to the licensee describing the acts complained of within five business days after a person files with the Division of Real Estate a signed written complaint against a licensed real estate broker or licensed real estate salesperson. The bill increases the amount of time the Superintendent has to send an acknowledgment and a notice to ten days, removes the requirement that the complaint be signed, and removes the requirement that the notice describe the acts complained of, and instead requires the notice to be accompanied by a copy of the complaint.

Current law requires that the acknowledgment to the complainant and the notice to the licensee state that an informal mediation will be held with the complainant, the licensee, and an investigator from the investigation and audit section of the Division if the complainant and licensee both file a request for such a meeting within ten business days thereafter on a form provided by the Superintendent. The bill instead requires that the acknowledgment and notice provide that an informal mediation meeting may be held with the complainant, the licensee, and an investigator from the investigation and audit section of the Division if the complainant and licensee both file a request for such a meeting within 20 calendar days after the acknowledgment and notice are mailed.

Current law requires an informal mediation meeting to be within 20 business days after the Superintendent notifies the complainant and licensee of the date of the meeting and allows any party to request an extension of up to 15 business days for good

cause shown. The bill removes the requirement of when the informal mediation meeting must be held and removes the provision allowing for requests for extensions. The bill adds a requirement that the notice sent by the Superintendent stating the date of the meeting must be sent by regular mail.

Current law requires the investigator to report to the Superintendent, the complainant, and licensee if the complainant and licensee reach an accommodation at an informal mediation meeting and the complaint file must be closed. The bill instead requires the complaint file to be closed upon the Superintendent receiving satisfactory notice that the accommodation agreement has been fulfilled.

Current law requires the Superintendent, within five days of determining that the complainant and licensee have failed to agree to an informal mediation meeting or have failed to reach an accommodation, notify the complainant and licensee and investigate the conduct of the licensee against whom the complaint is filed. The bill instead requires the Superintendent to assign the complaint for investigation if the complainant and licensee fail to agree to an informal mediation meeting or fail to reach or fulfill an accommodation.

Current law requires the investigator to file a written report of the results of the investigator's investigation with the Superintendent within 60 business days after receipt of the complaint, or if an informal mediation meeting is held, within 60 days of such meeting. The bill instead requires the investigator to file the written report upon conclusion of the investigation. Current law then requires the Superintendent to review the report and determine whether there exists reasonable and substantial evidence of a violation by the licensee within 14 business days after the investigator files the written report. The bill instead requires only that the Superintendent review the report and determine whether there exists reasonable and substantial evidence of a violation by the licensee and does not specify a time period in which to do so.

If the Superintendent finds that evidence of a violation by the licensee exists, current law requires the Superintendent to notify the complainant and licensee of the date of a hearing to be held by a hearing examiner pursuant to the Administrative Procedure Act (R.C. Chapter 119.) within 15 days but not prior to seven days thereafter, except that current law permits the Superintendent or licensee to request an extension of up to 30 business days for good cause shown. The bill instead requires the Superintendent to notify the complainant and licensee of the determination if the Superintendent finds that evidence of a violation by the licensee exists. The bill subsequently permits the licensee to request a hearing pursuant to the Administrative Procedure Act. Current law requires the Superintendent to notify the complainant and licensee of the Superintendent's determination and the basis for that determination if the Superintendent finds that evidence of a violation by the licensee does not exist

within five business days after the Superintendent makes that determination. The bill increases the amount of time the Superintendent has to send the notice to ten business days after the Superintendent makes the determination.

Current law allows the Real Estate Commission to review the Superintendent's determination upon request from the complainant. If the Commission affirms the determination of the Superintendent, the Superintendent must notify the complainant and licensee within five business days thereafter. The bill increases the amount of time the Superintendent has to send the notice to ten business days. Current law requires a hearing to be held if the Commission reverses the determination of the Superintendent. The bill adds the requirement that the hearing be held before a hearing examiner.

Current law allows the Superintendent to withdraw the notice of hearing, upon receipt of additional evidence, after the date of hearing to be held by a hearing examiner has been scheduled as described above, but before the issuance of the report of findings of fact and conclusions of law. The bill instead allows the Superintendent to withdraw the notice upon receipt of additional evidence after the Superintendent notifies the licensee of the determination of the Commission, but before the Commission issues an order. If the licensee requests a hearing, the bill permits the Superintendent to withdraw the notice of hearing upon the receipt of additional evidence before the issuance of the report of findings of fact and conclusions of law.

Current law requires the hearing examiner to file a report of findings of fact and conclusions of law with the Superintendent, the Commission, and the complainant and licensee within 25 business days after the conclusion of formal hearings. The bill removes the requirement that the report must be filed within 25 business days and instead requires only that the report be filed. The bill permits the respondent and the Division to file written objections to the report with the Commission within ten days of receipt of the copy of the written report of findings of fact and conclusions of law. The bill requires the Commission to consider such objections before approving, modifying, or disapproving the report.

Current law requires the Commission to hear the testimony of the complainant or the licensee upon request. The bill requires the Commission to hear the testimony of the complainant or the licensee and removes the requirement that they hear the testimony upon request.

Current law requires the Commission to decide whether to impose disciplinary sanctions upon a licensee for a violation within 60 days of the filing of the hearing examiner's report or within 60 days of the filing of an Ohio Civil Rights Commission complaint. The bill removes the provisions limiting the time within which the Commission must decide whether to impose sanctions.

Current law requires the Commission to maintain a record of the proceedings and issue a written opinion to the complainant and licensee, citing its findings and grounds for any action taken. Current law requires the Commission to notify the complainant and any other person who may have suffered financial loss because of the licensee's violations that the complainant or other person may sue for recovery under the Real Estate Brokers Law. The bill instead requires the Commission to maintain a record of the proceedings and issue a written finding and order to the complainant and licensee, citing its findings for any action taken. The bill removes the provision that requires the Commission to notify the complainant or any other party who may have suffered financial loss because of the licensee's violations that the complainant or other person may sue for recovery under the Real Estate Brokers Law.

Under current law the Commission may impose a fine for a violation by a licensee which cannot exceed $2,500 per violation. The bill increases this amount to $5,000 per violation.

Current law allows the Commission to require the licensee to complete additional continuing education course work on account of a violation, and specifies that any such continuing education course work imposed must not count toward the continuing education requirements otherwise required by the Real Estate Brokers Law. The bill instead allows the Commission to require the licensee to complete additional educational courses for a violation, and specifies that any course work imposed will not count toward the continuing education or pre or postlicensure requirements otherwise required by the Real Estate Brokers Law.

The bill allows the Commission to impose any other sanction the Commission finds is appropriate upon a licensee to remedy a violation by the licensee.

Current law requires all notices, written reports, and determinations issued during the complaint process regarding a licensee to be mailed via certified mail, return receipt requested. The bill specifies that refusal of delivery by personal service or by mail is not failure of delivery, and service is deemed to be complete.

Complaints against unlicensed individuals

(R.C. 4735.052)

Current law allows the Superintendent to investigate any person that has allegedly violated the Real Estate Brokers Law upon receipt of a written complaint or upon the Superintendent's own motion. Current law prohibits the Superintendent from investigating any person, under this provision, who held a <u>valid</u> (changed by the bill to "active") license under the Real Estate Brokers Law any time during the 12 months

preceding the date of the alleged violation. The substantive effect of this change is unclear.

If after an investigation, the Superintendent determines there exists reasonable evidence of a violation, current law requires the Superintendent to send the party who is the subject of the investigation, a written notice, by regular mail, within seven business days after that determination. The bill increases the time within which the Superintendent must send the notice to 14 business days.

Current law requires the notice required above to inform the party that a hearing concerning the alleged violation will be held at the next regularly scheduled meeting of the Real Estate Commission, and the notice must contain a statement giving the date and place of that meeting. The bill instead requires the hearing to be held before a hearing examiner and the notice to contain a statement giving the time and place of that hearing.

The bill requires the hearing examiner to file a report of findings of fact and conclusions of law with the Superintendent, the Commission, the complainant, and the parties after the conclusion of formal hearings. The bill allows the parties and the Division to file written objections to the report within ten days of receipt of such copy of the written report of findings of fact and conclusions of law. The bill requires the Commission to consider the objections before approving, modifying, or disapproving the report.

The bill requires the Commission to review the hearing examiner's report at the next regularly scheduled Commission meeting, which must be held at least 15 business days after receipt of the hearing examiner's report. At that meeting, the Commission must hear the testimony of the complainant or the parties decide whether to impose disciplinary sanctions upon a party for a violation.

Current law requires civil penalties collected as disciplinary sanctions upon a party for a violation to be deposited in the Real Estate Recovery Fund. The bill instead requires the penalties to be deposited in the Real Estate Operating Fund.

Real Estate Recovery Fund

(R.C. 4735.12)

Current law allows 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, to 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 bill requires the verified application to be filed only in the Court of Common Pleas of Franklin County instead of any court of common pleas, as provided in current law.

Sanctions against licensees and licensee misconduct

(R.C. 4735.14, 4735.18, and 4735.181)

Current law prohibits the Superintendent from renewing a license if the licensee is not in compliance with the Real Estate Brokers Law. The bill expands the prohibition to include licensees who are "no longer honest, trustworthy, or of good reputation," and who do not comply with the continuing education requirements.

Current law requires the Ohio Real Estate Commission to impose disciplinary sanctions upon any licensee who, whether or not acting in the licensee's capacity as a real estate broker or salesperson, or in handling the licensee's own property, is found guilty of "knowingly" making any misrepresentation. The bill removes the provision that the misrepresentation be made "knowingly," and instead requires sanctions against a licensee who is found guilty of making any misrepresentation.

Current law requires the Commission to impose sanctions upon any licensee who, whether or not acting in the licensee's capacity as a real estate broker or salesperson, or in handling the licensee's own property, is found guilty of having acted in the dual capacity of real estate broker and undisclosed principal, or real estate salesperson and undisclosed principal, in any transaction. The bill limits the exposure of a licensee to disciplinary sanctions when acting in the capacity of broker or salesperson and undisclosed principal to only those instances where the licensee has not placed all disclosures in writing.

Current law requires the Commission to impose sanctions upon any licensee who, whether or not acting in the licensee's capacity as a real estate broker or salesperson, or in handling the licensee's own property, is found guilty of having an unsatisfied final judgment in any court of record against the licensee arising out of the licensee's conduct as a licensed broker or salesperson. The bill includes licensees found guilty of having an unsatisfied lien in any court of record against the licensee arising out of the licensee's conduct as a licensed broker or salesperson in this provision.

The bill removes the requirement in current law that the Commission immediately notify the Real Estate Appraiser Board of any disciplinary action taken

against a licensee who also is a state certified real estate appraiser under the Real Estate Appraiser Law (R.C. Chapter 4763.).

Current law prohibits any real estate broker or salesperson from failing to comply with requirements regarding agency agreements, brokerage policies on agency, and agency disclosure statements and permits the Superintendent to initiate disciplinary action against a licensee who violates the prohibition or to serve a citation and impose sanctions upon a licensee who violates the prohibition. The bill adds to the prohibition failure to comply with requirements regarding change of address notification and maintenance of salesperson licenses by brokers.

Commission orders

(R.C. 4735.19)

Current law requires the Real Estate Commission to keep a record of its proceedings. Upon application of an interested party, or upon its own motion and notice to the interested parties, current law permits the Commission to reverse, vacate, or modify its own orders. An application to the Commission to reverse, vacate, or modify an order must be filed within 15 days after the mailing of the notice of the order of the Commission to the interested parties pursuant to the Administrative Procedure Act. Any applicant, licensee, or complainant, dissatisfied with an order of the Commission is permitted under current law to appeal in accordance with the Administrative Procedure Act. The bill instead, upon application of an interested party, or upon its own motion, permits the Commission to hold a hearing to consider whether or not the Commission should reverse, vacate, or modify its own orders. The bill requires the application to be filed with the Division of Real Estate within 15 days after the mailing of the notice of the order of the Commission to the interested parties. Any applicant or respondent dissatisfied with an order of the Commission is permitted by the bill to appeal in accordance with the Administrative Procedure Act.

Sales of cemetery lots

(R.C. 4735.22, 4735.23, 4735.99, 4767.05, 4767.07, and 4767.08)

The bill removes all provisions of the Real Estate Brokers Law regarding the sale of cemetery lots and commissions earned therefrom.

Definitions

(R.C. 4735.01)

The bill changes all occurrences in the Real Estate Brokers Law of "physically handicapped" to "disabled."

Under current law, the terms "real estate broker," "real estate salesperson," "foreign real estate dealer," and "foreign real estate salesperson" do not include a person, partnership, association, limited liability company, limited liability partnership, or corporation, or the regular employees thereof, who perform any of the acts or transactions specified in the Real Estate Brokers Law, whether or not for, or with the intention, in expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration:

(1) With reference to real estate situated in this state or any interest in it owned by such person, partnership, association, limited liability company, limited liability partnership, or corporation, or acquired on its own account in the regular course of, or as an incident to the management of the property and the investment in it;

(2) As receiver or trustee in bankruptcy, as guardian, executor, administrator, trustee, assignee, commissioner, or any person doing the things mentioned in the Real Estate Brokers Law, under authority or appointment of, or incident to a proceeding in, any court, or as a public officer, or as executor, trustee, or other bona fide fiduciary under any trust agreement, deed of trust, will, or other instrument creating a like bona fide fiduciary obligation;

(3) As a person who engages in the brokering of the sale of business assets, not including the negotiation of the sale, lease exchange, or assignment of any interest in real estate;

(4) Various other specifications unchanged by the bill.

The bill changes (1) above and applies with reference to real estate situated in this state and removes the provision relating to any interest in real estate situated in this state.

The bill changes (2) above and requires that the public officer be a "bona fide" public officer and that the trust agreement, deed of trust, will, or other instrument creating a like bona fide fiduciary obligation be executed in good faith.

The bill changes (3) above and instead of not including the negotiation of the sale, lease, exchange, or assignment of any interest in real estate, does not include the actual sale, lease, exchange, or assignment of any interest in real estate.

The bill limits the exemption of persons, partnerships, associations, limited liability companies, limited liability partnerships, or corporations as provided above by the legal interest in the real estate held by that person or entity to performing any of the acts or transactions specified in or comprehended by the Real Estate Brokers Law.

Real Estate Appraiser Law

(R.C. 4763.01, 4763.03, 4763.04, 4763.05, 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.

Under continuing law, 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. Current law directs the Board to review the standards for the *preparation and reporting of real estate appraisals* while the bill 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 bill, include, in addition to appraisals to wit "appraisal review" and "appraisal consulting service."

Current law requires the Board to appoint a referee or examiner for any proceeding that involves the *revocation or suspension* of a certificate, registration, or license. The bill instead characterizes the proceeding as a "*disciplinary action* of a certificate holder, licensee, or registrant."

The bill changes the procedures for serving a subpoena upon a witness to testify in a matter. Current law requires a sheriff or constable to serve and return the process. The bill enables the service to be made "by constable or by certified mail." The bill also deems the subpoena served on the date delivery is made, or the date the person refuses to accept delivery whereas existing law is silent on this matter. Under the bill, a sheriff or constable receives the same fee for the alternative forms of service as if the person actually made the service.

Current law requires an applicant for a license, registration, or certificate to submit a fingerprint with the other application materials. The bill eliminates this requirement. The bill 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.

Under existing law, an applicant to become a registered real estate appraiser assistant must submit proof of meeting the same education requirements as continuing law requires for appraisers. The bill eliminates this as an initial requirement for

assistants, specifying that they meet this requirement only in the third and successive years in that status.

Continuing law enables a person to file a complaint against a licensed, registered, or certified appraiser with the Superintendent of Real Estate. The bill modifies some of the procedures related to filing and investigating complaints. In general, the bill eliminates or increases the time specified for various steps in the procedure. It also permits the "informal meeting" that current law allows to be conducted as an "informal mediation meeting." If a formal hearing is held concerning the complaint, the bill requires the 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 bill requires the Board to consider any objections before approving, modifying, or rejecting the examiner's report.

Continuing law allows the Board to take any disciplinary action the Board considers appropriate after considering a referee's or hearing examiner's report. The law also lists actions the Board could take following a disciplinary hearing. The bill 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 would not count toward continuing requirements or pre-license or pre-certification requirements. The bill 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.

Continuing law requires the Board to take disciplinary action for specified violations of the law. The bill adds the following to the specified violations: (1) the failure to provide copies of records to the Superintendent, (2) a failure to comply with a subpoena, (3) and a failure to provide notice of a felony that the bill requires.

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.

Restoration of expired license

(R.C. 4713.63)

Under the current 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. An expired license may 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, applicants for a practicing or managing license renewal must retake the licensing examination test.

The bill 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 existing law's restoration fee must be paid to the State Board of Cosmetology. The bill also specifies that the required lapsed renewal fee is $45 per license renewal period[33] that has elapsed since the license was last issued or renewed. Under the bill, the lapsed renewal fee must be deposited into the General Revenue Fund.

The bill removes the requirement that all applicants for license renewal of an expired license complete continuation education requirements.[34] However, the bill replaces the 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 bill, 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.

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[33] 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 bill).

[34] The bill does not remove the existing law authority of the State Board of Cosmetology to impose continuing education requirements (R.C. 4713.57, not in the bill) in connection with a "regular" license renewal.

Fines

(R.C. 4713.64)

Under current 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 bill increases the fines 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.

COUNSELOR, SOCIAL WORKER, AND MARRIAGE AND FAMILY THERAPIST BOARD (CSW)

- Permits the Counselor, Social Worker, and Marriage and Family Therapist Board to establish, and from time to time adjust, fees for both of the following: (1) verification, to another jurisdiction, of a license or registration the Board has issued, and (2) continuing education programs offered by the Board to licensees or registrants.
- 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 current law, the Counselor, Social Worker, and Marriage and Family Therapist Board is required to establish, and from time to time adjust, fees for licensure and renewal of licensure for all of the following professionals: 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 adjust, fees for

registration and renewal of registration of social work assistants. The fees must be established in amounts sufficient to cover the direct expenses incurred in examining applicants for licensure and registration and to cover the necessary expenses in administering the law and rules governing these professionals. Current law permits the Board to charge different amounts for the various types of licensure and registration, except that a single fee cannot exceed $125 unless the Board determines an amount in excess of $125 per licensee or registrant is needed to cover the Board's necessary expenses in administering the law governing these professionals and the fee is approved by the Controlling Board.

The bill permits the Board to establish, and from time to time adjust, fees for both of the following: (1) verification, to another jurisdiction, of a license or registration the Board has issued, and (2) continuing education programs offered by the Board to licensees or registrants.

Authority to fine

(R.C. 4757.10 and 4757.36)

Current law 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 bill authorizes the appropriate professional standards committee of the Board to impose a fine for any disciplinary violation specified in current law consistent with a graduated system of fines established by the Board in rules that the bill 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 bill 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 Board.

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.

- 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.

- Increases from 10 to 11 the number of members on the Development Financing Advisory Council.

- Specifies that the affirmative vote of a majority of the members present at a meeting of the Development Financing Advisory Council where a quorum is present is necessary for any action taken by the 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 of Development, 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 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.

- Removes the prohibition of using Housing Trust Fund money for legal services.

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 bill 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.

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 bill 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 bill permits 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.

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.

Currently, the Council is 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 bill increases the membership of the Council from 10 to 11, by adding an eighth member appointed by the Governor.

Current law specifies that six members of the Council constitute a quorum of the Council; the affirmative vote of six members is necessary for any action taken by the Council. Under the bill, six members still constitute a quorum. However, a majority vote of the members present at a meeting of the Council where a quorum is present is necessary for any action taken by the Council. Thus, the bill permits fewer than six members to vote on an action, as long as at least six members are present at the meeting.

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 bill 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 bill 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.

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 bill removes the restriction on the portion of the fund that may be used for permanent and transitional housing and services for the homeless. Current law limits this category of expenditure to not more than 6% of any current year appropriation authority.

The bill 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 current law, but located in another section of the Revised Code. The bill removes the spending authority from that section.

The bill enables the use of Housing Trust Fund money to pay for legal services by removing the current prohibition of that type of expenditure.

DEPARTMENT OF EDUCATION (EDU)

I. State Funding for Primary and Secondary Education

- Replaces the current school funding method with a new method that calculates an "adequacy amount" for each city, local, and exempted village school district, community school, and STEM school.

- Provides the Cleveland Municipal School District with full funding of the components of the adequacy amount that otherwise are phased in for other districts, in exchange for the district's undertaking several reform measures, including (1) re-assigning teachers, (2) undergoing a curriculum audit and management study, (3)

establishing a five-year strategic plan, and (4) establishing transformational leadership teams and five-year redesign plans for each school.

- Establishes the Ohio Research-Based Funding Model Advisory Council to submit biennial recommendations for revisions to the components of the adequacy amount calculation.

Joint Vocational School Districts and Educational Service Centers

- Requires the Partnership for Continued Learning to establish a joint vocational school district (JVSD) funding committee to study the extent to which JVSD programming and funding meet state, regional, and local business and industry needs and to recommend revisions to JVSD funding and programming.

- Requires each educational service center (ESC) to undergo a performance audit during the FY 2010-FY 2011 biennium.

- Establishes the ESC Study Committee to study how the ESC system supports school districts and to make recommendations regarding a new regional service delivery system, ESC governance structure, and ESC accountability.

Community schools; scholarships programs

- Repeals the law requiring each Internet- or computer-based community school ("e-school") to spend at least a certain portion of its state payment for instructional purposes.

- Increases from $2,700 to $5,200 the annual deduction of state funds from school districts' accounts for kindergartners receiving Ed Choice scholarships.

- Prescribes 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.

Other funding provisions

- Although the new school funding system does not use a per-pupil formula amount, prescribes formula amounts of $5,841 for FY 2010 and $5,952 for FY 2011 for (1) districts to use in calculating deposits into their textbook and instructional materials fund and capital and maintenance fund and (2) the state to use in calculating payments to colleges and universities under the Post-Secondary Enrollment Options program.

- 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.

- Revises the law prohibiting school districts that receive state poverty-based assistance from charging instructional or materials fees to certain low-income students by applying the prohibition to districts that received the subsidy in FY 2009.

- Repeals the law requiring the Department of Job and Family Services to report annually to the Department of Education the number of children in each school district ages 5 to 17 whose families participate in the Ohio Works First program.

- 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 a settlement agreement.

Spending accountability

- Requires each city, local, and exempted village school district, each community school, and each STEM school to submit to the Department of Education a spending plan for its state funds.

- Requires each city, local, and exempted village school district that has a high school with a graduation rate of 70% or less (1) to obtain approval of its spending plan from the Department and the Governor's Closing the Achievement Gap Initiative and (2) to create and staff within its state-funded student support staff the position of "linkage coordinator" to serve as a primary mentor and service coordinator for students identified as potential nongraduates.

- Requires the Department annually to reconcile each district's, community school's, and STEM school's spending plan with its actual spending.

- Requires each school district, community school, and STEM school to undergo a performance audit once every five fiscal years.

- Requires the Auditor of State, when conducting a fiscal audit of a school district, community school, or STEM school, to note whether the district or school (1) has developed and submitted, and is complying with a spending plan and (2) is implementing recommendations from a performance audit.

- Prescribes graduated sanctions the Department must take against a school district, community school, or STEM school that (1) fails to properly allocate state funds for five or more components of the adequacy amount, (2) fails to submit a spending plan or to comply with its spending plan, (3) fails to cooperate with a performance audit or to submit a response or progress report, or (4) fails to implement a recommendation from a performance audit.

- Permits school districts, community schools, and STEM schools to apply to the Superintendent of Public Instruction for a waiver of the bill's new spending requirements or the State Board of Education's new state operating standards.

- Requires the Department to issue an annual funding and expenditure accountability report for each community school and STEM school (in addition to each school district, as currently required).

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 operating standards for school districts.

- Specifies that the school district operating standards override any conflicting collective bargaining agreement entered into after the provision's effective date.

- Modifies the requirement for the State Board to develop a standard for reporting financial information to the public by (1) applying the standard to community schools and their operators and to STEM schools (in addition to school districts and educational service centers (ESCs), as in current law), (2) requiring districts and ESCs to report revenues and expenditures by school building, and (3) 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 December 31, 2010, to update the model curricula for the core subject areas based on the revised academic standards.

- 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 current law), and (3) to adopt standards and curricula for grades K to 12 in the new areas of wellness literacy and financial literacy and entrepreneurship.

- Requires the State Board to periodically update its physical education standards.

- Requires the State Board to convene a committee by July 15, 2009, to provide guidance in the design of the updated academic standards and model curricula.

- Repeals the requirement that health education standards and model curricula are subject to approval by concurrent resolution of both houses of the General Assembly.

Achievement assessments

- Renames the state achievement tests as "achievement assessments."

- Combines the grade-level reading and writing achievement tests into one English language arts achievement assessment.

- Reduces the number of scoring levels on the achievement assessments from five to three.

- 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.

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, (3) a community service learning project developed by the student, and (4) 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.

Performance indicators for report cards

- Directs the State Board of Education to establish new performance indicators for the school district and building report cards by December 31, 2009 (instead of 2013 as currently required), and every six years thereafter.

- 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

- Requires each school district, community school, and STEM school to include community service education in its educational program and to create a community service advisory committee to oversee implementation of the district's or school's community service plan.

Career and college planning

- Requires each school district, community school, and STEM school to add "life and career-ready skills" to its curriculum, to be offered in the seventh or eighth grade.

- Requires each school district, community school, and STEM school to develop a career and college plan for students by the end of eighth grade.

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 current 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.

- Repeals the authority of certain school districts to charge tuition for all-day kindergarten.

Extending the school year

- Phases in over ten years a longer "learning year" for all public and nonpublic schools, increasing the minimum year from 182 to 202 days.

- Specifies that the new minimum learning year provisions do not prevail over conflicting provisions of existing collective bargaining agreements, but requires all collective bargaining agreements entered into, renewed, or amended on and after the effective date of the changes to comply with the minimum number of days or hours specified in the bill.

- Allows a school district, STEM school, or chartered nonpublic school to amend its contingency plan for making up excess calamity days.

On-site visits to schools

- Requires the Department of Education to develop and implement a temporary pilot program for periodic site visits to schools operated by school districts.

- Establishes a permanent provision for school site visits but suspends it for the FY 2010-FY 2011 biennium in favor of the pilot program.

- Requires the Department, by December 31, 2010, to report to the Governor and the General Assembly on the progress of the site visits under the pilot program and make recommendations for full implementation of the permanent provision.

Pre-high school academic credit

- 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.

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, including a requirement that applicants for a professional, senior, or lead license demonstrate that the applicant's students have achieved a value-added measure designated by the Superintendent of Public Instruction.

- 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 current 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 is currently required).

Principal licenses

- Specifies that the State Board of Education's qualifications for obtaining a principal license must (1) be aligned with the Educator Standards Board's principal standards and (2) require an applicant to demonstrate that students in the applicant's classroom or building have achieved a value-added measure designated by the Superintendent of Public Instruction.

Transition

- Requires the State Board of Education to accept applications for the current types of educator licenses through December 31, 2010, and to issue the licenses in accordance with existing 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 courses of study for the preparation of 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 current 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 must meet to be considered a lead teacher, and (3) 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.

- Renames "master teacher" as "lead teacher" and eliminates the requirement that the Educator Standards Board define a "master teacher."

- Adds a school district treasurer or business manager and a parent 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.

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.

- Creates 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 Fellow 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 nine 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 6 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 current law must have been completed since initial receipt of an educator license other than a substitute teaching license.

Termination of teacher 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 teacher employment contract.

- Specifies that the bill's changes to the grounds for termination of a teacher employment contract prevail over conflicting provisions of a collective bargaining agreement entered into after the changes' effective date.

Task Force on Teacher Compensation and Performance

- Creates the Task Force on Teacher Compensation and Performance to make recommendations for improving connections between teacher compensation, teaching excellence, and higher levels of student learning.

IV. Community Schools

Community school sponsors

- 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.

- Permits the Department to place a sponsor in probationary status or to suspend or restrict the sponsor's authority to sponsor community schools for failure to intervene to correct problems at a school.

- Prescribes other, graduated sanctions that the Department must take against a sponsor if the sponsor fails to take certain oversight actions or if one or more of the sponsor's community schools fails to meet certain criteria.

- Requires the governing authority of each community school to submit to the school's sponsor a copy of any corrective action plan for the school required by the Department.

- Specifies that community schools are educational institutions to which student records may be released for a legitimate educational purpose without the consent of the student or the student's parent.

- Requires a sponsor to provide annual assurances to the Department that each community school it sponsors is in compliance with criminal records check and supervision requirements for private contractor employees working in the school.

- Requires the Department's annual report on community schools to include the performance of community school sponsors.

Community school operators

- Revises the exception to the cap on new start-up community schools by prohibiting contracts with operators that manage other schools in Ohio, unless at least one of those schools has a report card rating higher than academic watch.

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

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

- Repeals a provision that allows a community school operator whose contract will be terminated or not renewed to appeal the decision to the school's sponsor or, in some cases, the State Board of Education, and that requires the operator to replace the school's governing authority if the operator prevails in the appeal.

Other community school provisions

- Requires teachers hired on or after the provision's effective date to teach core academic subjects in community schools that receive federal Title I funds to be "highly qualified."

- 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 current law).

- Specifies that if a community school closes, the chief administrative officer must transmit all student educational records to the Department, and that failure to do so is a third degree misdemeanor.

- Removes the opening date exception for community schools that serve dropouts and requires those schools to open not later than September 30 of each school year as other community schools are required.

- Codifies and makes permanent 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 with regard to unauditable community schools.

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

- Requires the Department to conduct an on-site evaluation of each community school at least every three years.

V. 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.

- Re-establishes 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.

VI. Merger of State Schools into Department of Education

- Merges the State School for the Blind and the State School for the Deaf into the Department of Education, effective July 1, 2009.

- Designates the position of "superintendent" of each school as an "assistant superintendent" with the Department.

- Authorizes the Superintendent of Public Instruction to appoint, fix the salaries of, and terminate employment of employees who work at each school.

- Specifies that employees of the schools who are transferred to the Department retain their respective classifications and collective bargaining rights, but permits the Superintendent of Public Instruction to reassign and reclassify employee positions and compensation for efficient administration.

- Transfers control over expenditures from the State School for the Blind Student Activity and Work-Study Fund and the State School for the Deaf Educational Program Expenses Fund to the Department, but retains current law requiring that money in the funds be used for specified school programs.

- Requires the Superintendent of Public Instruction to study the viability of funding the schools through the bill's evidence-based funding model and to issue a report by June 30, 2010, containing recommendations for a transparent, sustainable funding mechanism for the schools.

VII. Other Provisions

- Establishes the Office of School Resource Management in the Department of Education.
- Establishes the Office of Urban and Rural Student Success in the Department.
- Establishes the Center for Creativity and Innovation in the Department.
- Transfers 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.
- Allows the Department to use volunteers in performing the Department's functions.
- Requires each local and joint vocational school district, community school, and STEM school (in addition to city and exempted village school districts and educational service centers under current law) to appoint a business advisory council, and expands the matters on which business advisory councils must provide advice and recommendations.
- Requires each school district, community school, and STEM school to appoint a family and community engagement team to consist of parents and members of the community, representatives of health and human services and business, and others.
- Prohibits corporal punishment in all public and chartered nonpublic schools, but retains current 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, limits, to registered nurses and licensed practical nurses employed by a school district, the authority to administer prescription drugs to students in school districts.
- Requires school districts and community schools to report to the Department, through the Education Management Information System (EMIS), the aggregate results of health screenings of kindergartners and first graders entering school for the first time.
- 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 of Education 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.

- Disqualifies students from Ed Choice scholarships if they were enrolled in a nonpublic school for any portion of the school year in which an application for an Ed Choice scholarship was submitted.

- Requires all nonpublic schools that participate in the Ed Choice Program or the Cleveland Scholarship Program to administer the state achievement assessments to all enrolled students and report student scores to the Department of Education.

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

- Eliminates current provisions that specify that the statutory standards for reductions in force of teaching and nonteaching employees prevail over conflicting provisions of collective bargaining agreements entered into after September 29, 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.

I. State Funding for Primary and Secondary Education

The bill enacts a new R.C. Chapter 3306., and revises many other existing codified laws, to establish a new system of financing for school districts and other public entities that provide primary and secondary education. A detailed analysis of the current and proposed school funding systems is available in the LSC Redbook for the Department of Education, published on the LSC web site at **http://www.lsc.state.oh.us/budgetdocuments.html**.

Cleveland Early Adopter Project

(Section 265.40.90)

The bill's new system for financing school districts features eight-year phase-ins of several of its components for all school districts except the Cleveland Municipal School District. Cleveland is granted the full amount of the otherwise phased-in components in exchange for undertaking several reform measures. At the end of FY 2010, the chief executive officer (CEO)[35] of the district must issue a progress report. If the Superintendent of Public Instruction determines that there has not been sufficient progress toward meeting the recommendations of a curriculum audit and business and operations management study (described below), the district is *not* eligible for its "hold harmless" transitional aid in FY 2011 and for additional state funds earmarked for FY 2011 to assist Cleveland with implementing those recommendations.

Assignment of teachers

The bill explicitly authorizes the CEO of the district, upon the expiration of Cleveland's collective bargaining agreements, to assign teachers based upon the needs of students in individual "organizational units" (schools). This authority is granted "notwithstanding" any collective bargaining agreements, which presumably means that after the current agreements expire, the successor agreements cannot supersede the CEO's authority to assign teachers based on student need.

Curriculum audit

The bill requires the district to undergo a "curriculum audit" conducted by a vendor selected by the Superintendent of Public Instruction. That vendor must have "the requisite experience in conducting such studies of urban districts." The curriculum audit must review the district's curriculum management system and make recommendations to address all of the following:

(1) Control of resources, programs, and personnel to improve academic success;

(2) Establishment of clear and valid objectives for students;

(3) Internal consistency and rational equity in academic program development and implementation;

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[35] The CEO of the Cleveland district is the equal of the office of superintendent in other school districts (see R.C. 3311.72, not in the bill).

(4) Use of the results from district designed or adopted assessments to adjust, improve, or terminate ineffective practices of programs;

(5) Productivity through the district's curriculum management system; and

(6) Any other matters determined by the Superintendent of Public Instruction.

Business and operational management study

The bill also requires the district to undergo a "business and operational management study," likewise conducted by a vendor selected by the Superintendent of Public Instruction that has "the requisite experience in conducting such studies of urban districts." The study must review the district's business and operational management systems and make recommendations to address all of the following:

(1) Financial operations, business services, human resources, school facilities, technology systems, and other services identified by the Superintendent to increase effectiveness and efficiency;

(2) Overall leadership, management, and organizational structure to improve productivity;

(3) Alignment of instructional and business operations to achieve the academic mission; and

(4) Any other matters determined by the Superintendent.

The Superintendent must provide technical assistance and monitoring to assist the district in implementing the curriculum audit and management study.

Strategic plan

The district CEO must collaborate with the Department of Education, the district's business advisory committee, the district's family and community engagement leadership team, and the Living Cities Project[36] "to identify systems redesign and school improvement strategies." The CEO must incorporate these strategies into a five-year strategic plan, which also must implement the recommendations of the curriculum audit and the business and operational management study, unless the Superintendent of Public Instruction grants a waiver. The district board of education must adopt the strategic plan and monitor its implementation.

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[36] The Living Cities Project is an initiative of private and philanthropic organizations (see www.livingcities.org).

School leadership teams

The district must create "transformational leadership teams" in each school "to implement a systems redesign...based upon best practices of systems redesign and school improvement" and the recommendations from the curriculum audit and management study. Each team also must "define student success in terms that align with the vision, mission, and goals of the strategic plan." Each team shall include at least the following:

(1) The school principal, who must serve as co-chair;

(2) The collective bargaining unit representative for the school's teachers, who must serve as co-chair;

(3) The collective bargaining unit representative for the school's support staff;

(4) The school's lead teacher;

(5) A parent of a student who attends the school, selected by the principal;

(6) A representative of the community at large, selected by the principal;

(7) A family and community engagement coordinator from that school; and

(8) A student from the seventh or eighth grade, in the case of a K to 8 school, or a student from the eleventh or twelfth grade, in the case of a 9 to 12 school, selected by the principal.

Chief systems redesign officer; five-year redesign plans

The district must appoint a chief systems redesign officer who reports directly to the CEO. The officer must create a five-year redesign plan for each school in the district. In doing so, the officer must use data from the curriculum audit and management study, and must collaborate with the Department of Education, the systems redesign advisory council (see below), and each school's transformational leadership team. The officer must implement the recommendations of the Department and the school's transformational leadership team, unless the Superintendent of Public Instruction grants a waiver. The district board of education must adopt and monitor the implementation of the five-year plan for each school.

Systems redesign advisory council

The district also must create a district-level systems redesign advisory council to assist the chief systems redesign officer. The advisory council must make

recommendations to the chief systems redesign officer regarding the systems redesign of each school, implementation of the recommendations of the curriculum audit and management study, and any other matters that the chief systems redesign officer requests. The advisory council must consist of the following members:

(1) A representative from the Living Cities Project, who must serve as chair;

(2) A parent of a student enrolled in the district, appointed by the district CEO;

(3) A principal employed by the district, appointed by the CEO;

(4) A lead teacher employed by the district, appointed by the CEO;

(5) A representative of the collective bargaining unit for the district's teachers, appointed by the bargaining unit;

(6) A representative of the collective unit for district's support staff, appointed by the bargaining unit;

(7) A representative of the community at large, appointed by the CEO;

(8) A family and community engagement coordinator employed by the district, appointed by the CEO;

(9) A representative from an institution of higher education in the Cleveland metropolitan area, appointed by the Chancellor of the Board of Regents;

(10) A representative from the Department of Education, appointed by the Superintendent of Public Instruction; and

(11) A student from the eleventh or twelfth grade of a 9 to 12 school appointed by the CEO.

Funding advisory council

(R.C. 3306.29)

The bill establishes the Ohio Research-Based Funding Model Advisory Council to recommend biennial updates to the components of the bill's school funding system. The council must submit its recommendations by September 1 of each even-numbered year. The bill states that the recommendations must be "based on current, high quality research, information provided by school districts, and best practices in operational efficiencies identified in the performance audits" that the bill requires all school districts to undergo every five years.

The council's membership is to consist of the following:

(1) The Superintendent of Public Instruction, or the Superintendent's designee;

(2) The Chancellor of the Board of Regents, or the Chancellor's designee;

(3) The following, appointed by the Governor: two school district teachers, two nonteaching, nonadministrative school district employees, one school district principal, one school district superintendent, one school district treasurer, one representative of an institution of higher education, one representative of the business community, one representative of the general public, one representative of educational service centers, one parent of a student attending a school operated by a school district, one representative of community schools, and one representative of early childhood education providers;

(4) Two members of the House of Representatives appointed by the Speaker, one of whom shall be from the minority party and recommended by the Minority Leader of the House; and

(5) Two members of the Senate appointed by the Senate President, one of whom shall be from the minority party and recommended by the Minority Leader of the Senate.

The bill requires that the council membership reflect the diversity of the state in terms of gender, race, ethnic background, and geographic distribution. The members must serve without compensation and meet at least quarterly, beginning in August 2009.

The Superintendent, or the Superintendent's designee, is the chairperson of the council. The Office of School Resource Management, which the bill creates in the Department of Education, must provide staffing assistance to the council.

JVSD funding committee

(R.C. 3306.14)

The bill does not apply its new funding method to joint vocational school districts (JVSDs), but rather grants each JVSD a straight 1.9% increase in state funding in FY 2010 and FY 2011 over its state funding for the previous year. (See the LSC Redbook for the Department of Education for more details regarding funding for JVSDs.) In the

meantime, the bill requires the Partnership for Continued Learning[37] to establish a JVSD Funding Committee to study the extent to which current JVSD programming and funding are responsive to state, regional, and local business and industry needs. The committee must issue a report by September 1, 2010, containing recommendations for revisions to JVSD programming and funding. The bill states that the General Assembly will enact laws implementing revisions to JVSD programming and funding by July 1, 2011.

In addition to members of the Partnership for Continued Learning, the committee's membership must include business leaders and representatives of JVSDs, selected by the Superintendent of Public Instruction and the Chancellor of the Board of Regents and approved by the Partnership for Continued Learning. The committee must operate under the direction of the Superintendent and the Chancellor.

ESC performance audits; study committee

(R.C. 3306.15)

Background

Educational service centers (ESCs) are regional public entities that offer a broad spectrum of services, including curriculum development, professional development, purchasing, publishing, human resources, special education services, and counseling services, to school districts in their regions. Formerly known as "county school districts," ESCs are statutorily required to provide some administrative oversight and other services to all "local" school districts within their service areas. In addition, ESCs provide services to "city" and "exempted village" school districts, community schools, and STEM schools on a contractual basis. Each ESC is under the oversight of its own elected governing board. Currently, there are 60 ESCs.

Performance audits

The bill requires each ESC to undergo during the FY 2010-FY 2011 biennium a performance audit conducted by the Auditor of State or a vendor contracted by the Department of Education. The Department, the Office of Budget and Management, and

[37] The Partnership for Continued Learning is a state body charged with making recommendations to facilitate collaboration among providers of preschool through postsecondary education and to maintain a high-quality workforce. Members are the Governor, the Superintendent of Public Instruction, the Chancellor, the Director of Development, the chairpersons and ranking minority members of the House and Senate education committees, and representatives of education and workforce interests appointed by the Governor. (R.C. 3301.41, not in the bill.)

the Auditor of State, not later than 180 days after the bill's effective date, must agree to the scope of the audits and set metrics for (1) operational standards utilized by each ESC, (2) the utilization of services by school districts, and (3) the quality of educational and professional development services.

ESC study committee

The bill establishes an ESC study committee, and directs it to make recommendations, based on the ESC performance audits, concerning: (1) a new regional service delivery system, (2) ESC governance structure, and (3) accountability metrics for ESCs. The committee must issue a progress report to the Governor by July 1, 2010, and issue its final report to the Governor by October 1, 2010. The Department of Education and the Office of Budget and Management must provide the committee with any information and assistance it requires to carry out its duties.

The committee is to consist of the following members:

(1) The Superintendent of Public Instruction, the Chancellor of the Board of Regents, the Auditor of State or a designee of the Auditor of State, and the Director of Budget and Management or a designee of the Director;

(2) The following members appointed by the Governor: a representative of ESCs, a superintendent of a city school district, a representative of parents or community representatives, a representative of the business community, and a representative of county MR/DD boards;

(3) The following members appointed by the Speaker of the House: a representative of ESCs, a superintendent of an exempted village school district, a representative of school district treasurers or business managers, and a representative of higher education institutions; and

(4) The following members appointed by the Senate President: a representative of ESCs, a superintendent of a local school district, a representative of higher education institutions, and a representative of the special education community.

The committee is to be co-chaired by the Superintendent and the Chancellor. The Governor, Speaker, and Senate President must appoint members by September 1, 2009, and the committee must hold its first meeting by October 15, 2009.

E-school expenditures for instruction

(R.C. 3306.16 and 3314.08; repealed R.C. 3314.085)

The bill eliminates the practice of counting community school students in the enrollment of their resident school districts and then deducting state funds from the school districts' accounts. Instead, it requires that state payments be made directly to community schools, and calculates the amount using elements of the bill's new funding method for school districts. (See the LSC Redbook for the Department of Education for more details regarding funding for community schools.)

The bill also repeals the law requiring each Internet- or computer-based community school ("e-school") to spend at least a certain portion of its state payment for instructional purposes, including (1) teachers, (2) curriculum, (3) academic materials other than computers and filtering software, and (4) other purposes designated by the Superintendent of Public Instruction. The requirement is based on elements of the current school funding system, which the bill replaces.

In FY 2009, the amount the law requires e-schools to spend on instruction is $2,931 per pupil. Current law, repealed by the bill, requires each e-school to annually report its expenditures for instruction to the Department of Education. If the Department determines that an e-school has failed to comply with the expenditure or reporting requirements, the e-school must pay a fine equal to 5% of the total state payments to the school in the fiscal year of noncompliance or the amount the school underspent on instruction, whichever is greater. The Department may cancel the fine, however, if the e-school develops and implements a compliance plan approved by the Department. The Department must offer an e-school an opportunity for a hearing prior to assessing any fine and may withhold future state payments to the school to collect the fine.

Ed Choice funding

(R.C. 3310.08 and 3310.09)

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.

The bill continues this practice, but makes a couple of other changes. First, 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 bill's new school funding system, rather than as one-half student under the current funding system.

Second, it codifies and makes permanent the following maximum scholarship amounts that a student may receive annually: $4,500 for grades K to 8, and $5,300 for grades 9 to 12.[38] These are the amounts that the Department of Education had projected for the 2009-2010 school year. Under current law, the Ed Choice maximum must increase each year by the same percentage that the per pupil base-cost formula amount increases for that year under the current school funding system. But the bill's new school funding method does not feature a comparable per pupil formula amount. By setting the maximum scholarship at a definite dollar amount, the maximum amounts would not increase from year to year, as they are required to do currently.

Formula amount

(R.C. 3317.02(B))

The Ed Choice maximum scholarship amount is not the only feature of a state program or policy that is tied in some way to the per-pupil formula amount of the current school funding system. The state requirement that districts make annual deposits into district funds for textbooks and instructional materials and for building maintenance is also tied to the formula amount, as is the calculation of payments to colleges and universities under the Post-Secondary Enrollment Options (PSEO) program.[39] The bill, therefore, prescribes formula amounts of $5,841 for FY 2010 and $5,952 for FY 2011.

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[38] An Ed Choice scholarship also 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.

[39] The bill retains the current formula for calculating PSEO payments, but also authorizes the Superintendent of Public Instruction and the Chancellor to jointly adopt rules prescribing alternative PSEO payment arrangements. See "**Post-Secondary Enrollment Options alternative funding**."

Background: district textbook and maintenance funds

Current law, which the bill retains, requires each school district annually to deposit money into both a district textbook and instructional materials fund and a district capital and maintenance fund.[40] 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 under the current school funding system, times (b) the district's student count for the previous year. The per-pupil amount for FY 2009, to be used for calculating deposits in FY 2010, is $5,732; 3% of that amount is $172.

Post-Secondary Enrollment Options alternative funding

(R.C. 3365.12; conforming changes in R.C. 3314.08, 3326.36, 3365.04, 3365.041, 3365.07, 3365.08, 3365.09, and 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 bill 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 bill 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 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.

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[40] R.C. 3315.17 and 3315.18, the latter section not in the bill.

School fees for low-income students

(R.C. 3313.642)

Current law prohibits school districts that receive state poverty-based assistance (a component of the current school funding system) from charging students whose families are enrolled in the Ohio Works First or state disability assistance programs fees for materials needed to participate fully in a course of instruction. The bill's new school funding system eliminates the poverty-based assistance subsidies, but accounts for school districts' concentration of low-income students in other ways. The bill stipulates, therefore, that the prohibition against charging fees applies to districts that received the subsidy in FY 2009.

ODJFS reports

(repealed R.C. 3317.10)

The calculation of state poverty-based assistance under the current school funding system relies on annual reports from the Department of Job and Family Services to the Department of Education. These reports must indicate, for each school district, the number of children between the ages of five and 17 who live in the district and whose families participate in the Ohio Works First program. The bill's new school funding system does not use this data. The bill therefore repeals the requirement for the annual reports.

Legal claims for reimbursement of reduced funds

(Section 265.60.70)

The bill 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 a settlement agreement. 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.

Spending accountability

Along with the new evidence-based model for funding public schools, the bill establishes several provisions to assist districts and schools in directing the state funds they receive to the specific purposes for which they are computed and to hold the districts and schools accountable for those funds.

Spending plans

(R.C. 3306.30 and 3306.31(E))

Every year, each city, exempted village, and local school district, each community school, and each STEM school, by a date and in a manner set by the Superintendent of Public Instruction, must submit annually to the Department of Education a plan for the deployment of the state funds the district or school receives. The plan must show how the district or school will spend each component of its computed adequacy amount and must comply with the State Board's new operating standards regarding the evidence-based model and directives of the state Superintendent.

The Department annually must reconcile each district's or school's spending plan with its actual spending. If the Department finds that a district or school has not complied with its spending plan, the Department must take one of the specific sanctions prescribed by the bill (see "**Sanctions**" below). In the case of a school district that has a high school with a graduation rate of 70% 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 plan assistance for school districts with low graduation rates

(R.C. 3306.31(B) and (D))

The bill requires each school district that has a high school with a graduation rate of 70% or less to work with the Department of Education and the Governor's Closing the Achievement Gap Initiative in developing the district's annual spending plan.[41] The spending plan must be approved by both the state Superintendent and the Governor's Closing the Achievement Gap Initiative. If they disapprove a plan, the state Superintendent must either (1) modify the plan and notify the district board of the modifications, or (2) return the plan and require the board to modify the plan according to the state Superintendent's instructions or recommendations.

[41] 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.

Linkage coordinator for school districts with low graduation rates

(R.C. 3306.31(C))

Each school district that has a high school with a graduation rate of 70% or less, must create and staff in that high school at least one position funded with the amount computed under its student support staff factor to function as a "linkage coordinator" for closing the achievement gap and increasing the graduation rate. The bill describes the linkage coordinator as "a person who is the primary mentor, coach, and motivator for students identified as potential nongraduates 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 bill 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.[42]

Performance audits

(R.C. 3306.32)

The bill requires all school districts (including joint vocational school districts), community schools, and STEM schools to undergo a performance audit at least once every five fiscal years.[43] The Department of Education must direct, and pay the cost of, each performance audit. The bill specifies that the Department may contract with the Auditor of State, any other governmental entity, or any private entity to conduct the performance audits.

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[42] The bill 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.

[43] In the case of a STEM school that is governed by a school district under R.C. 3326.51, the school's performance audit must be conducted as part of the district's performance audit. Under the evidence-based model, such a STEM school is funded through the district and not funded directly like other STEM schools.

The Department's new Office of School Resource Management (established by the bill) must determine the order in which the audits will be conducted. Following this determination, the State Board and the Auditor of State jointly must adopt rules under the Administrative Procedure Act prescribing the scope of the performance audits. The final report of each audit must be submitted to the State Board, the Office of School Resource Management, and the district board, community school governing authority, or STEM school governing body.

Not more than 90 days after the date of the final audit report, the district board, community school governing authority, or STEM school governing body must submit a response to the report to the Office of School Resource Management. The response must address the findings and recommendations specified in the final audit report and present a timeline for implementing the recommendations. At the end of that timeline, the board, governing authority, or governing body must submit a report again to the Office of School Resource Management explaining the progress made in implementing each recommendation, specifying the steps taken to implement each recommendation, and indicating for each recommendation whether and to what extent it has been implemented.

If a district, community school, or STEM school fails to cooperate with a performance audit, or fails timely to submit the required response or progress report that the Office of School Resource Management finds satisfactory, the Department must take one of the specific sanctions prescribed in the bill (see "**Sanctions**" below).

Notations in fiscal audits

(R.C. 117.54)

The bill requires the Auditor of State, when conducting a fiscal audit of a city, local, or exempted village school district, a community school, or a STEM school, to note in the audit report (1) whether the district or school has developed and submitted its required spending plan and, if it has a plan, whether the plan complies with the requirements of the evidence-based model, and (2) whether the district or school has adopted a plan to implement the recommendations of a performance audit, if applicable.

Sanctions

The bill establishes a system of graduated sanctions to be imposed by the Department of Education if a district, community school, or STEM school fails to comply with the spending requirements of the evidence-based model or one of the bill's other accountability provisions.

Circumstances that trigger sanctions

(R.C. 3306.33(A); conforming change in R.C. 3301.073)

A sanction against a school district, community school, or STEM school is triggered if:

(1) The Department determines that the district, community school, or STEM school has failed to allocate state funds received for five or more of the 24 components of the adequacy amount for the purposes designated by those components. That determination may be based on (a) the Department's reconciliation of a district's or school's spending plan with actual spending, (b) a school site visit (also required by the bill, see "**On-site visits to schools**" and "**Community school on-site evaluations**" below), or (c) a notation by the Auditor of State (see "**Notations in fiscal audits**" above).

(2) The district, community school, or STEM school fails to submit the required spending plan or fails to comply with its spending plan; or

(3) The district, community school, or STEM school fails to cooperate with a performance audit, fails timely to submit a satisfactory performance audit response or progress report, or fails to implement a performance audit recommendation.

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 or school into compliance. In addition, the district board, community school governing authority, or STEM school governing body 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 requirements, (c) identification of the resources the board, governing authority, or governing body will use to meet the requirements, and (d) description of how the district or school will measure its progress in meeting the requirements.

(2) Notify the parent or guardian of each student served by the district or school, either in writing or by electronic means, of the requirements that were not met, the actions being taken to meet the requirements, and any progress achieved in the immediately preceding school year toward meeting the requirements;

(3) Present the plan, and take public testimony with respect to it, in a public hearing before the board, governing authority, or governing body.

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, governing authority, or governing body 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 or school's operations. The team must include teachers and administrators recognized as outstanding in their fields. The team must recommend methods for bringing the district or school into compliance. The state Superintendent must establish guidelines for the operation of these teams. The district or school 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 or school in place of the district board, community school governing authority, or STEM school governing body until the beginning of the first year that none of the triggering circumstances apply to the district or school.

Required actions--year 4

(R.C. 3306.33(E))

The fourth consecutive year the same or a different triggering circumstance applies:

(1) In the case of a school district, the State Board must take action to revoke the district's charter;[44] and

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[44] 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. The bill 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 or any of the bill's accountability sanctions (R.C. 3306.33(F)(1)).

(2) In the case of a community school or a STEM school, the Department of Education must order the school to close permanently.[45]

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 or school. Each of these commissions must consist of three members, one each appointed by the Governor, the state Superintendent, and the Auditor of State.[46] 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 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 or school. 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.[47] 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:

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[45] The bill specifies that the Department, at any time, may order a community school or a STEM school to close if the school fails to comply with any of the bill's accountability sanctions (R.C. 3306.33(F)(2)).

[46] 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 or community school or STEM school. 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.

[47] The commission's rules are not subject to the rulemaking provisions of R.C. Chapter 119. or section 111.15.

(1) Prepare and submit the district's, community school's, or STEM school's required spending plan;

(2) Appoint school building administrators and reassign administrative personnel;

(3) Terminate the contracts of administrators or administrative personnel;[48]

(4) Contract with a private entity to perform school or district management functions;

(5) Establish a budget for the district or school and approve district or school appropriations and expenditures, unless, in the case of a school district, a financial planning and supervision commission has been established for the district under the state law on school district solvency assistance;[49]

(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, in the case of a school district, 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, community school governing authority, or STEM school governing body regarding ways to improve the district's or school's operations and compliance. But any decision of the commission related to any authority granted to the commission is final. The bill also specifies that if a district board, community school governing authority, or STEM school governing body renews a collective 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.

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[48] The bill 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.

[49] 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.

Waivers

(R.C. 3306.40; conforming changes in R.C. 3302.05 and 3302.07)

Under the bill, a school district board, community school governing authority, or a STEM school governing body may apply to the state Superintendent for a waiver of any standard or requirement related to the evidence-based funding model, including the accountability provisions. 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, community school, or STEM school may apply to renew a waiver.

Funding and expenditure accountability reports

(R.C. 3302.031)

Current law requires the Department of Education to prepare an annual funding and expenditure accountability report for each school district. The report consists of the amount of state aid the district will receive for the fiscal year and any other fiscal data the Department determines is necessary to inform the public about the district's financial status.

Under the bill, the Department also must issue annual funding and expenditure accountability reports for each community school and STEM school, indicating the state aid the school will receive for the fiscal year. As it is currently required to do for the school district reports, the Department must post each school's report on its web site and provide a hard copy of the report to the school's chief administrator. Finally, the bill specifies that the Office of School Resource Management within the Department (see "**Office of School Resource Management**" below) is responsible for determining other fiscal data to include on the district and school reports.

II. Academic Standards and Assessments

Minimum standards for schools

(R.C. 3301.07(D) and (E))

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.[50]

With regard to the minimum standards for *public* schools, the bill allows a school district to request a temporary waiver of particular standards from the Superintendent of Public Instruction. The bill 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.

School district operating standards

(R.C. 3301.07(E); conforming change in 3301.0722)

The bill directs the State Board of Education to develop 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 bill explicitly states that the operating standards prevail over any conflicting collective bargaining agreement entered into after the provision's effective date.

The State Board's 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 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 peer evaluation, (d) a commitment to teaching and learning strategies that use technology and emphasize inter-disciplinary, real world, project-based, technology-oriented, and service learning experiences to meet every student's needs, (e) a commitment to high expectations for every student to attain core knowledge and twenty-first century skills in accordance with the State Board's academic content standards, (f) a commitment to the use of assessments to identify each student's needs, (g) effective relationships with families and community organizations to support student success, and (h) a commitment to the use of positive behavior intervention supports to ensure a safe learning environment.

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[50] See Ohio Administrative Code Chapter 3301-35.

(2) Standards for the establishment of business advisory councils and family and community engagement teams by each district (see "**Business advisory councils**" and "**Family and community engagement teams**" below);

(3) Standards for the expenditure of funds received for each component of the adequacy amount under the bill's evidence-based funding model;

(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 joint development of lesson plans, professional development, and shared learning, and (c) a commitment to effective management strategies that allow administrators unfettered 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 community 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 and community representatives.

Standard for reporting financial information to the public

(R.C. 3301.07(B)(2) and (E), 3314.03(A)(8), and 3326.21)

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 bill makes several modifications to the standard. First, it applies the financial reporting standard to community schools and STEM schools, in addition to school districts and ESCs. If a community school hires an operator to manage the school, the operator also must comply with the standard when reporting financial information about the school to the public. Second, the bill requires school districts and ESCs to report revenues and expenditures by school building, rather than by the district or ESC as a whole. Third, the bill eliminates a requirement that the reporting format provide year-to-year comparisons of budgets over a five-year period. Finally, the bill

allows a school district (but apparently not other public schools) 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 and 3313.603 and repealed R.C. 3301.0718; Section 265.60.80)

Background

Under current 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, 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) and (B))

The bill directs the State Board to revise the current academic standards in the core subject areas and to issue new ones by June 30, 2010. Revised model curricula must be adopted by December 31, 2010. In addition, the State Board must update and revise the standards (and presumably the model curricula) at least every five years thereafter. Under the bill, 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.

Following completion of the revised standards and curricula, the State Board must inform all school districts and community schools of their content. As in current 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 bill 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;

(3) The development of skills that promote information, media, and technological literacy;

(4) The development of skills that promote flexibility and adaptability, initiative and self-direction, social and cross-cultural understanding, productivity and accountability, and leadership and responsibility;

(5) Interdisciplinary, project-based real world learning opportunities; and

(6) Opportunities for community service learning.

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 repealed R.C. 3301.0718(A))

Current law requires 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 bill requires the State Board to update the existing standards and model curricula in these subjects. However, the updated standards and curricula for computer literacy must be expanded to cover all grades. The bill also requires adoption of standards and model curricula for grades K to 12 in two new subject areas: (1) wellness literacy and (2) financial literacy and entrepreneurship.[51] Standards and curricula in the

[51] 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

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 bill requires the State Board to periodically update its physical education standards for grades K to 12. In December 2007, in accordance with current law, the State Board adopted the physical education standards developed by the National Association for Sport and Physical Education (NASPE).[52] Consequently, the bill'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 July 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.

Repeal of legislative approval of health standards and curricula

(repealed R.C. 3301.0718(C))

The bill repeals a provision of current law prohibiting the State Board of Education from formally adopting or revising standards or model curricula in health education unless the General Assembly approves them by concurrent resolution, following at least one public hearing in each chamber's education committee. There is no requirement in the bill for the State Board to adopt health standards or model curricula. However, the standards and curricula in wellness literacy likely could include some subjects typically taught in health education.

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as part of the Ohio Core curriculum, which applies to students in the Class of 2014 and later. The bill further requires the course content to reflect the new standards in financial literacy and entrepreneurship. (R.C. 3313.603(C).)

[52] 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.

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, 3313.61, 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)

Background

Current law 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.

	Current 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

There are currently five ranges of scores on the achievement tests—*advanced*, *accelerated*, *proficient*, *basic*, and *limited*. A score in the *proficient* range is necessary to pass a test. The cut scores for each of the performance levels are designated by the State Board.

Name and content changes

(R.C. 3301.0710)

The bill 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 bill combines the grade-level reading and writing assessments into one English language arts assessment. As a result, the reading assessments in grades 3 to 8 and grade 10 will expand to include coverage of writing skills.[53] This change also 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 be reduced from five assessments to four.

Scoring levels

(R.C. 3301.0710(A)(2), 3301.0711(M), and 3313.608)

The bill decreases the number of performance levels on the achievement assessments to three, by eliminating the *accelerated* and *basic* levels.[54] In some cases, under current law, the possibility of retention in a student's current grade level is tied to a student's score on an achievement assessment. For example, a public school may 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. Since the bill eliminates the *basic* range, students who fail an elementary assessment by attaining less than a *proficient* score may be held back under the bill.

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 is the lowest of five scoring ranges under current law, only the lowest performing students are subject to the possibility of retention. Under the bill, however, the *limited* range is the lowest of only three scoring ranges, and contains all

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[53] 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 current testing system, by prescribing separate reading and writing tests, goes beyond NCLB requirements.

[54] 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.

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 (H))

Under current law, the State Board of Education designates the dates for administration of the achievement tests, within statutory parameters. These parameters specify the earliest possible date the tests may be given in the spring (see "**Background**" below) and require that the elementary-level tests be given over a two-week period.

The bill 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 bill permits the Superintendent to designate earlier times during the school year for giving the assessments and to administer them in a shorter timeframe than currently required.[55]

The bill 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 bill 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

Currently, the earliest date the State Board may designate for administration of the elementary achievement tests is Monday of the week of April 24. Therefore, the earliest possible administration date for those tests is April 19. The third grade reading

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[55] As in current 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)).

test (replaced by the English language arts assessment under the bill) also is given once in the fall prior to December 31. The OGT must 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 have failed a portion of the OGT have 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 administer the OGT in the summer for these students.

Public records status of OGT

(R.C. 3301.0711(N))

Under current law, the version of the OGT administered in the spring is a public record, but the versions administered in the fall and summer are not available to the public. The bill 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 which at least 40% of the questions that are counted toward a student's score must be a public record.

Replacement of OGT as graduation requirement

(R.C. 3301.0710(B), 3301.0711(B), 3301.0712, 3301.42, 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)

Under current law, 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.[56]

The bill 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 a career. The State Board, by

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[56] 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).

administrative rule, must determine when the new system will be implemented. In the meantime, the bill 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;

(2) A series of end-of-course exams in the areas of English language arts, math, science, and social studies;

(3) A community service learning project; and

(4) 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.[57] Although the bill 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 bill does not specify how many end-of-course exams there will be in total.

Community service learning project

(R.C. 3301.0712(B)(3))

The community service learning component must be designed to (1) promote learning through active participation, (2) provide structured time for the student to

[57] 20 United States Code 6311(b)(3)(C).

reflect, (3) provide opportunities to use skills and knowledge in real-life situations, (4) extend learning beyond the classroom, and (5) foster a sense of caring for others. Each student must develop his or her own service project. The project will be used to assess the student's (1) awareness of the importance of civic responsibility and community service, (2) leadership and collaboration skills, (3) cultural awareness and global competence, and (4) flexibility, adaptability, and self-direction.

Senior project

(R.C. 3301.0712(B)(4))

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.

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 service learning projects and 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 four components that indicates that a student is college or career 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) and 3301.42)

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

December 31, 2010, the latest this group may convene is January 30, 2011. In addition, the Partnership for Continued Learning must make recommendations for aligning the new assessment system with the expectations of employers and institutions of higher education regarding the knowledge and skills high school graduates need.

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 under current law. 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;[58] 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 current 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.[59] Under the bill, the State Board

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[58] 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).

[59] See R.C. 3313.603(F) and 3314.36.

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)

Current 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.[60] The bill 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)

Current law directs 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 currently 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 are not due for reconsideration until 2013.

Under the bill, the State Board must reconsider the performance indicators by December 31, 2009. As in current law, the State Board must review the indicators every six years thereafter. However, the bill requires the State Board to establish all future performance indicators 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 four components of the system as possible performance indicators (see "**Replacement of OGT as graduation requirement**" above).

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[60] 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).

Report card data on college and work readiness

(R.C. 3314.012 and repealed R.C. 3302.032)

The bill 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--current law

By June 30, 2012, the State Board must select one or more measures of the readiness of high school graduates for college and the workforce. Those measures may include student performance on college readiness assessments recommended by the Partnership for Continued Learning,[61] 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 must begin including the measures on the report cards covering the 2012-2013 school year. A district's or building's performance on the measures does not affect its report card rating.

Community service education

(R.C. 3313.605, 3314.03(A)(11)(d), and 3326.11)

Current law authorizes school districts to include community service education in their educational programs, provided the districts comply with certain requirements. The bill makes the provision of community service education mandatory for all districts (including joint vocational districts), community schools, and STEM schools. The requirements for community service education under the bill are similar to the requirements imposed on districts that voluntarily provide the education under current law.

Under the bill, each district, community school, and STEM school 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 or school 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

[61] See R.C. 3301.43, which is repealed by the bill.

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 or community or STEM school governing body 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) Guidelines for the community service learning project that is one component of the bill's new assessment system for a high school diploma (see "**Replacement of OGT as graduation requirement**");

(5) A community service instructional program for teachers, including strategies for teaching community service education, discovering community service opportunities, and motivating students to participate; and

(6) 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 or governing body 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 and schools.

Finally, the bill specifies that a district or school 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.[62]

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[62] As defined in the bill, 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

Career and college planning

(R.C. 3313.60, 3313.607, 3314.03, and 3326.11)

Life and career-ready skills

The bill adds "life and career-ready skills" to the required curriculum of all city and exempted village school districts, educational service centers (ESC), community schools, and STEM schools in seventh or eighth grade. "Life and career-ready skills" includes financial literacy, entrepreneurship, career planning and awareness, and any other skills identified by the Superintendent of Public Instruction. The Superintendent must issue program guidance and guidelines to assist schools in implementing these subjects.

Written career and college plans

Under current law, a board of education of a school board may help students develop a written career plan. School districts that receive state money for these plans must ensure that plans are completed by the end of the student's eighth grade year. The bill requires all school districts, community schools, and STEM schools to require all students to develop a written career and college plan as a part of the life and career-ready skills curriculum. Career and college plans must be completed by the end of the student's eighth grade year.

Career passports

Under current law, school districts may provide to students, upon completion of high school coursework, individual career passports that document the student's knowledge and skills, including coursework and employment, community, or leadership experiences. The passports also must list competency levels the student has achieved, the student's attendance record, and any career credentials the student has gained. The bill specifies that community schools and STEM schools may issue such passports, as well. But if the community school or STEM school receives state money to fund the program, the school must provide the passports. (Under current law, passports likewise become mandatory for school districts that receive state money for them.)

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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)).

All-day kindergarten

(R.C. 3321.01 and 3321.05)

School districts currently may offer all-day kindergarten classes or extended kindergarten. Beginning in the 2010-2011 school year, under the bill, each school district must provide all-day kindergarten to each kindergarten student, except that, as in current 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.

Authority to charge tuition for all-day kindergarten

(R.C. 3321.01(H))

Current law allows school districts that are *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.[63] Since current law generally counts each kindergarten student as one-half of one full-time-equivalent (FTE) student for state funding purposes, the student only generates one-half of the full base-cost formula amount. Therefore, the existing authority to charge fees or tuition is intended to enable districts that do not receive poverty-based assistance payments for all-day kindergarten to recoup at least part of the other half of the formula amount.

The bill'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, the bill repeals the authority of school districts to charge fees or tuition for all-day kindergarten.

Annual surveys

(R.C. 3321.01(H))

Under the bill, 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

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[63] Under current law, districts with a "poverty index" of 1.0 or greater (meaning the district's percentage of students living in families receiving public assistance is at least as high as the statewide percentage) or districts with a three-year average formula ADM (average daily membership) that is greater than 17,500 students are eligible to receive a poverty-based assistance payment for the provision of all-day kindergarten (R.C. 3317.029(D)).

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 current law, since the bill repeals the authority of districts to charge for that service.

Extending the school year

Phase in of a longer school year

(R.C. 3306.01(A)(2), 3313.48, 3313.481, 3313.482, 3313.485, 3313.62, 3314.03(A)(11)(a), 3314.031, 3314.08(J)(3), and 3317.01(B); conforming changes in R.C. 2151.011(B)(47) and 3313.533)

The bill phases in a longer school year over ten years. It changes the minimum school year for school districts and STEM schools from 182 days, or 910 hours if operating under an approved alternative schedule, to the following:

(1) 186 days or 930 hours, in fiscal years 2010 and 2011;

(2) 190 days or 950 hours, in fiscal years 2012 and 2013;

(3) 194 days or 970 hours, in fiscal years 2014 and 2015;

(4) 198 days or 990 hours, in fiscal years 2016 and 2017; and

(5) 202 days or 1,010 hours, in fiscal year 2018 and thereafter.

As under current law, the minimum number of days, or hours for an approved alternative schedule, specified under the bill includes up to two days for parent-teacher conferences and reporting, two days for professional development, and five calamity days.

As discussed under "**Minimum school year in general**" below, like the current minimum school year, these new school year provisions also likely will apply to nonpublic schools.

Terminology

The bill changes the terms used in the statutes to describe the minimum school year. It uses the terms "learning day" and "learning year" in place of the current terms "school day" and "school year" in defining the minimum number of days and hours a school must be open for instruction.

Effect on collective bargaining agreements

(R.C. 3313.485)

The bill specifies that the new minimum school year provisions do not prevail over conflicting provisions of a collective bargaining agreement entered into prior to the effective date of the bill's changes (90 days after filing with the Secretary of State). But it also requires all collective bargaining agreements entered into, renewed, or amended on and after that effective date to comply with the applicable minimum number of days or hours specified in the bill.

Community schools

(R.C. 3314.03(A)(11)(a), 3314.031, 3314.08(J)(3))

The bill changes the minimum year for community schools, too, from 920 hours, to the following:

(1) 930 hours, in fiscal years 2010 and 2011;

(2) 950 hours, in fiscal years 2012 and 2013;

(3) 970 hours, in fiscal years 2014 and 2015;

(4) 990 hours, in fiscal years 2016 and 2017; and

(5) 1,010 hours, in fiscal year 2018 and thereafter.

Background

Minimum school year in general

Current law regulates the length of the school year and school day for both public and nonpublic schools. School districts and STEM schools[64] are, by statute, explicitly subject to a minimum school year and school day requirement.[65] A separate statute states that the "hours and term of attendance" in a nonpublic school must be

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[64] "STEM" is an acronym for "science, technology, engineering, and mathematics." STEM schools, established under R.C. Chapter 3326. are specialized schools with integrated project-based curricula for any of grades 6 through 12 operated by a partnership of public and private entities that must include at least one school district.

[65] R.C. 3313.48 and 3313.62.

"equivalent" to those required of school districts.[66] Accordingly, the State Board of Education minimum education standards require nonpublic schools to comply with the minimum school year specified for public schools.[67] Under these rules and the statutory minimums, unless a public or nonpublic school obtains approval to operate on an alternative schedule, as discussed below, a school must be open for instruction with students in attendance at least 182 school days in a school year. By statute, a school day for students in grades 1 to 6 must include *at least* five hours, with two 15-minute recesses permitted, and a school day for students in grades 7 to 12 must be *at least* five hours, with no provisions for recesses.

The State Board has rulemaking authority to further define what constitutes a school day. Those rules provide that a school day for public and nonpublic school students in grades 1 to 6 must be at least five hours, excluding a lunch period, and 5½ hours, excluding a lunch period, for public school students in grades 7 to 12. Nonpublic school students in grades 7 to 12 need only have a school day of five hours, excluding a lunch period, which is the minimum prescribed in the statute.

Nevertheless, a school day that is shortened by up to two hours because of hazardous weather conditions still counts as a school day towards satisfying the minimum 182-school-day requirement.[68] In complying with the 182-day requirement, a school also may count up to four days when classes are dismissed a half-day early for individual parent-teacher conferences or reporting periods, two days for teacher professional development, and up to five days for a public calamity, such as inclement weather. Taking into account these permitted closings for parent-teacher conferences, reporting, professional development, and calamity days, a school must be open for instruction at least 173 days each year.

Alternative schedules

As an alternative to operating on a traditional five-hour-a-day, 182-day calendar, current law permits a school district to operate a school on a different schedule in order to (1) provide a flexible school day for parent-teacher conferences and reporting days that require more than the four half-days otherwise permitted, (2) operate on a calendar of quarters, trimesters, or pentamesters, or (3) establish a staggered attendance schedule ("split sessions"). The approval of the Department of Education is required to implement any of these alternative schedules.

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[66] R.C. 3321.07, not in the bill.

[67] Ohio Administrative Code 3301-35-06, 3301-35-08, and 3301-35-12.

[68] R.C. 3317.01(B) under current law and R.C. 3306.01(A)(2) under the bill.

If a school district obtains approval to operate an alternative schedule, the school must be open for instruction at least 910 hours a year. Included within this 910-hour requirement, a school may count two 15-minute daily recess periods for students in grades 1 to 6; ten hours for individualized parent-teacher conferences and reporting periods; ten hours for teacher professional meetings; and the number of hours students are not required to attend because of public calamity days.[69]

Community schools

Community schools (public "charter schools") are not subject to the same school year requirements as school districts and nonpublic schools. Instead, each community school must provide at least 920 hours of "learning opportunities" to each student enrolled for a full school year.[70] The law does not specify any calamity days or other days for conferences and professional development for community schools.

Amendment of calamity day contingency plans

(R.C. 3313.482 and 3326.11)

The bill allows a school district to amend its annual contingency plan for making up excess calamity days after the September 1 deadline for the plan's adoption. Specifically, if the district board of education determines that the district will be unable to implement its contingency plan as originally adopted, the board may adopt a resolution amending the plan. As with the original plan, the amended plan must provide for making up at least five full school days, even if the district has already made up some of its excess calamity days in accordance with the original plan.

The authority to amend a contingency plan also applies to STEM schools and to chartered nonpublic schools, both of which are required by ongoing law to adopt contingency plans.

Background

Annually by September 1, each school district, STEM school, and chartered nonpublic school must adopt a contingency plan for making up calamity days in excess of the five days otherwise allowed.[71] The plan must provide for making up at least five

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[69] R.C. 3313.481.

[70] R.C. 3314.03(A)(11)(a) and 3314.08(L)(3) under current law, changed to R.C. 3314.08(J)(3) under the bill.

[71] R.C. 3313.482(A); see also R.C. 3326.11 and Ohio Administrative Code 3301-35-12.

full school days. If a school is closed for more days than the five excused days plus the make-up days prescribed in the contingency plan, the district or school may add one-half hour increments to remaining days in the school year to make up those excess days.[72]

On-site visits to schools

Pilot program

(Section 265.60.10)

The bill requires the Department of Education to develop and implement a pilot program for periodic site visits to schools operated by school districts. The pilot program is to be implemented in place of the bill's permanent provision for site visits, which the bill appears to suspend for the 2009-2011 biennium. According to the bill, the pilot program must "contain all of the elements" of the permanent provision (see below). By December 31, 2010, the Department must report to the Governor and the General Assembly on the progress of the site visits conducted under the pilot program and recommendations for full implementation of the permanent provision. Presumably, if the temporary pilot program provision expires at the end of the biennium without other legislative changes, the permanent provision would control, requiring formal site visits to all schools operated by school districts once every five years. The pilot program does not affect the bill's separate provision requiring on-site visits for community schools (see "**Community school on-site evaluations**" below).

Permanent provision

(R.C. 3301.83)

A permanent provision for school site visits, which the bill appears to suspend for the FY 2010-FY 2011 biennium in favor of the pilot program described above, requires the Department, in cooperation with one or more state institutions of higher education, to conduct an on-site visit of each school operated by a school district at least once every five years to evaluate the school's operations. Like the community school site visits, described below, they may be done in conjunction with mandatory site evaluations conducted when schools rated in academic watch or academic emergency fail to demonstrate satisfactory improvement or to submit required information to the Department.[73] Each on-site visit may include school tours, classroom observations, and

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[72] R.C. 3313.482(C).

[73] R.C. 3302.04(D)(1), not in the bill.

interviews with administrators, school staff, parents, community members, or students. Each school must provide any data, documents, or other materials the Department considers necessary to conduct a thorough site visit.

During the site visit, the Department must determine if the school has complied with (1) the State Board's operating standards for school districts, (2) all laws regarding academic and fiscal accountability, and (3) "all other applicable laws and administrative rules." The bill also specifies that the Department must review the school's progress in implementing its three-year "continuous improvement plan" if it has one. However, under recent amendments to the law on school sanctions for persistent low academic performance, no district is required to have a continuous improvement plan after June 30, 2008.[74]

After the site visit, the Department must issue a written report summarizing its findings. This report must be provided to the district board of education, which may submit factual corrections to the Department. The Department must revise the report based on the factual corrections and post the final version on its web site. The district board also must post the final version of the report in its web site, if it has one.

Waiver of eighth-grade American history

(R.C. 3313.60)

Current 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 bill, 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, current law requires high school students to complete ½ unit (60 hours) of coursework in

[74] Under former law, a school was required to develop a three-year continuous improvement plan if it had not made adequate yearly progress, as required under federal law, for two consecutive school years (R.C. 3302.04(B)). Am. Sub. H.B. 420 of the 127th General Assembly, effective December 30, 2008, replaced many of the academic performance sanctions with a new pilot "differentiated accountability model" permitted under a waiver from the U.S. Department of Education. Among the former provisions replaced by the new model is the requirement for continuous improvement plans. See R.C. 3302.041, not in the bill.

American history and ½ unit (60 hours) in American government, as a condition for receiving a high school diploma.[75] The bill 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 bill 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.

III. Educator Licensure and Employment

Educator licensure

(R.C. 3319.22, 3319.222, 3319.24, 3319.26, 3319.261, and 3319.28 and repealed R.C. 3319.302 and 3319.304 and repealed current 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)

Currently, 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 bill 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 and for principal licenses. However, the State Board may establish additional qualifications for these licenses by administrative rule.[76] The State Board must begin issuing the new licenses on January 1, 2011.

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[75] R.C. 3313.603(B)(6) and (C)(6).

[76] 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 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)(1) and (E).)

New teacher licenses

(R.C. 3319.22(A) and (B) and 3319.24)

Under the bill, 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 bill repeals an existing 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 is currently issued by the State Board and eliminated by the bill. The table below compares the new resident educator license with the current provisional license.

	Current provisional educator license	New resident educator license
Duration	2 years	4 years
Renewable	Yes	No
Qualifications for license	Under current State Board licensure rules, the qualifications for a provisional license are: (1) A bachelor's degree; (2) Completion of an approved teacher preparation program and recommendation of the dean or head of the program; (3) Passage of the Praxis II assessment, which measures pedagogical skills and knowledge of the subject area to be taught; (4) Demonstrated skill in integrating educational technology into instruction; and	Under the bill, the minimum qualifications for the resident license are: (1) A bachelor's degree from an accredited teacher preparation program; and (2) If the license will be for teaching in grades K to 6, completion of at least 6 semester hours of coursework in the teaching of reading, including 3 semester hours of coursework in the teaching of phonics.[a] The State Board may adopt additional qualifications for the license, which could include any of the criteria it currently requires for the provisional license.

	Current provisional educator license	New resident educator license
	(5) If the license will be 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 will be 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. A provisional license may be renewed upon completion of 3 semester hours of coursework in pedagogy or the area of specialization since issuance of the current provisional license.[77]	Holders of the license must participate in the Ohio Teacher Residency Program (see "**Ohio Teacher Residency Program**" below).

[a] This coursework requirement does not apply to applicants who will be teaching dance, drama, theater, music, visual arts, physical education, or a similar specialty area.

Professional educator license

Under current State Board licensure rules, upon expiration of a provisional educator license, an individual may apply for a professional educator license, which is the standard license for teachers. The bill 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 current licensure requirements may apply for the new professional educator license beginning January 1, 2011. The table below compares the current and new licenses.

[77] Ohio Administrative Code 3301-24-05(A) and 3301-24-07.

	Current professional educator license	New professional educator license
Duration	5 years	5 years
Renewable	Yes	Yes
Qualifications for license	Under current State Board licensure rules, the qualifications for a professional license are: (1) A bachelor's degree; (2) Completion of an approved teacher preparation program; (3) Completion of an entry-year mentoring program; and (4) Passage of the Praxis III assessment, which evaluates teacher performance based on observations of the teacher's classroom instruction.[78]	Under the bill, the minimum qualifications for the professional license are: (1) A bachelor's degree from an accredited institution of higher education; (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; (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 (4) Demonstration that students in the applicant's classroom have achieved a value-added measure designated by the Superintendent of Public Instruction. The State Board may adopt additional qualifications for the license, which could include any of the criteria it currently requires for the professional license.

[78] Ohio Administrative Code 3301-24-05(D).

Senior professional educator license

The senior professional educator license is a five-year, renewable license for which there is no comparable license in current law. The bill's minimum qualifications for the senior license are:

(1) A master's degree from an accredited institution of higher education;

(2) Previous receipt of a professional educator license (either under the current requirements or the bill's provisions);

(3) Demonstration that students in the applicant's classroom have achieved a value-added measure designated by the Superintendent of Public Instruction; and

(4) 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.[79]

Lead professional educator license

A lead professional educator license, which has no equivalent in current 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 accredited institution of higher education;

(2) Have previously held a professional educator license (issued either under the current requirements or the bill'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;

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[79] See "Ohio Standards for the Teaching Profession" at *http://esb.ode.state.oh.us/*.

(4) Either hold a valid certificate from the National Board for Professional Teaching Standards or satisfy other criteria for a lead teacher adopted by the Educator Standards Board; and

(5) Demonstrate that students in the applicant's classroom have achieved a value-added measure designated by the Superintendent of Public Instruction.

Alternative resident educator license

(R.C. 3319.26 and 3319.261)

Current law 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 bill 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.

	Current alternative educator license	**Bill's alternative resident educator license**
Duration	2 years	4 years
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 is 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 current statute and State Board licensure rules, the qualifications for an alternative license are: (1) A bachelor's degree; (2) A major with a grade point average (GPA) of at 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	Under the bill, the minimum qualifications for the alternative resident license are: (1) A bachelor's degree; (2) Completion of an intensive pedagogical training institute to be developed by the Superintendent of Public Instruction and the Chancellor of the Ohio Board of Regents. The

	Current alternative educator license	Bill's alternative resident educator license
	subject area; (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. (4) Passage of the applicable Praxis II subject area assessment.[b]	instruction must cover such topics as student development and learning, assessment procedures, curriculum development, classroom management, and teaching methodology. (3) Passage of an examination in the teaching area, which could still be the Praxis II subject area assessment.[b] The State Board may adopt additional qualifications for the license, which could include any of the criteria it currently requires 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; (2) Participate in the Ohio Teacher Residency Program; and (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 is eligible for a provisional educator license upon completing: (1) Two years of successful teaching under the alternative license, as verified by the employer;	The holder of an alternative resident license is eligible for a professional educator license upon successfully completing: (1) Four years of teaching under the alternative resident license;

	Current alternative educator license	Bill's alternative resident educator license
	(2) The 12 semester hours of additional coursework described above with a GPA of at least 2.5; and (3) The Praxis II professional knowledge assessment.[80]	(2) The 12 semester hours of additional coursework described above; (3) The Ohio Teacher Residency Program; (4) The assessment of professional knowledge; and (5) All other requirements for a professional educator license adopted by the State Board, which includes the bill's requirement that an applicant for a professional license demonstrate that the applicant's students have achieved a value-added measure designated by the Superintendent of Public Instruction.

[a] An intervention specialist works with disabled, gifted, and other students with individualized instructional needs that require use of particularized teaching practices.

[b] However, an applicant for an alternative educator license in the area of intervention specialist is not required to take the subject area assessment until upgrading the license after its expiration. The same delay applies to intervention specialists applying for an alternative resident educator license under the bill.

One-year conditional teaching permits

(repealed R.C. 3319.302 and 3319.304)

The bill 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 are optional precursors to the current alternative educator license. Therefore, under the

[80] R.C. 3319.26 and Ohio Administrative Code 3301-24-10.

bill, 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 current law, the State Board must issue the one-year conditional teaching permit to applicants who:

(1) Have a bachelor's degree;

(2) Have passed the Praxis I basic skills test;

(3) Have 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 must 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, have completed six semester hours of additional coursework within the previous five years with a GPA of at least 2.5. This coursework, which must be approved by the applicant's prospective employer, must 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) Have entered into an agreement with the applicant's prospective employer under which the employer will provide a structured mentoring program; and

(6) Agree to complete another three 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 bill 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.[81] Currently, a person is eligible for a professional educator license after the two-year duration of the provisional STEM license, if the person (1) completed 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) receives a positive recommendation indicating that the

[81] 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.

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 bill adds that the person also must meet all other requirements for a professional educator license adopted by the State Board, which includes the bill's requirement that the teacher's students have achieved a value-added measure designated by the Superintendent of Public Instruction.

Principal licenses

(R.C. 3319.22(C))

The bill 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. Furthermore, the State Board's licensure rules must require an applicant for a principal license to demonstrate that students the applicant is responsible for have achieved a value-added measure designated by the Superintendent of Public Instruction. In the case of a teacher seeking a principal license for the first time, that measure applies to students in the teacher's classroom. In the case of a principal applying for renewal of a principal license, the measure applies to students in the principal's building.

Continuing effect of current licenses

(R.C. 3319.222)

The bill directs the State Board of Education to accept applications for new, and renewal or upgrade of, all current educator licenses and teaching permits through December 31, 2010, and to issue the licenses and permits to qualified applicants in accordance with the current statutes and rules regarding licensure. Those licenses and permits remain valid for teaching in the specified subjects and grades until their expiration.[82] All educator licenses issued based on applications received on or after January 1, 2011, must comply with the bill's new licensure requirements and corresponding licensure rules adopted by the State Board. An individual may apply for

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[82] Prior to September 1, 1998, the State Board issued professional (eight-year) and permanent (lifetime) teacher's certificates. Under current law, individuals were permitted to apply for one-time renewals of the professional certificates through September 1, 2006. Under the bill, 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.)

one of the bill's new educator licenses beginning January 1, 2011, even if the individual's current license or permit is still valid on that date.

Ohio Teacher Residency Program

(R.C. 3319.223)

Under the bill, 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 bill'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.

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, (3) use of measures of student academic gain to evaluate participants' effectiveness, and (4) 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**" above), 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. 3301.42, 3315.37, 3319.22(E)(1), 3319.234, 3319.235, 3319.28, and 3319.60)

Current law requires 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 bill 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 courses of study for the preparation of educators and other school personnel and the higher education institutions that prepare them 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 courses of study 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 courses of study 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 courses of study, 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 bill (see "**Ohio Teacher Residency Program**" above). The metrics and courses of study 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.[83] As in current law, if the metrics require a 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 bill 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. Current law places the same restriction on State Board rules regarding teacher preparation programs, so the bill simply broadens the restriction to apply to rule changes affecting preparation programs for other school personnel. Under the bill, institutions of higher education must pay for curricular changes from their existing appropriations.

Report on quality of teacher preparation programs

(R.C. 3333.049)

Under current law, the State Board of Education, in collaboration with the Chancellor of the Board of Regents and the Teacher Quality Partnership,[84] issues an annual report on the quality of approved teacher preparation programs. The

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[83] See R.C. 3302.021 and 3302.03.

[84] The Teacher Quality Partnership is a research consortium of 50 Ohio colleges and universities that offer teacher preparation programs.

Chancellor assumes responsibility for publishing the report under the bill, 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 bill 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 bill 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 current licensure rules, the State Board of Education issues a five-year professional pupil services license for nurses, social workers, audiologists, and other health professionals who work in schools. Currently, 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.[85]

The bill 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 and that an applicant for a school nurse wellness coordinator license be a licensed practical nurse. Presumably, under the bill, the State Board could keep its current 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.

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[85] Ohio Administrative Code 3301-24-05(F)(1)(f).

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 bill 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 Board of Education, the Chancellor of the Board of Regents, the Ohio Board of Nursing, and the Health Care Leverage and Quality Council.

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 licensed practical nurse employed by a school district or community school, appointed by the Governor;

(3) A representative of the Ohio Board of Nursing, appointed by the Governor;

(4) A representative of the Department of Health with expertise in school and adolescent health services, appointed by the Director of Health;

(5) A representative of the Department of Education, appointed by the Superintendent of Public Instruction;

(6) A representative of the Chancellor of the Board of Regents, appointed by the Chancellor;

(7) A representative of a nurse education program, appointed by the Chancellor;

(8) A representative of the Department of Development with expertise in workforce development, appointed by the Director of Development; and

(9) 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.

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.

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), 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 bill 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 bill. 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 bill (see "**School district operating standards**" above). The standards for teachers also must reflect (1) the Ohio Leadership Framework[86] and (2) the revised academic content standards adopted by the State

[86] 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

Board (see "**Academic standards and model curricula**" above), including standards on collaborative learning environments and interdisciplinary, project-based real world learning, differentiated instruction, and community service learning.

The bill 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 operating standards for school districts. Additionally, the standards for superintendents must be aligned with 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 bill, 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, as in current law, the Board must consider indicators of cultural competency and the impact on the achievement gap between students when developing the standards.

Recommendations for all of the standards required by the bill 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 bill assigns the following other duties to the Educator Standards Board:

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http://education.ohio.gov/GD/Templates/Pages/ODE/ODEDetail.aspx?page=3&TopicRelationID=523&ContentID=9169&Content=62299).

(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 and on student performance, as measured by value-added data and other demonstrations of students' abilities;

(3) Monitor compliance with all of the standards required by the bill and make recommendations for corrective action if the standards are not met. (The Board currently must 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 must meet to be considered a lead teacher for licensure purposes. The criteria must be in addition to the bill'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 bill 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.

The bill 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. Current law, also repealed by the bill, requires 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.

Finally, because the bill replaces the term "master teacher" with "lead teacher," the bill eliminates the requirement that the Educator Standards Board define a "master teacher." Under the bill, a "lead teacher" generally is a person who holds a lead professional educator license. As is currently required for master teachers, the number of lead teachers employed by each school district and building must be reported to the

Department of Education through the Education Management Information System (EMIS) and included on the district and building report cards.[87]

Membership

(R.C. 3319.60; Section 265.60.60)

The bill makes several changes to the membership of the Educator Standards Board. First, the bill retains the three members employed by institutions of higher education that offer teacher 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 bill adds four members to the Educator Standards Board. It adds, as voting members, a school district treasurer or business manager and a parent of a student enrolled in a school district, bringing the total number of voting members to 19. 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 bill also adds the ranking minority members of the House and Senate education committees as nonvoting members of the Board.[88]

Finally, the bill specifies that the membership of the Educator Standards Board must reflect Ohio's diversity in terms of gender, race, ethnicity, and geographic distribution.

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[87] R.C. 3301.0714(B)(2)(d) and 3302.03(C)(8). Continuing law 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).

[88] Members of the Educator Standards Board who are not affected by the bill 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).)

Subcommittees on standards

(R.C. 3319.611, 3319.612, and 3319.63)

The bill 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.

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.

Teach Ohio Program

(R.C. 3333.39)

The bill 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 Fellow Program created in the bill (see below).

(3) The Ohio Teacher Residency Program created in the bill as part of the new educator licensing requirements (see above).

(4) Alternative educator licensure procedures.

(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)

The bill directs 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 a state 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 bill, (2) plan to specialize in teaching special needs students, or (3) plan to teach in the STEM (science, technology, engineering, or math) disciplines.[89]

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, 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.

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[89] As with other state financial aid programs under current law, 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 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 bill directs the Chancellor and the Attorney General to collect payments on a converted loan under established procedures for payment collection by state officers.[90]

Teacher tenure

(R.C. 3319.08 and 3319.11)

Current law

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 resigns or retires. 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.[91]

The bill

The bill 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

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[90] R.C. 131.02, not in the bill.

[91] A teacher who holds a professional or permanent teaching certificate issued under prior law, and never upgraded that certificate to an educator license, is eligible for a continuing contract without further coursework (R.C. 3319.08(D)(1)).

January 1, 2011, remain subject to the existing tenure requirements described above, except that a teacher holding a senior professional educator license or a lead professional educator license issued under the bill's licensure provisions (see "**New teacher licenses**" above) also meets the requirement in (1). The existing tenure requirements continue to be a potential issue for collective bargaining. The bill 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 nine 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 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 bill retains current 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.[92] All teachers, regardless of the date of their initial licensure, must meet these employment criteria to receive a continuing contract.

Under the bill, 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*

[92] 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)).

teaching license.[93] This means, for example, that a person who is licensed as a substitute teacher prior to January 1, 2011, but who receives the bill'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 teacher employment contracts

(R.C. 3319.16)

Current law

Current law provides that a school district teacher's employment contract 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."[94] Separate statutes also specify that a teacher'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,[95] falsification of a sick or assault leave statement,[96] and assisting a student in cheating on a statewide achievement test.[97] 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 teacher 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.[98]

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[93] 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 bill's new tenure qualifications.

[94] 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 intent 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).

[95] R.C. 124.36, not in the bill.

[96] R.C. 3319.141 and 3319.143, neither section in the bill.

[97] R.C. 3319.151.

[98] According to Anderson's Ohio School Law (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).

The bill

The bill eliminates "gross inefficiency or immorality" and "willful and persistent violations of reasonable regulations of the board of education" as statutory grounds for termination of a school district teacher employment contract. It specifically retains "good and just cause" as statutory grounds for termination of a teacher employment contract, removing also the modifying word "other." The bill does not affect the other separate statutory grounds for termination or suspension of a teacher employment contract. Nor does the bill affect the statutory due process procedures. The bill states, however, that its changes to the grounds for termination of a teacher employment contract prevail over conflicting provisions of a collective bargaining agreement entered into after the amendment's effective date.

Task Force on Teacher Compensation and Performance

(Section 265.60.20)

The bill establishes the Task Force on Teacher Compensation and Performance to examine the existing systems of teacher compensation and retirement benefits and to recommend ways to improve the connections between teacher compensation, teaching excellence, and higher levels of student learning. Recommendations must be issued by December 1, 2010. Copies of the recommendations must be provided to the Governor, General Assembly, State Board of Education, Superintendent of Public Instruction, and Chancellor of the Board of Regents. After issuing its recommendations, the task force is abolished.

Membership

The Superintendent of Public Instruction is the chairperson of the task force. Other members, who are appointed by the Governor, are:

(1) Two teachers employed by a school district;

(2) Two retired educators;

(3) Two district superintendents;

(4) Two district treasurers;

(5) Two principals employed by a district;

(6) Two faculty members from institutions of higher education;

(7) Two representatives of Ohio philanthropic organizations;

(8) One representative of business; and

(9) One representative of the public.

Initial appointments to the task force must be made within 90 days after the provision's effective date. The Governor must convene the task force within 30 days after making the last appointment. Task force members are not compensated.

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).[99]

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.[100]

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

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

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

Oversight of sponsors

(R.C. 3314.015, 3314.021, 3314.027, and 3314.35)

Under current 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.[101] Furthermore, the Department may revoke its approval of a sponsor if the State Board of Education finds that the sponsor is not in compliance with or is no longer willing to comply with its contract with a community school or the Department's rules for sponsorship. If a sponsor's approval is revoked, it can no longer sponsor community schools and its existing schools must secure new sponsors.

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.[102] Current 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.[103] These grandfathered sponsors may continue to sponsor existing and new community schools in conformance with all other provisions of the Community School Law and their contracts with the schools.

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[101] 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).

[102] 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 bill.

[103] 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.)

Oversight of grandfathered sponsors; revocation of authority

(R.C. 3314.015(A) and (C), 3314.021(D), and 3314.027)

Although current law charges the Department of Education with overseeing community school sponsors, it is not explicit whether that oversight authority extends to grandfathered sponsors. The bill explicitly states that *any and all* sponsors are under the oversight of the Department, regardless of whether they must initially be approved for sponsorship. It also permits the Department to revoke a sponsor's "authority" to sponsor schools, rather than its approval for sponsorship, which broadens the applicability of the sanction to cover all sponsors. As under current law, the revocation must follow a finding by the State Board of Education that the sponsor is not complying with, or is unwilling to comply with, its contract with a community school or the Department's sponsorship rules.

Probation, suspension of sponsors

(R.C. 3314.015(D) and (E), 3314.021(D), and 3314.027)

The bill also establishes new sanctions that the Department of Education may impose prior to revoking a sponsor's authority to sponsor. These sanctions explicitly apply to both grandfathered sponsors and sponsors subject to Department approval. Under the new sanctions, the Department may declare a sponsor to be in probationary status if the sponsor fails to take any of the following actions that the Department determines are warranted:

(1) Take steps to intervene in a community school's operation to correct problems in the school's performance, including enforcing implementation of a corrective action plan required for the school by the Department (see "**Corrective action plans**" below);

(2) Declare the school to be in probationary status for (a) failure to meet student performance requirements stated in the contract with the school, (b) failure to meet generally accepted standards of fiscal management, (c) violation of the contract or state or federal law, or (d) other good cause;

(3) Suspend the school's operation for any of the reasons in (2) or for violation of health or safety standards for school buildings;

(4) Terminate the school's contract.[104]

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[104] See R.C. 3314.07, 3314.072, and 3314.073 (none in the bill).

When the Department declares a sponsor to be in probationary status, it must send the sponsor written notice of that fact, including the reasons for the probation and the probation's length. Within ten business days after the notice, the sponsor must submit reasonable remedies to the Department. If the Department finds the remedies satisfactory, the sponsor must implement them with monitoring by the Department.

However, if the Department finds that the proposed remedies are not satisfactory or finds that the sponsor is not implementing previously approved remedies, the Department may suspend the sponsor's authority to sponsor community schools. The suspension may be total or the Department may partially restrict the sponsorship authority by (1) limiting the geographic area in which the sponsor may sponsor schools, (2) reducing the number of schools the sponsor may sponsor, or (3) limiting the types of schools the sponsor may sponsor. The Department also may require the sponsor to submit additional reports beyond those otherwise mandated by law. The decision of the Department to suspend or restrict a sponsor's authority to sponsor schools, or to revoke the sponsor's sponsorship authority altogether, may be appealed under the Administrative Procedure Act.[105]

If the Department suspends or restricts a sponsor's authority to sponsor schools, it must assign another sponsor to each community school the sponsor can no longer sponsor. The new sponsor must be approved by the Department for sponsorship and must agree to sponsor the school. The term of the new sponsor's sponsorship lasts until the *earliest* of the following: (1) the Department rescinds the original sponsor's suspension or restriction, (2) the school secures another permanent sponsor, or (3) the school's contract with its original sponsor expires.

Additional sanctions against sponsors

(R.C. 3314.19 and 3314.191)

Circumstances that trigger sanctions

The bill imposes a system of graduated sanctions to be imposed against a sponsor when one or more of its community schools fail to meet any of the following criteria:

(1) Submit to the sponsor a plan for providing special education and related services to students with disabilities and have demonstrated the capacity to provide those services in accordance with state and federal law;

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[105] See R.C. Chapter 119., especially R.C. 119.12 (not in the bill).

(2) Have a plan and procedures for administering the state achievement and diagnostic assessments;

(3) Have school personnel with the necessary training, knowledge, and resources to properly submit information to all of the Department of Education's databases, including the education management information system (EMIS);

(4) Submit all required information to the Ohio Education Directory System;

(5) Enroll at least 25 students, which is the minimum number required by law;

(6) Use teachers who are licensed in accordance with the bill's requirements (see "**Highly qualified teachers**" below);

(7) Have a fiscal officer with the qualifications required by the community school laws;

(8) Have complied with all laws requiring criminal records checks of employees and contractors, and have conducted a criminal records check of each of its governing authority members;

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

(10) Designate an opening date for the school year that is in compliance with law;

(11) Have met all of the sponsor's requirements.

Moreover, the sanctions may be imposed if the sponsor itself fails to file with the Department's Office of Community Schools a copy of its contract with the school's governing authority or any subsequent modifications to that contract, or fails to conduct an annual pre-opening site visit of any of its schools.

Required actions--year 1

(R.C. 3314.191(A))

In the first year in which one or more of a sponsor's schools fail to meet any of the criteria, the Department of Education must provide the sponsor with technical

assistance to bring the sponsor or the community school into compliance, and the sponsor must:

(1) Develop and submit to the Department a three-year operations improvement plan; and

(2) Notify the parent or guardian of each student enrolled in each community school that did not meet the required criteria, either in writing or electronically, of (a) the actions the sponsor is taking toward meeting the criteria and assuring that the school meets the criteria and (b) any progress the sponsor has achieved in the immediately preceding school year toward meeting the criteria and assuring that the school meets the criteria.

The three-year operations improvement plan must contain an analysis of the reasons for the sponsor's failure to comply and to assure that the community school complied with the criteria. Further, the plan must include specific strategies the sponsor will use to address the problems in meeting the criteria and identify resources the sponsor will use to meet or assure that the schools it sponsors meet the criteria. The plan must also include a description of how the sponsor will measure its progress.

Required actions--year 2

(R.C. 3314.191(B))

The second consecutive year the same or different triggering circumstance applies, in addition to taking the required actions in year 1, the Department must declare the sponsor to be in probationary status and monitor the sponsor's actions to implement remedies. If the Department finds that the remedies offered by the sponsor are not satisfactory or that the sponsor is not taking actions necessary to implement those remedies, the Department may suspend or restrict the sponsor's authority to sponsor schools.

Required actions--year 3

(R.C. 3314.191(C))

The third consecutive year the same or different triggering circumstance applies, the Department must revoke the sponsor's authority to sponsor community schools.

Any suspension, restriction, or revocation of the sponsor's sponsorship authority under this provision is subject to appeal. The bill further clarifies that nothing in this provision restricts the Department's authority to otherwise place a sponsor on probation or to suspend, restrict, or revoke a sponsor's authority.

Corrective action plans

(R.C. 3314.015(D)(1) and 3314.42)

Under the bill, whenever a community school is required by the Department of Education to develop a corrective action plan, the school's governing authority must submit a copy of the plan to the school's sponsor.[106] The sponsor's chief administrative officer must review and sign the plan before returning it to the governing authority. Signing of the plan indicates that the sponsor has received notice of the content of the plan. The sponsor then must monitor implementation of the plan and may provide assistance to the school in that effort. Failure to submit a required corrective action plan to the sponsor or to implement the plan may be considered by the sponsor when deciding whether to terminate the school's contract, suspend its operations, or place it in probationary status. Also, the Department may sanction the *sponsor* for failing to enforce the corrective action plan (see "**Probation, suspension of sponsors**" above).

Sponsor access to student records

(R.C. 3314.43)

State and federal law prohibits the release of student educational records to most persons, other than education officials with a legitimate educational purpose and law enforcement personnel, unless the student's parent, or the student if at least 18 years old, consents to the release.[107] The bill specifies that the sponsor of a community school is an educational institution to which student records may be released for a legitimate educational purpose without prior consent. Therefore, under the bill, the sponsor may access student records for educational purposes such as evaluating the effectiveness of the school's academic programs or examining attendance data. Like the school itself, the sponsor must receive consent to release student educational records to another party other than education or law enforcement personnel.

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[106] The Department presumably may require a community school to develop a corrective action plan for any operational deficiency. However, it must require a corrective action plan from a community school that does not properly report data to the Education Management Information System (EMIS), which is a statewide electronic database of demographic, fiscal, and academic performance information on schools (R.C. 3301.0714).

[107] R.C. 3319.321, not in the bill, and the federal Family Educational Rights and Privacy Act (FERPA) at 20 United States Code 1232g.

Sponsor assurances

(R.C. 3314.19)

Under current law, community school sponsors must provide annual assurances to the Department of Education regarding the school's compliance with certain laws in preparation for the upcoming school year. The bill adds a requirement that each sponsor assures that each school has complied with the law requiring the school to obtain a criminal records check of, or otherwise provide direct supervision of, all employees of a private company under contract with the school to provide essential services that involve routine interaction with a child or regular responsibility for the care, custody, or control of a child.

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 bill further requires the report to address the performance of community school sponsors.

New start-up community schools

(R.C. 3314.016)

Current law has established a moratorium on new start-up community schools since June 30, 2007.[108] 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.[109] To qualify for the exception to the moratorium, the community school must contract with an operator that manages other schools anywhere in the United States that perform at a level higher than academic watch, as determined by the Department of Education.

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[108] 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 bill).

[109] R.C. 3314.014(A).

The bill stipulates that a new start-up community school cannot contract with an operator that already manages other schools in Ohio, unless at least one of those Ohio schools has a report card rating higher than academic watch.[110]

Contracts with operators

(R.C. 3314.014, 3314.02(E)(3), 3314.024, and 3314.028)

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

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

Repeal of procedure for appealing termination or nonrenewal of operator contract

(repealed R.C. 3314.026)

Under current law, there is an appeal procedure in cases in which the governing authority of a community school has notified the school's operator of its intent to terminate or not renew the operator's contract. Under that procedure, the operator may appeal the decision to the school's sponsor, except that if the sponsor has sponsored the school for less than 12 months, the appeal must be made to the State Board of Education. The sponsor or the State Board must determine whether the operator should continue to manage the school, taking into consideration whether the operator has managed the school in compliance with law and the terms of the contract between the sponsor and the school and whether the school's progress in meeting the academic goals stated in that contract has been satisfactory. If the sponsor or State Board decides that the operator should continue to manage the school, the sponsor must remove the existing governing authority and the operator must appoint a new governing authority for the school.

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[110] Ratings higher than academic watch under R.C. 3302.03 are: in need of continuous improvement, effective, and excellent.

The bill repeals this appeal procedure. Therefore, under the bill, a governing authority's decision to terminate or not renew an operator's contract is final.

Highly qualified teachers

(R.C. 3314.102; conforming changes in R.C. 3314.03(A)(10), 3314.19, and 3314.21)

Background

The federal No Child Left Behind Act of 2001 (NCLB) requires public school teachers who teach core academic subjects to be "highly qualified." Core academic subjects include English, reading or language arts, math, science, foreign languages, civics and government, economics, arts, history, and geography. Teachers hired after the start of the 2002-2003 school year to teach in a program supported by federal Title I funds must be highly qualified upon employment.[111] Generally by the end of the 2005-2006 school year, however, *all* public school teachers of core academic subjects, whether newly hired or continuing educators, had to be highly qualified. To be highly qualified under NCLB, a teacher must (1) hold a bachelor's degree, (2) have obtained full state certification, and (3) demonstrate subject matter competency.[112]

State law, which incorporates many of the NCLB requirements regarding highly qualified teachers, requires teachers hired after July 1, 2002, to teach a core academic subject in a school district-operated school receiving Title I funds to be highly qualified. A highly qualified teacher, as defined in state law, is a classroom teacher who (1) holds a bachelor's degree and (2) is fully licensed or is participating in an alternative licensure route in which the teacher receives professional development and mentoring, teaches for no longer than three years, and demonstrates satisfactory progress toward becoming fully licensed.[113] In addition, the teacher must fulfill at least *one* of the following requirements:

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[111] Title I funds serve the educational needs of low-income and other at-risk students.

[112] 34 Code of Federal Regulations §§ 200.55 and 200.56.

[113] R.C. 3319.074, not in the bill.

Option	If Teaching in Grades K to 6	If Teaching in Grades 7 to 12
Test	Pass a test of subject matter and professional knowledge required for licensure.	Pass a test of subject matter knowledge required for licensure.
Educational Credentials	Receive a graduate degree or advanced certification in the teacher's teaching assignment.	Successfully complete either an undergraduate major, coursework equivalent to a major, a graduate degree, or advanced certification in each subject area in which the teacher teaches.
Score on Ohio Highly Qualified Teacher Rubric	Achieve 100 points on the Ohio Highly Qualified Teacher Rubric developed by the Ohio Department of Education.[114]	Same.
Professional Development Program	Complete an individualized professional development program approved by the teacher's local professional development committee that includes 90 hours of high quality professional development incorporating grade-appropriate academic subject matter knowledge, teaching skills, and state academic content standards.	Same.

The bill

Under current state law, teachers in community schools must meet the same requirements for licensure as teachers working in district schools. However, while NCLB's teacher quality provisions appear to apply to teachers in community schools, the state provisions for highly qualified teachers do not appear to apply to those teachers.

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[114] The Ohio Department of Education has created a rubric to enable teachers to determine whether they satisfy the highly qualified teacher requirements. The rubric is a point-based evaluation that considers a teacher's years of experience in a particular content area, college coursework in this content area, college coursework in pedagogy related to the content area, professional development in the teacher's content area, professional activities in the teacher's content area, whether the teacher has received specific teaching awards, and whether the teacher has been published.

The bill explicitly requires community school teachers to be highly qualified in the same manner as teachers employed by school districts. Therefore, under the bill, community school teachers hired on or after this provision's effective date to teach core academic subjects in a Title I school must have a bachelor's degree, be fully licensed or participating in an alternative licensure route, and fulfill one of the options outlined in the table above. These new requirements do not apply to community school teachers hired before the effective date, who do not teach core subjects, or who work in a school that does not receive Title I funds.

The bill maintains the current law requiring community schools to employ only classroom teachers who are licensed in compliance with licensure rules of the State Board of Education, but further requires community schools to comply with any other State Board rules that require teachers to teach in the subject areas or grade levels for which they are licensed. Finally, the bill retains existing authority for community schools to employ nonlicensed persons who hold temporary permits to teach up to 12 hours a week.[115]

Timing of first report card

(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, current law prohibits the Department from issuing a community school's first report card until the school has been open for two full school years. The bill repeals this prohibition and instead requires the Department to begin issuing report cards for a community school after its first year of operation.

Opening date exception

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

Under current law, community schools must be open for operation not later than September 30 of each school year. However, community schools whose mission is to serve dropout students solely are exempt from this requirement. The bill removes the exemption. Therefore, schools serving dropout students must open for operation not later than September 30 of each school year.

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[115] The State Board may issue 12-hour permits, valid for one year, to persons with at least a bachelor's degree, or five years of work experience, in the subject the person will teach (R.C. 3319.301, not in the bill, and Ohio Administrative Code 3301-23-41).

Handling of student records after school closes

(R.C. 3314.44)

Under the bill, when a community school permanently closes, the school's chief administrative officer must transmit all educational records of past and current students to the school's sponsor or, if directed by the Department of Education, to another school or entity. The Department must prescribe the manner and deadline for conducting the transfer. 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 by the Department is a third degree misdemeanor.

Unauditable community schools

(R.C. 3314.38)

The bill codifies and makes permanent an uncodified provision of Am. Sub. H.B. 119 of the 127th General Assembly addressing unauditable community schools. H.B. 119 is the budget act for the 2007-2009 biennium. H.B. 119 states that its uncodified sections have no effect after June 30, 2009, unless the context clearly indicates otherwise. Because the provisions dealing with unauditable community schools are uncodified, it may be uncertain whether they would expire on that date or could be construed to operate after that date.

Under these provisions, 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 found unauditable, the Auditor must notify the Department of Education, which must immediately cease all state payments to the school. As 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.

Sale of school district property to community schools

(R.C. 3313.41, 3314.051, and 3318.08)

Existing law grants start-up community schools the right of first refusal to unneeded or unused school district property in certain circumstances. The bill repeals these provisions, thereby requiring community schools to bid for district property under the same conditions as any other potential buyer.[116] (Generally, but for the repealed community school right of first refusal, a school district must offer property for sale at public auction and may use a private sale if the public auction is not successful or for sales to certain other public entities.)

Existing provisions

(R.C. 3313.41)

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

Also, whenever a school district has not used property suitable for classroom space for academic instruction, administration, storage, or any other educational purpose for one full school year, the district must offer that property for sale to start-up community schools located in the district, unless the board of education adopts a resolution outlining a plan to use the property for an educational purpose within the next three school years. The district must offer the property at a price no higher than fair market value. If no community school accepts the offer, the district may keep the property or otherwise dispose of it.

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

Resale of property by community school

(R.C. 3314.051)

The bill retains a provision regarding the resale of property bought by a community school from a school district after the district has not used the property for an educational purpose for one school year and has no plan to do so (the second scenario described above). If a community school acquired property under those circumstances and the school later decides to sell the property or permanently closes, the property first must be offered back to the district from which it was purchased, at a price no higher than fair market value. If the district does not accept the offer within 60 days, the property may be disposed of in another manner. Since the bill retains this provision, the school district would still have the right of first refusal if the community school ever disposes of that property.

Community school on-site evaluations

(R.C. 3314.39)

The bill requires the Department of Education to conduct an on-site visit of each community school at least once every five years to evaluate the school's operations. This evaluation is similar to the on-site visits the bill requires for school district-operated schools (see "**On-site visits to schools**" above). The visits may be done in conjunction with mandatory site evaluations conducted when schools rated in academic watch or academic emergency fail to demonstrate satisfactory improvement or to submit required information to the Department.[117]

Each on-site visit may include school tours, classroom observations, and interviews with administrators, school staff, parents, or students. The State Board of Education must adopt rules for conducting the site visits. Each community school must provide any data, documents, or other materials the Department considers necessary to conduct a thorough site visit.

During the site visit, the Department must do all of the following:

(1) Determine if the school has complied with (a) the terms of the contract with its sponsor, (b) all laws regarding the academic and fiscal accountability of community schools, and (c) all other applicable laws and administrative rules;

[117] R.C. 3302.04(D)(1), not in the bill.

(2) Corroborate the results of the annual evaluation of the school conducted by the school's sponsor; and

(3) If the school is required to develop a continuous improvement plan, review the school's progress in implementing that plan, if it has one. However, under recent amendments to the law on school sanctions for persistent low academic performance, no school is required to have a continuous improvement plan after June 30, 2008.

After the site visit, the Department must issue a written report summarizing its findings. This report must be provided to the community school's sponsor and governing authority, which may submit factual corrections to the Department. The Department must revise the report based on the factual corrections and post the final version on its web site.

A community school's sponsor may consider the report's findings in deciding whether to sanction the school by placing it in probationary status, suspending its operations, or terminating its contract.[118] If the sponsor fails to take one of these actions when the Department determines it is warranted, the Department may revoke the sponsor's approval to sponsor community schools.

V. Early Childhood Programs

Center for Early Childhood Development

(Section 265.70.10)

The bill 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. The Superintendent must also hire a Director of the Center. 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.

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[118] Under continuing law, a sponsor may take any of these actions for (1) failure to meet student performance requirements outlined in the sponsorship contract, (2) fiscal mismanagement, (3) a violation of law or the contract, or (4) other good cause (R.C. 3314.07, 3314.072, and 3314.073, none in the bill).

The Director of the Center must submit an implementation plan to the Superintendent and the Governor by August 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 bill 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 appropriation within the same fund used by the same state agency.

Early Childhood Advisory Council

(R.C. 3301.90)

The bill 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

(Sections 265.70.20)

The bill 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 bill 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.[119] 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;[120]

(2) Align its curriculum to the Department of Education's early learning content standards;

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[119] 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.

[120] 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 bill.)

(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.

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.[121] 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 bill 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

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

implement a corrective action plan approved by the Department. This plan must be signed by the chief executive officer and the executive of the governing body of the provider. The plan must include a schedule for monitoring by the Department. Monitoring may involve monthly reports, inspections, a timeline for correction of deficiencies, or technical assistance provided by the Department or another source. If an early childhood education program does not improve, the Department may withdraw all or part of the funding for the program.

If a program provider has its funding withdrawn or voluntarily waives its right to funding, the provider must transfer property, equipment, and supplies obtained with state funds to other early childhood education program providers designated by the Department. It also must return any unused funds to the Department along with any reports requested by the Department. State funds made available when a program provider is no longer funded may be used by the Department to fund new early childhood education program providers or to award expansion grants to existing providers. In each case, interested providers must apply to the Department in accordance with the Department's selection process.

The bill requires the Department 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.

Early Learning Initiative

(Section 309.40.60)

The bill re-establishes 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. An eligible child is a child who is at least three years of age but not of compulsory school age or enrolled in kindergarten, is eligible for Title IV-A services,[122]

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[122] 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,

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 must determine eligibility for Title IV-A services for children who wish to enroll in an early learning program within 15 days after the county department receives a completed application.

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

ODJFS duties

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

ODE duties

The bill directs ODE to (1) define the early learning services that will be provided to eligible children through ELI, (2) establish an application deadline for entities seeking to become early learning agencies, and (3) establish early learning program guidelines for school readiness to assess the operation of early learning programs.[123]

Joint ODJFS and ODE duties

The bill directs ODJFS and ODE to jointly:

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

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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).)

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

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

(a) Establishing co-payments for families of eligible children whose family income is more than 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;

(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; and

(f) The timeline of eligibility determination.

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

Contracting with an early learning agency

Once an entity applies to ODE to become an early learning agency, ODE must select entities that meet the criteria established in conjunction with ODJFS. When ODE selects an entity to be an early learning agency, ODJFS and ODE must enter into a contract with that entity, and ODE must designate the number of eligible children that the entity may enroll and notify ODJFS of the number. The bill also specifies that certain contracts will remain effective, regardless of the date of issuance of a state purchase order. Competitive bidding requirements do not apply to these requirements.

Terms of the contract

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

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

(2) Requirements regarding the allowable use of and accountability for 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 fails to meet ODE's early learning program guidelines for school readiness or otherwise exhibits below average performance, the early learning agency must implement a corrective action plan approved by ODE. If the agency does not implement a corrective action plan, ODE may direct ODJFS to withhold funding from the agency or request that ODJFS suspend or terminate the agency's contract.

Early learning program duties

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

(1) Meet certain teacher qualification requirements;

(2) Align curriculum to early learning content standards;

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

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

(5) Document and report child progress;

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

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

Eligible expenditures

The bill requires 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 must enter into an interagency agreement to claim eligible expenditures, which must include development of reporting guidelines for these expenditures.

VI. Merger of State Schools into Department of Education

(R.C. 124.15(L), 124.381, 3101.08, 3301.0711(L), 3301.13, 3325.01, 3325.011, 3325.02, 3325.03, 3325.04, 3325.041, 3325.07, 3325.08, 3325.10, 3325.11, 3325.12, 3325.15, 3325.16, 4117.14, and 4117.15; Sections 260.60.40 and 260.60.50)

Effective July 1, 2009, the bill merges the State School for the Blind and the State School for the Deaf into the Department of Education. The schools will continue to operate in the same manner as currently, except as described below.

Appointment of school heads

(R.C. 3301.13 and 3325.01)

Under current law, the State Board of Education, upon recommendation of the Superintendent of Public Instruction, appoints a superintendent for the School for the Blind and a superintendent for the School for the Deaf. Each superintendent serves at the pleasure of the State Board. The bill retains this process, but designates the position of "superintendent" of each school as an "assistant superintendent" within the Department of Education. As with all other assistant superintendents, the State Board sets each appointee's salary, upon recommendation of the Superintendent of Public Instruction.[124]

School employees

(R.C. 124.15(L), 3301.13, 3325.04, 3325.041, 4117.14, and 4117.15)

With the merger, the Superintendent of Public Instruction becomes the appointing authority for employees who work at the School for the Blind and the School for the Deaf. The Superintendent also determines the employees' salaries and may terminate their employment. As is currently done by the school heads with the

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[124] Under current law, the superintendent of the State School for the Deaf may solemnize marriages. Under the bill, the assistant superintendent for the school retains this authority. (R.C. 3101.08.)

Superintendent's approval, the Superintendent must annually establish an hourly rate schedule for certificated employees of the schools' instructional staffs and assign each employee an hourly rate on the schedule that is commensurate with the employee's training, experience, and other qualifications.

To carry out the merger, the Superintendent, in accordance with any applicable collective bargaining agreement and the lay-off procedures of the Civil Service Law, must identify the employees to be transferred to the Department of Education and transfer those employees by July 1, 2009, or as soon as possible thereafter. The transferred employees retain their existing classifications in the Civil Service, although the Superintendent may reassign and reclassify any employee's position and compensation in the interest of efficient administration. All employees subject to the Public Employee Collective Bargaining Law retain their collective bargaining rights following the transfer, but, as in current law, employees who work at the School for the Blind or the School for the Deaf are not permitted to strike.

Administration of funds

(R.C. 3325.10, 3325.11, 3325.12, 3325.15, and 3325.16)

Under continuing law, the State School for the Blind Student Activity and Work-Study Fund provides funds for the school's operating expenses and for scholarships for post-secondary training. Similarly, the State School for the Deaf Educational Program Expenses Fund provides funds for the school's educational programs, after-school activities, and expenses associated with student activities. Money in these funds generally comes from donations, bequests, and specified student programs, and other sources designated by the head of each school. The bill transfers control over fund expenditures from the respective school to the Department of Education. However, the bill retains current law specifying the programs for which the funds may be used and allowing the assistant superintendents for the schools to designate moneys for deposit into the funds.

The bill does not affect students' personal accounts, which may be established under current law for the students' own use. As in existing law, the assistant superintendent for each school is responsible for depositing student money into those accounts and maintaining an itemized record of the receipt and disposition of student money. But the bill directs each assistant superintendent to establish written requirements, rather than to adopt rules as currently required, for the deposit, transfer, withdrawal, and investment of the money.

Finally, the bill authorizes the Department of Education, rather than the schools themselves, to accept and administer federal funds and personal gifts or donations intended for the education of blind or deaf students.

Study of funding mechanism for schools

(Section 260.60.50)

The bill directs the Superintendent of Public Instruction to study the viability of partially or fully funding the State School for the Blind and the State School for the Deaf through the bill's evidence-based funding model for school districts. The Superintendent must consider the merit of using the model for the two schools and possible methods of incorporating the schools into the model. By June 30, 2010, the Superintendent must prepare a report of the Superintendent's findings and recommendations for a "transparent and sustainable" funding mechanism for the schools. Copies of the report must be provided to the Governor, General Assembly, and State Board of Education.

VII. Other Provisions

Office of School Resource Management

(R.C. 3301.80)

The bill establishes the Office of School Resource Management within the Department of Education to assist school districts, community schools, and STEM schools "in improving the efficiency of their educational and operational systems by using data and best practices to redirect resources to classroom practices that research has shown to contribute to student academic success." Under the bill, the Office must perform the following functions:

(1) In consultation with the Auditor of State and the Director of Budget and Management, determine the fiscal data to be included on the annual funding and expenditure accountability reports prepared for each school district, community school, and STEM school under the bill (see "**Funding and expenditure accountability reports**"). In making its determination, the Office must use data collected from the Department's work with districts to develop and deploy analytical tools that enable districts to analyze district spending patterns in order to promote more effective and efficient use of resources.[125]

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[125] See Section 269.10.60 of Am. Sub. H.B. 119 of the 127th General Assembly.

(2) Collaborate with the Auditor of State to establish the metrics for the performance audits required by the bill (see "**Spending accountability**" above) and to periodically publish best practices for improved operational efficiency, as identified in the performance audits;

(3) Ensure that school districts, community schools, and STEM schools act in a timely manner to develop plans for implementation of recommendations contained in the performance audits;

(4) Provide staff assistance to the Ohio Research-Based Funding Model Advisory Council (see "**Funding advisory council**" above); and

(5) Conduct assessments and evaluations requested by the Superintendent of Public Instruction.

Office of Urban and Rural Student Success

(R.C. 3301.81)

The bill creates the Office of Urban and Rural Student Success within the Department of Education to (1) develop system redesign and improvement strategies for urban and rural school districts, (2) provide school districts with recommendations and strategies to improve the academic success of students from economically disadvantaged areas, and (3) provide school districts with recommendations and strategies to address academic barriers, including social, emotional, physical, and psychological barriers, facing students from economically disadvantaged areas. The office must work with University System of Ohio institutions, private colleges and universities, and national and international experts in performing the duties listed above. The office must also provide other assistance and support to urban and rural school districts as directed by the Superintendent of Public Instruction.

Center for Creativity and Innovation

(R.C. 3301.82)

The bill creates the Center for Creativity and Innovation within the Department of Education to assist schools in school districts 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 of those programs.

(5) Other duties as assigned by the Superintendent of Public Instruction.

The bill 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.

Transfer of School Employees Health Care Board

(Section 265.60.90)

Under the bill, 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, are transferred to the Department of Education. The Department of Education succeeds to, and must assume, 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, must be 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 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 is neither lost nor impaired by reason of the transfer and must be 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 continue 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 must renumber the rules of the board to reflect the transfer to the Department of Education.

The Department of Administrative Services and the Superintendent must identify the employees of the board to be transferred to the Department of Education. The employees must be transferred on July 1, 2009, or as soon as possible thereafter.

The bill requires that whenever the Department of Administrative Services is referred to in relation to the board in any law, contract, or other document, the reference must 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 bill is not affected by the transfer and must be 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, must be substituted as a party.

On or after July 1, 2009, notwithstanding any provision of law to the contrary, the Director of Budget and Management must 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 can transfer cash balances between funds. The Director can 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 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 are appropriated. The Director must 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 can be transferred to the appropriate appropriation item to be used for the same purposes, as determined by the Director.

Use of volunteers by Department of Education

(Section 265.60.30)

The bill 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.

Business advisory councils

(R.C. 3313.82, 3314.03, 3315.17, and 3326.11)

Under current law, each city and exempted village school district board of education and educational service center (ESC) governing board must appoint a business advisory council. The council must advise and provide recommendations on matters such as employment skills and curriculum to develop such skills, changes in the economy and future job markets, and developing working relationships among businesses, labor organizations, and education personnel. Joint vocational school districts (JVSDs), community schools, and STEM schools currently are not required to appoint a council.

The bill requires that all school district boards (including local district and JVSD boards), ESC governing boards, community school governing authorities, and STEM school governing bodies appoint a business advisory council. The bill also expands the advisory duties of the councils. Under the bill, the councils must also advise and

provide recommendations with respect to (a) coordination with the Ohio Skills Bank[126] and University System of Ohio member institutions, and (b) the development of a response to and implementation of recommendations from performance audits of the district or school.

As under current law, the membership of the council is to be determined by the district, ESC, community school, or STEM school. However, the bill adds a requirement that the names of the council members must be reported to the Department of Education annually.

Family and community engagement teams

(R.C. 3313.821, 3314.03, and 3326.11)

The bill requires school district boards of education, governing authorities of each community school, and governing bodies of each STEM school to appoint a family and community engagement team. The board, governing authority, or governing body 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, governing authority, or governing body.

Under the bill, family and community engagement teams must work with the local county and children first council to recommend qualifications and responsibilities that should be included in the job description for school family and community engagement coordinators. Teams also must develop five-year family and community engagement plans and provide annual progress reports on the development and implementation of such plans. The board, governing authority, or governing body must submit the team's plan and annual progress reports to the county family and children first council. Finally, the team must advise and provide recommendations on matters specified by the board, governing authority, or governing body.

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[126] The Ohio Skills Bank is a joint education and career initiative of the Governor's office that, according to the University System of Ohio web site, coordinates educators, workforce professionals, and regional employers to "align education programs, short-term training opportunities and workforce services that meet both the quantitative and qualitative occupation and skill needs of their employer communities" (http://uso.edu/opportunities/ohioskillsbank/index.php, last visited 2/17/09).

Corporal punishment

(R.C. 3319.41; conforming changes in R.C. 3314.03, 3319.088, and 3326.11)

The bill prohibits all public schools (school districts, educational service centers, community schools, and STEM schools) and chartered nonpublic schools from using corporal punishment as a means of discipline. The bill retains current law that allows 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.

Background

Under current law, a public school may use corporal punishment as a means of discipline only if the school district board has adopted a resolution to permit it and does not adopt a resolution prohibiting it. Before adopting a resolution to permit corporal punishment, district boards must appoint a local discipline task force, comprised of teachers, administrators, nonlicensed school employees, school psychologists, members of the medical profession, pediatricians when available, and representatives of parents' organizations, and receive and study the report from such task force. If a school district board has prohibited corporal punishment, but then later decides to reinstate it, the board must appoint a second local discipline task force to conduct a study of effective discipline measures for that school district.

If a district allows corporal punishment, only a teacher, principal, or administrator may inflict it and only when the punishment is "reasonably necessary" to preserve discipline. Parents, guardians, and custodians may request that corporal punishment not be used on their child and alternate disciplinary measures must be devised and used for those students. (R.C. 3319.41(E).)

Administration of prescription drugs to students

(R.C. 3313.713)

Under current law, school district boards 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 practitioner who prescribed it) to students. Beginning July 1, 2011, the bill allows only registered nurses or licensed practical nurses employed by the school board to administer prescription drugs to students in school districts.

The bill retains the authority of school boards to outright prohibit *any* employee, including school nurses, from administering any prescription drugs to students, or to prohibit administration of drugs that require certain procedures, such as injection.

Student health screenings

(R.C. 3301.0714(B)(1)(p) and 3313.673)

Continuing law requires school districts and community schools to conduct health screenings of students enrolling in school for the first time in kindergarten or first grade. These screenings include checks for hearing, vision, speech and communications, and health or medical problems and for developmental disorders.[127] If a screening indicates that a student might have special learning needs, the district or school must perform further assessments to determine if the student has a disability.

The bill requires districts and community schools to report the aggregate results of student health screenings to the Department of Education through the Education Management Information System (EMIS). EMIS is an electronic database of demographic, fiscal, and academic information on school districts and buildings.

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 bill 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.[128]

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[127] A district or community school may conduct the screenings itself, contract with another entity for the service, or request parents to obtain the screenings from a provider chosen by the parent.

[128] This requirement applies to community schools and STEM schools by virtue of a reference in R.C. 3314.03 and 3326.11, respectively.

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.[129] Specified categories of employees in elementary schools must complete at least four hours of this training within two years of commencing employment and every five years thereafter. The specified categories are: nurse, teacher, counselor, school psychologist, and administrator.

The bill 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 effective date of the act, the training must be completed within two years of that date and every five years thereafter.

The bill modifies the manner in which districts and schools are to develop the in-service curriculum. Existing law stipulates that districts and schools develop the curriculum, but the bill allows districts and schools as an alternative to adapt or adopt the curriculum that the state Department of Education develops. The bill 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.

Existing law does not specify who is to appoint the surrogate. The bill modifies existing law by specifying that the surrogate be assigned by the school district or other

[129] This requirement applies to community schools and STEM schools by virtue of a reference in R.C. 3314.03 and 3326.11, respectively.

educational agency responsible for educating the child or by the court with jurisdiction over the child's custody.

Ed Choice eligibility

(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. Under current law, 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.

The bill

The bill adds a stipulation that disqualifies students who are enrolled in a nonpublic school for any portion of the school year in which an application for a scholarship is submitted. For example, a student who was already enrolled in a nonpublic school and transferred to an eligible public school midyear would not qualify for the scholarship.

State achievement assessments at voucher schools

(R.C. 3310.14 and 3313.976)

The bill requires private schools that accept students with scholarships from either the Ed Choice Program or the Cleveland Scholarship Program to administer the state achievement assessments to all of their students, including students who do not have scholarships, and to report their scores to the Department of Education.

Under current law, private schools that have received a charter from the State Board of Education (called "chartered nonpublic schools") are required to administer the state achievement tests to their students in only two circumstances:

(1) The chartered nonpublic school is a high school, in which case it must administer the Ohio Graduation Tests, which their students must pass as a condition of earning their diplomas;[130] and

(2) The chartered nonpublic school is an elementary school and accepts students with Ed Choice vouchers, in which case it must administer the state tests to the Ed Choice students.[131]

Reductions in force

(R.C. 3319.17 and 3319.172)

A district board of education or educational service center governing board may make a reasonable reduction in teachers and nonteaching employees because of (1) a return to duty of regular teachers after leaves of absence, (2) suspension of schools, (3) territorial changes affecting the district or service center, or (4) "financial reasons." Both teachers and nonteaching employees with continuing contracts retain the right to

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[130] R.C. 3313.612.

[131] R.C. 3310.14.

restoration when conditions change, and terminations and suspensions must be in the order of seniority.

The bill removes "financial reasons" from the list of statutory grounds for which a district or service center board may make reductions in force.

The bill also repeals language that specifies that the statutory provisions governing reductions in force among teaching and nonteaching employees prevail over conflicting provisions of collective bargaining agreements entered into after September 29, 2005. That language was added when "financial reasons" was included in the list of grounds for reductions in force and when other changes were made to the statute.[132] Removing the language appears to permit district and service center boards and their employees to collectively bargain on all the terms of reductions in force.

Termination of school district transportation staff

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

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

The bill repeals these statutory provisions.

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

[132] See R.C. 3319.17 as amended and R.C. 3319.172 as enacted by Am. Sub. H.B. 66 of the 126th General Assembly.

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 is the current 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.

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 bill places the SPBR within the administrative structure of the SERB but specifies that the SPBR exists as a separate entity within that structure.

Current law requires SPBR to appoint a secretary, referees, examiners, and whatever other employees are necessary in the exercise of SPBR's powers and performance of SPBR's duties and functions. SPBR currently must determine appropriate education and experience requirements for its secretary, referees, examiners, and other employees and must prescribe their duties. A referee or examiner does not need to have been admitted to the practice of law. SPBR employees are excluded from the definition of "public employee" for the purposes of the PECBL (see "**Ability of specified types of employees to collectively bargain**").

The bill 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 bill, 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 bill does not substantively change the definition of "public employee" under the PECBL regarding SPBR employees. SERB employees are excluded from that definition, and the bill 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.

Beginning on July 1, 2009, the SERB Chairperson is the appointing authority for all employees of the SPBR and the SERB. Under the bill, 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 bill 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 bill 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 bill'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 bill 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 bill 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

Current law requires SPBR to deposit all moneys received by SPBR for copies of documents, rule books, and transcriptions into the state treasury to the credit of the Transcript and Other Documents Fund, which is used to defray the cost of producing an administrative record.

The bill abolishes the Transcript and Other Documents Fund (after the Director of Budget and Management transfers any funds in that fund to the Training, Grants, and Publications Fund) and 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. SERB currently must use the Training, Grants, and Publications Fund to defray specified administrative costs, and the bill 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 current law, 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. Current law also requires SERB and the Chairperson, respectively, to appoint all employees on the basis of training, practical experience, education, and character and requires SERB to give special regard to the practical training and experience that employees have for the particular position involved.

The bill 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 bill 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 current law, to give special regard to the practical training and experience that employees have for the particular position involved.

The bill 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.

Continuing law requires 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, 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 bill 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 current law, to select and assign administrative law judges. However, it appears that SERB actually employs administrative law judges, not the Chairperson.

Under current law, 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 bill 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)

Background regarding exclusive representation

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 bill). 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 bill).

Under continuing law, SERB must conduct a representation election if, after conducting a hearing, SERB determines that a question of recognition exists. Current law requires SERB to conduct representation elections by secret ballot at times and

places selected by SERB subject to conditions specified in continuing law. Under current law, no one may vote in an election by mail or proxy.

Conducting a representation election by mail or electronically

The bill eliminates the prohibition against a person voting in an election by mail. Accordingly, the bill 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.

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)

Current 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 bill 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 bill 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.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

- Extends from June 30, 2010, to June 30, 2012, the expiration date of the existing state fees on the disposal of solid wastes that are used to fund the Environmental

Protection Agency's solid, infectious, and hazardous waste and construction and demolition debris management programs and to pay the Agency's costs associated with administering and enforcing environmental protection programs.

- Increases one of the existing solid waste disposal fees, the proceeds of which are credited to the existing Environmental Protection Fund, from $1.50 per ton to $2.50 per ton.

- Establishes a new construction and demolition debris disposal fee of 22.5¢ per cubic yard or 45¢ per ton, as applicable, the proceeds of which must be credited to the Environmental Protection Fund, and provides that the levying of the fee begins on July 1, 2009.

- On July 1, 2009, increases one of the existing construction and demolition debris disposal fees, the proceeds of which are deposited in the existing Soil and Water Conservation District Assistance Fund, from 12.5¢ per cubic yard or 25¢ per ton, as applicable, to $1.25 per cubic yard or $2.50 per ton, as applicable.

- 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 July 1, 2009, through June 30, 2012.

- 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 by mail as required in current law.

- Alters the purposes for which money in the Scrap Tire Management Fund may be used by removing the limitation on the amount 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 required by current law and the bill, 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.

- Establishes a new fee on the sale of tires of $2.30 per tire, and requires the proceeds of the fee to be credited to the Auto Emissions Test Fund created by the bill.

- 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, replaces the Motor Vehicle Inspection and Maintenance Fund with the Auto Emissions Test Fund, and provides for the uses of that Fund.

- Extends all of the following for two years:

  --The sunset of the annual emissions fees for synthetic minor facilities;

  --The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works under the Water Pollution Control Law;

  --The sunset of the annual discharge fees for holders of NPDES permits issued under the Water Pollution Control Law;

  --The sunset of license fees for public water system licenses issued under the Safe Drinking Water Law;

  --A higher cap on the total fee due for plan approval for a public water supply system under the Safe Drinking Water Law and the decrease of that cap at the end of the two years;

  --The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;

  --The levying of higher fees, and the decrease of those fees at the end of the two years, for applications and examinations for certification as operators of water supply systems or wastewater systems under the Safe Drinking Water Law or the Water Pollution Control Law, as applicable; and

  --The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Law.

- Creates the 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 current law that specifies that the Hazardous Waste Clean-up Fund consists of, in part, natural resource damages collected by the state under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

- Repeals a provision in current law under which money in the Hazardous Waste Clean-up Fund may be used only through October 15, 2005, to fund certain emergency and remedial actions and the Voluntary Action Program, thus allowing money in the Fund to be used for those purposes permanently.

- 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.

State solid waste disposal fees; construction and demolition debris disposal fees

(R.C. 3714.07, 3714.073, and 3734.57)

Current law levies three state fees on the disposal of solid wastes. The first is a $1 per-ton fee, of which one-half of the proceeds must be deposited in the state treasury to the credit of the Hazardous Waste Facility Management Fund and one-half of the proceeds must be deposited in the state treasury to the credit of the Hazardous Waste Clean-up Fund. Both funds are administered by the Environmental Protection Agency (EPA). The second fee is another $1 per-ton fee that is deposited in the state treasury to the credit of the Solid Waste Fund and used to fund the EPA's solid and infectious waste and construction and demolition debris management programs. The third fee is an additional $1.50 per-ton fee (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 bill extends from June 30, 2010, to June 30, 2012, the expiration date of the three state fees levied on the disposal of solid wastes.

Current 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 existing Soil and Water Conservation District Assistance Fund and the existing 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.

In addition to extending the expiration dates of the three existing solid waste disposal fees, the bill increases certain fees and establishes new fees as discussed below.

Funding for Environmental Protection Fund

As stated above, current 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 July 1, 2009, the bill increases the fee to $2.50 per ton. Beginning on July 1, 2009, the bill also establishes a new construction and demolition debris disposal fee of 22.5¢ per cubic yard or 45¢ per ton, as applicable, the proceeds of which must be credited to the Environmental Protection 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 bill increases that fee to $1.25 per cubic yard or $2.50 per ton, as applicable, on and after July 1, 2009. In addition, the bill establishes a new solid waste disposal fee of 25¢ per ton from July 1, 2009 through June 30, 2012, and requires the proceeds to be deposited in the Fund.

Electronic filing of fees

Current 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. Those procedures require the fees to be submitted by mail. The bill authorizes the fees to be submitted electronically.

Scrap Tire Grant Fund; Scrap Tire Management Fund; tire fees

(R.C. 1502.12, 3734.82, and 3734.901)

Current law creates the Scrap Tire Grant Fund consisting of money transferred from the existing 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 bill 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 existing 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 Environmental Protection Agency's scrap tire management program. In each fiscal year, not more than $750,000 in the Fund must be expended to administer and enforce the scrap tire management program, and $1 million must 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 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 may be expended for those purposes if the Director of Environmental Protection requests approval from the Controlling Board and follows other specified procedures. Finally, if the balance in the Scrap Tire Management Fund exceeds certain levels, the law makes 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 bill streamlines the requirements for expending money in the Scrap Tire Management Fund. Under the bill, 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 bill repeals a provision that allows the proceeds of an existing 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.

New fee on sale of tires for motor vehicle inspection and maintenance program

The bill establishes a new fee on the sale of tires of $2.30 per tire beginning July 1, 2009, and requires the proceeds of the fee to be credited to the Auto Emissions Test Fund, which is created by the bill (see "**Extension of E-Check; Auto Emissions Test Fund**," below).

Extension of E-Check; Auto Emissions Test Fund

(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 Environmental Protection Agency (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 the 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 bill establishes authorization in uncodified law for the extension of the motor vehicle inspection and maintenance program through June 30, 2012. Under the bill, 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 bill, 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 bill. The Director of Administrative Services must select a vendor through a competitive selection process in compliance with current law.

The Director of Environmental Protection must administer the motor vehicle inspection and maintenance program operated under the bill. The bill retains current law 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 bill also retains current law that precludes 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 is federally mandated. The Director must adopt rules in accordance with the Administrative Procedure Act that the Director determines are necessary to implement current law and the bill. 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 bill creates in the state treasury the Auto Emissions Test Fund, which replaces the 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 received by the Director from any fees, cash transfers, state and local grants, and other contributions that are levied or received for the purpose of funding the program. The Director 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 bill. 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 bill declares that the motor vehicle inspection and maintenance program established under the bill expires upon the termination of all contracts entered into under the bill and must not be implemented beyond the final date on which termination occurs unless otherwise federally mandated. Finally, the bill repeals a statute governing earlier programs that is no longer operative.

Extension of various air and water fees and related provisions

Synthetic minor facility emissions fees

(R.C. 3745.11(D))

Under current law, each person who owns or operates a synthetic minor facility must pay an annual fee based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead in accordance with a fee schedule. "Synthetic minor facility" means a facility for which one or more permits to install or permits to operate have been issued for the air contaminant sources at the facility that include terms and conditions that lower the facility's potential to emit air contaminants below the major source thresholds established in rules adopted under existing law. Current law requires the fee to be paid through June 30, 2010. The bill 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 current law, a person applying for a plan approval for a wastewater treatment works is required to pay a fee of $100 plus 0.65 of 1% of the estimated project cost, up to a maximum of $15,000, when submitting an application through June 30, 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 bill, the first tier fee is extended through June 30, 2012, and the second tier applies to applications submitted on or after July 1, 2012.

Current law establishes two schedules for annual discharge fees to be paid by holders of national pollutant discharge elimination system (NPDES) permits with an average daily discharge flow of 5,000 or more gallons per day. Under each of the schedules, one of which is for public dischargers and one of which is for industrial dischargers, the fees are based on the average daily discharge flow and increase as the flow increases. Under current law, the fees are due by January 30, 2008, and January 30, 2009. The bill 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, current law imposes a $7,500 surcharge to the annual discharge fee applicable to major industrial dischargers that is required to be paid by January 30, 2008, and January 30, 2009. The bill continues the surcharge and requires it to be paid annually by January 30, 2010, and January 30, 2011.

Under current law, one category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of $180. Under current law, the fee is due annually not later than January 30, 2008, and January 30, 2009. The bill 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 current law. The fee for initial licenses and license renewals is required in statute through June 30, 2010, and has to be paid annually prior to January 31, 2010. The bill 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 current law, the fee cannot exceed $20,000 through June 30, 2010, and $15,000 on and after July 1, 2010. The bill 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.

Current law establishes two schedules of fees that the Environmental Protection Agency charges for evaluating laboratories and laboratory personnel for compliance with accepted analytical techniques and procedures established under the Safe Drinking Water Law. A schedule with higher fees is applicable through June 30, 2010, and a schedule with lower fees is applicable on and after July 1, 2010. The bill 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 bill 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))

Current law establishes a $45 application fee to take the examination for certification as an operator of a water supply system or a wastewater system through November 30, 2010, and a $25 application fee on and after December 1, 2010. The bill continues the higher application fee through November 30, 2012, and applies the lower fee on and after December 1, 2012. Under existing law, upon approval from the Director that an applicant is eligible to take the examination, the applicant must pay a fee in accordance with a statutory schedule. A higher schedule is established through November 30, 2010, and a lower schedule applies on and after December 1, 2010. The bill 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))

Current law requires any person applying for a permit, other than an NPDES permit, a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law to pay a nonrefundable fee of $100 at the time the application is submitted through June 30, 2010, and a nonrefundable fee of $15 if the application is submitted on or after July 1, 2010. The bill extends the $100 fee through June 30, 2012, and applies the $15 fee on and after July 1, 2012.

Similarly, under existing law, a person applying for an 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 bill extends the $200 fee through June 30, 2012, and applies the $15 fee on and after July 1, 2012.

Natural Resources Damages Fund; Hazardous Waste Clean-up Fund; Environmental Protection Remediation Fund

(R.C. 3734.28, 3734.281, and 3734.282)

The bill 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 bill repeals a provision in current law that requires 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. Current law requires the Director of Environmental Protection to use that Fund for hazardous waste remediation activities.

Under current law, 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 bill eliminates the date restriction, thus authorizing money in the Fund to be used for those purposes permanently.

Current law 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 bill repeals the provision that requires money set aside for the cleanup of the Ashtabula River to be credited to the Fund. In addition, the bill 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 bill 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.

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.
- Permits the Director of Budget and Management to seek Controlling Board approval to transfer cash and appropriations as necessary to implement the Workgroup's recommendations.

Service Coordination Workgroup

(Section 751.20)

The bill 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 Director of 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 Mental Retardation and Developmental Disabilities, appointed by the Director of Mental Retardation and 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.

The Director of Budget and Management, on receipt of the Governor's approval of the Workgroup's report, is permitted to seek Controlling Board approval to transfer cash and appropriations as necessary to implement the Workgroup's recommendations.

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.

- Expands the annual report the Department of Health 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.

- Authorizes the Department of Health, under its program for medically handicapped children, to charge counties for diagnostic services not paid from federal funds or Medicaid.

- 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.

- Eliminates the scheduled termination (June 30, 2009) of a provision of the Certificate of Need (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.

- Establishes a new CON comparative review procedure 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.

- 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.

- 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, and $35,000 for each of the third and fourth years.

- 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 the Public Health Council must prescribe for the following items or services provided by the State Office of Vital Statistics: (1) a certified copy of a vital record or certification of birth, (2) a search by the Office 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 to transfer $4 of each minimum $12 fee to the State Office of Vital Statistics.

- 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 of 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 the greater of the following as the penalty for late payment of board of health fees: (1) 25% of the applicable fee or, (2) for each week late, 10% of applicable fee.

- Applies the penalties for late payment of fees to food service operations and retail food establishments, which currently cannot be penalized more than $50.

- 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.

- Clarifies what constitutes an "asbestos hazard abatement activity" and an "asbestos hazard abatement project" and clarifies which provisions in the Ohio Asbestos Abatement Law apply to each of those terms.

- Revises the definition of "asbestos hazard abatement activity" to: (1) lower the amount of asbestos-containing materials needed to qualify as such an activity and (2) include the operation and maintenance of friable asbestos-containing materials.

- Creates a threshold amount of friable asbestos-containing material that must be involved for an asbestos hazard abatement activity to constitute an "asbestos hazard abatement project."

- Requires the Department of Health to deny the application for an asbestos hazard abatement contractor's license to any person who has been found civilly liable under environmental protection laws.

- Removes the Department of Health's authority in an emergency, to, waive certification requirements for certain types of asbestos hazard abatement workers.

- Authorizes the Department of Health to issue orders to unlicensed or uncertified persons requiring any action necessary to meet a public health emergency involving asbestos.

- Permits the Department of Health to deny, suspend, or revoke a license or certificate under the Ohio Asbestos Abatement Law for a violation or threatened violation of certain federal asbestos regulations.

- Authorizes the Department of Health to serve by personal delivery the Director of Health's order pertaining to an asbestos proceeding, and clarifies that a licensee or certificate holder's right to demand a hearing relating to the Ohio Asbestos Abatement Law is limited to ten business days after receiving notice of the right to a hearing.

- Removes the Department of Health's authority to approve alternatives to worker protection requirements that contractors and asbestos hazard evaluation specialists must follow.

- Expressly limits to asbestos hazard abatement contractors an existing prohibition against persons contracting to perform any aspect of an asbestos hazard abatement project without a written contract containing specified provisions.

- Includes inspectors as persons who are considered "asbestos hazard evaluation specialists" and expands the description of a specialist's duties to apply to suspect materials.

- Revises the definition of "friable asbestos-containing material" to (1) change the method by which the amount of asbestos in the material is determined and (2) specifically include previously non-friable material that has become damaged.

- Expands the possible duties of an "asbestos hazard abatement project designer" to include the oversight of an asbestos hazard abatement activity.

- Removes from the definition of "asbestos hazard abatement air-monitoring technician" the exception relating to a certified industrial hygienist in training.

- 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 and the Director of Health's notice that the rescission has been granted are not subject to expungement but are not public records.

- 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.

- 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.

- Permits the Director of Health to determine whether adult care facility inspections will be announced or unannounced.

- Eliminates a requirement that the Director prescribe how a violation is to be corrected and instead requires an adult care 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 without first notifying the appropriate board of alcohol, drug addiction, and mental health services (ADAMHS board).

- 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.

- Prohibits employees of public entities and related agencies from placing an individual in an adult care facility that is at licensed capacity.

- 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 to be accredited by a national accrediting organization approved by the Centers for Medicare and Medicaid Services and the Director of Health, rather than the Joint Commission or the American Osteopathic Association.

- Requires the Department of Health to establish, maintain, and enforce minimum standards for hospitals and permits the Department to adopt reasonable rules accordingly.

- Requires the Director of Health to institute the Department's prosecutions and proceedings for violations of the minimum standards and rules and related orders issued by the Department.

- Permits the Director of Health to apply for an injunction against a person committing an alleged violation.

- Eliminates a provision regarding standards for hospitals that was enacted to comply with the Social Security Act Amendments of 1950, which pertained to financial assistance for persons who are aged, blind, or disabled.

- Increases the licensing fees for agricultural labor camps.

- Clarifies an existing requirement that fees for licensing and inspecting the following be established by rule of the Ohio Public Health Council: (1) handlers of radioactive material, (2) handlers, other than medical practitioners, of radiation-generating equipment, and (3) radiation experts.

- Clarifies an existing requirement that medical-practitioner handlers of radiation-generating equipment pay fees specified in statute, and raises those fees.

- Increases the minimum fine for a child safety restraint violation (including safety seats, booster seats, and child seat belt violations) from $25 to $50 and directs that $50 from each fine be deposited in the Child Highway Safety Fund.

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 provided to, statements made by review board members during meetings of, and all 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 bill 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)

Existing law requires the person convening the child fatality review board to prepare and submit to the Department of Health, by the first day of April each year, a report that *includes 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 bill requires the person convening the child

fatality review board to prepare and submit to the Department of Health, by the first day of April each year, a report that *summarizes* the information listed above, with respect to *all* of the child deaths that were not reviewed by the review board in the previous calendar year.

The bill also 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 that establish a procedure for child fatality review boards to follow in conducting a review of the death of a child. The bill requires those rules to also establish guidelines for reporting child fatality review data to the Department of Health 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.

Program for Medically Handicapped Children Diagnostic Services

(R.C. 3701.024)

The Department of Health's program for medically handicapped children, which is known as the Bureau for Children with Medical Handicaps, provides diagnostic and treatment services, service coordination, and related goods to eligible children. Applicants must meet medical and financial eligibility requirements established by the Public Health Council.

The Department is required to determine the amount each county is to provide annually for the program. The amount is based on a proportion of a county's total general property tax duplicate and is not to exceed 1/10 of a mill.[133] Current law

[133] A mill is 1/10 of one cent.

authorizes the Department to charge counties for treatment services not paid from federal funds or Medicaid under the program. The bill authorizes the Department to charge counties for both diagnostic and treatment services not paid from federal funds or Medicaid under the program.

Help Me Grow Advisory Council

(R.C. 3701.611)

The bill 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 federal law. Members of the Council must reasonably represent Ohio's population. The Governor may appoint one of its members to serve as chairperson of the Council, 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 is required to meet at least once in each quarter of the calendar year. The chairperson may call additional meetings if necessary. A member of the Council 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 members of the Council for actual and necessary expenses incurred in the performance of their official duties, including child care for the parent representatives.[134] The Governor also may compensate members of the Council who are not employed or who must forfeit wages from other employment when performing official Council business.

The Help Me Grow Advisory Council is required to do all of the following:

(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

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[134] 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)).

agreements that define the financial responsibility of each agency for paying for early intervention services and procedures for resolving disputes;[135]

(2) Advise and assist the Department of Health in the preparation and amendment of applications related to the Department of Health'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 bill permits the Help Me Grow Advisory 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.

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)

The Governor's Advisory Council on Physical Fitness, Wellness, and Sports prepares and recommends to the Director of Health guidelines, programs, and activities related to health and physical fitness and recommends information and educational materials to be prepared and distributed to the public that encourage wide participation in the recommended programs and activities. The bill eliminates the Advisory Council.

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, 3702.60, 3702.61, and 5155.38; 3702.511, 3702.523, 3702.527, 3702.528, 3702.529, and 3702.542 (repealed))

Current law--long-term care beds

Ohio has had a certificate of need (CON) program since the late 1970s. Under the program, a health care facility may conduct a "reviewable activity" only if a CON is

[135] The bill designates the Department of Health as the "lead agency" for the purposes of this federal law.

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. Provisions dealing with CONs for these activities are eliminated by the bill.

The CON program continues to exist for long-term care beds in nursing homes and hospitals. However, a moratorium on the granting of CONs for new long-term care beds has been in effect since at least 1993.

Despite the moratorium, the Director has been authorized to grant CONs for new long-term care beds if the increase is attributable solely to a replacement or relocation of existing beds from an existing health care facility to one in the same county and the beds are one of the following:

(1) Beds in a health care facility that are proposed to be licensed by the Director as nursing home beds;

(2) Beds in a county home or county nursing home that are proposed to be certified under Medicare as skilled nursing facility beds or under Medicaid as nursing facility beds;

(3) Beds in a hospital that are proposed to be registered with the Department of Health as long-term care beds or skilled nursing beds.

The authority to grant CONs for these beds ends June 30, 2009.

Replacement or relocation within the same county

The bill indefinitely extends the authority to approve CONs for replacement or relocation of long-term care beds within the same county.

Relocation from another county

The bill provides for establishment of a new CON comparative review 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 can approve relocation from one county to another of the following types of beds:

(1) Beds in a health care facility that are proposed to be licensed by the Director as nursing home beds;

(2) Beds in a county home or county nursing home that are proposed to be certified under Medicare as skilled nursing facility beds or under Medicaid as nursing facility beds;

(3) An increase of hospital beds 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:

(a) Nursing home beds licensed by the Director under continuing law;

(b) Beds certified as skilled nursing facility beds under Medicare or nursing facility beds under Medicaid;

(c) Beds in a county home or county nursing home that are certified under the bill as having been in operation on July 1, 1993, and are eligible for licensure as nursing home beds;[136]

(d) 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, and every four years thereafter, for each county determine, using the formula developed in rules to be adopted under the bill, and publish on the Department of Health'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 for a projected population aged 65 and older to be 95%.

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.

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[136] The bill 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 the home on July 1, 1993. The certification must be accompanied by any documentation requested by the Director. (R.C. 5155.38.)

(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 95%, the Director may approve an increase in beds equal to up to 10% of the county's bed supply.

The period for each comparative review is to be four years, with the first period beginning July 1, 2010, and ending June 30, 2014.

CON applications are to be accepted and reviewed from the first day of each period through March 31 of the following year, which will be the initial phase of the review period. 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 second 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 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 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 will have to 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 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 second 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 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 of a review period 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 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:

(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'[137] five star nursing home quality rating system, of the health care facility in which the beds will be placed.

Review procedures

Current law specifies how the CON review process is to be conducted. It 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 bill further prohibits making revisions to information that was submitted to the Director

[137] CMS is part of the United State Department of Health and Human Services, the federal agency that administers Medicare and Medicaid.

before the Director mailed the notice of completeness. However, the bill authorizes a person to supplement an application after a notice of completeness has been received by submitting clarifying information to the Director.

The bill eliminates two conditions that must be met before the Director grants a CON. They are (1) that the trustees of the health service agency of the health service area in which the project is to be located recommends that the CON be granted and (2) that the Director does not receive timely written objections to the CON application from any affected person.

Current law generally permits the Director to grant a CON for all or part of a project, but if the conditions listed above are met, the Director must approve the entire project. Under the bill, the Director may approve part, rather than the entirety, of any project.

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 these programs, 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

Currently, 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 bill requires the Director to consider for designation as a dental health resource shortage area 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 current law, an individual who is not receiving National Health Service Corps tuition or student loan repayment assistance may apply to participate in the Dentist Loan Repayment Program if the individual meets one of the following requirements:

--The applicant is a dental student enrolled in the final year of dental college;

--The applicant is a dental resident in the final year of residency;

--The applicant has been practicing dentistry for not more than three years prior to submitting an application.

Instead of the prohibition on receiving National Health Service Corps assistance, the bill 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 bill also removes the criteria that the applicant have been practicing dentistry for not more than three years and replaces it with the criteria that the applicant holds a valid Ohio dentist license.

Application

Current 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 bill 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 bill eliminates a provision under which an applicant and the applicant's spouse may 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 may refer an applicant to the Ohio Dental Association for recruitment purposes.

Parties to the contract

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. Current law allows a lending institution to be party to the contract. The bill 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 the contract, the individual is required to provide services in a shortage area for at least one year. The bill extends the length of service to two years.

Repayment amount

If the individual performs the service obligation according to the terms of the contract, current law provides that the Department of Health will repay all or part of the principal and interest of the loan up to $20,000 per year of service. The bill specifies instead that in the first and second years, repayment must not exceed $25,000 each year, and in the third and fourth years, $35,000 per year.

Failure to complete service obligation

Current law also specifies that the individual agrees to pay the Department the following as damages for failure to complete the service obligation:

--Three times the total amount the Department has agreed to repay if the failure occurs during the first two years of the service obligation;

--Three times the amount the Department is still obligated to repay if the failure occurs after the first two years of the service obligation.

The bill removes these repayment specifications and instead specifies that any repayment for failing to complete the service obligation is an amount set in rules adopted by the Director.

Assignment of duty to repay loans

The bill eliminates a provision under which the contract may include an assignment to the Department of the individual's duty to pay a government or other loan for dental education expenses.[138]

Dentist Loan Repayment Advisory Board

Current law establishes the Dentist Loan Repayment Advisory Board. The Board is required to determine the amount of loan repayments (subject to certain restrictions). The Board currently consists of the following seven 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 bill increases the number of Board members to ten, adding one member of the House, one member of the Senate, and one dental professional, and

[138] Under an assignment, the Department can pay the principal and interest of a loan directly instead of giving the dentist the money to pay those expenses.

provides an appointment schedule for these new members. The two members from each chamber of the General Assembly must be from different political parties.

Current law requires Board members to serve without compensation but they may be reimbursed for reasonable and necessary expenses incurred in discharging their duties. The bill eliminates the provision allowing members to be reimbursed for these expenses.

Dentist Loan Repayment Program report

The Dentist Loan Repayment Advisory Board must submit an annual report to the General Assembly describing the operations of the Program during the previous calendar year. The bill requires the Board to also submit the report to the Governor.

Vital statistics fees

(R.C. 3705.24)

The Public Health Council is authorized under current law to adopt rules prescribing the fees that the Director of Health may 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. The fees cannot be less than $7.[139] 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.

Except for fee money specifically designated by current law to be used to support the operations, modernization, and automation of the vital records system, current law requires that all other money generated by fees collected by the Director of Health under the vital statistics law (R.C. 3705.01 to 3705.29) be used for administration and enforcement of that law.

The bill increases to $12 (from $7) the minimum fee the Public Health Council must prescribe in rules for a certified copy of a vital record or certification of birth, a

[139] 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, the following additional fees may 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).

search by the Office of its files and records pursuant to an information request, or a copy of a record provided pursuant to an information request. The bill also requires the Director of Health to transfer $4 of each minimum $12 fee to the State Office of Vital Statistics.

Fees for board of health services

(R.C. 3709.09 and 3709.092 and 3701.344, 3717.07, 3717.23, 3717.25, 3717.43, 3717.45, 3718.06, 3729.07, 3733.04, 3733.25, and 3749.04)

Background

Current 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 uniform methodologies for use in determining the cost of the service or license. The Public Health Council may also adopt rules adding additional amounts to the fees to be used for administration expenses of the Ohio 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;[140] 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.

Additional amounts imposed by the Public Health Council are required to be collected and transmitted by the board of health to the credit of the state treasury, general operations fund, and used solely for the purposes for which the amount was collected. A board of health that establishes or charges a fee for services for which the Public Health Council must adopt rules is required to notify, 30 days before the fee is established, any entity affected by the fee.

Boards of health and other licensors (the Directors of Agriculture and Health) must follow a different procedure when establishing a fee for a retail food establishment or food service operation license. The license fee is to be based on the cost of regulating the establishment or operation as determined by the Director of Agriculture or Public Health Council. The licensor, 30 days before establishing the

[140] The household sewage treatment system installation permit requirement is suspended by H.B. 119 of the 127th G.A until July 1, 2009.

license fee, is required to hold a public hearing and notify each entity holding a license of the proposed fee. Additional amounts may be added to the license fee by the Director of Agriculture (for retail food establishments) or the Public Health Council (for food service operators). The additional amounts are 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 is issued. The additional amounts are to be used for administering and enforcing the laws governing the establishments and operations. A penalty may be imposed on the late payment of a renewal fee for a retail food establishment or food service operation license. The penalty is the lesser of $50 or 25% of the renewal fee for the license.

The bill

The bill 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 service and license renewal fees.

Establishment of a board of health's uniform system of fees

The bill 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.[141] The record of the rules is to 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 board of health's 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

For the fees for which the Public Health Council or Director of Agriculture is to adopt rules, including licenses for a retail food establishment or food service operation, the bill requires that the Public Health Council or Director of Agriculture establish fee categories and "a uniform methodology" rather than "uniform methodologies" for use in calculating the costs of specified services.[142]

In establishing a fee for the services for which the Public Health Council is to adopt rules, the bill requires the board of health to hold a public hearing and, at least 20

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[141] R.C. 731.17 to 731.21.

[142] The effect of this change on the establishment of fees is not clear.

days (rather than 30) before the hearing, give notice of the proposed fee. The bill 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 bill permits these fees to be established by emergency measures, in which case the board is not required to hold public hearings.

The bill permits licensor 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, as under current law, to hold a public hearing. Under the bill, 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 bill.

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 bill 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.[143] The bill requires the additional amounts to be transmitted to the Director of Health for deposit to the state treasury, credit of the general operations fund, to be used solely for the purposes for which the fee was collected. The transmission schedule required under the bill is:

(1) For fees and amounts received by the board of health on or after the first day of January but not later than the 31st day of March, transmit fees and amounts not later than the 15th of May;

(2) For fees and amounts received by the board of health on or after the first day of April but not later than the 30th day of June, transmit fees and amounts not later than the 15th of August;

(3) For fees and amounts received by the board of health on or after the first day of July but not later than the 30th day of September, transmit fees and amounts not later than the 15th of November;

[143] The transmission schedule for extra amounts imposed on the fees for maternity home inspections and tattooing licenses is not included in the bill.

(4) For fees and amounts received by the board of health on or after the first day of October but not later than the 31st day of December, transmit fees and amounts not later than the 15th of February of the following year.

Late fees

The bill establishes fees for late payment of fees established by a board of health. The bill also modifies existing late fees for retail food establishment or food service operation licenses. The bill provides that a fee established under the board's uniform system of fees is late if not received by the end of the last day on which it is due. The penalty is an amount equal to the greater of the following:

(1) 25% of the original fee;

(2) 10% of the fee multiplied by the number of weeks that have elapsed since the payment was due.

For a retail food establishment or food service operation license, if the licensor charges a renewal fee, the bill provides that the late fee is the greater of 25% of the renewal fee or 10% of the fee multiplied by the number of weeks that have elapsed since payment of the fee was due. Currently the maximum penalty is $50.

Asbestos hazard abatement

"Asbestos hazard abatement activity" and "asbestos hazard abatement project"

(R.C. 3710.01(B), (C), (D), (I), and (S), 3710.04, 3710.05, 3710.06, 3710.07, and 3710.08)

The bill revises what constitutes "asbestos hazard abatement activity" and "asbestos hazard abatement project" and clarifies which provisions in the Asbestos Hazard Abatement Law apply to activities and projects.

Under existing law, "asbestos hazard abatement activity" means any activity involving the removal, renovation, enclosure, repair, or encapsulation of reasonably related friable asbestos-containing materials in an amount greater than 50 linear feet or 50 square feet. It also includes any such activity involving such asbestos-containing materials in lesser amounts if, when combined with any other reasonably related activity in terms of time and location of the activity, the total amount is in an amount greater than 50 linear or 50 square feet.

The bill:

- Reduces the threshold amounts from greater than 50 linear feet or 50 square feet to be greater than three linear feet or three square feet and eliminates the exception pertaining to combined related activities.

- Expands the definition to also include any activity involving the operation and maintenance of reasonably related friable asbestos-containing materials in the threshold amounts.

Under existing law, "asbestos hazard abatement project" means one or more asbestos hazard abatement activities that are conducted by one asbestos hazard abatement contractor and that are reasonably related to each other. The bill establishes a threshold amount for an asbestos hazard abatement activity to constitute a "project." Under the bill, an "asbestos hazard abatement project" means one or more asbestos hazard abatement activities the sum total of which is in an amount greater than 50 linear feet or 50 square feet of friable asbestos-containing materials and that is conducted by one asbestos hazard abatement contractor. The bill removes the requirement that the activities conducted be reasonably related to each other but includes in "asbestos hazard abatement project" any such activity involving such friable asbestos-containing materials in an amount of 50 linear feet or 50 square feet or less if, when combined with any other reasonably related activity in terms of time or location of the activity, the total amount is in an amount greater than those threshold amounts.

Related provisions

The bill then revises various Asbestos Hazard Abatement Law provisions in light of the revised definitions.

- The bill limits "asbestos hazard abatement contractors" to business entities or public entities that engage in or intend to engage in asbestos hazard abatement projects (rather than "activities") and that employ or supervise one or more asbestos hazard abatement specialists for asbestos hazard abatement activities. The bill also applies to projects (rather than "activities") the existing exclusions to this definition for a general contractor who subcontracts to an asbestos hazard abatement contractor an asbestos hazard abatement "activity" (project under the bill), or any individual who engages in an asbestos hazard abatement "activity" (project under the bill) in the individual's own home.

- The bill revises the provisions relating to an asbestos hazard abatement contractor's license to make the license apply to asbestos hazard abatement projects (as opposed to "activities"), including the scope of the license, the prohibition against performing asbestos hazard abatement

projects without a license or certification, and training requirements (which now apply to activities, rather than "projects").

- The bill revises the requirement that an asbestos hazard abatement specialist engaging in an asbestos hazard abatement activity (rather than "project") conduct each activity in a manner that will meet standards specified in the Asbestos Hazard Abatement Law.
- The bill amends the definition of the term "clearance air sampling" to make it refer to an air sampling performed after the completion of any asbestos hazard abatement project (rather than an "activity").

Standards for licenses and certificates

(R.C. 3710.06(B) and (C))

Civil violations

Existing law requires the Department of Health to deny an application for a license or certificate under the Asbestos Hazard Abatement Law if certain disqualifying circumstances apply. One disqualifying circumstance requires the Department to deny an application for an asbestos hazard abatement contractor's license if the applicant or an officer or employee of the applicant has been convicted of a felony under any state or federal law designed to protect the environment.

The bill expands this provision to also require the Department to deny the application if the applicant or an officer or employee of the applicant has been found liable in a civil proceeding under any state or federal law designed to protect the environment.

Certificate waivers

In an emergency that results from a sudden, unexpected event that is not a planned asbestos hazard abatement project, the Department of Health may waive the requirements for a certificate[144] or an asbestos hazard abatement contractor's license.[145]

[144] Certificates are given to asbestos hazard abatement specialists, asbestos hazard evaluation specialists, asbestos hazard abatement workers, asbestos hazard abatement project designers, asbestos hazard abatement air-monitoring technicians, approved asbestos hazard training providers, other category of asbestos hazard specialists that the Public Health Council establishes by rule, and certain other employees of a contractor.

Any person who performs an asbestos hazard abatement project ("activity" under existing law) under emergency conditions is required to notify the Director of Health within three days after performing the project.

The bill limits this provision to licenses; under the bill, the Department cannot waive the requirements for a certificate under the Asbestos Hazard Abatement Law.

Emergency orders

(R.C. 3710.141)

The bill authorizes the Director of Health to issue an order requiring any action necessary to meet a public health emergency involving asbestos. Any unlicensed or uncertified person to whom an order is directed is required to comply immediately with the order. If immediate action to comply with the order and correct the emergency is not taken, the bill permits the Attorney General at the request of the Director of Health to commence a civil action for civil penalties and injunctions in accordance with the Asbestos Hazard Abatement Law.

Denying, suspending, or revoking a license or certificate

(R.C. 3710.12 and 3710.13)

Grounds for action

Subject to the Asbestos Hazard Abatement law's hearing provisions, the Department of Health may deny, suspend, or revoke any license or certificate, or renewal thereof, if the licensee or certificate holder is violating or threatening to violate any provision of any one of the following:

(1) The Asbestos Hazard Abatement Law or the rules that the Public Health Council or Director of Health adopted pursuant to that Law;

(2) The "National Emission Standard for Hazardous Air Pollutants" regulations of the United States Environmental Protection Agency (U.S. EPA) as the regulations pertain to asbestos;

(3) The regulations of the United States Occupational Safety and Health Administration (U.S. OSHA) as the regulations pertain to asbestos.

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[145] For the purposes of this provision, "emergency" includes operations necessitated by nonroutine failures of equipment or by actions of fire and emergency medical personnel pursuant to duties within their official capacities.

The bill expands this provision to also authorize the Department of Health to deny, suspend, or revoke a license or certificate, or renewal thereof, if the licensee or certificate holder is violating or threatening to violate any provisions of the regulations set forth in 40 C.F.R. Part 763 that were adopted by the U.S. EPA pursuant to Title II of the "Toxic Substances Control Act," Pub. L. No. 94-469, 90 Stat. 2003, as amended by the "Asbestos Hazard Emergency Response Act of 1986," Pub. L. No. 99-519, 100 Stat. 2970.

Service before the Department may take action on a license or certificate

Under the Asbestos Hazard Abatement Law, before the Department of Health may deny, suspend, or revoke any license or certificate, the Department must give the licensee or certificate holder against whom action is contemplated an opportunity for a hearing. The Director of Health must notify, by certified mail or personal delivery, a licensee or certificate holder that the licensee or certificate holder is entitled to a hearing if the licensee or certificate holder requests it, in writing, within ten days of the time that the licensee or certificate holder receives the notice. If the licensee or certificate holder requests such a hearing, the Director must set the hearing date no later than ten days after the Director receives the request. The bill clarifies that the ten day period referred to in these provisions refers to ten business days.

Regardless of whether or not a hearing is held, the Director must make a decision on whether the Department will take action on the license or certificate. The Director must serve the Director's order, by certified mail, on the affected licensee or certificate holder or the licensee's or certificate holder's attorney or other representative of record. The bill permits the order also to be served by personal delivery.

Alternative worker protection requirements

(R.C. 3710.08(F))

Continuing law requires an asbestos hazard abatement contractor engaging in any asbestos hazard abatement project to: (1) conduct each project in a manner that is in compliance with the requirements the Director of Environmental Protection adopts and the asbestos requirements of the United States OSHA and (2) comply with all applicable rules adopted by the Public Health Council.

If the contractor is a public entity, the contactor also must: (1) provide workers with protective clothing and equipment and ensure that the workers involved in any asbestos hazard abatement project use the items properly and (2) comply with all applicable standards of conduct and requirements adopted by the Director of Health.

An asbestos hazard abatement specialist engaging in an asbestos hazard abatement project must: (1) conduct the project in a manner that will meet statutorily

set decontamination procedures, project containment procedures, and asbestos fiber dispersal methods, (2) ensure that workers utilize, handle, remove, and dispose of the disposable clothing provided by abatement contractors in a manner that will prevent contamination or recontamination of the environment and protect the public health from the hazards of exposure to asbestos, (3) ensure that workers utilize protective clothing and equipment and comply with the applicable health and safety standards, (4) ensure that there is no smoking, eating, or drinking in the work area, and (5) comply with all applicable standards of conduct and requirements adopted by the Public Health Council and Director of Health.

Existing law permits the Department of Health, on a case-by-case basis, approve an alternative to the worker protection requirements described above for an asbestos hazard abatement project conducted by a public entity, provided that the asbestos hazard abatement contractor submits the alternative procedure to the Department in writing and demonstrates to the satisfaction of the Department that the proposed alternative procedure provides equivalent worker protection.

The bill eliminates the option for alternative worker protection requirements.

Asbestos hazard abatement project agreements

(R.C. 3710.051)

Existing law prohibits any *person* from entering into an agreement to perform any aspect of an asbestos hazard abatement project unless the agreement is written and contains at least all of the following:

(1) A requirement that all persons working on the project are licensed or certified by the Department of Health as required by the Asbestos Hazard Abatement Law chapter;

(2) A requirement that all project clearance levels and sampling be in accordance with Public Health Council rules;

(3) A requirement that all clearance air-monitoring be conducted by asbestos hazard abatement air-monitoring technicians or asbestos hazard evaluation specialists certified by the Department of Health.

The bill limits this provision to asbestos hazard abatement contractors.

Revised definitions

(R.C. 3710.01(F), (L), (M), (Q), and (T))

Existing law defines "asbestos hazard evaluation specialist" as a person responsible for the identification, detection, and assessment of asbestos-containing materials, the determination of appropriate response actions, or the preparation of asbestos management plans for the purpose of protecting the public health from the hazards associated with exposure to asbestos. This category of specialists includes management planners, health professionals, industrial hygienists, private consultants, or other individuals involved in asbestos risk identification or assessment or regulatory activities. The bill expands this definition to make it also apply to suspect asbestos-containing materials and to a person responsible for the inspection of asbestos-containing materials and suspect asbestos-containing materials.

Under existing law, "encapsulate" means to coat, bind, or resurface walls, ceilings, pipes, or other structures to prevent friable asbestos from becoming airborne. The bill clarifies that "encapsulate" refers to coating, binding, or resurfacing asbestos-containing materials on these structures.

The bill alters the definition of "friable asbestos-containing material" in two ways. Under existing law, "friable asbestos-containing material" means any material that contains more than 1% asbestos by weight and that can be crumbled, pulverized, or reduced to powder, when dry, by hand pressure. The bill replaces the weight method of determining the amount of asbestos with the methods specified in the Code of Federal Regulations. The bill also expands the definition to include previously non-friable material that has become damaged to the extent that, when dry, it may be crumbled, pulverized, or reduced to powder by hand pressure.

The bill expands the possible duties of a person who is an "asbestos hazard abatement project designer" to include the person responsible for the oversight of an asbestos hazard abatement activity.

Under continuing law, an "asbestos hazard abatement air-monitoring technician" means the person who is responsible for environmental monitoring or work area clearance air sampling. Under existing law, "asbestos hazard abatement air-monitoring technician" does not mean an industrial hygienist or industrial hygienist in training, certified by the American Board of Industrial Hygiene. The bill eliminates the exemption granted to an industrial hygienist in training.

References to Code of Federal Regulations

(R.C. 3710.08(A)(1) and (B)(1)(a))

The bill makes a technical change updating references to 29 C.F.R. 1926.58 with references to 29 C.F.R. 1926.1101. 29 C.F.R. 1926.58 was relocated to 29 C.F.R. 1926.1101 (59 Fed. Reg. 40964).

Hospice licensing fees

(R.C. 3712.03)

Current law authorizes the Ohio Public Health Council to establish a license fee and license renewal fee for hospice care programs in Ohio "not to exceed" $300. The bill increases the maximum amount to $600 and clarifies that the limitation applies to license fees and license renewal fees.

Nursing home and residential care facility licensing fees

(R.C. 3721.02)

The Director of Health is responsible for licensing nursing homes[146] and residential care facilities.[147] 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. Current law sets the fees at $170 for each 50 persons or part thereof of a home or facility's licensed capacity. The bill 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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[146] 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)).

[147] 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)

Current 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.

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.[148] The bill 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 bill 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 the state's law regarding access to public documents.

[148] 42 U.S.C. 1395i-3(g)(1)(D).

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 or adult group homes. An adult family home provides accommodations to three to five unrelated adults, at least three of whom receive supervision and personal care services. An adult group home provides accommodations to six to sixteen unrelated adults, at least three of whom receive supervision and personal care services. 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.[149]

The bill specifies that a facility is an adult family home or adult group home if supervision is provided to all residents (rather than three or more residents) and three or more residents receive personal care services.

License to operate adult care facility--application process

(R.C. 3722.02)

Current law requires that a person seeking a license to operate an adult care facility submit certain information, including proof of insurance, to the Director of Health. The bill 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 and whether 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. If the facility will admit such persons the statement must state the total number of beds anticipated to be occupied.

Restrictions on applying for license

(R.C. 3722.022)

The bill 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 has elapsed since the Director of Health issued the order revoking or refusing to renew the facility's license. A person is permanently prohibited

[149] Revised Code § 3722.01(A)(6).)

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, current law 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[150] 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 bill provides that if an adult care facility is also licensed as a nursing home, residential facility,[151] 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.

Temporary licenses

(R.C. 3722.04)

Current law permits the Director of Health to issue a temporary adult care facility license, if the applicant submits specified information and a nonrefundable license application fee. A temporary license is valid for 90 days and may be renewed for an additional 90 days. The bill eliminates temporary licenses.

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[150] "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).)

[151] "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).)

Inspection of adult care facilities

(R.C. 3722.04(C))

During each licensing period, current law requires the Director of Health to make at least one unannounced inspection of an adult care facility[152] and may make additional unannounced inspections as necessary. The bill eliminates the requirement that the Director make at least one unannounced inspection and instead requires the Director to determine whether an inspection is to be conducted as an announced or unannounced inspection. As under current law, the Director must take all reasonable actions to avoid giving notice of unannounced inspections.

Correcting violations

(R.C. 3722.06)

Current 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, prescribe the steps necessary to correct the condition, 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 bill eliminates the 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 Director must conduct an inspection to determine whether the facility has corrected the violation in accordance with the plan of correction. If the Director determines that the facility failed to correct a violation, the Director may impose a penalty.

Fines

(R.C. 3722.99)

Current law establishes fines for violating adult care facility licensing laws. The fine for operating a facility without a license is $500 for a first offense and $1,000 for each subsequent offense. The fine for violating the other licensing laws is $100 for a first offense and $500 for each subsequent offense.

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[152] 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).)

The bill 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 and similarly increases fines for violations of the other licensing laws to $500 for a first offense and to $1,000 for a subsequent offense.

The bill newly imposes a fine of $500 for a first offense and $1,000 for a subsequent offense for the following: (1) an employee of state or local government, an ADAMHS board, mental health agency, or PASSPORT[153] agency placing or recommending placement of a resident if the employee knows that the placement would cause the facility to exceed licensed capacity, (2) a person admitting to a facility a resident requiring publicly-funded mental health services without first notifying the ADAMHS board serving the ADAMHS district in which the facility is located, and (3) a home health agency or hospice care program providing skilled nursing care that is associated with a facility, unless certain conditions are met.

Civil penalties

(R.C. 3722.08)

The Director of Health is authorized to 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.

Current law requires the Director to cancel the penalty for a class II or class III violation if the facility corrects the violation within the time specified, unless the facility has been cited previously for the same violation. Under the bill, 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 bill 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, an inspector discovered the violation by an examination of facility records.

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[153] 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.

Injunctions

(R.C. 3722.09)

Current 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 bill 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)

In the absence of a request from the resident, current law permits an adult care facility to transfer or discharge a resident only 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 bill adds another reason for such a transfer or discharge--that the resident is relocated as the result of a court order concerning a facility that is operating without a license

In most cases, a facility must give a resident 30 days advance notice of a proposed transfer or discharge. Advance notice is not required if an emergency exists and the transfer or discharge is based on reason (5) above (the health, safety, or welfare of an individual residing in the home who is not receiving supervision or personal services). The bill provides instead 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.

Current law provides that a resident may request, and the Director of Health must conduct, a hearing if the transfer or discharge is based on any of the reasons listed as (1) through (6) above. The bill 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.

Authorization to enter facility

(R.C. 3722.15)

Under current 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 bill expands the authority to enter an adult care facility at any time to the following: employees of a mental health agency, when the agency is acting as an agent of an ADAMHS board other than the board with which it is under contract and employees of an ADAMHS board, when a resident of the facility is receiving mental health services provided by another board or a mental health agency under contract with another board.

Restrictions on facility placement

(R.C. 3722.16)

The bill prohibits an adult care facility from admitting a resident requiring publicly funded mental health services without first notifying the ADAMHS board serving the ADAMHS district in which the facility is located.

Employees of state and local government, ADAMHS boards, mental health agencies, and PASSPORT agencies are prohibited by the bill from placing or recommending placement of a person in a facility when the placement would cause the facility to exceed licensed capacity.

Persons authorized to provide skilled nursing care

(R.C. 3722.011(A) and 3722.16)

Adult care facilities are generally prohibited 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 bill 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)

Current 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 ombudsperson and of the Department of Health's central and district offices. The bill requires each adult care facility to post within the facility the Department's telephone number for accepting complaints.

Technical changes

The bill removes obsolete provisions and makes various technical and conforming changes.

Community alternative homes

(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)

Currently the Revised Code provides for the licensure and regulation of community alternative homes. A "community alternative home" is a residence or facility that provides accommodations, personal assistance, and supervision for three to five unrelated individuals who have acquired immunodeficiency syndrome (AIDS) or a condition related to AIDS, but does not include (1) a licensed nursing home, residential care facility, or home for the aging, (2) an adult foster care facility, (3) a foster home or other residential institution for children, or (4) a hospice care program. The bill repeals the law governing licensure and regulation of community alternative homes.

As a result of this repeal, the bill 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 resident's 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 bill))

Current law prohibits a person or political subdivision, agency, or instrumentality of Ohio from operating a hospital unless it is certified pursuant to federal law governing the Medicare Program or is accredited by the Joint Commission[154] or the American Osteopathic Association.[155] 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

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[154] The Joint Commission 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* (last visited Feb. 4, 2009), available at <http://www.jointcommission.org/AboutUs/Fact_Sheets/joint_commission_facts.htm>.

[155] 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* (last visited Feb. 4, 2009), available at <http://www.osteopathic.org/ index.cfm?PageID=mc_prskit>.

hospital that violates the prohibition. Current law specifies that a person or political subdivision, agency, or instrumentality that violates the prohibition is guilty of a misdemeanor of the first degree and is also liable for an additional penalty of $1,000 for each 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 bill modifies 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[156] and the Director of Health, rather than the Joint Commission or the American Osteopathic Association.

Minimum standards for hospitals

(R.C. 3701.71 (renumbered 3727.05), 3701.72 (renumbered 3727.051), 3701.73 (repealed), 3727.04 (renumbered 3727.053), 3727.053, and 3929.67)

Current law designates the Department of Health as responsible for establishing and maintaining minimum standards for hospitals and medical and nursing units in city and county institutions to comply with the Social Security Act Amendments of 1950. Those amendments provided for federal grants to states to fund financial-assistance programs for persons who are aged, blind, or disabled. The bill removes the reference to federal law and requires the Department of Health to establish, maintain, *and enforce* the standards. The bill maintains the Department's authority to adopt rules to establish and maintain the standards.

The bill repeals a provision of existing law that specifies that the Department's authority to establish and maintain the minimum standards and make rules does not apply to "institutions licensed or approved under other existing statutes."

Currently, the Director of Health is required to institute the Department's prosecutions and proceedings for violations of laws governing an array of health-care services and programs, the Ohio Public Health Council, hospital construction, vital statistics, and health districts. The Director may apply for injunctive or other appropriate relief in connection with this duty. The bill requires the Director of Health to institute prosecutions and proceedings, and permits the Director to apply for appropriate relief, for violations of the minimum standards as well.

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[156] The Centers for Medicare and Medicaid is part of the U.S. Department of Health and Human Services.

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 bill 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).

Handlers of radioactive material and radiation-generating equipment

(R.C. 3748.01, 3748.04, 3748.07, and 3748.13)

Current law specifies licensing and inspection fees for handlers of radioactive material and handlers of radiation-generating equipment, but provides that the fee amounts apply only until the Ohio Public Health Council adopts rules establishing fees. Current law also prohibits the rules from revising the statutory fees to be paid by handlers of radiation-generating equipment who are medical practitioners.

The Council has adopted rules establishing fees. Therefore, the bill removes statutory fee amounts to be paid by handlers of radioactive material and handlers of radiation-generating equipment, with the exception of handlers of radiation-generating equipment who are medical practitioners. Where the bill removes statutory fee amounts, it provides that handlers are to pay the appropriate fees established in Council rules.

The bill eliminates the current provision that prohibits the fees established in rules from revising the statutory fees to be paid by handlers of radiation-generating equipment who are medical practitioners, and 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 bill increases, by approximately 20%, the statutory licensure and inspection fees to be paid by these handlers.

Current 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 bill 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.

Currently, the Director of Health is required to inspect all records and operating procedures of facilities that install sources of radiation. The bill 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)

Current law specifies fee amounts for the certification and certification renewal of radiation experts, but provides that these fee amounts apply only until the Public Health Council adopts rules establishing certification and certification-renewal fees. As the Council has adopted these rules, the bill removes references to the statutory fee amounts.

Child safety restraint fines

(R.C. 4511.81; Section 812.50)

Current law governing the transportation of children in a motor vehicle provides: (1) a child who is less than four years old or who weighs less than 40 pounds, or both, generally must be secured in a federally approved child restraint system, (2) a child who is less than 8 years old and less than four feet nine inches in height, generally must be secured in a booster seat, and (3) any child who is at least 8 years of age but not older than 15 years of age, generally must be secured by a seat belt, if the child is not otherwise appropriately secured in a child restraint system or booster seat. Violation of any of these requirements is a minor misdemeanor on a first offense and the offender is subject to a mandatory fine of not less than $25 nor more than $75. Subsequent offenses are a fourth degree misdemeanor (with a maximum fine of $250).

For a first offense, the bill increases the minimum fine from $25 to $50, while retaining the maximum fine of $75. For subsequent offenses, the bill establishes a minimum fine of $100. Under the bill, not less than $50 from each fine must be deposited in the Child Highway Safety Fund, created in current law.

The Child Highway Safety Fund consists of fines from child restraint violations and is used by the Department of Health to establish and administer a child highway safety program to educate the public about child restraint systems and the importance of their proper use and also to defray the cost of designating hospitals as pediatric trauma centers. However, the authority for a pediatric trauma center to operate under a designation issued by the Director of Health, rather than being verified by the American College of Surgeons, was established for a limited period of time and expired December 31, 2004 (R.C. 3727.081, not in the bill). The bill eliminates the designation of pediatric trauma centers as one of the authorized purposes of the fund.

DEPARTMENT OF INSURANCE (INS)

- Requires that all health care plans offered in the state that provide coverage for unmarried dependent children extend coverage, under certain conditions, until the dependent child reaches at least 29 years of age and allows Ohio income tax deductions for coverage of those dependents.
- 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.
- 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.
- Makes changes to the way preexisting conditions exclusions and limitations are determined.
- 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.
- Removes the Ohio Health Reinsurance Program's authority to design Ohio Health Care plans (OHC plans) and gives that authority to the Superintendent of Insurance.

- Eliminates the requirement that an individual be eligible for unemployment compensation in order to be eligible for continued coverage under the individual's group health insurance contract after termination of employment and requires only that the individual's employment not have been terminated as a result of any gross misconduct on the part of the individual.

- Lengthens the time that the individual would be eligible for continued coverage under a group health insurance contract from six months to twelve months.

- Requires continuation of coverage to include any prescription drug services that are covered in the group contract.

- 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.

- 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 existing Claims Processing Education Fund into the Department of Insurance Operating Fund as a separate account.

- 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.

- 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.

- Creates the Health Care Coverage and Quality Council to make recommendations on expanding affordable health insurance coverage to more individuals and improving the cost and quality of Ohio's health insurance system and health care system.

- 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 all 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.

Limiting age for dependent child coverage under a health care plan or insurance policy

(R.C. 1739.05, 1751.14, 3923.24, and 3923.241)

Existing 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 existing 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 subscriber for support and maintenance. The bill expands that requirement to include public employee benefit plans and multiple employer welfare arrangements (hereafter, MEWA).

Additionally, the bill stipulates that any public employee benefit plan, MEWA, sickness and accident insurance policy, or individual or group health insuring corporation plan that specifies a limiting age for an unmarried dependent child must provide that the limiting age be no earlier than the child's 29th birthday if all of the following also are true: (1) the child nor any spouse of the child is not employed by an employer that offers the child any "health benefit plan," (2) the child is a resident of Ohio or a full-time student at an accredited public or private institution of higher education, and (3) the child is not eligible for Medicaid or Medicare.

Exceptions

(R.C. 1751.14, 3923.24, and 3923.241)

The bill specifies that its requirements do not extend to dependents of dependents. An insurer would not be required to cover a dependent child's spouse or children as dependents on the original policy, plan, contract, or agreement of the parent or guardian of the dependent child. Additionally, the bill's requirements would not apply to specified supplemental health care services or specialty health care services.

Employer-sponsored group insurance

(R.C. 1751.14(E), 3923.24(F), and 3923.241(E))

The bill requires health insuring corporations, sickness and accident insurers, MEWAs, and public employee benefit plans that offer employer-sponsored policies, contracts, agreements, or plans to separately identify any additional costs for coverage of dependent children who are not incapable of self-sustaining employment by reason of mental or physical disability or primarily dependent on the subscriber but who are at least 19 years of age or older or 25 years of age or older and a full-time student. The bill then specifies that nothing in the bill should be construed to require an employer to offer coverage to the dependents of any employee.

Deduction for coverage for older children

(R.C. 5747.01(A)(11))

Current 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.[157] 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 currently applies the same definition. (The qualification criteria for dependents is described below.) If a child is covered by an employer-paid plan but does not qualify as a dependent under federal income tax law, the value of the policy to the extent of that coverage is not excluded from taxable income; the coverage of the nondependent is imputed to the taxpayer as taxable income.

Current 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

[157] Internal Revenue Code section 106, 26 U.S.C. 106.

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.[158]

The bill 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 bill also allows taxpayers to claim the medical care insurance deduction 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 bill exempts its provisions 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 precluded state regulation of benefits offered by private self-insured, employee benefit plans.

[158] Coverage offered by a former employer--e.g., through a retirement plan--is treated as employer-subsidized coverage.

Definition of "health benefit plan"

(R.C. 1751.14(F), 3923.24(G), and 3923.241(F))

This bill affects the limiting age only if the child or spouse of the child is not employed by an employer that offers the child "any health benefit plan." 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 bill, the bill 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.

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)

When the Superintendent of Insurance receives an application for a health insuring corporation certificate of authority, under current law, the Superintendent must give copies of applications and accompanying documents to the Director of Health. Within 90 days of receiving the application and accompanying documents, the Director of Health must review the applications and accompanying documents and certify to the Superintendent whether or not the health insuring corporation has done 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 finds that the health insuring corporation does not meet these five requirements, the Director must give the health insuring corporation the opportunity for a hearing. A health insuring corporation cannot receive a certificate of authority from the Superintendent if the Director does not certify that the health insuring corporation has met these five requirements.

Current law also requires 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 is amended or a health insuring corporation makes a request to expand its approved service area. The Director also must make an examination of health insuring corporations as often as the Director considers it necessary, but not less than every three years to determine whether the health insuring corporation still meets the above five requirements.

The bill 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 bill, the Superintendent must complete that review and the application review currently under the Superintendent's authority within the Superintendent's current time limit of 135 days.

Under current law, a health insuring corporation must make copies of its complaints and responses available to the Director and the Superintendent. A health insuring corporation also must file annual reports and annual audit reports with both

the Director and the Superintendent. Under the bill, a health insuring corporation would not need to make any records available to the Director or file any reports with the Director. Additionally, the bill 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.

Mandatory open enrollment period for health insurance coverage

(R.C. 1751.15, 3923.58, and 3923.581)

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. 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. Health insuring corporations and insurers are required also to accept non-federally eligible individuals for open enrollment coverage.

Maximum number of required enrollees

Continuing law limits the number of people that carriers must accept during open enrollment. With regard to federally eligible individuals, current law caps 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 are only required to accept non-federally eligible individuals for open enrollment to the extent the number of such individuals does not exceed ½% of the insurer's total number of insured individuals. For health insuring corporations, current law caps the number of non-federally eligible individuals that must be accepted at 1% of the health insuring corporation's total number of subscribers.

The bill increases the cap in all instances to 4½%. For insurers, the 4½% maximum can be reached by combining the number of federally eligible individuals and non-federally eligible individuals accepted by the insurer for open enrollment (under current law, there is one cap for federally eligible individuals and a separate cap for non-federally eligible individuals; this distinction remains under continuing law for health insuring corporations, which are required by the bill to accept federally eligible

individuals up to 4½% and non-federally eligible individuals up to 4½% of the health insuring corporation's total number of subscribers). The bill also adds language to clarify, for insurers accepting non-federally eligible individuals and any carrier accepting federally eligible individuals, that the cap is 4½% of the carrier's total number of insured individuals and non-employer group insureds.

Rates for open enrollment coverage

In addition to limiting the number of people who must be accepted during open enrollment, continuing law limits the premiums that can be charged for open enrollment coverage. Current law states that carriers accepting federally eligible individuals for open enrollment coverage cannot charge those individuals more than two times the midpoint rate charged other individuals for similar coverage. "Midpoint rate" is defined in current 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 are prohibited under current law from charging more than two and one-half times the highest rate charged any other individual for similar coverage. There is no similar prohibition for health insuring corporations under current law, meaning that health insuring corporations can charge higher premium rates.

The bill lowers the premium rates that can be charged by insurers and carriers and limits the rates that can be charged by health insuring corporations. Under the bill, the premium rates for all open enrollment coverage are limited to one and one-half times the base rate. "Base rate" is defined in the bill as the lowest premium rate charged for similar coverage. This definition replaces "midpoint rate."

Delay in open enrollment coverage

Under current law, an insurer does not have to make open enrollment benefits available to non-federally eligible individuals for the first 90 days after enrollment. The bill 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 bill continues to allow the 90-day delay.

Commissions for open enrollment contracts

Current law requires 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 bill removes the mandatory character

of those commissions and, instead, makes them optional. Health insuring corporations, insurers, and MEWAs issuing health insurance contracts through open enrollment to federally eligible individuals also are permitted under the bill to pay those commissions.

Preexisting conditions provisions in sickness and accident polices

(R.C. 3923.57 and 3923.58)

Continuing law allows insurers to establish pre-existing conditions provisions that exclude or limit coverage for a period of up to 12 months following the effective date of coverage under open enrollment policies for non-federally eligible individuals and all other sickness and accident policies. For sickness and accident policies, current law requires insurers to credit insured individuals with any time that the insured person was covered under a previous policy, contract, or plan if the previous coverage was continuous to a date not more than 30 days prior to the effective date of the new coverage. No similar provision exists in current law for open enrollment policies. The bill extends the time during which an insured person can be uninsured but still given credit for previous coverage, from 30 days to 63 days, and requires that insured persons accepted through open enrollment be given the same credit for previous insurance coverage.

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, current law 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" is not a defined term under current law.

The bill reduces the amount that can be charged, prohibiting health insuring corporations and insurers from charging more than one and one-half times the base rate charged any other individual for similar coverage. "Base rate" is defined in the bill as the lowest premium rate for the same or similar coverage. Additionally, the bill prohibits insurers and health insuring corporations from using health status as a basis for refusing to renew a converted contract.

Ohio health care plans

(R.C. 3924.01, 3924.09, and 3924.10)

Continuing law provides for Ohio health care plans (OHC plans), which are basic, standard, or carrier reimbursement plans for small employers and individuals. Under current law, the Ohio Health Reinsurance Program is given responsibility for designing OHC plans that are offered by carriers and eligible for reinsurance under the Reinsurance Program. The bill shifts this responsibility to the Superintendent of Insurance, stripping the Reinsurance Program of its authority to design the OHC plans and giving it authority, instead, to make recommendations to the Superintendent regarding the design of the OHC plans. The bill allows the Superintendent to consider the Reinsurance Program's recommendations in addition to those of the Ohio Health Care Coverage and Quality Council, an entity that is not yet in existence under continuing law, nor is it created in this bill.

Continuation of group health insurance coverage

(R.C. 1751.53 and 3923.38)

Current law requires group health insurance contracts offered by health insuring corporations and sickness and accident insurers to include a provision that allows eligible employees and their dependents to continue receiving coverage under the group contract at the employee's expense for six months after the employee's employment is terminated. The bill lengthens the time that the employee would be eligible for continued coverage from six months to twelve months.

Under current law an "eligible employee" is an employee that meets all of the following requirements:

(1) The employee has been continuously covered under a group contract during the entire three-month period preceding the termination of the employee's employment.

(2) The employee is entitled, at the time of the termination of this employment, to unemployment compensation benefits.

(3) The employee is not, and does not become, covered by or eligible for coverage by Medicare.

(4) The employee is not, and does not become, covered by or eligible for any other group coverage under which the employee was not covered immediately prior to the termination of employment.

The bill 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 as a result of any gross misconduct on the part of the individual.

Current law also specifies that the continuation of coverage is not required to include any supplemental health care services benefits or any specialty health care services benefits provided by a group health insuring corporation contract or dental, vision care, prescription drug benefits, or any other benefits provided under the policy in addition to its hospital, surgical, or major medical benefits provided by a group sickness and accident insurance policy. The bill exempts prescription drug benefits from that list and, in effect, requires health insuring corporations and sickness and accident insurers to include in the continued coverage any prescription drug services that were covered in the group contract prior to termination of the employee's employment.

Independent, external reviews of health care service denials

(R.C. 1751.831, 1751.84, 3923.66, 3923.67, 3923.68, 3923.75, 3923.76, and 3923.77)

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 of a denial of a health care service by a health insuring corporation, sickness and accident insurer (insurer), or public employee benefit plan (plan) on the basis that the service is not a covered service under the insurance contract, policy, or plan. 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 current law, when a determination is made, or the Superintendent concludes that a determination cannot be made because it requires resolution of a medical issue, the Superintendent must notify the insured person and the insuring entity of that decision. The bill 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 current law requires health insuring corporations to either cover the service or afford the enrollee an opportunity for an external review. The bill removes the latter option and simply requires that the health insuring corporation cover the service.

If the Superintendent cannot make a determination because doing so requires the resolution of a medical issue, current law requires the health insuring corporation, insurer, or plan to conduct an external review upon the insured person's request. A health insuring corporation can deny an enrollee's request for external review under current law if the request is 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 is made during the health insuring corporation's internal review, which occurs before the Superintendent's review). An insurer or plan can deny an insured's request for external review if the request is not made within 60 days after the insured received notice of the Superintendent's decision, as discussed above.

The bill requires the health insuring corporation, insurer, or plan to initiate an independent, external review automatically, without a request from the insured, 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 bill eliminates all provisions that give health insuring corporations, insurers, and plans the authority to deny external review requests that are not made within a certain time period.

For insurers and plans, the only authority that the bill eliminates is the authority to deny external review requests that result from the Superintendent not being able to make a determination as discussed above. For health insuring corporations, however, the bill eliminates the authority to deny any request for external review on the basis of time. Under continuing law, a health insuring corporation must afford an enrollee an opportunity for an external review in more situations than what is discussed above (i.e. when a health care service has been denied on the basis that it is not a covered service and the Superintendent cannot make a determination because such a determination requires the resolution of a medical issue). The provision in current law that permits a health insuring corporation to deny a request for external review made outside of 60 days applies to all requests for external review, not just those resulting from the Superintendent not being able to make a determination as discussed above. The bill removes the health insuring corporation's authority to deny any request for external

review of an adverse determination on the basis that it was untimely (i.e. not within 60 days of the health insuring corporation's initial decision following an internal review).

Insurance prompt payment fines--disposition

(R.C. 3901.3812)

Under current 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 bill 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.

Health insurance premium rate filing

(R.C. 3923.021 and 3924.06)

Under current 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 bill.)

Similarly, prior to delivering or issuing for delivery a group policy,[159] a health insuring corporation must file with the Superintendent the contractual periodic

[159] The 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 bill).

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 bill.)

The bill 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 current 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 bill 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.

Administrative expenses incurred by sickness and accident insurers

(R.C. 3923.022)

Current 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 bill, the percentage of aggregate administrative expenses would be based upon the premiums "earned" rather than "received."

Current law defines "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 bill additionally includes in the definition of administrative expenses for the purposes of the current 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 current law, each insurer must submit to the Superintendent of Insurance an annual statement of the insurer's aggregate administrative expenses. However, the bill 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; and

(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. Under the bill, "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 current law the Superintendent may suspend the license of an insurer if the insurer fails to meet the limits on aggregate administrative expenses. The bill also allows the Superintendent to suspend the license of an insurer if the insurer fails to submit the required annual statement.

Health Care Coverage and Quality Council

(R.C. 3923.90 and 3923.91)

The bill 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 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 the Office of Healthy Ohio in the Department 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 Senate President 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 individuals authorized to practice medicine and surgery or osteopathic medicine and surgery;

(e) Two representatives of sickness and accident insurers or health insuring corporations;

(f) Two representatives of organized labor;

(g) One representative of a nonprofit organization experienced in health care data collection and analysis;

(h) One individual with expertise in health information technology and exchange;

(i) One representative of a state retirement system;[160]

(j) One public health professional;

(k) One other member.

Appointments to the Council must be made not later than 30 days after the bill's effective date. The initial legislative members are to be appointed for terms ending three years from the date of appointment.[161] Of the initial members appointed by the

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[160] 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).

[161] Legislative members cease to be Council members on ceasing to be members of the General Assembly.

Governor, five are to serve terms ending December 31, 2010, six ending December 31, 2011, and six ending December 31, 2012. Thereafter, all appointed members are to serve terms of three years.

The Superintendent of Insurance or the Superintendent's designee is to serve as chairperson of the Council. Members are to serve without compensation, but are to be reimbursed for mileage and actual and necessary expenses incurred in the performance of official duties. The Superintendent is authorized by the bill to provide staff and other administrative support for the Council to carry out its duties.

Duties and annual report

The Council is required 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, including strategies such as the use of best practices regarding health care financing, delivery of health care services, and health promotion, and promote the widespread adoption of those practices;

(2) Monitor and evaluate implementation of strategies to improve access to health insurance coverage and transform the Ohio's health care system into a high quality, cost-effective, and high performing system and identify barriers to implementing those strategies and methods to overcome the barriers;

(3) Catalog existing health care data reporting efforts and make recommendations to improve data reporting;

(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 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, with assistance to be based on the availability of funds and individual affordability standards;

(8) Recommend strategies to implement health information technology to support improved access, cost, and quality in Ohio's health care system;

(9) Develop programs to assist employers in adopting cafeteria plans;[162]

(10) Perform any other duties specified in rules adopted by the Superintendent.

The bill 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.).

On or before the 31st day of December of each year, the Council is required 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.

Exemption from sunset requirements

Current law provides that a board or commission will cease to exist after four years unless legislation is enacted extending its existence. The bill 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

Current law specifies that the rates for the basic property insurance offered under the Fair Plan cannot exceed those filed with the Superintendent of Insurance by the major rating organization in Ohio. For homeowners insurance rates, the Association can file deviations from the rating organization's rates, but those deviations are subject

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[162] A "cafeteria plan" is a type of employee benefit plan under which participants have a portion of their salary withheld on a pre-tax basis to cover the cost of certain expenses such as health care. (Internal Revenue Service, *FAQ's for Government Entities Regarding Cafeteria Plans* (last visited February 5, 2009), available at <http://www.irs.gov/govt/fslg/article/0,,id=112720,00.html#1>.)

to the Superintendent's approval. The bill 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 current law, the binder takes effect 15 days following the date of application.

The bill 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 bill 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.

Employer-sponsored health insurance coverage

(R.C. 4113.11)

The bill requires all 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). The bill 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 bill 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 bill, 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. However, 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 bill 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 bill 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."

DEPARTMENT OF JOB AND FAMILY SERVICES (JFS)

I. General

- Permits federal grant funds that are obligated by the 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 in the state treasury 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 following a final closeout of a federal grant regarding a program ODJFS administers or a reconciliation of all final transactions with the federal government regarding federal funds for a program ODJFS administers.

- Provides for money in the ODJFS General Services Administration and Operating Fund to be used for ODJFS's administrative expenses.

- Ends 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.

II. Child Welfare and Adoption

- 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.

III. 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.

- 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.

IV. Temporary Assistance for Needy Families (TANF)

- Ends a prohibition against an assistance group's participation in the Prevention, Retention, and Contingency program until a member repays the cost of fraudulent assistance that a county director of job and family services determines the assistance group received.

- Provides that the prohibition applies only to fraudulent cash assistance received under the Ohio Works First (OWF) program, rather than any fraudulent assistance or services received under that program.

- Provides that an individual is not to be denied aid under any Temporary Assistance for Needy Families (TANF) program, rather than just the OWF or Prevention, Retention, and Contingency programs, on the basis of having been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance.

- Reenacts prior law that provides for a sanction under the 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.

V. Medicaid

- 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.

- 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.
- Repeals law that expressly permits the ODJFS Director to establish an e-prescribing system for the Medicaid program.
- Modifies a provision of existing law specifying that a hospital not under contract with a Medicaid managed care organization must provide services to Medicaid recipients enrolled in the organization and accept from the organization, as payment in full, the amount that would have been paid under the fee-for-service reimbursement system.
- Extends the modified provision to any health care provider that is employed, owned, leased, managed, or otherwise controlled by a hospital system.
- 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.
- Increases the franchise permit fee on nursing home beds and hospitals' long-term care beds from $6.25 per day to $11 per day.
- Provides for the Home and Community-Based Services for the Aged Fund to receive 9.09% of the money generated by the nursing home/hospital franchise permit fee and for the Nursing Facility Stabilization Fund to continue to get the remainder.

- Subjects intermediate care facilities for the mentally retarded (ICFs/MR) that the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) operates to the ICF/MR franchise permit fee.

- Increases the ICF/MR franchise permit fee from $11.98 per bed per day to $14.25.

- Provides for the money generated by the ICF/MR franchise permit fee to be deposited as follows: (1) 74.98% in fiscal year 2010 and 70.67% in fiscal year 2011 and thereafter into the Mentally Retarded and Developmentally Disabled Fund, (2) 3.78% in fiscal year 2010 and 3.57% in fiscal year 2011 and thereafter into the Children with Intensive Behavioral Needs Programs Fund, and (3) 21.33% in fiscal year 2010 and 25.76% in fiscal year 2011 and thereafter into a new fund created in the state treasury called the ODMR/DD Operating and Services Fund.

- Provides for money in the ODMR/DD Operating and Services Fund to be used for expenses of the programs that ODMR/DD administers and ODMR/DD's administrative expenses.

- Removes from statute reference to specific inflation measuring systems used in determining the Medicaid rates for nursing facilities and provides instead for the ODJFS Director to specify in rules the inflation measuring systems or inflation factors to be used in those cases.

- 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.

- Adjusts the formula used to calculate nursing facilities' Medicaid reimbursement rates for fiscal year 2010 by (1) increasing the cost per case mix-unit, rate for ancillary and support costs, rate for capital costs, and rate for tax costs as calculated under the formula by 2%, then by another 2%, and then by 1%, (2) providing for the mean payment used in the calculation of the quality incentive payment to be $3.03 per Medicaid day, and (3) reducing, if the federal government requires that the nursing home franchise permit fee be reduced or eliminated, the payments as necessary to reflect the loss of revenue and federal financial participation generated by the fee.

- Adjusts the formula used to calculate nursing facilities' Medicaid reimbursement rates for fiscal year 2011 by (1) increasing the cost per case mix-unit, rate for

ancillary and support costs, rate for capital costs, and rate for tax costs as calculated under the formula by 2%, then by another 2%, and then by 1%, (2) providing for the mean payment used in the calculation of the quality incentive payment to be $3.03 per Medicaid day, and (3) reducing, if the federal government requires that the nursing home franchise permit fee be reduced or eliminated, the payments as necessary to reflect the loss of revenue and federal financial participation generated by the fee.

- Provides for qualifying nursing facilities to receive quarterly capital compensation payments during fiscal year 2010.

- Provides that nursing facilities that qualify for the payments are (1) certain nursing facilities that are new as of fiscal year 2006, 2007, or 2008, (2) certain nursing facilities that completed a capital project before December 31, 2008, (3) certain nursing facilities that completed an activity for which a certificate of need is not needed before June 30, 2008, and (4) certain nursing facilities that completed a renovation before December 31, 2008.

- Creates formulas to be used to determine the amount of the capital compensation payments.

- Terminates all nursing facilities' eligibility for the capital compensation payments at the earlier of July 1, 2010, or the date the total amount of the payments equals $40 million.

- Removes from statute reference to specific inflation measuring systems used in determining the Medicaid rates for ICFs/MR and provides instead for the ODJFS Director to specify in rules the inflation measuring systems or inflation factors to be used in those cases.

- 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.

- Removes from statute a requirement that the difference between the actual and estimated inflation rate used in determining the Medicaid rates for an ICF/MR for a fiscal year be added to or subtracted from the inflation rate estimated for the following fiscal year.

- Adjusts the formula used to calculate ICFs/MR's Medicaid reimbursement rates for fiscal year 2010 by (1) limiting an ICF/MR's rate to not more than 108% of its fiscal year 2009 rate, (2) requiring ODJFS to reduce the fiscal year 2010 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 July 1, 2009, after application of the 108% limit, exceeds $277.25, (3) prohibiting, for the remainder of fiscal year 2010, further adjustments otherwise authorized by law governing Medicaid payments to ICFs/MR, and (4) 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) limiting an ICF/MR's rate to not more than 107% of its fiscal year 2010 rate, (2) 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, after application of the 107% limit, exceeds $277.25, (3) prohibiting, for the remainder of fiscal year 2011, further adjustments otherwise authorized by law governing Medicaid payments to ICFs/MR, and (4) 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.

- Establishes the Exiting Operator Fund and provides for money withheld from a nursing facility or ICF/MR undergoing a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation for purposes of collecting debts the facility owes the Medicaid program to be temporarily deposited into the fund.

- 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 the state receives under the Money Follows the Person Demonstration Program.

- 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 in the state treasury 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 ODJFS to take all necessary actions to cease implementation of the hospital assessment 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.

VI. Hospital Care Assurance Program

- Delays the termination of the Hospital Care Assurance Program to October 16, 2011.

VII. 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.

VIII. Unemployment Compensation

- Removes the requirement that the ODJFS Director receive approval from the Unemployment Compensation Advisory Council in order to use the Unemployment Compensation Special Administrative Fund (UCSAF) for the reasons specified under continuing law.

- Allows the ODJFS Director, rather than the Council as under current law, to determine whether amounts in the UCSAF are considered to be excessive in order to have the excessive amounts transferred into the Unemployment Compensation Fund.

- Removes the requirement that UCSAF funds be continuously available to the Council for expenditures consistent with the Unemployment Compensation Law, but retains the requirement that those funds be continuously available to the ODJFS Director.

I. General

Expenditure of federal grant funds obligated by the Department of Job and Family Services (ODJFS) for financial allocations to county family services agencies and local workforce investment boards

(R.C. 131.33)

Existing 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 bill creates an exception to this requirement for federal grant funds obligated by the Department of Job and Family Services (ODJFS) for financial allocations to county family services agencies and local workforce investment boards. Under the bill, 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 bill permits the ODJFS Director to adopt rules as necessary to implement this provision of the bill. 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 bill creates in the state treasury the ODJFS General Services Administration and Operating Fund. The ODJFS Director is required by the bill to submit a deposit modification and payment detail report to the Treasurer of State when there is a final closeout of a federal grant regarding a program ODJFS administers or a reconciliation of all final transactions with the federal government regarding federal funds for a program ODJFS administers. On receipt of the report, the State Treasurer must transfer the money in the Refunds and Audit Settlements Fund[163] 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 ODJFS's administrative expenses, including the costs of state hearings, required audit adjustments, and other related expenses.

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[163] The Refunds and Audit Settlements Fund is a state fund used as a holding account for checks whose 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 law authorizing 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 TANF program. H.B. 408 was enacted after the federal welfare legislation and updated Ohio's public assistance laws to reflect the federal changes.

Current law requires 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. After the training is developed, ODJFS must collaborate with the CDJFSs on providing the training. The bill eliminates these requirements.

II. Child Welfare and Adoption

Alternative Response pilot program

(Section 309.40.40)

The bill 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.

At any point during or at the conclusion of the 18-month pilot program, ODJFS may expand the Alternative Response approach statewide through a schedule determined by ODJFS. 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. ODJFS must seek a statutory framework for the Alternative Response approach if the independent evaluation of the pilot program recommends statewide implementation of an Alternative Response approach to child protection.

III. Child Support Enforcement

Office of Child Support requests for medical insurance information

(R.C. 3119.371)

The bill 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.

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 7 business days, after the withholding or deduction. The bill 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 existing 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 bill 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 bill 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 bill 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.

IV. 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 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 Prevention, Retention, and Contingency 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.

Fraudulent assistance

(R.C. 5101.83)

Current law provides that if a county director of job and family services determines that an assistance group participating in the OWF program or the Prevention, Retention, and Contingency program has received fraudulent assistance, the assistance group is ineligible to participate in the program until a member of the assistance group repays the cost of the fraudulent assistance. "Fraudulent assistance" is defined as assistance and services, including cash assistance, provided under the OWF program, or benefits and services provided under the Prevention, Retention, and Contingency program, to or on behalf of an assistance group that is provided as a result of fraud by a member of the assistance group, including an intentional violation of the program's requirements. Assistance or services provided as a result of an error that is the fault of a CDJFS or ODJFS does not count as fraudulent assistance.

The bill removes the Prevention, Retention, and Contingency program from the state law regarding fraudulent assistance, meaning that an assistance group participating in that program is no longer to be ineligible to participate in the program if a county director determines that the assistance group has received fraudulent assistance. The bill also provides that the provisions regarding fraudulent assistance apply only to fraudulent cash assistance received under OWF, rather than any

fraudulent assistance or services received under that program. This means that a member of the assistance group would be required to repay the cost of the cash assistance only, rather than the cost of all assistance and services provided under the OWF program, before the assistance group could resume participation in the program.

Felony drug conviction not a bar to TANF program

(R.C. 5101.84)

Federal law provides that an individual convicted after August 22, 1996, of any state or federal felony offense that has as an element the possession, use, or distribution of a controlled substance is ineligible for assistance under any TANF program and food stamp benefits. However, a state may opt out of this, thereby exempting individuals from the disqualification, through enactment of a law. Ohio chose to opt out by enacting Am. Sub. S.B. 52 of the 122nd General Assembly.

The law that opts Ohio out of the general disqualification for felony drug convictions provides in part that an individual otherwise ineligible for aid under the OWF or Prevention, Retention, and Contingency program by reason of the federal disqualification is eligible for the aid if the individual meets all other eligibility requirements. The bill revises state law establishing the opt out by including all of Ohio's TANF programs.[164] Therefore, a felony drug conviction is not to be a bar to aid under any of the state's TANF programs.

Ohio Works First (OWF) sanctions

(R.C. 5107.05, 5107.16, 5107.17, and 5111.01)

Continuing law modified by the bill 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 must deny or terminate the assistance group's eligibility to participate in OWF for one payment month. A second failure or refusal results in ineligibility for three payment months. A third or subsequent failure or

[164] In addition to the OWF and Prevention, Retention, and Contingency programs, Ohio law expressly establishes two other TANF programs: the Kinship Permanency Incentive Program and the Title IV-A Demonstration Program. State law also recognizes any other program established by the General Assembly, such as through an earmark, or an executive order issued by the Governor that is administered or supervised by ODJFS as being a TANF program (R.C. 5101.80).

refusal results in ineligibility for six payment months. The bill modifies the duration of the sanctions by providing that they are not to end before the failure or refusal ceases. This means that 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 bill restores prior law governing the duration of the sanctions.

The bill 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.

Current law provides that 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 bill 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.

V. 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. Federal Medicaid law requires states participating in Medicaid to cover certain groups of persons and types of benefits and gives states options for covering other groups of persons and types of benefits. 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.

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.[165] Consistent with federal law reflecting this intent, the U.S. Secretary of Health and Human Services has promulgated regulations[166] 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 (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

(R.C. 5101.573)

Federal law

To enhance states' ability to identify and obtain payments from liable third parties, the Deficit Reduction Act of 2005[167] made several changes to the third party liability provisions of federal Medicaid law.[168] 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

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[165] U.S. Government Accountability Office. *Medicaid Third Party Liability: Federal Guidance Needed to Help States Address Continuing Problems* (Sept. 2006) (last visited Jan. 26, 2009), available at <http://www.gao.gov/new.items/d06862.pdf>, at p. 1.

[166] 42 C.F.R. Part 433, subpart D (2005).

[167] Pub. L. 109-171.

[168] 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>.

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.[169]

Current Ohio law

Consistent with the Deficit Reduction Act's requirements, current 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.[170]

The bill--prior authorization

In addition to the current requirements, the bill (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 ODJFS solely on the basis of the Medicaid recipient's failure to obtain prior authorization for the medical item or service.

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 bill amends two of the existing exceptions and adds a new exception.

Exception related to conviction of offense

One existing exception is that ODJFS is not required to issue an order pursuant to an adjudication when denying, terminating, or not renewing a Medicaid provider

[169] Discussed in letter from Dennis G. Smith, *supra*.

[170] R.C. 5101.573.

agreement because the provider has been convicted of an offense for which continuing law requires a Medicaid provider agreement to be suspended. For example, ODJFS is to suspend the Medicaid provider agreement of a noninstitutional Medicaid provider[171] that is not an independent provider[172] when the provider is indicted for committing an act that would be a felony or misdemeanor under the laws of this state and the act relates to or results from (1) furnishing or billing for medical care, services, or supplies under the Medicaid program or (2) participating in the performance of management or administrative services relating to furnishing medical care, services, or supplies under the Medicaid program.[173] The suspension is to continue in effect until the proceedings in the criminal case are completed through conviction, dismissal of the indictment, plea, or finding of not guilty and, if ODJFS commences a process to terminate the suspended provider agreement, the suspension is to continue in effect until the termination process is concluded.[174]

Current law provides that the exception applies when a provider is convicted of such an offense. But, the law that specifies when a Medicaid provider agreement must be suspended due to such an offense applies not just 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 bill 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 existing 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

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[171] A noninstitutional Medicaid provider is any Medicaid provider other than a hospital, nursing facility, or intermediate care facility for the mentally retarded.

[172] An independent provider is a person who submits an application for a Medicaid provider agreement or has a Medicaid provider agreement as an independent provider in an ODJFS-administered home and community-based services program for consumers with disabilities.

[173] ODJFS is permitted to adopt rules specifying circumstances under which ODJFS would not suspend such a Medicaid provider agreement.

[174] R.C. 5112.031.

ODJFS. The bill 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

The bill 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 situation 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 and may be sent by regular 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 current law, 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 bill 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 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.

Medicaid e-prescribing system

(R.C. 5111.083 (repealed))

Current law permits the ODJFS Director to establish an e-prescribing system for the Medicaid program under which a Medicaid provider who is a licensed health professional authorized to prescribe drugs[175] must use an electronic system to prescribe a drug for a Medicaid recipient under certain circumstances. If the e-prescribing system were to be established, a Medicaid provider would be required to use the e-prescribing system during a fiscal year if the Medicaid provider was one of the ten Medicaid providers who, during the calendar year that precedes that fiscal year, issued the most prescriptions for Medicaid recipients receiving hospital services. The ODJFS Director would be required, before the beginning of each fiscal year, to determine the ten Medicaid providers that issued the most prescriptions for Medicaid recipients receiving hospital services during the calendar year that precedes the upcoming fiscal year and notify those Medicaid providers that they must use the e-prescribing system for the upcoming fiscal year. The ODJFS Director would also be required to seek the most federal financial participation available for the development and implementation of the e-prescribing system.

Current law requires any such e-prescribing system to eliminate the need for Medicaid providers participating in the system to make prescriptions for Medicaid recipients by handwriting or telephone. The e-prescribing system, if established, also would be required to provide such Medicaid providers with an up-to-date, clinically relevant drug information database and a system of electronically monitoring Medicaid recipients' medical history, drug regimen compliance, and fraud and abuse.

The bill repeals the law regarding the e-prescribing system. Continuing law, however, requires the ODJFS Director to adopt rules establishing the amount, duration, and scope of Medicaid services, including rules that establish the conditions under which the Medicaid program covers and reimburses Medicaid services.[176] This means

[175] The following licensed health professionals are authorized to prescribe drugs: (1) dentists, (2) clinical nurse specialists, certified nurse-midwives, and certified nurse practitioners holding a certificate to prescribe, (3) optometrists licensed to practice under a therapeutic pharmaceutical agents certificate, (4) physicians and podiatrists, and (5) physician assistants who hold a certificate to prescribe. Veterinarians also have authority to prescribe drugs but they do not participate in the Medicaid program. (R.C. 4729.01(I).)

[176] R.C. 5111.02.

that the ODJFS Director may have authority to establish by rule an e-prescribing system that is not subject to the conditions included in current law.

Medicaid managed care reimbursement rate for non-contracting hospitals

(R.C. 5111.162)

Under existing law, when a Medicaid recipient enrolled in a Medicaid managed care organization is referred by the organization to a Medicaid participating hospital that is not under contract with the organization, the hospital must provide services, other than emergency services, to the Medicaid recipient and accept from the organization, as payment in full, the amount derived by using the fee-for-service reimbursement rate that otherwise applies under the Medicaid program.[177] Certain hospitals that contracted with Medicaid-participating health insuring corporations before January 1, 2006, are not subject to this payment requirement if they remain under contract with the Medicaid-participating health insuring corporation.

The bill modifies payments to a hospital not under contract with a particular Medicaid managed care organization to require the hospital to provide to the individual the service or services authorized by the organization, including inpatient and outpatient services, as long as the service or services are medically necessary and covered by Medicaid. The bill also extends the fee-for-service reimbursement provisions to a "hospital system provider,"[178] including physicians and any others that may be specified in rules adopted by the ODJFS Director.

The bill eliminates the exemption from the fee-for-service reimbursement provisions for a hospital that was under contract with at least one Medicaid managed care organization before January 1, 2006, and has retained at least one such contract. Under the bill, no exemptions from the fee-for-service reimbursement provisions will

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[177] A provider of "emergency services" is required to accept, as payment in full, the amounts that the provider could collect if the participant received Medicaid other than through enrollment in a managed care organization (R.C. 5111.163, not in the bill).

[178] The bill defines a "hospital system" as one or more hospitals owned or controlled by the same organization for the purposes of coordinating and delivering health services with a geographic area selected by the organization.

"Hospital system provider" is defined as a health care provider that is employed, owned, leased, managed, or otherwise controlled by a hospital system, including a physician, a business entity under which one or more physicians practice, a provider of ancillary health services, and any other type of provider specified in rules adopted by the ODJFS Director.

exist. The bill also eliminates a requirement that the ODJFS Director adopt rules specifying circumstances under which a Medicaid managed care organization is permitted to refer a participant to a hospital not under contract with the organization.

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 bill 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 bill, 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.

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.[179]

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[179] R.C. 3721.56.

ODJFS is required to use money in the Nursing Facility Stabilization Fund to make Medicaid payments to nursing facilities.[180]

Current law also provides for the money generated by the ICF/MR franchise permit fee to be deposited into two funds: the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund and the Children with Intensive Behavioral Needs Programs Fund. ODJFS and the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) 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. The money in the Children with Intensive Behavioral Needs Programs Fund must be used for programs the ODMR/DD Director is to establish for individuals under 21 years of age who have intensive behavioral needs.

Changes to nursing home and hospital franchise permit fee

(R.C. 3721.51 and 3721.56)

Current law sets the franchise permit fee for nursing homes and hospitals at $6.25 per bed per day. The bill increases the fee to $11 per bed per day effective July 1, 2009 (i.e., the first day of fiscal year 2010). Whereas current law provides for 16% of the money generated by the fee to be deposited into the Home and Community-Based Services for the Aged Fund and for the remainder to be deposited into the Nursing Facility Stabilization Fund, the bill provides for the former fund to receive 9.09% and the latter fund to continue to get the remainder. With the increase in the fee, the change in the percentages results with the Home and Community-Based Services for the Aged Fund receiving the first 99¢ of the franchise permit fee whereas before it received the first $1.

Changes to ICF/MR franchise permit fee

(R.C. 5112.30, 5112.31, 5112.37, 5112.371, and 5112.372)

Current law excludes ICFs/MR that ODMR/DD operates (i.e., developmental centers) from the ICF/MR franchise permit fee. The bill makes developmental centers subject to the ICF/MR franchise permit fee.

Current law sets the ICF/MR franchise permit fee at $11.98 per bed per day until July 1, 2009. ODJFS is required to adjust the ICF/MR franchise permit fee in accordance

[180] R.C. 3721.561.

with a composite inflation factor established in rules beginning July 1, 2009, and the first day of each July thereafter. The bill provides for the ICF/MR franchise permit fee to be set at $14.25 per bed per day effective July 1, 2009, and requires ODJFS to adjust the fee in accordance with the composite inflation factor beginning July 1, 2011, and the first day of each successive July.

As discussed above, current law provides for the money generated by the ICF/MR franchise permit fee to be deposited into two funds: the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund and the Children with Intensive Behavioral Needs Programs Fund. The bill creates a third fund, the ODMR/DD Operating and Services Fund, which is also to receive a portion of the money generated by the fee. As is the case with the existing two funds, the new fund is created in the state treasury. The following table shows how the money generated by the fee is to be divided among the three funds.

	Current law	FY 2010 under the bill	FY 2011 and thereafter under the bill
Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund	94.28%	74.98%	70.67%
Children with Intensive Behavioral Needs Programs Fund	5.72%	3.78%	3.57%
ODMR/DD Operating and Services Fund	N/A	21.33%	25.76%

The bill requires that money deposited into the ODMR/DD Operating and Services Fund be used for the expenses of the programs that ODMR/DD administers and ODMR/DD's administrative expenses.

Medicaid rates for nursing facilities

The formula for determining the rate nursing facilities are to be paid under the Medicaid program for providing covered services to recipients eligible for the services 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.[181] 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.[182]

Ancillary and support costs include costs for activities, social services, pharmacy consultants, habilitation supervisors, incontinence supplies, food, laundry, security, travel, dues, subscriptions, and other costs not included with direct care costs or capital costs.[183]

Tax costs are costs for real estate taxes, personal property taxes, corporate franchise taxes, and commercial activity taxes.[184]

Capital costs means a nursing facility's costs of ownership, which is the actual expense incurred for (1) depreciation and interest on capital assets costing $500 or more per item, (2) amortization and interest on land improvements and leasehold improvements, (3) amortization of financing costs, and (4) lease and rent of land, building, and equipment.[185]

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

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

[182] Nursing facilities are placed in one of three peer groups as part of the process of determining their rate for direct care costs. Which peer group a nursing facility is placed in depends on the county in which it is located. For example, the first peer group consists of nursing facilities located in Brown, Butler, Clermont, Clinton, Hamilton, or Warren county. (R.C. 5111.20 and 5111.231.)

[183] R.C. 5111.20 and 5111.24.

[184] R.C. 5111.242.

[185] R.C. 5111.20 and 5111.25.

incentive payment for fiscal year 2007, weighted by Medicaid days,[186] was set at $3 per Medicaid day.[187]

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. Current law requires ODJFS to use the health services component of the Employment Cost Index for Total Compensation, as published by the United States Bureau of Labor Statistics, in calculating the inflation adjustment for direct care costs. ODJFS must 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.

The bill removes from state law the specific inflation measuring systems to be used for these calculations. Instead, ODJFS is to use an inflation measuring system or inflation factor that the ODJFS Director must specify in rules.

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

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[186] "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.)

[187] R.C. 5111.244.

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 bill reduces the amount of time by which the information may be corrected before ODJFS may assign the reduced case-mix score.

Current law provides that ODJFS may not assign the reduced case-mix score unless the nursing facility fails to submit corrected information before the earlier of (1) the 81st day after the end of the quarter to which the information pertains or (2) the deadline for submission of corrections established by federal Medicare and Medicaid regulations. This means that the nursing facility has at most 80 days after the end of a quarter to submit the corrections. The bill reduces this to at most 45 days.

FY 2010 Medicaid reimbursement rate for nursing facilities

(Section 309.30.20)

Current 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.[188] ODJFS must also annually adjust the mean quality incentive payment starting in fiscal year 2008 by the same adjustment factors.[189]

The bill establishes adjustments to the fiscal year 2010 Medicaid rates for nursing facilities that have a valid Medicaid provider agreement on June 30, 2009, and a valid Medicaid provider agreement during fiscal year 2010. The cost per case mix-unit calculated as part of direct care costs, rate for ancillary and support costs, rate for capital costs, and rate for tax costs are to be adjusted as follows:

(1) Increase the cost and rates by 2%.

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

(3) Increase the amount calculated above by 1%.

Instead of adjusting the mean quality incentive payment by the same adjustment factors, the act provides that the mean payment for fiscal year 2010 is to be $3.03 per Medicaid day and weighted by Medicaid days.

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[188] R.C. 5111.222.

[189] R.C. 5111.244.

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 as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

The bill requires that ODJFS implement the rate adjustments in determining nursing facilities' fiscal year 2010 Medicaid rates notwithstanding anything to the contrary in the Revised Code governing nursing facilities' Medicaid rates.

The ODJFS Director is required to submit an amendment to the state Medicaid plan to the United States Secretary of Health and Human Services as necessary to implement the rate adjustments. The amendment must be submitted not later than 60 days after July 1, 2009. On receipt of the Secretary's approval of the state Medicaid plan amendment, the ODJFS Director is to implement the rate adjustments retroactive to the later of the effective date of the amendment and July 1, 2009.

FY 2011 Medicaid reimbursement rate for nursing facilities

(Section 309.30.30)

The bill establishes the same adjustments for nursing facilities' fiscal year 2011 Medicaid rates. The cost per case mix-unit calculated as part of direct care costs, rate for ancillary and support costs, rate for capital costs, and rate for tax costs for nursing facilities that have a valid Medicaid provider agreement on June 30, 2010, and a valid Medicaid provider agreement during fiscal year 2011 are to be adjusted as follows:

(1) Increase the cost and rates by 2%.

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

(3) Increase the amount calculated above by 1%.

The mean quality incentive payment for fiscal year 2011 is to be $3.03 per Medicaid day and weighted by Medicaid days.

ODJFS must reduce nursing facilities' fiscal year 2011 rate as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee if the United States Centers for Medicare and Medicaid Services requires that the franchise permit fee be reduced or eliminated.

ODJFS is to implement the rate adjustments notwithstanding anything to the contrary in the Revised Code governing nursing facilities' Medicaid rates.

The ODJFS Director is required to submit an amendment to the state Medicaid plan to the United States Secretary of Health and Human Services as necessary to implement the rate adjustments. The amendment must be submitted not later than 60 days after July 1, 2009. On receipt of the Secretary's approval of the state Medicaid plan amendment, the ODJFS Director is to implement the rate adjustments retroactive to the later of the effective date of the amendment and July 1, 2010.

FY 2010 capital compensation payments to qualifying nursing facilities

(Sections 309.30.40 and 309.30.50)

The bill provides for qualifying nursing facilities to receive quarterly capital compensation per diem payments during fiscal year 2010. However, the per diem payments are to cease before the end of fiscal year 2010 if, before that date, the total amount spent on the payments equals $40 million. (In other words, not more than a total of $40 million may be spent on the payments.) Four groups of nursing facilities are to qualify for the payments.

A nursing facility qualifies for the payments under the first group if (1) it obtained certification as a nursing facility from the Director of Health and the facility began participating in the Medicaid program during fiscal year 2006, 2007, or 2008 and (2) an application for a certificate of need for the nursing facility was filed with the Director of Health before June 15, 2005. The per diem payments for a nursing facility in the first group is to equal the difference between the capital costs portion of the nursing facility's Medicaid reimbursement rate for fiscal year 2010 and the lesser of (1) 88.65% of the nursing facility's cost of ownership as reported on a three-month projected capital cost report divided by the greater of the number of inpatient days the nursing facility is expected to have during the period covered by the projected capital cost report or the number of inpatient days the nursing facility would have during that period if the nursing facility's occupancy rate was 80% and (2) the maximum capital per diem rate in effect for fiscal year 2005 for nursing facilities.

A nursing facility qualifies for the payments under the second group if (1) the nursing facility does not qualify under the first group, (2) the nursing facility, before December 31, 2008, completed a capital project for which a certificate of need was filed with the Director of Health before June 15, 2005, and for which at least one of certain activities[190] occurred before July 1, 2005, or, if the capital project was undertaken to

[190] The activities are (1) the delivery of any materials or equipment for the capital project, (2) preparations for the physical site of the capital project, and (3) the beginning of actual work on the capital project.

comply with rules adopted by the Public Health Council regarding resident room size or occupancy, before June 30, 2007, (3) the costs of the capital project were not fully reflected in the capital costs portion of the nursing facility's Medicaid reimbursement per diem rate on June 30, 2005, and (4) the nursing facility filed a three-month projected capital cost report with the ODJFS Director not later than 90 days after the later of March 30, 2006, or the date the capital project was completed. The per diem payments for a nursing facility in the second group is to equal the difference between the capital costs portion of the nursing facility's Medicaid reimbursement per diem rate for fiscal year 2010 and the lesser of (1) 88.65% of the nursing facility's cost of ownership as reported on a three-month projected capital cost report divided by the greater of the number of inpatient days the nursing facility is expected to have during the period covered by the projected capital cost report or the number of inpatient days the nursing facility would have during that period if the nursing facility's occupancy rate was 95% and (2) the maximum capital per diem rate in effect for fiscal year 2005 for nursing facilities.

A nursing facility qualifies for the payments under the third group if the nursing facility, before June 30, 2008, completed an activity for which (1) a request was filed with the Director of Health before June 1, 2005, for a determination of whether the activity was a reviewable activity requiring a certificate of need and that the Director determined was not a reviewable activity and (2) at least one of certain activities[191] occurred before July 1, 2005, or, if the nursing facility undertook the activity to comply with rules adopted by the Public Health Council regarding resident room size or occupancy, before June 30, 2007. The per diem payments for a nursing facility in the third group is to be calculated in the same manner as for nursing facilities in the second group.

A nursing facility qualifies for the payments under the fourth group if the nursing facility, before December 31, 2008, completed a renovation (1) that the ODJFS Director approved before July 1, 2005, (2) for which at least one of certain activities[192] occurred before July 1, 2005, or, if the nursing facility undertook the renovation to comply with rules adopted by the Public Health Council regarding resident room size or occupancy, before June 30, 2007, (3) for which the costs were not fully reflected in the

[191] The activities are (1) the delivery of any materials or equipment for the capital project, (2) preparations for the physical site of the capital project, and (3) the beginning of actual work on the capital project.

[192] The activities are (1) the delivery of any materials or equipment for the capital project, (2) preparations for the physical site of the capital project, and (3) the beginning of actual work on the capital project.

capital costs portion of the nursing facility's Medicaid reimbursement per diem rate on June 30, 2005, and (4) for which the nursing facility filed a three-month projected capital cost report with the ODJFS Director not later than 90 days after the later of March 30, 2006, or the date the renovation was completed. The per diem payments for a nursing facility in the fourth group is to equal 85% of the nursing facility's capital costs for the renovation as reported on a three-month projected capital cost report divided by the greater of the number of inpatient days the nursing facility is expected to have during the period covered by the projected capital cost report or the number of inpatient days the nursing facility would have during that period if the nursing facility's occupancy rate was 95%.

The per diem payments are to be made for quarterly periods by multiplying the per diem determined for a nursing facility by the number of Medicaid days the nursing facility has for the quarter the payment is made. The payments for the last quarter that the payments are made may be reduced proportionately as necessary to avoid spending more than $40 million.[193] The payments must be made not later than September 30, 2010. A change of operator is not to cause the payments to a nursing facility to cease. Payments are only to be made to a nursing facility for the quarters of fiscal year 2010 for which the nursing facility has a valid Medicaid provider agreement.

The ODJFS Director's determinations regarding the per diem payments are not subject to appeal under the Administrative Procedure Act (R.C. Chapter 119.).

The ODJFS Director is permitted to adopt rules in accordance with the Administrative Procedure Act as necessary to implement this provision of the bill.

Medicaid rates for ICFs/MR

The formula for determining the rate ICFs/MR are to be paid under the Medicaid program for providing covered services to recipients eligible for the services 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.

[193] The bill requires the ODJFS Director to monitor, on a quarterly basis, the per diem payments made to nursing facilities to ensure that not more than a total of $40 million is spent.

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.[194]

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.[195]

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.[196]

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.[197]

Inflation adjustments used in ICF/MR rates

(R.C. 5111.23, 5111.235, 5111.241, and 5111.251)

The formulas used to determine the direct care, other protected, indirect, and capital costs for ICFs/MR include provisions regarding inflation adjustments. Current law requires ODJFS to use certain inflation measuring systems published by the United States Bureau of Labor Statistics in calculating the inflation adjustment. ODJFS must use the health services component of the Employment Cost Index for Total Compensation for direct care costs. ODJFS must use the Consumer Price Index for all

[194] R.C. 5111.20(H) and 5111.23.

[195] R.C. 5111.20(R).

[196] R.C. 5111.20(C).

[197] R.C. 5111.20(K).

urban consumers for nonprescription drugs and medical supplies for other protected costs. ODJFS must use the Consumer Price Index for all items for all urban consumers for the North Central Region for indirect care costs. For capital costs, ODJFS must use the Consumer Price Index for shelter costs for all urban consumers for the North Central Region.[198]

The bill removes from state law the specific inflation measuring systems to be used for these calculations. Instead, ODJFS is to use an inflation measuring system or inflation factor that the ODJFS Director must specify in rules. The bill also removes from state law a requirement that the difference between the estimated inflation rate used in the calculation for direct, other protected, and indirect care costs and the actual inflation rate determined after the calculation is made be added to or subtracted from the estimated inflation rate used in the calculation for those rates for the following fiscal year.

Limits on costs of outside ICF/MR resident meals

(R.C. 5111.261)

Current law generally prohibits ODJFS 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 the following categories only: compensation of owners, compensation of relatives of owners, compensation of administrators, and costs for resident meals prepared and consumed outside the ICF/MR.

The bill removes the costs for resident meals prepared and consumed outside an ICF/MR from the categories of reasonable costs for which ODJFS may place a limit. This means ODJFS would no longer be authorized to place a limit on such costs when determining whether the direct care and indirect care costs of an ICF/MR are allowable.

FY 2010 Medicaid reimbursement rate for ICFs/MR

(Section 309.30.60)

The bill establishes limits on the fiscal year 2010 Medicaid rates for ICFs/MR to which either of the following apply:

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[198] During the period beginning June 30, 1990, and ending July 1, 1993, ODJFS was directed to use the Dodge Building Cost Indexes, Northeastern and North Central States, as published by Marshall and Swift. The bill eliminates this obsolete language. In connection with that, the bill updates the base amount used in the inflation calculation to reflect the amount used in the fiscal year 2009 calculation: $28.

(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 subject to the following limitations:

(1) If the rate so calculated is more than 108% of the rate for the ICF/MR on June 30, 2009, ODJFS must reduce the ICF/MR's fiscal year 2010 rate so that the rate is not more than 108% of its June 30, 2009 rate.

(2) If the mean total per diem rate for all such ICFs/MR for fiscal year 2010, weighted by May 2009 Medicaid days and calculated as of July 1, 2009, after application of the 108% limit, exceeds $277.25, 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 $277.25.

The bill 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.

The ODJFS Director is required to submit an amendment to the state Medicaid plan to the United States Secretary of Health and Human Services as necessary to implement the rate limits. The amendment must be submitted not later than September 30, 2009. On receipt of the Secretary's approval of the state Medicaid plan amendment, the ODJFS Director is to implement the rate adjustments retroactive to the later of the effective date of the amendment and July 1, 2009.

FY 2011 Medicaid reimbursement rate for ICFs/MR

(Section 309.30.70)

The bill 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 subject to the following limitations:

(1) If the rate so calculated is more than 107% of the rate for the ICF/MR on June 30, 2010, ODJFS must reduce the ICF/MR's fiscal year 2011 rate so that the rate is not more than 107% of its June 30, 2010 rate.

(2) 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, after application of the 107% limit, exceeds $277.25, 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 $277.25.

The bill 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.

The ODJFS Director is required to submit an amendment to the state Medicaid plan to the United States Secretary of Health and Human Services as necessary to implement the rate limits. The amendment must be submitted not later than September

30, 2010. On receipt of the Secretary's approval of the state Medicaid plan amendment, the ODJFS Director is to implement the rate adjustments retroactive to the later of the effective date of the amendment and July 1, 2010.

Exiting Operator Fund

(R.C. 5111.688 (primary), 5111.65, 5111.651, 5111.689, 5111.874, and 5111.875)

Current law establishes requirements for a nursing facility or ICF/MR that undergoes a change of operator,[199] facility closure,[200] voluntary termination,[201] or voluntary withdrawal of participation.[202] The requirements concern the state collecting debts a nursing facility or ICF/MR owes under the Medicaid program.

An operator is required to notify ODJFS of an impending change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation.[203] 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.[204] Generally, ODJFS is to withhold a certain amount[205] from

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[199] 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)).

[200] 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)).

[201] 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)).

[202] 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)).

[203] R.C. 5111.66 and 5111.67.

[204] R.C. 5111.68.

[205] The amount to be withheld is the greater of (1) the total amount of any overpayments made under the Medicaid program to the operator, including overpayments the exiting operator disputes, and other actual and potential debts, including any unpaid penalties, the operator owes or may owe under the Medicaid program and (2) an amount equal to the average amount

payment due the operator under the Medicaid program pending receipt of information needed for ODJFS to be able to determine the actual amount of the debt the operator owes under the Medicaid program.[206] After determination of the actual debt, ODJFS is to release the amount withheld, less any amount the operator owes under the Medicaid program.[207]

The bill creates a fund for the purpose of temporarily holding the money withheld from a nursing facility or ICF/MR operator. The fund is named the Exiting Operator Fund and is created in the state treasury. Money in the fund is to be used to pay an operator when a withholding is released and to pay ODJFS and federal government the amount an operator owes under the Medicaid program. Amounts used to be paid to ODJFS or federal government from the fund are 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)

Current 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

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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 (R.C. 5111.681).

[206] ODJFS may 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 any debt the former operator owes the Medicaid program and (2) provides ODJFS a copy of the new operator's balance sheet that assists ODJFS in determining whether to make the withholding (R.C. 5111.681).

[207] R.C. 5111.686. The amount withheld is released under other circumstances too. ODJFS may release the amount withheld if the operator submits to ODJFS written notice of a postponement of the change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation and the transactions leading to the change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation are postponed for at least 30 days but less than 90 days. ODJFS must release the amount withheld if the operator submits to ODJFS written notice of a cancellation or postponement of a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation and the transactions leading to the change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation are canceled or postponed for more than 90 days. (R.C. 5111.687.)

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 bill 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 bill 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[208] 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[209] who is capable of selecting, directing the actions of, and dismissing a home care attendant.

Requirements for home care attendant service providers

The bill 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 bill'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[210] 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

[208] A consumer who is at least 18 is permitted by the bill 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.)

[209] 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.

[210] 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.)

program approved by ODJFS that includes training in certain subjects[211] 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.

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 bill 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.

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[211] 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.

Assisting with nursing tasks and self-administration of medication

The bill 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 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;

(3) Assist the consumer with the self-administration of a schedule II, III, IV, or V medication unless (a) the medication is administered orally, topically, or via a gastrostomy tube[212] or jejunostomy tube,[213] (b) the medication has a warning label on its container, (c) the attendant counts the medication in the consumer's presence when the

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[212] A gastrostomy tube is a percutaneously inserted catheter that terminates in the stomach.

[213] A jejunostomy tube is a percutaneously inserted catheter that terminates in the jejunum which is the middle portion of the small intestine.

medication is administered to the consumer and records the count on a form used for the count as specified in rules the bill authorizes the ODJFS Director to adopt, (d) the attendant recounts the medication in the consumer's presence at least monthly and reconciles the recount on a log located in the consumer's clinical record, and (e) 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;

(4) Perform an intramuscular injection;

(5) Perform a subcutaneous injection unless it is for a routine dose of insulin;

(6) Program a pump used to deliver a medication unless the pump is used to deliver a routine dose of insulin;

(7) Insert, remove, or discontinue an intravenous access device;

(8) Engage in intravenous medication administration;

(9) Insert or initiate an infusion therapy;

(10) Perform a central line dressing change.

Use of a metered dose inhaler is permitted when assisting a consumer with self-administration of a schedule II, III, IV, or V 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 such 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 such 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 bill 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 bill requires the ODJFS Director to adopt rules as necessary for the implementation of the bill'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 bill 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.[214] The projects are to be designed to achieve the following

[214] Section 6071 of the Deficit Reduction Act of 2005, Public Law No. 109-171.

objectives with respect to institutional and home and community-based long-term care services under a state's Medicaid program:

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

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

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

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

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

The bill

The bill creates the Money Follows the Person Enhanced Reimbursement Fund in the state treasury. 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 the state 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.

Hospital assessments

(R.C. 5112.40, 5112.41, 5112.42, 5112.43, 5112.44, 5112.45, 5112.46, 5112.47, and 5112.48)

The bill imposes an annual assessment on hospitals. A nonfederal hospital 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).[215]

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 buying durable medical equipment.[216] 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, 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 the 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 the 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 1.27%. The percentage to be used for the second and successive years is 1.37%. 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

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[215] See "**Hospital Care Assurance Program (HCAP)**" below for a discussion of that program.

[216] These costs are to be shown on cost-reporting data ODJFS is to use for purposes of determining the hospital's assessment.

period[217] 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 would be counted would 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), 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. As 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

A hospital is required to pay the amount it is assessed in three equal installments. The installments are due on the fifteenth day of December, the fifteenth

[217] A cost reporting period is the period of time used by a hospital in reporting costs for purposes of the Medicare program.

day of March, and the fifteenth day of June. However, the ODJFS Director is permitted to adopt rules establishing a different payment schedule.

Hospital audits

The bill 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 bill 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.

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.[218] 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.[219] 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.[220] To avoid being deemed 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.[221] A state may obtain a federal waiver of aspects of the broad-based and uniform requirements but not the hold harmless prohibition.[222]

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[218] 42 U.S.C. 1396b(w).

[219] 42 C.F.R. 433.55.

[220] 42 U.S.C. 1396b(w)(1)(A).

[221] 42 C.F.R. 433.68(b).

[222] 42 U.S.C. 1396b(w)(3)(E) and 42 C.F.R. 433.72(b)(3).

The bill 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. 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 bill 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 bill repeals the law governing the hospital assessment (i.e., sunsets) effective October 1, 2011.

VI. 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)

HCAP is currently schedules to terminate on October 16, 2009. The bill delays the termination date of the program until October 16, 2011.

VII. Supplemental Nutrition Assistance Program (Food Stamp Program)

Name of Food Stamp Program changed

(R.C. 5101.54 (primary), 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 bill 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 bill 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.

Current law requires that when a household is 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) must be issued immediately upon certification. A CDJFS staff member must personally hand the card to the member of the household in whose name application was made or that member's authorized representative. The bill 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 bill 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.

VIII. Unemployment Compensation

Payments from the Unemployment Compensation Special Administrative Fund (UCSAF)

(R.C. 4141.11)

The Unemployment Compensation Special Administrative Fund (UCSAF) exists in the state treasury. The ODJFS Director, under continuing law, may use the UCSAF without prior approval from the Unemployment Compensation Advisory Council to pay state disaster unemployment benefits pursuant to continuing law and to pay any costs attributable to the Director that are associated with the sale of real property under continuing law. The ODJFS Director or the Director's deputy may use the UCSAF whenever it appears that such use is necessary for the payment of refunds or adjustments of interest, fines, forfeitures, or court costs erroneously collected and paid into the UCSAF pursuant to the Unemployment Compensation Law (R.C. Chapter 4141.). Under current law, the ODJFS Director, with the Council's approval, may use the UCSAF whenever it appears that such use is necessary for:

(1) The proper administration of the Unemployment Compensation Law and no federal funds are available for the specific purpose for which the expenditure is to be made, provided the moneys are not substituted for appropriations from federal funds, which in the absence of such moneys would be available;

(2) The proper administration of the Unemployment Compensation Law for which purpose appropriations from federal funds have been requested and approved but not received, provided the UCSAF would be reimbursed upon receipt of the federal appropriation;

(3) To the extent possible, the repayment to the Unemployment Compensation Administration Fund of moneys found by the proper United States agency to have been lost or expended for purposes other than, or an amount in excess of, those found necessary by the proper United States agency for the administration of the Unemployment Compensation Law.

The bill removes the requirement that the ODJFS Director receive approval from the Council before using the UCSAF for the reasons listed in (1) to (3) above.

Under current law, whenever the balance in the UCSAF is considered to be excessive by the Council, the ODJFS Director must request the Director of Budget and Management to transfer to the Unemployment Compensation Fund the amount considered to be excessive. Any balance in the UCSAF cannot lapse at any time, but

must be continuously available to the ODJFS Director or to the Council for expenditures consistent with the Unemployment Compensation Law.

The bill allows the ODJFS Director, rather than the Council under current law, to determine whether amounts in the UCSAF are considered to be excessive in order to have the excessive amounts transferred into the Unemployment Compensation Fund. The bill also removes the requirement that UCSAF funds be continuously available to the Council for expenditures consistent with the Unemployment Compensation Law, but the bill retains the requirement that those funds be continuously available to the ODJFS Director.

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.
- 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 current 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 existing 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 bill's provisions.
- Increases from $500 to $750 the threshold amount that is used in determining increased penalties for theft-related offenses.

Annual compensation of judges

(R.C. 141.04)

Current 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.

Current law provides that increased salaries are payable to the justices and judges mentioned above each calendar year from 2002 through 2008. The bill 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.

Supreme Court filing fee

(R.C. 2503.17)

General provision

Existing law generally requires 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 are 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 must pay the filing fee to the Clerk before the case *or motion* is docketed, and it must 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 bill 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 bill deletes all of the italicized language in the discussion of existing law above, retains the last sentence in the preceding paragraph, and deletes the phrase *or motion* in that sentence. 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.[223]

Exception

Existing law precludes 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 apply:

(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 bill repeals the above provisions.

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[223] 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.

Modification of Rules of Practice

(Section 313.20)

The bill 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.[224]

Penalties for theft-related offenses

(R.C. 926.99, 1333.99, 1707.99, 1716.99, 2909.03, 2909.05, 2909.11, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.40, 2913.401, 2913.42, 2913.421, 2913.43, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2913.61, 2915.05, 2917.21, 2917.31, 2917.32, 2921.13, 2921.41, 2923.31 and 2981.07)

Under the Revised Code, a violation of many theft-related offenses may be classified as more serious, a higher degree of offense, as the value of the victim's loss increases. A violation may be designated as a misdemeanor or felony of a minimum degree and the degree of the offense then increases as the value of the victim's loss reaches or exceeds a threshold dollar amount and greater dollar amounts. The designated threshold amount is generally $500 or more. The bill would increase the threshold amount from $500 or more to $750 or more. A system of classification based on the value of the loss also is used for violations of some non-theft-related offenses, and the threshold amount is increased from $500 or more to $750 or more for these offenses.

The offenses affected are operating as an agricultural commodities handler without a license when insolvent, operating a pyramid sales plan or program, a violation of the securities law, solicitation fraud, arson, vandalism, petty theft, theft, grand theft, aggravated theft, theft from an elderly person or disabled adult, grand theft of a motor vehicle, theft of drugs, theft of a police dog or horse or an assistance dog, unauthorized use of a vehicle, unauthorized use of property, unauthorized use of computer, cable, or telecommunication property, passing bad checks, misuse of credit

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[224] Existing Rule XV, section 1 provides for the $40 filing fee imposed under existing 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.

cards, forgery, criminal simulation, trademark counterfeiting, Medicaid fraud, Medicaid eligibility fraud, tampering with records, illegally transmitting multiple commercial electronic mail messages, securing writings by deception, defrauding creditors, illegal use of food stamps or WIC program benefits, insurance fraud, Workers' Compensation fraud, identity fraud, receiving stolen property, cheating, telecommunications harassment, inducing panic, making false alarms, falsification in a theft offense, theft in office, corrupt activity, or interference with or diminishing forfeitable property.

LEGAL RIGHTS SERVICE (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.[225] 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 bill requires the Commission to conduct a study on the potential transition of OLRS from a public entity to a nonprofit organization.[226] The study is to include an analysis of all of the following:

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[225] 42 U.S.C.15041 *et seq.*; the specific requirement is in 42 U.S.C. 15043.

[226] 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

(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 is also to 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 bill'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.

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 bill 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

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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)).

cooperation, and other library purposes. All investment earnings of the fund must be credited to the fund.

LOCAL GOVERNMENT

- 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.
- Specifies that a township, regardless of its population count, is considered a public employer for purposes of the Public Employees Collective Bargaining Law (PECBL) with respect to permanent, full-time, paid members of its fire department.
- Removes a provision that excludes specified employees of community-based correctional facilities and district community-based correctional facilities from the definition of "public employee" under the PECBL.
- Allows specified employees of community-based correctional facilities and district community-based correctional facilities likewise to be members of the Ohio Elections Commission.

Financial planning and supervision commissions

(R.C. 118.05; Section 701.20)

Under current law, 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 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 bill 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 and follow the process set forth in current law. 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 established in current law 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.

Under current law, 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 bill 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 a 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 bill, however, retains the rule disqualifying a member who becomes a candidate for elected public office while serving as a member of a commission.

Under current law, five members of the commission constitute a quorum and the affirmative vote of five members is necessary for any action taken by vote of the commission. Under the bill, 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 four members is necessary for any action taken by vote of the commission. Under the bill, for a commission for a municipal corporation, county, or township with a population of less than 1,000, three members of a commission constitute a quorum of the commission and the affirmative vote of three members is necessary for any action taken by vote of the commission. The bill also specifies for any commission established before the subject-to-the-referendum effective date of the bill, four members constitute a quorum and the affirmative vote of four members is necessary for any action taken by vote of the commission.

Ability of specified types of employees to collectively bargain

(R.C. 4117.01)

Under the Public Employees' Collective Bargaining Law (R.C. Chapter 4117.; hereafter "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)). Current 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.[227]

[227] 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 with township firefighters

Current law defines "public employer" to include a township with a population of at least 5,000 in its unincorporated area according to the most recent federal decennial census (R.C. 4117.01(B)). A township with a population of less than 5,000 in its unincorporated area is not a public employer and thus is excluded from the scope of the PECBL. The bill expands the definition of "public employer" for purposes of the PEBCL by specifying that a township, regardless of its population count, is considered a public employer with respect to those of the township employees who are permanent, full-time, paid members of its fire department.

Collective bargaining with specified community-based or district-based correctional facility employees

One exception to the definition of "public employee" under the PEBCL is that portion of employees of community-based correctional facilities and district community-based correctional facilities created under continuing law who, as of June 1, 2005, were not subject to a collective bargaining agreement. The bill removes the employees of community-based correctional facilities and district community-based correctional facilities from the list of exclusions from the definition of "public employee." Therefore, under the bill, these types of employees are defined as a "public employee" for collective bargaining purposes.

Change in membership restrictions of the Ohio Elections Commission

Under existing 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).) Therefore, by removing the employees of community-based correctional facilities and district community-based correctional facilities described above from the list of exceptions from being a "public employee" under the PECBL, the bill has the effect also of allowing these types of employees to be members of the Elections Commission.

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)

Currently, the State Medical Board is 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 is $50. The bill 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)

Existing law requires the Board to issue a duplicate certificate to practice as a physician, osteopath, podiatrist, masseuse, 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 bill 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)

Currently, all Board vouchers must be approved by either the Board president or the executive secretary, or both, as authorized by the Board. Under the bill, the president retains the authority to approve the vouchers. However, the bill also allows the executive director (rather than the executive secretary), or another person authorized by the Board, to approve the vouchers.

- 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 with the Department.

Ambulette licensure

(R.C. 4766.09; R.C. 4766.01, 4766.03, and 4766.14 (not in the bill))

Current 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 a wheelchair. The Board is to 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 is also to 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.

Current 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 bill 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.

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 when ODMH determines it is in the public interest and advisable.
- Permits, rather than requires, ODMH to provide the goods and services to ODMH institutions and state-operated community-based mental health services.
- 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.
- Permits the ODMH Director to distribute funds for the local management of mental health services to groups of ADAMHS boards (boards of alcohol, drug addiction, and mental health services) on a regional or statewide basis.
- Requires the ODMH Director, when allocating the funds, to specify (1) the maximum portion of the funds that an ADAMHS board or group of boards may use for administrative purposes and (2) the permissible uses of the funds for administrative purposes.
- Permits an ADAMHS board or group of boards to submit a written request to the ODMH Director asking for a variance or waiver from the Director's determination of the maximum portion of the funds that may be used for administrative purposes, and specifies that the Director has sole discretion to approve or deny the request.
- Requires an ADAMHS board or group of boards to account for its use of funds for administrative purposes by submitting an annual report to the ODMH Director.
- Specifically authorizes ODMH to develop and operate more than one community mental health system (rather than one system).
- Specifically 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 in current law 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.

- Creates the Medicaid Elevation Advisory Group and requires the Group to study the issue of transferring the responsibility for paying providers of Medicaid-covered community behavioral health services and related management responsibilities from ADAMHS boards to ODMH and ODADAS.
- Requires the Medicaid Elevation Advisory Group to issue a report regarding its study not later than June 30, 2010.
- Requires ODMH and ODADAS to assume responsibility for paying providers of Medicaid-covered community behavioral health services and related management responsibilities not later than July 1, 2011, but provides that the Departments' assumption of the payment and related management responsibilities is subject to changes in state law that otherwise would conflict with the Departments' assuming the responsibilities, including changes related to funding.

ODMH purchasing program

(R.C. 5119.16 and 5120.09)

Existing law requires 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 determines it is in the public interest and advisable: ODMH, the Ohio Department of Mental Retardation and Developmental Disabilities, the Ohio Department of Rehabilitation and Correction, and the Ohio Department of Youth Services. The goods and services ODMH is designated to provide are 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 are not satisfactorily provided by ODMH to a department or agency, existing law requires the director or managing officer of the department or agency to follow a specific process to attempt to resolve the unsatisfactory service.

The bill permits, rather than requires, ODMH to provide the goods and services specified above and eliminates the specific process that must be used to attempt to resolve unsatisfactory service.

Allocation of funds for local management of mental health services

Background--alcohol, drug addiction, and mental health services districts

Ohio is divided into alcohol, drug addiction, and mental health service districts. Generally, each county or combination of counties having a population of at least 50,000 is to serve as a district, but the ODMH Director and Director of the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) may approve a district comprised of a single county or combination of counties with a smaller population.[228]

Most districts have a single board to serve as the planning agency for the district's mental health services and its alcohol and drug addiction services. This type of board is called a board of alcohol, drug addiction, and mental health services (ADAMHS board). However, a district comprised of a county that had a population of 250,000 or more on October 10, 1989, may have two separate boards: one to serve as the planning agency for mental health services (community mental health board) and another to serve as the planning agency for alcohol and drug addiction services (alcohol and drug addiction services board).[229]

One duty of an ADAMHS board or community mental health board is to establish an annual community mental health plan. 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.[230]

Allocation of funds to multiple boards

(R.C. 5119.622(A); R.C. 5119.62 (not in the bill))

On the ODMH Director's approval of the community mental health plan of an ADAMHS board or community mental health board, existing law requires the Director to authorize the payment of funds to the board from funds appropriated for such purpose by the General Assembly. Funds must be distributed to the board consistent

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[228] R.C. 340.01 (not in the bill).

[229] R.C. 340.02 and 340.021.

[230] R.C. 340.03(A)(1)(c).

with current law governing payments to the boards, other Ohio statutes and administrative rules, federal statutes and regulations, and the approved community mental health plan. Current Ohio law governing payments to the boards requires the ODMH Director to develop and review annually a methodology for distributing and allocating funds to separate boards, including a formula for allocating to the boards appropriations from the General Revenue Fund for the purpose of local management of mental health services.

The bill permits the ODMH Director, notwithstanding provisions of current law referring to the allocation of funds for local management of mental health services to separate ADAMHS boards and community mental health boards, to allocate the funds for the local management of mental health services to groups of two or more boards. The ODMH Director is authorized to make these allocations on a regional or statewide basis, as specified by the Director.

If the ODMH Director chooses to allocate funds to groups of ADAMHS boards and community mental health boards, the bill requires the Director to require that the boards included in each group submit to the Director a joint plan for the provision of mental health services and the use of funds. The boards included in the group are required by the bill to submit the plan to the ODMH Director in a timely manner.

To accommodate the allocation of funds to groups of ADAMHS boards and community mental health boards, the bill requires the ODMH Director to make all necessary adjustments to the methodology for distributing and allocating funds to separate boards, as well as the formula for allocating to the boards appropriations from the General Revenue Fund for the purpose of local management of mental health services.

Limit on use of funds for administrative purposes

(R.C. 5119.621)

Separate boards

The bill requires the ODMH Director, when the Director allocates funds to an ADAMHS board or community mental health board for the local management of mental health services, to specify the maximum portion of the funds that may be used for administrative purposes and the permissible uses of the funds for administrative purposes. In specifying the maximum portion of the fund that may be used for administrative purposes, the ODMH Director must take into account (1) the board's community mental health plan, (2) the board's total budget for mental health services, and (3) any other factor the Director considers appropriate. In specifying the permissible uses of funds for administrative purposes, the bill requires the ODMH

Director to establish general categories that describe the functions for which the funds may be used. These general categories may include continuous quality improvement, utilization review, resource development, fiscal administration, general administration, other functions required under statutes governing ADAMHS boards, and any other category the ODMH Director considers appropriate.

Under the bill, an ADAMHS board or community mental health board is required to account for its use of funds for administrative purposes by submitting an annual report to the ODMH Director. The report must include details about the board's use of funds according to the general categories of permissible uses established by the ODMH Director.

The bill permits a board to seek a variance or waiver from the maximum portion of the funds that may be used for administrative purposes by submitting a written application to the ODMH Director.

Groups of boards

If the ODMH Director has allocated funds for the local management of mental health services to a group of two or more ADAMHS boards or community mental health boards, the bill permits the Director to specify a maximum portion of funds allocated to the group that may be used by the group for administrative purposes.

The bill also requires the ODMH Director to make all necessary adjustments in the procedures used for the specification of a maximum portion of funds that may be used by a single ADAMHS board or community mental health board for administrative purposes to accommodate the specification of a maximum portion of funds that may be used by groups of boards. These adjustments include (1) taking into account the total amount of funds to be allocated to a group of boards for the local management of mental health services, (2) taking into account the joint plan for the provision of mental health services submitted by a group of boards, (3) requiring the group to submit an annual plan accounting for its use of funds for administrative purposes, (4) permitting the group to submit a written application for a variance or waiver regarding the portion of funds used for administrative purposes, and (5) any other adjustments the ODMH Director considers necessary.

The bill further specifies that in addition to the adjustments the ODMH Director must make to accommodate groups of ADAMHS boards and community mental health boards, as described above, all references in Ohio law to the allocation of funds to separate boards or to the use of funds by separate boards for administrative purposes constitute references to groups of boards as the Director considers necessary to

accommodate the allocation of funds for the local management of mental health services to groups of boards.

Information systems maintained by ODMH and ODADAS

(R.C. 3793.04 and 5119.61; R.C. 340.033)

Under current law, ODMH must develop and operate a community mental health information system. Similarly, ODADAS must establish and maintain an information system to aid it in formulating a comprehensive statewide alcohol and drug addiction services plan. ADAMHS boards[231] must provide certain information for these systems, but ODMH and ODADAS are prohibited from collecting from the ADAMHS boards any information for the purpose of identifying by name any person who receives a service through a board, except when the collection is required by state or federal law to validate appropriate reimbursement.

The bill specifically authorizes ODMH to develop and operate more than one community mental health information system (rather than just one system) and 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.

Further, the bill 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 collection is *permitted or* required (rather than just required) by state or federal law. The bill 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. Regulations regarding health information privacy promulgated under the federal Health Insurance Portability and Accountability (HIPAA) already 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,

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

health oversight activities, and research activities,[232] as long as the use and disclosure otherwise comports with HIPAA regulations.[233]

Medicaid Elevation Advisory Group

(Section 751.10)

The bill creates the Medicaid Elevation Advisory Group. The Group is charged with studying the issue of transferring the responsibility for paying providers of Medicaid-covered community behavioral health services[234] and related management responsibilities from ADAMHS boards[235] to ODMH and ODADAS.

Composition of Group

The Medicaid Elevation Advisory Group is to consist of all of the following:

(1) The ODMH Director or the Director's designee;

(2) The ODADAS Director or the Director's designee;

(3) Representatives of ADAMHS boards;

(4) Representatives of providers of community behavioral health services;

(5) Consumers of community behavioral health services and advocates of such consumers;

(6) At the option of the Speaker of the House of Representatives, up to two members of the House from different political parties appointed by the Speaker;

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[232] 45 C.F.R. 164.512.

[233] 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. 512(i)).

[234] The bill defines "community behavioral health services" as (1) community mental health services certified by the Director of Mental Health and (2) services provided by an alcohol and drug addiction program certified by the Department of Alcohol and Drug Addiction Services.

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

(7) At the option of the Senate President, up to two members of the Senate from different political parties appointed by the Senate President;

(8) Other state policy makers.

The ODMH and ODADAS Directors, or their designees, are to serve as co-chairpersons. The co-chairpersons are to appoint the representatives of the ADAMHS boards, providers, consumers and consumer advocates, and other state policy makers and determine the number of such persons to be appointed. The co-chairpersons are required to appoint the same number of representatives of the ADAMHS boards, providers, and consumers and consumer advocates so as to ensure balanced representation by the ADAMHS boards, providers, and consumers and consumer advocates.

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. ODMH and ODADAS jointly may reimburse the members for their reasonable travel expenses.

The Group's report

The Medicaid Elevation Advisory Group is required to submit a report regarding its study to the Governor and General Assembly[236] not later than June 30, 2010. The report must include all of the following:

(1) A fiscal analysis of the impact that transferring payment responsibility and related management responsibilities would have on ODMH and ODADAS and ADAMHS boards.

(2) Recommendations for increasing efficiencies related to submission of Medicaid claims for community behavioral health services and the processing and payment of such claims and exchange of information regarding Medicaid-covered community behavioral health services and non-Medicaid-covered community behavioral health services.

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[236] In submitting the report to the General Assembly, the Medicaid Elevation Advisory 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)).

(3) Recommendations for system changes needed for ODMH and ODADAS to assume responsibility for directly paying providers of Medicaid-covered community behavioral health services.[237]

The Group is to cease to exist on submission of its report.

Departments' assumption of payment responsibilities

The bill requires ODMH and ODADAS to assume responsibility for paying providers of Medicaid-covered community behavioral health services and related management responsibilities not later than July 1, 2011. In assuming these responsibilities, ODMH and ODADAS may adopt, in whole or in part, the recommendations included in the Medicaid Elevation Advisory Group's report. The bill provides, however, that the Departments' assumption of payment related management responsibilities is subject to changes in state law that otherwise would conflict with the Departments' assuming the responsibilities, including changes related to funding. ODMH and ODADAS are permitted to take actions as part of the transfer of responsibilities as are consistent with state law.

DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES (DMR)

- Permits the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) 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 ODMR/DD-administered home and community-based Medicaid waiver services.

- Provides that in a community living arrangement certified MR/DD personnel who are not health professionals may be authorized to provide certain health-care services to not more than five, rather than not more than four, individuals with mental retardation or a developmental disability.

- Provides that under the Supported Living program an individual with mental retardation or a developmental disability may reside in a residence of the individual's choice with up to four, rather than up to three, other individuals with

[237] The recommendations must focus on increasing efficiencies, transparency, and accountability in order to improve the delivery of community behavioral health services.

mental retardation or a developmental disability who are not the individual's relatives.

- Specifies that the prohibition against disclosure of the identity of a person who is eligible for or requests programs or services from a county MR/DD board, or an entity under contract with a county MR/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 MR/DD board, or entity under contract with a county MR/DD board, that either discloses the identity of a person who requests county MR/DD 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.
- Requires the ODMR/DD 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 ODMR/DD administers.
- Requires the ODMR/DD Director to establish a methodology to be used in state fiscal years 2010 and 2011 to estimate the quarterly amount each county MR/DD board is to pay of the nonfederal share of the Medicaid expenditures for which the county MR/DD board is responsible.
- Authorizes the ODMR/DD Director to withhold from a county MR/DD board that fails to make the full payment by the time it is due money the Director would otherwise provide the county MR/DD 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.

ODMR/DD and ODJFS Administration and Oversight Funds

(R.C. 5123.0412)

The Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) is required to charge each county board of mental retardation and developmental disabilities (county MR/DD board) an annual fee on Medicaid paid claims for ODMR/DD-administered home and community-based Medicaid waiver services provided to individuals eligible for services from the county MR/DD boards.

The fees are to be deposited into two funds: the ODMR/DD Administration and Oversight Fund and the Ohio Department of Job and Family Services (ODJFS) Administration and Oversight Fund. ODMR/DD and ODJFS are required to enter into an interagency agreement regarding how to divide the fees among the two funds.

State law specifies the purposes for which the money in the ODMR/DD and ODJFS Administration and Oversight Funds is to be used. Current law provides that one of the purposes is the administrative and oversight costs of Medicaid case management services and ODMR/DD-administered home and community-based Medicaid waiver services. The bill expands this purpose to Medicaid administrative costs in general, rather than just administrative and oversight costs of Medicaid case management services and ODMR/DD-administered home and community-based Medicaid waiver services.

MR/DD personnel providing specified health care services

(R.C. 5123.42)

Current law permits MR/DD personnel[238] who are not specifically authorized by other provisions of state law to administer prescribed medications, perform health-related activities, or perform tube feedings to do so as part of the specialized services[239] the MR/DD personnel provide to certain categories of individuals with mental retardation or a developmental disability. Different restrictions apply depending on which category of individuals receive the health-care services or the type of health-care service being provided. For example, MR/DD personnel must obtain a certificate or certificates from ODMR/DD to provide the services to certain of the categories of individuals or successfully complete a training course or courses to provide the services to one of the categories. Also, the MR/DD personnel must act under a nurse's delegation some of the time.

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[238] MR/DD personnel are employees, and workers under contract, who provide specialized services to individuals with mental retardation or a developmental disability. This includes those who provide the services (1) through direct employment with ODMR/DD or a county MR/DD board, (2) through an entity under contract with ODMR/DD or a county MR/DD board, or (3) through direct employment or by being under contract with a private entity, including a private entity that operates a residential facility for persons with mental retardation or a developmental disability. (R.C. 5123.40.)

[239] A specialized service is any program or service designed and operated to serve primarily individuals with mental retardation or a developmental disability, including a program or service provided by an entity licensed or certified by ODMR/DD. A program or service available to the general public is not a specialized service. (R.C. 5123.50.)

One of the categories of individuals with mental retardation or a developmental disability for whom MR/DD personnel may administer prescribed medications, perform health-related activities, or perform tube feedings consists of recipients of residential support services provided under a Medicaid-funded program of home and community-based services in a community living arrangement that includes not more than a certain number of individuals with mental retardation or a developmental disability. Under current law the number of individuals is four. The bill increases this limit to five.

Number of persons living together in Supported Living

(R.C. 5126.01)

Supported Living is a program ODMR/DD administers. The program consists of services provided for as long as 24 hours a day to an individual with mental retardation or a developmental disability through any public or private resources that enhance the individual's reputation in community life and advance the individual's quality of life by doing certain activities such as encouraging the individual's participation in the community and promoting the individual's rights and autonomy.

Among the Supported Living program's activities is providing the support necessary to enable an individual to live in a residence of the individual's choice with any number of individuals who are not disabled or not more than a certain number of individuals with mental retardation or a developmental disability who are not the individual's relatives by blood or marriage. Current law limits the number of unrelated individuals with mental retardation or a developmental disability with whom a Supported Living participant may reside to three. The bill increases this limit to four. The bill also specifies that the individual may reside with not more than four *other* individuals with mental retardation or a developmental disability for the purpose of clarifying that a total of five unrelated individuals with mental retardation or a developmental disability may reside together (i.e., the Supported Living participant and four other unrelated individuals with mental retardation or a developmental disability).

Identity disclosure--county MR/DD programs

(R.C. 5126.044)

Exception to prohibition of identity disclosure

In general, current 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 MR/DD board or an entity under contract with a county MR/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 county board's waiting lists for programs or services are being maintained in accordance with current law. The bill adds another exception. It specifies that the prohibition against identity disclosure also does not apply when disclosure is needed for treatment of, or payment for services provided to, an eligible person. The bill 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 MR/DD board or from an entity under contract with a county MR/DD board. The bill defines "payment" as activities undertaken by a service provider or governmental entity to obtain or provide reimbursement for services to an eligible person.

Disclosure records

The bill eliminates the requirement that a county MR/DD board, or an entity under contract with a county MR/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.

Fiscal plan for home and community-based Medicaid waiver services

(Section 337.30.40)

The bill requires the ODMR/DD 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 ODMR/DD 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.

County share of Medicaid home and community-based services

(Section 337.30.60)

With certain exceptions, continuing law requires a county MR/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 county MR/DD board determines is eligible for county MR/DD board services:

(1) Home and community-based services provided by the county MR/DD board to such an individual;

(2) Home and community-based services provided by a provider other than the county MR/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 MR/DD board to such an individual who, pursuant to a request the county MR/DD 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 MR/DD board to such an individual for whom there is in effect an agreement between the county MR/DD board and ODMR/DD Director.[240]

The bill requires the ODMR/DD Director to establish a methodology to be used in state fiscal years 2010 and 2011 to estimate the quarterly amount each county MR/DD board is to pay of the nonfederal share of the Medicaid expenditures for which the county MR/DD board is responsible. Each quarter, the ODMR/DD Director must submit to a county MR/DD board written notice of the amount for which the county MR/DD board is responsible. The notice must specify when the payment is due.

The bill authorizes the ODMR/DD Director to withhold money from a county MR/DD board that fails to make the full payment by the time it is due. The ODMR/DD Director may withhold the amount the county MR/DD board fails to pay from one or more state subsidies that ODMR/DD would otherwise provide to the county MR/DD board.

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[240] R.C. 5126.0510.

Developmental center services

(Section 337.31.20)

The bill permits a residential center for persons with mental retardation or other developmental disability operated by ODMR/DD (i.e., 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. ODMR/DD is permitted to develop a method for recovery of all costs associated with the provision of the services.

DEPARTMENT OF NATURAL RESOURCES (DNR)

- Establishes energy resource extraction fees of 8¢ per ton of coal to be paid by the operator of a coal mining operation, 20¢ per barrel of crude oil sold or 0.56% of the total purchase price of the crude oil after the severance tax has been subtracted, whichever results in the greater amount, to be paid by the first purchaser of crude oil, and 5¢ per 1,000 cubic feet of natural gas or 2.25% of the total purchase price of the natural gas after the severance tax has been subtracted, whichever results in the greater amount, to be paid by the first purchaser of natural gas.

- States that the purpose of the energy resource extraction fees is to provide funding to the Division of Mineral Resources Management to administer the coal mining and reclamation program, reclaim land affected by mining, and satisfy the regulatory, environmental, and natural resources management requirements of this state.

- Specifies that the fee on coal is to be credited to the existing Coal Mining Administration and Reclamation Reserve Fund and the fees on oil and natural gas are to be credited to the existing Oil and Gas Well Fund.

- Allows the Director of Natural Resources to reduce the fees and to transfer a portion of their proceeds to the existing Geological Mapping Fund under certain circumstances.

- Requires the Chief of the Division of Mineral Resources Management, in cooperation with specified statewide associations, to study the solvency of the Coal Mining Administration and Reclamation Reserve Fund and the Oil and Gas Well Fund, report the Chief's determinations concerning the Funds to the Director of Budget and Management, and make recommendations concerning the rates of the energy extraction fees charged under the bill.

- 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 current 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 current 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 current 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 Water 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.

- Increases the minimum amount of the fee that a person must file with the Chief of the Division of Water for a dam or levee construction permit from $1,000 to $1,500, increases the maximum amount of such a filing fee from $100,000 to $500,000, and allows the Chief to establish alternative minimum and maximum amounts by rule.

- 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 several 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 Water regarding the annual fees to be subject to the prior approval of the Director of Natural Resources.

- 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.

- Removes the exemption in current law that allows a nonresident owner of land in this state and the owner's children and grandchildren under 18 years of age to hunt on the land without a hunting license, thus requiring such a nonresident owner of land and that person's children and grandchildren each to purchase a $124 nonresident hunting license.

- Removes the exemption in current law that allows an owner and the children of the owner of lands in this state and a tenant and children of the tenant on lands where they reside to hunt deer and wild turkey without a deer or wild turkey permit.

- Requires a resident of this state who owns land in this state and the owner's children and grandchildren and a tenant and children of the tenant residing on lands in this state to procure a landowner deer or landowner wild turkey in order to hunt deer or wild turkeys on the applicable lands, and specifies that such a permit is free of charge.

- Defines "children" to mean the biological or adopted sons or daughters and adopted stepsons or stepdaughters and "grandchildren" to mean the children of one's child for purposes of the Division of Wildlife Law and the Hunting and Fishing Law.

Energy resource extraction fees

(R.C. 1509.021 and 1513.021)

The bill establishes an energy resource extraction fee of 8¢ per ton of coal to be paid by the operator of a coal mining operation, 20¢ per barrel of crude oil sold or 0.56% of the total purchase price of the crude oil after the severance tax has been subtracted, whichever results in the greater amount, to be paid by the first purchaser of crude oil, and 5¢ per 1,000 cubic feet of natural gas or 2.25% of the total purchase price of the natural gas after the severance tax has been subtracted, whichever results in the greater amount, to be paid by the first purchaser of natural gas. "First purchaser of crude oil" means the person to whom title is first transferred beyond the gathering tank or tanks, beyond the facility from which the crude oil was first produced, or both. "First purchaser of natural gas" means the person to whom title first is transferred beyond the inlet side of the measurement station from which the natural gas was first produced. The bill states that the purpose of the energy resource extraction fees is to provide funding to the Division of Mineral Resources Management to administer the coal mining and reclamation program, reclaim land affected by mining, and satisfy the regulatory, environmental, and natural resources management requirements of this state.

The bill requires the Chief of the Division of Mineral Resources Management, with the approval of the Director of Natural Resources, to adopt rules in accordance with the Administrative Procedure Act for the administration of the energy resource extraction fees charged under the bill. In accordance with those rules, the Chief must collect from each operator of a coal mining operation, each first purchaser of crude oil, and each first purchaser of natural gas the applicable fee that is charged under the bill. In the case of the energy resource extraction fee that is charged with respect to coal, the Chief must transfer the money collected to the Treasurer of State to be credited to the existing Coal Mining Administration and Reclamation Reserve Fund. In the case of the energy resource extraction fees that are charged with respect to crude oil and natural gas, the Chief must transfer the money collected to the Treasurer of State to be credited to the existing Oil and Gas Well Fund.

The bill requires the Director of Natural Resources, beginning July 1, 2013, and within the first 30 days of each fiscal biennium thereafter, to examine the balances of the Coal Mining Administration and Reclamation Reserve Fund and the Oil and Gas Well Fund to determine if the balances of each of the Funds are sufficient to fulfill the purposes for which the fees are levied under the bill for the fiscal biennium in which the examination is conducted. The Director must certify the Director's determinations to the Director of Budget and Management and the Treasurer of State. If the Director of Natural Resources determines that the Coal Mining Administration and Reclamation

Reserve Fund contains sufficient money for that fiscal biennium, the energy resource extraction fee for coal must be 4¢ per ton of coal. If the Director determines that the Fund does not contain sufficient money for that fiscal biennium, the energy resource extraction fee for coal must be 8¢ per ton of coal. Similarly, if the Director determines that the Oil and Gas Well Fund contains sufficient money for that fiscal biennium, the energy resource extraction fee for crude oil must be 20¢ per barrel of crude oil and the energy extraction fee for natural gas must be 5¢ per 1,000 cubic feet of natural gas. If the Director determines that the fund does not contain sufficient money for that fiscal biennium, the energy resource extraction fee for crude oil must be 20¢ per barrel of crude oil sold or 0.56% of the total purchase price of the crude oil after the severance tax has been subtracted, whichever results in the greater amount, and the energy resource extraction fee for natural gas must be 5¢ per 1,000 cubic feet of natural gas or 2.25% of the total purchase price of the natural gas after the severance tax has been subtracted, whichever results in the greater amount.

The bill authorizes the Director of Natural Resources in any fiscal year to request the Director of Budget and Management to transfer from the Coal Mining Administration and Reclamation Reserve Fund, the Oil and Gas Well Fund, or both to the existing Geological Mapping Fund a portion of money credited to the Coal Mining Administration and Reclamation Reserve Fund or the Oil and Gas Well Fund, as applicable, resulting from the energy resource extraction fees that are collected.

The bill requires the Chief of the Division of Mineral Resources Management, not later than January 1, 2015, and in cooperation with a statewide association representing the coal mining industry and a statewide environmental advocacy association, to complete a study to determine the solvency of the Coal Mining Administration and Reclamation Fund. Likewise, the Chief, by that date and in cooperation with a statewide association representing the oil and natural gas industry and a statewide environmental advocacy association, to complete a study to determine the solvency of the Oil and Gas Well Fund. The Chief must report each determination to the Director of Budget and Management and make recommendations to the Director concerning the rates of the energy resource extraction fees charged under the bill.

Transfer of state programs for wild, scenic, and recreational river areas

Administration of wild, scenic, and recreational river areas

(R.C. 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, and 1547.87)

Current law

Current law requires the Chief of the Division of Natural Areas and Preserves in the Department of Natural Resources to administer wild, scenic, and recreational river areas.[241] In addition, the Chief may supervise, operate, protect, and maintain such areas as designated by the Director of Natural Resources. The Chief may cooperate with federal agencies administering any federal program concerning wild, scenic, or recreational river areas. The Chief must adopt rules for the use, visitation, and protection of lands owned or managed and administered by the Division that are within or adjacent to any wild, scenic, or recreational river area. Finally, the Chief or the Chief's representative may participate in watershed-wide planning with federal, state, and local agencies in order to protect the values of wild, scenic, and recreational river areas.

Current law also authorizes the Chief to administer federal financial assistance programs for wild, scenic, and recreational river areas. The Chief may 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 are appropriated by the General Assembly. The Chief may 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 bill revises the Chief's authority by adding that the Chief may participate in watershed planning activities with other states or federal agencies.

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[241] Current 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. 1517.15 (1547.01 in the bill).)

The bill

The bill transfers the administration of the state programs governing wild, scenic, and recreational river areas from the Chief of the Division of Natural Areas and Preserves to the Chief of the Division of Watercraft. To effectuate the transfer, the bill 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 bill 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 bill 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 of Natural Resources, 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 existing 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 4% of all money accruing to the Waterways Safety Fund. 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 bill states that any action taken by the Chief under the bill'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.[242]

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[242] Section 7 of Article XVIII, Ohio Constitution.

In addition, the bill authorizes the Division, in carrying out the bill'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 existing law.

The bill 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))

Under current law governing the Division of Natural Areas and Preserves, 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. Current law establishes procedures and requirements that the Director must follow in making such declarations. The bill retains the authority, procedures, and requirements concerning the Director's declaration of an area as a wild, scenic, or recreational river area.

Natural Areas and Preserves Fund; Waterways Safety Fund

(R.C. 1517.11 and 1547.75 (not in the bill))

Current law requires 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 bill 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)

Current law 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 bill 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 bill 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 bill))

Current law authorizes a preserve officer to enforce all laws and rules governing land and waters on lands that are owned or administered by the Division of Natural Areas and Preserves that are within or adjacent to any wild, scenic, or recreational river area. The bill 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))

Current law 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 of the Division of Natural Areas and Preserves 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 bill 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.

Waterways Safety Council

(R.C. 1547.73)

Current 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 bill 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 bill 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)

Current law 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 bill 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 bill 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 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)

Current law establishes fees for the issuance of triennial watercraft registration certificates and issuing agents' fees. The bill also imposes on watercraft that are not

powercraft a waterways conservation assessment fee of $5.[243] The fee must be collected at the time of the issuance of a triennial watercraft registration under current law and deposited in the state treasury and credited to a distinct account in the Waterways Safety Fund.

Under existing 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 bill) is $3. Existing law does not specify where the fee is to be deposited. The bill specifies that the fee is to be deposited to the credit of the Waterways Safety Fund as is the case in current law for other issuance (writing) fees paid to the Chief.

Current 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 bill 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 Waterways Safety Fund.

Well log filing fees

(R.C. 1521.05, 3701.344, and 6109.21)

Current law 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. 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 bill 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 current law, private water systems are regulated by boards of health, and public water systems are regulated by the Environmental Protection Agency. The well log filing fee must be paid in accordance with rules adopted under the bill. The bill requires the fee to be levied at a rate of $20 per well log filed or, if the Chief of the Division of Water has adopted an alternative fee amount in rules (see below), the fee amount established in rules. A board of health or the Environmental Protection Agency, as applicable, must collect well log filing fees on

[243] Current law defines "powercraft" as any vessel propelled by machinery, fuel, rockets, or similar device (R.C. 1547.01(B)(4)).

behalf of the Division of Water. 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 bill 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 bill and establish procedures for the quarterly transfer of filing fees by boards of health and the Environmental Protection Agency.

Dam program

(R.C. 1521.06 and 1521.063)

Permit filing fees

Current law prohibits the construction of a dam or levee without a construction permit that is issued by the Chief of the Division of Water. Before a construction permit may be issued, three copies of the plans and specifications, a filing fee, and a bond or other security must be filed with the Chief. The filing fee must be in an amount that is determined in accordance with a fee schedule that is established in current law. In addition, current law states that the fee cannot be less than $1,000 or more than $100,000. The bill increases the minimum amount of the filing fee for a dam or levee construction permit from $1,000 to $1,500 and increases the maximum amount of such a filing fee from $100,000 to $500,000. The bill adds that the Chief may adopt rules in accordance with the Administrative Procedure Act for establishing the minimum and maximum amounts of the construction permit filing fee in lieu of the amounts established by the bill.

Annual fee and compliant dam discount program

Current law 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 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 of Water 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 current law is 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 bill 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. It then amends the statutory fee schedule that establishes the annual fee by increasing some 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 scheduled established in the bill is as follows:

(1) For any dam classified as a class I dam, $30 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, $30 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, $30 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 bill retains the requirement that the Chief of the Division of Water 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 bill then establishes a compliant dam discount program to be administered by the Chief. 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.

Hunting licenses; annual deer and wild turkey permits

(R.C. 1531.01, 1533.10, and 1533.11)

Current law authorizes the owner of lands in this state and the owner's children of any age and grandchildren under 18 years of age to hunt on the lands without a hunting license. The bill removes the exemption and instead authorizes only a resident of this state who owns lands in the state and the owner's children of any age and grandchildren under 18 years of age to hunt on the lands without a hunting license. Thus, a nonresident owner of land in Ohio and the nonresident owner's children and grandchildren each must purchase a $124 nonresident hunting license.

Current law authorizes the owner and the children of the owner of lands in this state to hunt deer or wild turkey on the owner's land without a deer or wild turkey permit. In addition, current law authorizes the tenant and children of the tenant to hunt deer or wild turkey on lands where they reside without a deer or wild turkey permit. The bill eliminates the exemptions, thus requiring all persons to obtain an annual deer or wild turkey permit in order to hunt deer or wild turkey. It specifically requires a resident of this state who owns land in this state and the owner's children and grandchildren and a tenant and children of the tenant residing on lands in this state to procure a landowner deer or landowner wild turkey permit in order to hunt deer or wild turkeys on the applicable lands and specifies that the permit is free of charge. The current fee for an annual deer or wild turkey permit is $23, except for persons who are 66 years of age or older and for persons who are under 18 years of age in which case the fee is one-half of the regular deer or wild turkey permit fee. The bill requires every person while hunting deer or wild turkey to carry the person's deer or wild turkey permit rather than requiring every person while hunting deer or wild turkey on lands of another to carry the person's deer or wild turkey permit as in current law.

For purposes of the Division of Wildlife Law and the Hunting and Fishing Law, the bill defines "children" to mean biological or adopted sons or daughters and adopted stepsons or stepdaughters and "grandchildren" to mean the children of one's child.

OCCUPATIONAL, PHYSICAL THERAPY AND ATHLETIC TRAINERS BOARD (PYT)

- Requires the Occupational Therapy Section of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board to charge fees for the following purposes: (1) late license renewals, (2) reviewing continuing education activities, (3) initial license applications, (4) license verifications, and (5) any other purpose considered appropriate by the Section.

- 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)

Current law requires 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. Also, current law permits the Section to adopt rules establishing fees for late license renewal applications and the administrative costs of reviewing continuing education activities. The bill requires--rather than permits--the Section to charge these two fees.

The bill requires the Section to charge fees for the following additional purposes: (1) initial license applications, (2) license verifications, and (3) any other purpose for which the Section considers a fee appropriate.

The bill specifies that the amounts of fees that the Section is required to charge under existing law and under the bill are to be established in rules adopted by the Section.

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.
- Gives the Ohio Legal Assistance Foundation authority over the administration of interest on trust accounts (IOTA) and interest on lawyer's trust accounts (IOLTA).
- Eliminates the deduction of service charges from IOTA and IOLTA interest income.
- Amends the IOTA and IOLTA statutory rate provisions to conform with the rules of the Ohio Legal Assistance Foundation.

- Removes the statutory restriction on funding certain legal services from the Low- and Moderate-Income Housing Trust Fund.

- Provides that it is the policy of Ohio, insofar as it is not inconsistent with federal law, that all unpaid moneys remaining after the distribution to the members of the class of monetary awards in class actions must be used for the charitable public purpose of providing financial assistance to legal aid societies that operate within Ohio.

- Requires each defendant from whom the unpaid moneys are due after distribution of the monetary award to the members of the class to remit any unpaid moneys to the State Treasurer for deposit in the Legal Aid Fund and to notify the Ohio Legal Assistance Foundation (OLAF) of the amount so remitted, the case name and number of the class action, and the court that approved the settlement agreement or rendered the judgment in the class action.

- Makes a corrective change in existing law regarding rules established by OLAF in administering the Fund.

Indigent Defense Support Fund

(R.C. 120.08, 2937.22, 2949.091, 2949.111, 4507.45, 4509.101, and 4510.22)

Under existing law, the Indigent Defense Support Fund consists 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 uses the money to reimburse counties for costs incurred in running their public defender programs. The bill 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.

Existing law requires 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 of county appointed counsel systems. The bill 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.

Legal Aid Fund

(R.C. 120.52, 120.53, and 2315.50)

Administrative costs

Current law provides that the State Public Defender, through the Ohio Legal Assistance Foundation, must administer the payment of moneys out of the Legal Aid Fund. Four and one-half per cent of the moneys in the Fund must be reserved for the actual, reasonable costs of administering certain specified provisions of the Revised Code. The bill specifies that four and one-half per cent of the moneys in the Fund must be reserved for the Ohio Legal Assistance Foundation for the actual, reasonable costs of administering those provisions. The bill also specifies that the Ohio Legal Assistance Foundation is responsible for administering the programs established under the R.C. sections that require additional filing fees to be paid for deposit into the Legal Aid Fund and the R.C. sections that govern interest on trust accounts (IOTA) and interest on lawyer's trust accounts (IOLTA). The bill also provides that the Ohio Legal Assistance Foundation must establish rules governing the administration of the Legal Aid Fund, including the programs established under the above-described R.C. sections and removes from the reference to the programs established under those sections the limiting words "regarding interest on interest bearing trust accounts of an attorney, law firm, or legal professional association."

Unpaid moneys in class actions

The bill provides that it applies to an action maintained as a class action in which the settlement agreement or judgment includes a monetary award, including compensatory or punitive and exemplary damages, restitution, or any other payment of

money due from each defendant to the members of the class. It provides that it is the policy of this state, insofar as it is not inconsistent with federal law, that all unpaid moneys remaining after the distribution to the members of the class of monetary awards in those class actions must be used for the charitable public purpose of providing financial assistance to legal aid societies that operate within Ohio. Not later than the 20th day of the month immediately following the month during which the amount of unpaid moneys, if any, remaining after that distribution of the monetary award in the class action is identified, each defendant from whom the unpaid moneys are due, in a manner and form prescribed in the rules established by the Ohio Legal Assistance Foundation (OLAF) under R.C. 120.52, must do both of the following: (1) remit the sum of the unpaid moneys to the State Treasurer for deposit in the Legal Aid Fund established under R.C. 120.52 and (2) notify OLAF of: (a) the amount of the sum of unpaid moneys so remitted and (b) the case name and case number of the class action and the court that approved the settlement agreement or rendered the judgment in the class action.

Technical change

The bill modifies the Legal Aid Fund Law to include R.C. 2315.50 in the list of sections pursuant to which specific types of fees or moneys are credited to the Fund and makes a corrective change in the provision regarding rules established by OLAF in administering the Fund.

Low- and Moderate-Income Housing Trust Fund

(R.C. 174.02)

Current law provides that the Low- and Moderate-Income Housing Trust Fund consists of all appropriations made to the fund, housing trust fund fees collected by county recorders and deposited into the fund, and all grants, gifts, loan repayments, and contributions of money made from any source to the Department of Development for deposit in the fund. Use of all money drawn from the fund is subject to certain specified restrictions, including a *prohibition against using money in the fund to pay for any legal services other than the usual and customary legal services associated with the acquisition of housing*. The bill removes this prohibition.

Title Insurance Agents

(R.C. 3953.23)

Current law requires every title insurance agent to keep books of account and record and vouchers pertaining to the business of title insurance in such manner that the title insurance company may readily ascertain from time to time whether the agent

has complied with Ohio law regarding title insurance. A title insurance agent may engage in the business of handling escrows of real property transactions provided that the agent maintains a separate record of all receipts and disbursements of escrow funds. The agent cannot commingle any such funds with the agent's own funds held by the agent in any other capacity, and if at any time the Superintendent of Insurance determines that an agent has failed to comply with the above requirements, the Superintendent may revoke the license of the agent, subject to review as provided for in R.C. Chapter 119.

The bill modifies the requirements a title insurance agent must meet in order to engage in the business of handling escrows of real property by including a requirement that the agent deposit funds held in trust at interest in either an IOTA account in accordance with all applicable rules or a separate escrow account for the benefit of one or more parties to the escrow transaction. The bill requires the agent to ensure that any person or entity delegated or assigned by the agent with the responsibility for handling escrows of real property transactions complies with all provisions of the Revised Code and any rules that are applicable to the agent.

Interest-Bearing Trust Accounts (IOTA)

(R.C. 3953.231)

Current law

Current law requires each title insurance agent or title insurance company to establish and maintain an interest-bearing trust account (IOTA) for the deposit of all non-directed escrow funds that meet certain specified requirements. The account must be established and maintained in any federally insured bank, savings and loan association, credit union, or savings bank that is authorized to transact business in Ohio. Each account must be in the name of the title insurance agent or company and must be identified as an "interest on trust account" or "IOTA." The name of the account may contain additional identifying information to distinguish it from other accounts. Current law also requires that all funds in the account are subject to withdrawal or transfer upon request and without delay, or as so permitted by law.

The bill defines "escrow transaction" as a transaction in which a person, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of an interest in commercial or residential real property located in this state to another person, provides a written instrument or document, money, negotiable instrument, check, evidence of title to real property, or anything of value to an escrow or closing agent to be held by the agent until a specified event occurs or until the performance of a prescribed condition, at which time the agent must deliver it to a

specific person in compliance with applicable instruction by filing that written instrument or document with the appropriate public entity or by direct tender to the appropriate person.

Operation of the bill

The bill provides that each title insurance agent or title insurance company must establish and maintain an IOTA for the deposit of all non-directed escrow funds *received by the agent to affect an escrow transaction* and provides that the account be established and maintained in *an eligible depository* (the bill removes the reference to "bank, savings and loan association, credit union, or savings bank" and replaces it with "eligible depository"). The bill also requires that all funds be deposited into an IOTA account product at an eligible depository, where applicable.

The bill defines "escrow transaction" as a transaction in which a person, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of an interest in commercial or residential real property located in this state to another person, provides a written instrument or document, money, negotiable instrument, check, evidence of title to real property, or anything of value to an escrow or closing agent to be held by the agent until a specified event occurs or until the performance of a prescribed condition, at which time the agent must deliver it to a specific person in compliance with applicable instruction by filing that written instrument or document with the appropriate public entity or by direct tender to the appropriate person.

Interest on Lawyer's Trust Accounts (IOLTA)

(R.C. 4705.09)

Current law provides that any person admitted to the practice of law in Ohio by order of the Supreme Court in accordance with its prescribed and published rules, or any law firm or legal professional association, may establish and maintain an interest-bearing trust account, for purposes of depositing client funds held by the attorney, firm, or association for a short period of time, *with any bank, savings bank, or savings and loan association that is authorized to do business in Ohio and is insured by the Federal Deposit Insurance Corporation or the successor to that corporation, or any credit union insured by the National Credit Union Administration operating under the "Federal Credit Union Act," 84 Stat. 994 (1970), 12 U.S.C.A. 1751, or insured by a credit union share guaranty corporation established under R.C. Chapter 1761.* The bill removes the italicized language above and provides that the account must be established and maintained at an eligible depository.

Current law allows the Supreme Court to adopt and enforce rules of professional conduct that pertain to the use, by attorneys, law firms, or legal professional

associations, of interest-bearing trust accounts and that pertain to the enforcement of the requirement that the account be established and maintained at an eligible depository. Any rules adopted by the Supreme Court under this authority must conform to the provisions of R.C. 4705.09, 4705.10, and 120.51 to 120.55. The bill requires that these rules also conform to any rules adopted by the Ohio Legal Assistance Foundation pursuant to R.C. 120.52.

Eligible depository

(R.C. 3953.231 and 4705.09)

The bill defines "eligible depository" as a depository or financial institution that satisfies all of the following requirements:

(1) It voluntarily offers and maintains account products and meets the requirements prescribed in R.C. 3953.231 (regarding IOTA account products), 4705.09 (regarding IOLTA account products), and 4705.10 (regarding IOLTA account products) and any rules adopted by the Ohio Legal Assistance Foundation.

(2) It is a bank, savings bank, or savings and loan association authorized by federal or state law to do business in Ohio and insured by the Federal Deposit Insurance Corporation or any successor insurance corporation or is a credit union authorized by federal or state law to do business in this state and insured by the National Credit Union Administration or by a credit union share guaranty corporation in Ohio.

(3) It has been certified by the Ohio Legal Assistance Foundation as an eligible depository, based on the criterion provided in R.C. 120.52 (Legal Aid Fund), 3953.231 (regarding IOTA), 4705.09 (regarding IOLTA), and 4705.10 (regarding IOLTA), subject to a dispute resolution process established by rules adopted by the Ohio Legal Assistance Foundation pursuant to R.C. 120.52.

Rate of interest payable on IOTA account products and IOLTA account products

(R.C. 3953.231(C)(2) and (3) and 4705.10(A)(1) and (2))

Current law

Current law provides that the rate of interest payable on the account cannot be less than the rate paid by the bank, savings and loan, credit union, or savings bank to its regular depositors in the case of IOTA and the rate of interest on the account cannot be less than the rate paid by the depository institution to regular, nonattorney depositors in the case of IOLTA. For IOTA, the rate may be higher if there is no impairment of the

right to the immediate withdrawal or transfer of the principal. All interest earned on the account, net of service charges and other related charges, must be transmitted to the State Treasurer for deposit in the Legal Aid Fund. No part of the interest earned can be paid to the title insurance agent or company. For IOTLA, higher rates offered by the institution to customers whose deposits exceed certain time or quantity qualifications, such as those offered in the form of certificates of deposit, may be obtained by a person or law firm establishing the account if there is no impairment of the right to withdraw or transfer principal immediately.

Operation of the bill

The bill provides that the approved rate of interest payable on the account must equal or exceed the highest interest rate or dividend paid by the eligible depository on its account products that are not IOTA account products or IOLTA account products, where applicable. The eligible depository must pay on its IOTA account product or IOLTA account product any higher rates offered by it on its account products that are not IOTA account products or IOLTA account products.

In paying not less than the highest interest rate or dividend paid by the eligible depository on its account products that are not IOTA account products or IOLTA account products, an eligible depository must do both of the following:

(1) For IOTA accounts or IOLTA accounts with balances of less than $100,000, pay a rate that equals or exceeds the highest rate paid on its business checking account paying preferred interest rates, such as money market or indexed rates, or any other similar, suitable interest-bearing account offered by the eligible depository on its account products that are not IOTA account products or IOLTA account products;

(2) For IOTA accounts or IOLTA accounts with balances of $100,000 or more, pay a rate that equals or exceeds the highest rate paid on its business checking account with an automated investment feature, such as an overnight sweep account, business investment or other similar premium checking account, short-term jumbo certificate of deposit, money market account, or any other similar, suitable interest-bearing account offered by the eligible depository on its account products that are not IOTA account products or IOLTA account products.

In determining the highest interest rate or dividend paid by the eligible depository on its account products that are not IOTA account products or IOLTA account products, an eligible depository must consider the rates it offers its customers from internal rate sheets or through preferred or negotiated rates on a per customer basis. In considering the rate for the IOTA account product or the IOLTA account product, the eligible depository may also take into consideration and discount for

factors such as fees paid by the account-holder, time commitments, and withdrawal limitations. The eligible depository cannot use these factors to preclude the consideration of the rates paid on one or more of its account products that are not IOTA account products or IOLTA account products in the eligible depository's establishment of a rate for the IOTA account product or IOLTA account product.

If an eligible depository determines that it is unable to pay the approved rate during any reporting period, the eligible depository may request from the Ohio Legal Assistance Foundation a waiver from the approved rate requirement for that reporting period. If an eligible depository requests a waiver from the approved rate requirement, the eligible depository must demonstrate in the form and manner prescribed in rules adopted by the Ohio Legal Assistance Foundation that the rates of interest paid on its IOTA account product or IOLTA account product are generally not less than the highest rates paid by the eligible depository on its account products that are not IOTA account products or IOLTA account products. At a minimum, the eligible depository must demonstrate by an independent, third-party auditor's certification that not more than five per cent of the eligible depository's account products that are not IOTA account products or IOLTA account products with an average daily balance of greater than or equal to $100,000 have rates that are higher than the rate paid on its IOTA product or IOLTA account product during the same reporting period.

The bill also provides that no part of the interest earned on the funds deposited in an interest-bearing trust account can be paid to, *or inure to the benefit of,* the title insurance agent or company, *the client or other person who owns or has a beneficial ownership of the funds deposited, or any other account, person, or entity other than in accordance with R.C. 3953.231 or R.C. 120.51 to 120.55 (Ohio law regarding the Legal Aid Fund)*.

Remittance of interest or dividends

(R.C. 3953.231(D) and 4705.10(A)(3) and (4))

Current law

Under current law, in the case of IOTA, the title insurance agent or company establishing an account must direct the bank, savings and loan association, credit union, or savings bank, and in the case of IOLTA, the person or law firm establishing the account must direct the depository institution to do both of the following:

(1) Remit interest on dividends on the average monthly balance in the account, or as otherwise computed in accordance with the standard accounting practice of the bank, savings and loan association, credit union, savings bank, or institution less

reasonable service charges and other related charges, to the State Treasurer at least quarterly for deposit in the Legal Aid Fund;

(2) At the time of each remittance, transmit to the State Treasurer, and if requested, to the Ohio Legal Assistance Foundation, and the title insurance agent or company (IOTA), or the depositing attorney, law firm, or legal professional association upon the attorney's, firm's, or association's request (IOLTA), a statement showing the name of the title insurance agent, company, the name of the attorney for whom or the law firm or legal professional association for which the remittance is sent, the rate of interest applied, the accounting period, the net amount remitted to the State Treasurer for each account, the total remitted, the average account balance for each month of the period for which the report is made, and the amount deducted for service charges and other related charges.

Current law requires the depository institution (IOLTA) to notify the office of disciplinary counsel or other entity designated by the Supreme Court on each occasion when a properly payable instrument is presented for payment from the account, and the account contains insufficient funds. The depository institution must provide this notice without regard to whether the instrument is honored by the depository institution. The depository institution must provide the notice by electronic or other means within five banking days of the date that the instrument was honored or returned as dishonored. The notice must contain all of the following:

(1) The name and address of the institution;

(2) The name and address of the lawyer, law firm, or legal professional association that maintains the account;

(3) The account number and either the amount of the overdraft and the date issued or the amount of the dishonored instrument and the date returned.

Operation of the bill

The bill modifies the above-described provisions by requiring that the title insurance agent or company or person or law firm establishing the account direct the eligible depository to: (a) remit by the 15th day of each month interest or dividends on the average monthly balance in the account earned in the previous month, at the time of each remittance, and (b) transmit to the State Treasurer, the Ohio Legal Assistance Foundation, and, *if requested, to* the title insurance agent or company, depositing attorney, law firm, or legal professional association the information listed above as well as *the comparable accounts or product types and the rates paid as required above*. The bill also requires the title insurance agent or company direct the eligible depository to notify the Superintendent or other entity designated by the Superintendent and requires the

Office of Disciplinary Counsel or other entity designated by the Supreme Court on each occasion when a properly payable instrument is presented for payment from the account and the account contains insufficient funds, provide this notice by electronic or other means within five banking days of the date that the instrument was honored or returned as dishonored, and include in the notice all of the following:

(1) The name and address of the eligible depository;

(2) The name and address of the title insurance agent or company that maintains the account;

(3) The account number and either the amount of the overdraft and the date issued or the amount of the dishonored instrument and the date returned.

Confidentiality of statements and reports

(R.C. 3953.231(E) and 4705.10(B)(1))

Current law provides that the statements and reports submitted by the bank, savings and loan association, credit union, or savings bank (IOTA) and statements and reports of individual depositor information (IOLTA) are not public records subject to R.C. 149.43 and can be used only to administer the Legal Aid Fund. In the case of IOLTA the statements and reports can be used for enforcement of the Rules of Professional Conduct adopted by the Supreme Court. The bill provides that the statements and reports submitted by the *eligible depository* are confidential and are not public records, specifies that the statements and reports can be used by the Ohio Legal Assistance Foundation to administer the Legal Aid Fund *and by the Superintendent (IOTA) for enforcement of R.C. 3953.231* or *by the Supreme Court* for enforcement of the Rules of Professional Conduct adopted by the Supreme Court. Under the bill, if any statement or report submitted by an eligible depository is used by the Superintendent for the enforcement of R.C. 3953.231, that statement or report may become a public record subject to R.C. 149.43.

Deposited funds

(R.C. 3953.231(F))

Current law prohibits funds belonging to a title insurance agent or company from being deposited into an account established under R.C. 3953.231(A) (described above) except funds necessary to pay services charges and other related charges of the bank, savings and loan association, credit union, or savings bank that are in excess of earnings on the account. The bill provides that the account can include funds necessary to establish the account, removes the reference to the bank, savings and loan

association, credit union, or savings bank, and removes the requirement that the funds are in excess of earnings on the account.

Liability for negligent act or omission

(R.C. 3953.231(H))

Current law provides that no liability or responsibility arising out of any negligent act or omission of any title insurance agent with respect to any IOTA may be imputed to a title insurance company. The bill removes this prohibition.

Rules pertaining to the use of IOTA

(R.C. 3953.231(H))

Current law allows the Superintendent to adopt, in accordance with R.C. Chapter 119., rules that pertain to the use of IOTA and to the enforcement of R.C. 3953.231. The bill requires that any rules adopted by the Superintendent that pertain to the use of IOTA conform to the provisions of R.C. 3953.231, R.C. 3953.23, and any rules adopted by the Ohio Legal Assistance Foundation pursuant to R.C. 120.52.

Definitions

(R.C. 3953.231(I) and 4705.10(C))

The bill defines the following terms:

(1) "Approved rate" means the minimum allowable rate of interest payable on an IOTA account product established and maintained under R.C. 3953.231 or an IOLTA account product established and maintained under R.C. 4705.09 and 4705.10.

(2) "IOLTA account product" means a separate and unique product offered by an eligible depository that is used exclusively for the deposit of funds transferred electronically or otherwise, cash, money orders, or negotiable instruments that are received by an attorney that is used to hold client funds and fully complies with the account requirements of R.C. 120.52, 4705.09, and 4705.10.

(3) "IOTA account product" means a separate and unique product offered by an eligible depository that is used exclusively for the deposit of funds transferred electronically or otherwise, cash, money orders, or negotiable instruments that are received by a title insurance agent to effect an escrow transaction and fully complies with the account requirements of R.C. 120.52, 3953.23, and 3953.231.

DEPARTMENT OF PUBLIC SAFETY (DPS)

- Increases the three-year snowmobile, off-highway motorcycle, and all-purpose vehicle registration fee from $5 to $31.25.
- Increases the length of time a temporary operating permit for these vehicles is valid from 15 days to one year, and increases the cost of such a permit from $5 to $11.25.

Increase in snowmobile, off-highway motorcycle, and all-purpose vehicle registration fees

(R.C. 4519.04 and 4519.09)

Under current law, registrations for snowmobiles, off-highway motorcycles, and all-purpose vehicles expire on December 31 in the third year after the date they are issued; the cost is $5. The bill increases this registration fee from $5 to $31.25.

Temporary operating permits for certain out-of-state residents who wish to operate any of these vehicles in this state currently are valid for 15 days from the date of issuance and cost $5. The bill makes these temporary operating permits valid for one year and increases their cost from $5 to $11.25.

BOARD OF REGENTS (BOR)

- In order to enhance the marketability of obligations issued by or on behalf of a community or technical college district, creates an intercept program that generally does the following:

  --Permits the board of trustees of any community or technical college district, in connection with the issuance of obligations, to request the Chancellor of the Ohio Board of Regents to enter into an intercept agreement that would, in the event the debt service payments on the obligations are not made in full and on time, authorize the Chancellor to withhold funds that otherwise would be paid to the district as part of its allocated state share of instruction 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.

- Directs the needs-based assistance of the Ohio College Opportunity Grant Program only to Ohio resident students at Ohio's public institutions of higher education and establishes statutory formulae for determining grant amounts.
- Repeals the Student Choice Program, which currently provides grants to Ohio resident undergraduates at nonprofit private institutions based on academic merit.
- Creates two new block grant programs for grant awards to nonprofit private institutions and career colleges, for needs-based assistance to their Ohio resident undergraduate students.
- 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.
- Adds Columbiana, Mahoning, and Trumbull counties to the Jefferson County Community College District to create a new four-county 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.
- Specifies policies for trustee voting authority, tax levies, tuition rates, and bond issuance for the new, four-county district.

Community or Technical College Bond Issuance Intercept Program

(R.C. 152.09, 152.10, 152.12, 152.15, 3333.90, and 3345.12)

Definitions

For purposes of this portion of the bill, the key terms are defined as follows:

(1) "**Allocated state share of instruction**" means, for any fiscal year, the amount of the state share of instruction appropriated to the Ohio Board of Regents by the General Assembly that is allocated to a community or technical college or community or technical college district for that fiscal year.

(2) "**Community or technical college**" means any of the following state-supported or state-assisted institutions of higher education:

(a) A community college, which generally means a public institution of education beyond the high school that provides a curricular program of up to two years duration for either or both of the following purposes:

--To enable students to gain academic credit for courses generally comparable to courses offered in the first two years in colleges and universities, such that students may transfer to a college or university to earn a baccalaureate degree or terminate study after two years with a proportionate recognition of academic achievement;

--To enable students to gain academic credit for courses designed to prepare them to meet the occupational requirements of the community. (See R.C. 3354.01, not in the bill.)

(b) A technical college, which generally means a public institution of education beyond the high school that provides a curricular program of up to two years duration for the purpose of qualifying students to pursue careers in which they provide immediate technical assistance to professional or managerial persons generally required to hold baccalaureate or higher academic degrees in technical or professional fields. (See R.C. 3357.01, not in the bill.)

(c) A state community college, which generally means a two-year institution offering a baccalaureate-oriented program, a post-high school technical education program, or an adult continuing education program. (See R.C. 3358.01, not in the bill.)

(3) "**Community or technical college district**" means any of the following institutions of higher education that are state-supported or state-assisted:

(a) A community college district, which generally means a political subdivision comprised of the territory of one or more contiguous counties having together a total population of at least 75,000 preceding the establishment of the district, that is organized for the purpose of operating a community college within the district. (See R.C. 3354.01, not in the bill.)

(b) A technical college district, which generally means a political subdivision comprised of the territory of a city school district or a county, or two or more contiguous school districts or counties, that is organized for the purposes of operating one or more technical colleges within the district. (See R.C. 3357.01, not in the bill.)

(c) A state community college district, which generally means a political subdivision composed of the territory of a county, or two or more contiguous counties, in either case having a total population of at least 150,000, that is organized for the purpose of operating a state community college within the district. (See R.C. 3358.01, not in the bill.)

Intercept agreements

Existing law authorizes the board of trustees of a community or technical college district to issue bonds or other obligations.[244] The bill permits a board of trustees, in connection with an issuance of obligations, to adopt a resolution requesting the Chancellor of the Ohio Board of Regents to enter into an agreement 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, 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 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 bill (see below).

If the Chancellor approves the request, he or she is required to enter into a written agreement with the district and the primary paying agent or fiscal agent for the obligations.[245] 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 deposit 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.

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[244] See R.C. 3354.12, 3354.121, 3357.11, 3357.112, and 3358.10, not in the bill.

[245] 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)).

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 applicable 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 such obligations, the Chancellor must immediately contact the district or college and the paying agent or fiscal agent to confirm that the district and the college are not able to make the required payment by the date on which it is due. If the Chancellor so confirms, and the payment will not be made pursuant to a credit enhancement facility,[246] the Chancellor must promptly pay to the paying agent or fiscal agent the lesser of the amount due for bond service charges or the amount of the next periodic distribution scheduled to be made to the district or to the 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 is permitted to 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 to the Ohio Board of Regents 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.[247]

The bill permits the Chancellor, with the advice and consent of the Office of Budget and Management, 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.

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[246] For the definition of credit enhancement facility, see R.C. 133.01 (not in the bill).

[247] Because current law prohibits the use of money raised by taxation and state appropriations to be used to secure obligations issued by institutions of higher education, the bill creates an exception for obligations issued in conjunction with the intercept program (R.C. 3345.12(C)).

Issuance of bonds by the Ohio Building Authority

As part of this intercept program, the existing authority of the Ohio Building Authority ("Authority") to issue revenue bonds under Article VIII, Section 2i of the Ohio Constitution is expanded. Specifically, the bill permits the Authority to issue obligations on behalf of a community or technical college district if the issuance is subject to an intercept agreement for the withholding and depositing of funds otherwise due the district or the college it operates as its allocated state share of instruction (see "Intercept agreements," above).

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" generally means auxiliary facilities, education facilities, and housing and dining facilities,[248] 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

[248] For a definition of those terms, see R.C. 3345.12.

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 bill 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.

Obligations not a debt of the state

The bill 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.

Needs-based grants for Ohio students in higher education

(R.C. 3315.37, 3333.04, 3333.122, 3333.28, 3333.38, 3345.32, and 5107.58; R.C. 3333.27 repealed)

The bill modifies the Ohio College Opportunity Grant Program (OCOGP), which is a state program of needs-based assistance to Ohio residents in nursing degree and undergraduate programs. In general, the bill directs OCOGP grants only to Ohio resident students at public institutions and creates separate, needs-based assistance programs for Ohio resident students at Ohio career colleges and nonprofit private institutions. It also repeals the current Student Choice Grant Program, which is a Board of Regents (BOR)-administered program that provides grants to full-time, Ohio resident students of academic merit enrolled in bachelor's degree programs at Ohio nonprofit private institutions.

Under the current OCGP, an individual newly receiving a grant in the 2008-2009 academic year could be an Ohio resident student first enrolled 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 BOR, (3) for-profit private institution exempt from regulation by the Board of Career Colleges and Schools, but holding a certificate of authorization from the BOR and appropriately accredited, (4) education program of at least two years duration sponsored by a private institution of higher education in Ohio that meets Title VI and has a certificate of authorization from the BOR, or (5) nursing diploma program approved by the Board of Nursing and meeting Title VI. Under the bill, an OCOGP grant will be available to any resident that enrolls in an undergraduate program or in a nursing diploma program approved by the Board of Nursing, at a state-assisted state university or college, community college, technical college, university branch, or state community college that meets Title VI requirements. As under current law, OCOGP grants will be awarded through the institution of enrollment and the institution must still report to the Chancellor of BOR all students who received OCOGP grants but are no longer eligible for all or part of the grants. The refunding of grants made to ineligible students required under current law also applies.

The bill preserves the OCOGP's current, student need standard of a 2,190 expected family contribution ((EFC), which is a measure of a family's financial strength based on the processing results of the Free Application for Federal Student Aid (FAFSA) form). But, it removes the statutory table that currently specifies award amounts based on particular EFC ranges. Instead, the bill prohibits an OCOGP grant from ever exceeding the total state cost of attendance, and it establishes formulae for an OCOGP grant award. That is, an OCOGP 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 one of the state universities or in the Northeastern Ohio Universities College of Medicine or a university branch, the Chancellor may provide that the grant amount equals the student's remaining instructional and general charges for the undergraduate program after the student's Pell Grant and EFC are applied to those charges, but, in no case, can the grant amount for such a student exceed any maximum that the Chancellor can set by rule. The Chancellor may specify by rule the maximum grant amounts for additional semesters or quarters of enrollment beyond those covered by a grant, but the percentage maximums for a third semester or fourth quarter remain the same as under current law. Also preserved is the current limitation on receiving an OCOGP grant for no more than ten semesters, fifteen quarters, or the equivalent of five academic years.

Notwithstanding these grant amount standards, if there is inadequate program funding for any academic year, the Chancellor under the bill must (1) give preference in the payment of grants on the basis of EFC, beginning with the lowest EFC category and proceeding to the highest EFC category, (2) proportionately reduce the amount of each

individual grant, or (3) use an alternate formula for such grants that addresses the shortage of available funds and has been submitted to and approved by the Controlling Board.

The two new programs the bill creates are block grant programs for awards to Ohio BOR-certified nonprofit private institutions and to BOR-certified career colleges, or those certified by the State Board of Career Colleges and Schools. The schools must use the money to provide needs-based grants to their Ohio resident students enrolled in nursing or undergraduate programs. The bill provides that the General Assembly shall support the new Private Higher Education Needs-based Financial Aid Block Grant and Career College Needs-based Financial Aid Block Grant Programs in such sums and manner as it may provide; and it also authorizes the Chancellor to receive funds from other sources.

Under the bill, the Chancellor by rule will determine the eligibility of nonprofit private institutions and career colleges for grants under each program and the terms and conditions of and the manner of distributing those grants. The rules must include a requirement that, on the financial aid statement it must provide to each grant recipient, the nonprofit private institution or career college receiving a grant must note that a portion of the student's award is from the state of Ohio.

The Chancellor's rules also must specify the needs-based standard that will apply to grants awarded to students under the block grant programs. As with OCOGP, the block grant programs allow grants for degrees in theology, religion, or other field of preparation for a religious profession if the course of study leads to an accredited Bachelor of Arts or Bachelor of Science or an associate's degree. Unlike OCOGP, the new block grant programs do not expressly prohibit an award to a person serving a term of imprisonment, nor is a cap established in statute regarding the maximum award to a student receiving a grant through either program.

The bill requires a nonprofit private institution or career college that receives a grant from either block grant program to report to the Chancellor all students who have received a portion of that award. It also must report the amount of its award not distributed to students. The bill requires that that undistributed amount be deducted from the next such grant amount received by the institution or college.

The bill retains the OCOGP requirements under current law regarding institution eligibility for grants based on cohort default rates and applies it to the new OCOGP and the block grant programs.

University System of Ohio

(R.C. 3345.011)

The bill 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 current law, "state institution of higher education" includes all state universities,[249] the Northeastern Ohio Universities College of Medicine, community colleges, state community colleges, university branches, and technical colleges. The bill defines a "member of the University System of Ohio" as any individual institution listed above.

Multiple-county community college district

(R.C. 3354.24)

The bill adds Columbiana, Mahoning, and Trumbull counties to the Jefferson County Community College District to form a new four-county district that will be called the Eastern Gateway Community College District, to be governed by a new board of trustees composed of residents of the four-county territory.

Taxes and bonds

Under current 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 bill would divide the Eastern Gateway Community College District into two taxing subdistricts, with Jefferson County comprising one subdistrict and Columbiana, Mahoning, and Trumbull counties (CMT) comprising the other subdistrict. The new board of trustees may levy separate taxes in each subdistrict with the approval of the electors 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-

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[249] Under R.C. 3345.011, "state university" includes 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.

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 bill abolishes the existing 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. Three of the trustees must be residents of Jefferson County, one of whom is appointed for a one-year term, one for a three-year term, and one for a five-year term. Initially, the trustees currently serving on the existing board will continue to serve these appointments until the expiration of their respective terms. The other eight trustees must be residents of Columbiana, Mahoning, or Trumbull counties. Terms of those trustees are to be appointed 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 bill requires the new board of trustees of the four-county community college district to submit a proposal to the Chancellor of the Board of Regents 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 of trustees must enter into a transition agreement with the Chancellor following existing procedures and terms governing the conversion of a technical college into a state community college and providing for the disposition of assets and liabilities and the continuation of contracts (R.C. 3358.05).

DEPARTMENT OF REHABILITATION AND CORRECTION (DRC)

- Permits instead of requires the Department of Rehabilitation and Correction (DRC) to develop and implement intensive program prisons for male and female prisoners and, if any such prisons are established, permits instead of requires DRC to contract for the private operation and management of the initial intensive program prison for male and female prisoners who are sentenced to a mandatory prison term for a third or fourth degree felony OVI offense.

- Provides that the court must sentence an offender who commits the offense of "nonsupport of dependents" to one or more community control sanctions if the offense is committed by abandoning or failing to provide adequate support to the offender's child under 18 years of age or mentally or physically handicapped child under 21 years of age or by abandoning or failing to provide support established by court order to another person whom the offender is legally obligated to support by court order or decree and is a fourth or fifth degree felony.

- If a nonresidential sanction is imposed under the requirement discussed in the preceding dot point, requires the court to include as a condition of the nonresidential sanction that the offender participate in and complete a community corrections program if available in the county, unless the offender participated in such a program in the past three years.

- Removes from the definition of "detention" in R.C. 2921.01, which applies to all of R.C. Chapter 2921., supervision by an employee of DRC of a person on any type of release from a state correctional institution (making the crime of escape inapplicable to a person on any type of release from a state correctional institution who purposely breaks, attempts to break, or fails to return to supervision by an employee of DRC under those circumstances).

- Increases the days of credit a prisoner in a state correctional institution can earn per month for participation in approved programs from one day to seven days, excludes sex offender treatment programs from the programs through which credit may be earned, and prohibits the granting of credit to persons serving terms for sexually oriented offenses.

- Repeals the prohibition against smoking, using, or possessing tobacco in specified correctional institutions and repeals duties of DRC with respect to the prohibition.

Intensive program prisons

(R.C. 9.06, 5120.032, and 5120.033)

Current law

Current law requires that no later than January 1, 1998, the Department of Rehabilitation and Correction (DRC) develop and implement intensive program prisons for male and female prisoners other than prisoners described in R.C. 5120.032(B)(2). The intensive program prisons must include institutions at which imprisonment of the type described in R.C. 5120.031(B)(2)(a) is provided (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) and 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.

In addition, current law requires DRC, within 18 months after October 17, 1996, to develop and implement intensive program prisons for male and female prisoners who are sentenced pursuant to R.C. 2929.13(G)(2) to a mandatory prison term for a third or fourth degree felony OVI offense. DRC must contract pursuant to R.C. 9.06 for the private operation and management of this intensive program prison.

Operation of the bill

The bill permits (instead of requires) DRC to develop and implement intensive program prisons under R.C. 5120.032 and 5120.033, as described in the preceding paragraph. The bill also permits (instead of requires) DRC to contract for the private operation and management of any intensive program prison established under R.C. 5120.033.

Sentencing for "nonsupport of dependents"

(R.C. 2919.21 and 2929.17)

Current law prohibits any person from abandoning, or failing to provide adequate support to, the person's child who is under 18 years of age or mentally or physically handicapped child who is under 21 years of age. It also prohibits any person from abandoning, or failing to provide support as established by a court order to, another person whom the person is legally obligated by court order or decree to support.[250] A violation of either of the above prohibitions is "nonsupport of dependents," generally a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to nonsupport of dependents committed by a violation of either prohibition or if the offender has failed to provide support under either prohibition for a total accumulated period of 26 weeks out of 104 consecutive weeks, whether or not the 26 weeks were consecutive, then a violation of either prohibition is a felony of the fifth degree. If the offender previously has been convicted of or pleaded guilty to a felony offense of "nonsupport of dependents," a violation of either prohibition is a felony of the fourth degree.

The bill provides that if the violation of either of the prohibitions described in the preceding paragraph is a felony of the fourth or fifth degree, the court must sentence the offender to one or more community control sanctions authorized under R.C. 2929.16, 2929.17, or 2929.18.[251] If the court imposes a nonresidential sanction under R.C.

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[250] The offense of nonsupport of dependents is also committed by any person who abandons, or fails to provide adequate support to, the person's spouse, as required by law, or the person's aged or infirm parent or adoptive parent, who from lack of ability and means is unable to provide adequately for the parent's own support, or who aids, abets, induces, causes, encourages, or contributes to a child or a ward of the juvenile court becoming a dependent child or a neglected child (R.C. 2919.21(A)(1) and (3) and (C).) The bill does not affect these violations.

[251] The court imposing a sentence for a felony upon an offender who is not required to serve a mandatory prison term generally may impose any community residential sanction or combination of community residential sanctions authorized under R.C. 2929.16 or to impose

2929.17, the court must include as a condition of the sanction that the offender participate in and complete a community corrections program, as established under R.C. 5149.30 to 5149.37, unless the offender has previously participated in a community corrections program within the past three years, if available in the county in which the court imposing the sentence is located.[252]

Nonresidential sanctions

In addition to any nonresidential sanction or a combination of nonresidential sanctions that the court may impose upon an offender who is not required to serve a mandatory prison term under R.C. 2929.17, if the offense is a felony violation of either prohibition described above in "**Sentencing for "nonsupport of dependents"**," the bill permits the court to impose a requirement that the offender participate in and complete a community corrections program, as established under R.C. 5149.30 to 5149.37, unless the offender has previously participated in a community corrections program within the past three years, if available in the county in which the court imposing the sentence is located.

The crime of escape and the definition of "detention"

(R.C. 2921.01)

Current law provides that a person is guilty of the crime of escape if the person, knowing the person is under "detention" or being reckless in that regard, purposely breaks or attempts to break the detention, or purposely fails to return to detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent confinement (R.C. 2921.34).

R.C. 2921.01 defines "detention" to mean, for purposes of R.C. 2921.01 to 2921.45, arrest; confinement in any vehicle subsequent to an arrest; confinement in any public or private facility for custody of persons charged with or convicted of crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the

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any nonresidential sanction or combination of nonresidential sanctions authorized under R.C. 2929.18 generally permits the court imposing a sentence upon an offender for a felony to sentence the offender to any financial sanction or combination of financial sanctions authorized under that section.

[252] R.C. 5149.30(A) defines "community corrections programs" to include, but not be limited to, probation, parole, preventive or diversionary corrections programs, release-on-recognizance programs, prosecutorial diversion programs, specialized treatment programs for alcoholic and narcotic-addicted offenders, and community control sanctions.

United States; hospitalization, institutionalization, or confinement in any public or private facility that is ordered pursuant to or under the authority of R.C. 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402; confinement in any vehicle for transportation to or from any facility of any of those natures; detention for extradition or deportation; except as provided in this division, supervision by any employee of any facility of any of those natures that is incidental to hospitalization, institutionalization, or confinement in the facility but that occurs outside the facility; *supervision by an employee of the Department of Rehabilitation and Correction of a person on any type of release from a state correctional institution*; or confinement in any vehicle, airplane, or place while being returned from outside of this state into this state by a private person or entity pursuant to a contract entered into under R.C. 311.29(E) or R.C. 5149.03(B). For a person confined in a county jail who participates in a county jail industry program pursuant to R.C. 5147.30, "detention" includes time spent at an assigned work site and going to and from the work site.

The bill repeals the italicized language. As a result, the bill makes the crime of escape inapplicable to a person on any type of release from a state correctional institution who purposely breaks, attempts to break, or fails to return to supervision by an employee of DRC under those circumstances.

Credit for program participation by state prisoner

(R.C. 2967.193)

Under existing law, a person confined in a state correctional institution may earn one day of credit as a deduction from the person's stated prison term for each full month during which the person productively participates in an education program, vocational training, employment in prison industries, treatment for substance abuse, treatment as a sex offender, or any other constructive program developed by the Department of Rehabilitation and Correction with specific standards for performance by prisoners. However, a person who is serving a sentence of life imprisonment without parole under R.C. 2929.03 or 2929.06 or a prison term or a term of life imprisonment without parole under R.C. 2971.03 may not earn credit under this provision. At the end of each calendar month in which an eligible prisoner productively participates in a program or activity, the Department must deduct one day from the date on which the prisoner's stated prison term will expire. If a prisoner is released before the expiration of the prisoner's stated prison term by reason of credit earned for program participation, the Department must retain control of the prisoner by means of an appropriate post-release control sanction imposed by the Parole Board until the end of the stated prison term if the Parole Board imposes a post-release control sanction pursuant to R.C. 2967.28. If the Parole Board is not required to impose a post-release control sanction, it may elect not to impose one.

The bill allows a prisoner to earn seven days of credit for each "completed" month in which the prisoner participates in a program, excludes sex offender treatment programs from the programs through which a prisoner may earn credit, and prohibits the granting of such credit to any person who is serving a prison term or term of life imprisonment for a sexually oriented offense. The bill also deletes the language referring to the deduction of credit at the end of each calendar month and the language referring to post-release control sanctions for prisoners released early as the result of credit earned for program participation.

Tobacco use in correctional institutions

(R.C. 5145.32)

Current law

Current law prohibits any person from "smoking" (see below), using, or possessing tobacco or having tobacco under the person's control on any property under the control of the Corrections Medical Center in Columbus or the Ohio State Penitentiary in Youngstown.

Current law also prohibits a person from smoking or using tobacco in a building of the North Coast Correctional Treatment Facility in Grafton, Lake Erie Correctional Institution, Toledo Correctional Institution, Hocking Correctional Facility, Oakwood Correctional Facility, Northeast Pre-release Center, Franklin Pre-release Center, or Montgomery Education Pre-release Center.

The Director of Rehabilitation and Correction must designate at least one tobacco-free housing area within each "state correctional institution" (see below) that is not identified in the preceding two paragraphs. Current law prohibits a person from smoking or using tobacco in any such area.

A violation of any of the prohibitions in the preceding three paragraphs is not a criminal offense. Current law requires the Department of Rehabilitation and Correction (DRC) to adopt rules that establish procedures for the enforcement of the prohibitions and that establish disciplinary measures for a violation of the prohibitions.

DRC may designate locations at which it is permissible to smoke or use tobacco outside of a building of an institution identified in the third preceding paragraph.

DRC must provide smoking and tobacco usage cessation programs for prisoners at all state correctional institutions, subject to available funding. Further, the Director must review the practicality of eliminating access to smoking or tobacco usage in

specialized units to which the prohibitions under "**Tobacco use in correctional institutions**" do not otherwise apply.

For purposes of the above provisions, current law defines the following terms:

(1) "Smoke" means to burn any substance containing tobacco, including, but not limited to, a lighted cigarette, cigar, or pipe.

(2) "State correctional institution" has the same meaning as in R.C. 2967.01 and includes a prison that is privately operated and managed pursuant to a contract DRC enters into under R.C. 9.06.

Operation of the bill

The bill repeals all of the above prohibitions and duties of DRC.

RETIREMENT

- Removes current and future Unemployment Compensation Advisory Council members from the Public Employees Retirement System.
- Makes the current 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 1, 2009.
- Requires a state institution or state employing unit to establish a retirement incentive plan if, on or after July 1, 2009, it proposes to close or to lay off, within a six-month period, the lesser of 200 or 30% of its employees.

Removal of Unemployment Compensation Advisory Council Members from the Public Employees Retirement System

(R.C. 145.012 and 4141.08; Section 309.50.30)

Currently, the members of the Unemployment Compensation Advisory Council are considered "public employees" for purposes of the Public Employees Retirement System Law (R.C. Chapter 145.). The bill removes the current and future Council members from the definition of "public employee" under that law, thus removing those Council members from the Public Employees Retirement System (PERS). The bill

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 each and their actual and necessary expenses while engaged in the performance of their duties as Council members. The bill specifies that the $50 per day each Council member currently receives under continuing law is to be considered a "meeting stipend." This does not appear to be a substantive change in the law.

PERS retirement incentive plans

(R.C. 145.298)

Current law requires a state institution[253] or state employing unit[254] to establish a retirement incentive plan if the institution or employing unit proposes 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 members of the PERS 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 bill establishes different requirements under which an institution or employing unit must establish a retirement incentive plan depending on the date the institution or employing unit proposes to close or to lay off employees. The institution or employing unit is required to establish a plan if, prior to July 1, 2009, it proposes to close or to lay off, within a six-month period, the lesser of 50 or 10% of its employees. It

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[253] "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).)

[254] "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).)

must establish a plan if, on or after July 1, 2009, it proposes to close or to lay off, within a six-month period, the lesser of 200 or 30% of its employees.

SCHOOL FACILITIES COMMISSION (SFC)

- Changes the ½-mill maintenance levy requirement for a school district participating in the Accelerated Urban School Building Assistance Program that has divided its project into separate segments so that levy will run for 23 years from the date the initial segment was undertaken, instead of 23 years after the district's last segment under the program is undertaken as provided under current law.

- Requires the Executive Director of the School Facilities Commission to study and issue a report regarding 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.

- 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 calculating a district's tuition rate for nonresident students or the determination of whether the district has met its obligation to levy at least 20 mills for the operating expenses of the district.

Background: school facilities assistance programs

The Ohio School Facilities Commission administers several programs that provide state assistance to school districts and community schools in the acquisition of classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP) 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 priority for funding are based on the district's relative wealth. 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. Besides raising its shares of the cost of its project, generally through the issuance of 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 on 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.

Maintenance tax for Accelerated Urban districts

(R.C. 3318.061 and 3318.38; Section 385.30)

One of the other programs 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. That program applies only to 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. However, the maintenance levy requirement for an Accelerated Urban district that has segmented its project currently runs for 23 years after the district's last segment under the program is undertaken. The bill 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.

Study of shared community spaces

(Section 385.40)

The bill requires the Executive Director of the Commission to conduct a study of spaces, included in classroom facilities projects financed by the Commission, that are used for activities, services, and programs shared between schools and other public and private entities in their communities. The study 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 a written report of the results and recommendations of the study to the Commission by December 31, 2009.

Consideration of school district income tax levies allocated for school facilities projects

(R.C. 3317.021(D), 3317.0216, and 3317.08)

A continuing provision of the Classroom Facilities Law permits a school district to use the proceeds of an existing property tax or school district income tax that properly can be used for school construction to leverage securities to pay all or part of the district's local share of a state-assisted construction project.[255] This is an alternative to the usual method of financing a district's share of its project by requesting a new voter-approved bond issue and tax levy. Other separate provisions of the law on school finance require the Tax Commissioner annually to report the amount of a school

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[255] R.C. 3318.052, not in the bill.

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[256] and to determine whether a district has met its obligation to levy at least 20 mills for the current expenses of the district.[257] The bill 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.

SECRETARY OF STATE (SOS)

- Designates 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 of 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, adopt rules for the lease program's implementation, and approve purchases of marking devices and automatic tabulating equipment using moneys from the Fund.

- Specifies that marking devices and automatic tabulating equipment will be leased by participating counties until all lease payments have been made, at which time ownership will transfer to the counties.

[256] 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).

[257] Each district must levy at least 20 mills of its property tax valuation for current expenses; however, the amount of a district's income tax that is for current expenses counts toward a district's satisfaction of this requirement (R.C. 3306.01(A)(1) and 3317.01).

Acquisition of marking devices and automatic tabulating equipment; County Voting Machine Revolving Lease/Loan Fund

(R.C. 111.26 and 152.33)

The bill 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 marking devices and automatic tabulating equipment for optical scan ballots.

Use of Ohio Building Authority bond proceeds for specified election equipment; designation of boards of elections as state agencies

The bill designates 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 bill also declares both of the following: (1) that voting machines financed under the bill's provisions, the marking devices and automatic tabulating equipment for optical scan ballots, 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 bill authorizes the Ohio Building Authority to issue revenue obligations under the Building Authority Law to pay all or part of the cost of marking devices and automatic tabulating equipment for optical scan ballots. A county acquires use of the marking devices and automatic tabulation by lease from the Secretary of State, as described more completely below.

County Voting Machine Revolving Lease/Loan Fund

The bill 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 marking devices and automatic tabulating equipment, as needed to ensure sufficient moneys to support appropriations from the fund. Lease payments from counties acquiring 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.

Moneys in the fund are required to be used for the purpose of acquiring a portion of the marking devices and automatic tabulating equipment used by a county, at the request of the applicable board of elections. Acquisitions made under the bill must provide not more than 50% of the estimated total cost of a board of county

commissioners' purchase of marking devices and automatic tabulating equipment for optical scan ballots. Participation in the fund by a board of county commissioners must be voluntary.

The Secretary of State is required to administer the County Voting Machine Revolving Lease/Loan Fund in accordance with the bill and must enter into any lease or other agreement with the Department of Administrative Services necessary or appropriate to accomplish the bill's purposes.

County lease of voting equipment acquired through the fund

Counties must lease the 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 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 bill must provide not more than 50% of the estimated total cost of a board of county commissioners' purchase of marking devices and automatic tabulating equipment for optical scan ballots. All equipment purchased through the fund remains 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 equipment purchased through the fund are the responsibility of the participating boards of elections and boards of county commissioners.

The voting equipment lease may obligate the counties, as state agencies using capital facilities, to operate the voting 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 law 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 equipment authorized by the bill, 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 equipment acquisition and lease program established under the bill. The rules

must require that the Secretary of State approve any acquisition of marking devices and automatic tabulating equipment using money made available under the bill. An acquisition for any one board of county commissioners must not exceed $5 million, and must be made only for 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 bill.

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.

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 current law, the Board is required to send its decisions rendered on these appeals by certified mail.

The bill 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.

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 or 2017.
- Authorizes a conversion tax to be levied for a fixed period up to ten years or for a continuing period of time.
- 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.

II. Sales and Excise Taxes

- 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 the sales tax prompt-pay vendor discount from 0.75% to 1.0% of the amount of tax remitted, but caps it at $100 per month or other reporting period, beginning August 1, 2009.
- Permits dealers of titled vehicles to claim the discount on reports covering the time period when a sale is made, instead of when the dealer remits sales tax collections to the clerk of courts.

- 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.
- Authorizes retail licenses to be used at an unlimited number of places of business, instead of on a per-place basis.
- Eliminates the authority of a wholesale or retail licensee to assign such a license to another person.
- Increases the percentage of wholesale cigarette license fees paid into the Cigarette Tax Enforcement Fund from 47.5% to 100% of the amount collected (license fees are currently distributed 37.5% to the municipal corporation or township where the business is located, 15% to the county general fund, and 47.5% to the Cigarette Tax Enforcement Fund).
- 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.
- Requires 85% of severance tax revenue from salt extraction to be used for Lake Erie water and shore erosion protection and recreation facilities.

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 $1.2 million before a credit is authorized.

- Limits total motion picture credits allowed to $20 million per fiscal 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.

IV. Commercial Activity Tax

- 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

- 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.

- Removes the requirement that employees of the Research and Statistics division of the Department of Taxation be in the unclassified civil service.

- 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 bill 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 conversion is effected by repealing current expense levies in excess of 20 mills and re-levying that effective 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 (i.e., the effective millage for Class I real property to the extent it exceeds 20 mills) 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. The board of education may adopt the resolution proposing the conversion on or after January 1, 2010, but before December 31, 2013. The conversion requires voter approval.

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 would not be 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, 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 bill 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**").

The bill 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. 5705.2110)

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. The extent of the loss depends principally on the number of mills converted and the composition of property in the district as between Class I real property, Class II real property, and public utility personal property. Any loss will be from a reduction in taxes charged against Class II property and public utility personal property. It arises from the discrepancy between the effective rates on Class I, Class II, and public utility personal property. Under the conversion, the number of mills that must be converted 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.[258]

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 bill provides for temporary state reimbursement to be paid for some of this loss. 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 continue until the reimbursement amount for a year equals zero or until year 2026, whichever occurs first. 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.

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[258] 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.

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 2017.

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 bill, 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 currently 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, or through 2017, whichever comes first.

Property tax administration fund

(R.C. 5703.80)

Under current law, the state collects a fee for administration of property taxes. The fee is excised from property tax distributions to local taxing units. It is based upon two percentages: a percentage of the total tax reduction due to the 10% rollback for real property for the previous year, and a percentage of the taxes charged 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 current law, the percentage of the 10% rollback tax reduction for real property excised for the Property Tax Administration Fund equals 0.35%. The bill 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 currently equals 0.725%. The bill 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. Current law requires 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 must provide for payment to the treasurer for distribution to taxing units.

The bill 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 pre-existing 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 bill 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.

II. Sales and Excise Taxes

Taxation of Medicaid health insurance companies

Insurance corporation franchise tax

(R.C. 5725.18, 5725.25, and 5729.03)

Under current law, insurance companies are required 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. The franchise tax premiums base excludes 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 participate in the state's Medicaid care management system are required to pay a franchise permit fee, which is equal to 4.5% of the managed care premiums received by the corporation.

The bill eliminates the franchise permit fee, and includes Medicaid premiums received by insurance companies 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 current 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. Services provided by a health insuring corporation are not subject to the sales and use taxes under Chapters 5739. and 5741.

Beginning September 1, 2009, the bill 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 bill 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 would be issued direct payment permits allowing them to remit the tax directly to the state. Payment

must be made monthly. The bill 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.[259] 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 bill 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.

Sales and use tax vendor discount

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

Current sales tax law authorizes vendors who collect sales and use taxes to retain a percentage of the tax collected if they report and remit the tax to the state by the date on which it is due. This "discount" percentage is currently 0.75%. Dealers of titled vehicles (including boats and boat motors) are currently required to claim the discount when they remit sales tax collections to the clerk of courts.

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[259] 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.

The bill increases the vendor discount to retain to 1.0% of the amount remitted, but limits it to $100 for each return beginning August 1, 2009.

The bill permits the dealers of titled vehicles to claim the discount on a return covering the time period when a vehicle sale is made, rather than when sales tax is remitted to the clerk of courts. If the tax due on the return is less than the discount, a dealer may file up to two claims each year for a refund of any unused discount.

Cigarette and tobacco dealer licensing

(R.C. 5743.15 and 5743.61)

License fees

Current 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 from the county auditor of the county in which the manufacturer, importer, wholesaler, or retailer wishes to conduct business. Distributors of other tobacco products also must obtain a license for each place of business.

To obtain a license, an applicant must file annually with the Tax Commissioner. A license is valid for one year. Annual licensing fees are $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 may be assigned to another person in the same county upon application to the county auditor. Failure to obtain a license is a fourth-degree misdemeanor.

The bill increases the annual fees for tobacco product distribution licenses to $1,000 for each place of business, wholesale cigarette licenses to $1,000, and retail cigarette licenses to $125. A retail license may be used at an unlimited number of places of business. If a tobacco product distribution license is issued for less than one year, the fee is reduced proportionately to the remainder of the year, but not to less than $200. The bill eliminates the authority of cigarette wholesale and retail licensees to assign such licenses to another person.

Fee distribution

Under current law, of the fees collected from cigarette wholesale licenses, 37.5% is distributed to the municipal corporation or township where the business is 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% is distributed to the municipal corporation or township treasury where the business is 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% is paid to the municipal corporation or township, and 25% to the county general fund.

The bill increases the percentage of cigarette wholesale license fees paid into the Cigarette Tax Enforcement Fund to 100%. The bill 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.

Salt severance tax revenue

(R.C. 5749.02(B))

Continuing law levies an excise tax on the severance of minerals, including salt. Under current 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 are 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 bill requires revenue currently credited to the Unreclaimed Lands Fund to be credited instead to the Permit and Lease Fund. The Permit and Lease Fund holds money derived from granting permits and leases for removing sand, gravel, stone, gas, oil, and other minerals and substances from and under the bed of Lake Erie. It also holds revenue from permits granted to construct structures to control erosion, wave action, or inundation along or near the shoreline of Lake Erie. Fund money is used generally for the protection of Lake Erie shores and waters; investigation and control of erosion; the planning, development, and construction of facilities for recreational use of Lake Erie; preparation of the state shore erosion plan under; and state administration of Lake Erie coastal erosion areas.

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 bill 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[260]), 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 bill's Ohio New Markets Tax Credit totals 39% of the "adjusted purchase price" of qualified equity investments in qualified active low-income community 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, or long-term debt security issued by, a qualified CDE. It must be acquired after the bill's effective date, 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 $1 million per business.

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 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;

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[260] 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.

(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.[261]

Aggregate credit limit

The Ohio Department of Development may award a combined maximum of $10 million of tax credits annually (disregarding credit carry-forwards). The bill requires CDEs issuing qualified equity investments to certify the amount of the qualified low-income community investments that it anticipates it will make during the first 12 months to the Director of Development. At the end of the first year, the Director is required to increase or decrease the credits allowed based on the difference between the actual amount of the investments and the anticipated amount certified to the Director.

Recapture; rule-making

The bill 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.

The bill gives rule-making authority to the Director of Development to determine how credits are awarded, based on the order in which qualified investments are certified to the Director, and how credits are to be recaptured, if necessary.

Technology investment tax credit increase

(R.C. 122.151(D)(1))

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

[261] Nonqualified financial property is financial property (debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar 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.

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.

Current law limits the total amount of tax credits that may allowed to not more than $30 million.

The bill raises this limit to $45 million.

Job retention tax credit

(R.C. 122.171, 5725.98, and 5729.98)

Credit base

(R.C. 122.17(A) and (B))

Current 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." The credit equals a percentage, up to 75%, of annual Ohio income tax withholdings from employees filling full-time employment positions. Generally, a "full-time employment position" is a position for consideration for at least an average of 35 hours a week that has been filled for at least 180 days immediately preceding the date the eligible business files its application for the credit. (For purposes of this analysis, employees filling such positions are referred to as full-time employees.)

The bill eliminates the use of Ohio income tax withholdings from full-time employees as the base for determining the credit amount. Under the bill, 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))

Current law requires 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 is greater than 400% of the federal minimum wage, over the three preceding years. The amount invested may 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 must employ an average of at least 1,000 full-time employees during the twelve months preceding the date of credit application.

The bill reduces the investment threshold and the minimum number of employees, and it permits part-time employees to count toward the employee quota. The bill 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. The bill 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 bill 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)

Current law limits 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 bill expands eligibility to domestic and foreign insurance companies.

Credit limits

(R.C. 122.171(M))

The bill 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))

Current law authorizes the TCA and the business to enter into a tax credit agreement if the TCA determines, among other matters, that the political subdivisions in which the project is located have agreed to provide substantial financial support to the project. The bill removes this condition.

Under continuing law, the agreement must require the business to maintain a negotiated number of full-time employees at the project site (at least 1,000) for the term of the credit. The bill replaces the minimum of 1,000 actual full-time employees with a minimum of 500 full-time equivalent employees.

Under current law, the agreement also must prohibit the Director from allowing a credit 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 bill removes this prohibition.

Current law requires the agreement to prohibit the business from relocating any Ohio jobs to the project location unless the Director determines their current location is inadequate to meet market and industry conditions or other business considerations.

Under the bill, 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 current law, the agreement must require the business to provide to the Director information regarding full-time employment positions and related withholdings.

Under the bill, the agreement must require the business to 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 current law, if a business fails to comply with the agreement, the TCA may amend the agreement to reduce the percentage or term of the tax credit. The reduction may 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 may take effect in the taxable year immediately following the taxable year in which the Director of Development notifies 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 notifies the business in writing of such failure. If the business fails 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 may take effect in the current taxable year.

The bill provides that, in the event of any noncompliance, the percentage or credit term reduction may take effect in the current taxable or calendar year.

Current law prohibits a business that relocates employment positions in violation of the agreement from claiming any allowed credits. The bill 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))

Current law requires 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 bill changes this date to August 1.

Additional credit

(R.C. 122.171(M))

The bill 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))

Current law establishes a job creation grant program administered by the Ohio Tax Credit Authority (TCA) under which a business may receive refundable tax credits against specified taxes for creating new full-time employment positions. The credit amount is based on annual state and school district income tax withholdings from new full-time employees. Generally, a "full-time employee" is 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 bill eliminates the use of withholdings only from new full-time employment positions as a base for determining the credit amount. Under the bill, 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, to reflect an assumed rate of payroll growth presumably attributable only to pay increases. 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).

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))

Current law authorizes the TCA and the business to enter into a tax credit agreement if the TCA determines, among other matters, that the business' project will create new jobs in Ohio.

The bill 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 current law, the agreement must require the business to maintain operations at the project site for at least twice the term of the credit. If the business fails to do so, the TCA may 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 bill, 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 bill authorizes the TCA to require the business to reimburse the state for up to 50% 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 failed 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.

Current law requires the agreement to prohibit the business from relocating any Ohio jobs to the project location unless the Director determines their current location is inadequate to meet market and industry conditions or other business considerations.

Under the bill, 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 current law, the agreement must require the business to provide to the Director information regarding new full-time employment positions and related withholdings, and must require the Director to verify the business' compliance with the agreement and certify such verification to the business.

Under the bill, the agreement must require the business to 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 current law, if a business fails to comply with the agreement, the TCA may amend the agreement to reduce the percentage or term of the tax credit. The reduction may 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 may take effect in the taxable year immediately following the taxable year in which the Director of Development notifies 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 notifies the business in writing of such failure. If the business fails 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 may take effect in the current taxable year.

The bill provides that, in the event of any noncompliance, the percentage or credit term reduction may take effect in the current taxable or calendar year.

Current law prohibits a business that relocates employment positions in violation of the agreement from claiming any allowed credit. The bill 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. 122.17(L))

Current law requires 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 bill changes this date to August 1.

Movie and television production tax credit

(R.C. 122.85, 5733.58, 5733.98, 5747.66, and 5747.98)

The bill 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

The credit equals 25% of budgeted eligible production expenditures or actual eligible production expenditures, whichever is less. If the lesser of the two does not exceed $1.2 million, however, no credit is allowed. Not more than $20 million in credits may be allowed per fiscal biennium, and not more than $5 million in credits may be allowed per production.

Eligible productions and expenditures

"Motion picture" is defined as "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; and interactive web sites. 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," and in-house advertising. "Eligible production expenditures" is defined to mean expenditures for goods or services (including payroll) purchased and consumed in Ohio directly for the production. With respect to payroll for nonresident cast and crew, only 10% of such payroll counts toward eligible production expenditures.

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.

If the Director of Development certifies the motion picture as a tax credit-eligible production, the motion picture company must submit to the Director within 90 days of the certification "sufficient evidence of reviewable progress." 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. 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 $1.2 million, 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 bill authorizes the Director of Development, in consultation with the Tax Commissioner, to adopt rules to administer the tax credit program. The rules may govern what constitutes a tax credit-eligible production and eligible expenditures, a process for competitive 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 bill 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 bill specifies that the state reserves the right to refuse the use of its name in the credits of any tax credit-eligible production.

IV. Commercial Activity Tax

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 bill 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 of 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 current 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 bill 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 bill does not further define.

Commercial activity tax

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.

Current 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 bill, 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 bill 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 bill 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.

Currently, certain bad debts, cash discounts, returns and allowances, and accounts receivable are deducted when calculating taxable gross receipts. The bill 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 bill 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 current 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. Persons that would otherwise be subject to the tax but that begin business after November 30 in any year are exempt from the fee, as are persons that do not surpass the $150,000 taxable gross receipts threshold as of December 1.

The bill 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 bill 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 was not required to file returns due February 9 of 2007 or 2008, or to pay annual minimum tax payments for calendar year 2007 or 2008.

Consolidated elected taxpayer group

(R.C. 5751.01(R), 5751.011, 5751.013, and 5751.014)

Current 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 each group may 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 bill 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 bill 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 current law (only the pertinent language is moved).

Combined taxpayer group

(R.C. 5751.01, 5751.012, 5751.013, and 5751.014)

Under current 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 bill 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)

Currently, 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 correspond 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.

Taxpayers having estimated annual taxable gross receipts of $1 million or less may report and pay the tax on a calendar year basis, but only if the taxpayers make an election to do so. Such taxpayers are referred to as "calendar year taxpayers." (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 bill, 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 current 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 bill also changes commercial activity tax return filing dates. Currently, returns must be filed within 40 days after the end of the quarterly or annual reporting period. Under the bill, 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))

Current law requires 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.[262] Whether all or some part of the assessment must be paid depends on several conditions, including the reason for the assessment, the basis of the taxpayer's objection, and whether a return was filed.

The bill eliminates the various conditions and corresponding payment requirements, and requires payment of the entire amount assessed if either 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 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.

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[262] 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.

School district income tax

(R.C. 5748.02 and 5748.03)

Existing 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 bill 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)

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 bill 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 bill 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.

VI. Miscellaneous Tax Provisions

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 bill modifies the means by which the Tax Commissioner notifies persons of alleged outstanding tax liabilities or orders persons to take some action. Currently, the Commissioner must 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. Current law also requires a person who has received such an order to notify the Department of Taxation whether the person accepts the terms of the order and will obey it; the person's reply must 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 apply to the existing notices and orders issued by the Tax Commissioner under ongoing law, and are also extended 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. Currently, process or notice for such a person must 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 bill eliminates the requirement that a person receiving an order must notify the Department whether the order is accepted and will be obeyed. The bill eliminates the requirement that the copy of a notice or order be a "certified" copy. The bill 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 bill 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 bill 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 bill, "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 four-year 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 bill 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 bill 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 considered to be associated with an address if either:

(1) The person was residing or receiving legal documents at the address; or

(2) A business was conducted at the address by the person or the person's agent, or by any other person affiliated with the business, the person to whom the mailing was directed owns or controls at least 20% of the business' ownership interests having voting rights.

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.

Department of Taxation employee classification

(R.C. 5703.05)

Current law authorizes the Tax Commissioner to conduct a continuous study of the tax law's effects and operation, and to appoint necessary employees to carry out the study (currently residing in the Division of Research and Statistics). Currently, these employees are assigned by law to the unclassified civil service. The bill removes the reference to such employees and their assignment to the unclassified civil service.

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 bill 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.

TUITION TRUST AUTHORITY (TTA)

- Transfers the powers and duties of the Ohio Tuition Trust Authority to the Chancellor of the Board of Regents.
- Makes the Tuition Trust Authority an advisory board to the Chancellor, renames the Authority the "Ohio Tuition Trust Advisory Board," and adds to the Advisory Board one additional gubernatorial-appointed member who has experience in the field of banking, investment banking, insurance, or law.

Transfer to the Chancellor of the Board of Regents

(R.C. 3334.01, 3334.02, 3334.03, 3334.031, 3334.032, 3334.04, 3334.06 to 3334.12, 3334.16 to 3334.21, 5111.015, and 5115.03; Section 371.70.20)

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" currently 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.

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 the Authority determines that a price adjustment is 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 Authority has suspended the sale of new credits under the Guaranteed Program 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 in accordance with a plan adopted by the Authority. Because the program is market-based, it generally provides a variable rate of return and contributors assume all investment risk.

The bill

The bill transfers the powers and duties of the Ohio Tuition Trust Authority to the Chancellor of the Board of Regents, renames the Authority the "Ohio Tuition Trust Advisory Board," and makes it an advisory board to the Chancellor. The bill does not affect the legislative authorization of the state's college savings programs. It does specify, however, that the Chancellor "shall operate [each of those] programs . . . as a

qualified state tuition program within the meaning of Section 529 of the Internal Revenue Code."[263]

Ohio Tuition Trust Advisory Board powers

As noted above, the bill renames the Tuition Trust Authority the "Ohio Tuition Trust Advisory Board" to give advice to the Chancellor on the operation of the state's college savings programs. The new Advisory Board also must submit an annual report to the General Assembly and the Governor on the Chancellor's administration of those programs.[264] The bill requires the Chancellor to provide administrative assistance and all necessary documentation to assist the Advisory Board in preparing its report.[265] Whereas the Authority is required under current law to meet at least annually, the bill specifies that the new Advisory Board must meet at least quarterly.[266]

Ohio Tuition Trust Advisory Board membership

The bill adjusts the membership of the Tuition Trust Authority for its new role as the Ohio Tuition Trust Advisory Board. Currently, the Authority consists of 11 members, six of whom are appointed by the Governor with the advice and consent of the Senate, two of whom are state senators appointed by the Senate President, two of whom are state representatives appointed by the Speaker of the House, and the Chancellor. The bill keeps the 11-member format but replaces the Chancellor, to whom the new Board is to provide advice, with another member appointed by the Governor.[267] It does not make any other changes to the membership of the Advisory Board.

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[263] R.C. 3334.03(A).

[264] R.C. 3334.031(B).

[265] R.C. 3334.03(B).

[266] R.C. 3334.031(E).

[267] R.C. 3334.031(C). Of the Governor's appointees, under current law and under the bill, 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, under current law two members appointed by the Governor must have experience in the field of banking, investment banking, insurance, or law. The bill specifies that the new seventh gubernatorial-appointed member also have experience in one of those latter four fields.

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)

Current Ohio law generally requires every state agency to make any purchase from a particular supplier that would amount to $50,000 or more by competitive selection or with Controlling Board approval. Current law exempts 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 bill 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.

BUREAU OF WORKERS' COMPENSATION (BWC)

- Removes the requirement that the Administrator of Workers' Compensation, with the advice and consent of the Bureau of Workers' Compensation Board of Directors, employ an internal auditor who must report findings directly to the Board, Workers' Compensation Audit Committee, and Administrator.

- Requires the Chief Internal Auditor or the Office of Internal Auditing in the Office of Budget and Management, as applicable, to submit a copy of specified reports regarding internal audits directly to the Board and the Audit Committee in addition to the Administrator as required under continuing law.

Employment of an internal auditor by the Administrator of Workers' Compensation

(R.C. 4121.125)

Under continuing law, the Office of Internal Auditing (OIA) in the Office of Budget and Management (OBM) conducts internal audits of certain state agencies, including the Bureau of Workers' Compensation (BWC), or divisions of those agencies to improve their operations in the areas of risk management, internal controls, and governance. The audits are to be conducted as part of specified OIA programs. These programs must include an annual internal audit plan that utilizes risk assessment techniques and identifies the specific audits to be conducted during the year. The programs also must include periodic audits of each agency's major systems and controls, including those pertaining to accounting, administration, and electronic data processing. After the conclusion of an internal audit, the Chief Internal Auditor must submit a preliminary report of the audit's findings and recommendations to the State Audit Committee and to the director of the state agency involved. The agency or division covered by a preliminary report must be provided an opportunity to respond within 30 days after receipt of the report. The response must include a corrective action plan for any recommendation in the report that the agency or division does not dispute. The OIA is required to include any response that it receives within the 30-day period in its final report of the internal audit and must issue a final report within 30 days after the end of the 30-day response period, and submit copies of that report to the Committee, the Governor, and the director of the state agency involved.

Current law requires the Administrator of Workers' Compensation, with the advice and consent of the BWC Board of Directors, to employ an internal auditor who must report findings directly to the Board, Workers' Compensation Audit Committee, and Administrator, except that the internal auditor must not report findings directly to the Administrator when those findings involve malfeasance, misfeasance, or nonfeasance on the part of the Administrator. The Board and the Workers' Compensation Audit Committee, under current law, may request and review internal audits conducted by the internal auditor.

The bill removes the requirement that the Administrator employ an internal auditor as described immediately above. The bill also removes the ability of the Board and the Workers' Compensation Audit Committee to request and review internal audits conducted by that internal auditor. Instead, the bill requires the Chief Internal Auditor or the OIA, as applicable, to submit a copy of the preliminary report of the internal audit findings and recommendations regarding the BWC and a copy of the final report directly to the Board and the Workers' Compensation Audit Committee in addition to the Administrator, who serves as director of BWC, as required under continuing law.

DEPARTMENT OF YOUTH SERVICES (DYS)

- Decreases the amount of money the Department of Youth Services must withhold from future payments to a county's Felony Delinquent Care and Custody Fund when the Fund's balance exceeds total allocations made to it during the preceding fiscal year.

County Juvenile Felony Delinquent Care and Custody Fund

(R.C. 5139.43(B))

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 (R.C. 5139.34 and 5139.41). Those funds and subsidies are deposited in a county's Felony Delinquent Care and Custody Fund. Current law provides that beginning June 30, 2008, the balance in the Fund in any county cannot exceed the total moneys, i.e., the aforementioned operational funds and state subsidies, allocated to it during the previous fiscal year, unless the county is granted an exemption by DYS. DYS is required to withhold from future payments to each county fund an amount equal to any moneys in the Fund that exceed the total moneys allocated to the Fund during the preceding fiscal year.

The bill decreases the amount of moneys DYS is required to withhold from future payments to a fund. The bill requires DYS to withhold an amount equal to any moneys in the Fund that exceed 50% of the total moneys allocated in fiscal year 2010, and 25% of the total moneys allocated in subsequent fiscal years.

NOTE ON EFFECTIVE DATES

(Sections 809.10 to 812.50)

Section 1d, Article II of the Ohio Constitution states that "laws providing for tax levies [and] appropriations for the current expenses of the state government and state institutions *** shall go into immediate effect," and "shall not be subject to the referendum." R.C. 1.471 implements this provision with respect to appropriations, providing that a codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if (1) it is an appropriation for current expenses, (2) it is an earmarking

of the whole or part of an appropriation 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 bill includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section in the bill is subject to the referendum and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The bill also includes many exceptions to the default provision, some of which provide that specified provisions are not subject to the referendum and go into immediate effect. For example, many of the bill's provisions that provide for or are essential to the implementation of a tax levy go into immediate effect. Provisions that are or relate to an appropriation for current expenses also go into immediate effect.

The bill also specifies that an item that composes the whole or part of an *uncodified* section contained in the bill (other than an amending, enacting, or repealing clause) has no effect after June 30, 2011, unless its context clearly indicates otherwise.

HISTORY

ACTION	DATE
Introduced	02-12-09

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