Ohio Legislative Service Commission

Bill Analysis

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

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ADJUTANT GENERAL (ADJ)

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

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

- Increases the number of participants in the Ohio National Guard Scholarship Program for the 2009 summer term from the equivalent of 800 full-time participants to the equivalent of 1,000 full-time participants.

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.

Assistant Adjutant General-Army and Air Force

(R.C. 5913.051)

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

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

Ohio National Guard Scholarship Program

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

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

The bill carves out, in a special law, an exception to that limitation by increasing, for the summer academic term in 2009, the limit on the number of participants to the equivalent of 1,000 full-time participants.

DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS)

- Expands the powers of the Department of Administrative Services by authorizing the Department to lease any space, not just office space, for use by a state agency.

- Requires the Director of Administrative Services to administer a state equal employment opportunity program.

- Specifies that the Director's authority to enter into agreements with political subdivisions to furnish the Department's services and facilities in the administration of a merit program and other functions related to human resources includes counties and also includes, but is not limited to, administering competitive examinations for persons in the classified civil service.

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

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

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

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

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

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

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

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

- Provides that the moratoria on personal leave described above apply to employees of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides to exempt the officer's employees and so notifies the Director of Administrative Services in writing on or before July 1, 2009.

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

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

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

- Creates for specified state employees salary continuation not to exceed 480 hours at their total rate of pay for injuries incurred during the performance of, and arising out of, state employment after July 1, 2009.

- Modifies the occupational injury leave program established under current law.

- Eliminates pay supplements and probationary periods for intermittent employees.

- Places a general moratorium, from June 21, 2009, through June 20, 2011, on annual step advancements for exempt state employees who are paid in accordance with Salary Schedule E-1.

- Makes intermittent employees ineligible for step advancements.

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

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

- Specifies that a person in the classified civil service who holds a permanent position, rather than a certified position, may be appointed to an unclassified position and retain the right to return to the classified position.

- Provides that a laid-off employee has the right to displace employees with fewer retention points within the classification or classification series, and appointment category, rather than just within the classification or classification series.

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

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

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

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

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

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

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

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

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

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

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

- 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 conjunction with the individual boards and commissions, to develop and implement specific service level agreements to perform and provide support to the boards and commissions.

- Requires the Central Service Agency 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 human resources, fiscal, and information technology functions to achieve cost savings and efficiency.

- Allows a service level agreement to require employee transfers 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, but must be interpreted to focus on functions that are not evident to the licensees of the boards and commissions, registrants, or customers and so as not to interfere with the protection of the public.

- Specifies that the Director of Budget and Management must take budget actions necessary to implement the service level agreements and addendums thereto that have been signed by the respective boards and commissions and the Agency.

- 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.

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

- Requires contractors to comply with any workforce regulation or ordinance enacted by a political subdivision when performing a contract in that political subdivision when such contract is entered into pursuant to the Public Improvement Law or the Goods and Services Contract Law and is made by the state or is funded in whole or in part by state funds.

- Allows the director of each cabinet department to form, with the Governor's approval and utilizing department resources, one or more nonprofit corporations to solicit financial contributions or in-kind contributions of goods to support the fulfillment of the duties and responsibilities of the department.

- Specifies criteria for the articles of incorporation and bylaws of such a nonprofit corporation and requires the Department of Administrative Services to develop model articles of incorporation and bylaws.

- Permits employees of a department creating such a nonprofit corporation to serve as directors of the corporation.

- Requires certain disclosures to be made before soliciting or accepting any contributions to such a nonprofit corporation, and specifies how any such contribution is to be used.

- Permits the Director of Budget and Management to establish any accounts and take any other steps necessary for a department to receive contributions from such a nonprofit corporation.

- Requires the Director of Administrative Services to establish a single electronic internet web site through which the following can be accessed: a database containing each state employee's year-to-date gross pay and pay from the most recent pay period, a database containing agency expenditures for goods and services, and a database containing tax credits granted to business entities.

- Requires each database to contain searchable fields through which details about the subject of the database can be accessed.

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

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

- Removes obsolete pay tables prescribing pay for exempt employees.

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.

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.

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

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

The bill, effective August 30, 2009, changes the amount of service required of the following state employees before they accrue specific amounts of vacation leave with full pay: (1) exempt employees, (2) legislative employees, (3) Supreme Court employees, (4) certain employees in the office of the Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General, and (5) employees in any position for which authority to determine compensation is given by law to an individual or entity other than the Director of Administrative Services. These employees will accrue 120, 160, 180, 200, or 240 hours of vacation each year if they have accrued 4, 9, 14, 19, or 24 years of service respectively, rather than 5, 10, 15, 20, or 25 years of service as required by current law. Employees with less than four years of

service will accrue 80 hours of leave per year, but may begin using their accrued leave upon completion of their initial probation period. The bill provides that 52 weeks equal one year of service, rather than 26 biweekly pay periods as under current law. (R.C. 124.134 and Section 812.20.) These changes take effect on August 30, 2009 (Section 812.20).

The bill requires the Director of Administrative Services to determine an additional prorated amount of vacation leave for employees who are in their 4th, 9th, 14th, 19th, or 24th year of service to receive as a result of the transition occurring on August 30, 2009. This additional, prorated amount must be such that the affected employees are not harmed as a result of the transition, and must be added to the vacation leave balances of the affected employees on that date. (Section 803.30.)

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

(R.C. 124.382)

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

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

The bill does not grant the additional one-time sick leave credit to employees of the Secretary of State, Auditor of State, Treasurer of State, or Attorney General unless these employees were subject to the moratoria on the accrual and annual payment of personal leave in effect from December 2009 until December 2011 and the Secretary of State, Auditor of State, Treasurer of State, or Attorney General notified the Director of Administrative Services on or before July 1, 2009, of the decision to participate in the one-time additional sick leave credit. (R.C. 124.382(H).)

Moratoria on the accrual and annual payment of personal leave

(R.C. 124.386)

Current law provides 32 hours of personal leave each year to the following state employees: (1) exempt employees, (2) legislative employees, (3) Supreme Court employees, (4) certain employees in the office of the Governor, Secretary of State, Auditor of State, Treasurer of State, and Attorney General, and (5) employees in any position for which authority to determine compensation is given by law to another individual or entity. Existing law allows employees who receive personal leave to (1) carry forward their balance to the next year, (2) convert the balance to sick leave, or (3) be paid for the value of their balance. The bill imposes moratoria, from December 2009 through December 2011, on the accrual of personal leave by these employees and on the annual conversion of their accrued but unused personal leave. The bill provides that personal leave accrual will resume with employees receiving credit in December 2011, but with no retroactive grant of credit for the period the moratoria were in effect. (R.C. 124.386(A) and (D).)

The bill further provides that the moratoria described above apply to employees of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides to exempt the office's employees and so notifies the Director of Administrative Services in writing on or before July 1, 2009 (R.C. 124.386(H)).

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

(R.C. 124.183)

The bill grants to those state employees who are eligible to receive personal leave and who are in active payroll status on July 30, 2011, a one-time pay supplement in the earnings statements they receive on August 26, 2011. Part-time employees receive a one-time pay supplement equivalent to 16 hours of personal leave. Full-time employees receive a one-time pay supplement equivalent to 32 hours of personal leave or one-half the hours of personal leave hours the employee lost as a result of the moratoria on the crediting and annual payment of personal leave that was in effect from December 2009 until December 2011, whichever is less.

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

receive pay for an approved leave of absence including, but not limited to, occupational injury leave, disability leave, or workers' compensation. (R.C. 124.183(A) to (C).)

The bill does not grant the additional one-time pay supplement described above to employees of the Secretary of State, Auditor of State, Treasurer of State, or Attorney General unless these employees were subject to the moratoria on the accrual and annual payment of personal leave that was in effect from December 2009 until December 2011 and the Secretary of State, Auditor of State, Treasurer of State, or Attorney General notified the Director of Administrative Services in writing before July 1, 2009, of the decision to participate in the one-time pay supplement (R.C. 124.183(E)).

Use of compensatory time balance to supplement disability leave payments

(R.C. 124.385)

Existing law provides disability leave to employees who are paid by warrant of the Director of Budget and Management and meet certain qualifications. Current law allows employees to use available sick leave, personal leave, or vacation leave to supplement their disability leave payments to reach up to 100% of their base rate of pay. The bill allows employees also to use available compensatory time balances to supplement their disability leave payments to reach up to 100% of their base rate of pay. (R.C. 124.385(A)(6).)

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

(R.C. 124.381)

Current law provides occupational injury leave to each employee of the Departments of Rehabilitation and Correction, Mental Health, Mental Retardation and Developmental Disabilities, Veteran Services,[1] and Youth Services, and to each employee of the School for the Deaf and the School for the Blind, who suffers bodily injury inflicted by an inmate, patient, client, youth, or student in the facilities of these agencies during the time the employee is lawfully carrying out the assigned duties of the employee's position. Occupational injury leave is paid at the employee's total rate of pay during the period the employee is disabled as a result of the injury, but cannot exceed 120 work days. Occupational injury leave is in lieu of workers' compensation.

[1] Current law actually refers, not to the Department of Veterans Services, but to the Ohio Veterans Home Agency (OVHA). The OVHA now is part of the Department of Veterans Services, however, and the bill substitutes a reference to the Department for the reference in current law to the OVHA.

Under the bill, an employee of the agencies described in the preceding paragraph qualifies for occupational injury leave if the employee sustains a qualifying physical condition inflicted by a ward of these agencies during the time the employee is lawfully carrying out the assigned duties of the employee's position, and the duration of the leave is changed to 960 hours rather than 120 work days. As is the case under current law, if such an employee's disability as a result of a qualifying physical condition extends beyond 960 hours, the employee immediately becomes subject to sick leave and disability leave benefits. (R.C. 124.381(A)(2).)

The bill further provides, to the following state employees, including those ineligible for occupational injury leave described in the first paragraph above, salary continuation not to exceed 480 hours at their total rate of pay for absence as a result of injuries incurred during the performance of, and arising out of, state employment after the implementation date the Director of Administrative Services establishes by rule: (1) exempt employees, (2) legislative employees, (3) Supreme Court employees, (4) certain employees in the office of the Governor, Secretary of State, Auditor of State, Treasurer of State, and Attorney General, and (5) employees in any position for which authority to determine compensation is given by law to another individual or entity. If such an employee's absence as the result of such an injury extends beyond 480 hours, the employee immediately becomes subject to sick leave and disability leave benefits. (R.C. 124.381(A)(1).)

Under the bill, an employee who is participating in the modified occupational injury leave program or the new salary continuation program is ineligible for other paid leave, including holiday pay, and does not accrue vacation leave credit, but does accrue sick leave credit and personal leave credit (R.C. 124.381(B)).

The bill authorizes the Director of Administrative Services to adopt rules for the administration of both the modified occupational injury leave program and the new salary continuation program and for the payment of health benefits while an employee is on workers' compensation leave (R.C. 124.381(C)). The rules, as specified in continuing law, are to include provisions for determining a disability, for filing a claim for leave, and for allowing or denying claims for leave. And, by explicit implication from the bill, the rules are to define the implementation date for the new salary continuation program.

Finally, the bill clarifies that an appointing authority may apply to the Director of Administrative Services to grant both the new salary continuation and the modified occupational injury leave to law enforcement personnel employed by the appointing authority (R.C. 124.381(D)).

Elimination of pay supplements and probationary periods for intermittent employees

(R.C. 124.181 and 124.27)

Current law provides pay supplements for exempt state employees who are paid in accordance with Salary Schedule E-1. These pay supplements are for items such as service longevity, hazardous duty, call-back, shift differentials, professional achievement, and educational achievement. The bill specifies that intermittent employees are not eligible for these pay supplements. (R.C. 124.181(P).) A rule of the Department of Administrative Services defines an "intermittent employee" as one who works an irregular schedule that (1) is determined by the fluctuating demands of the work, (2) is not predictable, and (3) is generally characterized as requiring less than 1,000 hours of work per fiscal year.

Current law generally requires that all original and promotional appointments in the classified civil service be for a probationary period of not less than 60 days or more than one year, as fixed by rule of the Director of Administrative Services. The bill excludes intermittent appointments from this requirement. (R.C. 124.27(C).)

Moratorium on step advancements; prohibition on step advancements for intermittent employees

(R.C. 124.15)

The bill places a general moratorium, from June 21, 2009, through June 20, 2011, on the annual step advancements generally required for exempt state employees paid in accordance with Salary Schedule E-1. Generally, Schedule E-1 defines salaries for state employees who are exempt from public employee collective bargaining. The moratorium therefore applies to employees of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides to exempt the office's employees from the moratorium and so notifies the Director of Administrative Services in writing on or before July 1, 2009.

An employee who begins a probationary period before June 21, 2009, must advance to the next step in the employee's pay range at the end of the probationary period, and then become subject to the moratorium. An employee who is hired, promoted, or reassigned to a higher pay range between June 21, 2009, through June 20, 2011, cannot advance to the next step in the employee's pay range until the next anniversary of the employee's date of hire, promotion, or reassignment that occurs on or after June 21, 2011.

When an employee is promoted, the step entry date will be set to account for a probationary period. When an employee is reassigned to a higher pay range, the step entry date will be set to allow an employee who is not at the highest step of the range to receive a step advancement one year from the reassignment date.

The bill also specifies that employees in intermittent positions be employed at the minimum rate established for the pay range for their classification and makes them ineligible for step advancements. A rule of the Department of Administrative Services defines an "intermittent employee" as one who works an irregular schedule that (1) is determined by the fluctuating demands of the work, (2) is not predictable, and (3) is generally characterized as requiring less than 1,000 hours of work per fiscal year.

Miscellaneous civil service changes

(R.C. 124.11, 124.22, 124.324, and 124.34)

Current law requires that an applicant to take an examination for a position in the classified civil service be a United States citizen or have declared the intention of becoming a United States citizen. The bill instead requires that such an applicant be a United States citizen or have a valid permanent resident card. (R.C. 124.22.)

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

The bill instead requires that an appointing authority serve an employee in the classified civil service with a copy of an order of suspension or fine in the case of (1) a suspension of more than 40 work hours if the employee is exempt from the payment of overtime compensation, (2) a suspension of more than 24 work hours if the employee is required to be paid overtime compensation, (3) a fine of more than 40 hours' pay if the employee is exempt from the payment of overtime compensation, and (4) a fine of more than 24 hours' pay if the employee is required to be paid overtime compensation. (R.C. 124.34.)

Current law grants to certain employees who hold a certified position in the classified civil service and who are appointed to a position in the unclassified civil service the right to return to their former or a similar job in the classified service if they are removed from their job in the unclassified service. The bill makes this privilege available to a permanent, rather than to a certified, employee. (R.C. 124.11(D).) A

"certified" employee is an employee who is appointed to a position from an eligible list of persons who have passed a civil service examination.

Current law provides that a laid-off employee in the classified civil service has the right to displace employees with fewer retention points within the same or a lower classification or classification series. The bill provides that a laid-off employee in the classified civil service has the right to displace employees with fewer retention points within the same or a lower classification or classification series and appointment category. (R.C. 124.324(A).) An "appointment category" is one of the following: (1) part-time probationary, (2) part-time permanent, (3) full-time probationary, or (4) full-time permanent. (R.C. 124.324.)

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.

Mandatory cost savings days for exempt state employees

(R.C. 124.18, 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.

In addition to the provisions described in the preceding paragraph, the bill requires the Director of Administrative Services to establish a mandatory cost savings program applicable to the employees described in that paragraph. The program may include, but is not limited to, a loss of pay or loss of holiday pay as determined by the Director. The program may be administered differently among exempt employees based on their job classifications, appointment categories, appointing authorities, or other relevant distinctions.

The bill requires each full-time exempt employee to participate in the mandatory cost savings program for a total of 80 hours of mandatory cost savings during both fiscal years 2010 and 2011. Similarly, the bill requires each part-time employee to participate in the mandatory cost savings program by not receiving holiday pay during both fiscal years 2010 and 2011. The bill requires participation in the cost savings program described above for all employees of the Secretary of State, Auditor of State, Treasurer of State, or Attorney General unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General chooses to exempt the office's employees and so notifies the Director of Administrative Services in writing on or before July 1, 2009. (R.C. 124.392(C)(1).)

After June 30, 2011, the bill authorizes the Director of Administrative Services, in consultation with the Director of Budget and Management, to implement mandatory cost savings days for exempt employees in the event of a fiscal emergency. Each employee of the Secretary of State, Auditor of State, Treasurer of State, or Attorney General must participate in these mandatory cost savings days unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General chooses to exempt the office's employees and so notifies the Director of Administrative Services in the manner the Director of Administrative Services prescribes by rule. (R.C. 124.392(C)(2).)

The bill authorizes the Governor to declare a fiscal emergency if the Governor determines that the available revenue receipts and balances for any fund or across any funds will likely be less than the appropriations for the year, and to issue orders as

necessary to the Director of Budget and Management to reduce expenditures, or to the Director of Administrative Services to implement personnel actions consistent therewith, including, but not limited to, the mandatory cost savings days described above (R.C. 126.05).

The bill specifies that modifications or reductions in pay made as the result of voluntary or mandatory cost savings days are not modifications or reductions in pay that an employee in the classified civil service can appeal to the State Personnel Board of Review under the Civil Service Law (R.C. 124.34).

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 participating in a voluntary or mandatory cost savings day on that work day. (R.C. 124.18(B)(3).)

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, on or before June 30, 2010, in conjunction with the individual boards and commissions, developing and implementing specific service level agreements and agency-specific addendums to perform and provide support services for the boards and commissions. The service level agreements can provide for all or some of the following services:

(1) Making recommendations regarding and preparing and processing of payroll and other personnel documents;

(2) Preparing and processing vouchers, purchase orders, encumbrances, and other accounting documents;

(3) Maintaining ledgers of accounts and balances; and

(4) Preparing and monitoring budgets and allotment plans in consultation with the boards and commissions;

(5) Other routine support services that the Agency and the boards and commissions consider appropriate to achieve efficiency.

All services must be documented in the service level agreements and addendums signed by the Agency and the boards and commissions.

Under the bill the Agency can initiate or deny those personnel or fiscal actions that are addressed in a service level agreement or addendum, subject to the terms and conditions of the agreement or addendum. The Agency can, in writing, initiate or deny personnel or fiscal actions that are contrary to state law or policy. The state law or policy must be stated in the initiation or denial.

Under the bill, notwithstanding any contrary provision of law, on July 1, 2009, or as soon as possible thereafter, the Agency must review the support services the Agency performs on behalf of the boards and commissions and the fiscal condition of those boards and commissions with those boards and commissions. Thereafter, the Agency, in consultation with the boards and commissions, must provide recommendations to the Director of Budget and Management regarding consolidation of human resources, fiscal, and information technology functions to achieve administrative cost savings and efficiency.

The Agency must develop and enter into service level agreements and agency-specific addendums thereto with the boards and commissions. The Agency and the boards and commissions also must develop a resolution process for settling any disagreements. The dispute resolution process must be included in the service level agreements. The service level agreements, and any board and commission-specific addendums thereto, must be signed by a representative of the board or commission and the Agency. An agreement or addendum can require the transfer of the board's or commission's employees and assets and 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 human resources, fiscal, or information technology expenses.

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, but must be interpreted to focus on functions that are not evident to the licensees of the boards and commissions, registrants, or customers and so as not to interfere with the protection of the public.

The bill also directs the Director of Budget and Management to take budget actions necessary to implement the service level agreements and addendums thereto that have been signed by the respective boards and commissions and the Agency. The Director of Administrative Services must ensure that the service level agreements and addendums thereto are properly implemented.

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.

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

(Section 701.40)

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

If any person requests or obtains a waiver of the preferences described above, the Director of Administrative Services must publish information identifying the person and the product or service with regard to which the waiver was requested or obtained. The bill states that the purpose of publishing this information is to enhance opportunities for producers, service providers, and workers to identify and provide products made and services performed in the United States and Ohio, and thereby maximize the success of the fiscal stabilization and economic recovery program. The Director must publish the identifying information on an Internet web site maintained by the Department of Administrative Services. (Section 701.40.)

Contractor compliance with local law when performing a contract funded by state funds

The bill requires contractors to comply with any regulation or ordinance enacted by a political subdivision, which relates to the health, safety, status, and welfare of employees, when performing a contract in that political subdivision and when such contract is entered into pursuant to the Public Improvement Law (R.C. Chapter 125.) or the Goods and Services Contract Law (R.C. Chapter 153.) and is made by the state or is funded in whole or in part by state funds.

Nonprofit corporation formed by state departments

(R.C. 121.16)

The bill permits the director of each cabinet department to form, with the Governor's approval and utilizing department resources, one or more nonprofit corporations incorporated under the Ohio nonprofit corporation law to solicit financial

contributions or in-kind contributions of goods to support the fulfillment of the duties and responsibilities of the department.

The articles of incorporation or bylaws of any such nonprofit corporation must state that the corporation's sole purpose is to act in the interest of the department, include guidelines for the public disclosure of the employees, vendors, and contracts of the corporation and for the reporting and disclosure of donors and donation amounts. The articles of incorporation or bylaws also must include requirements for regular financial statements from the corporation to the department's director regarding the corporation's budget, expenditures, and processes, a regular schedule of audits, and any other conditions or protections to the public considered necessary by the Ohio Ethics Commission.

The bill requires the Department of Administrative Services to develop model articles of incorporation and bylaws that such a corporation can utilize. Alternatively, the corporation can adopt articles of incorporation and bylaws of its choosing, so long as they comply with all relevant Revised Code provisions, including those of the bill. The Department of Administrative Services must update the model articles of incorporation and bylaws to reflect any relevant changes in the Revised Code and any new guidance from the Ohio Ethics Commission.

A department director that forms a nonprofit corporation under the bill can permit department employees to serve as directors of the corporation. Any such employee must represent the department and the department's interests in all actions as a director of the corporation and must file an annual disclosure statement with the Oho Ethics Commission.

An employee of a department serving as a director of a nonprofit corporation can solicit financial contributions or in-kind contributions of goods for the corporation to support the fulfillment of the duties and responsibilities of the department. The employee must not personally benefit from solicitations for the corporation and must not receive any personal benefit from the corporation. All such solicitations are subject to the Ohio Ethics Law, the statutes prohibiting theft in office and soliciting or accepting improper compensation, and other relevant provisions of the Revised Code.

Before soliciting or accepting any contributions to a nonprofit corporation formed under the bill, an agent of the corporation must inform the prospective contributor of the following:

(1) That all contributions or donations are voluntary and must not be made with or in return for any state contracts, grants, or other financial benefits;

(2) That a contributor must not make a contribution and the corporation must not solicit or accept a contribution while a specific matter involving the contributor is pending before the department or a matter involving the contributor is reasonably foreseeable to come before the department soon after making the solicitation or contribution;

(3) That a contributor must not be given any ability, in a manner not afforded to other contributors or the general public, to lobby or promote the contributor's activities with public officials and employees of any department that benefits from the contribution;

(4) That public officials and employees must not be influenced in the objective performance of the official's or employee's public duties regarding a contributor by the contributor's decision to contribute or not to contribute; and

(5) That any contribution made in violation of these requirements must be returned to the contributor.

The bill permits contributions to be made to a nonprofit corporation formed under the bill to support specific projects or initiatives of the department, but requires the corporation to reject any proposed contribution that carries conditions or requirements that the director of the department determines are contrary to the interests of the department or the state.

A nonprofit corporation formed under the bill can make expenditures with the approval of the director of the department, to support the operations of the corporation. The corporation may only make expenditures that, in the director's judgment, benefit the department. The expenditures or transfers of contributed goods can be made directly by the corporation or can be transferred to the department. All corporation expenditures and all funds transferred to the department must comply with Ohio law. The Director of Budget and Management can establish any accounts and take any other steps necessary for a department to receive contributions from the corporation.

All activity of a nonprofit corporation formed under the bill is subject to the Open Meetings Act and the Public Records Act, and is subject to audits as if it were a public office. Directors, employees, and other agents of the corporation are considered to be public officials or employees subject to the requirements of the Ohio Ethics Law and to the statutes prohibiting theft in office and soliciting or accepting improper compensation.

Databases of state employee pay, agency expenses, and tax credit issuances published on one Internet web site

(R.C. 125.20)

The bill requires, within 180 days after the provision's effective date, that the Director of Administrative Services establish an electronic site accessible through the Internet to publish the following:

- A database containing each state employee's year-to-date gross pay and pay from the most recent pay period. The database must contain searchable fields, including the name of the agency, position title, and employee name.

- A database containing agency expenditures for goods and services that must contain searchable fields, including the name of the agency, expenditure amount, category of good or service for which an expenditure is made, and contractor or vendor name.

- A database containing tax credits issued by the Director of Development to business entities that must contain searchable fields, including the name under which the tax credit is known, the name of the entity receiving the credit, and the county in which the credit recipient's principal place of business in Ohio is located.

Daily, each executive agency must provide to the Department of Administrative Services information to be published in these databases. The Director of Administrative Services may adopt rules governing the means by which this information is to be submitted and the databases are updated. (R.C. 125.20.)

Life insurance coverage for county and municipal court judges

(R.C. 124.81)

The bill requires the Department of Administrative Services, in consultation with the Superintendent of Insurance, to negotiate with and, in accordance with the competitive selection procedures of the State Purchasing Law, to contract with one or more insurance companies that are authorized to do business in Ohio for the issuance of a group life insurance policy covering all municipal and county court judges. The amount of the coverage must equal the aggregate salary for each municipal and county court judge as prescribed by law. On and after the effective date of the life insurance coverage for municipal and county court judges, these judges are ineligible for life insurance coverage from any county or other political subdivision. (R.C. 124.81(B).)

Removal of obsolete pay tables prescribing pay for exempt employees

(R.C. 124.152)

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

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.
- Permits the Director of Aging to expand the PACE program to additional regions of Ohio to the extent funding is available.
- Establishes a home first process for the PACE program under which an individual who is admitted to a nursing facility while on a PACE waiting list is to be enrolled in the 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.
- Codifies the Choices Program and requires that it be available statewide, subject to federal approval.
- Provides that the Assisted Living Program may not serve more individuals than the number that is set by the federal government when the Medicaid waiver authorizing the program is approved.
- Requires the Director of Job and Family Services to seek federal approval to consolidate three Department of Aging-administered Medicaid waiver programs (the Assisted Living Program, Choices Program, and PASSPORT Program) into one Medicaid waiver program.
- Provides that an individual enrolled in a Medicaid waiver program that the Department of Aging administers may not receive certain Medicaid state plan services unless the services are provided in conjunction with Medicaid case management services provided to the individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Eliminates the Ohio's Best Rx Program and requires the Director of Aging to make efforts to conclude the program's operation by July 31, 2009, while setting program accounts with drug manufacturers and pharmacies until October 1, 2009.

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

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

- 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.

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

Residential State Supplement program

Background

The Department of Aging administers the Residential State Supplement (RSS) program, which provides a cash supplement to payments provided to eligible aged, blind, or disabled adults under the Supplement Security Income (SSI) program. The cash supplements provided under the RSS program must be used for the provision of accommodations, supervision, and personal care services.[2]

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.[3] 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;[4]

(2) $927 for a resident of an adult group home;[5]

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[2] R.C. 173.35.

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

[4] 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)).

[5] 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;[6]

(4) $824 for a resident of an adult family home;[7]

(5) $824 for a resident of an adult community alternative home;[8]

(6) $824 for a resident of an adult residential facility;[9]

(7) $618 for a person receiving adult community mental health housing services.[10]

PACE program

Background

Federal law permits a state to include in its Medicaid program a component known as the Program of All-inclusive Care for the Elderly (PACE).[11] The state agency administering the PACE program and the United States Secretary of Health and Human Services enter into an agreement with a provider under which the provider, directly or

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[6] 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).

[7] 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)).

[8] 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)).

[9] 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)).

[10] 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)).

[11] 42 U.S.C. 1396u-4.

by contract with other entities, provides medical services to individuals enrolled in the PACE program.

The medical services available under the PACE program must include all items and services covered by the Medicaid program and, in the case of PACE enrollees who are also entitled to benefits under Medicare Part A or enrolled in Medicare Part B, all items and services covered by 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 program, a Medicaid recipient must be (1) at least 55 years old, (2) require the level of care required by the state's Medicaid program for coverage of nursing facility services, (3) reside in an area of the state in which the PACE program is available, and (4) meet all other eligibility requirements included in a PACE agreement with a provider.[12] 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.[13]

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

[13] R.C. 173.50.

Expansion of PACE program

(Section 209.20)

The bill permits the Director of Aging to expand the PACE program to additional regions of Ohio to the extent funding is available. In implementing the expansion, the Director is prohibited from decreasing to less than 880 the number of PACE program slots that are available to eligible residents of Cuyahoga and Hamilton counties and the parts of Butler, Clermont, and Warren counties in which the PACE program is currently being operated.

Home first process

(R.C. 173.50 and 173.501)

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 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.

Choices Program

(R.C. 173.402)

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

neighbor, or relative (other than a spouse, parent, step-parent, or legal guardian) to provide home and community-based services to the individual.[14]

Current law has references to the Choices Program but it is not created in statute. The bill creates the Choices Program in statute (i.e., codifies the program).

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

Assisted Living Program

(R.C. 5111.89 and 5111.894)

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

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

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

Consolidated federal Medicaid waivers

(R.C. 5111.861; 173.40, 173.401, 173.402, 5111.89, 5111.891, 5111.894, and 5111.971)

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

[14] Ohio Department of Aging. *Choices Home Care Waiver* (last visited April 29, 2009), available at <http://aging.ohio.gov/services/choices/>.

waiver programs until the state receives federal approval for the consolidated federal Medicaid waiver.

In seeking the consolidated federal Medicaid waiver, the Director of Job and Family Services must work with the Director of Aging and provide for the waiver to do all of the following:

(1) For the part of the waiver that concerns the Assisted Living Program, include provisions established by state law governing the program;

(2) For the part of the waiver that concerns the Choices Program, include provisions in the bill regarding the program;

(3) For the part of the waiver that concerns the PASSPORT program, include provisions established by state law and the bill for the program;

(4) For each part of the waiver, be available statewide.

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

Case management for certain state plan services

(R.C. 173.403)

Currently the Department of Aging administers three Medicaid waiver programs: the Assisted Living Program, Choices Program, and PASSPORT program. The bill provides that an individual enrolled in a Medicaid waiver program that the Department of Aging administers may not receive certain Medicaid state plan services unless the services are provided in conjunction with Medicaid case management services provided to the individual. The Medicaid state plan services subject to this requirement are home health services, private duty nursing services, durable medical

equipment, services of a clinical nurse specialist, and services of a certified nurse practitioner.

Home First Reports

(R.C. 173.401 and 5111.894)

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

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[15] or recipient of community-based long-term care services[16] to any form of retaliation, reprisal, discipline, or discrimination for providing information to the Office of the State Long-Term Care Ombudsperson Program, participating in registering a complaint with the Office, or participating in the investigation of a complaint or in administrative or judicial proceedings resulting from a complaint registered with the Office. Retaliatory actions may include physical, mental, or verbal abuse; change of room assignment; withholding services; and failure to provide care in a timely manner. 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

[15] 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)).

[16] "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)).

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[17] under a program the Department administers unless the person or government entity is certified by the Department or the Department's designee.[18] 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.

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

[17] 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).

[18] R.C. 173.39.

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.

Unified long-term care budget

Interagency agreement regarding unified long-term care budget

(R.C. 173.43)

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

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

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

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

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

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

(2) Contract with each area agency on aging for assistance in the budget's administration;

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

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

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

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

(R.C. 173.431)

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

(1) Personal care services;

(2) Home-delivered meals;

(3) Adult day-care;

(4) Homemaker services;

(5) Emergency response services;

(6) Medical equipment and supplies;

(7) Chore services;

(8) Social work counseling;

(9) Nutritional counseling;

(10) Independent living assistance;

(11) Medical transportation;

(12) Nonmedical transportation;

(13) Home care attendant services;

(14) Assisted living services;

(15) Community transition services;

(16) Enhanced community living services;

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

Care management and authorization services

(R.C. 173.432)

The bill requires the Department of Aging or its designee to provide care management and authorization services with regard to the following state Medicaid plan services that are provided to participants of Medicaid waiver programs the Department administers: home health services, private duty nursing services, durable medical equipment, services of a clinical nurse specialist, and services of a certified nurse practitioner.

Federal approval

(R.C. 173.433)

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

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

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

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

Rules

(R.C. 173.434)

The bill requires the Director of Job and Family Services to adopt rules to authorize the Director of Aging to adopt rules that are needed to implement the

provisions of the bill discussed above regarding the unified long-term care budget. The Director of Aging's rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

Unified Long-Term Care Budget Workgroup

(Section 209.40)

The bill creates the Unified Long-Term Care Budget Workgroup,[19] consisting of the following members:

(1) The Director of Aging;

(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.[20]

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

Progress report on unified long-term care budget

(Section 209.40)

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[21] describing the progress towards establishing, or if already established, the effectiveness of the unified long-term care budget.[22]

Transfer of appropriations

(Section 209.40)

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.[23]

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

[21] 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).

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

[23] 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.

Long-Term Care Consultation Program

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

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

(R.C. 173.42 and 173.424)

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

The Department of Aging or program administrator is required by the bill to provide consultation to an individual identified by the Department or administrator as being likely to benefit from consultation. To assist the Department or administrator in making this determination, the 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 of its residents.[24] 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 of Aging or program administrator.

[24] 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 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 by the bill to have a consultation. Specifically, the bill provides that an individual is not required to be provided a consultation if the individual "refuses to cooperate" rather than, as under current law, if the individual "chooses to forego" participation.

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

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

Periodic or follow-up consultations

(R.C. 173.421)

The Department of Aging is permitted by the bill to establish procedures for the conduct of periodic or follow-up long-term care consultations for nursing facility residents, including annual or more frequent reassessments of the residents' functional capabilities. If the procedures are established, the Department or program administrator must assign individuals to nursing facilities to serve as care managers

within the facilities. To be assigned, an individual must be certified by the Department to provide long-term care consultations.

Program administration

(R.C. 173.42)

Under the 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 quality of long-term care services and supports (including procedures for assessing the extent to which the services and supports are provided in a culturally competent manner) and the health and welfare of individuals receiving the services and supports;

(6) Priorities for using resources efficiently and effectively.

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

(R.C. 173.42)

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 eliminates the Director's authority to issue a fine if a nursing facility retains an individual without such evidence. The Director is required by the bill to 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.

Monitoring of home and community-based services

(R.C. 173.423)

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

(1) Whether the services are appropriate;

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

Annual report

(R.C. 173.425)

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

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

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

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

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

Ohio's Best Rx Program

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

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 July 1, 2009, the bill repeals all statutes governing the program.

The bill requires the Director of Aging to make every effort to conclude the program's operation by July 31, 2009. Any program accounts with drug manufacturers or pharmacies still in effect are to be settled until October 1, 2009.

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

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

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

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.

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

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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.

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

(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."

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.

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

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

- Increases or eliminates certain fees under the Nursery Stock and Plant Pests Law, and requires all of the money collected under that Law to be credited to the Plant Pest Program Fund created by the 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 poultry dealers in the definition of "dealer" or "broker," and thus in the licensure requirements for dealers and brokers, in the Livestock Dealers Law, and

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

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

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

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

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

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

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

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

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

- Eliminates the existing exemption from licensure under the Rendering Plants Law for operations on any premises that are licensed under the Meat and Poultry Inspection Law or are subject to federal meat inspection and render only raw rendering material that is produced on the premises, and exempts holders of

nuisance wild animal permits issued by the Division of Wildlife in the Department of Natural Resources and county dog wardens or animal control officers from those licensure requirements.

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

- Prohibits a food processing establishment from being operated in a home except an establishment that is operating in a home prior to the effective date of the bill's applicable provisions.

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

- 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.

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

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

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

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

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

Sustainable Agriculture Program Fund

(R.C. 901.041)

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

Under 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.

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.

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.

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 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 maintain or furnish proof of financial responsibility. Application for a license as a small dealer must be made in writing to the Department. The application must state the nature of the business, the municipal corporation or township, county, and post-office address of the location where the business is to be conducted, the name of any employee who is authorized to act in the small dealer's behalf, and any additional information that the Department prescribes.

The applicant must satisfy the Department of the applicant's character and good faith in seeking to engage in the business of a small dealer. The Department then must

issue to the applicant a license to conduct the business of a small dealer at the place named in the application. Licenses, unless revoked, expire annually on March 31 and are renewed in accordance with procedures established in the Standard License Renewal Procedure Law.

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

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

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

The 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 (see below) for livestock dealers or brokers or their employees.

Other provisions

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

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

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 and fines that are imposed and collected under the Livestock Dealers Law are credited to the General Revenue Fund or paid into the state treasury, as applicable. The bill instead requires the money collected and fines imposed and collected under that Law to be credited to the renamed Animal and Consumer Analytical Laboratory Fund.

Garbage-Fed Swine and Poultry Law

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

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.

Under current law, equipment used for handling garbage, except for containers in which the garbage is treated, must not subsequently be used in the feeding of swine unless first cleaned and disinfected in accordance with directions on the labels of specified disinfectants approved by the Federal Insecticide, Fungicide and Rodenticide Act. The bill adds that conveyances also must be cleaned and disinfected before they can be used in the feeding of swine. "Conveyance" is defined to mean a vehicle, trailer,

or compartment that is used to transport raw rendering material.[27] As under existing law governing the cleaning and disinfecting of the premises, vehicles, and equipment used in the feeding of treated garbage to swine, the bill states that the owner of a conveyance is responsible for cleaning and disinfecting the conveyance with no expense to the Department of Agriculture.

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

Rendering Plants Law

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

With specified exemptions, 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 conveyance that is used for those purposes and establishes a $10 per-conveyance fee for late renewal applications that are received after November 30. It defines "conveyance" to mean a vehicle, trailer, or compartment. 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.

Current law exempts certain persons and operations from obtaining a license under the Rendering Plants Law to dispose of, pick up, render, or collect raw rendering material or transport the material to a composting facility. Included in the exemptions are operations on any premises that are licensed under the Meat and Poultry Inspection Law or are subject to federal meat inspection and render only raw rendering material that is produced on the premises. The bill eliminates that exemption.

The bill exempts both of the following from the Rendering Plants Law:

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

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

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

Food processing establishment registration

(R.C. 915.24 and 3715.041)

Current law requires the Director of Agriculture to adopt rules establishing standards and good manufacturing practices for food processing establishments.[28] However, a business or portion of a business that is regulated under the Dairy Products Law or the Meat Inspection Law is not subject to regulation under those rules as a food processing establishment. The bill requires a person that operates a food processing establishment to register the establishment annually with the Director. The person must submit an application for registration or renewal on a form prescribed and provided by the Director. Except as discussed below, an application for registration or renewal must be accompanied by a registration fee in an amount established in rules adopted by the Director under the bill (see below). If a person files an application for registration on or after August 1 of any year, the fee must be one-half of the annual registration fee.

The bill requires the Director to inspect the food processing establishment for which an application for initial registration has been submitted. If, upon inspection, the Director finds that the establishment is in compliance with the applicable provisions of the bill and with specified provisions of the Pure Food and Drug Law or the Bakeries, Canneries and Soft Drink Bottling, Cold Storage and Individual Locker, or Marketing Law, as applicable, or applicable rules, the Director must issue a certificate of registration to the food processing establishment. A registration expires on January 31

[28] "Food processing establishment" means a premises or part of a premises where food is processed, packaged, manufactured, or otherwise held or handled for distribution to another location or for sale at wholesale. "Food processing establishment" includes the activities of a bakery, confectionery, cannery, bottler, warehouse, or distributor and the activities of an entity that receives or salvages distressed food for sale or use as food. "Food processing establishment" does not include a cottage food production operation; a processor of maple syrup who boils sap when a minimum of 75% of the sap used to produce the syrup is collected directly from trees by that processor; a processor of sorghum who processes sorghum juice when a minimum of 75% of the sorghum juice used to produce the sorghum is extracted directly from sorghum plants by that processor; or a beekeeper who jars honey when a minimum of 75% of the honey is from that beekeeper's own hives. (R.C. 3715.041(A)(1) by reference to R.C. 3715.021, not in the bill.)

and is valid until that date unless it is suspended or revoked. A copy of the food processing establishment registration certificate must be conspicuously displayed in an area of the establishment to which customers of the establishment have access.

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

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

The bill prohibits a food processing establishment from operating in a home except for a food processing establishment that is operating in a home prior to the effective date of the applicable provisions of the bill. If a food processing establishment that is operating in a home prior to that date increases its existing operating capacity or transfers ownership, the person operating the food processing establishment or to whom ownership of the establishment will be transferred must apply for a food processing establishment registration.

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

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

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

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

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

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

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

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

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[29] 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;[30]

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[29] 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.

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

(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 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.

Ohio Pet Fund

(R.C. 955.201)

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

Under existing law, the Fund has certain duties and responsibilities regarding the support of sterilization programs and educational programs. One of those duties is to establish eligibility criteria for certain types of organizations that may receive financial assistance from the Fund. Formerly, tax-exempt charitable organizations could receive assistance if their primary purpose was to support programs for the sterilization of dogs and cats and educational programs concerning the proper veterinary care of those animals. The bill expands the tax-exempt charitable organizations that may receive assistance from the Fund to include those that have as one of their purposes, rather than as their primary purpose, the support of programs for the sterilization of dogs and cats and educational programs concerning proper veterinary care.

Veterinarian Loan Repayment Program

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

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

Ohio Farm Loan Fund

(R.C. 901.32)

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

Ohio Beekeepers Task Force

(Section 709.10)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AIR QUALITY DEVELOPMENT AUTHORITY (AIR)

- Requires the Ohio Air Quality Development Authority 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 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.
- Provides that the $50 immobilization waiver fee that a county or municipal court must impose in certain cases involving a motor vehicle that is subject to immobilization must be deposited into the indigent drivers alcohol treatment fund under the control of that court rather than into the state treasury to the credit of the state Indigent Drivers Alcohol Treatment Fund.
- Requires each Alcohol and Drug Addiction Services Board and Board of Alcohol, Drug Addiction, and Mental Health Services to submit detailed annual reports to ODADAS for each indigent drivers alcohol treatment fund in that board's area.

ODADAS representation on Ohio Commission on Fatherhood

(R.C. 5101.34)

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:

(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.[31] The warning must read as follows:

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

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).[32] 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

[31] 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.)

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

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.

Indigent drivers alcohol treatment funds

(R.C. 4503.235 and 4511.191)

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

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 court clerk to deposit the $50 vehicle immobilization fee that is imposed in certain cases involving the immobilization of a motor vehicle into the appropriate county or municipal indigent drivers alcohol treatment fund under the control of that court instead of into the state Indigent Drivers Alcohol Treatment Fund.

Annual reports by ADAMHS boards

The bill requires each ADAMHS board[33] to submit to ODADAS an annual report of each local indigent drivers alcohol treatment fund in that board's area. The report, which must be submitted not later than 60 days after the end of the state fiscal year, must provide the total payment that was made from the fund, including the number of indigent consumers that received treatment services and the number of indigent consumers that received an alcohol monitoring device. The report also must identify the treatment program and expenditure for an alcohol monitoring device for which that payment was made and include the fiscal year balance of each indigent drivers alcohol treatment fund located in that board's area. If a surplus is declared in a fund, as permitted by current law, the bill requires the report to provide the total payment that was made from the surplus money and identify the treatment program and expenditure for an alcohol monitoring device for which that payment was made. ODADAS may require additional information necessary to complete the comprehensive statewide Alcohol and Drug Addiction Services Plan as required by current law.

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

If an ADAMHS board is unable to obtain adequate information to develop the report to submit to ODADAS for a particular indigent drivers alcohol treatment fund, the board must submit a report detailing the effort made to obtain the information.

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.
- Requires the Ohio Athletic Commission to adopt rules that require the examinations of contestants before and after competitions by appropriate medical personnel.
- Authorizes the Commission to impose fines, with the amount to be determined by Commission rule, against licensees for their violations.
- Authorizes the Commission to revoke, suspend, or refuse to renew a license for associating or consorting with any person who has been convicted of a crime that involves a sport the Commission regulates.

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.

Ohio Athletic Commission rules regarding medical examination before and after bouts the Commission regulates

(R.C. 3773.45)

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

The bill eliminates the requirements described in the preceding paragraph and instead requires the Commission to adopt, and authorizes the Commission to amend or rescind, rules that require the physical examination by appropriate medical personnel

of each contestant in any public competition that involves boxing, mixed martial arts, kick boxing, karate, tough man contestant, or any other form of boxing or martial arts within a specified time period before or after the competition to determine whether the contestant is physically fit to compete in the competition under specified standards, has sustained physical injuries in the competition, or requires a follow-up examination, and require the reporting of each such examination to the Commission. (R.C. 3773.45 (A).)

Fines for violation of the Ohio Athletic Commission Law

(R.C. 3773.53)

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

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

(R.C. 3773.53)

The Ohio Athletic Commission may revoke, suspend, or refuse to renew a license if a licensee of the Commission is associating or consorting with any person who has been convicted of a crime. The bill limits the Commission's authority to situations where the licensee is associating or consorting with any person who has been convicted of a crime involving the sports regulated by the Commission. (R.C. 3773.53(B).)

Clarification of Ohio Athletic Commission fee statute

(R.C. 3773.43)

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

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

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

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

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

Peace officer training and reporting requirements

Hours of training in certain areas

(R.C. 109.73, 109.742, 109.743, and 109.77)

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

Current law requires the Attorney General to adopt rules that require peace officer training programs to include at least 15 hours of training in handling domestic relations matters and at least six hours in crisis intervention and requires a state, county, municipal, or Department of Natural Resources peace officer basic training program to include those types and amounts of training. The bill eliminates the

references to specific numbers of hours of such training and requires instead that the rules specify the amount of those types of training required and that the programs include those types of training.

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

Agency reports to OPOTC

(R.C. 109.761)

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

Exemption from peace officer training requirements

(R.C. 109.77)

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

Technical amendment

(R.C. 109.751)

The bill makes a technical change to a provision dealing with peace officer training.

- In addition to any other fee charged and collected, allows the Barber Board to ask each person renewing a license to practice as a barber whether the person wishes to make a $2 voluntary contribution to the Ed Jeffers Barber Museum.

- Requires the board to transmit any contributions to the Treasurer of State for deposit into the Occupational Licensing Fund.

- Requires the Director of Budget and Management and the Executive Director of the Barber Board to develop a plan to distribute the amounts collected to the Ed Jeffers Barber Museum.

Optional charge during barber license renewal to fund barber museum

(R.C. 4907.12; Section 227.10)

Under continuing law the Barber Board must charge and collect fees for the following: an application to take the barber examination; an application to retake any part of the barber examination; the initial issuance of a license to practice as a barber; the biennial renewal of the license to practice as a barber; the restoration of an expired barber license; the issuance of a duplicate barber or shop license; the inspection of a new barber shop, change of ownership, or reopening of premises or facilities formerly operated as a barber shop, and issuance of a shop license; the biennial renewal of a barber shop license; the restoration of a barber shop license; the inspection of premises for location of a new barber school, or each inspection of premises for relocation of a currently licensed barber school; the initial barber school license and the renewal of the license; the restoration of a barber school license; the issuance of a student registration; the examination and issuance of a biennial teacher license; the renewal of a biennial teacher license; the restoration of an expired teacher license; the issuance of a barber license by reciprocity; and for providing licensure information concerning an applicant.

Additionally, the Board, subject to the approval of the Controlling Board, can establish excess fees, provided that the fees do not exceed the permitted amounts by more than 50%.

The bill requires, in addition to any other fee charged and collected, the Board to ask each person renewing a license to practice as a barber whether the person wishes to make a $2 voluntary contribution to the Ed Jeffers Barber Museum. The Board must transmit any contributions to the Treasurer of State for deposit into the Occupational

Licensing Fund. Beginning October 1, 2009, or as soon as possible thereafter, the Director of Budget and Management and the Executive Director of the Barber Board must develop a plan to distribute the amounts collected to the Ed Jeffers Barber Museum.

OFFICE OF BUDGET AND MANAGEMENT (OBM)

- Requires that state employees be paid at the employee's regular rate of pay for any hours of compensatory time in excess of maximum amounts specified in existing law if the employee has not used the compensatory time with 365 days after it is granted, rather than within 180 days as provided by current law.

- Requires that part-time permanent employees receive four hours of holiday pay, rather than on a pro-rated basis as required by present law.

- Changes certain conditions governing the payment of holiday pay for state employees that relate to whether the employee worked the day immediately before or after the holiday.

- 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.

- 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.

Changes in payment of holiday pay and the use of compensatory leave

(R.C. 124.18)

Current law generally requires that employees whose salary or wage is paid in whole or in part by the state or by any state-supported college or university and who are required to work more than 40 hours in any calendar week are entitled to overtime pay or compensatory time. An employee may accrue compensatory time up to a maximum of 240 hours, except that public safety employees and other employees who meet the criteria established in the federal Fair Labor Standards Act of 1938 may accrue a maximum of 480 hours. An employee must be paid at the employee's regular rate of pay for any hours of compensatory time accrued in excess of these amounts if the employee has not used the compensatory time within 180 days after it is granted. The bill extends this time period to 365 days. (R.C. 124.18(A).)

An employee paid by warrant of the Director of Budget and Management who is scheduled to work on a holiday and who does not report to work the day before, the day of, or the day after the holiday due to an illness of the employee or a member of the employee's immediate family does not receive holiday pay unless the employee can provide documentation of extenuating circumstances that prohibited the employee from reporting to work. The bill limits this provision to the holidays of New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day. The bill also specifies that if an employee works a shift between the employee's scheduled shift and the holiday, the employee must be paid for the holiday. (R.C. 124.18(B)(2).)

Current law provides that part-time permanent employees receive holiday pay on a pro-rated basis, based upon the daily average of actual hours worked, excluding overtime hours, in the previous calendar quarter. The bill instead grants part-time permanent employees four hours of holiday pay regardless of the employee's work shift and work schedule. (R.C. 124.18(B)(7).)

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

(R.C. 126.21)

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

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

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 (GRF). If additional federal fiscal stabilization funds are available, the Director may authorize expenditures from the GRF in excess of the amounts appropriated to provide additional government services.

The bill states that this federal money cannot be used as a match for the state's share of Medicaid.

STATE CHIROPRACTIC BOARD (CHR)

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

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

Renewal of licenses to practice chiropractic

(R.C. 4734.25)

Under current law, a license to practice chiropractic must be renewed annually by the first day of January. The fee for renewal of a license is $250. If a person fails to renew a license, the license is automatically forfeited. A forfeited license may be reinstated if all fees due are paid, in addition to a $150 penalty.

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

CIVIL RIGHTS COMMISSION (CIV)

- 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 the Fair Housing Law.

- Requires an "aggrieved person" to be a party to an administrative hearing held in relation to a violation of the Fair Housing Law.

- Permits the complainant and "aggrieved persons" to appear at an administrative hearing held in relation to a violation of the Fair Housing Law in person, by attorney, or otherwise to examine and cross-examine witnesses and to present evidence.

- Authorizes respondents in administrative hearings before the Ohio Civil Rights Commission to present evidence.

- Expands the category of persons who may request that the Ohio 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.

- Authorizes the Ohio Civil Rights Commission to refer a matter to the Attorney General for a civil action when a person breaches a conciliation agreement with the Commission and establishes the remedies that a court may award.

- Expands the remedies a court may award in a civil action the Attorney General brings to enforce the Ohio Fair Housing Law.

- Permits any person to intervene in a civil action the Attorney General brings pursuant to a referral, if the person is an "aggrieved person" under the Fair Housing Law or a party to a breached conciliation agreement.

Civil Rights Law

(R.C. 4112.01(A)(23), 4112.04(B)(3)(b), 4112.05(C), (D), and (E), 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;

(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 of unlawful discriminatory practice through Ohio Civil Rights Commission

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

Under existing law, the respondent to a complaint the OCRC issues has the right to file an answer or an amended answer to the original complaint (and any amended complaint) and to appear at the administrative hearing in person, by attorney, or otherwise to examine and cross-examine witnesses. The complainant also must be a

party to the hearing. (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 for a Fair Housing Law violation

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

Parties and presentation of evidence at administrative hearing relating to a Fair Housing Law violation

The bill requires any "aggrieved person" to be a party to the administrative hearing held in relation to a violation of the Fair Housing Law and permits the complainant and aggrieved persons to appear at the hearing in person, by attorney, or otherwise to examine and cross-examine witnesses and to present evidence.

The bill also expands the right of the respondent to participate in any OCRC administrative hearing relating to an unlawful discriminatory practice by permitting the respondent to present evidence at the hearing. (R.C. 4112.05(C), (D), and (E).)

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)(b).)

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)).

Ohio Civil Rights Commission referral to Attorney General for enforcement action

Breach of conciliation agreement

(R.C. 4112.052(B))

Continuing law enables the OCRC to refer specified matters relating to the Fair Housing Law to the Attorney General for commencement of a civil action in a court of common pleas. The bill authorizes the OCRC also to refer a matter to the Attorney General when a person breaches a conciliation agreement that the person entered into

with the OCRC, enabling the Attorney General to commence a civil action in a court of common pleas.

Awards in civil actions

(R.C. 4112.052(C))

In actions the Attorney General commences pursuant to an OCRC referral relating to Fair Housing Law violations, existing law enables the Attorney General to seek preventative relief considered necessary to ensure rights under the Ohio Fair Housing Law, including a permanent or temporary injunction or a temporary restraining order.

The bill expands the awards the court may make in any action commenced pursuant to an OCRC referral (both Fair Housing Law violations and breaches of conciliation agreements) to include:

(1) Preventative relief, including permanent or temporary injunction, and restraining orders. The bill specifies that no statute of limitation applies to this class of relief.

(2) Actual and punitive damages;

(3) A penalty not to exceed $50,000 for a first violation or $100,000 for any subsequent violation.

Right to intervene

(R.C. 4112.052(D))

The bill enables any person to intervene in a civil action the Attorney General commences when the action involves an alleged discriminatory housing practice when the person is an aggrieved person by a violation of the Fair Housing Law or the action involves the breach of a conciliation agreement to which the person is a party. The bill enables the court to grant relief to an intervening party as the court considers appropriate and as the Ohio Fair Housing Law authorizes for a civil action.

Not a limitation on other rights or remedies

(R.C. 4112.052(E))

The bill specifies that the new actions and remedies do not limit any right or remedy that a person otherwise is entitled to under law.

- Eliminates the requirement that the Director of Commerce retain in the Unclaimed Funds Trust Fund 5% of the total amount of unclaimed funds payable to a claimant as a fee for administering the funds.

- Provides that certain savings and loan associations and savings banks are eligible to become public depositories and removes such eligibility from banks authorized to do business by another country.

- Creates the Division of Securities Investor Education and Enforcement Expense Fund to pay expenses of the Division relating to education or enforcement for the protection of securities investors and the public.

- Eliminates the provision of current law stating that the Superintendent of Financial Institutions and the Division of Financial Institutions are independent of and not subject to the control of the Department or the Director of Commerce when performing any of the examination or regulatory functions vested in the Superintendent by Title XI, Chapters 1733. and 1761., and sections 1315.01 to 1315.18 of the Revised Code.

- Provides for the implementation of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("S.A.F.E. Act") by requiring the licensing of "loan originators" who are employed by or associated with either a mortgage broker under the Mortgage Brokers Law (R.C. 1322.01 to 1322.12) or a mortgage lender under the Mortgage Loan Law (R.C. 1321.51 to 1321.60); eliminates the licensing of "loan officers" under the Mortgage Brokers Law.

- Makes numerous revisions to the Mortgage Loan Law with respect to the regulation of mortgage lenders.

- Makes numerous revisions to the Mortgage Brokers Law with respect to the regulation of mortgage brokers.

- 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 assessment on video service providers, to be used by Commerce to carry out the Law.

- 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.

- Changes local option elections on Sunday sales of intoxicating liquor allowing sales between 1 p.m. and midnight to instead allow sales between 11 a.m. and midnight.

- Authorizes certain Sunday liquor sales to begin at 11 a.m. even if the sales previously were approved by the voters to commence at 1 p.m., but allows voters to hold an election to revert the time of commencement to 1 p.m. in accordance with certain conditions.

- Makes other changes in the law governing local option elections on Sunday sales of beer and intoxicating liquor at or in election precincts, parts of a precinct, specific locations, and community facilities.

Unclaimed Funds Trust Fund costs and fees of administration

(R.C. 169.08)

Unclaimed funds are generally defined as moneys, rights to moneys, or intangible property enumerated in the Unclaimed Funds Law (Chapter 169. of the Revised Code) with respect to which the owner has not taken specified actions or otherwise indicated any interest. Current law requires holders of unclaimed funds to report the amounts to the Director of Commerce and for the transfer of all or some of such funds to the Director for deposit with a financial organization or in the Unclaimed Funds Trust Fund in the state treasury. Claims made to recover unclaimed funds are to be paid from the Trust Fund. Current law also requires the Director to retain in the Trust Fund 5% of the total amount of unclaimed funds payable to a claimant as a fee for administering the funds. The bill eliminates this requirement.

Public Depository Law

(R.C. 135.03, 135.06, 135.08, and 135.32)

Under Ohio's public depository law, national banks, state banks, banks operating under the regulatory authority of another state or country, federal savings associations, state savings and loan associations, or state savings banks, are eligible to become depositories of public money. The bill revises that law to extend such eligibility to savings banks and savings and loan associations that are located in Ohio and doing business under authority granted by another state. The bill also withdraws eligibility to become a public depository from any bank doing business under authority granted by the regulatory authority of another country.

Division of Securities Investor Education and Enforcement Expense Fund

(R.C. 1707.37; Section 241.10)

The bill creates in the state treasury the Division of Securities Investor Education and Enforcement Expense Fund, which is to consist of all money received in settlement of any violation of the Securities Law (R.C. Chapter 1707.) and any cash transfers. Money in the fund is to be used to pay expenses of the Division of Securities relating to education or enforcement for the protection of securities investors and the public. The bill authorizes the Division to adopt rules that establish what qualifies as such an expense.

If the Director of Budget and Management and the Director of Commerce determine that money in the Fund is in excess of $1 million at the end of a fiscal year and that any amount of that excess is not needed to defray the qualifying expenses of

the Division, the Director of Budget and Management may transfer that amount to the General Revenue Fund.

Independence of the Superintendent and Division of Financial Institutions

(R.C. 121.07(A))

Existing law states that the Superintendent of Financial Institutions and the Division of Financial Institutions are independent of and not subject to the control of the Department or the Director of Commerce when performing any of the examination or regulatory functions vested in the Superintendent by Title XI (Financial Institutions), Chapter 1733. (Credit Unions), Chapter 1761. (Credit Union Guaranty Corporations), and sections 1315.01 to 1315.18 (Money Transmitters Law) of the Revised Code.

The bill eliminates this provision.

Implementation of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("S.A.F.E. Act")

Background

The S.A.F.E. Act, Title V of the federal Housing and Economic Recovery Act of 2008, was signed into law by the President on July 30, 2008. The S.A.F.E. Act requires that residential mortgage loan originators be either state-licensed by August 1, 2009, or--for employees of depository institutions and their subsidiaries--federally registered. Both state licensed and federally registered loan originators must register with, and obtain a unique identifier from, the **Nationwide Mortgage Licensing System and Registry**--a mortgage licensing system to be developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of loan originators.

If, by August 1, 2009 (or August 1, 2010, for any state whose legislature meets biennially), a state does not have in place a system for licensing and registering loan originators that meets the requirements of the S.A.F.E. Act, the U.S. Department of Housing and Urban Development (HUD) is to establish a backup licensing system to coordinate licensing and registration for loan originators in that state. However, HUD may grant an extension of up to 24 months to any state making a good faith effort to meet the minimum standards.

According to the National Conference of State Legislatures, the following is what states must due to maintain loan originator supervisory authority:

- Provide effective supervision and enforcement of such law, including suspension, termination or

nonrenewal of a license for a violation of State or Federal Law.

- Ensure all State-licensed loan originators operating in the State are registered with the Nationwide Mortgage Licensing System and Registry.

- Regularly report violations of such law, as well as enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry.

- Have due process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry.

- Establish a mechanism to assess civil money penalties for individuals acting as mortgage originators in their State without a valid license or registration.

- Establish minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated by a residential mortgage loan originator, or establish a recovery fund paid into by the loan originators.

To be licensed within a State, loan originators must not have any felonies over the past seven years, never had a felony involving fraud or dishonesty, never had a loan originator license revoked, must demonstrate financial responsibility and general fitness, score 75% or better on a national test created by the Nationwide Mortgage Licensing System and Registry and take eight hours of continuing education annually.[34]

[34] Information Alert, S.A.F.E. Mortgage Licensing Act, National Conference of State Legislatures Office of State-Federal Relations, October 17, 2008, *available at: http://www.ncsl.org/standcomm/sccomfc/SAFEAct.htm.*

Overview of the bill

(R.C. 1321.51, 1321.52 (E) and (F)(1), 1321.521, 1322.01, 1322.02(B) and (C)(1), and 1322.023)

Existing law prohibits any person from acting as a loan officer without first having obtained a license from the Superintendent of Financial Institutions under the Mortgage Brokers Law (R.C. 1322.01 to 1322.12). For purposes of that law, "**loan officer**" is defined as an employee who originates mortgage loans in consideration of direct or indirect gain, profit, fees, or charges. The term includes an employee who solicits financial and mortgage information from the public for sale to another mortgage broker. A loan officer is prohibited from being employed by more than one mortgage broker at any one time.[35]

The bill eliminates the licensing of loan officers, and instead requires the licensing of *loan originators* who are employed by or associated with:

(1) A mortgage broker registered under the Mortgage Brokers Law (R.C. 1322.01 to 1322.12), or an entity exempt from registration under that law; ***or***

(2) A mortgage lender registered under the Mortgage Loan Law (R.C. 1321.51 to 1321.60), or an entity exempt from registration under that law.

For purposes of the Mortgage Loan Law, the defined term is "mortgage loan originator" (*see* R.C. 1321.51(P)). Under the Mortgage Brokers Law, however, the defined term is "loan originator" (*see* R.C. 1322.01(E)). Because the two terms have substantially the same meaning, this analysis will simply refer to "loan originator."

"**Loan originator**" is defined as an individual who for compensation or gain, or in anticipation of compensation or gain, does any of the following:

(1) Takes or offers to take a residential mortgage loan[36] application;

(2) Assists or offers to assist a buyer in obtaining or applying to obtain a residential mortgage loan by, among other things, advising on loan terms, including rates, fees, and other costs;

(3) Offers or negotiates terms of a residential mortgage loan;

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[35] Current R.C. 1322.01(E) and 1322.02(B).

[36] A "**residential mortgage loan**" is a loan primarily for personal, family, or household use that is secured by a mortgage on a dwelling or on residential real estate upon which is constructed or intended to be constructed a dwelling (R.C. 1321.51(Q) or 1322.01(X)).

(4) Issues or offers to issue a commitment for a residential mortgage loan to a buyer.

"**Loan originator**" does *not* include any of the following:

(1) An individual who performs purely "administrative or clerical tasks"[37] on behalf of a loan originator;

(2) A person licensed under the Real Estate Brokers Law (R.C. Chapter 4735.), or under the similar law of another state, who performs only "real estate brokerage activities"[38] permitted by that license, provided the person is not compensated by a mortgage lender, mortgage broker, loan originator, or by any agent thereof;

(3) A person solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101 in effect on January 1, 2008;

(4) A person acting solely as a "loan processor or underwriter"[39] and who does not represent to the public, through advertising or other means of communicating, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the employee can or will perform any of the activities of a loan originator;

(5) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or another loan originator, or by any agent thereof;

(6) Any person engaged in the retail sale of manufactured or mobile homes if, in connection with obtaining financing by others for those retail sales, the person only assists the borrower by providing or transmitting the loan application and does not do any of the following:

(a) Offer or negotiate the residential mortgage loan rates or terms;

(b) Provide any counseling with borrowers about residential mortgage loan rates or terms;

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[37] For the definition of "**administrative or clerical tasks,**" see R.C. 1321.51(T) or 1322.01(N), as applicable.

[38] For the definition of "**real estate brokerage activity,**" see R.C. 1321.51(W) or 1322.01(W), as applicable.

[39] For the definition of "**loan processor or underwriter,**" see R.C. 1321.51(V) or 1322.01(T), as applicable.

(c) Receive any payment or fee from any company or individual for assisting the borrower obtain or apply for financing to purchase the manufactured or mobile home;

(d) Assist the borrower in completing a residential mortgage loan application.

For purposes of the Mortgage Loan Law, an individual acting exclusively as a servicer engaging in loss mitigation efforts with respect existing mortgage transactions is not to be considered a "mortgage loan originator" until July 1, 2011, if the delay is approved by the U.S. Department of Housing and Urban Development.[40]

The bill authorizes the Superintendent to adopt rules to expand the definition of loan originator by adding individuals or to exempt additional individuals or person from that definition, if the Superintendent finds that the addition or exemption is consistent with the purposes fairly intended by the policy and provisions of the Mortgage Loan Law or Mortgage Brokers Law, as applicable, and the S.A.F.E. Act. Such rules must be adopted in accordance with R.C. Chapter 119., the Administrative Procedure Act.

Each licensed loan originator ("licensee") must register with, and maintain a valid unique identifier issued by, the Nationwide Mortgage Licensing System and Registry (NMLSR). A "**unique identifier**" is a number or other identifier that permanently identifies a loan originator and is assigned by protocols established by the NMLSR or federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of, and the publicly adjudicated disciplinary and enforcement actions against, loan originators.

An individual acting under the individual's authority as a *registered* loan originator is *not* required to be licensed under the bill. A "**registered loan originator**" is loan originator who is an employee of a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration.[41] Registered loan originators must be registered with, and maintain a unique identifier through, the NMLSR.

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[40] R.C. 1321.51(P)(3).

[41] For the definitions of "**depository institution**" and "**federal banking agency**," see R.C. 1321.51(U) and (A)(A) or 1322.01(P) and (Q), as applicable.

Application for a loan originator license; investigation

(R.C. 109.572, 1321.531, and 1322.031)

An application for a loan originator license must be in writing, under oath, and in the form prescribed by the Superintendent of Financial Institutions. It must be accompanied by a nonrefundable application fee of $150 and all other required fees, including any fee required by the NMLSR.

In connection with applying for a loan originator license, the applicant is also required to furnish to the NMLSR the following information concerning the applicant's identity:

(1) The applicant's fingerprints for submission to the FBI, and any other governmental agency or entity authorized to receive such information, for purposes of a state, national, and international criminal history background check;

(2) Personal history and experience in a form prescribed by the NMLSR, along with authorization for the Superintendent and the NMLSR to obtain an independent credit report from a consumer reporting agency and information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

The bill permits the Superintendent to use the Conference of State Bank Supervisors, or a wholly owned subsidiary, as a channeling agent for requesting information from and distributing information to the U.S. Department of Justice or any other governmental agency. The Superintendent may also use the NMLSR as a channeling agent for requesting information from and distributing information to any source related to matters subject to (1) and (2), above.

Upon the filing of the application and payment of the application fee and any additional fee, the Superintendent is required to obtain a criminal history records check and request that criminal record information from the FBI be obtained. To fulfill this requirement, the Superintendent is to either request the Superintendent of the Bureau of Criminal Identification and Investigation, or a vendor approved by the Bureau, to conduct a criminal records check based on the applicant's fingerprints (or, if the fingerprints are unreadable, based on the applicant's social security number), or authorize the NMLSR to request a criminal history background check. Any fee required by the Bureau or by the NMLSR is to be paid by the applicant.

The Superintendent of Financial Institutions is also required to conduct a civil records check.

If, in order to issue a license to an applicant, additional investigation by the Superintendent outside this state is necessary, the Superintendent may require the applicant to advance sufficient funds to pay the actual expenses of the investigation, if it appears that these expenses will exceed $150. The Superintendent must provide the applicant with an itemized statement of the actual expenses that the applicant is required to pay.

If an application for a loan originator license does not contain all of the information required under the bill, and if that information is not submitted to the Superintendent within 90 days after the Superintendent requests the information in writing, the Superintendent may consider the application withdrawn.

Issuance of license; license renewals

(R.C. 1321.532 and 1322.041)

Upon conclusion of the investigation, the Superintendent of Financial Institutions must issue a loan originator license to the applicant *if* the Superintendent finds that all of the following conditions are met:

(1) The application is accompanied by the application fee and any fee required by the NMLSR. If a check or other draft instrument is returned to the Superintendent for insufficient funds, the Superintendent must notify the applicant by certified mail, return receipt requested, that the application will be withdrawn unless the applicant, within 30 days after receipt of the notice, submits the application fee and a $100 penalty. If the applicant does not submit the application fee and penalty within that time period, or if any check or other draft instrument used to pay the fee or penalty is returned for insufficient funds, the application is to be withdrawn immediately without a hearing.

If a check or other draft instrument is returned to the Superintendent for insufficient funds *after* the license has been issued, the Superintendent must notify the licensee by certified mail, return receipt requested, that the license issued in reliance on the check or other draft instrument will be canceled unless the licensee, within 30 days after receipt of the notice, submits the application fee and a $100 penalty. If the licensee does not submit the application fee and penalty within that time period, or if any check or other draft instrument used to pay the fee or penalty is returned for insufficient funds, the license must be canceled immediately without a hearing, and the licensee must cease activity as a loan originator.

(2) The applicant complies with the Mortgage Loan Law or Mortgage Brokers Law, as applicable.

(3) The applicant has not had a loan originator license, or comparable authority, revoked in any governmental jurisdiction.

(4) The applicant has not been convicted of, or pleaded guilty to, any of the following in a domestic, foreign, or military court:

(a) A felony during the seven-year period immediately preceding the date of application for licensure;

(b) A felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering at *any* time prior to the date of application for licensure;

(c) A misdemeanor involving theft during the seven-year period immediately preceding the date of application for licensure.

(5) Based on the totality of the circumstances and information submitted in the application, the applicant has proven to the Superintendent of Financial Institutions, by a preponderance of the evidence, that the applicant is of good business repute and appears qualified to act as a loan originator.

(6) The applicant successfully completed the written test and the education requirements set forth in the bill (see "**Pre-licensing instruction; written test**," below).

(7) The applicant is covered under a valid bond in compliance with the bill (see "**Bond requirement**," below)

(8) The applicant's financial responsibility, character, and general fitness command the confidence of the public and warrant the belief that the loan originator will operate honestly and fairly in compliance with the purposes of the Mortgage Loan Law or Mortgage Brokers Law, as applicable. The Superintendent is prohibited from using a credit score as the sole basis for a license denial.

A loan originator license may be ***renewed*** annually on or before December 31, if the Superintendent finds that all of the following conditions are met:

(1) The renewal application is accompanied by a nonrefundable renewal fee of $150 and any additional fee required by the NMLSR. If a check or other draft instrument is returned to the Superintendent for insufficient funds, the Superintendent is to notify the licensee by certified mail, return receipt requested, that the license renewed in reliance on the check or other draft instrument will be canceled unless the licensee, within 30 days after receipt of the notice, submits the renewal fee and a $100 penalty to the Superintendent. If the licensee does not submit the renewal fee and penalty within that time period, or if any check or other draft instrument used to pay

the fee or penalty is returned for insufficient funds, the license is to be canceled immediately without a hearing, and the licensee must cease activity as a loan originator.

(2) The applicant has completed at least eight hours of continuing education as required by the bill (see "**Continuing education requirement**," below).

(3) The applicant meets the conditions described above for original licensure.

(4) The applicant's license is not subject to an order of suspension or an unpaid and past due fine imposed by the Superintendent.

If a license renewal application or fee is received by the Superintendent after December 31, the license is not to be considered renewed, and the applicant must cease activity as a loan originator. This does not apply, however, if the applicant submits the renewal application and fee, and a $100 penalty, to the Superintendent not later than January 31.

Pre-licensing instruction; written test

(R.C. 1321.534, 1321.535, 1322.031(B) and (C), and 1322.051(B))

The bill requires loan originator applicants to submit evidence acceptable to the Superintendent of Financial Institutions that the applicant has successfully completed at least 24 hours of pre-licensing instruction consisting of the following: (1) 20 hours of instruction in a course or program of study reviewed and approved by the NMLSR and (2) 4 hours of instruction in a course or program of study reviewed and approved by the Superintendent concerning state lending laws and the Ohio Consumer Sales Practices Act (R.C. Chapter 1345.), as it applies to licensees. Review and approval of a pre-licensing education course includes review and approval of the course provider.

If a person successfully completed the pre-licensing education requirements reviewed and approved by the NMLSR for any state within the previous five years, the person is to be granted credit toward completion of the pre-licensing education requirements of this state.

In the event the NMLSR does not have in place an approval program to ensure that all pre-licensing education courses meet the criteria set forth above, the Superintendent is to require, until that program is in place, evidence that the applicant has successfully completed 24 hours of instruction in a course or program of study approved by the Superintendent that consists of at least all of the following:

(1) Four hours of instruction concerning state and federal mortgage lending laws;

(2) Four hours of instruction concerning the Ohio Consumer Sales Practices Act, as it applies to registrants and licensees;

(3) Four hours of instruction concerning the loan application process;

(4) Two hours of instruction concerning the underwriting process;

(5) Two hours of instruction concerning the secondary market for mortgage loans;

(6) Four hours of instruction concerning the loan closing process;

(7) Two hours of instruction covering basic mortgage financing concepts and terms;

(8) Two hours of instruction concerning the ethical responsibilities of a licensee, including with respect to confidentiality, consumer counseling, and the duties and standards of care created by the bill.

Each applicant also must submit to a written test that is developed and approved by the NMLSR and administered by a test provider approved by the NMLSR based upon reasonable standards. The test must adequately measure the applicant's knowledge and comprehension in appropriate subject matters, including ethics and federal and state law related to mortgage origination, fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues. In order to pass the test, an individual must achieve a test score of at least 75% correct answers on all questions and at least 75% correct answers on all questions relating to Ohio mortgage lending laws and the Ohio Consumer Sales Practices Act.

An individual may retake the test three consecutive times provided the period between taking the tests is at least 30 days. After failing three consecutive tests, an individual must wait at least six months before taking the test again. If a loan originator fails to maintain a valid license for a period of five years or longer, the individual must retake the test.

Until the NMLSR implements a testing process that meets the criteria set forth above, the Superintendent is to require evidence that the applicant passed a written test acceptable to the Superintendent.

Bond requirement

(R.C. 1321.533(A)(2) and (B) to (F) and 1322.05(A)(2) and (B) to (F))

If licensed loan originator is employed or associated with a person or entity that is *exempt* from registration under the Mortgage Loan Law or Mortgage Brokers Law, as applicable, the licensee must obtain and maintain in effect at all times a corporate surety bond issued by a bonding company or insurance company authorized to do business in Ohio. All of the following conditions apply to the bond:

(1) The bond must be in favor of the Superintendent of Financial Institutions.

(2) The bond must be in the penal sum of the greater of $50,000 *or* one-half per cent of the aggregate loan amount of residential mortgage loans originated in the immediately preceding calendar year, but not exceeding $250,000.

(3) The term of the bond must coincide with the term of licensure.

(4) A copy of the bond must be filed with the Superintendent.

(5) The bond must be for the exclusive benefit of any buyer injured by a violation by the licensee of any provision of the Mortgage Loan Law or the Mortgage Brokers Law, as applicable, or the rules adopted thereunder.

(6) The aggregate liability of the corporate surety for any and all breaches of the conditions of the bond cannot exceed the penal sum of the bond.

Continuing education requirement

(R.C. 1321.536 and 1322.052)

Each licensed loan originator is required to complete at least eight hours of continuing education every calendar year. To fulfill this requirement, the continuing education must be offered in a course or program of study reviewed and approved by the NMLSR based upon reasonable standards. The course or program of study must include all of the following:

(1) Three hours of applicable federal law and regulations;

(2) Two hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues;

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.[42]

The following conditions apply to the continuing education required by the bill:

(1) An individual cannot take the same approved course in the same or successive years to meet the annual requirement for continuing education.

(2) An individual can only receive credit for a continuing education course in the year in which the course is taken, unless the individual is making up a deficiency in continuing education pursuant to a rule or order of the Superintendent of Financial Institutions.

(3) A licensee who subsequently becomes unlicensed must complete the continuing education requirement for the last year in which the license was held prior to the issuance of a new or renewed license.

(4) A licensee who is approved as an instructor of an approved continuing education course may receive credit for the licensee's own annual continuing education requirement at the rate of two credit hours for every one hour taught.

(5) A person having successfully completed a continuing education course approved by the NMLSR for any state is to receive credit toward completion of the continuing education requirement of this state.

Until the NMLSR implements a review and approval process, the Superintendent is to require evidence that the licensee has successfully completed at least eight hours of continuing education in a course or program of study approved by the Superintendent.

Conduct of business

(R.C. 1321.551 and 1322.031(H))

The business of a loan originator must principally be transacted at an office of the mortgage lender or mortgage broker ("registrant") with whom the licensee is employed or associated. Each original loan originator license is to be deposited with and maintained at the registrant's main office. A copy of the license is to be maintained and displayed at the office where the loan originator principally transacts business.

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[42] "**Nontraditional mortgage product**" is defined as any mortgage product other than a 30-year fixed rate mortgage (R.C. 1321.51(CC) and 1322.01(V)).

If a loan originator's employment or association is terminated for any reason, the registrant is required to return the original loan originator license to the Superintendent of Financial Institutions within five business days after the termination. The licensee may request the transfer of the license to another registrant by submitting a transfer application, along with a $15 fee and any fee required by the NMLSR, to the Superintendent, or may request in writing that the Superintendent hold the license in escrow. A licensee whose license is held in escrow must cease activity as a loan originator, must apply for renewal annually, and must comply with the annual continuing education requirement.

Pending the transfer of a loan originator's license to a different registrant, the registrant may employ or be associated with the loan originator on a temporary basis *if* the registrant receives written confirmation from the Superintendent that the loan originator holds a valid license.

If a loan originator is employed by or associated with a person claiming to be *exempt* from registration under the Mortgage Loan Law or Mortgage Brokers Law, the loan originator must maintain and display the original loan originator license at the office where the loan originator principally transacts business. In the event the loan originator's employment or association is terminated for any reason, the licensee is required to return the original loan originator license to the Superintendent within five business days after the termination. The licensee may request the transfer of the license to a mortgage broker or another person claiming an exemption from the law by submitting a transfer application, along with a $15 fee and any fee required by the NMLSR, to the Superintendent, or may request the Superintendent in writing to hold the license in escrow. A licensee whose license is held in escrow must cease activity as a loan originator, apply for renewal annually, and comply with the annual continuing education requirement. The licensee may seek to be employed or associated with a mortgage broker or another person claiming exemption from the law if the mortgage broker or person receives written confirmation from the Superintendent that the loan originator is holds a valid license.

A license, or the authority granted under that license, is not assignable and cannot be franchised by contract or any other means.

Duties and standards of care

(R.C. 1321.593 and 1322.081)

Under the bill, a licensed loan originator and any person required to be licensed must do all of the following:

(1) Safeguard and account for any money handled for the buyer;

(2) Follow reasonable and lawful instructions from the buyer;

(3) Act with reasonable skill, care, and diligence;

(4) Act in good faith and with fair dealing in any transaction, practice, or course of business in connection with originating any residential mortgage loan;

(5) Make reasonable efforts to secure a residential mortgage loan with rates, charges, and repayment terms that are advantageous to the buyer.

The bill provides that these duties and standards of care cannot be waived or modified.

A buyer injured by a failure to comply with these duties and standards of care may bring an action for recovery of damages. Damages awarded cannot be less than all compensation paid directly or indirectly to a registrant from any source, plus reasonable attorney's fees and court costs. The buyer may be awarded punitive damages. An injured buyer is precluded from recovering any damages if the buyer has already recovered damages in a cause of action initiated under any other provision of the Mortgage Loan Law or Mortgage Brokers Law, as applicable, and the recovery of damages for a failure to comply with these duties and standards of care is based on the same acts or circumstances as the recovery of damages under the other provision.

Required disclosures; advertising

(R.C. 1321.592, 1321.594, 1321.60(A), 1322.062 to 1322.064, and 1322.09)

The bill imposes numerous disclosure requirements on licensed loan originators, including the following:

A licensee must, not earlier than three business days nor later than 24 hours before the loan is closed, deliver to the buyer a written disclosure that includes (1) a statement indicating whether property taxes will be escrowed and (2) a description of what is covered by the regular monthly payment, including principal, interest, taxes, and insurance, as applicable.

The bill also prohibits a licensee from failing to do either of the following:

(1) Timely inform the buyer of any material change in the terms of the residential mortgage loan. "Material change" means: (a) a change in the type of residential mortgage loan being offered, such as a fixed or variable rate loan or a loan with a balloon payment, (b) a change in the term of the loan, as reflected in the number of monthly payments due before a final payment is scheduled to be made, (c) a change in the interest rate of more than 0.15%, (d) a change in the regular total monthly

payment, including principal, interest, any required mortgage insurance, and any escrowed taxes or property insurance, of more than 5%, (e) a change regarding whether the escrow of taxes or insurance will be required, or (f) a change regarding whether private mortgage insurance will be required.

(2) Timely inform the buyer if any fees payable by the buyer to the licensee, registrant, or lender increase by more than 10% or $100, whichever is greater.

To be considered "timely," the licensee must provide the buyer with the revised information not later than 24 hours after the change occurs, or 24 hours before the loan is closed, whichever is earlier.

Under current law, advertising for loans subject to the Mortgage Loan Law cannot be false, misleading, or deceptive. The bill states that "false, misleading, or deceptive advertising" includes the following:

--Any advertisement indicating that special terms, reduced rates, guaranteed rates, particular rates, or any other special feature of mortgage loans is available unless the advertisement clearly states any limitations that apply;

--Any advertisement containing a rate or special fee offer that is not a bona fide available rate or fee.

Prohibitions; penalties and damages

(R.C. 1321.52(F)(2), 1321.59, 1321.591, 1321.595, 1321.99, 1322.021(C)(2), 1322.07, and 1322.11)

Generally, the bill prohibits licensees from doing any of the following:

(1) Obtaining a license through any false or fraudulent representation of a material fact or any omission of a material fact required by state or federal law, or making any substantial misrepresentation in the license application;

(2) Making false or misleading statements of a material fact, omissions of statements required by state or federal law, or false promises regarding a material fact, through advertising or other means, or engaging in a continued course of misrepresentations;

(3) Engaging in conduct that constitutes improper, fraudulent, or dishonest dealings;

(4) Failing to notify the Division of Financial Institutions within 30 days after (a) being convicted of or pleading guilty to a felony offense in a domestic, foreign, or

military court, (b) being convicted of or pleading guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities, in a domestic, foreign, or military court, or (c) having a loan originator license, or comparable authority, revoked in any governmental jurisdiction.

(5) Knowingly making, proposing, or soliciting fraudulent, false, or misleading statements on any mortgage loan document or on any document related to a mortgage loan, including a mortgage application, real estate appraisal, or real estate settlement or closing document. "Fraudulent, false, or misleading statements" does not include mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bona fide error.

(6) Knowingly instructing, soliciting, proposing, or otherwise causing a borrower to sign in blank a loan related document;

(7) Knowingly compensating, instructing, inducing, coercing, or intimidating, or attempting to compensate, instruct, induce, coerce, or intimidate, a person licensed or certified as an appraiser under Ohio law for the purpose of corrupting or improperly influencing the independent judgment of the person with respect to the value of the dwelling offered as security for repayment of a mortgage loan;

(8) Retaining original documents provided to the licensee by the buyer in connection with the residential mortgage loan application, including income tax returns, account statements, or other financial related documents.

(9) Receiving, directly or indirectly, a premium on the fees charged for services performed by a bona fide third party.[43]

(10) Paying or receiving, directly or indirectly, a referral fee or kickback of any kind to or from a bona fide third party or other party with a related interest in the transaction, including a home improvement builder, real estate developer, or real estate broker or agent, for the referral of business;

Under the Mortgage Loan Law, licensees are prohibited from using unfair, deceptive, or unconscionable means to collect or attempt to collect any claim. Conduct or activities deemed to violate this prohibition include, but are not limited to, the following:

[43] For the definition of "**bona fide third party**" see R.C. 1321.51(BB) or R.C. 1322.08(D), as applicable.

--Collecting or attempting to collect any interest or other charge, fee, or expense incidental to the principal obligation, unless the interest or other fee, charge, or expense is expressly authorized by the agreement creating the obligation and by law;

--Communicating with a consumer whenever it is known that the consumer is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls, or discuss the obligation in question or unless the attorney consents to direct communication with the consumer;

--Placing a telephone call or otherwise communicating by telephone with a consumer or third party at any location, including a place of employment, and falsely stating that the call is urgent or an emergency;

--Using profane or obscene language or language that is intended to unreasonably abuse the listener or reader;

--Placing telephone calls without disclosure of the caller's identity and with the intent to annoy, harass, or threaten any person at the number called;

--Causing expense to any person in the form of long distance telephone tolls, text messaging fees, or other charges incurred by a form of communication, by concealing the true purpose of the communication;

--Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously, or at unusual times or at times known to be inconvenient, with the intent to annoy, abuse, oppress, or threaten any person at the called number.

The bill also prohibits any person from using a licensee's unique identifier for any purpose other than as set forth in the S.A.F.E. Act.

A buyer injured by a violation of or failure to comply with certain provisions of the Mortgage Loan Law or Mortgage Brokers Law may bring an action for the recovery of damages.

Enforcement; administrative actions; reports to NMLSR

(R.C. 1321.54, 1321.55(B)(3), 1322.06(C), 1322.061(D), and 1322.10)

The Division of Financial Institutions is authorized to adopted reasonable rules to administer and enforce these provisions and to carry out their purposes. The rules must be adopted in accordance with R.C. Chapter 119. (the Administrative Procedure Act).

After notice and an opportunity to be heard, the Division may revoke, suspend, or refuse to renew any loan originator license if it finds any of the following:

(1) A violation of or failure to comply with any provision of the Mortgage Loan Law or Mortgage Brokers Law, as applicable, or the rules adopted thereunder, any federal lending law, or any other law applicable to the business conducted under a license;

(2) The person has been convicted of or pleaded guilty to a felony offense in a domestic, foreign, or military court;

(3) The person has been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities, in a domestic, foreign, or military court;

(4) The person's loan originator license, or comparable authority, has been revoked in any governmental jurisdiction.

The Superintendent of Financial Institutions may impose a fine of not more than $1,000 for each day a violation of the Mortgage Loan Law or Mortgage Brokers Law, or any rule adopted thereunder, is committed, repeated, or continued. If the licensee engages in a pattern of repeated violations, the Superintendent may impose a fine of not more than $2,000 for each day the violation is committed, repeated, or continued. All fines collected are to be paid to the Treasurer of State to the credit of the existing Consumer Finance Fund.

In determining the amount of a fine to be imposed, the Superintendent may consider all of the following to the extent it is known to the Division:

(1) The seriousness of the violation;

(2) The licensee's good faith efforts to prevent the violation;

(3) The licensee's history regarding violations and compliance with Division orders;

(4) The licensee's financial resources;

(5) Any other matters the Superintendent considers appropriate in enforcing these provisions.

The bill states that imposition of monetary fines under this provision does not preclude the imposition of any criminal fine.

If the Superintendent makes application to the court of common pleas for an order enjoining a person from acting as a loan originator without being licensed under the bill, the Superintendent may also seek civil penalties for that unlicensed conduct in an amount not to exceed $5,000 per violation. In addition, if the Superintendent takes *administrative* action to enjoin such unlicensed conduct, the Superintendent may impose fines of not more than $5,000 per violation.

The bill requires the Superintendent to regularly report violations of the law, as well as enforcement actions and other relevant information, to the NMLSR. In addition, each licensee is required to submit to the NMLSR call reports or other reports of condition, which must be in the form and contain the information required by the NMLSR.

Information shared with NMLSR; confidentiality; challenge process

(R.C. 1321.531(B), 1321.55, 1322.031(I), and 1322.061)

The Superintendent of Financial Institutions is authorized to establish relationships or enter into contracts with the NMLSR, or any entities designated by it, to collect and maintain records and process transaction fees or other fees related to loan originator licensees or other persons subject to or involved in their licensure. In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing, the Superintendent may also enter into sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, and the American Association of Residential Mortgage Regulators.

The bill states that any confidentiality or privilege arising under federal or state law with respect to any information or material provided to the NMLSR continues to apply to the information or material after the information or material has been provided to the NMLSR. That information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of confidentiality or privilege protections provided by federal law or the law of any state. This provision does *not* apply, however, with respect to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in the NMLSR for access by the public.

Information or material to which confidentiality or privilege applies is not subject to any of the following:

(1) Disclosure under any federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or of the respective state;

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless the person to whom such information or material pertains waives, in whole or in part and at the discretion of the person, any privilege held by the NMLSR with respect to that information or material.

The bill requires the Superintendent to establish a process by which loan originators may challenge information provided to the NMLSR by the Superintendent. That process must be established by rule adopted in accordance with R.C. Chapter 119.

Rule-making authority if the S.A.F.E. Act is subsequently modified

(R.C. 1321.552 and 1322.024)

The bill provides that--if the S.A.F.E. Act is modified after the effective date of this provision of the bill, or if any regulation, statement, or position is adopted under the S.A.F.E. Act, and the item modified or adopted affects any matter within the scope of this portion of the bill--the Superintendent of Financial Institutions may by rule adopt a similar provision. The rule is to be adopted in accordance with section 111.15 of the Revised Code, not R.C. Chapter 119. (the Administrative Procedure Act).

A rule so adopted by the Superintendent is effective on the later of (1) the date the Superintendent issues the rule or (2) the date the regulation, rule, interpretation, procedure, or guideline the Superintendent's rule is based on becomes effective. The Superintendent may, upon 30 day's written notice, revoke any rule adopted under this authority. A rule adopted and not revoked by the Superintendent lapses 18 months after the rule's effective date.

Transition to licensed loan originators

(Section 701.70)

The bill states that it is the intent of the General Assembly that the Superintendent of Financial Institutions take any action necessary to provide for an orderly transition for those persons who, on the effective date of this provision, hold loan officer licenses under the Mortgage Brokers/Loan Officers Law, and for those persons who, on the effective date of this provision, perform the functions or duties of loan originators, as specified in the bill.

Conforming changes

(R.C. 1343.011, 1345.01, 1345.05, 1345.09, 1349.31, and 1349.43)

Due to the elimination of the "loan officer" license and the creation of the "loan originator" license, the bill makes several cross-reference changes in other areas of the law.

Regulation of mortgage lenders under the Mortgage Loan Law

Registration required; exemptions

(R.C. 1321.51(Q) and (U), 1321.52, and 1321.53(D))

The Mortgage Loan Law (R.C. 1321.51 to 1321.60) currently prohibits any person from doing either of the following without having first obtained a certificate of registration from the Division of Financial Institutions:

(1) Advertise, solicit, or hold out that the person is engaged in the business of making loans secured by a mortgage on a borrower's real estate which is other than a first lien on the real estate;

(2) Engage in the business of lending or collecting the person's own or another person's money, credit, or chooses in action for such loans.

The bill amends these provisions, as follows:

--In (1), above, the bill specifies that the loans are "residential mortgage" loans, and defines "residential mortgage loans" as any loan primarily for personal, family, or household use that is secured by a mortgage on a dwelling or on residential real estate upon which is constructed or intended to be constructed a dwelling.

--In (2), above, the bill specifies that the loans are "non-first lien residential mortgage" loans.

--The bill expands the activities for which a person must be registered by adding the following: (a) employing or compensating mortgage loan originators licensed or who should be licensed under the Mortgage Loan Law to conduct the business of making residential mortgage loans and (b) making unsecured loans or loans secured by other than real property, which loans are for more than $5,000 at a rate of interest greater than permitted by the Usury Law (R.C. 1343.01) or any specific provision of the Revised Code.

The bill revises the list of persons exempt from registration under the Mortgage Loan Law, including with respect to the following:

--The current exemption for persons lawfully doing business under the authority of this state, another state, or the United States relating to banks, savings banks, trust companies, savings and loan associations, or credit unions is modified to read as follows: "entities chartered and lawfully doing business under the authority of this state, another state, or the United States as a bank, savings bank, trust company, savings and loan association, or credit union, or a subsidiary of any such entity, which subsidiary is regulated by a federal banking agency and is owned and controlled by such a depository institution." The bill defines "federal banking agency" as the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

--The bill adds a new exemption for a college or university, or controlled entity of a college or university, as those terms are defined in R.C. 1713.05.

Application; operations manager; investigation

(R.C. 109.572, 1321.20, 1321.51(R), 1321.53, 1321.535(A), and 1321.536)

Current law requires an application for a certificate of registration to include, among other things, the location where the business is to be conducted and the names and addresses of the partners, officers, or trustees of the applicant. The bill removes this specific requirement. Current law also requires that the applicant pay a $200 investigation fee and an annual registration fee determined by the Superintendent of Financial Institutions as provided by law.[44] The bill specifies that the investigation fee is nonrefundable, that the annual registration fee is $300 and is nonrefundable, and that the applicant also must pay any additional fee required by the Nationwide Mortgage Licensing System and Registry (NMLSR). The "**Nationwide Mortgage Licensing System and Registry**" is a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successor entities, for the licensing and registration of mortgage loan originators, or any system established by the Secretary of Housing and Urban Development pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

The bill requires all applicants making loans secured by an interest in real estate to designate an employee or owner of the applicant as the applicant's operations

[44] See R.C. 1321.20.

manager. While acting as the operations manager, the employee or owner cannot be employed by any other registrant or mortgage broker. Each registrant making residential mortgage loans secured by an interest in real estate must have a designated operations manager who has at least three years of experience in the mortgage or lending field acceptable to the superintendent *and* is a licensed mortgage loan originator (see "**S.A.F.E. Act**," above). The operations manager is required to submit to a written test approved by the Superintendent. To pass the test, the individual must achieve a test score of not less than 75% correct answers to all questions. The individual must also complete at least eight hours of continuing education every year.

The bill specifies that the investigation undertaken upon application must include both a civil and criminal records check of the applicant, including any individual whose identity is required to be disclosed in the application. Where the applicant is a business entity, the Superintendent may require a civil and criminal background check of those persons that in the determination of the Superintendent have the authority to direct and control the operations of the applicant.

The Superintendent is required to obtain a criminal history records check and, as part of that records check, request that criminal record information from the FBI be obtained. To fulfill this requirement, the Superintendent is to either (1) request the Superintendent of the Bureau of Criminal Identification and Investigation, or a vendor approved by the Bureau, to conduct a criminal records check based on the applicant's fingerprints (or, if the fingerprints are unreadable, based on the applicant's social security number) or (2) authorize the NMLSR to request a criminal history background check. Any fee required by the Bureau or by the NMLSR is to be paid by the applicant.

The bill prohibits the Superintendent from using a credit score as the sole basis for a registration denial.

Renewal

(R.C. 1321.52(D) and 1321.53(A))

The bill states that certificates of registration issued on or after July 1, 2009, annually expire on December 31, unless renewed by the filing of a renewal application and payment of an annual fee, any assessment, and any additional fee required by the NMLSR. As a condition of renewal, registrants must provide proof that the designated operations manager successfully completed the required testing and the continuing education requirement. Renewal cannot be granted if the applicant's certification of registration is subject to an order of suspension, revocation, or an unpaid and past due fine imposed by the Superintendent of Financial Institutions.

Currently, if there is a change of 10% or more in the ownership of a registrant, the Division may make any investigation necessary to determine whether any condition exists that, if it had existed at the time of the original application, the condition would have warranted a denial. The bill changes the threshold to 5%.

If a person's registration terminates due to nonrenewal or otherwise, but the person continues to engage in the business of collecting or servicing non-first lien residential mortgage loans in violation of the law, the bill authorizes the Superintendent to take administrative action, including action on any subsequent application for a certificate of registration. In addition, no late fee, back check charge except as incurred, charge related to default or cost to realize on its security interest, or prepayment penalty on non-first lien residential mortgage loans can be collected or retained by a person who is in violation. Nothing in this provision precludes any other actions or penalties provided by law or modifies a defense of holder in due course that a subsequent purchaser servicing the residential mortgage loan may raise.

Net worth or bond requirement

(R.C. 1321.53(B) and 1321.533(A)(1) and (B) to (F))

Currently, each registrant must maintain a net worth of at least $50,000 and, for each certificate of registration, assets of at least $50,000 either in use or readily available for use in the conduct of business. Under the bill, a registrant may comply with that net worth requirement *or* obtain a corporate surety bond issued by a bonding company or insurance company authorized to do business in Ohio. All of the following conditions apply to the bond:

(1) The bond must be in favor of the Superintendent of Financial Institutions.

(2) The bond must be in the penal sum of the greater of (a) $50,000 and an additional penal sum of $10,000 for each location, in excess of one, at which the registrant conducts business or (b) one-half per cent of the aggregate loan amount of residential mortgage loans originated in the immediately preceding calendar year, but not exceeding $250,000.

(3) The term of the bond must coincide with the term of registration.

(4) A copy of the bond must be filed with the Superintendent.

(5) The bond must be for the exclusive benefit of any borrower injured by a violation by an employee, licensee, or registrant of any provision of the Mortgage Loan Law or the rules adopted thereunder.

(6) The aggregate liability of the corporate surety for any and all breaches of the conditions of the bond cannot exceed the penal sum of the bond.

A registrant is to give notice to the Superintendent by certified mail of any action that is brought by a borrower against the registrant or any mortgage loan originator of the registrant alleging injury by a violation of any provision of the Mortgage Loan Law, and of any judgment that is entered against the registrant or mortgage loan originator of the registrant by a borrower injured by such a violation. The notice must provide details sufficient to identify the action or judgment, and be filed with the Superintendent within ten days after the commencement of the action or notice to the registrant of entry of a judgment. An exempt entity securing bonding for the loan originators in their employ must report those actions by a borrower in the same manner as is required of registrants. The bill also requires a corporate surety, within 10 days after it pays any claim or judgment, to give notice to the Superintendent by certified mail of the payment, with details sufficient to identify the person and the claim or judgment paid.

Whenever the penal sum of the corporate surety bond is reduced by one or more recoveries or payments, the registrant must furnish a new or additional bond so that the total or aggregate penal sum of the bond or bonds equals the sum required, or furnish an endorsement executed by the corporate surety reinstating the bond to the required penal sum of it.

The liability of the corporate surety on the bond to the Superintendent and to any borrower injured by a violation of any provision of the Mortgage Loan Law is not to be affected in any way by any misrepresentation, breach of warranty, or failure to pay the premium, by any act or omission upon the part of the registrant, by the insolvency or bankruptcy of the registrant, or by the insolvency of the registrant's estate. The liability for any act or omission that occurs during the term of the corporate surety bond is to be maintained and in effect for at least two years after the date on which the corporate surety bond is terminated or canceled.

The corporate surety bond cannot be canceled by the registrant or the corporate surety except upon notice to the Superintendent by certified mail, return receipt requested, and the cancellation cannot be effective prior to 30 days after the Superintendent receives the notice.

The bill requires any registrant that fails to comply with this provision to cease all mortgage lender activity in this state until the registrant has so complied.

Permissible fees and other charges

(R.C. 1321.57)

Existing law specifies the interest and charges that may be received by a registrant. With respect to a loan secured by an interest in real estate, such charges include certain closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of the law. The bill adds that they also must be "paid to third parties."

These permissible closing costs currently include "settlement or closing costs." The bill specifies that they are settlement or closing costs "paid by unaffiliated third parties, provided the costs are not for underwriting or processing services."

Other permissible closing costs currently include fees for preparation of mortgage documents, appraisal fees, and fees for any federally mandated inspection, if such fees are not paid to the registrant, an employee of the registrant, or a person *related to* a registrant. The bill replaces "related to" with "affiliated with."

Certain loan origination charges are also permissible under current law, both with respect to secured loans and unsecured loans. The bill specifies that secured loans are those secured by goods or real estate, and unsecured loans are those that are not secured by goods or real estate. The bill also revises the threshold loan amounts upon which the amount of the loan origination charge is determined.

Choice of law

(R.C. 1321.52(B))

Existing law provides that loans made to persons who at the time are Ohio residents are subject to Ohio law, regardless of any statement in the contract to the contrary. The bill provides several exceptions. If the loan is primarily secured by a lien on real property in another state and is arranged by a mortgage loan originator licensed by that state, the borrower may by choice of law designate that the transaction be governed by the law where the real property is located if the other state has consumer protection laws covering the borrower that are applicable to the transaction. Additionally, if the loan is for the purpose of purchasing goods acquired by the borrower when the borrower is outside of Ohio, the loan may be governed by the laws of the other state. However, nothing prevents a choice of law or requires registration or licensure of persons outside this state in a transaction involving the solicitation of Ohio residents to obtain non-real estate secured loans that require the borrowers to physically visit a lender's out-of-state office to apply for and obtain the disbursement of loan funds.

Duties and standards of care

(R.C. 1321.593)

Under the bill, a registrant and any person required to be registered must do all of the following:

(1) Safeguard and account for any money handled for the borrower;

(2) Follow reasonable and lawful instructions from the borrower;

(3) Act with reasonable skill, care, and diligence;

(4) Act in good faith and with fair dealing in any transaction, practice, or course of business in connection with making any loan;

(5) In connection with providing a loan secured by a lien on real property, make reasonable efforts to secure a residential mortgage loan with rates, charges, and repayment terms that are advantageous to the borrower.

The bill provides that these duties and standards of care cannot be waived or modified. They do not apply, however, to wholesale lenders.[45]

A borrower injured by a failure to comply with these duties and standards of care may bring an action for recovery of damages. Damages awarded cannot be less than all compensation paid directly or indirectly to a registrant from any source, plus reasonable attorney's fees and court costs. The borrower may be awarded punitive damages. An injured borrower is precluded from recovering any damages if the borrower has already recovered damages in a cause of action initiated under any other provision of the Mortgage Loan Law and the recovery of damages for a failure to comply with these duties and standards of care is based on the same acts or circumstances as the recovery of damages under the other provision.

Required disclosures; advertising

(R.C. 1321.592, 1321.594, and 1321.60)

The bill imposes numerous disclosure requirements on registrants, including the following:

In connection with providing a non-brokered loan secured by a lien on real property, a registrant must, not earlier than three business days nor later than 24 hours

[45] *See* R.C. 1321.593(B).

before the loan is closed, deliver to the borrower a written disclosure that includes (1) a statement indicating whether property taxes will be escrowed and (2) a description of what is covered by the regular monthly payment, including principal, interest, taxes, and insurance, as applicable.

If a residential mortgage loan applied for will exceed 90% of the value of the real property, the registrant must provide a statement to the borrower within three business days after taking the loan application, printed in boldface type of the minimum size of sixteen points, as follows: "You are applying for a loan that is more than 90% of your home's value. It will be hard for you to refinance this loan. If you sell your home, you might owe more money on the loan than you get from the sale."

The bill also prohibits a registrant, in connection with making a non-brokered residential mortgage, from failing to do either of the following:

(1) Timely inform the borrower of any material change in the terms of the residential mortgage loan. "Material change" means: (a) a change in the type of residential mortgage loan being offered, such as a fixed or variable rate loan or a loan with a balloon payment, (b) a change in the term of the loan, as reflected in the number of monthly payments due before a final payment is scheduled to be made, (c) a change in the interest rate of more than 0.15%, (d) a change in the regular total monthly payment, including principal, interest, any required mortgage insurance, and any escrowed taxes or property insurance, of more than 5%, (e) a change regarding whether the escrow of taxes or insurance will be required, or (f) a change regarding whether private mortgage insurance will be required.

(2) Timely inform the borrower if any fees payable by the borrower to the licensee, registrant, or lender increase by more than 10% or $100, whichever is greater.

To be considered "timely," the registrant must provide the borrower with the revised information not later than 24 hours after the change occurs, or 24 hours before the loan is closed, whichever is earlier.

Under current law, advertising for loans cannot be false, misleading, or deceptive. The bill states that "false, misleading, or deceptive advertising" includes the following:

--Any advertisement indicating that special terms, reduced rates, guaranteed rates, particular rates, or any other special feature of mortgage loans is available unless the advertisement clearly states any limitations that apply;

--Any advertisement containing a rate or special fee offer that is not a bona fide available rate or fee.

Additionally, the bill requires registrants to comply with Regulation Z of the federal Truth in Lending Act in making any advertisement.

Prohibitions; penalties and damages

(R.C. 1321.551(F), 1321.59, 1321.591, 1321.595, and 1321.99)

The bill prohibits a registrant, though its operations manager or otherwise, from failing to reasonably supervise a mortgage loan originator or other person employed by or associated with the registrant. In addition, registrants cannot fail to establish reasonable procedures designed to avoid violations of the Mortgage Loan Law or rules adopted thereunder, or violations of applicable state and federal consumer and lending laws or rules, by mortgage loan originators or other persons employed by or associated with the registrant.

Generally, the bill also prohibits registrants from doing any of the following:

(1) Obtaining a certificate through any false or fraudulent representation of a material fact or any omission of a material fact required by state or federal law, or making any substantial misrepresentation in the application;

(2) Making false or misleading statements of a material fact, omissions of statements required by state or federal law, or false promises regarding a material fact, through advertising or other means, or engaging in a continued course of misrepresentations;

(3) Engaging in conduct that constitutes improper, fraudulent, or dishonest dealings;

(4) Failing to notify the Division of Financial Institutions within 30 days after (a) being convicted of or pleading guilty to a felony offense in a domestic, foreign, or military court, (b) being convicted of or pleading guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities, in a domestic, foreign, or military court, or (c) having a certificate of registration, or comparable authority, revoked in any governmental jurisdiction.

(5) Knowingly making, proposing, or soliciting fraudulent, false, or misleading statements on any mortgage loan document or on any document related to a mortgage loan, including a mortgage application, real estate appraisal, or real estate settlement or closing document. "Fraudulent, false, or misleading statements" does not include

mathematical errors, inadvertent transposition of numbers, typographical errors, or any other bona fide error.

(6) Knowingly instructing, soliciting, proposing, or otherwise causing a borrower to sign in blank a loan related document;

(7) Knowingly compensating, instructing, inducing, coercing, or intimidating, or attempting to compensate, instruct, induce, coerce, or intimidate, a person licensed or certified as an appraiser under Ohio law for the purpose of corrupting or improperly influencing the independent judgment of the person with respect to the value of the dwelling offered as security for repayment of a mortgage loan;

(8) Retaining original documents provided to the registrant by the borrower in connection with the residential mortgage loan application, including income tax returns, account statements, or other financial related documents.

(9) Receiving, directly or indirectly, a premium on the fees charged for services performed by a bona fide third party.[46]

(10) Paying or receiving, directly or indirectly, a referral fee or kickback of any kind to or from a bona fide third party or other party with a related interest in the transaction, including a home improvement builder, real estate developer, or real estate broker or agent, for the referral of business;

(11) Using unfair, deceptive, or unconscionable means to collect or attempt to collect any claim. Conduct or activities deemed to violate this prohibition include, but are not limited to, the following:

--Collecting or attempting to collect any interest or other charge, fee, or expense incidental to the principal obligation, unless the interest or other fee, charge, or expense is expressly authorized by the agreement creating the obligation and by law;

--Communicating with a consumer whenever it is known that the consumer is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls, or discuss the obligation in question or unless the attorney consents to direct communication with the consumer;

[46] For the definition of "**bona fide third party**" see R.C. 1321.51(BB).

--Placing a telephone call or otherwise communicating by telephone with a consumer or third party at any location, including a place of employment, and falsely stating that the call is urgent or an emergency;

--Using profane or obscene language or language that is intended to unreasonably abuse the listener or reader;

--Placing telephone calls without disclosure of the caller's identity and with the intent to annoy, harass, or threaten any person at the number called;

--Causing expense to any person in the form of long distance telephone tolls, text messaging fees, or other charges incurred by a form of communication, by concealing the true purpose of the communication;

--Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously, or at unusual times or at times known to be inconvenient, with the intent to annoy, abuse, oppress, or threaten any person at the called number.

A borrower injured by a violation of or failure to comply with certain provisions of the Mortgage Loan Law may bring an action for the recovery of damages.

Enforcement; administrative actions; reports to NMLSR

(R.C. 1321.54 and 1321.55(B)(3))

After notice and an opportunity to be heard, the Division of Financial Institutions is authorized by the bill to revoke, suspend, or refuse to renew any certificate of registration if it specifically finds any of the following:

(1) A violation of or failure to comply with any provision of the Mortgage Loan Law or the rules adopted thereunder, any federal lending law, or any other law applicable to the business conducted under a certificate;

(2) The person has been convicted of or pleaded guilty to a felony offense in a domestic, foreign, or military court;

(3) The person has been convicted of or pleaded guilty to any criminal offense involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, breach of trust, dishonesty, or drug trafficking, or any criminal offense involving money or securities, in a domestic, foreign, or military court;

(4) The person's certificate of registration, or comparable authority, has been revoked in any governmental jurisdiction.

Current law specifies that the revocation, suspension, or refusal to renew does not impair the obligation of any pre-existing lawful contract made under the law. The bill provides, however, that a prior registrant must make good faith efforts to promptly transfer the registrant's collection right to another registrant or person exempt from registration, or be subject to additional monetary fines and legal or administrative action by the Division. This provision does not limit a court's ability to impose a cease and desist order preventing any further business or servicing activity.

The Superintendent of Financial Institutions may also impose a fine of not more than $1,000 for each day a violation of the Mortgage Loan Law, or any rule adopted thereunder, is committed, repeated, or continued. If the registrant engages in a pattern of repeated violations, the Superintendent may impose a fine of not more than $2,000 for each day the violation is committed, repeated, or continued. All fines collected are to be paid to the Treasurer of State to the credit of the existing Consumer Finance Fund.

In determining the amount of a fine to be imposed, the Superintendent is authorized to consider all of the following to the extent it is known to the Division:

(1) The seriousness of the violation;

(2) The registrant's good faith efforts to prevent the violation;

(3) The registrant's history regarding violations and compliance with Division orders;

(4) The registrant's financial resources;

(5) Any other matters the Superintendent considers appropriate in enforcing these provisions.

The bill states that imposition of monetary fines under this provision does not preclude the imposition of any criminal fine.

If the Superintendent makes application to the court of common pleas for an order enjoining a person from acting as a registrant without being registered, the Superintendent may also seek civil penalties for that unlicensed conduct in an amount not to exceed $5,000 per violation. In addition, if the Superintendent takes *administrative* action to enjoin such unlicensed conduct, the Superintendent may impose fines of not more than $5,000 per violation.

The bill requires the Superintendent to regularly report violations of the Mortgage Loan Law, as well as enforcement actions and other relevant information, to the NMLSR.

Record keeping; confidentiality

(R.C. 1321.55)

Existing law requires registrants to preserve records pertaining to loans made for at least two years after making the final entry on the records. The bill increases the retention period to four years.

The bill revises the confidentiality provisions of the Mortgage Loan Law. Under the bill, the following information is confidential:

(1) Examination information, and any information leading to or arising from an examination;

(2) Investigation information, and any information arising from or leading to an investigation.

This information is to remain confidential for all purposes except when it is necessary for the Superintendent of Financial Institutions to take official action regarding the affairs of a registrant, or in connection with criminal or civil proceedings to be initiated by a prosecuting attorney or the Attorney General. This information may also be introduced into evidence or disclosed when and in the manner authorized by current law (R.C. 1181.25).

All application information, except social security numbers, employer identification numbers, financial account numbers, the identity of the institution where financial accounts are maintained, personal financial information, fingerprint cards and the information contained on such cards, and criminal background information, is a public record as defined in section 149.43 of the Revised Code.

These provisions do not prevent the Division of Financial Institutions from releasing to or exchanging with other financial institution regulatory authorities information relating to registrants. For this purpose, a "financial institution regulatory authority" includes a regulator of a business activity in which a registrant is engaged, or has applied to engage in, to the extent that the regulator has jurisdiction over a registrant engaged in that business activity. A registrant is engaged in a business activity, and a regulator of that business activity has jurisdiction over the registrant, whether the registrant conducts the activity directly or a subsidiary or affiliate of the registrant conducts the activity.

In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing, the Superintendent is permitted to enter into

sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, and the American Association of Residential Mortgage Regulators.

These provisions do not prevent the Division from releasing information relating to registrants to the Attorney General, to the Superintendent of Real Estate and Professional Licensing for purposes relating to the administration of R.C. Chapters 4735. and 4763., to the Superintendent of Insurance for purposes relating to the administration of R.C. Chapter 3953., to the Commissioner of Securities for purposes relating to the administration of R.C. Chapter 1707., or to local law enforcement agencies and local prosecutors. Information the Division releases remains confidential.

The bill prohibits any person, in connection with an examination or investigation conducted by the Superintendent under the Mortgage Loan Law, from knowingly doing any of the following:

(1) Circumventing, interfering with, obstructing, or failing to cooperate, including making a false or misleading statement, failing to produce records, or intimidating or suborning any witness;

(2) Withholding, abstracting, removing, mutilating, destroying, or secreting any books, records, computer records, or other information;

(3) Tampering with, altering, or manufacturing any evidence.

Transition to the new requirements

(Section 701.70)

The bill states that it is the intent of the General Assembly that the Superintendent of Financial Institutions take any action necessary to provide for an orderly transition for those persons who, on the effective date of this provision, hold mortgage lender certificates of registration under the Mortgage Loan Law.

Regulation of mortgage brokers under the Mortgage Brokers Law

Registration required; exemptions

(R.C. 1322.01, 1322.02, and 1322.023)

The Mortgage Brokers Law (R.C. 1322.01 to 1322.12) currently prohibits any person from acting as a mortgage broker without first having obtained a certificate of registration from the Superintendent of Financial Institutions for every office to be maintained by the person for the transaction of business as a mortgage broker in Ohio. "**Mortgage broker**" is defined as any of the following:

(1) A person that holds that person out as being able to assist a buyer in obtaining a mortgage and charges or receives from either the buyer or lender valuable consideration for providing this assistance;

(2) A person that solicits financial and mortgage information from the public, provides that information to a mortgage broker, and charge or receives from the mortgage broker valuable consideration for providing the information;

(3) A person engaged in table-funding or warehouse-lending mortgage loans that are first lien mortgage loans.

The bill substantially retains this definition. In (2), above, it adds that the information may be provided to a person making residential mortgage loans, in addition to a mortgage broker. And in (3), above, it clarifies that the loans are first lien *residential* mortgage loans.

Whereas current law lists the persons that are exempt from the Mortgage Brokers Law, the bill specifies what the term "mortgage broker" does not include. Under the bill, "**mortgage broker**" does ***not*** include any of the following:

(1) A person that makes residential mortgage loans and receives a scheduled payment on each of those mortgage loans;

(2) Any entity chartered and lawfully doing business under the authority of any law of this state, another state, or the United States as a bank, savings bank, trust company, savings and loan association, or credit union, or a subsidiary of any such entity, which subsidiary is regulated by a federal banking agency and is owned and controlled by a depository institution;

(3) A consumer reporting agency that is in substantial compliance with the federal Fair Credit Reporting Act;

(4) Any political subdivision, or any governmental or other public entity, corporation, instrumentality, or agency, in or of the United States or any state;

(5) A college or university, or controlled entity of a college or university, as those terms are defined in R.C. 1713.05;

(6) Any entity created solely for the purpose of securitizing loans secured by an interest in real estate, provided the entity does not service the loans. For this purpose, "securitizing" means the packaging and sale of mortgage loans as a unit for sale as investment securities, but only to the extent of those activities.

(7) Any person engaged in the retail sale of manufactured or mobile homes if, in connection with obtaining financing by others for those retail sales, the person only assists the borrower by providing or transmitting the loan application and does not do any of the following:

(a) Offer or negotiate the residential mortgage loan rates or terms;

(b) Provide any counseling with borrowers about residential mortgage loan rates or terms;

(c) Receive any payment or fee from any company or individual for assisting the borrower obtain or apply for financing to purchase the manufactured or mobile home;

(d) Assist the borrower in completing the residential mortgage loan application.

(8) A mortgage banker, provided it holds a valid letter of exemption issued by the Superintendent (see "**Mortgage banker exemption requirements**," below). The bill defines "mortgage banker" as any person that makes, services, buys, or sells only residential mortgage loans secured by a first lien, that underwrites the loans, and that meets at least one of the following criteria:

(a) The person has been directly approved by the U.S. Department of Housing and Urban Development (HUD) as a nonsupervised mortgagee with participation in the direct endorsement program. This provision includes a person that has been directly approved by HUD as a nonsupervised mortgagee with participation in the direct endorsement program and that makes loans in excess of the applicable loan limit set by the Federal National Mortgage Association, provided that the loans in all respects, except loan amounts, comply with HUD's underwriting and documentation requirements. This provision does not include a mortgagee approved as a loan correspondent.

(b) The person has been directly approved by the Federal National Mortgage Association as a seller/servicer. This provision includes a person that has been directly approved by the Federal National Mortgage Association as a seller/servicer and that makes loans in excess of the applicable loan limit set by the Association, provided that the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of the Association.

(c) The person has been directly approved by the Federal Home Loan Mortgage Corporation as a seller/servicer. This provision includes a person that has been directly approved by the Federal Home Loan Mortgage Corporation as a seller/servicer and that makes loans in excess of the applicable loan limit set by the Corporation, provided that

the loans in all respects, except loan amounts, comply with the underwriting and documentation requirements of the Corporation.

(d) The person has been directly approved by the U.S. Department of Veterans Affairs as a nonsupervised automatic lender. This provision does not include a person directly approved by the Department as a nonsupervised lender, an agent of a nonsupervised automatic lender, or an agent of a nonsupervised lender.

The bill authorizes the Superintendent, by rule, to expand the definition of mortgage broker by adding individuals, persons, or entities, or to exempt additional individuals, persons, or entities from the definition, if the Superintendent finds that the addition or exemption is consistent with the purposes fairly intended by the policy and provisions of the Mortgage Brokers Law and the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. Such rules must be adopted in accordance with R.C. Chapter 119. (Administrative Procedure Act).

Application; operations manager; investigation; renewals

(R.C. 1322.01(U), 1322.03, 1322.04, 1322.051(A), and 1322.052)

Under 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.

Under the bill, applicants also must pay any additional fee required by the Nationwide Mortgage Licensing System and Registry (NMLSR). The "**Nationwide Mortgage Licensing System and Registry**" is a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successor entities, for the licensing and registration of mortgage loan originators, or any system established by the Secretary of Housing and Urban Development pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

Existing law requires that an application provide the location or locations where the business is to be transacted. If any location is a residence, the application must be accompanied by a copy of a zoning permit authorizing the use of the residence for commercial purposes or a written opinion issued by the appropriate local government.

Under the bill, the Superintendent *may* require such documents. The bill eliminates the requirement that the application include a photograph of each business location.

Existing law requires applicants that are business entities to designate an employee or owner as the applicant's operations manager. The bill requires *all* applicants to do so. It also requires that the individual be licensed as a loan originator while acting as the operations manager (see "**S.A.F.E. Act**," above) and not be employed by any other mortgage broker. The bill revises the pre-licensing instruction that is required of operations managers and the written test that must be successfully completed.

Though current law requires the Superintendent to obtain a criminal history records check of the applicant and to request that criminal record information from the FBI be obtained, the bill permits the Superintendent to authorize the NMLSR to request a criminal history background check. It also requires that such background checks be conducted for any person whose identity is required to be disclosed on the application.

To be issued a certificate of registration, the Superintendent must determine, among other things, that neither the applicant nor any person whose identity is required to be disclosed on the application has had a mortgage broker certificate of registration or loan originator license, or any comparable authority, revoked in any governmental jurisdiction or has pleaded guilty to or been convicted of any of the following in a domestic, foreign, or military court:

(1) A felony during the seven-year period immediately preceding the date of application;

(2) A felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering at any time prior to the date of application;

(3) A misdemeanor involving theft during the seven-year period immediately preceding the date of application.

The bill also requires that, based on the totality of the circumstances and information submitted in the application, the applicant prove to the Superintendent, by a preponderance of the evidence, that the applicant is of good business repute and appears qualified to act as a mortgage broker. The Superintendent is prohibited by the bill from using a credit score as the sole basis for registration denial.

Certificates may be renewed annually on or before December 31. One condition that must be met under current law is that the operations manager completed at least six hours of continuing education during the preceding year. The bill increases the number of hours to eight.

Surety bond requirement

(R.C. 1322.05)

Existing law requires that each registrant obtain a corporate surety bond in favor of the Superintendent of Financial Institutions. It must be in the penal sum of at least $50,000 and an additional penal sum of $10,000 for each location, in excess of one, at which the registrant conducts business. The bill requires that the bond be in the penal sum of the *greater* of the above amount *or* one-half per cent of the aggregate loan amount of residential mortgage loans originated in the immediately preceding calendar year, but not exceeding $250,000.

Call reports to NMLSR; annual reports

(R.C. 1322.06(C) and (D))

The bill requires each registrant to submit to the NMLSR call reports or other reports of condition in the form required by the NMLSR. In addition, each registrant must file with the Division of Financial Institutions an annual report under oath or affirmation, on forms supplied by the Division, concerning the business and operations of the registrant for the preceding calendar year. If a registrant operates two or more registered offices or two or more affiliated registrants operate registered offices, a composite report of the group of registered offices may be filed in lieu of individual reports.

The Division is to publish annually an analysis of this information, but the individual reports are not to be considered public records.

Disclosures

(R.C. 1322.065)

Under the bill, a person registered as a mortgage broker solely to sell leads of potential buyers to residential mortgage lenders or mortgage brokers, or solely to match buyers with residential mortgage lenders or mortgage brokers through a computerized loan origination system recognized by the U.S. Department of Housing and Urban Development, is required to make only those disclosures under the Mortgage Brokers Law that apply to the portion of the transaction during which they have direct buyer contact. Those persons are, however, subject to all fair conduct and prohibition requirements in their dealing with buyers.

Advertising

(R.C. 1322.09(B))

The bill requires registrants to comply with Regulation Z of the federal Truth in Lending Act in making any advertisement.

Prohibitions

(R.C. 1322.071(C), 1322.074, and 1322.075)

The bill prohibits a registrant, through its operations manager or otherwise, from failing to reasonably supervise a loan originator or other persons employed by or associated with the registrant. A registrant is also prohibited from failing to establish reasonable procedures designed to avoid violations of the Mortgage Brokers Law or rules adopted thereunder, or violations of applicable state and federal consumer and lending laws or rules, by loan originators or other persons employed by or associated with the registrant.

The bill modifies the existing limitations on the ownership or control of a majority interest in an appraisal company, and on referrals to an appraisal company, by making them apply to the immediate family of an owner of a registrant, rather than to members of the registrant's immediate family.[47]

Mortgage banker exemption requirements

(R.C. 1322.022)

A mortgage banker seeking exemption from registration under the Mortgage Brokers Law is required by the bill to submit an application to the Superintendent of Financial Institutions along with a nonrefundable fee of $350 for each location of an office to be maintained by the mortgage banker. The application must be in a form prescribed by the Superintendent and include all of the following:

(1) The mortgage banker's business name and state of incorporation or business registration;

(2) The names of the owners, officers, or partners having control of the business;

(3) An attestation to all of the following:

[47] For the definitions of "**appraisal company**" and "**immediate family**," see R.C. 1322.01(O) and (R).

(a) That the mortgage banker and its owners, officers, or partners have not had a mortgage banker license, mortgage broker certificate of registration, or loan originator license, or any comparable authority, revoked in any governmental jurisdiction;

(b) That the mortgage banker and its owners, officers, or partners have not been convicted of, or pleaded guilty to, any of the following in a domestic, foreign, or military court:

(i) A felony during the seven-year period immediately preceding the date of application for exemption;

(ii) A felony involving an act of fraud, dishonesty, a breach of trust, theft, or money laundering at any time prior to the date of application for exemption;

(iii) A misdemeanor involving theft during the seven-year period immediately preceding the date of application for exemption.

(c) That, with respect to financing residential mortgage loans, the mortgage banker only conducts business with residents of this state, or secures its loans with property located in this state, under authority of an approval described in R.C. 1322.01(G)(2)(h).

(4) The names of all loan originators or licensees under the mortgage banker's control and direction;

(5) An acknowledgment of understanding that the mortgage banker is subject to the regulatory authority of the Division of Financial Institutions;

(6) Any further information that the Superintendent may require.

If the Superintendent determines that the mortgage banker honestly made the required attestation and otherwise qualifies for exemption, the Superintendent must issue a letter of exemption. Additional certified copies of a letter of exemption are to be provided upon request and the payment of $75 per copy. If the Superintendent determines that the mortgage banker does *not* qualify for exemption, the Superintendent is to issue a notice of denial, and the mortgage banker may request a hearing in accordance with R.C. Chapter 119.

All of the following conditions apply to any mortgage banker holding a valid letter of exemption:

(1) The mortgage banker is subject to examination in the same manner as a registrant with respect to the conduct of the mortgage banker's loan originators. In

conducting any out-of-state examination, a mortgage banker is responsible for paying the costs of the Division in the same manner as a registrant.

(2) The mortgage banker has an affirmative duty to supervise the conduct of its loan originators, and to cooperate with investigations by the Division with respect to that conduct, in the same manner as is required of registrants.

(3) The mortgage banker is to keep and maintain records of all transactions relating to the conduct of its loan originators in the same manner as is required of registrants.

(4) The mortgage banker may provide the surety bond for its loan originators in the same manner as is permitted for registrants.

A letter of exemption expires annually on December 31, and may be renewed on or before that date by submitting an application that meets the requirements described above for an original application and a nonrefundable renewal fee of $350 for each location of an office to be maintained by the mortgage banker.

The Superintendent is authorized to issue a notice to revoke or suspend a letter of exemption if the Superintendent finds that the letter was obtained through a false or fraudulent representation of a material fact, or the omission of a material fact, required by law, or that a condition for exemption is no longer being met. Prior to issuing an order of revocation or suspension, the mortgage banker must be given an opportunity for a hearing in accordance with R.C. Chapter 119.

All information obtained by the Division pursuant to an examination or investigation is subject to the confidentiality requirements set forth in the Mortgage Brokers Law. All money collected is to be deposited into the state treasury to the credit of the existing Consumer Finance Fund.

Transition to the new requirements

(Section 701.70)

The bill states that it is the intent of the General Assembly that the Superintendent of Financial Institutions take any action necessary to provide for an orderly transition for those persons who, on the effective date of this provision, hold mortgage broker certificates of registration under the Mortgage Brokers Law.

Assessments for video service authorizations

(R.C. 1332.24 and 1332.25; Section 713.10)

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 video service provider to (1) operate with proper authorization, (2) assist municipalities and townships in addressing consumer complaints, (3) meet customer service standards, (4) provide certain notices, filings, reports, and emergency announcements, (5) comply with PEG (public, educational, and governmental) channel requirements, and (6) comply with the service commitment applicable to telecommunications facilities-based franchisees.

The bill adds to Commerce's current, special funding sources for its VSA functions--consisting of application fees and civil penalties--the authority for the Director to impose an annual, proportional assessment. The assessment revenue must be deposited to the credit of Commerce's Division of Administration Fund, from which all of that division's operating expenses must be paid. The assessment is to be paid by video service providers. As with an application fee currently, a subscriber bill cannot refer to any such assessment charged to a provider.

Under the bill, the total amount assessed in a fiscal year cannot exceed the lesser of $450,000 or, as determined annually by the Director, Commerce's actual, current fiscal year administrative costs in carrying out its VSA duties. The Director must allocate that total amount proportionately among the providers to be assessed, using a formula based on subscriber counts as of December 31 of the preceding calendar year. Providers must submit the first such counts by October 9, 2009; thereafter, by January 31 of each year. The counts must be sent via a notarized statement signed by an authorized officer. Any information submitted to the Director for purposes of determining subscriber counts must be considered trade secret information, must not be disclosed except by court order, and does not constitute a public record under public record law (R.C. 149.43).

The Director must send to each video service provider to be assessed a written notice of its proportional amount of the total assessment. For FY 2010, the notice must be sent by October 16, 2009; for later years, by June 1. The provider must pay the assessment not later than 30 days after the notice is sent.

The Director must reconcile annually the amount collected with the total, current amount assessed, and either charge each assessed video service provider its respective proportion of any insufficiency or proportionately credit the provider's next assessment for any excess collected.

The bill also expands Commerce's current enforcement authority by authorizing the Director to enforce the bill's assessment provisions in the manner it would other provisions of the VSA law.

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

Licensing--fees

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

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 $60.

- The fee for reactivation or transfer of a license by a real estate salesperson--from $20 to $25.

- The fee for a branch office license from $8 to $15 for each year of the licensing period.

- The fee for a renewal real estate broker's license from $49 to $60 for each year of the licensing period.

- The fee for the renewal of a real estate salesperson's license--from $39 to $45 for each year of the licensing period.

The bill makes the fees for branch office licenses, license renewals, late filings, and foreign real estate dealer and salesperson licenses nonrefundable.

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.

Real Estate Recovery Fund

(R.C. 4735.12)

Under current law, the Ohio Real Estate Commission must impose a special assessment of up to $10 on each licensed real estate broker, brokerage, or salesperson who files a notice of license renewal if the amount available in the Real Estate Recovery Fund is less than $1 million on the first day of July preceding the renewal filing. The bill lowers that threshold amount to $500,000.

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.

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.

Overview of current law on Sunday sales of beer, wine and mixed beverages, or intoxicating liquor

(R.C. 4301.22 (not in the bill) and 4303.182)

Current law generally prohibits the sale of intoxicating liquor on Sunday after 2:30 a.m. by a permit holder unless the sale has been approved in a local option election held in the election precinct in which the premises is located. Questions may be submitted to the voters at a primary or general election to allow the sale of beer, wine and mixed beverages, or intoxicating liquor on Sundays either between the hours of 10 a.m. and midnight or between 1 p.m. and midnight. The question or questions submitted may govern sales in an election precinct, in a specific area of an election precinct, at a particular location, or at a community facility.[48]

Changing Sunday sale of intoxicating liquor questions from between 1 p.m. and midnight to between 11 a.m. and midnight

(R.C. 4301.351, 4301.354, 4301.361, 4301.364, 4301.37 (not in the bill), and 4303.182; Sections 743.10 and 743.11)

Current law

Under current law, seven questions govern the Sunday sale of intoxicating liquor that may be legally sold in an election precinct or part of an election precinct on days of the week other than Sunday. Four of the questions for election precincts and three of the questions for parts of election precincts pertain to sales between the hours of 1 p.m. and midnight, and three of the questions for both election precincts and their parts pertain to sales between 10 a.m. and midnight. One question from each time period pertains to sales of wine and mixed beverages for off-premises consumption, another question from each time period pertains to sales of intoxicating liquor for on-premises consumption, and a final question from each time period pertains to sales of intoxicating liquor for on-premises consumption at premises where the sale of food and other goods and services exceeds 50% of the total gross receipts of the permit holder at the premises. A seventh question for election precincts pertains to intoxicating liquor sales between the hours of 1 p.m. and midnight for on-premises consumption at an

[48] "Community facility" means either of the following: (1) any convention, sports, or entertainment facility or complex, or any combination of these, that is used by or accessible to the general public and that is owned or operated in whole or in part by the state, a state agency, or a political subdivision of the state or that is leased from, or located on property owned by or leased from, the state, a state agency, a political subdivision of the state, or a convention facilities authority created under current law, or (2) an area designated as a community entertainment district pursuant to current law (R.C. 4301.01(B)(19), not in the bill).

outdoor performing arts center. The latter question may be presented to the voters of a precinct in which an outdoor performing arts center is located only by the legislative authority of the municipal corporation in which, or by the board of trustees of the township in which, the center is located and only within a specified period of time.

Current law specifies how the results of local option elections affect the sale of intoxicating liquor at locations wishing to sell intoxicating liquor on Sundays in election precincts or parts of election precincts. If the voters of a precinct or part of a precinct, whichever applies, approve the sale of intoxicating liquor on Sundays, locations within the precinct or part of a precinct are authorized to sell intoxicating liquor.

Changes proposed by the bill

Certain Sunday sale hours and D-6 permits

Under the bill, the questions governing the Sunday sale of intoxicating liquor are substantively the same as those that may be submitted in an election precinct under current law, except that the bill changes the questions governing the hours of Sunday sale of intoxicating liquor between 1 p.m. and midnight to apply to Sunday sale of intoxicating liquor between 11 a.m. and midnight. The bill also generally requires that the sale of intoxicating liquor be permitted between the hours of 11 a.m. and midnight on Sunday under a D-6 permit (Sunday liquor sales) if the sale of intoxicating liquor between the hours of 1 p.m. and midnight was approved at a local option election before the bill's effective date, except for the exception discussed below. Finally, the bill requires that a D-6 permit be issued to the holders of specified liquor permits if Sunday sales are allowed as the result of an election in or at an election precinct, a specific area of a precinct, a particular location, or a community facility during specified hours.

Exception special election

The bill allows the electors in a precinct in which the commencement time is changed by its operation to 11 a.m. (see above) to hold an election to revert that time to 1 p.m. The election must be held under the following conditions:

- At the first general election that occurs after the effective date of the bill's applicable provisions unless that general election will be held less than 135 days after that date, in which case the election must be held at the immediately following general election;

- Under one of the "11 a.m. to midnight" questions (other than the question pertaining to outdoor performing arts centers), as amended by the bill, that seeks approval of Sunday sales of intoxicating liquor in an election precinct or part of an election precinct, as applicable, except that the

starting time for sales under the question must be stated as 1 p.m. rather than 11 a.m.;

- In accordance with the applicable requirements and election provisions that govern those questions and that are established under the Liquor Control Law.

Not later than 45 days after the effective date of the bill's provisions, the Superintendent of Liquor Control must publish notice of the special election provisions in a newspaper of general circulation in each county of the state.

Permitted hours of sale and effective period of election

The bill specifies that locations in a precinct or part of a precinct, whichever applies, generally are only authorized to sell intoxicating liquor on Sunday during the hours specified in the relevant questions--either 10 a.m. to midnight or 11 a.m. to midnight. As under current law, the results of elections on the Sunday liquor sales questions remain in effect until another election is held on the same question for the precinct or part of the precinct, but no election can be held on the same question for the precinct or part of the precinct more than once every four years.

Validity of pending petitions

Under the bill, if a petition seeks the holding of an election on Sunday liquor sales on or after the effective date of the bill's provisions under the questions seeking approval of Sunday sales for an election precinct, a specific area of a precinct, a specified location, or a community facility (which question now generally refers to "1 p.m. to midnight," but the bill changes to "11 a.m. to midnight") and the petition contains signatures that were placed on it before that date, the petition is not invalid merely because the question or questions sought to be submitted to the voters and contained in the petition state that Sunday liquor sales will commence beginning at 1 p.m. rather than 11 a.m.

Changes in procedure for local option elections on liquor sales at a particular location

(R.C. 4301.323 (not in the bill), 4301.333, 4301.355, 4301.365, and 4303.182)

Change in the petition requirements and in the wording of the questions on the ballot

Petition

Current law allows a local option election to be held in an election precinct on the sale of beer, wine and mixed beverages, or intoxicating liquor at a particular location

within the precinct if the petitioner for the election is one of the following: (1) an applicant for the issuance or transfer of a liquor permit at, or to, a particular location within the precinct, (2) the holder of a liquor permit at a particular location within the precinct, (3) a person who operates or seeks to operate a liquor agency store at a particular location within the precinct, or (4) the designated agent for such an applicant, permit holder, or liquor agency store.

The petition for the election described above currently must contain all of the following: (1) a notice that the petition is for the submission of a question or questions seeking an election on sales of beer, wine and mixed beverages, or intoxicating liquor at a particular location, (2) the name of the applicant for the issuance or transfer, or the holder, of the liquor permit or, if applicable, the name of the liquor agency store, including any trade or fictitious names under which the applicant, holder, or liquor agency store either intends to do or does business at the particular location, and (3) the address and proposed use of the particular location within the election precinct to which the results of the question or questions will apply. The bill specifies that a petition that seeks approval of Sunday sales at a particular location also must contain a statement indicating whether the hours of sale sought are between 10 a.m. and midnight or between 11 a.m. and midnight.

Ballot

Under current law, the wording of a Sunday liquor sales question that is placed on the ballot must state whether beer, wine and mixed beverages, or intoxicating liquor is to be sold under the permit sought for, or under the permit issued to, the particular premises, or is to be sold at the liquor agency store, that is the subject of the election. Under the bill, the question also must specify that the sale of beer, wine and mixed beverages, or intoxicating liquor on Sunday will be either between the hours of 10 a.m. and midnight or 11 a.m. and midnight.

Effect of election concerning Sunday liquor sales

Current law specifies how the results of a local option election concerning Sunday sales at a particular location affect the sale of beer, wine and mixed beverages, or intoxicating liquor at the location. If the voters in a precinct approve the Sunday sale of beer, wine and mixed beverages, or intoxicating liquor at a particular location, the location is allowed to sell whichever was the subject of the election. The bill adds that the location specified in a question generally is only authorized to sell beer, wine and mixed beverages, or intoxicating liquor during the hours authorized under the bill and approved in the local option election.

Under existing law, if a question is submitted to the electors of a precinct proposing to authorize the sale of beer, wine and mixed beverages, or spirituous liquor

between the hours of 10 a.m. and midnight at a particular location at which the sale of beer, wine and mixed beverages, spirituous liquor, or intoxicating liquor is already allowed between the hours of 1 p.m. and midnight and the question submitted is defeated, the sale of beer, wine and mixed beverages, spirituous liquor, or intoxicating liquor between the hours of 1 p.m. and midnight must continue at that particular location. Under the bill, if the question allowing sales between 10 a.m. and midnight is defeated and if the particular location is already allowed to sell beer, wine and mixed beverages, spirituous liquor, or intoxicating liquor either between the hours of 11 a.m. and midnight or between the hours of 1 p.m. and midnight, the particular location is allowed to continue to sell beer, wine and mixed beverages, spirituous liquor, or intoxicating liquor between the hours of 11 a.m. and midnight or 1 p.m. and midnight, as applicable.

Changes in procedure for local option elections on liquor sales at a community facility

(R.C. 4301.334, 4301.356, 4301.366, and 4303.182)

Change in the petition requirements and in the wording of the questions on the ballot

Petition

Current law allows a local option election to be held in a municipal corporation or the unincorporated area of a township on the sale of beer and intoxicating liquor at a community facility located within the municipal corporation or unincorporated area if the petitioner for the election presents a petition and other specified information to the board of elections of the county in which the community facility is located. The petition must contain both of the following: (1) a notice that it is for the submission of a question authorizing the sale of beer and intoxicating liquor on all days of the week except Sunday and between the hours of 1 p.m. and midnight on Sunday at a particular community facility, and (2) the name and address of the community facility and, if the community facility is a community entertainment district, the boundaries of the district. The bill specifies that the petition also must include a statement indicating whether the hours of Sunday sales sought in the local option election are between 10 a.m. and midnight or between 11 a.m. and midnight.

Ballot

Under current law, the question for a local option election authorizing the Sunday sale of beer and intoxicating liquor at a community facility specifies that the sale can only occur on days of the week other than Sunday and between the hours of 1 p.m. and midnight on Sunday. The bill changes the hours of Sunday sale specified on

the ballot question from between 1 p.m. and midnight to between 10 a.m. and midnight or between 11 a.m. and midnight, whichever time period is sought.

Effect of election concerning Sunday liquor sales

Under current law, if a majority of the voters approve the sale of beer and intoxicating liquor at a community facility, the community facility is authorized to sell beer and intoxicating liquor for the use specified in the question. The bill provides that the sale of beer and intoxicating liquor is allowed on Sunday at a community facility generally only during the hours approved by the voters, either between 10 a.m. and midnight or between 11 a.m. and midnight.

STATE BOARD OF COSMETOLOGY (COS)

- Makes changes to the requirements for restoring a license issued by the State Board of Cosmetology.
- Increases the fines that the Board may impose for specified offenses including failure to comply with Ohio's law regulating cosmetology.
- Increases the education requirement for a cosmetology license from a public school tenth grade education level or equivalent to an Ohio high school diploma, certificate of completion, or a general equivalency diploma.
- Deems the education requirement for a cosmetology license to be satisfied if the applicant has met all career technical requirements established by the Ohio Department of Education.
- Increases from eight to ten the number of daily hours of instruction the State Board of Cosmetology may consider in determining an applicant's total hours of instruction for licensing purposes.

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[49] 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.[50] 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.

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.

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[49] 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).

[50] 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.

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.

Cosmetology licensing

The State Board of Cosmetology issues practicing licenses to applicants who meet specified criteria, including minimum age, education, and training requirements. Under current law, an applicant must have the equivalent of an Ohio public school tenth grade education level in order to satisfy the education requirement.

The bill increases the education requirement from a public school tenth grade level or its equivalent to an Ohio high school diploma, certificate of completion, or a general equivalency diploma. Alternatively, the bill deems the education requirement to have been met if the applicant has satisfied all career technical requirements established by the Department of Education. (R.C. 4713.28(C).)

Applicants seeking a practicing license, managing license, or instructor license from the State Board of Cosmetology are required to successfully complete a specified amount of hours of instruction. The number of hours required varies depending on the type of license sought and the practice area (e.g., cosmetology, esthetics, hair design, manicuring, or hair styling). (R.C. 4713.28, 4713.30, and 4713.31.) Under current law, the State Board of Cosmetology may only count eight hours of instruction per day toward the total number of hours when determining whether an applicant has accumulated the requisite hours of instruction. Any instruction in excess of eight hours in a single day cannot be counted.

The bill increases from eight to ten the daily number of hours of instruction that the State Board of Cosmetology may consider in calculating an applicant's total hours of instruction required for licensure. (R.C. 4713.32.)

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.

- Prevents appropriated state funds allocated to pay administrative costs of existing local development districts from being reduced due to the creation of additional development districts and ensures that such allocated funds are increased to match federal Consumer Price Index increases.

- Permits the Director of Development to provide export promotion assistance to Ohio businesses and to organize or support missions to foreign countries to promote the export of Ohio products and services and to encourage direct foreign investment in Ohio.

- Permits the Director to charge fees to businesses receiving export assistance and to participants in foreign missions to recover the direct cost of those activities, and requires those fees to be deposited into the International Trade Cooperative Projects Fund.

- Authorizes the Director of Development to make grants of up to $500,000 from the General Revenue Fund to local governments hosting major sporting events, up to a total of $1 million annually, if estimates of the associated state sales tax increase is at least $250,000.

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

- 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 a provision that requires the rules regarding the establishment of procedures for minority businesses applying for surety bonds to provide that a minority business submit documentation, as the Director of Development requires, to demonstrate either that the minority business has been denied a bond by two surety companies or that the minority business has applied to two surety companies for a bond and, at the expiration of 60 days after making the application, has neither received nor been denied a bond.

- Makes a community development corporation eligible for loans under the minority business enterprise loan program if the corporation predominantly benefits minority business enterprises or is located in a census tract that has a population that is 60% or more minority.

- Creates a micro-lending program within the Department of Development's 166 Direct Loan programs specifically for small business enterprises, to be funded from a legislatively designated portion of the Facilities Establishment Fund.

- Authorizes the Director of Development to develop a program to encourage employers to hire individuals from significantly disadvantaged groups including, but not limited to, individuals who have not graduated from high school, have been convicted of a felony, are disabled, or have been out of the workforce for more than 18 months.

- 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.

- Creates a new Ohio Venture Capital Authority composed of three members appointed by the Governor (including the Director of Development).

- Creates a new seven-member Ohio Venture Capital Advisory Board to advise the Ohio Venture Capital Authority.

- Authorizes Venture Capital Program funds to be used for the "Third Frontier" research and development purposes of Section 2p, Article VIII, Ohio Constitution.

- Authorizes port authorities to issue revenue bonds for the purposes of the Ohio Venture Capital Program, lend the bond proceeds to venture capital funds, and to claim refundable Venture Capital Program tax credits to cover any investment losses.

- Specifies that bond proceedings may include a covenant by the state that the venture capital tax credits shall be preserved as fully refundable tax credits in amounts sufficient to pay the port authorities' debt service and reserves for as long as the port authority bonds are outstanding.

- Eliminates the requirement that Venture Capital Program Fund money to be invested in a venture capital fund be added to amounts already invested in a venture capital fund managed by the same entity for the purpose of determining the maximum amount of Program Fund money that may be invested in any one venture capital fund.

- Authorizes program fund investment in a co-investment fund that is capitalized by the Program Fund and invests exclusively in Ohio-based business enterprises together with other investors.

- Extends by ten years the period in which a venture capital tax credit may be claimed.

- Includes compressed air in the definition of alternative fuel for the purpose of making alternative fuel transportation grants to businesses, nonprofit organizations, public schools, and local governments for the purpose of increasing the availability and use of alternative fuels.

- Includes compressed air in the definition of alternative fuel for the purpose of requiring all new motor vehicles acquired by the state for use by state agencies be capable of using alternative fuel.

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.

Local development districts

(R.C. 107.21)

Under current law, local development districts in the Appalachian region are responsible for the regional planning for the distribution of funds received from the Appalachian Regional Commission within the region.

The bill provides that the amount of money from appropriated state funds allocated each year to pay administrative costs of existing local development districts cannot be decreased due to the creation and funding of additional local development districts. The bill also ensures that the amount of such allocated funds must be increased each year by the average percentage of increase in the federal Consumer Price Index (all urban consumers, U.S. city average, all items) for the prior year.

Export promotion assistance and foreign investment

(R.C. 122.05 and 122.051)

Under continuing law, the Director of Development is permitted to engage in various activities to encourage, promote, and assist trade and commerce between Ohio and foreign nations, including establishing offices in foreign countries and entering into

contracts with foreign nationals. The 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.

State subsidy for hosting sports events

(R.C. 122.12 and 122.121; Section 812.10)

The bill authorizes the Director of Development to make grants of General Revenue Fund money to counties or municipal corporations hosting major sporting events (specified below), beginning July 1, 2011. The grant amount is to be "based on" the increased state sales tax revenue directly attributable to the preparation for and presentation of the event, as determined by the Director. Grants are available only if the increased state sales tax revenue is estimated to be greater than $250,000. No individual grant may exceed $500,000, and the total of all grants in any fiscal year may not exceed $1 million.

The games that qualify for grants are the following: National Football League "Super Bowl," World Cup soccer matches, NCAA "Final Four" basketball tournament games, NCAA football Bowl Championship Series games, all-star games of the National Basketball Association, National Hockey League, or Major League Baseball, and the Olympic Games. In order to apply for a grant, a county or municipal corporation ("endorsing" county or municipality) must contain a site that may be selected as a site for such an event by the corresponding organization ("site selection organization") and must have entered into a "joinder undertaking" with the organization. A joinder undertaking is a preliminary agreement that the parties will enter into a subsequent "joinder agreement" if the site selection organization selects the county or municipal corporation for the game site. The joinder agreement sets forth "representations and assurances by the endorsing municipality or endorsing county in connection with" the site selection. Combinations of counties and municipal corporations may be parties to joinder undertakings and agreements.

To obtain a grant, an endorsing county or municipality must apply to the Director of Development and must certify information to be used by the Director to estimate the increased state sales tax attributable to the game. The information may include historical attendance and ticket sales for the game, income statements showing revenue and expenditures for the game in prior years, attendance capacity at the proposed venues, event budget at the proposed venues, and projected lodging room nights based on historical attendance, attendance capacity at the proposed venues, and duration of the game and related activities.

In estimating the increased state sales tax revenue attributable to the event, the Director must consider the increase for a two-week period within a "market area," which is a geographic area designated by the Director, in consultation with the Tax Commissioner, where there is "a reasonable likelihood of measurable economic impact directly attributable to the preparation for and presentation of the game and related events, including areas likely to provide venues, accommodations, and services in connection with the game." The endorsing municipality or endorsing county that has been selected as the site for a game must be included in a market area. The two-week period ends on the day after the game is held. The Director's estimate is to be based on the information and the copy of the joinder undertaking provided to the Director by the county or municipal corporation or by a local organizing committee (see below).

If the Director of Development approves an application, and the applicant enters into a joinder agreement, the applicant county or municipality must file a copy of the agreement with the Director. The Director then must notify the Director of Budget and Management, who must establish a schedule for disbursing the grant from the General Revenue Fund.

The bill requires the endorsing county or municipality to report to the Director of Development on the economic impact of the game. The report must be filed within 60 days after the game, and must include any information the Director requires, including, at least, a final income statement showing total revenue and expenditures and revenue and expenditures in the market area for the game and ticket sales. On the basis of the report and the "exercise of reasonable judgment," the Director must determine the incremental increase in state sales tax directly attributable to the game. If the actual incremental increase is less than the estimated increase, the Director is authorized to require the endorsing county or municipality to refund all or a portion of the grant.

The bill also requires the endorsing county or municipality or a local organizing committee to provide information required by the Director of Development and Tax Commissioner, including annual audited statements of any financial records required by a site selection organization, and data obtained by the county or municipal corporation or the local organizing committee relating to the game's attendance and

economic impact. The Director and Tax Commissioner also may require them to provide an annual audited financial statement within four months after the closing date of the financial statement. (A local organizing committee is defined as an organization that an endorsing county or municipal corporation authorizes to pursue and bid on selection of the county or municipal corporation as the site of a game, or that executes an agreement with a site selection organization regarding a bid to host a game.)

The bill prohibits disbursement of a grant if the Director of Development determines that the money would be used to solicit the relocation of a professional sports franchise within Ohio. The bill also states that the bill's grant provision does not create or require the state's guarantee of any obligation undertaken by a county or municipal corporation under a "game support contract" (i.e., a joinder undertaking, joinder agreement, or similar agreement) or other agreement related to hosting a game.

Development Financing Advisory Council

(R.C. 122.40)

The Development Financing Advisory Council makes recommendations to the Director of Development and advises the Director regarding various economic development programs, including the purchase and improvement of property for industrial, commercial, distribution, or research facilities and the Capital Access Loan Program.

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.

Rules for application by minority business for a bond

(R.C. 122.89)

Under current law the Director of Development can execute bonds as surety for minority businesses as principals, on contracts with the state, any political subdivision or instrumentality thereof, or any person as the obligee. The Director, with the advice of the Minority Development Financing Advisory Board, must adopt rules under the Administrative Procedure Act establishing procedures for application for surety bonds by minority businesses and for review and approval of applications. Current law requires the rules of the Board to provide that a minority business, in order to make an application for a bond to the Director, must submit documentation, as the Director requires, to demonstrate either that the minority business has been denied a bond by two surety companies or that the minority business has applied to two surety companies for a bond and, at the expiration of 60 days after making the application, has neither received nor been denied a bond. The bill removes this requirement.

Community development corporations--Minority Business Enterprise Loan Program

(R.C. 122.71, 122.751, and 122.76)

Under current law, the Director of Development, with Controlling Board approval, can lend funds to minority business enterprises and to community improvement corporations, Ohio development corporations, minority contractors business assistance organizations, and minority business supplier development councils for the purpose of loaning funds to minority business enterprises and for the purpose of procuring or improving real or personal property, or both, for the establishment, location, or expansion of industrial, distribution, commercial, or research facilities in Ohio, if the Director determines, in the Director's sole discretion, that all of the following apply:

(1) The project is economically sound and will benefit the people of Ohio by increasing opportunities for employment, by strengthening the economy of Ohio, or expanding minority business enterprises.

(2) The proposed minority business enterprise borrower is unable to finance the proposed project through ordinary financial channels at comparable terms.

(3) The value of the project is or, upon completion, will be at least equal to the total amount of the money expended in the procurement or improvement of the project, and one or more financial institutions or other governmental entities have loaned not less than 30% of that amount.

(4) The amount to be loaned by the Director will not exceed 60% of the total amount expended in the procurement or improvement of the project.

(5) The amount to be loaned by the Director will be adequately secured by a first or second mortgage upon the project or by mortgages, leases, liens, assignments, or pledges on or of other property or contracts as the Director requires, and the mortgage will not be subordinate to any other liens or mortgages except the liens securing loans or investments made by the financial institutions referred to above, and the liens securing loans previously made by any financial institution in connection with the procurement or expansion of all or part of a project.

Current law specifies that a loan applicant must not be considered until after a certification by the equal employment opportunity coordinator of the Department of Administrative Services that the applicant is a minority business enterprise, or after a certification by the Minority Business Supplier Development Council that the applicant

is a minority business, and that the applicant satisfies all criteria regarding eligibility for assistance.

The bill expands eligibility for loans under the minority business enterprise loan program to a community development corporation[51] that predominantly benefits minority business enterprises or is located in a census tract that has a population that is 60% or more minority. The bill also specifies that the application of a commercial development corporation for a loan must not be considered until after a determination that the applicant is indeed a community development corporation.

Micro-lending Program

(R.C. 166.07(C))

Current law authorizes the Department of Development to lend money at below-market rates to businesses to assist them in acquiring nonretail facilities and equipment (among other "allowable costs"). Lending is from the Facilities Establishment Fund, which is funded primarily from constitutionally authorized state bond issuances. Among the criteria for obtaining a loan under current law are the number of jobs to be created or preserved, the payroll, and the state and local taxes generated. (R.C. 166.05(A)(1)(a) and (b).) Loans are subject to minimum collateral and equity requirements and minimum ratios of jobs-to-loan amount. Application fees, processing fees, and servicing fees are charged.

The bill requires the Director of Development to make loans (or to arrange for others to make loans) to "small" businesses from any part of the Facilities Establishment Fund designated for that purpose by the General Assembly. (The bill designates $1 million for that purpose for each of FY 2010 and 2011. Section 259.20.90.) The Director is required to establish eligibility criteria and loan terms that supplement existing eligibility criteria and loan terms, and the Director may prescribe reduced fees. The bill directs the Director to give precedence to projects "that foster the development of small entrepreneurial enterprises," notwithstanding the current job creation/retention, payroll, and tax generation considerations to the extent those considerations otherwise may disqualify small businesses' projects from the existing loan program.

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[51] A "community development corporation" is a nonprofit corporation that consists of residents of the community and business and civic leaders and that has as a principal purpose one or more of the following: the revitalization and development of a low- to moderate-income neighborhood or community; the creation of jobs for low- to moderate-income residents; the development of commercial facilities and services; providing training, technical assistance, and financial assistance to small businesses; and planning, developing, or managing low-income housing or other community development activities.

Department of Development program to encourage businesses to hire individuals from significantly disadvantaged groups

(R.C. 122.042)

The bill authorizes the Director of Development to fund an employment opportunity program that encourages employers to employ individuals who are members of significantly disadvantaged groups. The bill cites, as examples of significantly disadvantaged groups, groups of individuals who have not graduated from high school, who have been convicted of a crime, who are disabled, or who are chronically unemployed, usually for more than 18 months. If the Director intends to found such a program, the Director must adopt, and thereafter may amend or rescind, rules under the Administrative Procedure Act, to found, operate, maintain, and improve the program. In these rules the Director must:

- Construct, and as changing circumstances indicate, re-construct, procedures according to which significantly disadvantaged groups are identified as such, an individual is identified as being a member of a significantly disadvantaged group, and an employer is identified as being a potential employer of such a group.

- Describe, and as experience indicates, re-describe, the kinds of evidence that must be considered to identify significantly disadvantaged groups, the kinds of evidence an individual must offer to prove that the individual is a member of such a group, and the kinds of evidence an employer must offer to prove that the employer is a potential employer of an individual who is a member of such a group.

- Specify, and as experience indicates, re-specify, strategies and tactics for connecting individuals who are members of significantly disadvantaged groups with potential employers of members of such groups.

- Define a mix of, and, as experience indicates, define a re-mix of, incentives, such as grants, loans, loan guarantees, and tax benefits, that will encourage potential employers of individuals who are members of significantly disadvantaged groups actually to employ these individuals, to train those individuals in the particular skills of employment, and to otherwise develop and continue those individuals in the employment.

- Prescribe, and as experience indicates, re-prescribe, terms and conditions under which incentives are provided to and used by employers, including standards according to which incentives are provided or not provided to employers, results that reasonably can be expected from the provision of

incentives, terms for and conditions on the use to which incentives may be put, methods according to which the use of incentives can be monitored and accounted for, any obligation to repay or otherwise reimburse an incentive, and liability under which employers may be obligated to provide restitution to the Director if incentives are misused according to the terms and conditions of their provision and use.

- Construct, describe, specify, define, and prescribe any other thing that is necessary and proper for the founding, and for the successful and efficient operation, maintenance, and improvement, of employment opportunity programs.

In founding, and in operating, maintaining, and improving, the employment opportunity program under these rules, the Director must proceed so that the resulting program functions as a coherent, efficient system for improving employment opportunities for significantly disadvantaged groups.

The Director cannot provide an incentive in the form of a tax benefit unless the Director has first consulted, and obtained the approval of, the Tax Commissioner. Examples of tax benefits include tax deductions, tax credits, and tax exemptions.

The Director has a cause of action for restitution to recover for the misuse of an incentive according to the terms and conditions under which the incentive was provided or to be used. (R.C. 122.042.)

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.

Venture Capital Authority tax credits

Existing law

Existing law establishes a nine-member state agency, the Ohio Venture Capital Authority, to administer the Ohio Venture Capital Program, the purpose of which is to increase the amount of private investment capital available in Ohio for Ohio-based businesses in the "seed" or early stages of business development and established Ohio-based businesses developing new methods or technologies. The Authority's principal function is to develop a lending and investment policy for the investment of private capital in private, for-profit venture capital funds and similar investment vehicles, primarily Ohio-based, that invest at least 50% of their program fund money in Ohio-based businesses. The Authority's exercise of its powers and duties is designated by law as an essential state governmental function, and the Authority is subject to all laws generally applicable to state agencies and public officials, with certain exceptions. Its investment policy must include provision of security against program fund investors' investment losses, either directly from program fund money or tax credits against the insurance premiums franchise tax, the financial institutions franchise tax, the dealers in intangibles tax, and the personal income tax.

The Authority is charged with hiring one or two private, for-profit investment companies to execute the investment policy and to serve as the program administrator.

Membership of Authority

(R.C. 150.02)

The Authority currently is composed of the Tax Commissioner and the Director of Development, or their designees, serving in an ex-officio capacity, and seven members appointed from the general public by the Governor with the advice and consent of the Senate. The appointees must have relevant experience in banking, investment, commercial law, or industry. Members serve without compensation, but must be reimbursed for their reasonable and necessary expenses.

The bill re-creates the Authority as a three-member body composed of the Director of Development (or a designee) and two appointees of the Governor, and creates a new, seven-member Advisory Board. The bill does not prescribe qualifications

for the two appointed members of the Authority, and does not specify their terms, the causes for which they may be removed, or whether they are to be compensated, all of which current law specifies for existing members of the Authority.

The bill does not specify how the transition is to be made from the existing Authority to the re-created Authority.

New Advisory Board

(R.C. 150.021)

The bill's new Advisory Board is created to provide general advice to the Authority "on various issues relevant to the purpose of the venture capital program" upon the Authority's request. The issues include "strategic planning, investment policy, and investment prohibitions for [Authority] programs;" budget and investment targets, investment processes, and "other aspects of the professional management and administration of [Authority] programs;" "metrics and methods of measuring the progress and impact of [Authority] programs;" and qualifications and standards for evaluating the performance of the program administrator and other professionals and advisors engaged by the Authority. The bill prohibits the Authority from requesting, and the Advisory Board from offering, advice about the selection or retention of any specific professional service provider, contractor, or other agent that the Authority has or may retain, or about any specific investment that the program administrator may consider or make.

The Advisory Board is to be composed of seven members appointed by the Governor (with the advice and consent of the Senate) from among the general public. All appointees must have experience with businesses in the seed or early stages of development or with investments in such businesses. At least three members must have experience investing in or managing investments in businesses in the seed or early stages of development. At least two members must have experience "providing professional services to" individuals or funds investing in or managing investments in businesses in the seed or early stages of development, or providing such services to businesses in the seed or early stages of development with respect to the process of seeking and obtaining such investments. The other members must have experience generally in investing in or managing investments in businesses or providing professional services to entities whose primary business is investing in or managing investments in businesses, or providing such services to businesses "with respect to the process of seeking and obtaining investment financing."

Advisory Board members serve at the pleasure of the Governor, for three-year terms, except that the initial terms of two members expire January 31, 2010, the initial

terms of two other members expire January 31, 2011, and the initial terms of the other three members expire January 31, 2012. Members are not compensated but are reimbursed for expenses.

Investment purposes

(R.C. 150.01)

Under current law, money in the Venture Capital "program fund" are invested in venture capital funds, which in turn invest in businesses that are in seed or early stages of development or in established businesses that are developing new methods or technologies. The Program Fund consists of money lent to it, presumably by taxpayers in expectation of security against any losses incurred from investment of the money in venture capital funds.

The bill specifies that OVC Program Funds money may be used for the "research and development" purposes of Section 2p, Article VIII, Ohio Constitution, (otherwise known as the "Third Frontier" program which authorizes the use of state general obligation bond proceeds for, among other economic development purposes, "research and product innovation, development, and commercialization through efforts by and collaboration among Ohio business and industry, state and local public entities and agencies, public and private education institutions, or research organizations and institutions . . . ."

Port authority bond funding of Third Frontier through OVC Program

(R.C. 150.02, 150.04, 150.07, and 4582.71)

The bill authorizes port authorities to issue revenue bonds specifically for the purpose of the OVC Program, including making loans to the Program Fund to provide for Third Frontier program research and development costs. Port authorities may claim refundable OVC Program tax credits to cover losses, just as other investors under the program even though port authorities are nontaxable government bodies. The credits may be claimed directly by the port authority or through a "trustee" (i.e., a trust company or bank with corporate trust powers engaged in connection with the bond issuance). Among various other terms, the bond proceedings may include a covenant by the state that the venture capital tax credits must be preserved as fully refundable tax credits in amounts sufficient to pay the port authorities' debt service and reserves for as long as the port authority bonds are outstanding.

The bill "authorizes" the General Assembly to repeal any of the taxes against which the OVC tax credits may be claimed, provided that the General Assembly

permits holders of tax credits to be claimed against any new tax consistent with the covenant.

A port authority's or trustee's claim for tax credits would be subject to an agreement between the OVC Authority and the port authority. The bill authorizes the OVC Authority and a port authority to cooperate in the promotion of the OVC and Third Frontier programs and to enter into agreements as they deem appropriate.

More than one port authority may jointly exercise the authority granted to port authorities under the bill.

Co-investment fund

The bill authorizes the OVC Authority to create "Ohio co-investment funds," which are Ohio-based venture capital funds consisting only of Program Fund money invested in accordance with the OVC investment policy. (Under the OVC law, a venture capital fund is "Ohio-based" if the fund's principal office is in Ohio and the majority of the fund's staff are employed at the principal office, including an "investment professional" with at least five years of experience in venture capital investment.) A co-investment fund is subject to an investment policy that differs in some respects from the investment policy currently governing Program Fund money invested in other venture capital funds, particularly with respect to the concentration of its investments in Ohio-based businesses, as explained below.

Investment policy

(R.C. 150.03)

Under current law, the OVC Authority is required to maintain a written investment policy for the OVC Program that complies with a number of requirements governing, among other things, the concentration of investments in Ohio-based venture capital funds, Ohio-based businesses, and any single fund, as follows:

(1) At least 75% of Program Fund money must be invested in Ohio-based venture capital funds.

(2) At least 50% of OVC Program Fund money invested in a venture capital fund must be invested by the fund in "Ohio-based business enterprises" (i.e., businesses that employ at least one individual in Ohio on a full-time or part-time basis).

(3) The amount of Program Fund money invested in any single venture capital fund, when combined with Program Fund money invested in any other fund under the same management, may not exceed the lesser of the following: (a) $10 million or (b)

50% of the capital invested in the fund (if the fund is an Ohio-based fund) or 20% of the capital invested in the fund (in the case of any non-Ohio-based fund).

Under the bill, all Program Fund money invested in Ohio co-investment funds must be invested in Ohio-based businesses, rather than the 50% level required of other venture capital funds. Of the remaining Program Fund money not invested in an Ohio co-investment fund, 75% must be invested in Ohio-based venture capital funds as currently required.

The bill also differentiates between Ohio co-investment funds and non-Ohio co-investment funds for purposes of the limit on the amount of money from the Program Fund that may be invested in a venture capital fund. Ohio co-investment funds are limited to the lesser of the following: (a) $100 million or (b) 50% of the total amount of capital committed to all venture capital funds by the Program Fund. As under existing law, other venture capital funds are limited to the lesser of the following: (a) $10 million or (b) 50% of the capital invested in the fund (if the fund is an Ohio-based fund) or 20% of the capital invested in the fund.

Additionally, the bill eliminates the requirement that Program Fund money be added to amounts already invested in a venture capital fund managed by the same entity for the purpose of determining the maximum amount of Program Fund money that may be invested in any one venture capital fund.

The bill also modifies the investment policy by setting a floor on the amount of Program Fund money that must be invested in Ohio-based businesses by venture capital funds relative to the amount of Program Fund money invested in those funds. The total amount invested in Ohio-based businesses by all venture capital funds receiving Program Fund money must be at least equal to the amount of Program Fund money invested in those funds.

Sunset date for tax credits

(R.C. 150.07)

Existing law prohibits the claiming of a tax credit under the OVC Program after June 30, 2026. The bill extends the date by which credits must be claimed to June 30, 2036.

Compressed air included in the definition of alternative fuel

Alternative Fuel Transportation Grant Program

(R.C. 122.075)

Existing law establishes various programs encouraging the use of alternative fuels. The Alternative Fuel Transportation Grant Program permits the Director of Development to make grants to businesses, nonprofit organizations, public school systems, or local governments for the following purposes in order to increase the availability and use of alternative fuel:

- Purchase and installation of alternative fuel refueling or distribution facilities and terminals;
- Purchase and use of alternative fuel;
- Pay the costs of education and promotional materials and activities intended for prospective alternative fuel consumers, fuel marketers, and others.

As used in the Alternative Fuel Transportation Grant Program, "alternative fuel" currently means blended biodiesel or blended gasoline. The bill expands the definition of alternative fuel also to include compressed air used in air-compression driven engines. Thus, under the bill, grants may be awarded to businesses, nonprofit organizations, public school systems, or local governments in order to increase the availability and use of compressed air as an alternative fuel.

State vehicles capable of using alternative fuel

(R.C. 125.831)

Existing law requires all new motor vehicles acquired by the state for the use of state agencies to be capable of using alternative fuels. "Alternative fuel" currently means E85 blend fuel; blended biodiesel; natural gas; liquefied petroleum gas; hydrogen; any power source, including electricity; or any fuel that the United States Department of Energy determines to be substantially not petroleum and that would yield substantial energy security and environmental benefits. The bill generally retains these provisions and adds compressed air to the list of alternative fuels that new state vehicles may use.

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.

- Allows school districts to use state education funds that are not allocated for another purpose for the modification or purchase of classroom space to provide all-day kindergarten or to reduce class sizes in grades K to 3.

- States that the bill's school funding provisions neither (1) prohibit school districts, community schools, or STEM schools from using state funds to contract for services from educational service centers nor (2) prohibit school districts from using state funds to establish, operate, or participate in joint or cooperative programs with each other.

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

- Establishes a subcommittee of the Ohio School Funding Research Advisory Council to provide recommendations for fostering collaboration between school districts and community schools.

- Permits the Ohio School Funding Research Advisory Council to establish other subcommittees and to appoint some non-council members to these other subcommittees.

- Requires the Ohio School Facilities Commission to conduct a study of new demands upon and issues related to classroom facilities that may arise from new operating requirements.

Joint vocational school districts and educational service centers

- Requires the Partnership for Continued Learning to establish a career-technical education funding committee to study the extent to which funding for joint vocational school districts and other career-technical schools meets state, regional, and local business and industry needs and to recommend revisions to career-technical education funding and programming.

- Requires each educational service center (ESC) to undergo a performance review every five years.

- 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.

Creative learning environment classrooms

- Establishes a 21-member "Harmon Commission" to review applications for and designate classrooms operated by school districts and community schools as creative learning environments.

- Requires the Department of Education, through the Center for Creativity and Innovation (established by the bill), to provide staff to assist the Harmon Commission.

- Authorizes each city, exempted village, or local school district and each community school, if the community school has a memorandum of understanding with one or more school districts that specifies a collaborative agreement, to apply to the Harmon Commission for designation of one or more classrooms as creative learning environments.

- Authorizes a pilot subsidy for fiscal year 2011 for school districts in the lowest quintile of districts by income factor and community schools of $100 per pupil in the district's or community school's creative learning environment classrooms.

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 and expands current law by prohibiting all school districts from charging students who are eligible for free lunch programs any fees for materials necessary to participate in a course of instruction, instead of prohibiting only districts receiving poverty-based assistance from charging such fees to students from families receiving Ohio Works First or state disability assistance as under current law.

- 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 in a settlement agreement executed on or before June 1, 2009.

- Increases to $325 (from $300 as under current law) the maximum per pupil amount for reimbursement of chartered nonpublic school administrative costs.

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.

- Beginning in fiscal year 2011, requires school districts with graduation rates of 80% or less (1) to obtain approval of certain components of their spending plans from the Department and the Governor's Closing the Achievement Gap Initiative and (2) to create and staff the position of "linkage coordinator" to serve as mentor and service coordinator for students at risk of not graduating, and directs the Governor's Closing the Achievement Gap Initiative to work with school districts in fiscal year 2010 to assist them in planning for implementation of these provisions.

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

- Requires the Superintendent of Public Instruction to adopt three classes of rules prescribing spending and reporting requirements for components of the bill's school funding model: (1) core academic strategies, (2) academic improvement, and (3) other funded components.

- Sets specific spending requirements for the use of gifted education funding by school districts and educational service centers.

- Requires each school district, community school, and STEM school to undergo a performance review 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 review.

- Prescribes graduated sanctions the Department must take against a school district, community school, or STEM school that (1) fails to comply with the state Superintendent's spending and reporting rules, (2) fails to submit a spending plan, (3) fails to cooperate with a performance review or to submit a response or progress report, or (4) fails to implement a recommendation from a performance review.

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

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

- Requires the Department of Education to develop the "Formula Accountability and Transparency" form, or "FACT" form, to provide to the public a comparison of a district's, community school's, or STEM school's funded components with its spending plan.

- Renames as the "PASS" form the current "SF-3" form developed by the Department of Education to report each school district's operating funding. ("PASS" is an acronym for "PAthway to Student Success.")

II. Academic Standards and Assessments

Minimum standards for schools

- Specifies that the State Board of Education's minimum standards for public schools must require that instructional and library materials be aligned with the statewide academic content standards.

- Requires the State Board to adopt minimum operating standards for school districts.

- Specifies that the minimum school district operating standards override any conflicting provisions of a collective bargaining agreement between a district and its employees.

- Modifies the requirement for the State Board to develop a standard for 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 March 31, 2011, 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 and diagnostic assessments into the single subject of English language arts.

- 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 within one year after it adopts rules to implement the new high school assessment system, and at least every six years thereafter.

- Requires the State Board, by December 31, 2011, to establish a performance indicator that reflects the level of services provided to, and the performance of, gifted students.

- Requires the State Board to establish the performance indicators based on recommendations of the Superintendent of Public Instruction.

- Eliminates the requirement that the State Board establish a minimum of 17 performance indicators.

- Repeals a requirement that the State Board include measures of high school graduates' preparedness for higher education and the workforce on the report cards.

Community service education

- 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.

- Permits school districts to use space in child day-care centers licensed by the Department of Job and Family Services to provide all-day kindergarten.

- Repeals the authority of certain school districts and community schools to charge tuition for all-day kindergarten, beginning in fiscal year 2012.

Extending the school year

- Phases down the five excused calamity days to three calamity days for the 2009-2010 school year and one day for 2010-2011 and thereafter.

- Phases in over ten years a longer "learning year" for all public and nonpublic schools, increasing the minimum year from 182 to 198 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.

- Directs the Department of Education to study the best use of school hours, in consultation with teachers, superintendents, school district boards, and gifted education associations.

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 and community schools.

- Establishes permanent provisions 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 provisions.

Other academic provisions

- Permits a school district to waive the requirement to complete an eighth-grade American history course for promotion to high school for academically accelerated students who demonstrate mastery of the course content.

- Clarifies that a high school that permits students below ninth grade to take high school work for high school credit must award high school credit for successful completion of that work.

- Requires school districts, community schools, and STEM schools to count up to four days per school year as excused absences if a student is traveling out of state to participate in an approved enrichment or extracurricular activity, and requires that a classroom teacher accompany the student to provide instructional assistance if the student will be out of state for four or more consecutive school days.

III. Educator Licensure and Employment

Educator licenses

- Requires the State Board of Education to issue the following educator licenses beginning January 1, 2011: (1) a resident educator license, (2) a professional educator license, (3) a senior professional educator license, and (4) a lead professional educator license.

- Prescribes minimum qualifications for each of the new educator licenses.

- Permits the State Board to issue additional educator licenses of categories and types it elects to provide.

- Repeals the prohibition on the State Board requiring an educator license for teaching children two years old or younger.

Alternative credentials

- Renames the alternative educator license as the "alternative resident educator license" and makes it a four-year license for teaching in grades 4 to 12 (instead of a two-year license for teaching in grades 7 to 12, as in 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 be aligned with the Educator Standards Board's principal standards.

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 preparation programs for educators and other school personnel and the institutions of higher education with preparation programs and (2) to provide for inspection of those institutions.

- Requires the Chancellor (instead of the State Board as in 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 and does not meet the definition of "master teacher" 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.

- Adds a school district treasurer or business manager, a parent, and one more high school teacher and one more elementary school teacher to the Educator Standards Board as voting members and adds the ranking minority members of the House and Senate education committees as nonvoting members.

- Transfers authority to appoint the representatives of institutions of higher education on the Educator Standards Board from the State Board of Education to the Chancellor of the Ohio Board of Regents.

- Requires the membership of the Educator Standards Board to reflect Ohio's diversity in terms of gender, race, ethnicity, and geographic distribution.

Peer assistance and review programs

- Requires the Department of Education, by December 31, 2010, to develop a model peer assistance and review program and to make recommendations to expand the use of peer assistance and review programs in school districts.

Teach Ohio Program

- Directs the Chancellor of the Ohio Board of Regents and the Superintendent of Public Instruction to establish and administer the Teach Ohio Program, which includes (1) a statewide program administered by a nonprofit corporation that encourages high school students from economically disadvantaged groups to become teachers, (2) the Ohio Teaching Fellows Program, (3) the Ohio Teacher Residency Program, (4) alternative licensure programs, and (5) any other program identified by the Chancellor and Superintendent.

- 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 five years, and (3) has completed 30 semester hours of coursework in the area of licensure since initially receiving a license, if the teacher did not have a master's degree at the time of initial licensure, or six semester hours of graduate coursework in the area of licensure since initially receiving a license, if the teacher had a master's degree at that time.

- Stipulates that the tenure qualifications for teachers initially licensed on or after January 1, 2011, override any conflicting collective bargaining agreement entered into on or after the provision's effective date.

- Clarifies that, for classroom teachers licensed for the first time prior to January 1, 2011, the continuing education coursework required for tenure under 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 and the caps on the number of schools an entity may

sponsor apply 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.

- Prohibits a sponsor from initially entering into a sponsorship contract with a community school if more than 33% of the sponsor's existing schools in Ohio are in academic watch or academic emergency.

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

- Requires community school sponsors annually to report to the Department information about operators hired by the schools they sponsor.

- 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.

Closure of community schools

- Beginning July 1, 2009, replaces the current performance criteria that trigger automatic closure of a community school with new criteria requiring a community school to close if it (1) does not offer a grade higher than 3 and has been in academic emergency for three of the four most recent school years, (2) offers any of grades 4 to 8 but no grade higher than 9, has been in academic emergency for two of the three most recent school years, and showed less than one year of academic growth in reading or math for at least two of the three most recent school years, or (3) offers any of grades 10 to 12 and has been in academic emergency for three of the four most recent school years.

- Exempts from the automatic closure requirement community schools in which a majority of the students are children with disabilities receiving special education (in addition to community schools operating dropout programs with a waiver from the Department of Education, as in 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.

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).

- 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.

- Requires classroom facilities owned or leased by the governing authority or operator of a brick-and-mortar community school to comply with the Ohio School Facilities Commission's design specifications.

- 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.

- Enacts the following provisions regarding two or more brick-and-mortar community schools that are located in the same building, share the same chief administrative officer, and have at least one common member on their governing authorities: (1) requires the Department to compute aggregate funding for the schools as if they were one school and to pay each school a per-pupil share of the aggregate amount and (2) permits the schools to consolidate into a single school and to assign the individual schools' assets and liabilities to the consolidated school.

- Permits a community school to continue operating from the facility it occupied in the 2008-2009 school year, rather than relocating to another school district, if the school (1) has been in its current facility for at least three years, (2) is sponsored by a school district adjacent to the district in which the school is located, (3) emphasizes serving gifted students, and (4) has been rated continuous improvement or higher for the previous three years.

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.

- Creates the Family Child Care Licensing Workgroup to develop recommendations that explore the implementation, costs, and timeline necessary to create a statewide licensing system for family child care providers.

- 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.

- Requires the Governor to appoint to the Early Childhood Cabinet a representative of a board of health of a city or general health district or an authority having the duties of a board of health.

VI. Other Provisions

- Requires the Superintendent of Public Instruction, in consultation with the Chancellor of the Board of Regents, to develop a ten-year strategic plan by December 1, 2009.

- 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.

- 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.

- Permits school districts, community schools, and STEM schools to appoint one committee that functions as both a Business Advisory Council and a Family and Community Engagement Team.

- 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, permits only school district employees who have a school nurse license or school nurse wellness coordinator license, or who have completed a drug administration training program, to administer prescription drugs to students in school districts.

- Beginning with the 2010-2011 school year, requires students entering the seventh grade at a public or nonpublic school to have received a tetanus, diphtheria, and acellular pertussis booster vaccination, with exceptions for reasons of conscience, including religious convictions, and medical contraindication.

- 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 Cleveland Scholarship Program (in addition to nonpublic schools that participate in the Ed Choice Scholarship Program, as in current law) to administer the state achievement

assessments to enrolled scholarship students and to report their scores to the Department of Education.

- Requires the Department to post achievement assessment data for students participating in the Cleveland Scholarship Program or the Ed Choice Scholarship Program on its web site and to distribute that data to the parents of students eligible for the programs.

- Requires the Department to provide the parent of each Cleveland or Ed Choice scholarship student with a comparison of the student's performance on the achievement assessments with the average performance of similar students enrolled in the school district building the scholarship student would otherwise attend.

- 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.

- Places a two-year moratorium on local school districts relocating from their current educational service centers to adjacent service centers, and voids recently approved, as well as pending, resolutions for such relocations.

- Provides procedures for dissolving an educational service center if all of its "local" school districts sever from it and annex to another service center.

- Specifically permits a "city" or "exempted village" school district that entered into an agreement for services from an ESC that is dissolved to enter into a new agreement with another ESC, which may receive per pupil state funds in the same manner as the original ESC.

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 the Governor's 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**. Information regarding the House version of the proposed system is available in the LSC Comparison Document of the bill as passed by the House, published at **http://www.lbo.state.oh.us/fiscal/budget/comparedoc128/default.cfm**.

Use of state funds--all-day kindergarten and class-size reduction

(R.C. 3306.01(C))

All state funds distributed to school districts under the bill's school funding system, except funds specifically allocated for another purpose, may be used only for one of the following expenditures: (1) current operating expenses, (2) the modification or purchase of classroom space to provide all-day kindergarten for all kindergarten students (see "**All-day kindergarten**" below), or (3) the modification or purchase of classroom space to reduce class sizes in grades K to 3 to attain the goal of a student-core teacher ratio of 15 to 1. To use state funds for classroom space for kindergarten or class-size reduction, a district must certify its need for additional space to the Department of Education.

Use of state funds--ESC services and joint programs

(R.C. 3306.21 and 3306.22)

The bill specifically states that nothing in its school funding provisions should be construed to prohibit either:

(1) School districts, community schools, or STEM schools from using state funds to contract to receive services from an educational service center (ESC); or

(2) School districts from using state funds to establish, operate, or participate in joint or cooperative programs with each other.

Ohio School Funding Research Advisory Council

(R.C. 3306.29)

The bill establishes the Ohio School Funding Research Advisory Council to recommend biennial updates to the components of the bill's school funding system. The council must submit its recommendations by December 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 reviews" that the bill requires all school districts to undergo every five years.

The council's analyses due on December 1, 2010, must include at least a report on the adequacy of the model's financing for gifted education services, career-technical education, arts education, services for limited English proficient students, and early college high schools. The council's analyses due on December 1, 2010, and each subsequent biennial report, may address (1) strategies and incentives to promote school cost-saving measures and efficiencies, (2) options for adding learning time to the learning year,[52] (3) adequacy of the model's accounting for and financing of operational costs and the effect of those costs on student academic achievement,[53] and (4) accuracy of the calculation of each component of the funding model, and of the model as a whole, in light of current educational needs, current educational practices, and best practices.

Council membership

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 member of a school district board, one representative of a college of education operated by a state institution of higher education, one representative of the business community, one representative of a philanthropic organization, one representative of the Ohio Academy of Science, 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 school sponsors, one representative of nonprofit operators of community schools, one community school fiscal officer, one parent of a student attending a community school, and one representative of early childhood education providers;

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[52] The bill suggests that these options might include moving professional development for educators to summer, adding learning time for children with greater educational needs, accounting for learning time by hours instead of days, and appropriate compensation to school districts and staff for providing additional learning time.

[53] According to the bill, these costs include district-level administration and administrative and transportation challenges experienced by low-density and low-wealth school districts.

(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. It also requires the Governor to consider the recommendations of stakeholder associations or groups representing the professions or individuals to be represented on the council. The members must serve without compensation and meet at least quarterly, beginning in August 2009.

The state Superintendent, or the Superintendent's designee on the council, is the chairperson of the council.

Subcommittee on school district-community school collaboration

(R.C. 3306.291)

The bill also establishes a subcommittee of the School Funding Research Advisory Council to make recommendations for fostering collaboration between school districts and community schools. Its recommendations must include fiscal incentives, including changes to the funding model, to encourage districts and community schools to enter into collaborative agreements for "creative and innovative academic programming" and "academic and fiscal efficiency." The subcommittee must report its recommendations to the full council, Governor, and General Assembly by September 1, 2010, and periodically thereafter at the direction of the state Superintendent.

The subcommittee consists of the following nine members of the full council:

(1) The school district superintendent;

(2) The school district treasurer;

(3) One of the school district teachers, selected by the state Superintendent;

(4) The member representing a public college of education;

(5) The member representing community schools sponsors;

(6) The member representing nonprofit operators of community schools;

(7) The community school fiscal officer;

(8) The parent of a student attending a community school; and

(9) The parent of a student attending a school operated by a school district.

Other subcommittees

(R.C. 3306.292)

The bill specifically permits the School Funding Research Advisory Council to establish other subcommittees and to determine the membership of those subcommittees. The full committee also may appoint non-council members to the other subcommittees, but no more than one-half of a subcommittee's membership may consist of non-council members.

Staff assistance

The Office of School Resource Management and the Center for Creativity and Innovation, both of which the bill creates in the Department of Education, must provide staffing assistance to the council and its subcommittees.

Classroom facilities study

(R.C. 3318.312)

The bill requires the Ohio School Facilities Commission to conduct a study of demands upon and other issues related to existing classroom facilities that may arise due to new operating requirements, after the state Superintendent adopts rules for spending and reporting funds paid under the bill's evidence-based model. The bill does not specify a deadline for the Commission to complete its study, but it does require the Commission to reports its findings to the Governor and the General Assembly.

JVSD funding; career-technical education study 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 and Comparison Document for the Department of Education for more details regarding funding for JVSDs.)

In the meantime, the bill requires the Partnership for Continued Learning[54] to establish a career-technical education funding committee to study the extent to which current funding for JVSDs, as well as comprehensive and compact career-technical schools, is 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 career-technical education programming and funding. The bill states that the General Assembly will consider the enactment of laws implementing the committee's recommendations by July 1, 2011.

The committee, which will operate under the direction of the Superintendent of Public Instruction and the Chancellor of the Ohio Board of Regents, must consist of the following:

(1) One or more representatives of the Partnership for Continued Learning, selected by members of the Partnership;

(2) One or more business leaders, selected by the Superintendent;

(3) At least three representatives of JVSDs, selected by the Superintendent;

(4) At least three representatives of compact career-technical schools, selected by the Superintendent;

(5) At least three representatives of comprehensive career-technical schools, selected by the Superintendent; and

(6) One member of a school district board of education, selected by the Governor.

Any of the members selected under (3) to (5) above may be members of the Partnership.

[54] 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.)

ESC performance reviews; study committee

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 57 ESCs.

Performance reviews

(R.C. 3306.15(A), 3306.32, and 3306.321; Section 265.10.50)

The bill requires that a performance review of each ESC be conducted, during fiscal years 2010 and 2011, in a manner similar to the five-year performance reviews the bill also requires of school districts, community schools, and STEM schools. It specifies, however, that the review of an ESC must examine (1) the ESC's delivery of services to school districts both as required by law and by the contracts it has with those districts and (2) whether that delivery of services comports with the requirements and specifications for those services, including the quality standards recommended by the State Regional Alliance Advisory Board. The bill further requires the Department of Education to review the final report of each ESC performance review and, if necessary, to provide technical assistance to the ESC in aligning its services with the requirements and specifications for those services. The bill also specifies that the performance reviews may form the basis of a proposal for a new funding model for ESCs.

ESC study committee

(R.C. 3306.15(B) to (D))

The bill establishes an ESC study committee, and directs it to make recommendations, based on the ESC performance reviews, 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, a member of a school district board, 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.

Designation of creative learning environments; pilot subsidy

The bill establishes a new state committee called the "Harmon Commission" to review applications for designation of certain classrooms as "creative learning environments" and authorizes a pilot subsidy for fiscal year 2011 for some of the classrooms that receive designations.

Harmon Commission

(R.C. 3306.50 and 3306.52)

The bill establishes the "Harmon Commission" to consist of 21 members appointed by the Governor and legislative leaders. At least five members of the commission must be classroom teachers, at least five must be school administrators, and at least five must be instructors at teacher preparation programs in Ohio. Ten members must be appointed by the Governor. Eleven members, who are not also members of the General Assembly, must be appointed jointly by the Speaker of the House and the President of the Senate, upon their consultation with the minority leaders of each house. Members serve at the pleasure of their appointing authority, but the terms of members

appointed by the Governor are limited to the four-year term of office of that Governor, and the terms of members appointed by the Speaker and the Senate President are limited to the two-year term of the General Assembly in which they were appointed. The chairperson of the commission must be selected by the Governor from among the members of the commission.

State Board guidelines and Department of Education assistance

(R.C. 3306.52)

The State Board of Education must adopt guidelines for the Harmon Commission to use in reviewing applications for designation of classrooms as creative learning environments. In addition, the Department of Education through its Center for Creativity and Innovation, established by the bill, must provide staff to assist the commission in carrying out the commission's duties.

Designation of creative learning environments

(R.C. 3306. 51, 3306.53, 3306.54, and 3306.55)

Beginning January 1, 2010, school districts and community schools may apply to the Harmon Commission to have one or more of their classrooms designated as creative learning environments. To qualify for that designation, a district or school must demonstrate to the Commission's satisfaction that the classroom supports and emphasizes innovation in instruction methods and lesson plans and operates in accordance with the State Board's guidelines for such classrooms. Each city, exempted village, or local school district may apply. A community school may apply only if it has entered into a memorandum of understanding with one or more school districts. The memorandum must be approved by the Center for Creativity and Innovation and must specify "a collaborative agreement to share programming and resources to promote successful academic achievement for students and academic and fiscal efficiencies."

From January 1, 2010, through April 14, 2010, a school district and a qualifying community school may submit to the Harmon Commission an unlimited number of applications for first-time designation of individual classrooms as creative learning environments. No applications may be submitted between April 15, 2010, and July 1, 2010. After July 1, 2011, each district and each qualifying community school may submit only one application per fiscal year for first-time designation of one classroom as a creative learning environment. The bill makes no statement as to how many first-time applications may be submitted between July 1, 2010, and July 1, 2011.

Not later than May 1 each year, the commission must begin meeting to review pending applications for first-time designations. The commission must approve or

disapprove all pending applications by July 1. Each first-time designation is valid for only one fiscal year. Upon application, a first-time designation may be renewed for two more fiscal years. Further subsequent renewals for two years at a time are automatic and do not require application by the district or community school.

However, a designation may be revoked. If the Department of Education at any time finds that a designated classroom is no longer operating in accordance with the State Board's creative learning environment standards, the Department may appeal the designation to the Harmon Commission. The Department's appeals must be filed by February 15 each year. Upon appeal, the commission must review the operation of the classroom and either continue the designation or revoke it, effective the following July 1.

The decision of the commission to grant, renew, or revoke a designation is final. If the commission declines to renew or revokes a designation, the district or community school may reapply for designation of the classroom, but the application must be treated as a new application for first-time designation.

Progress reports

(R.C. 3306.56)

Each school district or community school that operates a classroom designated as a creative learning environment must submit periodic progress reports to the Department of Education on the operation and performance of the classroom. The reports are to be submitted by a deadline and in the manner prescribed by the Department.

Pilot subsidy

(R.C. 3306.57)

The bill appropriates $2 million to the Department of Education in fiscal year 2011 to provide a pilot subsidy to eligible school districts and community schools for operating designated creative learning environment classrooms. A district with a designated classroom may apply for the subsidy if the district falls within the lowest quintile of districts ranked by ratio of district median income to statewide median income.[55] Each community school with a designated classroom may apply for the subsidy. The amount of the subsidy is $100 for each student enrolled in the designated

[55] The bill requires the Department to rank all school districts by "income factor," as prescribed by current law. Income factor is the quotient of a district's median income divided by the statewide median income, based on information certified to the Department by the Tax Commissioner (R.C. 3317.02(P) to (R)).

classroom. If more eligible districts and community schools apply for the subsidy than can be supported by the amount appropriated, the Department must select districts and community schools to receive the subsidy on a first-come, first-served basis.

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.[56] 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.[57] The bill, therefore, prescribes formula amounts of $5,841 for FY 2010 and $5,952 for FY 2011.

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[56] 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.

[57] 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.[58] 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.

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

School fees for low-income students

(R.C. 3313.642)

The bill revises and expands the current law prohibiting school districts from charging fees to low-income students. The bill outright prohibits every school district from charging for materials necessary to participate fully in a course of instruction to students who are eligible for free lunch programs under federal law.

Current law prohibits only school districts that receive state poverty-based assistance (a component of the current school funding system replaced by the bill) 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.)

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 in a settlement agreement executed on or before June 1, 2009. This would mean that should there be such a court order or settlement agreement with a school district, no other district could make a similar claim.

Nonpublic school administrative cost reimbursement

(R.C. 3317.063)

Under current law, the Superintendent of Public Instruction annually reimburses each chartered nonpublic school[59] for administrative and clerical costs incurred as a result of complying with state and federal recordkeeping and reporting requirements. The bill increases to $325 (from $300 under current law) the maximum amount per pupil that may be reimbursed to a school each year.

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 and to hold the districts and schools accountable for those funds.

Spending plans

(R.C. 3306.30 and 3306.31)

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, when they are effective, must comply with rules adopted by the state Superintendent for the expenditure and reporting of the funds computed under those components (see "**Rules for expenditure and reporting**" and "**Statutory spending requirements**" below). In the case of a school district, the spending plan also must comply with the State Board's new operating standards regarding the evidence-based model and directives of the state Superintendent.

At the end of each fiscal year, the Department must reconcile each district's or school's spending plan with its actual spending. If the Department finds that a district or school has not complied with any applicable expenditure or reporting rule, the Department must take one of the specific sanctions prescribed by the bill (see "**Sanctions**" below). In the case of a school district that has a three-year average

[59] A chartered nonpublic school is a private school that operates under a charter issued by the State Board of Education. In return for abiding by certain standards, each chartered nonpublic school receives reimbursement of some of its administrative costs (as described in the text above) and its students are entitled to some goods and services purchased with state Auxiliary Services Funds (R.C. 3317.06, not in the bill).

graduation rate of 80% or less, the Department must work with the Governor's Closing the Achievement Gap Initiative in reconciling the district's spending plan (see below).

Spending plans for school districts with low graduation rates

The bill establishes both temporary and permanent requirements for assistance and coordination of spending for certain activities in school districts with graduation rates of 80% or less by the Governor's Closing the Achievement Gap Initiative. The temporary provision appears to suspend the permanent provisions for fiscal year 2010 and requires some assistance in planning for implementation of the permanent provisions beginning in fiscal year 2011.

In 2008, the Governor appointed a special adviser on closing the achievement gap and increasing the graduation rates of students with the highest rates of failure. The office of the special adviser is housed at the Department of Education.

Temporary provision--fiscal year 2010

(Section 265.70.80)

The bill's temporary provision states that "notwithstanding section 3306.31 of the Revised Code," which contains the bill's codified provisions regarding spending plans of school districts with three-year average graduation rates of 80% or less, the Governor's Closing the Achievement Gap Initiative must work with those districts in fiscal year 2010 to assist them in planning for "implementation of the program" in fiscal year 2011. Thus, it appears that the bill suspends all of the codified spending requirements for such districts for the first year of the biennium while both the districts and Governor's Initiative plan for their full implementation in fiscal year 2011. The bill also states that districts currently working with the Governor's Initiative and that continue to have graduation rates of 80% or less "are encouraged" to maintain their existing closing-the-achievement-gap programs during the planning period.

Permanent provisions

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

Under bill's permanent provisions, beginning in fiscal year 2011, each school district that has a three-year average graduation rate of 80% or less must work with the Department of Education and the Governor's Closing the Achievement Gap Initiative in developing the district's annual spending plan. The items in the spending plan that relate to required closing the achievement gap actions (see below) must be approved by both the state Superintendent and the Governor's Closing the Achievement Gap Initiative. If they disapprove those items of the plan, the state Superintendent must

either (1) modify those items of the plan and notify the district board of the modifications, or (2) return the plan and require the board to modify those items of the plan according to the state Superintendent's instructions or recommendations. Furthermore, the bill requires the Governor's Closing the Achievement Gap Initiative to work with each organizational unit of each of these low-graduation-rate districts to assess its progress in implementing the required activities and ensuring the unit's compliance with the district's annual spending plan.

Closing-the-achievement-gap actions in districts with low graduation rates

(R.C. 3306.31(B))

The bill requires a district with a three-year average graduation rate of 80% or less to implement actions prescribed by the Governor's Closing the Achievement Gap Initiative in both (1) each high school and (2) each elementary and middle school where less than 50% of the students have attained a proficient score on the 4th and 7th grade achievement tests in English language arts and math.

Linkage coordinator for school districts with low graduation rates

(R.C. 3306.31(D))

Each district with a graduation rate of 80% or less must create and staff in each organizational unit at least one position, funded with the amount computed under its family and community liaison factor, to function as a "linkage coordinator" for closing the achievement gap and increasing the graduation rate. The bill describes the linkage coordinator as a person who meets guidelines established by the Governor's Closing the Achievement Gap Initiative and "who is the primary mentor, coach, and motivator for students identified as at risk of not graduating[60] . . . 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

[60] For this purpose, "at risk of not graduating" is to be as defined by the Governor's Closing the Achievement Gap Initiative.

establish and coordinate the work of academic promotion teams, which must address the academic and social needs of the identified students.[61]

Rules for expenditure and reporting

(R.C. 3306.25)

The bill requires the Superintendent of Public Instruction to adopt rules prescribing spending and reporting requirements for particular components funded under the bill's new evidence-based school funding model. In doing so, the Superintendent must classify the components into three separate categories: (1) core academic strategies, (2) academic improvement, and (3) other funded components. The Superintendent must determine the components that are included in each of the categories. The bill's system of graduated sanctions, when effective, will be based in part on a district's or school's compliance with these rules. Neither the rules nor the sanctions are effective for the first fiscal year the new funding model is effective (fiscal year 2010).

Core academic rules

The rules for spending and reporting for core academic strategies must not take effect earlier than July 1, 2010, and must apply to all school districts, community schools, and STEM schools. However, these particular rules also must provide flexibility for districts and schools rated as effective or excellent. On the other hand, elsewhere, the bill makes the following stipulations about the state Superintendent's spending and reporting rules:

(1) They must "encourage school districts to give preference to employing or obtaining the services of licensed school nurses with funds received for the school nurse wellness coordinator factor and the district health professional factor."[62]

(2) They must specify that the gifted education support component be spent only on staff and services for identified gifted students in accordance with the State Board's operating standards for services to gifted students. These gifted education

[61] 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.

[62] R.C. 3306.06(C). However, the bill provides no payments for these two factors of the funding model for fiscal years 2010 and 2011.

spending and reporting rules must take effect July 1, 2011.[63] (See also "**Statutory spending requirements--Gifted education**" below.)

Academic improvement rules

The rules for spending and reporting for academic improvement must not take effect earlier than July 1, 2011, and must apply only to districts, community schools, and STEM schools in academic emergency or academic watch for two or more consecutive years.

Rules on other components

The rules on other components must prescribe only reporting standards and not spending standards. These rules must not take effect earlier than July 1, 2010, and must apply to all districts, community schools, and STEM schools.

Statutory spending requirements

Although the bill generally leaves spending requirements related to the new funding model to future rules of the state Superintendent, it also includes some statutory provisions that address spending, as described below:

Special education and related services

(R.C. 3306.11)

The bill specifically permits the instructional services support funds received for children with disabilities to be used to pay for providers of related services for those children. "Related services" include those services necessary to assist a child with a disability to benefit from special education, including transportation, speech-language pathology and audiology services, psychological services, physical and occupational therapy, health services, and counseling.[64]

Professional development

(R.C. 3306.031)

Beginning in fiscal year 2012, the bill requires school districts, community schools, and STEM schools to use funds calculated for the professional development factor to provide teachers with professional development that is aligned with the

[63] R.C. 3306.09(E).

[64] R.C. 3323.01(K), not in the bill.

professional development standards developed by the Educator Standards Board and adopted by the State Board of Education.[65]

Gifted education

(R.C. 3306.09)

The bill sets forth a number of spending requirements related to the gifted education support component:

- Specifies that the state Superintendent's expenditure and reporting rules require the gifted education support component to be spent only on staff and services for identified gifted students in accordance with the State Board's operating standards for services to identified gifted students.

- Permits school districts to use up to 15% of the gifted intervention specialist funds attributable to grades 6 to 12 for services that are specified in gifted students' written education plans, but are not described in the laws governing gifted education (R.C. Chapter 3324.), subject to the Department of Education's approval.

- Requires a district that received gifted unit funding in fiscal year 2009 to spend on services to identified gifted students in subsequent fiscal years not less than its amount of fiscal year 2009 gifted unit funding.

- Requires each school district that received gifted student services from an educational service center (ESC) in fiscal year 2009, to do one of the following in each subsequent fiscal year if the services from the ESC were financed with state gifted unit funding: (a) obtain gifted student services from an ESC that are comparable to the services provided in that fiscal year by an ESC with the unit funding, or (b) spend from the district's own state funding at least as much as it received in gifted student services from an ESC in that fiscal year. A district that received any gifted unit funding or received gifted services through an ESC in fiscal year 2009 may not apply for or receive a waiver from the gifted funding expenditure requirements. Any other district may apply for and receive a waiver from spending its gifted education support component on gifted student services.

[65] The bill also directs the Department of Education to provide guidance to districts and schools in aligning professional development with the standards.

- Requires each ESC that received gifted unit funding for fiscal year 2009 to spend on services to identified gifted students in subsequent fiscal years not less than the amount of fiscal year 2009 gifted unit funding. ESCs may not receive waivers from this spending requirement.

Enrichment support

(R.C. 3306.091)

The bill specifies that the enrichment support component may not be used for gifted education services delivered under the laws governing services to identified gifted students (R.C. Chapter 3324.). However, it also specifies enrichment funds may be used to pay for activities that may encourage the intellectual and creative pursuits of all students, including the fine arts.

Performance reviews

(R.C. 3306.32)

The bill requires all school districts (including joint vocational school districts), educational service centers, community schools, and STEM schools to undergo a performance review at least once every five fiscal years.[66] The Department of Education must direct, and pay the cost of, each performance review. 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 review.

The Department's new Office of School Resource Management (established by the bill) must determine the order in which the reviews 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 reviews. The final report of each review 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 report of a performance review, 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

[66] 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.

in the final 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 review, 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 applicable spending and reporting rules adopted by the Superintendent of Public Instruction (see above), and (2) whether the district or school has adopted a plan to implement the recommendations of a five-year performance review (as required under the bill) or a performance audit prescribed under the continuing law on school district solvency.[67]

Sanctions

The bill establishes a system of graduated sanctions to be imposed, not earlier than fiscal year 2011, by the Department of Education if a district, community school, or STEM school fails to comply with any applicable spending or reporting rules of the state Superintendent 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:

[67] R.C. 3316.042, not in the bill.

(1) The Department determines that the district, community school, or STEM school has failed to comply with any of the applicable spending or reporting rules. 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**" below), or (c) a notation by the Auditor of State (see above).

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

(3) The district, community school, or STEM school fails to cooperate with a performance review, fails timely to submit a satisfactory performance review response or progress report, or fails to implement a performance review 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 standards or requirements, (c) identification of the resources the board, governing authority, or governing body will use to meet the standards or requirements, and (d) description of how the district or school will measure its progress in meeting the standards or 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 standards or requirements that were not met, the actions being taken to meet them, and any progress achieved in the immediately preceding school year toward meeting them; and

(3) Present the plan, and take public testimony with respect to it, in a public hearing before the board, 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;[68] and

(2) In the case of a community school or a STEM school, the Department of Education must order the school to close permanently.[69]

[68] 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)).

[69] 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)).

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.[70] 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.[71] Its meetings must be held in compliance with the state Open Meetings Law. The Department of Education must provide the commission with administrative support, requested data, and information about available state resources that could assist the commission in its work.

An accountability compliance commission may do any of the following:

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

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

[70] 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.

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

(3) Terminate the contracts of administrators or administrative personnel;[72]

(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;[73]

(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.

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 expenditure or reporting rules of the state Superintendent and other accountability

[72] 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.

[73] 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.

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. The bill further limits the duration of waivers of the spending and reporting rules for the gifted education support component. Those waivers, which may be granted only to school districts that did not receive gifted unit funding in fiscal year 2009, may not exceed two years for an initial waiver and one year at a time for each renewal.[74]

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.[75] 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.

FACT form

(R.C. 3306.35)

In addition to the funding and expenditure reports described above, the bill requires the Department of Education to develop a separate form to be called the "Formula Accountability and Transparency" form or "FACT" form. The Department annually must issue and publish on its web site, a FACT form for each city, exempted

[74] R.C. 3306.09(H).

[75] Continuing law requires the Department also to provide a hard copy of a school district's report to the district superintendent (R.C. 3302.03(C)(5)). It is not clear if this provision additionally requires the chief administrator of each community or STEM school to receive a hard copy of the school's report.

village, and local school district, each community school, and each STEM school. The form must compare the district's or school's payments under the bill's evidence-based model with its deployment of those payments as indicated in its spending plan. The bill states that the FACT form must not form the basis of any sanctions taken against the district or school but is only a document intended to inform the public about the its spending.

PASS form

(R.C. 3306.012)

The Department of Education calculates and reports each school district's payment of state operating funds using a form the Department calls the "SF-3" form. The bill renames that form as the "PASS" form, "PASS" being an acronym for "PAthway to Student Success." The bill also specifies that the new form must be revised as necessary to reflect payments made under the bill's new school funding model. It further specifies that the PASS form must be available to the public in a format understandable to the average citizen. The current SF-3 form for each school district is published on the Department's web site.[76]

II. Academic Standards and Assessments

Minimum standards for schools

(R.C. 3301.07(D)(2) and second to last paragraph)

Under continuing law, the State Board of Education prescribes minimum standards for all public and nonpublic schools. These standards address such factors as educator licensing, instructional materials, school organization, and student admissions and graduation requirements.[77]

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.

[76]http://webapp2.ode.state.oh.us/school_finance/data/2009/foundation/SF3-report-FY2009.asp.

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

Minimum school district operating standards

(R.C. 3301.07(D)(3) and second to last paragraph)

The bill directs the State Board of Education to develop additional minimum *operating* standards for school districts. Each district must comply with the operating standards, but a district may apply to the Superintendent of Public Instruction for a temporary waiver of particular standards.

The State Board's minimum operating standards for districts must include the following:

(1) Standards for effective and efficient organization, administration, and supervision of each district and organizational unit so that it becomes "a thinking and learning organization" in accordance with principles of systems design and collaborative professional learning communities research, as defined by the Superintendent. The standards must provide for (a) a focus on the individual needs of each student, (b) a shared responsibility among school boards and staff to develop a common mission and set of guiding principles and to engage in a process of collective inquiry, action orientation, and experimentation to ensure each student's academic success, (c) a commitment to teaching and learning strategies that use technology and emphasize inter-disciplinary, real world, project-based, technology-oriented, and service learning experiences to meet every student's needs, (d) 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, (e) a commitment to the use of assessments to identify each student's needs, (f) effective relationships with families and community organizations to support student success, and (g) a commitment to the use of positive behavior intervention supports to ensure a safe learning environment.

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

(3) Standards incorporating the Superintendent of Public Instruction's classifications of the components of the adequacy amount under the bill's evidence-based funding model into core academic strategy components and academic improvement components;

(4) Standards for each district organizational unit that require (a) a commitment to job-embedded professional development and professional mentoring and coaching, (b) periods of time for teachers to pursue development of lesson plans, professional development, and shared learning, and (c) a commitment to effective management

strategies that allow administrators reasonable access to classrooms for observation and professional development experiences; and

(5) Standards for each district organizational unit that require a school leadership team to coordinate positive behavior intervention supports, family and 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.

Construction; application of Collective Bargaining Law

(R.C. 3301.07(D)(1))

The bill states that, with one exception and unless the context specifically indicates otherwise, references in the Revised Code to the State Board of Education's minimum standards are to be construed to refer to the State Board's standards for all public and nonpublic schools (see "**Minimum standards for schools**" above) and not to the minimum *operating* standards, which apply only to school districts (see "**Minimum school district operating standards**" above). The exception applies to a reference contained in the Public Employee Collective Bargaining Law. Currently, under the Collective Bargaining Law, the State Board's minimum standards prevail over any conflicting provisions of a collective bargaining agreement between school employees and their public employers.[78] By stating that this reference is an exception to the general rule described above for construing references to the minimum standards as including only the minimum standards for *all* schools, the bill has the effect of requiring this reference to be construed as including both those standards and the bill's new minimum operating standards for school districts. Consequently, under the bill, the State Board's minimum operating standards for school districts also prevail over conflicting provisions of a collective bargaining agreement between a district and its employees.

Standard for reporting financial information to the public

(R.C. 3301.07(B)(2) and second to last paragraph, 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

[78] R.C. 4117.10(A), not in the bill.

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, if the Department of Education determines that method is more appropriate. 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 March 31, 2011. In addition, the State Board must update and revise the standards (and presumably the model curricula) at least every five years

thereafter. Under the 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, community schools, and STEM schools of their content.[79] 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

[79] Under the bill, nonpublic schools required to administer the state achievement assessments, which include chartered nonpublic high schools and nonpublic schools that enroll Ed Choice or Cleveland voucher students, also must be notified of the content of the revised standards.

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.[80] Standards and curricula in the non-core subject areas must be adopted after the State Board completes its revisions to the standards in the core subjects. Like the standards in the core subjects, the non-core subject standards must include the content knowledge, skills, and learning opportunities necessary to prepare students for success in the 21st century.

Finally, the 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).[81] Consequently, the bill's provision appears to require the State Board to update the physical education standards to reflect future changes by NASPE.

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[80] Under continuing law, the study of economics and financial literacy, as expressed in the social studies content standards, must be integrated into one or more high school social studies classes as part of the Ohio Core curriculum, which applies to students in the Class of 2014 and later. The bill further requires the course content to reflect the new standards in financial literacy and entrepreneurship. (R.C. 3313.603(C).)

[81] 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.

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.

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.[82] 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.

[82] 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.

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.[83] 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 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

[83] 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.

earlier times during the school year for giving the assessments and to administer them in a shorter timeframe than currently required.[84]

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 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

[84] 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)).

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) and (K), 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.[85]

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 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.

[85] 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).

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.[86] 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 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

[86] 20 United States Code 6311(b)(3)(C).

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;[87] 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.[88] Under the bill, the State Board must determine if the students in these programs must comply with the new assessment system as a condition of the program receiving a waiver.

Exemption for disabled students

(R.C. 3313.532, 3313.61(L), 3313.611, 3313.612, and 3325.08)

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.[89] The bill preserves this

[87] 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).

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

[89] 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).

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 within one year after it adopts rules to implement the bill's new assessment system for high school graduation (see "**Replacement of OGT as graduation requirement**" above). Since the bill does not set a deadline for the assessment system, this date could be earlier or later than 2013. Similarly to current law, the State Board must review the indicators at least every six years after the initial reconsideration. Also, by December 31, 2011, the State Board must establish a performance indicator reflecting the level of services provided to gifted students and the performance of those students.

The bill requires the State Board to establish all future performance indicators, including the indicator for gifted students, based on recommendations of the Superintendent of Public Instruction. It also eliminates the requirement that there be a minimum of 17 indicators. When the new high school assessment system is operational, the Superintendent may consider including student performance on the four components of the system as possible performance indicators.

Report card data on college and work readiness

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

The 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,[90] 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.

Diagnostic assessments

(R.C. 3301.079(D), 3301.0715, and 3313.608)

Current law requires the State Board of Education to adopt a diagnostic assessment for each of grades K to 2 in reading, writing, and math and for grade 3 in writing. The diagnostic assessments must be aligned with the State Board's academic content standards and model curricula. Since the bill combines the reading and writing standards and curricula into the single subject of English language arts (see "**Name and content changes**" above), the reading and writing diagnostic assessments also are combined. Therefore, under the bill, an English language arts diagnostic assessment will replace the separate reading and writing assessments in grades K to 2 and the writing assessment in grade 3.

Community service education

(R.C. 3313.605, 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.

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

Other members may include parents, teachers, administrators, or representatives of business, government, nonprofit organizations, veterans organizations, social service agencies, or religious organizations.

After considering the advisory committee's recommendations and consulting with local or regional organizations experienced in volunteer program development, the district board of education 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.[91]

[91] 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 providing mental

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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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; Section 265.70.70)

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. To alleviate space concerns, the bill authorizes districts to use space in child day-care centers licensed by the Department of Job and Family Services to provide all-day kindergarten.

Authority to charge tuition for all-day kindergarten

(R.C. 3321.01(H); Section 265.70.70)

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.[92] Community schools also may charge fees or tuition for all-day kindergarten students whose resident school districts are not eligible for the poverty-based assistance payments for all-day kindergarten. 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, and community schools with students from those districts, 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, beginning in fiscal year 2012, the bill repeals the authority of school districts and community schools to charge fees or tuition for all-day kindergarten.

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[92] 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)).

Until that time, districts and community schools that charged fees or tuition for all-day kindergarten in fiscal year 2009 may continue to charge for all-day kindergarten in fiscal years 2010 and 2011. However, they cannot charge a rate higher than the per-student amount charged in fiscal year 2009, as specified in the sliding fee scale used by the district or school for that fiscal year. Districts that did not charge tuition for all-day kindergarten in fiscal year 2009 could not charge in fiscal years 2010 and 2011.

Annual surveys

(R.C. 3321.01(H))

Under the 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 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 after fiscal year 2011.

Extending the 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), 3313.533, and 3317.03)

The bill phases in a longer school year over ten years, through a combination of (1) incrementally reducing the excused number of days a school may be closed for hazardous weather conditions or other public calamity ("calamity days") and (2) incrementally increasing the total days a school must be open for instruction. Like the current minimum school year, these new school provisions also likely will apply to nonpublic, as well as public, schools. For background on the minimum school year, see "**Minimum school year in general**" below.

The following table outlines the bill's changes to the school year over time. The last column presents the net minimum days a school must be open for instruction, assuming it takes advantage of the maximum number of days excused for parent-teacher conferences, teacher professional development, and public calamity.

School Year	Total Minimum	Parent-Teacher Conferences*	Professional Development	Excused Calamity Days	Net Minimum
2008-2009 (Current Law)	182	-2	-2	-5	**173**
2009-2010	182	-2	-2	-3	**175**
2010-2011	182	-2	-2	-1	**177**
2011-2012 & 2012-2013	186	-2	-2	-1	**181**
2013-2014 & 2014-2015	190	-2	-2	-1	**185**
2015-2016 & 2016-2017	194	-2	-2	-1	**189**
2017-2018 & After	198	-2	-2	-1	**193**

*Current law, unchanged by the bill, permits up to four half-days for parent-teacher conferences. For sake of convenience, this table presents the four half-days as two whole days.

Reduction of calamity days

The bill phases down calamity days from five days currently to three days for 2009-2010 school year and one day for 2010-2011 and thereafter. Calamity days are days a school is closed due to: (1) disease epidemic, (2) hazardous weather conditions, (3) inoperability of school buses or other necessary equipment, (4) damage to a school building, or (5) other temporary circumstances because of a utility failure that renders a building unfit for use. The bill does not change the law allowing schools to shorten any number of school days by up to two hours due to hazardous weather conditions. Current law, likewise unchanged by the bill, also mandates that teachers be paid when schools are closed due to hazardous weather or other calamity.

Phase in of a longer school year

The bill 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 2012 and 2013;

(2) 190 days or 950 hours, in fiscal years 2014 and 2015;

(3) 194 days or 970 hours, in fiscal years 2016 and 2017; and

(4) 198 days or 990 hours, in fiscal year 2018 and thereafter.

The minimum number of days, or hours for an approved alternative schedule, specified under the bill retains the up to two days for parent-teacher conferences and reporting and two days for professional development.

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, and 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 2012 and 2013;

(2) 950 hours, in fiscal years 2014 and 2015;

(3) 970 hours, in fiscal years 2016 and 2017; and

(4) 990 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[93] are, by statute, explicitly subject to a minimum school year and school day requirement.[94] A separate statute states that the "hours and term of attendance" in a nonpublic school must be "equivalent" to those required of school districts.[95] Accordingly, the State Board of Education minimum education standards require nonpublic schools to comply with the minimum school year specified for public schools.[96] 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.[97] 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, under current law, up to five days for a public calamity,

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[93] "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.

[94] R.C. 3313.48 and 3313.62.

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

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

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

such as inclement weather. Taking into account these permitted closings for parent-teacher conferences, reporting, professional development, and calamity days, a school currently 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.

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.[98]

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.[99] 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

[98] R.C. 3313.481.

[99] 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.

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.[100] The plan must provide for making up at least five 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.[101]

Study of school time allocation

(Section 265.70.30)

The bill requires the Department of Education to study best practices for allocating school hours, in terms of classroom instruction, competency-based evaluation, planning time, and professional development, within the learning year. The Department must consult with teachers, school district superintendents, members of school district boards of education, and associations for gifted students. The Department must submit a report of its findings and recommendations for allocation of hours for optimal learning in an extended learning year to the General Assembly and the Governor not later than one year after the bill's effective date.

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 and community schools. The pilot program is to be implemented in place of the bill's permanent provisions for site visits, which the bill appears to suspend for the 2009-2011 biennium.

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

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

According to the bill, the pilot program must "contain all of the elements" of the permanent provisions (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 provisions. Presumably, if the temporary pilot program provision expires at the end of the biennium without other legislative changes, the permanent provisions would control, requiring formal site visits to all schools operated by school districts and community schools once every five years.

Permanent provisions

(R.C. 3301.83 and 3314.39)

The bill enacts two separate permanent provisions 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. Under these provisions the Department must conduct an on-site visit of each school operated by a school district and each community school at least once every five years to evaluate the school's operations. (The site 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.[102]) Each on-site visit must include school tours, classroom observations, and 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 of a school operated by a school district, 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." Similarly, during the site of visit of a community school, the Department must (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, and (2) corroborate the results of the annual evaluation of the school conducted by the school's sponsor. The bill also specifies that the Department must review a school's progress in implementing its three-year "continuous improvement plan" if it has one. However, under recent amendments to the law on

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

school sanctions for persistent low academic performance, no district is required to have a continuous improvement plan after June 30, 2008.[103]

After a site visit, the Department must issue a written report summarizing its findings. This report must be provided to the district board of education in the case of a school district, and to a community school's governing authority and its sponsor in the case of a community school. A district board or a community school governing authority or sponsor 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.)

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.[104] 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.

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

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[103] 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.

[104] 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).

American history and ½ unit (60 hours) in American government, as a condition for receiving a high school diploma.[105] 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.

Student absences for extracurricular activities

(R.C. 3321.041, conforming amendments to 3314.03(A)(11)(d), and 3326.11)

Beginning in the 2009-2010 school year, if a student enrolled in a school district, community school, or STEM school is absent from school for the sole purpose of traveling out of state to participate in an enrichment activity approved by the district board of education, governing authority of a community school, or governing body of a STEM school, or an extracurricular activity,[106] the district, governing authority, or governing body must count the student's absence as an excused absence. Students may have up to four days per school year for any such absence. The student must complete any classroom assignments that the student misses because of the absence.

If a student will be absent for four or more consecutive school days to travel out of state for an approved enrichment activity or an extracurricular activity, a classroom teacher employed by the district or school must accompany the student during the travel period to provide instructional assistance.

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

[106] The bill defines "extracurricular activity" as a pupil activity program operated by but not included in a school or school district's course of study, including an interscholastic extracurricular activity that a school or school district sponsors or participates in and that has participants from more than one school or school district.

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. However, the State Board may establish additional qualifications for these licenses by administrative rule.[107] The State Board must begin issuing the new licenses on January 1, 2011.

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.

[107] 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).)

	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 (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	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. Holders of the license must participate in the Ohio Teacher Residency Program (see "**Ohio Teacher Residency Program**" below).

	Current provisional educator license	New resident educator license
	hours of coursework in pedagogy or the area of specialization since issuance of the current provisional license.[108]	

[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.

	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	Under the bill, the minimum qualifications for the professional license are: (1) A bachelor's degree from an institution of higher education accredited by a regional accrediting organization; (2) If the applicant's prior license was a resident educator license or an alternative resident

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

	Current professional educator license	New professional educator license
	(4) Passage of the Praxis III assessment, which evaluates teacher performance based on observations of the teacher's classroom instruction.[109]	educator license, successful completion of the Ohio Teacher Residency Program; and (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. The State Board may adopt additional qualifications for the license, which could include any of the criteria it currently requires for the professional license.

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 institution of higher education accredited by a regional accrediting organization;

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

(3) Meeting the criteria for the accomplished or distinguished level of performance described in the standards for teachers adopted by the State Board, based on recommendations of the Educator Standards Board. Under those standards, an accomplished teacher is one who (a) successfully integrates the knowledge and skills needed for effective content-area instruction, (b) shows purposefulness, flexibility, and

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

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.[110]

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 institution of higher education accredited by a regional accrediting organization;

(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; and

(4) Either hold a valid certificate from the National Board for Professional Teaching Standards or satisfy the Educator Standards Board's criteria for a master teacher or lead teacher.

Under the bill, a "lead teacher" generally is a person who holds a lead professional educator license. The number of lead teachers employed by each school district and building must be reported to the Department of Education through the Education Management Information System (EMIS) and included on the district and building report cards.[111]

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

[111] 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).

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 subject area; (3) Completion of 3 semester hours of college coursework in the developmental characteristics of adolescents and 3	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 instruction must cover such topics as student development and learning, assessment procedures, curriculum development, classroom management, and teaching methodology.

	Current alternative educator license	Bill's alternative resident educator license
	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]	(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; (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	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; (2) The 12 semester hours of additional coursework described above; (3) The Ohio Teacher Residency Program;

	Current alternative educator license	Bill's alternative resident educator license
	assessment.[112]	(4) The assessment of professional knowledge; and (5) All other requirements for a professional educator license adopted by the State Board.

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

[b] However, 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 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;

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

(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.[113] 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 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.

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.

[113] 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.

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.[114] 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 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, and (3) measures of appropriate progression through the program. Furthermore, the program must be aligned with the standards for teachers adopted by the State Board of Education, based on recommendations of the Educator

[114] 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.)

Standards Board (see "**Duties of Board**" below), and best practices identified by the Superintendent of Public Instruction.

Approval of educator preparation programs

(R.C. 3301.12, 3333.048, and 3333.049 and repealed R.C. 3319.23; conforming changes in R.C. 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 preparation programs for educators and other school personnel and the higher education institutions that offer the programs and (2) provide for inspection of the institutions. Within one year after the provision's effective date, the Chancellor, based on the new metrics and preparation programs developed with the Superintendent, must approve institutions with preparation programs that maintain satisfactory training procedures and records of performance, as determined by the Chancellor. The Chancellor must notify the State Board of the metrics and preparation programs and the approved institutions of higher education, which the State Board must publish with the standards and qualifications for educator licensure.

The new metrics and preparation programs, which must be adopted in accordance with the Administrative Procedure Act, must be aligned with the State Board's standards and qualifications for educator licensure and the requirements of the Ohio Teacher Residency Program established by the bill (see "**Ohio Teacher Residency Program**" above). The metrics and preparation programs also must ensure that educators and other school personnel are adequately prepared to use the value-added progress dimension, which measures student academic gain attributable to a particular teacher or school and is a factor in the performance ratings assigned to school districts and buildings on the annual report cards.[115] 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.

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

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,[116] issues an annual report on the quality of approved teacher preparation programs. The 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

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

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.[117]

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. 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.

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 Coverage and Quality Council.

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

Membership

Members of the Council, who must be appointed within 30 days after the provision's effective date, are the following:

(1) A registered nurse who is also licensed as a school nurse and is a member of the Ohio Association of School Nurses, appointed by the Governor;

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

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

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

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

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

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

(8) A representative of the Department of Job and Family Services with expertise in child and adolescent care, appointed by the Director of Job and Family Services; and

(9) A representative of the public, appointed by the Governor.

Council members serve at the pleasure of their appointing authorities. They receive no compensation, except to the extent that service on the Council is part of their regular job duties. The representative of the Department of Education must call the first meeting, but all subsequent meetings are at the call of the chairperson.

Educator Standards Board

(R.C. 3319.60, 3319.61, 3319.611, 3319.612, and 3319.63; Section 265.60.60)

Duties of Board

(R.C. 3319.61)

Recommending standards

(R.C. 3319.61(A), (D), (E), and (G))

Continuing law charges the Educator Standards Board, in consultation with the Chancellor of the Ohio Board of Regents, to develop state standards for (1) teachers and principals, (2) renewal of licenses, and (3) educator professional development. The Educator Standards Board was required to submit recommendations for these standards to the State Board of Education within one year after its first meeting. In 2005, the State Board adopted standards for teachers and principals and for educator professional development, based on the recommendations of the Educator Standards Board.

The 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 "**Minimum school district operating standards**" above). The standards for teachers also must reflect (1) the Ohio Leadership Framework[118] and (2) the revised academic content standards adopted by the State Board (see "**Academic standards and model curricula**" above), including standards on collaborative learning environments and interdisciplinary, project-based real world learning, 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

[118] The Ohio Leadership Framework probably refers to the Ohio Leadership Development Framework, which describes core leadership practices that school districts can use to make systemic advances in leadership at the district and building levels (see http://education.ohio.gov/GD/Templates/Pages/ODE/ODEDetail.aspx?page=3&TopicRelationID=523&ContentID=9169&Content=62299).

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.

Finally, the bill also requires that the professional development standards developed by the Educator Standards Board contain standards for the inclusion of local professional development committees in the planning and design of professional development. Local professional development committees are established at the school-district level to determine whether a teacher's proposed coursework meets the State Board of Education's requirements for license renewal.

Recommendations for all of the standards required by the 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:

(1) Investigate and make recommendations for the creation, expansion, and implementation of school district and building leadership academies;

(2) Develop model teacher and principal evaluation instruments and processes based on the Board's standards for teachers and principals;

(3) Monitor compliance with all of the standards required by the 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 and does not satisfy the Educator Standard Board's definition of "master teacher" must meet to be considered a lead teacher for licensure purposes. The criteria must be in addition to the 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.

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 educator preparation programs, but it transfers the appointing authority for those members from the State Board of Education, which appoints all other members of the Board, to the Chancellor of the Board of Regents. The Chancellor must appoint new members as the terms of the existing appointees expire.

Second, the bill adds six members to the Educator Standards Board. It adds, as voting members, a school district treasurer or business manager, a parent of a student enrolled in a school district, and two additional teachers employed by school districts

(one high school teacher and one elementary school teacher),[119] bringing the total number of voting members to 21. The Ohio Association of School Business Officials must submit two nominees for the treasurer or business manager and the Ohio Parent Teacher Association must submit two nominees for the parent member, from which the State Board must select one person for each appointment. The State Board must make initial appointments for these members within 60 days after the provision's effective date. Although the terms for these members are initially staggered, they subsequently will have two-year terms like the other voting members.

The bill also adds the ranking minority members of the House and Senate education committees as nonvoting members of the Board.[120]

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.

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:

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[119] The Board currently must include eight school district teachers--two high school teachers, two middle school teachers, two elementary school teachers, one preschool teacher, and one teacher who serves on a local professional development committee.

[120] 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).)

(1) The school district superintendent appointed to the Educator Standards Board, who is the subcommittee's chairperson;

(2) Three other district superintendents, appointed to two-year terms by the State Board of Education from a slate of six nominees submitted by the Buckeye Association of School Administrators;

(3) Three additional members of the Educator Standards Board, appointed by the Board's chairperson; and

(4) The Superintendent of Public Instruction and the Chancellor of the Board of Regents, or their designees, as nonvoting members.

Subcommittee on Standards for School Treasurers and Business Managers

(R.C. 3319.612)

The Subcommittee on Standards for School Treasurers and Business Managers consists of the following members:

(1) The school district treasurer or business manager appointed to the Educator Standards Board, who is the subcommittee's chairperson;

(2) Three other district treasurers or business managers appointed to two-year terms by the State Board of Education from a slate of six nominees submitted by the Ohio Association of School Business Officials;

(3) Three additional members of the Educator Standards Board, appointed by the Board's chairperson; and

(4) The Superintendent of Public Instruction and the Chancellor of the Board of Regents, or their designees, as nonvoting members.

Peer assistance and review programs

(Section 265.70.50)

Under the bill, by December 31, 2010, the Department of Education, in consultation with the Educator Standards Board, must develop a model peer assistance and review program and make recommendations to expand the use of peer assistance and review programs by school districts. Copies of the model program and recommendations must be provided to the Governor and legislative leaders and posted on the Department's web site.

In developing the model program, the Department must examine the operation of existing peer assistance and review programs used by Ohio school districts. The model program must include the following elements: (1) releasing experienced teachers from instructional duties for up to three years to mentor and evaluate new and underperforming teachers through classroom observations and follow-up meetings, (2) targeted professional development to improve instructional weaknesses, and (3) a committee of representatives of teachers and the employer to review teacher evaluations and make recommendations regarding teachers' continued employment.

The recommendations for expanding peer assistance and review programs must include: (1) identification of barriers to expansion, such as financial constraints, labor-management relationships, and barriers unique to small school districts, (2) legislative changes that would eliminate those barriers, and (3) incentives to increase participation in the programs.

Teach Ohio Program

(R.C. 3333.39)

The 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 an Ohio public or private institution of higher education. The Chancellor must determine the amount of the scholarship based on state appropriations.

The Chancellor must establish a competitive process for awarding scholarships that must include establishing a minimum grade point average and scores on college admissions tests. The selection process must also give additional consideration to applicants who (1) have participated in the statewide teacher recruitment program administered by a nonprofit corporation as part of the Teach Ohio Program established under the bill, (2) plan to specialize in teaching special needs students, or (3) plan to teach in the STEM (science, technology, engineering, or math) disciplines.[121]

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

[121] 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.

note is cancelled if the recipient fulfills the four-year commitment within seven years of graduating, or if the recipient dies, becomes totally and permanently disabled, or is unable to complete the required service as a result of layoffs from the recipient's school of employment before the four years of service have been completed.

Repayment and interest accrued must be deferred while the recipient is enrolled in an approved teaching program, while the recipient is seeking employment to fulfill the service obligation for a period not to exceed six months, and while the recipient is employed as a teacher at a qualifying school. For every year a recipient teaches at a qualifying school, the Chancellor must deduct 25% of the outstanding balance that may be converted to a loan.

The Chancellor may terminate the scholarship at any time, in which case the scholarship must be converted into a loan. The scholarship is also considered terminated and converted into a loan if a recipient withdraws from school or fails to meet the standards of the scholarship as determined by the Chancellor.

The bill directs the Chancellor and the Attorney General to collect payments on a converted loan under established procedures for payment collection by state officers.[122]

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

[122] R.C. 131.02, not in the bill.

educator license, six semester hours of graduate coursework in the area of licensure or a related area since initial issuance of the license.[123]

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 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 five 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

[123] 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)).

continuing contract status elsewhere, have taught there for the last two years.[124] 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 teaching license*.[125] 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."[126] 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,[127] falsification of a sick or assault leave statement,[128] and assisting a student in cheating on a statewide achievement test.[129] Statutory law

[124] 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)).

[125] 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.

[126] 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).

[127] R.C. 124.36, not in the bill.

[128] R.C. 3319.141 and 3319.143, neither section in the bill.

[129] R.C. 3319.151.

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.[130]

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;

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[130] 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).

(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).[131]

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;

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

(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.[132]

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.[133] 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.[134] Current law also grants an exemption from Department approval to the successor of the University of Toledo board of trustees or

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[132] R.C. 3314.02(C)(1)(a) through (f).

[133] 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).

[134] 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.

its designee as a sponsor of community schools.[135] 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.

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

[135] 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.)

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.[136]

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.[137]

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.

[136] See R.C. 3314.07, 3314.072, and 3314.073 (none in the bill).

[137] See R.C. Chapter 119., especially R.C. 119.12 (not in the bill).

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;

(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.[138] 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).

Caps on sponsors

(R.C. 3314.015(B)(2))

Current law caps the total number of community schools an entity may sponsor, as shown in the table below.

[138] 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).

Limit on Schools an Entity May Sponsor	
Number of schools sponsored by entity open as of May 1, 2005	**Limit**
50 or fewer	50 schools
51-75	Number of schools sponsored by entity open as of May 1, 2005
More than 75	75 schools

*A sponsor's limit decreases by one whenever one of its schools permanently closes.

The bill retains these overall caps, with two changes. First, it clarifies that the caps apply to *all* community school sponsors, including the grandfathered sponsors that were not subject to approval for sponsorship by the Department of Education. Second, it prohibits a sponsor from initially entering into a sponsorship contract with a community school if more than 33% of the Ohio community schools currently sponsored by the sponsor have a performance rating of academic watch or academic emergency. In other words, even though a sponsor may have room under its cap, it cannot sponsor additional schools if more than one-third of its current schools in Ohio are poorly performing. This provision does not prohibit the sponsor from renewing a contract with a school it already sponsors.

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.[139] 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.

[139] 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.[140] 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.[141] 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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[140] 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).

[141] 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.[142]

Contracts with operators

(R.C. 3314.024 and 3314.192)

The bill establishes two new requirements regarding community school contracts with operators that manage the schools' daily operations. First, it 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.

Second, it requires each community school's sponsor annually to report to the Department, by ten business days before the school's opening, whether the school's governing authority has entered into a contract with an operator for that school year. If the governing authority has done so, the sponsor also must report any information about the operator and contract that the Superintendent of Public Instruction specifies in administrative rule. All information reported about the operator and contract must be posted on the Department's web site. If there is a change in the contract during the course of the school year, the governing authority must notify the school's sponsor within 30 days after the change. If the change involves any of the information previously reported to the Department, the sponsor must notify the Department of the change within 30 days and the Department must update its web site to reflect the change within 30 days after receiving the notification.

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

[142] Ratings higher than academic watch under R.C. 3302.03 are: in need of continuous improvement, effective, and excellent.

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.

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.[143] 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.[144]

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.[145] In addition, the teacher must fulfill at least *one* of the following requirements:

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[143] Title I funds serve the educational needs of low-income and other at-risk students.

[144] 34 Code of Federal Regulations §§ 200.55 and 200.56.

[145] 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.[146]	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.

[146] 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.[147]

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 solely to serve dropout students 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.

[147] 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).

Closure of poorly performing community schools

(R.C. 3314.35)

Under current law, community schools that meet statutory criteria for poor academic performance after July 1, 2008, must permanently close. Beginning July 1, 2009, the bill replaces the current performance criteria that trigger the closure of a community school with new, more stringent criteria. Community schools that meet the existing criteria between July 1, 2008, and June 30, 2009, still must close at the end of the 2008-2009 school year, in accordance with current law. The first schools subject to the new performance criteria will close following the 2009-2010 school year. The table below compares the current closure criteria with the bill's new criteria.

Community School Closure Criteria		
Type of school	**Current law**	**The bill**
A school that does not offer a grade higher than 3	Has been in academic emergency for four consecutive school years	Has been in academic emergency for *three of the four most recent school years*
A school that offers any of grades 4 to 8 but no grade higher than 9	(1) Has been in academic emergency for three consecutive school years and (2) showed less than one standard year of academic growth in reading or math for two of those years	(1) Has been in academic emergency for *two of the three most recent school years* and (2) showed less than one standard year of academic growth in reading or math for *at least two of the three most recent school years*
A school that offers any of grades 10 to 12	Has been in academic emergency for four consecutive school years	Has been in academic emergency for *three of the four most recent school years*

Exemptions

The bill retains current law exempting a community school from the closure requirement if it operates a dropout prevention and recovery program and has a waiver from the Department of Education.[148] Additionally, it grants an exemption to a

[148] The Department must grant a waiver to a dropout program that (1) serves only students between 16 and 21 years old, (2) enrolls students who are one or more grades behind their cohort age group or experience crises that prevent them from continuing in traditional educational programs, (3) requires students to pass the Ohio Graduation Tests, (4) develops individual career plans for students and provides counseling and support related to the plans, and (5) submits to the Department an instructional

community school in which a majority of the students are disabled students receiving special education. In the case of a community school serving mostly disabled students that met the existing performance criteria for closure and would otherwise be required to cease operations at the end of the 2008-2009 school year, it appears that the bill averts the closure and would allow the school to continue operating in future school years.

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 (the main budget act for the 2007-2009 biennium) addressing unauditable community schools. 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

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plan indicating how the State Board of Education's academic content standards will be taught and assessed (R.C. 3314.36).

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.

Design specifications for community schools

(R.C. 3314.052)

Under continuing law, the Ohio School Facilities Commission adopts design specifications for classroom facilities constructed or acquired for a school district participating in a state-assisted classroom facilities project. Brick-and-mortar community schools, which must build or acquire their own facilities, are currently not subject to the Commission's design specifications, although their facilities must comply with all health and safety standards established by law for school buildings.[149]

The bill requires each classroom facility owned or leased by the governing authority or operator of a brick-and-mortar community school to comply with the Commission's design specifications applicable to the grade levels and function of the facility, except that a community school is exempt from the Commission's requirement that the actual or projected enrollment of each classroom facility be at least 350 students. This provision does not apply to Internet- or computer-based community schools (e-schools). Consequently, under the bill, if a brick-and-mortar community school's classroom facilities do not meet the Commission's design specifications on the provision's effective date, the school must acquire new facilities or renovate its existing ones to comply with those specifications.[150]

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[149] R.C. 3314.05(B)(4), not in the bill.

[150] For purposes of the bill, "classroom facilities" includes "rooms in which pupils regularly assemble. . .to receive instruction and education [including vocational education] and such facilities and building improvements for the operation and use of such rooms as may be needed in order to provide a complete educational program, and may include space within which a child care facility or a community resource center is housed" (R.C. 3318.01(B), not in the bill).

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.[151] (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.

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

[151] 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)).

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.

Co-located community schools

(R.C. 3306.16(E) and 3314.075)

The bill contains two provisions addressing a situation in which two or more brick-and-mortar community schools are located in the same building, share the same chief administrative officer, and have at least one common member on their governing authorities. First, the bill permits the co-located schools to consolidate into one community school and assign the assets and liabilities of the individual schools to the consolidated school. For the consolidation to occur, the sponsor of each of the individual schools must approve the merger. Furthermore, the consolidation of assets and liabilities must not be prohibited by other law or a contract. The consolidation must take effect by September 30 of the school year in which the consolidated school is to begin operating.

Second, for co-located community schools that do not consolidate, the bill requires the Department of Education to compute aggregate funding for the co-located schools as if they were one school and to pay each school a per-pupil share of the aggregate amount.

Exception to community school location

(R.C. 3314.028)

Under the bill, beginning in the 2009-2010 school year, a community school may continue to operate from the facility it occupied in the 2008-2009 school year and cannot be required to relocate to another school district (presumably under another provision of law), if it meets the following conditions:

(1) It has been located in its current facility for at least three school years;

(2) It is sponsored by a school district adjacent to the district in which the school is located;

(3) Its education program emphasizes serving gifted students; and

(4) It has been rated continuous improvement or higher for the previous three school years.

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, who must report to the Superintendent and the Governor. The Center, under the supervision of the Director, must research and make recommendations about the coordination of early childhood programs and services for children, from prenatal care and through entry into kindergarten, and the eventual transfer of the authority to implement those programs and services from other state agencies to the Department of Education.

After considering advice from the Early Childhood Advisory Council, the Director of the Center, in partnership with Department of Education staff, must submit an implementation plan to the Superintendent and the Governor by December 31, 2009. The implementation plan must include research and recommendations regarding all of the following:

(1) The identification of programs, services, and funding sources to be transferred from other state agencies to the Department of Education;

(2) The creation of a new administrative structure within the Department for implementing early childhood programs and services;

(3) Statutory changes necessary to implement the new administrative structure within the Department; and

(4) A timeline for the transition from the current administrative structure within other state agencies to the new administrative structure within the Department.

The 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

(Section 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.

Family Child Care Licensing Workgroup

(Section 265.70.60)

The bill requires the Early Childhood Advisory Council to establish a Family Child Care Licensing Workgroup. The Workgroup must develop recommendations that explore the implementation, costs, and timeline necessary for the creation of a statewide licensing system for family child care providers. Not later than December 31, 2009, the Workgroup must submit its recommendations to the Governor and the General Assembly. 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.[152] 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;[153]

(2) Align its curriculum to the Department of Education's early learning content standards;

(3) Comply with any child or program assessment requirements prescribed by the Department;

(4) Require teachers, except for those working toward an associate or bachelor's degree in a related field, to attend at least 20 hours every two years of professional development;

(5) Document and report child progress; and

(6) Meet and report compliance with the Department's early learning program guidelines.

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[152] 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.

[153] 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.)

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.[154] 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 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

[154] 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.

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,[155] 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

[155] Title IV-A services cannot include "cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses)." Title IV-A services, however, may include: (1) "nonrecurrent, short-term benefits . . . designed to deal with a specific crisis situation or episode of need [that are] not intended to meet recurrent or ongoing needs, and [that will] not extend beyond four months, (2) work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training), (3) supportive services such as child care and transportation provided to families who are employed, (4) refundable earned income tax credits, (5) contributions to, and distributions from, Individual Development Accounts, (6) services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support, and (7) transportation benefits provided under a Job Access or Reverse Commute project . . . to an individual who is not otherwise receiving assistance." (45 Code of Federal Regulations 260.31(a) and (b).)

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.[156]

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;

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

(a) Establishing co-payments for families of eligible children whose family income is more than 100% of the federal poverty line but equal to or less than the maximum amount of family income authorized for an eligible child (200% of the federal poverty guidelines);

(b) An exemption from co-payment requirements for families whose family income is equal to or less than 100% of the federal poverty line;

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

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[156] 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.

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

(e) Completion of criminal record checks for certain employees of early learning agencies and early learning providers;

(f) The timeline of eligibility determination; and

(g) The required participation of early learning programs licensed by ODE under the Preschool Law in the quality-rating program established under the Child Care Law.

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

Contracting with an early learning agency

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.

Early Childhood Cabinet--health district representation

(Section 265.10.23)

The bill requires the Governor to appoint to the Early Childhood Cabinet a representative of a board of health of a city or general health district or an authority having the duties of a board of health. The Early Childhood Cabinet is an initiative of

the Governor's Office that seeks to coordinate state activities and programs that serve children, prenatal through age six.

VI. Other Provisions

Strategic plan

(R.C. 3301.122)

The bill requires the Superintendent of Public Instruction, in consultation with the Chancellor of the Board of Regents, to develop a ten-year strategic plan that is aligned with the strategic plan for higher education developed by the Chancellor[157] not later than December 1, 2009. The Superintendent must submit the plan to the General Assembly and the Governor and include all of the following recommendations:

(1) A framework for collaborative, professional, innovative, and thinking twenty-first century learning environments;

(2) Ways to prepare and support Ohio's educators for successful instructional careers;

(3) Enhancement of the current financial and resource management accountability systems; and

(4) Implementation of an effective school funding system according to the principles, mandates, and guidance established in the bill's new school funding 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

[157] Section 375.30.25(D) of Am. Sub. H.B. 119 of the 127th General Assembly required the Chancellor to develop a strategic plan for higher education.

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 may consult with district and school fiscal officers. It also may use data collected from the Department's work with districts to develop and deploy analytical tools that enable districts to analyze their spending patterns in order to promote more effective and efficient use of resources.[158]

(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.

[158] See Section 269.10.60 of Am. Sub. H.B. 119 of the 127th General Assembly.

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 school districts, educational centers, community schools, and STEM schools with any of the following:

(1) Designing and implementing strategies and systems that enable schools to become professional learning communities. Strategies and systems include (a) mentoring and coaching teachers and support staff, (b) enabling principals to focus on supporting instruction and engaging teachers and support staff as part of the instructional leadership team to give teachers and staff input on making and implementing school decisions, (c) adopting new models for restructuring the learning day or year, such as incorporating teacher planning and collaboration time as part of the school day, and (d) creating smaller schools or units within larger schools to facilitate teacher collaboration to improve and advance the practice of teaching and to enhance instruction that yields enhanced student achievement.

(2) Collaborating with the new Teach Ohio program to promote, recruit, and enhance the teaching profession by (a) using strategies such as "grow your own" teacher recruitment and retention strategies to support individuals becoming licensed teachers, retain highly qualified teachers, assist experienced teachers in obtaining licensure in subject areas for which there is need, assist teachers in obtaining senior professional education and lead professional educator licenses, and assist teachers to grow and develop, (b) enhancing conditions for new teachers, (c) creating incentives to attract qualified math, science, or special education teachers, (d) developing and implementing partnerships with teacher preparation programs at colleges and universities to attract qualified teachers in shortage areas, and (e) implementing a program to increase cultural competency of new and veteran teachers.

(3) Identifying any impediments in statute, rule, or regulation to the adoption of innovative practices and recommending to the Superintendent of Public Instruction that those provisions be repealed, revised, or waived.

(4) Identifying promising programs and practices based on high quality research and developing models for early adoption, including research and practices in arts education and creativity, of those programs.

(5) Other duties as assigned by the Superintendent of Public Instruction.

The bill also requires the Center to promote collaboration between school districts and community schools to enhance the academic programs and to broaden the

application of successful and innovative academic practices developed by community schools. Together with the Department's Office of Community Schools, the Center must (1) study, gather information concerning, and serve as a clearinghouse of best practices and innovative programming developed and utilized by community schools that could be adopted by school districts, and (2) identify circumstances in which students could benefit from collaboration between the complementary programs of school districts and community schools.

The 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.

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[159] 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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[159] 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).

Business Advisory Council/Family and Community Engagement Team Alternative

(R.C. 3313.822)

As an alternative to creating both committees, the bill allows school districts, community schools, and STEM schools to appoint one committee to function as both a Business Advisory Council and a Family and Community Engagement Team. An alternative committee must perform all the functions required of both. A school district, community school, and STEM school may determine the membership and organization of its committee, so long as the membership complies with the membership requirements of either committee under the bill.

Corporal punishment

(R.C. 3319.41; conforming changes in R.C. 3301.0714, 3301.0715, 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 employees of the school board who hold a valid school nurse license or school nurse wellness coordinator license under this bill, or who have completed a drug administration training program conducted by a registered nurse, 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.

TDAP booster vaccinations for seventh graders

(R.C. 3313.671)

Beginning in the 2010-2011 school year, the bill requires pupils entering seventh grade at a public or private school to have received a Department of Health-approved tetanus, diphtheria, and acellular pertussis booster vaccination.[160] A pupil may not be permitted to remain in school for more than 14 days unless the pupil presents written evidence satisfactory to the person in charge of admission that the pupil has received the booster vaccination.

As with other required immunizations for school children, boards of health, municipal corporations, and townships on application of a school board must provide the booster vaccinations without delay and at public expense to pupils who have not been provided them by their parents or guardians. Also as with other immunizations, a pupil is not required to have the booster vaccination if (1) the parent or guardian presents a written statement that the parent or guardian declines the vaccination for reasons of conscience, including religious convictions, or (2) the pupil's physician certifies in writing that the vaccination is medically contraindicated.

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[160] According to the Centers for Disease Control and Prevention (CDC), acellular pertussis vaccines "contain inactivated pertussis toxin . . . [and] contain substantially less endotoxin than whole-cell pertussis vaccines" (http://www.cdc.gov/mmwr/preview/mmwrhtml/00048610.htm, last visited May 1, 2009) In other words, the vaccine is made up of parts of the cellular material, not the whole pertussis cell. Therefore, acellular vaccines are considered safer than whole-cell vaccines.

Background

Current law requires pupils, at the time of initial entry to a public or nonpublic school, to be immunized against mumps, polio, diphtheria, pertussis, tetanus, rubeola (measles), rubella (German measles), hepatitis B, and chicken pox. A pupil may not be permitted to remain in school for more than 14 days unless the pupil presents satisfactory written evidence that the pupil has been immunized or is in the process of being immunized. Boards of health, municipal corporations, and townships on application of a school board are required to provide the required immunizations, without delay and at public expense, to pupils who have not been provided them by their parents or guardians. The Ohio Department of Health has authority to approve means of immunization against the diseases for which pupils are required to be immunized.

There are exceptions to the immunization requirement. A pupil who has had natural rubeola, mumps, or chicken pox and presents a signed statement from a parent or physician to that effect is not require to be immunized against the disease for which there is natural immunity. Further, a pupil is not required to be immunized if the parent or guardian presents a written statement declining to have the pupil immunized for reasons of conscience, including religious convictions. Finally, a child whose physician certifies in writing that immunization against any disease is medically contraindicated is not required to be immunized against that disease.

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.[161] 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.

[161] 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.

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.[162]

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.[163] 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

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[162] This requirement applies to community schools and STEM schools by virtue of a reference in R.C. 3314.03 and 3326.11, respectively.

[163] This requirement applies to community schools and STEM schools by virtue of a reference in R.C. 3314.03 and 3326.11, respectively.

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 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.

Administration of achievement assessments to voucher students

(R.C. 3310.15, 3313.976, and 3313.978)

Current law requires nonpublic schools that enroll students with a scholarship under the Educational Choice Scholarship Program to administer the state achievement assessments to the scholarship students and to report their scores to the Department of Education.[164] The bill imposes the same requirement on nonpublic schools that accept scholarship students under the Cleveland Scholarship Program.

Additionally, the bill requires the Department to report performance data derived from the achievement assessments taken by the Cleveland and Ed Choice scholarship students. The Department must post the performance data on its web site and distribute it to the parent of each student eligible to participate in the scholarship programs. For each program, the data must be grouped by school district (including all

[164] Under current law, nonpublic schools generally are not required to administer the assessments. However, chartered nonpublic schools must administer the Ohio Graduation Tests, which their students must pass as a condition of earning a diploma, and may elect to administer any of the elementary assessments. (R.C. 3301.0711(K) and 3313.612.)

participants in the program from that district), by nonpublic school (including all program participants enrolled in that school), and, in the case of the Ed Choice program, by state (including all program participants statewide). The data also must be disaggregated within each group by (1) age, (2) race and ethnicity, (3) gender, (4) students who have participated in the scholarship program for three or more years, (5) students who have participated in the program between one and three years, (6) students who have participated in the program for one year or less, and (7) economically disadvantaged students.

In reporting performance data for scholarship students, the Department may not report data that is statistically unreliable or that could result in the identification of individual students. The bill prohibits the Department from reporting data for any group that contains less than ten scholarship students. Therefore, if a nonpublic school enrolls 20 scholarship students across several grade levels, the Department could report the school-wide assessment results, but there may be too few students in a particular grade or racial group to report the results without endangering a student's privacy.

Finally, the Department must provide the parent of each scholarship student with a comparison of the student's achievement assessment scores with the average scores of similar students enrolled in the school district-operated building the scholarship student would otherwise attend. For this purpose, the scholarship student must be compared to students of similar age, grade, race or ethnicity, gender, and socioeconomic status.

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 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.[165] 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.

Moratorium on ESC switches by local school districts

(Section 265.70.40)

The bill places a two-year moratorium (from July 1, 2009, to July 1, 2011) on pending and new proposals for local school districts to sever from their current educational service centers and annex to different service centers. Under the bill, all severance and annexation resolutions that are pending, or already approved but not yet effective, are void and may not be refiled until after the moratorium expires. Nor may a local school district board adopt a severance and annexation resolution during the moratorium period.

Background

Current law permits a local school district (which receives mandatory services and is under some oversight by an educational service center (ESC)) to sever its territory from its current ESC and annex itself to an adjacent ESC.[166] The local district board's resolution to do so is subject to approval by both (1) the State Board of Education and (2) the district's voters at a referendum election if a petition is filed

[165] 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.

[166] R.C. 3311.059, not in the bill.

within 60 days following the district board's adoption of the resolution. The severance and annexation action may not take effect sooner than one year after the first day of July that follows the later of the date the State Board approves the action or the date voters approve the action at a referendum election, if one is held.

Dissolution procedures for ESCs

(R.C. 3311.0510)

As noted above, a local school district may sever from its current ESC and annex to another adjacent ESC. Since the electoral territory of each ESC, from which its governing board is elected, is made up of the territory of each "local" school district that receives services from the ESC, if all of its local school districts sever from it, the ESC no longer has any territory.[167] It appears that the ESC must, therefore, dissolve. However, current law does not provide any procedures for the ESC's dissolution.

The bill provides some procedures for dissolving an ESC. First, the bill expressly states that if all of its "local" school districts sever from an ESC, the ESC's governing board is abolished and the ESC is dissolved. Next, the bill requires the Superintendent of Public Instruction to order an equitable distribution of the assets and liabilities of the ESC among the "local" school districts that made up the ESC. The Superintendent's order "is final and not appealable."[168] Third, the bill specifies that the costs incurred by the Department of Education in dissolving the ESC may be charged against the assets of the ESC. Any amount of those costs in excess of the ESC's assets may be charged equitably against each of the local school districts that made up the ESC. Fourth, a final audit of the ESC must be performed in accordance with procedures established by the Auditor of State. Finally, the bill requires that the ESC's public records be transferred to the school districts that received services from the ESC and, in the case of records that do not relate to services to a particular school district, to the Ohio Historical Society.

Continuation of services to "city" and "exempted village" districts

(R.C. 3313.843)

Although an ESC is required to provide services and oversight for local school districts that make up its territory, the ESC also may contract with city and exempted village school districts to provide similar services. For those services, an ESC may be

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[167] R.C. 3311.05, not in the bill. The ESC's electoral territory does not include the territory of "city" or "exempted village" districts that receive services from the ESC.

[168] The state Superintendent must appoint "a qualified individual" to implement the Superintendent's order.

eligible for the same state and district per-pupil payments prescribed for serving local districts.[169] If an ESC dissolves, as described above, the bill specifically provides authority for those city and exempted village districts to contract for those services from another ESC and for the state per-pupil payments to be made to the new ESC in the same manner as they were made to the original (now dissolved) ESC.

STATE EMPLOYMENT RELATIONS BOARD (ERB)

- Places the State Personnel Board of Review (SPBR) within the administrative structure of the State Employment Relations Board (SERB) but specifies that the SPBR exists as a separate entity within that structure.

- Requires SPBR to utilize SERB employees in the exercise of SPBR's powers and the performance of the SPBR's duties and functions rather than requiring SPBR to appoint employees as necessary in the exercise of its powers and performance of its duties and functions.

- Transfers SPBR employees to SERB and declares the Chairperson of SERB the appointing authority for both SPBR and SERB.

- Abolishes the Transcripts and Other Documents Fund in the state treasury and transfers any moneys in that fund to the Training, Publications, and Grants Fund.

- Requires the Training, Publications, and Grants Fund, in addition to the other uses specified in continuing law, to be used to defray the cost of producing an administrative record for SPBR, which 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

[169] The mandatory payments received by an ESC for services to school districts are as follows: (1) $6.50 per pupil from each school district served, (2) either $37 or $40.52 (for an ESC made up of the merger of at least three smaller ESCs) per pupil of direct state funding for each school district served, and (3) one "supervisory unit" for the first 50 classroom teachers required to be employed in the district and one such unit for each additional 100 required classroom teachers (R.C. 3317.11, not in the bill). Plus, an ESC may enter into extra fee-for-service contracts with the districts for other services (R.C. 3313.845, not in the bill).

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.

- Allows independent home care providers and independent child care providers to bargain collectively with the state to determine wages, hours, terms, other conditions of employment that are within the control of the state.

- Allows independent home care providers and independent child care providers to form, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in any representative organization of their own choosing.

- Specifies processes by which a representative organization may become the exclusive representative of the independent home care providers or independent child care providers.

- Specifies processes by which collective bargaining between the state and the providers can occur.

- Maintains the right of the recipients of care to choose providers and to control the hiring, termination, and supervision of providers and the right of the state to take appropriate action when a provider is no longer eligible to provide care under state or federal law, or any state or federal rules or regulations.

- Grants the State Employment Relations Board the same authority as that provided in the Public Employee Collective Bargaining Law to investigate, hold hearings, make determinations, and issue complaints regarding unfair labor practices with respect to providers.

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.

Collective bargaining for independent home health care providers and independent child care providers

(R.C. 4113.81, 4113.82, 4113.83, 4113.84, 4113.85, and 4113.86)

Introduction

On July 17, 2007, Governor Strickland issued executive order 2007-23s permitting independent home care providers to collectively bargain with the state regarding reimbursement rates and other terms and conditions of the provisions of the provision of services. Shortly thereafter, on February 1, 2008, Governor Strickland issued a similar order, 2008-02s permitting independent child care providers (hereinafter independent home care providers and independent child care providers shall collectively be referred to as "providers") to collectively bargain with the state regarding reimbursement rates and other terms and conditions of the provision of services. The executive orders contain provisions substantially similar to those found in the bill.

Collective bargaining rights of providers

The bill permits providers to do all of the following:

(1) Form, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in any representative organization of their own choosing;

(2) Engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection;

(3) Be represented by a representative organization;

(4) Bargain collectively with the state to determine wages, hours, terms, other conditions of employment that are within the control of the state, the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, and enter into a collective bargaining agreement;

(5) Present grievances and have them adjusted, without the intervention of the representative organization, so long as the adjustment is not inconsistent with the terms of any collective bargaining agreement then in effect and the representative organization has the opportunity to be present at the adjustment.

Collective bargaining rights of representative organizations

The bill requires a representative organization to become the exclusive representative of all the providers in an appropriate unit for the purpose of collective bargaining by satisfying either of the following criteria:

(1) Being certified by an impartial election monitor as described in the Governor's executive order 2008-02s for independent child care providers or the Governor's executive order 2007-23s for independent home care providers;

(2) Filing a request with the state for recognition as an exclusive representative that fulfills the criteria described below, a copy of which must be sent to the SERB.

The request for recognition an exclusive representative may file with the state for recognition, must do all of the following:

(1) Describe the bargaining unit;

(2) Allege that a majority of the providers in the bargaining unit wish to be represented by the representative organization;

(3) Support the request with substantial evidence based on, and in accordance with, rules prescribed by SERB demonstrating that a majority of the providers in the bargaining unit wish to be represented by the representative organization.

The state must request an election in accordance with the same requirements as provided in the PECBL immediately upon receipt of the request described above. The provisions describing the collective bargaining rights of representative organizations must not be construed to permit the state to recognize, or SERB to certify, a representative organization as an exclusive representative if there is in effect a lawful writing agreement, contract, or memorandum of understanding between the state and another representative organization that, on the effective date of these provisions, has been recognized by the state as the exclusive representative of the providers in an appropriate unit or that by tradition, custom, practice, election, or negotiation has been the only representative organization representing all providers in the unit. This limitation does not apply to any agreement that has been in effect in excess of three years, and extensions of an agreement do not affect the expiration of the original agreement.

Collective bargaining agreements

Under the bill, all matters pertaining to wages, hours, terms, and other conditions of employment that are within the control of the state, the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the state and the exclusive representative of all the providers in an appropriate unit. The provisions of the bill relating to collective bargaining between providers and the state do not affect the ability of the state to take appropriate action when a provider is no longer eligible to provide care under Ohio or federal law, or any rules or regulations adopted pursuant to those laws.

The collective bargaining rights provided by the bill, or any collective bargaining agreement entered into pursuant to those rights, do not alter the unique relations between providers and recipients of care. Recipients retain the absolute right to choose providers and to control the hiring, termination, and supervision of providers.

The bill requires the parties to any collective bargaining agreement entered into between providers and the state to record that agreement in writing, which is to be executed by all of the parties to the agreement. The agreement must contain the same provisions as described in the PECBL. Such provisions apply to the state, its agents or representatives, any representative organization, its agents or representatives, and providers in the same manner as the same provisions apply to public employers, public employees, and employee organizations as described in the PECBL.

SERB authority

The bill grants SERB the same authority as described in the PECBL to investigate, hold hearings, make determinations, and issue complaints regarding unfair labor practices, insofar as that authority does not conflict with the rights provided to the state, providers, and representative organizations under the bill. For purposes of the bill, "unfair labor practice" has the same meaning as in the PECBL, except any provisions that apply to public employers apply to the state, any provisions that apply to employee organizations apply to representative organizations, and any provisions that apply to public employees apply to providers.

Applicable definitions

Under the bill, "independent home care provider" means any person who provides home services under a Medicaid waiver component or who provides home services through a state Medicaid plan amendment, but does not include any person employed by a private agency for purposes of performing the activities otherwise attributed to an independent home care provider. "Independent child care provider" means a child care provider categorized as either a Type A licensed provider who does

not meet the definition of employee under the National Labor Relations Act, or a Type B certified or licensed provider or an in-home aide who is not a county or state employee. "Representative organization" means any employee organization as defined in the PECBL or any labor or bona fide organization in which providers participate and that exists for the purpose, in whole or in part, of dealing with the state concerning grievances, wages, hours, terms, and other conditions of employment of providers that are within the control of the state.

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.

- Beginning August 1, 2009, adds a new solid waste disposal fee of $1 per ton, the proceeds of which must be credited to the existing Environmental Protection Fund.

- 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.

- Declares that fees on the disposal of construction and demolition debris apply to the disposal of asbestos and asbestos-containing materials or products at a licensed construction and demolition debris facility.

- 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.

- Authorizes solid waste disposal fees to be paid by a customer or political subdivision to a transporter of solid waste rather than only to the owner or operator of a solid waste transfer or disposal facility as in current law notwithstanding the existence of a contract that would not require or allow such payment.

- Specifies that the existing solid waste generation fee that may be levied by a solid waste management district does not apply to solid waste delivered to a solid waste composting facility for processing rather than yard waste delivered to a composting facility or transfer facility as in current law; declares that if any unprocessed solid waste or compost product is transported off the premises of a composting facility for disposal at a landfill, the solid waste generation fee applies and must be collected by the owner or operator of the landfill; and specifies that the solid waste generation fee does not apply to materials removed from the solid waste stream as a result of recycling.

- Provides that rules of a solid waste management district governing out-of-district waste apply only to county and district solid waste facilities unless the board of county commissioners or board of directors of the district submits an application to

the Director of Environmental Protection that demonstrates insufficient disposal capacity in the district and the Director approves the application, and provides for appeal of the Director's action.

- Alters the purposes for which money in the Scrap Tire Management Fund may be used by removing 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.

- 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.

- Requires the Director of Environmental Protection to make grants from the Clean Diesel School Bus Fund to county boards of mental retardation and developmental disabilities rather than only to school districts as authorized in current law.

- Extends all of the following for two years:

  --The sunset of the annual emissions fees for synthetic minor facilities;

  --The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works under the Water Pollution Control Law;

  --The sunset of the annual discharge fees for holders of NPDES permits issued under the Water Pollution Control Law;

  --The sunset of license fees for public water system licenses issued under the Safe Drinking Water Law;

--A higher cap on the total fee due for plan approval for a public water supply system under the Safe Drinking Water Law and the decrease of that cap at the end of the two years;

--The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;

--The levying of higher fees, and the decrease of those fees at the end of the two years, for applications and examinations for certification as operators of water supply systems or wastewater systems under the Safe Drinking Water Law or the Water Pollution Control Law, as applicable; and

--The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Law.

- Declares that the transfer of a hazardous waste facility installation and operation permit for a facility that is not an off-site facility is a Class 1 modification rather than a Class 3 modification as in current law; specifically declares that the transfer of a hazardous waste facility installation and operation permit for an off-site facility is a Class 3 modification; and, with respect to the modification of a hazardous waste facility that involves the transfer of a permit, eliminates provisions of law requiring the Director of Environmental Protection to make certain determinations regarding the background of the transferee if the transferee has been involved in any prior activity involving hazardous waste.

- Creates the Natural Resource Damages Fund consisting of money collected by the state for natural resources damages under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Oil Pollution Act, the federal Clean Water Act or any other applicable federal or state law, and requires money in the Fund to be used in accordance with those acts.

- Repeals a provision in 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 August 1, 2009, the bill adds an additional $1 per-ton disposal fee the proceeds of which must be credited to that Fund.

Funding for Soil and Water Conservation District Assistance Fund

As stated above, money in the Soil and Water Conservation District Assistance Fund is derived from the proceeds of a fee levied on the disposal of construction and demolition debris. The fee is levied at the rate of 12.5¢ per cubic yard or 25¢ per ton, as applicable. The 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 August 1, 2009 through June 30, 2012, and requires the proceeds to be deposited in the Fund.

Application of construction and demolition debris disposal fees to asbestos

The bill declares that, notwithstanding any provision of law to the contrary, construction and demolition debris disposal fees apply to the disposal of asbestos and asbestos-containing materials or products at a construction and demolition debris facility that is licensed under the Construction and Demolition Debris Law.

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.

Payment of solid waste disposal fees

Current law requires solid waste disposal fees levied by the state, solid waste management districts, and other local governments to be paid by the customer or political subdivision to the owner or operator of a solid waste transfer facility or disposal facility notwithstanding the existence of any provision in a contract that the

customer or political subdivision may have with the owner or operator or with a transporter of the waste to the facility that would not require or allow such payment. The bill adds that in the alternative, the fees must be paid by a customer or political subdivision to a transporter of waste who subsequently transfers the fees to the owner or operator of such a facility. The bill then provides that the fees must be paid notwithstanding the existence of any provision in a contract that the customer or political subdivision may have with the owner or operator or with a transporter of the waste to the facility that would not require or allow such payment regardless of whether the contract was entered into prior to or after the effective date of those provisions of the bill. The bill defines "customer" to mean a person who contracts with, or utilizes the solid waste services of, the owner or operator of a solid waste transfer or disposal facility or a transporter of solid waste to such a facility.

Solid waste generation fees--composted and recycled materials

(R.C. 3734.573)

Current law authorizes solid waste management districts to levy a fee on the generation of solid waste for the same purposes that solid waste disposal fees may be levied by such districts. The generation fee does not apply to yard waste delivered to a solid waste composting facility for processing or to a solid waste transfer facility. The bill instead specifies that the generation fee does not apply to solid waste delivered to a solid waste composting facility for processing. Current law also specifies that the generation fee does not apply to materials separated from a mixed waste stream for recycling by the generator. The bill adds that the fee does not apply to materials removed from the solid waste stream as a result of recycling. Finally, the bill provides that if any unprocessed solid waste or compost product is transported off the premises of a composting facility for disposal at a landfill, the generation fee applies and must be collected by the owner or operator of the landfill.

Solid waste management district rules governing out-of-district waste

(R.C. 343.01 and 3734.53)

Current law authorizes a solid waste management plan (plan) of a solid waste management district to provide for the adoption of rules governing various issues concerning solid waste management within the district. One such issue is the disposal within the district of solid wastes generated outside the district but inside Ohio. Current law authorizes a solid waste management district to adopt and enforce rules prohibiting or limiting the receipt at facilities covered by the district's plan of solid wastes generated outside the district or outside a service area prescribed in the plan consistent with certain generation and disposal capacity projections that are required to

be made by the district under current law. The bill provides that the rules apply to the receipt of solid wastes at facilities that are located within the district rather than those covered by the district's plan. It then states that such rules may be adopted and enforced with respect to facilities in the district that are not owned by a county or the district only if the board of county commissioners or board of directors of the district, as applicable, submits an application to the Director of Environmental Protection that demonstrates that there is insufficient capacity to dispose of all solid wastes that are generated within the district at the facilities located within the district and the Director approves the application. The demonstration must be based on projections contained in the plan or amended plan of the district. The bill declares that the approval or disapproval of such an application by the Director is an action that is appealable to the Environmental Review Appeals Commission. Finally, the bill requires the Director to establish the form of the application.

Scrap Tire Grant Fund; Scrap Tire Management Fund; tire fees

(R.C. 1502.12, 3734.82, and 3734.901)

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.

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 from any cash transfers, state and local grants, and other contributions that are 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.

Clean Diesel School Bus Fund

(R.C. 3704.144)

Current law creates the Clean Diesel School Bus Fund consisting of gifts, grants, and contributions made for the purpose of adding pollution control equipment to diesel-powered school buses. The Fund is administered by the Director of Environmental Protection who must use money in the Fund for the above purpose and to pay the Environmental Protection Agency's costs incurred in administering the grant program. The bill requires the Director to make grants from the Fund to county boards of mental retardation and developmental disabilities as well as to school districts.

Extension of various air and water fees and related provisions

Synthetic minor facility emissions fees

(R.C. 3745.11(D))

Under 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.

Hazardous waste facility permit modifications

(R.C. 3734.01 (not in the bill) and 3734.05)

Current law establishes requirements governing the modification of a hazardous waste facility or its operations. "Modification" is defined to mean a change or alteration to a hazardous waste facility or its operations that is inconsistent with or not authorized by its existing permit or authorization to operate. The Director of Environmental Protection is required to adopt rules classifying modifications as either Class 1, Class 2, or Class 3 modifications. Class 1 modifications generally involve the most minor changes to a facility or its operations while Class 3 modifications represent the most significant changes.

Current law provides that any modification that involves the transfer of a hazardous waste facility installation and operation permit to a new owner or operator must be classified as a Class 3 modification. The bill instead specifies that any modification that involves the transfer of a hazardous waste facility installation and operation permit to a new owner or operator *for an off-site facility* must be classified as a Class 3 modification. The transfer of a hazardous waste facility installation and operation permit to a new owner or operator for a facility that is not an off-site facility must be classified as a Class 1 modification requiring prior approval of the Director. "Off-site facility" is generally defined under current law to mean a facility that is located off the premises where hazardous waste is generated or any such facility that is owned and operated by the generator of the waste and that exclusively disposes of hazardous waste generated at one or more premises owned by the generator.

With respect to permit modification applications for a transfer of a permit to a new owner or operator of a hazardous waste facility, current law requires the Director to make a determination regarding the transferee's compliance with specified federal law related to hazardous waste management, Ohio laws related to hazardous waste management, air pollution control, and water pollution control, and similar laws of other states. The Director must determine if the transferee demonstrates sufficient reliability, expertise, and competency to operate a hazardous waste facility in accordance with Ohio law. The bill repeals those provisions.

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.

eTECH COMMISSION (ETC)

- Transfers responsibility for developing a state education technology plan from the State Board of Education to the eTech Ohio Commission, requires the Commission to "implement" the plan and requires the State Board to assist in the development and modification of the plan at the request of the Commission.

- Requires the eTech Ohio Commission, with assistance from the Department of Education and in consultation with the Chancellor of the Board of Regents, to develop and implement a pilot project to provide at least two Advanced Placement and one foreign language interactive distance learning courses to district-operated high schools throughout the state.

- Requires the Superintendent of Public Instruction, the Chancellor, and the Commission, by December 31, 2010, to submit a formative evaluation and legislative recommendations regarding the pilot project to the Governor and the General Assembly.

Background

The eTech Ohio Commission is a state agency that provides financial and technical assistance to school districts, other educational entities, public television and radio stations, and radio reading services for the acquisition and use of educational technology and for the development of educational materials. The Commission consists

of 13 members, nine of whom are voting members and four of whom are nonvoting legislative members. The voting members include the Superintendent of Public Instruction (or a designee), the Chancellor of the Board of Regents (or a designee), and the state chief information officer (or a designee).

State education technology plan

(R.C. 3301.07 and 3353.09)

Under current law, the State Board of Education is responsible for developing "a state plan to encourage and promote the use of technological advancements in educational settings." The bill transfers that responsibility to the eTech Ohio Commission. Further, the bill changes the purpose of the plan to "creating an aligned education technology system that spans preschool to postsecondary education and that complies with federal mandates." Moreover, the bill requires the Commission to "implement" the plan.

The State Board must assist with the development and modification of the plan if the Commission requests it.

Interactive distance learning pilot project

The bill requires the eTech Ohio Commission to establish an interactive distance learning pilot project to provide at least three courses free of charge to school-district-operated high schools throughout the state. The bill first creates a permanent requirement for the Commission to establish the pilot project. It then modifies the permanent requirement with temporary uncodified provisions based on federal limitations on the funding used to finance the pilot project. The pilot project must begin offering courses for the 2009-2010 school year.

Permanent provision

(R.C. 3353.20(A) to (F))

The Commission must contract for the development of courses to be offered. However, the bill requires the Department of Education, in consultation with the Chancellor of the Board of Regents, to select the courses to be offered by the pilot project and to develop the standards for the curriculum of each course. Then, the Commission and the Department, jointly, and again in consultation with the Chancellor, must select the teachers who will be paid by the Commission.

The Commission is solely responsible to:

(1) Produce and broadcast the courses;

(2) Except as limited by the temporary provisions, provide funds for schools to purchase necessary video conferencing telecommunications equipment and connectivity devices;

(3) Except as limited by the temporary provisions, assist schools in arranging for the purchase and installation of telecommunications equipment and connectivity devices;

(4) Except as limited by the temporary provisions, pay for up to one school year, the cost of upgrading internet service for schools that currently have a connection that is capable of transmitting data at only 1.544 Mbits per second or slower;

(5) Offer training in the use of the telecommunications equipment necessary to participate in the pilot project; and

(6) Administer and oversee the operation of the pilot project.

Finally, the Commission, the Department, and the Chancellor, jointly, must notify schools about the pilot project and promote their participation in it.

The bill specifies that each school will determine how and where its students will participate in the courses, consistent with specifications for technology and connectivity required by the Commission. The grade for a student enrolled in a course will be assigned by the course teacher and transmitted to the student's high school.[170]

Temporary provisions

(Sections 281.10, 281.35, and 281.36)

The bill appropriates $2 million from General Revenue Fund to the Commission "to hire teachers to develop and teach the [distance learning] courses." Any amount of these funds remaining after paying for the development of the courses may be used by the Commission to assist non-Title I schools for purchasing video conferencing telecommunications equipment and to upgrade Internet service as provided under the permanent provision described above. However, since the amount available for this latter purpose likely will be very limited, the bill also specifies that, notwithstanding the permanent provision, no *non*-Title I school participating in the pilot project is entitled to those items. In other words, those schools may participate in the project using their own funds, but they might not receive any additional funding for equipment and Internet service.

[170] The bill does not specify the manner of transmitting a student's grade or whether the student's school must record that grade and award credit for the completed course.

Grants for Title I schools

The bill transfers to the Commission from the Department of Education $4.5 million of federal education technology funds each fiscal year of the biennium to provide competitive grants to Title I schools for their participation in the distance learning pilot project. The use of this federal technology funding, known as "EETT" or Enhancing Education Through Technology,[171] is limited to Title I schools.[172] Roughly one-half of a state's EETT funds must be paid to Title I schools according to the Title I formula. The other half may be paid for special projects, like the distance learning pilot project, but only to Title I schools and only on the basis of competitive grants.[173]

Thus, the bill specifies that the Commission must operate the distance learning pilot project (as paid for with federal EETT funds) as a competitive grant program, instead of the entitlement program as otherwise provided under the permanent provision described above. In doing so, the Commission must: (1) issue a request for proposals before or during the 2009-2010 school year, (2) limit the number of grants so that each grant recipient receives an amount sufficient to ensure full participation in the program, (3) solicit all Title I schools to participate in the program, (4) require 25% of any grant award be used for professional development, (5) contract for the development and offering of interactive distance learning courses, (6) require each Title I school submitting proposals to specify the amount, if any, needed to purchase video conferencing telecommunications equipment and upgraded Internet services, and (7) assist Title I schools in arranging for the purchase and installation of telecommunications equipment. Also, as permitted under federal law, the Commission may retain 5% of the appropriated federal funds to administer and oversee the program.[174] The bill also specifies that in developing, administering, and overseeing the pilot project, the Commission is not obligated for goods and services beyond the scope of the appropriation.

Priority for grants

The bill also establishes guidelines the Commission must use in awarding grants to Title I schools. Under these guidelines, the Commission must give priority to:

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[171] 20 U.S.C. 6751 *et seq*.

[172] "Title I" refers to a long-standing federal education program providing targeted funds to schools with relatively high concentrations of economically disadvantaged students. The funds generally are paid through the state Department of Education according to a federal formula.

[173] 20 U.S.C. 6762.

[174] 20 U.S.C. 6762(a)(1).

(1) School districts for which Advanced Placement or foreign language course offerings make up less than 1% of the district's total course offerings;

(2) Schools and school districts that without additional assistance lack the necessary connectivity or equipment to offer interactive distance learning courses;

(3) School districts that demonstrate that the course offerings will take place during the regular school day; and

(4) Schools and school districts that demonstrate commitment to "appropriately supporting distance learning offerings," including but not limited to:

(a) Enrolling a minimum number of students to participate in the distance learning classes;

(b) Committing the necessary personnel to facilitate and assist students with distance learning classes; and

(c) Committing the necessary personnel capable of operating distance learning equipment.

Evaluation of the Pilot Project

(R.C. 3353.20(G))

Finally, the bill requires the Superintendent of Public Instruction, the Chancellor, and the Commission, by December 31, 2010, to submit to the Governor and General Assembly a formative evaluation of the implementation and results of the interactive distance learning pilot project. They also must include in their report legislative recommendations for changes in the pilot project.

OFFICE OF THE GOVERNOR (GOV)

- Creates the Service Coordination Workgroup to develop procedures for coordinating services that certain state agencies provide to individuals under age 21 and their families.

- Requires the Workgroup, not later than July 31, 2009, to submit a report to the Governor with recommendations for implementing the procedures.

- 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.

- Establishes the Hemophilia Advisory Council to advise the Director of Health on issues related to hemophilia and related bleeding disorders.

- Creates the Sickle Cell Anemia Advisory Committee within the Department of Health to assist the Director of Health in fulfilling the Director's duties regarding sickle cell disease.

- 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 that may be charged for the following items or services provided by the State Office of Vital Statistics or a local board of health: (1) a certified copy of a vital record or certification of birth, (2) a search by the Office of Vital Statistics of its files and records pursuant to an information request, and (3) a copy of a record provided pursuant to an information request.

- Requires the Director of Health or a local board of health to transfer $4 of each minimum $12 fee collected to the State Office of Vital Statistics not later than 30 days after the end of each calendar quarter.

- 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 an asbestos hazard abatement contractor to notify the Department of Health at least ten business days (as opposed to ten days) before beginning 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.

- Revises the definition of "palliative care" used in the laws governing hospice care programs and specifies that nothing in the definition is to be interpreted as meaning that palliative care can be provided only as a component of a hospice care program.

- Increases to $600 (from $300) the maximum amount that the Public Health Council may establish as a license fee or license renewal fee for a hospice care program.

- Increases the application fee and annual renewal licensing and inspection fee for nursing homes and residential care facilities.

- Provides that a statement of neglect added to the Nurse Aide Registry regarding a nurse aide or other individual may be removed, and any accompanying information expunged, by the Director of Health if, in the judgment of the Director, the neglect was a singular occurrence and the employment and personal history of the nurse aide or other individual does not evidence abuse or any other incident of neglect of residents.

- Provides that the petition and the Director of Health's notice that the rescission has been granted are not subject to expungement but are not public records.

- Modifies the authority of the Director of Health to issue subpoenas regarding alleged abuse or neglect of a long-term care facility resident by permitting the Director to (1) issue subpoenas for "other evidence," (2) issue subpoenas for investigations, and (3) serve subpoenas by means of a representative of the Director.

- Prohibits the owner or manager of an adult care facility whose license has been revoked or denied renewal other than for nonpayment of fees from applying for another license until two years have elapsed, and permanently prohibits such a person from applying if the revocation or refusal was based on abuse, neglect, or exploitation of a resident.

- Eliminates temporary licenses for adult care facilities.

- Authorizes the Director of Health to waive any of the adult care facility licensing requirements established by rule, in place of the Director's authority to waive only those requirements pertaining to fire and safety requirements or building standards.

- Eliminates the requirement that proof of insurance be submitted with an application for an adult care facility license.

- Clarifies that an adult care facility is an adult family home or adult group home when supervision is provided to all residents, rather than to three or more residents.

- Increases the fine for operating an adult care facility without a license to $2,000 (from $500) on a first offense and $5,000 (from $1,000) for each subsequent offense, and similarly increases the fines for violating other adult care facility licensing laws.

- Provides that if an inspection is conducted to investigate an alleged violation in an adult care facility that serves residents receiving publicly funded mental health services or Residential State Supplement Program payments, the inspection (1) must be coordinated with the appropriate mental health agency, board of alcohol, drug addiction, and mental health services (ADAMHS board), or PASSPORT administrative agency, and (2) may be conducted jointly with the appropriate entity.

- Eliminates a requirement that the Director prescribe how a violation 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 unless the appropriate ADAMHS board is notified and the facility and the ADAMHS board have entered into a mental health resident program participation agreement.

- Requires the Director of Mental Health to approve a standardized form for mental health resident program participation agreements and, as part of approving the form, to specify the requirements that an adult care facility must meet under the agreement.

- Modifies the Public Health Council's rulemaking authority regarding procedures to be followed by an adult care facility when individuals with mental illness or severe mental disability are referred to the facility.

- Provides that in an emergency, an adult care facility is not required to provide a resident with advance notice of a proposed transfer or discharge.

- Expands the circumstances under which an employee of an ADAMHS board or mental health agency must be permitted to enter an adult care facility that has a resident who is receiving mental health services.

- Adds to the circumstances under which employees of state or local government, ADAMHS boards, mental health agencies, or PASSPORT agencies are prohibited from placing an individual in an adult care facility.

- Specifies that individuals providing skilled nursing care in adult care facilities must be appropriately licensed.

- Requires each adult care facility to post within the facility the telephone number maintained by the Department of Health for accepting complaints.

- Repeals all laws governing community alternative homes.

- Modifies the accreditation requirements for operation of a hospital by requiring the hospital 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 every hospital 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.

- Requires the Department of Health to establish a Disease and Cancer Commission to study the prevalence of colorectal cancer, prostate cancer, triple negative breast cancer, and sickle cell anemia in Ohio and requires the Commission to submit a report not later than June 30, 2011.

- 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.

- Authorizes the Ohio Department of Health to form a nonprofit corporation to raise money to aid the Department in reducing tobacco use.

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 reviewed by the review board in the previous calendar year. The bill also requires the board to specify the number of child deaths that were not reviewed 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.[175] Current law 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.

Hemophilia Advisory Council

(R.C. 3701.0211)

Council responsibilities

The bill establishes the Hemophilia Advisory Council in the Department of Health and requires the Council to advise the Director of Health on all of the following:

[175] A mill is 1/10 of one cent.

(1) Reviewing the effect of changes to existing programs and policies for persons with hemophilia and related bleeding disorders;

(2) Developing standards of care and treatment for persons with hemophilia and related bleeding disorders;

(3) Developing programs of care and treatment for persons with hemophilia and related bleeding disorders, including self-administration of medication, home care, medical and dental procedures, and techniques designed to provide maximum control over bleeding episodes;

(4) Reviewing data and making recommendations regarding the ability of persons with hemophilia and related bleeding disorders to obtain appropriate health insurance coverage and access to appropriate care;

(5) Coordinating with other state agencies and private organizations to develop community-based initiatives to increase awareness of hemophilia and related bleeding disorders.

The Council is to submit to the Governor and General Assembly an annual report with recommendations on increasing access to care and treatment and obtaining appropriate health insurance coverage for persons with hemophilia and related bleeding disorders.

Council membership

The Council is to consist of three nonvoting members and 11 voting members. The nonvoting members are (1) the Director of Health or the Director's designee, (2) the Superintendent of Insurance or the Superintendent's designee, and (3) a representative of the Department of Job and Family Services.

The voting members are to be appointed by the Governor with the advice and consent of the Senate. Not more than six may be of the same political party. The members must be appointed as follows:

(1) Two physicians currently treating patients with hemophilia or related bleeding disorders, one of whom specializes in pediatrics and one of whom specializes in the treatment of adults;

(2) A nurse currently treating patients with hemophilia or related bleeding disorders;

(3) A social worker currently treating patients with hemophilia or related bleeding disorders;

(4) A representative of a federally funded hemophilia treatment center;

(5) A representative of a health insuring corporation or sickness and accident insurer;

(6) A representative of an Ohio chapter of the National Hemophilia Foundation that serves the community of persons with hemophilia and related bleeding disorders;

(7) An adult with hemophilia or caregiver of an adult with hemophilia;

(8) A caregiver of a minor with hemophilia;

(9) A person with a bleeding disorder other than hemophilia or caregiver of a person with a bleeding disorder other than hemophilia;

(10) A person with hemophilia who is a member of the Amish sect or a health professional currently treating such persons.

Appointments are to be made not later than 90 days after the provision's effective date. Except for the initial members, who are to be appointed for staggered terms of office of two, three, or four years, the terms of appointed members are two years. The Council's voting members are to select a chairperson. Members of the Council are to serve without compensation, but are permitted to be reimbursed for actual and necessary expenses incurred in the performance of the Council's duties.

Sickle Cell Anemia Advisory Committee

(R.C. 3701.136(A) and 3701.131 (not in the bill))

The bill creates the Sickle Cell Anemia Advisory Committee within the Department of Health to assist the Director of Health in fulfilling the Director's duties regarding sickle cell disease. The Director's duties include:

- Encouraging and assisting in the development of programs of education and research pertaining to the causes, detection, and treatment of sickle cell disease and providing for rehabilitation and counseling of persons possessing the trait of or afflicted with this disease;

- Advising, consulting, cooperating with, and assisting, by contract or otherwise, agencies in Ohio and the federal government, agencies of the governments of other states, agencies of political subdivisions of this state, and private organizations, corporations, and associations in the development and promotion of programs pertaining to the causes,

detection, and treatment of sickle cell disease and rehabilitation and counseling of persons possessing the trait of or afflicted with this disease;

- Accepting and administering grants from the federal government or other sources, public or private, for carrying out any of the functions described above;

- Submitting a written report annually to the General Assembly on or before August 21 outlining the receipt and disbursement of funds and the implementation and progress of various programs undertaken regarding sickle cell disease during the preceding fiscal year.

Committee membership

(R.C. 3701.136(B) and (C))

The bill requires the Director to appoint five members to the Committee who are familiar with sickle cell anemia, including researchers, health care professionals, and persons personally affected by sickle cell anemia. Members of the Committee are to serve without compensation, but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.

The Director must make initial appointments to the Committee no later than 90 days after the effective date of the bill. After initial appointments for staggered terms of one, two, and three years, terms of office will be three years. Members may be reappointed and vacancies are to be filled in the same manner as original appointments.

The Committee must annually select from among its members a chairperson. The Committee is to meet at the call of the chairperson, but not less than twice each year. A majority of the members of the Committee constitutes a quorum.

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 must appoint as a member a representative of a board of health of a city or general health district or an authority having those duties.

The Governor may appoint one of 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.[176] 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 agreements that define the financial responsibility of each agency for paying for early intervention services and procedures for resolving disputes;[177]

(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

[176] 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)).

[177] The bill designates the Department of Health as the "lead agency" for the purposes of this federal law.

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 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;[178]

(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.

(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 April 30 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 third year of the review period. The second phase is to be limited to acceptance and review of applications for redistribution of beds made available as described below.

[178] 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.)

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 third year of the review period.

If the Director decides to redistribute the additional beds that were taken out of service, the Director may publish on the Department's web site the remaining bed need for counties that will be considered for redistribution of the additional beds. The director must base the determination of whether to include a county on 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'[179] 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 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.

[179] CMS is part of the United State Department of Health and Human Services, the federal agency that administers Medicare and Medicaid.

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.[180]

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 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.

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[180] 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.

Vital statistics fees

(R.C. 3705.24 and 3709.09)

Current law requires the Public Health Council to adopt rules prescribing the fees that the Director of Health must charge for various items and services provided by the State Office of Vital Statistics, including fees for certified copies of vital records and certifications of birth, searches by the Office of its files and records pursuant to information requests, and copies of records provided pursuant to information requests. The fees the Director of Health must charge for these items and services, however, cannot be less than $7.[181] Current law also prohibits a board of health of a city or general health district (a "local board of health") from charging a fee for a certified copy of a vital record or a certification of birth that is less than the fee prescribed by the Public Health Council for these items; consequently the fee a local board of health must charge for a certified copy of vital record or certification of birth also cannot be less than $7. In general, money generated by these fees must be paid into the state treasury to the credit of the Department of Health's General Operations Fund.

The bill increases to $12 (from $7) the minimum fee the Director of Health or a local board of health must charge for a certified copy of a vital record or certification of birth, a search by the Office of Vital Statistics of its files and records pursuant to an information request, or a copy of a record provided by the office pursuant to an information request. The bill also requires the Director of Health or a local board of health to transfer $4 of each minimum $12 fee collected to the State Office of Vital Statistics not later than 30 days after the end of each calendar quarter.

Fees for board of health services

(R.C. 3709.09, 3709.092, 3701.344, 3717.07, 3717.23, 3717.25, 3717.43, 3717.45, 3718.06, 3729.07, 3733.04, 3733.25, and 3749.04)

Background

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

[181] 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).

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;[182] 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 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.

[182] The household sewage treatment system installation permit requirement is suspended by H.B. 119 of the 127th G.A until July 1, 2009.

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.[183] 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.[184]

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 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)

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[183] R.C. 731.17 to 731.21.

[184] The effect of this change on the establishment of fees is not clear.

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.[185] 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;

(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:

[185] The transmission schedule for extra amounts imposed on the fees for maternity home inspections and tattooing licenses is not included in the bill.

(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").

Notice to Department of Health

Under existing law, after obtaining or renewing a license, an asbestos hazard abatement contractor must notify the Department of Health at least ten days before beginning each asbestos hazard abatement project conducted during the term of the contractor's license. The bill requires this notice to be given at least ten *business* days before beginning the project.

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[186] or an asbestos hazard abatement contractor's license.[187] 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.

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[186] 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.

[187] 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 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.

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.

Palliative care

(R.C. 3712.01)

Under current law, any person or public agency seeking to provide a hospice care program is required to be licensed by the Department of Health. One of the services that may be provided by a hospice care program is short-term inpatient care, including palliative care. Current law defines "palliative care" as treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of a hospice patient and the hospice patient's family as they experience the stress of the dying process rather than treatment aimed at investigation and intervention for the purpose of cure or prolongation of life.

The bill redefines "palliative care" as treatment for a patient with a serious or life-threatening illness directed at controlling pain, relieving other symptoms, and enhancing the quality of life of the patient and the patient's family rather than treatment for the purpose of cure. Although the bill's definition no longer refers to palliative care as care that is provided to a hospice patient, the term continues to be used in the context of hospice patients.

The bill specifies that nothing in the statutory definitions established for the laws governing hospice care programs is to be interpreted to mean that palliative care can be provided only as a component of a hospice care program.[188]

Nursing home and residential care facility licensing fees

(R.C. 3721.02)

The Director of Health is responsible for licensing nursing homes[189] and residential care facilities.[190] The Director must inspect a home or facility at least once

[188] The effect of this provision is unclear, since it is not apparent how the statutory definitions established for hospice care programs limit other health care providers from engaging in palliative care if they are authorized to do so under other provisions of the Revised Code.

[189] 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)).

[190] 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)

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;

(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. For purposes of a hearing on an allegation of abuse or neglect, the Director may issue subpoenas compelling the attendance of witnesses or production of documents. Any subpoenas are required to be served in the same manner as those issued for a trial of a civil action in a court of common pleas.

If the Director finds that a nurse aide or other individual has neglected or abused a resident, the Director is to include in the Nurse Aide Registry a statement detailing the findings pertaining to the nurse aide or other individual. The nurse aide or other individual is permitted to include a statement disputing the Director's finding and have the statement included in the Registry along with the Director's findings.

Removal of name from registry

Federal law requires that a finding of neglect be removed from a nurse aid registry if the neglect was a singular occurrence and the employment and personal history of the nurse aide or individual does not reflect a pattern of abusive behavior or

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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)).

neglect.[191] 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.

Subpoenas issued by Director

The bill modifies the Director's authority to issue subpoenas regarding allegations of abuse or neglect. Under the bill, in addition to issuing subpoenas to compel the attendance of witnesses and production of documents during a hearing, the Director may also issue subpoenas to compel the production of "other evidence." The bill permits the Director to issue subpoenas for purposes of investigating an allegation. The bill provides that subpoenas issued by the Director may be served by a representative of the Director, as well as in the manner subpoenas are served in a civil action.

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.[192]

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[191] 42 U.S.C. 1395i-3(g)(1)(D).

[192] Revised Code § 3722.01(A)(6).)

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. If the facility will admit persons referred by or receiving services from a board of alcohol, drug addiction, and mental health services (ADAMHS board) or a mental health agency under contract with an ADAMHS board, the facility must also submit a statement regarding the total number of beds anticipated to be occupied as a result of those admissions.

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 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[193] and an adult

[193] "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).)

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,[194] 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.

"Waiver of licensing requirements"

(R.C. 3722.04(D))

Current law authorizes the Director of Health, on written request of a facility, to waive any of the adult care facility licensing requirements established by rule pertaining to fire and safety requirements or building standards. A waiver may be granted if the Director determines that strict application of the licensing requirement would cause undue hardship to the facility and that granting the waiver would not jeopardize the health or safety of any facility resident.

The bill authorizes the Director, on written request of a facility, to waive any of the adult care facility licensing requirements established by rule, in place of the Director's existing authority to waive only those requirements established by rule pertaining to fire and safety requirements or building standards.

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[194] "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).)

Restrictions on facility placement

(R.C. 3722.10, 3722.16, 3722.18, and 5119.613)

Placement of residents requiring mental health services

The bill prohibits an adult care facility from admitting a resident requiring publicly funded mental health services unless both of the following conditions are met: (1) the ADAMHS board serving the ADAMHS district in which the facility is located is notified and (2) the facility and the ADAMHS board have entered into a mental health resident program participation agreement.[195]

The Director of Mental Health is required to approve a standardized form to be used by adult care facilities and ADAMHS boards when entering into mental health resident program participation agreements. As part of approving the form, the Director is required to specify the requirements that facilities must meet to admit residents who are receiving or are eligible for publicly funded mental health services.

Under current law, before an adult care facility admits a prospective resident with mental illness or severe mental disability, the facility owner or manager is subject to both of the following: (1) if the prospective resident is referred to the facility by a mental health agency or ADAMHS board, the owner or manager must follow procedures established in rules adopted by the Public Health Council, and (2) if the prospective resident is not referred by a mental health agency or ADAMHS board, the owner or manager must offer to assist the prospective resident in obtaining appropriate mental health services and document the offer of assistance. The Council's rules may provide for any of the following: (1) that the facility owner or manager sign written agreements with the mental health agencies and ADAMHS boards that refer prospective residents to the facility, (2) that the facility owner or manager and the mental health agencies and ADAMHS boards that refer prospective residents to the facility develop and sign a plan for services for each resident referred, and (3) any other process regarding referrals and arrangements for ongoing mental health services.

The bill modifies the Public Health Council's rulemaking authority regarding the procedures described above by providing for any of the following: (1) that the facility owner or manager and the appropriate ADAMHS board sign a mental health resident program participation agreement, (2) that the facility owner or manager comply with

[195] A "mental health resident program participation agreement" means a written agreement between an adult care facility and the ADAMHS board serving the alcohol, drug addiction, and mental health service district in which the facility is located, under which the facility is authorized to admit residents who are receiving or are eligible for publicly funded mental health services. (R.C. 3722.01(A)(15).)

the requirements of its mental health resident program participation agreement, (3) that the facility owner or manager and the mental health agencies and ADAMHS boards develop and sign a mental health plan for ongoing mental health services for each prospective resident, and (4) any other process established by the Council in consultation with the Director of Health and Director of Mental Health regarding referrals and arrangements for ongoing mental health services for prospective residents with mental illness.

Placement of residents by public entities and related agencies

An employee of state or local government, an ADAMHS board, a mental health agency, and a PASSPORT agency is prohibited by the bill from placing or recommending placement of a person in a facility if the employee knows any of the following: (1) that the placement would cause the facility to exceed licensed capacity, (2) that an enforcement action initiated by the Director of Health is pending and may result in the revocation of or refusal to renew the facility's license, or (3) that the potential resident is receiving or is eligible for publicly funded mental health services and the facility has not entered into a mental health resident program participation agreement with the ADAMHS board.

Inspection of adult care facilities

(R.C. 3722.04(C))

During each licensing period, current law requires the Director of Health to make at least one unannounced inspection of an adult care facility[196] and may make additional unannounced inspections as necessary. The bill provides for the following if an inspection is conducted to investigate an alleged violation in an adult care facility that serves residents receiving publicly funded mental health services or Residential State Supplement Program[197] payments: (1) the inspection is to be coordinated with the appropriate mental health agency, ADAMHS board, or PASSPORT[198] administrative agency and (2) the inspection may be conducted jointly with the mental health agency, ADAMHS board, or PASSPORT administrative agency.

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[196] 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).)

[197] The Residential State Supplement (RSS) Program provides a cash supplement to payments provided to eligible aged, blind, or disabled adults under the Supplemental Security Income (SSI) program.

[198] 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.

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.

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. The bill increases the fines for violations of the other licensing laws to $500 for a first offense and to $1,000 for a subsequent offense. These fines are applied to the bill's new prohibitions, as well as current prohibitions that are not expressly subject to a fine.

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, and an inspector discovered the violation by an examination of facility records.

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 the following reasons for such a transfer or discharge: (a) that the resident is relocated as the result of a court order concerning a facility that is operating without a license, and (b) the resident is receiving publicly funded mental health services and the facility's mental health resident program participation agreement is terminated by the facility or the ADAMHS board.

In most cases, a facility must give a resident 30 days advance notice of a proposed transfer or discharge. Advance notice is not required if an emergency exists and the transfer or discharge is based on reason (4) 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:

(1) Employees of a mental health agency, when (a) the agency is acting as an agent of an ADAMHS board other than the board with which it is under contract and

(b) there is a mental health resident program participation agreement between the facility and the ADAMHS board with which it is under contract;

(2) Employees of an ADAMHS board, when (a) a resident of the facility is receiving mental health services provided by another board or a mental health agency under contract with another board and (b) there is a mental health resident program participation agreement between the facility and that ADAMHS board.

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 long-term care ombudsperson program and of the Department of Health's central and district offices. The bill eliminates the requirement that each adult care facility post within the facility the addresses and telephone numbers of the Department's central and district offices and instead requires each facility to post the Department's telephone number for accepting complaints.

Technical changes

The 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[199]

[199] 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*

or the American Osteopathic Association.[200] The Director of Health must adopt, and may amend or rescind, rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) establishing procedures under which hospitals must provide the Department of Health in a timely fashion with proof of the required certification or accreditation and under which the Department must institute proceedings to close a hospital that violates the prohibition. 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[201] 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 specifies that the

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Commission (last visited Feb. 4, 2009), available at <http://www.jointcommission.org/AboutUs/Fact_Sheets/joint_commission_facts.htm>.

[200] 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>.

[201] The Centers for Medicare and Medicaid is part of the U.S. Department of Health and Human Services.

standards are for every hospital and every unit described above. 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.

Disease and Cancer Commission

(Section 289.30)

The bill establishes in the Department of Health the Disease and Cancer Commission. The Commission is required to be composed of representatives of local boards of health in areas that the Director of Health determines have a high prevalence of colorectal cancer, prostate cancer, triple negative breast cancer, or sickle cell anemia. The Commission is required to study colorectal cancer, prostate cancer, triple negative breast cancer, and sickle cell anemia in the state and submit, no later than June 30, 2011, a report to the Governor, Speaker and Minority Leader of the House of Representatives, and President and Minority Leader of the Senate. The report is required to include policy recommendations to combat the prevalence of such diseases. On submission of the report, the Commission ceases to exist.

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 Health tobacco use reduction plans

(R.C. 3701.84)

Under current law, the Department of Health is authorized to prepare a plan to reduce tobacco use by Ohioans, with emphasis on reducing the use of tobacco by youth, minority and regional populations, pregnant women, and others. The bill authorizes the Department to form a nonprofit corporation for the purpose of raising money to aid the Department with such plan.

DEPARTMENT OF INSURANCE (INS)

- Requires that all health care plans offered in the state that provide coverage for unmarried dependent children extend coverage at the request of the insured, under certain conditions, until the dependent child reaches at least 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.

- Prohibits health insurers from excluding coverage for specified autism services for individuals diagnosed with an autism spectrum disorder.

- Requires the Director of Mental Retardation and Developmental Disabilities to convene a committee on the coverage of autism spectrum disorders to investigate and recommend additional treatments or therapies for autism spectrum disorders to be covered by health insurers.

- 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.

- Makes permanent the changes made by H.B. 2 of the 128th General Assembly (Transportation budget act) to the law regarding continuation of group health insurance coverage after termination of employment.

- 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 advise the Governor, General Assembly, public and private entities, and consumers on strategies to expand affordable health insurance coverage to more individuals and improve the cost and quality of Ohio's health insurance system and health care system.

- 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.

- Requires property and casualty insurance companies to annually submit to the Superintendent of Insurance specified actuarial documents.

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; Section 803.10)

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 once an unmarried child has attained the limiting age for dependent children, as provided in the policy or plan, upon the request of the subscriber, the insurer must offer to cover the unmarried child until the child's 29th birthday if all of the following are true: (1) 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. The bill's requirements apply only to policies and plans delivered, issued for delivery, or renewed on or after July 1, 2010.

Exceptions

(R.C. 1751.14, 3923.24, and 3923.241)

The bill specifies that it does not require insurers to offer dependent coverage in general and its requirements do not extend to dependents of dependents. Additionally, the bill specifically does not require an employer to offer coverage to the dependents of any employee or to pay for any part of the premium for a dependent child that has already attained the normal limiting age for dependents that is specified in the policy or plan. The bill's requirements would not apply to specified supplemental health care services or specialty health care services.

Deduction for coverage for older children

(R.C. 5747.01(A)(11))

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.[202] 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 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.[203]

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

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[202] Internal Revenue Code section 106, 26 U.S.C. 106.

[203] Coverage offered by a former employer--e.g., through a retirement plan--is treated as employer-subsidized coverage.

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), 1751.68(A), 3923.24(A), 3923.241(A), and 3923.84(A))

The bill exempts its provisions that require certain coverages for dependents and autism services (see "**Coverage for autism services**" below) 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.

Definition of "health benefit plan"

(R.C. 1751.14(F), 3923.24(G), and 3923.241(F))

This bill affects the limiting age for dependents' coverage only if 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.

Coverage for autism services

(R.C. 1739.05, 1751.68, and 3923.84; Section 803.12)

The bill prohibits policies, contracts, agreements, and plans of health insuring corporations, sickness and accident insurers, public employee benefit plans, and multiple employer welfare arrangements from excluding coverage for the screening and diagnosis of autism spectrum disorders of for any of the following services for individuals already diagnosed with an autism spectrum disorder: habilitative or rehabilitative care, psychological care, therapeutic care, and counseling services. Additionally, at the recommendation of the Committee on the Coverage of Autism Spectrum Disorders (see "**The Committee on the Coverage Autism Spectrum Disorders**" below), the Director of Mental Retardation and Developmental Disabilities (hereafter, MRDD) may adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to include other treatments or therapies for autism spectrum disorders that policies, contracts, agreements, and plans would be required to cover. The bill also prohibits those policies, contracts, agreements, and plans from excluding coverage for pharmacy care if the policy, contract, agreement, or plan provides coverage for other prescription drug services. The bill's autism coverage requirements apply only to policies, contracts, agreements, or plans delivered, issued for delivery, or renewed six months after the bill's effective date.

The above services, however, must be medically necessary and prescribed, provided, or ordered by a health care professional licensed or certified in Ohio to prescribe, provide, or order those services. Additionally, the services must be delineated in a treatment plan developed by the attending physician. Under the bill, "medically necessary" means

> the service is based upon evidence; is prescribed, provided, or ordered by a health care professional licensed or certified under the laws of this state to prescribe, provide, or order autism-related services in accordance with accepted standards of practice; and will or is reasonably expected to do any of the following: (a) Prevent the onset of an illness,

condition, injury, or disability; (b) Reduce or ameliorate the physical, mental or developmental effects of an illness, condition, injury, or disability; (c) Assist in achieving or maintaining maximum functional capacity for performing daily activities, taking into account both the functional capacity of the individual and the appropriate functional capacities of individuals of the same age.

The bill specifies that its coverage requirements may not be construed as limiting benefits otherwise available under an individual's policy, contract, agreement, or plan and may not be subject to limits on the number or duration of visits that an individual makes to an autism service provider except as delineated in the treatment plan if the services are medically necessary. However, the bill's requirements may be subject to any copayment, deductible, and coinsurance provisions of the policy, contract, agreement, or plan to the extent that other medical services covered by the policy, contract, agreement, or plan are subject to those requirements, and the coverage may be subject to a yearly maximum limitation of $36,000 on claims paid for these covered services.

Under the bill, an insurer may request a review of any treatment provided under the bill's requirements not more than once every six months unless the insured's licensed physician or licensed psychologist agrees that more frequent review is necessary, except the review limitation does not apply to inpatient services. The insurer must pay for any review it requests. Additionally, if requested by an insurer, the bill requires a provider to give the insurer an annual treatment plan.

Exception for supplemental policies

(R.C. 1751.68(A) and 3923.84(G))

The bill's requirement for coverage of autism services does not apply to health insuring corporation policies, contracts, or agreements that do not cover basic health care services[204] (i.e. supplemental policies) or to any policy of sickness and accident insurance that provides coverage for specific diseases or accidents only, or to any

[204] Under section 1751.01 of the Revised Code, "basic health care services" means the following services when medically necessary: (1) physician's services, except when such services are supplemental, (2) inpatient hospital services, (3) outpatient medical services, (4) emergency health services, (5) urgent care services, (6) diagnostic laboratory services and diagnostic and therapeutic radiologic services, (7) diagnostic and treatment services, other than prescription drug services, for biologically based mental illnesses, (8) preventive health care services, including, but not limited to, voluntary family planning services, infertility services, periodic physical examinations, prenatal obstetrical care, and well child care, (9) routine patient care for patients enrolled in an eligible cancer clinical trial.

hospital indemnity, medicare supplement, medicare, tricare, long-term care, disability income, one-time limited duration policy of not longer than six months, or other policy that offers only supplemental benefits.

Opt out provision

(R.C. 1751.68(G) and 3923.84(H))

Under the bill, an insurer is not required to provide the coverage required by the bill if all of the conditions are met:

(1) The insurer submits documentation certified by an independent member of the American Academy of Actuaries to the Superintendent of Insurance showing that incurred claims for the coverage required under the bill for a period of at least six months independently caused the insurer's costs for claims and administrative expenses for the coverage of all other covered services to increase by more than 1% per year.

(2) The insurer submits a signed letter from an independent member of the American Academy of Actuaries to the Superintendent of Insurance opining that the increase in costs could reasonably justify an increase of more than 1% in the annual premiums or rates charged by the insurer for the coverage of all covered services.

(3) The Superintendent of Insurance determines, from the documentation and opinions submitted, that the incurred claims for the coverage required under this bill for a period of at least six months independently caused the insurer's costs for claims and administrative expenses for the coverage of all covered services to increase by more than 1% per year, that the increase in costs reasonably justifies an increase of more than 1% in the annual premiums or rates charged by the insurer for the coverage of basic health care services for health insuring corporations or all covered services for sickness and accident insurers and public employee benefit plans.

Any such determination made by the Superintendent of Insurance is subject to the Administrative Procedure Act (R.C. Chapter 119.).

Effect on existing programs

(R.C. 1751.68(F) and 3923.84(F))

The bill specifies that its requirements should not be construed as affecting any obligation to provide services to an individual under any of the following: (1) an Individualized Family Service Plan developed under federal law (20 U.S.C. 1436) including Ohio's Help Me Grow program, (2) an individualized service plan established by a county Board of Mental Retardation and Developmental Disabilities for adults for the prevention, correction, or discontinuance of abuse or neglect or of a condition

resulting from abuse or neglect for any adult who has been determined to need the services and consents to receive them (R.C. 5126.31, not in the bill), (3) the duty of a public school to provide a child with a disability with a free appropriate public education under Ohio law (R.C. Chapter 3323.) and the federal Individuals with Disabilities Education Improvement Act of 2004 (20 U.S.C. 1400 *et seq*.).

The Committee on the Coverage of Autism Spectrum Disorders

(R.C. 3923.84(I))

The bill requires the Director of MRDD to convene a committee on the coverage of autism spectrum disorders as an independent commission in the Department of Health. The committee must investigate and recommend to the Director of MRDD treatments or therapies for autism spectrum disorders that the committee believes should be included in the services that health insuring corporations, sickness and accident insurers, and public employee benefit plans, and multiple employer welfare arrangements are required to cover under the bill and the qualifications of the providers of those treatments or therapies.

The bill requires that the nine members of the committee appointed by the Director of MRDD include the Director of MRDD, the Director of Health, at least one licensed physician, licensed psychologist, and parent of an individual diagnosed with an autism spectrum disorder. Under the bill, the committee serves at the pleasure of the Director of MRDD.

Definitions related to coverage of autism services

(R.C. 1751.68(H) and 3923.84(J))

The bill defines the following terms:

(1) "Autism services provider" means any person whose professional scope of practice allows treatment of autism spectrum disorders, whose services are delineated in the treatment plan, and of whom one of the following is true: (a) the person is licensed, certified, or registered by an appropriate agency of this state to perform the services assigned to the person in the treatment plan, (b) the person is directly supervised by an individual who is licensed, certified, or registered by an appropriate agency of this state to perform the services assigned to the person in the treatment plan.

(2) "Autism spectrum disorder" means any of the pervasive developmental disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association, or if that manual is no longer published, a similar diagnostic manual. Autism spectrum

disorders includes, but is not limited to, autistic disorder, Asperger's disorder, Rett's disorder, childhood disintegrative disorder, and pervasive developmental disorder.

(3) "Diagnosis of autism spectrum disorders" means medically necessary assessments, evaluations, or tests, including but not limited to genetic and psychological tests to determine whether an individual has an autism spectrum disorder.

(4) "Habilitative or rehabilitative care" means professional, counseling, and guidance services and treatment programs, including applied behavior analysis, that are necessary to develop, maintain, or restore the functioning of an individual to the maximum extent practicable.

(5) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences to produce socially significant improvement in human behavior, including, but not limited to, the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(6) "Pharmacy care" means prescribed medications and any medically necessary health-related services used to determine the need or effectiveness of the medications.

(7) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices psychiatry.

(8) "Psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices psychology.

(9) "Therapeutic care" means services, communication devices, or other adaptive devices or equipment provided by a licensed speech-language pathologist, licensed occupational therapist, or licensed physical therapist.

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 and requires the Superintendent to conduct an actuarial analysis of the cost impacts of any change to the plans the Superintendent proposes to make prior to adopting any rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

Continuation of group health insurance coverage

(Section 105.10)

Am. Sub. H.B. 2 of the 128th General Assembly makes the following changes to the law regarding continuation of group health insurance coverage after termination of employment:

(1) The act lengthens the time that the employee would be eligible for continued coverage from six months to twelve months.

(2) The act also eliminates the requirement that an individual be eligible for unemployment compensation in order to be eligible for continued coverage under the individual's group contract after termination of employment and requires only that the individual's employment has not been terminated voluntarily or as a result of any gross misconduct on the part of the individual.

(3) Removes prescription drug benefits from a list that specifies coverages that the continuation of coverage is not required to include.

(4) The act requires employees to notify the health insuring corporation or insurer if the employee elects continuing coverage and allows the health insuring corporation or insurer to require the employer to provide documentation if the employee elects continuation of coverage and is seeking premium assistance for the continuation of coverage under the American Recovery and Reinvestment Act of 2009. The "Director of Insurance" (presumably, this refers to the Superintendent of Insurance) must publish guidance for employers and health insuring corporations concerning the contents of that documentation.

However, Am. Sub. H.B. 2 also specified that its changes to this law automatically repeal on January 1, 2010, thereby reverting the law to the set of requirements that existed prior to the act's enactment. This bill, however, removes the automatic repeal, thereby making the changes enacted in Am. Sub. H.B. 2 permanent.

Independent, external reviews of health care coverage decisions

(R.C. 1751.831, 1751.84, 1751.85, 3923.66, 3923.67, 3923.68, 3923.75, 3923.76, and 3923.77)

Under continuing law, health insuring corporations, sickness and accident insurers (insurers), and public employee benefit plans (plans) must provide for external reviews of certain health care coverage decisions made by those entities.

External reviews at the request of the insured person

If a health care coverage decision denies, reduces, or terminates coverage for a particular service on the basis that the service is not medically necessary, continuing law requires the health insuring corporation, insurer, or plan that makes that decision to afford the insured person who has been denied coverage an opportunity for an external review upon that person's request. The same is required if a decision denies, reduces, or terminates coverage for a drug, device, procedure, or other therapy for a terminal condition on the basis that the therapy is experimental or investigatory.

Under current law, a health insuring corporation can deny an insured person's request for an external review if the request is not made within 60 days after the insured person receives notification of the results of the health insuring corporation's internal review (the internal review is required under continuing law after the initial denial of coverage and upon the insured person's request). Insurers and plans are not afforded this same authority under current law. The bill increases the time during which an insured person can request an external review of a health insuring corporation's adverse decision, from 60 days to 180 days. The bill also gives insurers and plans the

authority to deny an insured person's request for an external review of an adverse decision if the request is not made within 180 days after the insured person receives notice from the insurer or plan of the adverse decision.

Automatic external reviews

If a health insuring corporation, insurer, or plan denies, reduces, or terminates coverage for a particular service on the basis that the service is not one that is covered under the insurance contract, policy, or plan, continuing law allows an insured person, or a person authorized to act on behalf of the insured person, to request a review by the Superintendent of Insurance. Upon receiving the request, the Superintendent must consider the denial and determine whether the health care service is a service covered under the terms of the contract, policy, or plan. The Superintendent does not have to make a determination, however, if doing so requires resolution of a medical issue.

Under 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. As is the case with all other external reviews, a health insuring corporation can deny an enrollee's request for this type of 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 person's request for this type of

external review if the request is not made within 60 days after the insured person received notice of the Superintendent's decision.

The bill requires the health insuring corporation, insurer, or plan to initiate an independent, external review automatically, without a request from the insured person, upon receiving notification from the Superintendent that a determination cannot be made as to whether the service is a covered service under the contract, policy, or plan because that determination requires the resolution of a medical issue. Accordingly, the bill removes any language that references an insurer's or plan's authority to deny this type of external review request on the basis that the insured person failed to make the request within a certain time period (there is no language in current law that references this authority as it relates to health insuring corporations).

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,[205] a health insuring corporation must file with the Superintendent the contractual periodic prepayment information for the group policy. The Superintendent may reject the filing at any time, with at least 30 days' written notice to a health insuring corporation, if the contractual periodic prepayment is not in accordance with sound actuarial principles or is not reasonably related to the applicable coverage and characteristics of the applicable class of enrollees. (R.C. 1751.12, not in the 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.

[205] 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).

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 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:

(a) Two representatives of consumers of health care services;

(b) Two representatives of employers that provide health care coverage to their employees;

(c) Two representatives of medical facilities, at least one of whom is a representative of a research and academic medical center;

(d) Two physicians;

(e) Two individuals or representatives of individuals authorized to practice dentistry, optometry, podiatry, or chiropractic;

(f) Two representatives of sickness and accident insurers or health insuring corporations;

(g) Two representatives of organized labor;

(h) One representative of a nonprofit organization experienced in health care data collection and analysis;

(i) One individual with expertise in health information technology and exchange;

(j) One representative of a state retirement system;[206]

(k) One public health professional.

(9) Other members to be appointed by the Superintendent of Insurance.

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[206] 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).

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.[207] The initial members appointed by the Governor and the Superintendent of Insurance are to serve staggered terms of one, two, or three years, as selected by the Governor or Superintendent when making appointments to the Council. Thereafter, all appointed members are to serve terms of three years.

The Superintendent of Insurance or the Superintendent's designee is to serve as chairperson of the Council. Members are to serve without compensation, but may 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;

(2) Monitor and evaluate implementation of strategies for improving access to health insurance coverage and improving the quality of Ohio's health care system, identify barriers to implementing those strategies, and identify methods for overcoming the barriers;

(3) Catalog existing health care data reporting efforts and make recommendations to improve data reporting in a manner that increases transparency and consistency in the health care and insurance coverage systems;

(4) Study health care financing alternatives that will increase access to health insurance coverage, promote disease prevention and injury prevention, contain costs, and improve quality;

(5) Evaluate systems that individuals use to obtain or otherwise become connected with health insurance and recommend improvements to those systems or the use of alternative systems;

(6) Recommend minimum coverage standards for basic and standard health insurance plans offered by insurance carriers;

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[207] Legislative members cease to be Council members on ceasing to be members of the General Assembly.

(7) Recommend strategies, such as subsidies, to assist individuals in being able to afford health insurance coverage;

(8) Recommend strategies to implement health information technology to support improved access and quality and reduced costs in Ohio's health care system;

(9) Develop programs to assist employers in adopting cafeteria plans;[208]

(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.). In adopting the rules, the Superintendent may consider recommendations made by the Council.

On or before December 31 each year, the Council must 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.

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[208] 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>.)

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 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."

Property and casualty insurance reporting requirements

(R.C. 3903.77)

The bill requires property and casualty insurance companies that do business in Ohio annually to have an actuary prepare the following documents:

(1) A "Statement of Actuarial Opinion" (an actuarial opinion that certifies to the current adequacy of the insurance company's reserves);

(2) An "Actuarial Opinion Summary" (a summary in support of the Statement of Actuarial Opinion). Except, the bill does not require an insurance company licensed but not domiciled in Ohio to include the Actuarial Opinion Summary in its submissions to the Superintendent of Insurance unless requested by the Superintendent.

The bill requires insurers to submit those documents to the Superintendent in accordance with the National Association of Insurance Commissioners' (hereafter, NAIC) property and casualty annual statement instructions along with the insurer's annual financial statement required under current law. However, the bill allows the Superintendent to adopt rules to exempt property and casualty insurance companies from the requirement to prepare and submit these documents.

Additionally, prior to preparation of the Statement of Actuarial Opinion and the Actuarial Opinion Summary, the bill requires insurers to prepare an actuarial report and underlying work papers to support those documents in accordance with the NAIC's property and casualty statement instructions. The insurance company must make the actuarial report and underlying work papers available to the Superintendent upon request. If an insurer fails to provide the actuarial report or work papers at the request of the Superintendent or the Superintendent determines that the actuarial report or work papers provided are unacceptable, the bill allows the Superintendent to contract with a qualified actuary[209] at the expense of the insurer to review the Statement of Actuarial Opinion provided by the insurer. The actuary may review the basis for that opinion and prepare a separate set of actuarial report and work papers.

Except in cases of fraud or willful misconduct on the part of the actuary, the bill protects any actuary appointed by an insurer to prepare the Statement of Actuarial Opinion and Actuarial Opinion Summary from liability for damages to any person except the insurer and the Superintendent for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

Under the bill, the Statement of Actuarial Opinion is a public document and a public record. However, the Actuarial Opinion Summary, actuarial report, work papers, and any documents, materials or other information provided in support of the Statement of Actuarial Opinion are privileged and confidential, are not a public record, are not subject to subpoena or to discovery, and are not admissible in evidence in any private civil action. The bill prohibits the Superintendent, including any person who receives documents, materials, or other information required to be kept confidential

[209] Under the bill, "qualified actuary" means a person who is a member in good standing of the American Academy of Actuaries and who meets the requirements identified in the NAIC's property and casualty statement instructions.

while acting under the authority of the Superintendent, from testifying in any private civil action concerning any of the documents, materials, or other information. However, the bill specifies that this confidentiality should not be construed to limit the Superintendent's authority to release documents to the Actuarial Board for Counseling and Discipline so long as the documents are necessary for the purpose of professional disciplinary proceedings and the Actuarial Board for Counseling and Discipline establishes procedures satisfactory to the Superintendent for preserving the confidentiality of the documents. Additionally, the bill specifies that the confidentiality provisions should not be construed to limit the Superintendent's authority to use documents, materials, nor other information in furtherance of any regulatory or legal action brought as part of the Superintendent's official duties.

In order to assist in the performance of the Superintendent's duties, the bill allows the Superintendent to do all of the following:

(1) Share documents, materials, or other information, including any documents, materials, or other information required to be kept confidential, with other state, federal, and international regulatory and law enforcement agencies and with the NAIC including its affiliates and subsidiaries if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality;

(2) Receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, and information from other state, federal, and international regulatory and law enforcement agencies and from the NAIC including its affiliates and subsidiaries. The bill additionally specifies that the Superintendent must maintain the confidentiality and privileged status of any document, material, or other information received with notice of confidential and privileged status under the laws of the jurisdiction that is the source of the document, material, or information.

(3) Enter into agreements as described above for the sharing and use of information.

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 after completion of the reconciliation of all final transactions with the federal government regarding a federal grant for a program ODJFS administers and a final closeout for the grant.

- Provides for money in the ODJFS General Services Administration and Operating Fund to be used for expenses of the programs ODJFS administers and ODJFS's administrative expenses.

- 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.

- Requires ODJFS to reallocate certain funds to counties when ODJFS is informed that a county will not use the full amount allocated to it for fiscal year 2010 or 2011.

- Revises the law governing the method by which cash assistance is provided under the Ohio Works First (OWF) and Disability Financial Assistance programs by (1) also applying the law to cash assistance provided under the Refugee Assistance Program, (2) eliminating law that permits a board of county commissioners to require a CDJFS to establish a voluntary or mandatory direct deposit system unless the ODJFS Director has provided for the cash assistance to be made by a state electronic benefit transfer system, (3) requiring a CDJFS to establish a direct deposit system and inform applicants for and recipients of the programs that they must choose whether to receive the cash assistance under the county direct deposit system or the state electronic benefit transfer system, (4) eliminating law that (a) requires a CDJFS to determine what type of account will be used for direct deposit, (b) requires a CDJFS to negotiate with financial institutions to determine the charges, if any, to be imposed, and (c) specifies whether a CDJFS must or may pay the charges, (5) eliminating law that permits a recipient to elect to receive cash assistance in the form of a paper warrant, and (6) eliminating law that requires a CDJFS to bear the full cost of the amount of a replacement warrant under certain circumstances.

II. Child Welfare and Adoption

- 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. Publicly Funded Child Care

- Defines "full-time" for publicly funded child care providers as being at least 32.5 hours per week until July 1, 2011, at which time the definition is repealed.

- Permits the ODJFS Director to adopt rules that establish a different system for the payment of publicly funded child care.

- Eliminates the requirement that CDJFSs specify the maximum number of days providers of publicly funded child care will be provided certificates of payment for days the provider would have provided publicly funded child care had the child been present.

- Eliminates the requirement that CDJFSs automatically review the fee paid by a caretaker parent for publicly funded child care every six months, and instead requires CDJFSs to adjust the fee if the parent reports changes in income, family size, or both.

- Codifies the reimbursement ceiling for providers of publicly funded child care for fiscal years 2010 and 2011 at the 51st percentile of the Child Care Market Rate Survey commissioned by ODJFS in 2008.

- Requires the parent, guardian, or custodian of each child receiving child care from a type A or type B family day-care home that is not covered by liability insurance to sign a written statement, instead of an affidavit, provided by the licensee of the type A family day-care home or the provider of the type B family day-care home stating that the family day-care home does not carry liability insurance.

IV. Child Support Enforcement

- Requires health insurance providers to send information to the Office of Child Support in ODJFS identifying policy holders and policy information upon request.

- Requires employers with more than 50 employees to send withholdings and deductions of child support to the Office of Child Support in ODJFS by electronic means.

- Requires payors who submit combined child support withholdings and deductions to the Office of Child Support in ODJFS to provide the case numbers from the income withholding or deduction notice.

- Requires the ODJFS Director to adopt rules for the compromise and waiver of child support arrearages owed to the state and federal governments, consistent with the federal Title IV-D program.

V. Temporary Assistance for Needy Families (TANF)

- 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 OWF, 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.

VI. Medicaid

- Provides that a parent is not required to undergo an eligibility redetermination for Medicaid more often than once every 12 months unless there are reasonable grounds to believe that circumstances have changed that may affect the parent's eligibility.

- Requires a third party against which ODJFS has a right of recovery for payment of a medical item or service provided to a Medicaid recipient to consider ODJFS's payment to be the equivalent of the recipient having obtained prior authorization for the item or service from the third party.

- Prohibits a third party from denying a claim described above solely on the basis of the Medicaid recipient's failure to obtain prior authorization for the medical item or service.

- Modifies the laws governing ODJFS's use of time-limited Medicaid provider agreements by (1) extending the phase-in period to January 1, 2015 (from January 1, 2011), (2) extending the duration of time-limited agreements to seven years (from three), and (3) exempting hospitals from the requirement that provider agreements be time-limited.

- Provides that ODJFS is not required to issue an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act when doing any of the following: (1) denying, terminating, or not renewing a Medicaid provider agreement because a provider's owner, officer, authorized agent, associate, manager, or employee has been convicted of an offense that caused the provider agreement to be suspended, (2) terminating or not renewing a Medicaid provider agreement because the provider has not billed or otherwise submitted a Medicaid claim to ODJFS for at least two years, regardless of whether ODJFS has determined that the provider has moved from the address on record with ODJFS without leaving an active forwarding address, or (3) denying, terminating, or not renewing a Medicaid provider agreement because the provider fails to provide to ODJFS the National Provider Identifier assigned to the provider.

- Adds to the offenses that disqualify a person from being a Medicaid provider or employed by a Medicaid provider, and applies the same disqualifying offenses to a provider of home and community-based waiver services and any of its employees.

- Includes, among the additional disqualifying offenses, cruelty to animals, permitting child abuse, menacing, arson, and a violation of any municipal ordinance that is substantially equivalent to the new or existing disqualifying offenses.

- Specifies that the date a person was convicted of, entered a guilty plea to, or was found eligible for intervention in lieu of conviction for an offense that disqualifies the person from being a Medicaid provider, provider of home and community-based services, or an employee of such providers is irrelevant for purposes of determining the person's eligibility to be a provider or an employee.

- Repeals law that expressly permits the ODJFS Director to establish an e-prescribing system for the Medicaid program.

- Applies Ohio's health insurance prompt payment law to Medicaid managed care organizations.

- Repeals a provision requiring the ODJFS Director to determine whether a waiver of federal Medicaid requirements is necessary to apply Ohio's prompt payment law to Medicaid managed care organizations.

- Creates the Prompt Payment Policy Workgroup to research and make policy recommendations for Ohio's Medicaid program.

- Requires ODJFS to establish a two-year pilot program under which a CDJFS serving a county with at least 400,000 persons may contract with medical transportation management organizations to manage nonemergency medical transportation services provided to groups of Medicaid recipients the CDJFS includes in the pilot program.

- 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.

- Requires ODJFS to seek a federal waiver to (1) reduce the nursing home franchise permit fee to zero dollars for each nursing home that is exempt from state and federal taxation, does not participate in Medicaid or Medicare, and provides services for the life of each resident without regard to the resident's ability to secure payment for the services and (2) reduce, for each nursing facility with more than 200

Medicaid-certified beds, the franchise permit fee for a number of the nursing facility's beds specified by ODJFS to the amount necessary to obtain approval of the waiver.

- Permits ODJFS to increase uniformly the franchise permit fee for each nursing home and hospital not qualifying for a reduction to an amount that will have the franchise permit fee raise an amount of money that does not exceed the amount the franchise permit fee would raise if not for the waiver.

- 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.

- Provides that a nursing facility's Medicaid rate for capital costs is to be the sum of (1) the capital costs portion of its fiscal year 2005 rate or, if the nursing facility did not have a Medicaid rate on June 30, 2005, the capital costs portion of its initial Medicaid rate and (2) any capital compensation per diem for which it qualified during the first

three quarters of fiscal year 2008, if that sum is greater than the median rate for capital costs for the nursing facilities in its peer group.

- Adjusts the formula used to calculate nursing facilities' Medicaid reimbursement rates for fiscal years 2010 and 2011.

- 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) 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, exceeds $277.25, (2) prohibiting, for the remainder of fiscal year 2010, further adjustments otherwise authorized by law governing Medicaid payments to ICFs/MR, and (3) if the federal government requires that the franchise permit fee for ICFs/MR be reduced or eliminated, reducing the payments to ICFs/MR as necessary to reflect the loss of revenue and federal financial participation generated by the fee.

- Adjusts the formula used to calculate ICFs/MR's Medicaid reimbursement rates for fiscal year 2011 by (1) requiring ODJFS to reduce the fiscal year 2011 Medicaid rates for ICFs/MR if the mean total per diem rate for all ICFs/MR, weighted by May 2010 Medicaid days and calculated as of July 1, 2010, exceeds $277.25, (2) prohibiting, for the remainder of fiscal year 2011, further adjustments otherwise authorized by law governing Medicaid payments to ICFs/MR, and (3) if the federal government requires that the franchise permit fee for ICFs/MR be reduced or eliminated, reducing the payments to ICFs/MR as necessary to reflect the loss of revenue and federal financial participation generated by the fee.

- Creates the ICF/MR Reimbursement Study Council and requires the Council to submit a report, not later than July 1, 2010, on its review of the state system for Medicaid reimbursement of ICF/MR services.

- 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 existing Medicaid Payment Withholding Fund.

- Requires the Medicaid program to cover oxygen services provided by a medical supplier to a medically fragile child residing in an ICF/MR regardless of certain circumstances.

- 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.

- Increases the Medicaid reimbursement rate for hospital inpatient and outpatient services provided during the period beginning January 1, 2010, and ending June 30, 2011, by 5% over the rate for such services provided on December 31, 2009.

- Increases the Medicaid rate ceilings for community behavioral health services provided during fiscal year 2010 by ½% over the rate ceilings for fiscal year 2009 and the Medicaid rate ceilings for those services provided during fiscal year 2011 by ½% over the rate ceilings for fiscal year 2010.

- Requires the ODJFS Director to seek federal approval to establish a system under which community behavioral health boards obtain federal financial participation for the allowable administrative activities the boards perform in the administration of the Medicaid program.

- 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 the ODJFS Director to seek federal approval to create the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program for the purpose of making supplemental Medicaid payments to hospitals.

- Specifies that portions of the money raised by the hospital assessment, and available federal matching funds, are to be used to fund the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program.

- Requires ODJFS to take all necessary actions to cease implementation of the hospital assessment if the United States Secretary of Health and Human Services determines that the assessment is an impermissible health care-related tax under federal Medicaid law.

- Repeals the law governing the hospital assessment effective October 1, 2011.

- For fiscal years 2010 and 2011, (1) requires the ODJFS Director to pay the full cost (100%) of Medicaid cost outlier claims for inpatient admissions at children's hospitals that are less than a threshold amount ($443,463 in 2002, adjusted annually for inflation), rather than just 85% of the cost, but (2) specifies that paying the full cost of such claims must cease and revert back to 85% of the estimated cost when the difference between the total amount the Director has paid at full cost for the outlier claims and the total amount the Director would have paid for such claims at the 85%

level exceeds the sum of the state funds earmarked for the additional cost outlier payments in each fiscal year and the corresponding federal match.

- For fiscal years 2010 and 2011, requires the ODJFS Director to make supplemental Medicaid payments to children's hospitals for inpatient services under a program modeled after the program that ODJFS was required to create under Am. Sub. H.B. 66 of the 126th General Assembly for supplemental payments to children's hospitals when the difference between the total amount the Director has paid at full cost for Medicaid outlier claims and the total amount the Director would have paid at the 85% level for the claims does not require the expenditure of all state and federal funds earmarked for the additional cost outlier payments in the applicable fiscal year.

- Prohibits the ODJFS Director from adopting, amending, or rescinding any rules that would result in decreasing the amount paid to children's hospitals for cost outlier claims.

VII. Hospital Care Assurance Program

- Delays the termination of the Hospital Care Assurance Program to October 16, 2011.

VIII. Children's Health Insurance Program

- Provides that a school-based health center may furnish health assistance services covered under the Children's Health Insurance Program if it meets the requirements applicable to other providers of those services.

IX. Children's Buy-In Program

- Provides that an individual's countable family income must exceed 300% of the federal poverty guidelines rather than 250% for the individual to meet the income requirement for the Children's Buy-In Program.

- Revises the eligibility requirements for the Children's Buy-In Program regarding access to creditable coverage.

X. 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.

XI. 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 permitted by the bill to submit a deposit modification and payment detail report to the Treasurer of State after completion of the reconciliation of all final transactions with the federal government regarding a federal grant for a program ODJFS administers and a final closeout for the grant. On receipt of the report, the State Treasurer must transfer the money in the Refunds and Audit Settlements Fund[210] that is the subject of the report to the ODJFS General Services

[210] 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.

Administration and Operating Fund. Money in the ODJFS General Services Administration and Operating Fund is to be used to pay for expenses of the programs ODJFS administers and ODJFS's administrative expenses, including the costs of state hearings, required audit adjustments, and other related expenses.

Collaboration on welfare reform training

(R.C. 5101.072 (repealed))

The General Assembly enacted various welfare reforms in the 1990s, including Sub. H.B. 167 of the 121st General Assembly and Sub. H.B. 408 of the 122nd General Assembly. H.B. 167 predated federal welfare reform legislation that, in part, replaced the Aid to Families with Dependent Children program with the Temporary Assistance for Needy Families (TANF) program. H.B. 408 was enacted after the federal 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.

Reallocation of unused county funds

(Section 309.45.90)

The bill requires ODJFS to reallocate certain funds when ODJFS is informed that a county will not use the entire amount allocated to it for fiscal year 2010 or 2011. The following funds are subject to reallocation:

(1) Funds ODJFS allocates to a county to meet matching fund requirements or reimburse a county for administrative expenses incurred in the administration of the Disability Financial Assistance Program, Disability Medical Assistance Program, Medicaid, or Supplemental Nutrition Assistance Program (i.e., the Food Stamp Program). Collectively, the bill refers to the funds as "income maintenance funds."

(2) Funds ODJFS allocates to a county for programs funded with the TANF block grant, such as the Ohio Works First Program and the Prevention, Retention, and Contingency Program. The bill refers to these funds as "TANF funds."

(3) Funds ODJFS allocates to a county from funds under the TANF block grant that are transferred for use for social services under Title XX of the Social Security Act. The bill refers to these funds as "TANF Title XX transfer funds."

(4) Funds ODJFS allocates to a CDJFS for social services under Title XX of the Social Security Act. The bill refers to these funds as "Title XX social services funds."

If a county informs ODJFS that the county will not use the entire amount of any of the funds subject to reallocation, ODJFS must reallocate the portion of the funds the county will not use to other counties for the remainder of the fiscal year in which the funds are reallocated or the next fiscal year. In reallocating the funds, ODJFS is required to do both of the following:

(1) For each group of funds separately, rank each county by the percentage reduction in allocations of the funds from the fiscal year preceding the fiscal year in which the reallocation is made to the fiscal year in which the reallocation is made, with the county that has the greatest reduction percentage placed at the top of the ranking;

(2) Reallocate each group of funds separately to counties in the order in which they are ranked in a manner that provides, to the extent funds are available for reallocation, for each county to be, as a result of the reallocation, allocated the same amount of the funds that the county was allocated the previous year, other than the counties that inform ODJFS they will not use the full amount of their allocation of the funds.

Direct deposit system for cash assistance

(R.C. 329.03 (primary) and 126.35)

Continuing law authorizes ODJFS to make payment or delivery of benefits under programs ODJFS administers, including the Ohio Works First Program (OWF) and Disability Financial Assistance Program, through a state electronic benefit transfer system. Under the state electronic benefit transfer system, ODJFS contracts with an agent to supply debit cards to be used in accessing the programs' benefits.[211]

Current law permits the ODJFS Director to require that cash assistance payments under OWF and Disability Financial Assistance Program be made under the state electronic benefit transfer system. If the ODJFS Director does not require that, a board of county commissioners may adopt a resolution requiring its CDJFS to establish a direct deposit system to distribute the cash assistance payments. The resolution must specify whether use of the direct deposit system is voluntary or mandatory.

A CDJFS that is required to establish a direct deposit system must determine what type of account will be used and negotiate with financial institutions to determine

[211] R.C. 5101.33.

the charges, if any, to be imposed by a financial institution for establishing and maintaining the accounts. A CDJFS is permitted to pay the charges under a voluntary direct deposit system and is required to pay the charges under a mandatory system.

An OWF or Disability Financial Assistance applicant or recipient residing in a county with a voluntary direct deposit system may elect to receive cash assistance payments in the form of a paper warrant. An applicant or recipient residing in a county with a mandatory direct deposit system may request to receive payments in the form of a paper warrant under certain circumstances.

A CDJFS is to bear the full cost of the amount of any replacement warrant issued to an OWF or Disability Financial Assistance recipient for whom an authorization form for direct deposit is not obtained within 180 days after the later of (1) the date the board of county commissioners adopts the resolution regarding direct deposit or (2) the date of application for the program. The CDJFS's responsibility to bear the full cost of each replacement warrant continues until the board of county commissioners requires the CDJFS to obtain an authorization form from each recipient.

The bill eliminates these provisions regarding county direct deposit systems and the option to receive OWF and Disability Financial Assistance cash assistance payments in the form of a paper warrant. Instead, the bill requires each CDJFS to establish a direct deposit system under which cash assistance payments to OWF and Disability Financial Assistance recipients who agree to direct deposit are made by electronic transfer to an account in a financial institution the recipient designates. The bill makes this applicable to cash assistance provided under the Refugee Assistance Program also.

Each CDJFS is required by the bill to inform each OWF, Disability Financial Assistance, and Refugee Assistance applicant or recipient that the applicant or recipient must choose whether to receive cash assistance payments under the county direct deposit system or under the state electronic benefit transfer system. As under current law, a CDJFS must obtain from each applicant or recipient who is to receive cash assistance payments through direct deposit an authorization form designating a financial institution and account into which the payments are to be made. The bill requires a CDJFS to receive from an applicant or recipient who chooses the state electronic benefit transfer system a signed form to that effect. Each CDJFS must inform the applicants and recipients of the conditions under which an applicant or recipient may change the system used to receive the cash assistance payments.

The bill retains a requirement that a recipient's designation of a financial institution and account remain in effect until withdrawn in writing or dishonored by the financial institution. Current law, however, provides that no designation change may be made until the recipient's next eligibility redetermination unless the

department[212] feels that good grounds exist for an earlier change. The bill provides instead that no designation change may be made until the next eligibility redetermination unless the CDJFS determines that good cause exists for an earlier change or the financial institution dishonors the recipient's account.

As under current law, an applicant or recipient who does not have an account but is to receive cash assistance payments through a county direct deposit system must designate an account suitable for direct deposit within ten days of receiving the authorization form. Current law requires the department[213] to designate a financial institution and help the recipient to open an account if the designation is not made by the deadline or the recipient requests that the department make the designation. The bill provides instead that a recipient is to receive cash assistance payments under the state electronic benefit transfer system if the recipient fails to make the designation by the deadline.

The bill makes changes to the law governing how the Director of Budget and Management makes cash assistance payments to reflect the changes the bill makes regarding county direct deposit systems.

II. Child Welfare and Adoption

Alternative Response pilot program

(Section 309.45.10)

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. 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

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[212] The statute uses the term "department" in this context making it ambiguous as to whether it refers to ODJFS or a CDJFS.

[213] *Id.*

child protection. The measure associated with the 18-month pilot program will, for the purposes of the evaluation, be compared with those same measures in the pilot counties during the 18-month period immediately preceding the beginning of the pilot program period. If the independent evaluation of the pilot program recommends statewide implementation of an Alternative Response approach to child protection, ODJFS may expand the Alternative Response approach statewide through a schedule determined by ODJFS. Until that time, ODJFS may adopt rules, as if they were internal management rules, as necessary to carry out the purposes of the Alternative Response pilot program.

III. Publicly Funded Child Care

Definition of full-time for publicly funded child care

(R.C. 5104.01 and 5104.38; Sections 115.10, 115.11, and 115.12)

Under current ODJFS rules, a "full-time week" for the purpose of publicly funded child care is defined as 25 hours to 60 hours of care in a week for licensed child care centers and licensed type A homes, and 25 hours to 50 hours of care in a week for certified type B providers.[214]

The bill codifies in the Child Care Law the definition of "full-time week" as at least 32.5 hours and not more than 60 hours of care in a week for licensed child care centers and licensed type A homes and at least 32.5 hours and not more than 50 hours of care in a week for certified type B providers. This new definition will automatically repeal on July 1, 2011.

Reimbursements for providers of publicly funded child care

(R.C. 5104.30, 5104.32, 5104.39, and 5104.42)

Current law requires the ODJFS Director to adopt rules establishing a payment procedure for publicly funded child care. The rules may provide that ODJFS will either reimburse CDJFSs for payments made to providers of publicly funded child care or make direct payments to providers pursuant to an agreement entered into with a county board of commissioners.

Under the bill, these rules may provide that ODJFS will reimburse CDJFSs for payments made to providers of publicly funded child care, make direct payments to providers, or establish another system for the payment of publicly funded child care.

[214] Ohio Administrative Code 5101:2-16-01(M).

Certificates of payment for days a child has been absent

(R.C. 5104.32)

Under current law, CDJFSs must give individuals eligible for publicly funded child care the option of obtaining certificates for payment that the individual may use to purchase that care. Current law states that for each six-month period a provider of publicly funded child care provides publicly funded child day-care to the child of an individual given certificates for payment, the individual must provide the provider certificates for days the provider would have provided publicly funded child care to the child had the child been present. CDJFSs must specify the maximum number of days providers will be provided certificates of payment for days the provider would have provided publicly funded child care had the child been present. The maximum number of days cannot exceed ten days in a six-month period during which publicly funded child care is provided to the child regardless of the number of providers that provide publicly funded child care to the child during that period.

The bill eliminates the requirement that CDJFSs specify the maximum number of days providers of publicly funded child care will be provided certificates of payment for days the provider would have provided publicly funded child care had the child been present.

Eligibility determinations for publicly funded child care

(R.C. 5104.341)

Under current law, the CDJFS must redetermine the appropriate level of a fee charged to a caretaker parent for publicly funded child care every six months, unless the caretaker parent requests that the fee be reduced due to changes in income, family size, or both and the CDJFS approves the reduction.

The bill eliminates the automatic review of this fee every six months, and instead the CDJFS must adjust the level of the fee if the caretaker parent reports changes in income, family size, or both.

Reimbursement ceiling for providers of publicly funded child care

(Section 309.45.80)

The bill codifies the reimbursement ceiling for providers of publicly funded child care for fiscal years 2010 and 2011 at the 51st percentile of the 2008 Child Care Market Rate Survey commissioned by ODJFS.

Liability insurance for type A and type B family day-care homes

(R.C. 5104.041)

Current law requires the parent, guardian, or custodian of each child receiving child care from a type A or type B family day-care home that is not covered by liability insurance to sign an affidavit, provided by the licensee of the type A family day-care home or the provider of the type B family day-care home, stating that the family day-care home does not carry liability insurance.

Under the bill, the parent, guardian, or custodian must only sign a written statement, instead of an affidavit, provided by the licensee of the type A family day-care home or the provider of the type B family day-care home, stating that the family day-care home does not carry liability insurance.

IV. 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.

V. Temporary Assistance for Needy Families (TANF)

Title IV-A of the Social Security Act authorizes the Temporary Assistance for Needy Families (TANF) block grant. States may receive federal funds under the TANF block grant to operate programs designed to meet one or more of the following purposes:

(1) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies;

(4) Encourage the formation and maintenance of two-parent families.

Persons who receive assistance funded in part with federal TANF funds are subject to a number of federal requirements, including time limits and work requirements. Federal regulations define "assistance" as including cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs for such things as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. It includes such benefits even when they are provided in the form of payments to individual recipients and conditioned on participation in work experience, community service, or other work activities provided by federal TANF law. Unless specifically excluded, "assistance" also includes supportive services such as transportation and child care provided to unemployed families.

Ohio has a number of different programs funded with TANF funds, including 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.[215] Therefore, a felony drug conviction is not to be a bar to aid under any of the state's TANF programs.

[215] 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).

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 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.

VI. Medicaid

Medicaid is a health-care program for low-income children and families and for aged, blind, and disabled persons. The program is funded with federal, state, and county funds and was established by Congress in 1965 as Title XIX of the Social Security Act. 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.

Annual Medicaid eligibility redeterminations for parents

(R.C. 5111.0121 (primary) and 5111.0120)

Existing law requires the ODJFS Director to seek federal approval to make an individual eligible for Medicaid if the individual is the residential parent of a child under age 19, has family income not exceeding 90% of the federal poverty guidelines, and meets all other eligibility requirements established by ODJFS rules. The bill provides that an individual who qualifies for Medicaid under this provision is not required to undergo a redetermination of eligibility for the Medicaid program more often than once every 12 months unless there are reasonable grounds to believe that circumstances have changed that may affect the individual's Medicaid eligibility.

Medicaid third party liability

Background

Congress intended that Medicaid be the payer of last resort; if a Medicaid recipient has another source of payment for health services, that source is to pay instead of Medicaid.[216] Consistent with federal law reflecting this intent, the U.S. Secretary of Health and Human Services has promulgated regulations[217] 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.

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[216] 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.

[217] 42 C.F.R. Part 433, subpart D (2005).

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[218] made several changes to the third party liability provisions of federal Medicaid law.[219] Under the federal act, states are required to enact laws requiring health insurers to do all of the following: (1) provide states with coverage, eligibility, and claims data needed to identify potentially liable third parties, (2) honor the assignment to states of Medicaid recipients' rights to payment by insurers for health care items or services, and (3) not deny assignment or refuse to pay claims submitted by state Medicaid agencies based on procedural reasons such as the failure of a recipient to present an insurance card at the point of sale or a state's failure to submit an electronic, as opposed to a paper, claim.[220]

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.[221]

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

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[218] Pub. L. 109-171.

[219] 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>.

[220] Discussed in letter from Dennis G. Smith, *supra*.

[221] R.C. 5101.573.

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.

Time-limited Medicaid provider agreements

(R.C. 5111.028)

Current law requires, with some exceptions, that Medicaid provider agreements be "time-limited" in accordance with procedures established in rules adopted by the ODJFS Director. The "time-limited" requirement means that a provider agreement must expire not later than three years after the effective date of the agreement. The entities with provider agreements that are currently exempt from this requirement are (1) managed care organizations under contract with ODJFS, (2) nursing facilities, including skilled nursing facilities, and (3) intermediate care facilities for the mentally retarded. Currently, ODJFS is to phase in the use of time-limited provider agreements during a period commencing not later than January 1, 2008, and ending three years later on January 1, 2011. During the phase-in period, ODJFS may provide for the conversion of provider agreements that are not time-limited into time-limited provider agreements.

The bill extends the phase-in period by four years, moving the end date to January 1, 2015. The bill also extends the duration of a time-limited provider agreement from three to seven years. Finally, the bill adds hospitals to the list of Medicaid providers that are exempt from the requirement that provider agreements be time-limited.

Administrative actions relative to Medicaid provider agreements

(R.C. 5111.06)

Generally, ODJFS is required to issue an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act (R.C. Chapter 119.) when refusing to enter into a Medicaid provider agreement or suspending, terminating, or refusing to renew an existing Medicaid provider agreement. There are several exceptions to this requirement however. The 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 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[222] that is not an independent provider[223] 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.[224] 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.[225]

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 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.

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[222] A noninstitutional Medicaid provider is any Medicaid provider other than a hospital, nursing facility, or intermediate care facility for the mentally retarded.

[223] 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.

[224] ODJFS is permitted to adopt rules specifying circumstances under which ODJFS would not suspend such a Medicaid provider agreement.

[225] R.C. 5112.031.

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 must be sent by certified mail.

Disqualifying offenses--Medicaid providers and home and community waiver services providers

(R.C. 109.572, 5111.032, 5111.033, and 5111.034)

Except in circumstances specified in rules ODJFS is permitted to adopt under 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.

The bill also specifies that the date a person was convicted of, entered a guilty plea to, or was found eligible for intervention in lieu of conviction for an offense that disqualifies the person from being a Medicaid provider, provider of home and community-based services, or an employee of such providers is irrelevant for purposes of determining the person's eligibility to be a provider or an employee.

Medicaid 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[226] 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,

[226] 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).)

and scope of Medicaid services, including rules that establish the conditions under which the Medicaid program covers and reimburses Medicaid services.[227] This means 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 nonemergency medical transportation management

(Section 309.32.60)

The bill requires ODJFS to establish a Medicaid nonemergency medical transportation pilot program. The pilot program is to be operated for two years.

A CDJFS serving a county with a population exceeding 400,000 persons is allowed to participate in the pilot program. A CDJFS that participates in the pilot program must identify which groups of Medicaid recipients residing in the county are required to participate in the pilot program. A participating CDJFS must also contract with one or more medical transportation management organizations to have the organizations manage Medicaid-covered nonemergency medical transportation services to the groups required to participate. To be eligible to contract with a participating CDJFS, a medical transportation management organization must have experience in coordinating nonemergency medical transportation services.

The bill requires a medical transportation management organization that contracts with a participating CDJFS to report monthly to the CDJFS. Each report must contain (1) a description of the transportation services provided to Medicaid recipients participating in the pilot program, including details on the varying modes of transportation used in providing the services and the frequency at which the services were provided, (2) the number of times nonemergency medical transportation providers failed to arrive for an appointment to transport a pilot program participant, (3) the number of times the providers were late for such an appointment and the lengths of the delays, (4) the cost of the services provided in the pilot program, and (5) other quality indicators the CDJFS requests be included in the report.

ODJFS is required, on conclusion of the pilot program, to submit a report regarding the pilot program to the Governor and General Assembly.[228] CDJFSs that participate in the pilot program are to assist with the report. The report must specify

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[227] R.C. 5111.02.

[228] In submitting the report to the General Assembly, ODJFS is to provide it to the Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and the Director of the Legislative Service Commission (R.C. 101.68(B)).

the amount of savings, if any, the Medicaid program realized as a result of the pilot program.

Prompt payment requirements for Medicaid managed care organizations

(R.C. 3901.38 to 3901.3814 and 5111.178 (repealed))

Background

"Prompt payment" refers to the timely processing of claims for payment to health care providers entitled to reimbursement for services rendered.[229] Medicaid managed care organizations are subject to prompt payment requirements established under federal Medicaid law, but Ohio law currently excludes the laws that govern prompt payment by other health insurers.

Under federal law, a Medicaid managed care organization must pay 90% of all clean claims[230] from practitioners within 30 days of receipt of the claims for payment. The organization must pay 99% of those claims within 90 days of receipt. With certain exceptions, all other claims must be paid within 12 months of receipt.[231] The organization and its providers may, by mutual agreement, establish an alternative payment schedule.[232]

In general, Ohio's health insurance prompt payment law requires a claim to be paid or denied no later than 30 days after receipt. An additional 15 days for payment is permitted if supporting documentation is necessary to reimburse the claim.[233] Ohio's prompt payment requirements apply only to claims submitted electronically and the claims must be submitted on the standard claim form adopted by the Superintendent of Insurance.[234]

With regard to Medicaid managed care organizations, current law requires the ODJFS Director to seek, if necessary, a waiver of federal Medicaid requirements from

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[229] A provider is defined as a hospital, nursing home, physician, podiatrist, dentist, pharmacist, chiropractor, or other health care provider (R.C. 3901.38).

[230] A "clean claim" is defined as one that can be processed without obtaining additional information from the provider of the service or from a third party (42 C.F.R. 447.45).

[231] 42 C.F.R. 447.45.

[232] 42 C.F.R. 447.46.

[233] R.C. 3901.381.

[234] R.C. 3901.381, 3901.382, and 3902.22.

the United States Secretary of Health and Human Services to apply Ohio's prompt payment law to the organizations. Until the waiver is granted, or it is determined that the waiver is not necessary, Medicaid managed care organizations are exempt from Ohio's prompt payment law.

Exemption removed

The bill applies Ohio's prompt payment law to Medicaid managed care organizations. It repeals the law requiring the ODJFS Director to apply for any necessary federal Medicaid waiver. The bill specifies that its application of Ohio's prompt payment law to Medicaid managed care organizations does not affect ODJFS's authority do either of the following: (1) act as the single state Medicaid agency or (2) enter into contracts with managed care organizations.

Prompt Payment Policy Workgroup

(Section 751.30)

The bill creates the Prompt Payment Policy Workgroup and gives the workgroup the following duties: (1) to recommend one set of regulations to govern prompt payment policies for Medicaid managed care plans, (2) to research and analyze prompt payment policies related to aged medical claims within the health insurance industry and the Medicaid program, (3) to review general payment rules, payment policies related to electronic and paper claims, definitions of clean and unclean claims, late payment penalties, auditing requirements, and any other issues related to Medicaid prompt payment policy identified by the Workgroup, and (4) to review statistical data on the compliance rates of current policies.

Under the bill, the Workgroup is made up of the following members: (1) one representative of the Office of Budget and Management, appointed by the Director of Budget and Management, (2) three representatives of the Department of Insurance, appointed by the Superintendent of Insurance, (3) four representatives of the Office of Ohio Health Plans in ODJFS, appointed by the ODJFS Director, (4) two representatives of Ohio's Medicaid managed care plans, appointed by the Executive Director of Ohio's Care Coordination Plans, (5) two representatives from the community of provider associations, one appointed by the Speaker of the House of Representatives and one appointed by the President of the Senate, (6) two members of the Ohio House of Representatives, one appointed by the Speaker of the House of Representatives and one appointed by the Minority Leader, and (7) two members of the Ohio Senate, one appointed by the President of the Senate and one appointed by the Minority Leader.

The bill designates the ODJFS Director, or the Director's designee, as chairperson of the Workgroup and specifies that members of the Workgroup are to serve without

compensation, except to the extent that serving on the Workgroup is considered part of the members' regular employment duties.

Not later than February 1, 2010, the bill requires the Workgroup to submit a report containing prompt payment policy recommendations for Ohio's Medicaid program to the Governor and the majority and minority leadership in both Houses of the Ohio General Assembly. The Workgroup ceases to exist on February 28, 2010.

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.[235] ODJFS is required to use money in the Nursing Facility Stabilization Fund to make Medicaid payments to nursing facilities.[236]

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 (primary), 3721.50, 3721.511, 3721.512, 3721.513, 3721.53, 3721.55, and 3721.56)

Increase in fee

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.

Waiver to reduce fee

The bill requires ODJFS to seek a federal waiver to reduce the franchise permit fee to zero dollars for each nursing home meeting certain requirements and to reduce the franchise permit fee for a number of nursing facility beds located in a nursing facility with more than 200 Medicaid-certified beds. The waiver's effective date is to be the first day of the calendar quarter beginning after the United States Secretary of Health and Human Services approves the waiver.

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[235] R.C. 3721.56.

[236] R.C. 3721.561.

To be eligible to have its franchise permit fee reduced to zero, a nursing home must (1) be exempt from state taxation, (2) be exempt from federal income taxation, (3) not participate in Medicaid or Medicare, and (4) provide services for the life of each resident without regard to the resident's ability to secure payment for the services.

The amount of the reduction in the franchise permit fee for a nursing facility with more than 200 Medicaid-certified beds is to be the amount necessary to obtain the waiver. ODJFS is to specify the number of such a nursing facility's beds that are to be subject to the reduced franchise permit fee.

ODJFS is required, if the United States Secretary approves the waiver, to reduce the franchise permit fee for each nursing home and hospital that qualifies for a reduction in its franchise permit fee under the waiver. ODJFS is to reduce the franchise permit fee in accordance with the waiver's terms. For purposes of the first fiscal year during which the waiver takes effect, ODJFS must determine the amount of the reduction not later than the waiver's effective date and mail to each nursing home and hospital qualifying for the reduction notice of the reduction not later than the last day of the first month of the calendar quarter that begins after the waiver is approved. For the purposes of subsequent fiscal years, ODJFS is to make the determinations and mail the notices in accordance with state law governing regular determinations and notices of the franchise permit fee.

ODJFS is permitted by the bill to increase the franchise permit fee for nursing homes and hospitals that do not qualify for the reduction if the United States Secretary approves the waiver. In increasing the franchise permit fee, ODJFS is required to determine how much money the franchise permit fee would have raised in a fiscal year if not for the waiver and uniformly increase the amount of the franchise permit fee for each nursing home and hospital subject to the increase to an amount that will have the franchise permit fee raise an amount of money that does not exceed the amount the franchise permit fee would have raised. If ODJFS increases the franchise permit fee for the first fiscal year during which the waiver takes effect, ODJFS must determine the amount of the increase not later than the waiver's effective date and mail to each nursing home and hospital subject to the increase notice of the increase not later than the last day of the first month of the calendar quarter that begins after the waiver is approved. If ODJFS increases the franchise permit fee for a subsequent fiscal year, ODJFS must make the determinations and mail the notices in accordance with state law governing regular determinations and notices of the franchise permit fee.

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 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.[237] 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.[238]

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.[239]

Tax costs are costs for real estate taxes, personal property taxes, corporate franchise taxes, and commercial activity taxes.[240]

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

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

[238] 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.)

[239] R.C. 5111.20 and 5111.24.

[240] R.C. 5111.242.

improvements, (3) amortization of financing costs, and (4) lease and rent of land, building, and equipment.[241]

The quality incentive payment is based on the number of points a nursing facility earns for such factors as having no health deficiencies on its most recent standard survey and a resident satisfaction above the statewide average. The mean quality incentive payment for fiscal year 2007, weighted by Medicaid days,[242] was set at $3 per Medicaid day.[243]

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.

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[241] R.C. 5111.20 and 5111.25.

[242] "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.)

[243] R.C. 5111.244.

Nursing facilities are required to provide the state information used in calculating their case-mix scores. The information must be provided quarterly. If a nursing facility fails to submit the information in time for ODJFS to be able to calculate the nursing facility's case-mix score, or submits incomplete or inaccurate information, ODJFS is authorized to assign the nursing facility a case-mix score that is 5% less than its case-mix score for the previous quarter. The reduced score may be used in calculating the nursing facility's rate for direct care costs for one or more months of the quarter for which the rate will be paid. However, before taking such action, ODJFS must permit the nursing facility a reasonable period of time to correct the information. The 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.

Nursing facilities' capital costs

(R.C. 5111.25 (primary) and 5111.222)

Current law provides that a nursing facility's Medicaid rate for capital costs is the median rate for capital costs for the nursing facilities in the peer group in which the nursing facility is placed.[244] The bill provides that a nursing facility's Medicaid rate for capital costs is to be the greater of that rate and the sum of the following:

(1) The capital costs portion of the nursing facility's Medicaid reimbursement per diem rate on June 30, 2005,[245] or, if the nursing facility did not have a Medicaid reimbursement per diem rate on June 30, 2005, the capital costs portion of the nursing facility's initial Medicaid rate;

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[244] Existing law establishes six peer groups for purposes of calculating nursing facilities' capital costs. Which peer group a nursing facility is placed in depends on which county the nursing facility is located in and how many beds the nursing facility has. For example, a nursing facility is placed in the first peer group if it has fewer than 100 beds and is located in Brown, Butler, Clermont, Clinton, Hamilton, or Warren County.

[245] The June 30, 2005, rate applies regardless of whether the nursing facility underwent a change of operator after that date.

(2) Any capital compensation per diem for which the nursing facility qualified during the first three quarters of fiscal year 2008.

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.[246] ODJFS must also annually adjust the mean quality incentive payment starting in fiscal year 2008 by the same adjustment factors.[247]

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.

A nursing facility's rate for capital costs is to be the greater of the following:

(1) The sum of (a) the capital costs portion of the nursing facility's Medicaid reimbursement per diem rate on June 30, 2005, or, if the nursing facility did not have a Medicaid reimbursement per diem rate on June 30, 2005, the capital costs portion of the nursing facility's initial Medicaid rate and (b) any capital compensation per diem for which the nursing facility qualified during the first three quarters of fiscal year 2008;

(2) The median rate for capital costs for the nursing facilities in the nursing facility's peer group (a) increased by 2%, (b) increased again by 2%, and (c) increased a third time by 1%.

A nursing facility's cost per case mix-unit calculated as part of direct care costs, rate for ancillary and support 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%.

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[246] R.C. 5111.222.

[247] R.C. 5111.244.

Instead of adjusting the mean quality incentive payment by the same adjustment factors, the bill provides that the mean payment for fiscal year 2010 is to be $3.03 per Medicaid day and weighted by Medicaid days.

After the adjustments discussed above are made, ODJFS is to further increase a nursing facility's total fiscal year 2010 rate by $3 per Medicaid day.

The bill requires ODJFS to reduce a nursing facility's fiscal year 2010 rate if its total rate, after the adjustments discussed above are made, is more than its fiscal year 2009 rate. ODJFS is to reduce the nursing facility's fiscal year 2010 rate by one-half of the difference between its adjusted fiscal year 2010 rate and its fiscal year 2009 rate. If a nursing facility's adjusted fiscal year 2010 rate is less than its fiscal year 2009 rate, ODJFS must increase its adjusted fiscal year 2010 rate by five-sixths of the difference between its adjusted fiscal year 2010 rate and its fiscal year 2009 rate.

A nursing facility with more than 250 Medicaid-certified beds is to have its fiscal year 2010 rate further adjusted after all the adjustments discussed above (including the possible decrease or increase that is applied depending on its fiscal year 2009 rate) are applied. ODJFS is to increase such a nursing facility's fiscal year 2010 rate by $5 per Medicaid day.

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.

FY 2011 Medicaid reimbursement rate for nursing facilities

(Section 309.30.30)

The bill establishes similar adjustments for nursing facilities' fiscal year 2011 Medicaid rates. The adjustments apply to nursing facilities that have a valid Medicaid provider agreement on June 30, 2010, and a valid Medicaid provider agreement during fiscal year 2011.

A nursing facility's rate for capital costs is to be the greater of the following:

(1) The sum of (a) the capital costs portion of the nursing facility's Medicaid reimbursement per diem rate on June 30, 2005, or, if the nursing facility did not have a Medicaid reimbursement per diem rate on June 30, 2005, the capital costs portion of the nursing facility's initial Medicaid rate and (b) any capital compensation per diem for which the nursing facility qualified during the first three quarters of fiscal year 2008;

(2) The median rate for capital costs for the nursing facilities in the nursing facility's peer group (a) increased by 2%, (b) increased again by 2%, and (c) increased a third time by 1%.

A nursing facility's cost per case mix-unit calculated as part of direct care costs, rate for ancillary and support 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%.

The mean quality incentive payment for fiscal year 2011 is to be $3.03 per Medicaid day and weighted by Medicaid days.

After the adjustments discussed above are made, ODJFS is to further increase a nursing facility's total fiscal year 2011 rate by $5.35 per Medicaid day.

The bill requires ODJFS to further increase a nursing facility's fiscal year 2011 rate if its total rate, after the adjustments discussed above are made, is less than its fiscal year 2009 rate. ODJFS is to increase the nursing facility's fiscal year 2011 rate by two-thirds of the difference between its adjusted fiscal year 2011 rate and its fiscal year 2009 rate.

A nursing facility with more than 250 Medicaid-certified beds is to have its fiscal year 2011 rate further adjusted after all the adjustments discussed above (including the possible increase that is applied depending on its fiscal year 2009 rate) are applied. ODJFS is to increase such a nursing facility's fiscal year 2011 rate by $5 per Medicaid day.

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.

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.

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.[248]

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.[249]

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.[250]

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

[248] R.C. 5111.20(H) and 5111.23.

[249] R.C. 5111.20(R).

[250] R.C. 5111.20(C).

services, accounting services, minor equipment, maintenance and repairs, and employee benefits.[251]

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:

(1) There is a valid Medicaid provider agreement for the ICF/MR on June 30, 2009, and a valid Medicaid provider agreement during fiscal year 2010.

(2) The ICF/MR undergoes a change of operator effective July 1, 2009, the exiting (i.e., former) operator has a valid Medicaid provider agreement for the ICF/MR on June 30, 2009, and the entering (i.e., new) operator has a valid Medicaid provider agreement for the ICF/MR during fiscal year 2010.

The Medicaid rate to be paid to such an ICF/MR during fiscal year 2010 is the rate calculated for the ICF/MR in accordance with the formula included in the Revised Code. However, 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, 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.

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[251] R.C. 5111.20(K).

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 or 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. However, if the mean total per diem rate for all such ICFs/MR for fiscal year 2011, weighted by May 2010 Medicaid days and calculated as of July 1, 2010, exceeds $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 or July 1, 2010.

ICF/MR Reimbursement Study Council

(Section 309.30.71)

The bill creates the ICF/MR Reimbursement Study Council, which is to consist of the following:

(1) The ODJFS Director;

(2) The Deputy Director of ODJFS's Office of Ohio Health Plans;

(3) The ODMR/DD Director;

(4) One representative of Medicaid recipients residing in ICFs/MR, appointed by the Governor;

(5) Two representatives each, appointed by their respective governing bodies, of the Ohio Provider Resource Association and the Ohio Health Association.

The ODJFS Director is to serve as the Council's chairperson. Council members are to serve without compensation. The Council is to review the system for reimbursing ICF/MR services under the Medicaid program. When reviewing the system, the Council is to use the following principles:

(1) The system should appropriately account for differences in acuity and service needs among individuals in ICFs/MR.

(2) The system should support and encourage quality services, including both of the following elements:

(a) A high level of coverage of direct care costs.

(b) Pay for performance mechanisms.

(3) The system should reflect appropriate recognition that virtually all individuals served in ICFs/MR are Medicaid recipients.

(4) The system should encourage cost-effective service delivery.

(5) The system should encourage innovation in service delivery.

(6) The system should encourage appropriate maintenance, improvement, and replacement of facilities.

The Council is to submit a report of its activities, findings, and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate no later than July 1, 2010.

Funds withheld during Medicaid debt collection process

(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,[252] facility closure,[253] voluntary termination,[254] or voluntary withdrawal of participation.[255] The requirements concern the state collecting debts a nursing facility or ICF/MR owes under the Medicaid program.

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[252] 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)).

[253] 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)).

[254] 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)).

[255] 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)).

An operator is required to notify ODJFS of an impending change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation.[256] 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.[257] Generally, ODJFS is to withhold a certain amount[258] from 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.[259] After determination of the actual debt, ODJFS is to release the amount withheld, less any amount the operator owes under the Medicaid program.[260]

The bill requires that all amounts so withheld from a nursing facility or ICF/MR operator be deposited into the existing Medicaid Payment Withholding Fund. 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.

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[256] R.C. 5111.66 and 5111.67.

[257] R.C. 5111.68.

[258] 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 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).

[259] 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).

[260] 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.)

Medicaid coverage of oxygen services for ICF/MR residents

(R.C. 5111.236)

The ODJFS Director has adopted a rule limiting when Medicaid covers oxygen services. Under the rule, oxygen services are covered only for Medicaid recipients with significant hypoxemia in the chronic stable state and only when certain conditions are met, including blood gas or oxygen saturation levels indicating the need for oxygen services. A Medicaid recipient's oxygen saturation levels indicate the need for oxygen services if the recipient has (1) an arterial oxygen saturation at or below 88% when at rest while awake, (2) an arterial oxygen saturation at or below 88% during sleep if the recipient demonstrates an arterial oxygen saturation at or above 89% while awake, (3) a decrease in arterial oxygen saturation of more than 5% during sleep that is associated with symptoms or signs reasonably attributable to hypoxemia, or (4) an arterial oxygen saturation at or below 88% during exercise if the recipient demonstrates an arterial oxygen saturation at or above 89% during the day while at rest.[261]

The bill requires the Medicaid program to cover oxygen services that a medical supplier with a valid Medicaid provider agreement provides to a Medicaid recipient who is a medically fragile child[262] and resides in an ICF/MR. The Medicaid program must cover such oxygen services regardless of any of the following:

(1) The percentage of the Medicaid recipient's arterial oxygen saturation at rest, exercise, or sleep;

(2) The type of system used in delivering the oxygen to the Medicaid recipient;

(3) Whether the ICF/MR in which the Medicaid recipient resides purchases or rents the equipment used in the delivery of the oxygen to the recipient.

The bill requires a medical supplier of an oxygen service to bill ODJFS directly for oxygen services the Medicaid program covers due to this provision of the bill. An ICF/MR is prohibited from including the cost of such an oxygen service in its Medicaid cost report unless it is the medical supplier of the oxygen service.

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[261] O.A.C. 5101:3-10-13.

[262] The bill defines "medically fragile child" as an individual under age 18 who requires (1) the services of a physician at least once a week due to instability of the individual's medical condition and (2) the services of a registered nurse on a daily basis.

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 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[263] 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[264] 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[265] 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

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[263] 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.)

[264] 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.

[265] 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[266] 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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[266] 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 administered orally, topically, or via a gastrostomy tube[267] or jejunostomy tube;[268]

(3) Assist the consumer with the self-administration of a medication unless the medication is in its original container and the label attached to the container displays (a) the consumer's full name in print, (b) the medication's dispensing date, which must not be more than 12 months before the date the attendant assists the consumer with self-administration of medication, and (c) the exact dosage and means of administration that match the physician or registered nurse's authorization to the attendant;

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[267] A gastrostomy tube is a percutaneously inserted catheter that terminates in the stomach.

[268] A jejunostomy tube is a percutaneously inserted catheter that terminates in the jejunum, which is the middle portion of the small intestine.

(4) Assist the consumer with the self-administration of a schedule II, III, IV, or V medication unless (a) the medication has a warning label on its container, (b) the attendant counts the medication in the consumer's or authorized representative's presence when the medication is administered to the consumer and records the count on a form used for the count as specified in rules the bill authorizes the ODJFS Director to adopt, (c) the attendant recounts the medication in the consumer's or authorized representative's presence at least monthly and reconciles the recount on a log located in the consumer's clinical record, and (d) the medication is stored separately from all other medications and is secured and locked at all times when not being administered to the consumer to prevent unauthorized access;

(5) Perform an intramuscular injection;

(6) Perform a subcutaneous injection unless it is for a routine dose of insulin;

(7) Program a pump used to deliver a medication unless the pump is used to deliver a routine dose of insulin;

(8) Insert, remove, or discontinue an intravenous access device;

(9) Engage in intravenous medication administration;

(10) Insert or initiate an infusion therapy;

(11) Perform a central line dressing change.

Use of a metered dose inhaler is permitted when assisting a consumer with self-administration of a medication that is administered orally. Use of an eye, ear, or nose drop or spray or a vaginal or rectal suppository is permitted when assisting a consumer with self-administration of a medication that is administered topically. Transdermal medication is included as a topical medication. A home care attendant may assist with the self-administration of a medication that is administered via a gastrostomy tube or jejunostomy tube only when a pre-programmed pump is used.

Practice of nursing without a license

The 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.[269] The projects are to be designed to achieve the following objectives with respect to institutional and home and community-based long-term care services under a state's Medicaid program:

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

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

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

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

The Deficit Reduction Act includes federal appropriations for the Money Follows the Person grants through federal fiscal year 2011 (ending September 30, 2011). A state seeking a grant is required to apply to the 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.

Increase in Medicaid rates for Hospital Services

(Section 309.30.73)

The bill requires the ODJFS Director to amend Medicaid rules as necessary to increase, for the period beginning January 1, 2010, and ending June 30, 2011, the Medicaid reimbursement rates for Medicaid-covered hospital inpatient and outpatient

[269] Section 6071 of the Deficit Reduction Act of 2005, Public Law No. 109-171.

services. The rates are to be increased to rates that result in an amount that is 5% higher than the amount resulting from the rates in effect on December 31, 2009.

Medicaid rates for community behavioral health services

(Section 309.30.75)

The ODJFS Director is required by the bill to amend Medicaid rules as necessary to increase the fiscal years 2010 and 2011 Medicaid rate ceilings for community behavioral health services.[270] For fiscal year 2010, the Medicaid rate ceilings are to be increased to rate ceilings that result in an amount that is ½% higher than the amount resulting from the rate ceilings in effect on June 30, 2009. For fiscal year 2011, the Medicaid rate ceilings are to be increased to rate ceilings that result in an amount that is ½% higher than the amount resulting from the rate ceilings in effect June 30, 2010.

Community behavioral health boards' administrative costs

(Section 309.32.40)

The bill requires the ODJFS Director to seek federal approval to establish a system under which boards of alcohol, drug addiction, and mental health services, community mental health boards, and alcohol and drug addiction services boards (i.e., community behavioral health boards) obtain federal financial participation for the allowable administrative activities the boards perform in the administration of the Medicaid program. The ODJFS Director must implement the system on receipt of federal approval. The ODJFS Director is required by the bill to work with the Directors of Alcohol and Drug Addiction Services and Mental Health and representatives of community behavioral health boards when implementing this provision of the bill.

Hospital assessments

(R.C. 5112.40, 5112.41, 5112.42, 5112.43, 5112.44, 5112.45, 5112.451, 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.

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[270] "Community behavioral health services are defined 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.

(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).[271]

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.[272] 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 1.52%. The percentage to be used for the second and successive years is 1.61%. 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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[271] See "**Hospital Care Assurance Program (HCAP)**" below for a discussion of that program.

[272] These costs are to be shown on cost-reporting data ODJFS is to use for purposes of determining the hospital's assessment.

period[273] 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 December 15, March 15, and June 15.

[273] A cost reporting period is the period of time used by a hospital in reporting costs for purposes of the Medicare program.

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.

Hospital Inpatient and Outpatient Supplemental U.P.L. Program

The ODJFS Director is required by the bill to seek federal approval to create the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program. If federal approval is obtained, the program is to make supplemental Medicaid payments to hospitals for Medicaid-covered inpatient and outpatient services. A portion of the money raised by the hospital assessment, and federal matching funds available for the program, are to be used for the program. The bill specifies that 16.45% of the money raised by the hospital assessment for the first year of the assessment is to be used for the program. Of the money raised by the hospital assessment for the second and subsequent years, 14.91% is to be used for the program.

Federal issues

Federal law places restrictions on federal financial participation for the Medicaid program when a state receives revenue generated by health-care related taxes.[274] 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.[275] 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

[274] 42 U.S.C. 1396b(w).

[275] 42 C.F.R. 433.55.

health-care related taxes that are deemed impermissible.[276] 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.[277] A state may obtain a federal waiver of aspects of the broad-based and uniform requirements but not the hold harmless prohibition.[278]

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.

Cost outlier and supplemental payments to children's hospitals

(Section 309.30.15)

Background

Ohio pays hospitals for Medicaid inpatient admissions under a prospective payment system that includes pre-established, fixed amounts for each admission based on diagnosis-related group (DRG) codes. ODJFS makes additional payments to hospitals, called "cost outlier payments" and "exceptional outlier payments," to

[276] 42 U.S.C. 1396b(w)(1)(A).

[277] 42 C.F.R. 433.68(b).

[278] 42 U.S.C. 1396b(w)(3)(E) and 42 C.F.R. 433.72(b)(3).

supplement base DRG payments for certain high- and extraordinarily high-cost inpatient admissions. The outlier payment policy is intended to promote access to care for patients with more costly claims.[279] The reimbursement methodology for cost outlier and exceptional outlier cases is in an administrative rule adopted by the ODJFS Director (Ohio Administrative Code 5101:3-2-07.9).

The bill

Am. Sub. H.B. 119 of the 127th General Assembly, the biennial appropriations act, created an alternative outlier payment methodology for children's hospitals during fiscal years 2008 and 2009. The bill re-establishes this methodology for fiscal years 2010 and 2011.

Under the bill, notwithstanding continuing law's cost outlier payment, the ODJFS Director must pay the full cost (100%) of Medicaid cost outlier claims for inpatient admissions at children's hospitals[280] that are less than a threshold amount ($443,463 in 2002, adjusted annually for inflation), rather than just 85% of the cost, as under continuing law. The bill requires that the practice of paying the full cost of such claims cease and revert back to 85% of the estimated cost when the difference between the total amount the Director has paid at full cost for the outlier claims and the total amount the Director would have paid children's hospitals for such claims at the 85% level exceeds the sum of the state funds earmarked for the additional cost outlier payments in each fiscal year and the corresponding federal match.

In addition, the bill requires the ODJFS Director, for fiscal years 2010 and 2011, to make supplemental Medicaid payments to children's hospitals for inpatient services under a program modeled after the program that ODJFS was required to create under Section 206.66.79 of Am. Sub. H.B. 66 of the 126th General Assembly for supplemental payments to children's hospitals when the difference between the total amount the

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[279] U.S. Department of Health and Human Services, Office of Inspector General. *Review of Ohio's Medicaid Hospital Outlier Payments for State Fiscal Years 2000 through 2003* (March 2006) (last visited April 10, 2009), available at <http://oig.hhs.gov/oas/reports/region5/50400064.pdf>.

[280] The bill defines "children's hospital" as a hospital that primarily serves patients 18 years of age and younger and is excluded from Medicare prospective payment in accordance with federal regulations (42 U.S.C. 412.23(d)).

Under continuing law, the cost for an inpatient case is determined by multiplying the allowed charges for the claim by the hospital-specific cost-to-charge ratio. As directed by paragraph (A)(6) of O.A.C. 5101:3-2-07.9, ODJFS pays the full estimated cost (100%) for a case where the cost exceeds an amount ($443,463) that is adjusted annually for inflation. For cases where the cost does not meet or is equal to $443,463 adjusted annually for inflation, ODJFS pays 85% of the estimated cost.

Director has paid at full cost for Medicaid outlier claims and the total amount the Director would have paid at the 85% level for the claims does not require the expenditure of all state and federal funds earmarked for the additional cost outlier payments in the applicable fiscal year. The program may be the same as the program the Director used for making supplemental payments for fiscal years 2008 and 2009 under Am. Sub. H.B. 119 of the 127th General Assembly.

Further, the bill prohibits the ODJFS Director from adopting, amending, or rescinding any rules that would result in decreasing the amount paid to children's hospitals for cost outlier claims.

VII. Hospital Care Assurance Program (HCAP)

Under the Hospital Care Assurance Program (HCAP), (1) hospitals are annually assessed an amount based on their total facility costs and (2) government hospitals make annual intergovernmental transfers to ODJFS. ODJFS distributes to hospitals money generated by the assessments and intergovernmental transfers along with federal matching funds generated by the assessments and transfers. A hospital compensated under HCAP must provide, without charge, basic, medically necessary, hospital-level services to Ohio residents who are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty guidelines.

Delay of termination of HCAP

(Sections 640.10 and 640.11)

HCAP is currently schedules to terminate on October 16, 2009. The bill delays the termination date of the program until October 16, 2011.

VIII. Children's Health Insurance Program

The Children's Health Insurance Program (CHIP) is a health-care program for uninsured, low-income children. It is funded with federal, state, and county funds and was established by Congress in 1997 as Title XXI of the Social Security Act. ODJFS administers the program. Federal and state law permits ODJFS to implement CHIP as a separate program, as part of the Medicaid program, or a combination of both. ODJFS has chosen to implement CHIP as part of the Medicaid program. State law provides for CHIP to have three parts. CHIP Part I covers uninsured individuals under age 19 with family incomes not exceeding 150% of the federal poverty guidelines. CHIP Part II covers uninsured individuals under age 19 with family incomes above 150% but not exceeding 200% of the federal poverty guidelines. CHIP Part III covers individuals under age 19 with family incomes above 200% but not exceeding 300% of the federal

poverty guidelines. ODJFS plans to begin implementation of CHIP Part III on July 1, 2009.

School-based health centers as CHIP providers

(R.C. 5101.504, 5101.5110, and 5101.5210 (primary); 173.71, 5101.26, 5101.50, 5101.5111, and 5101.571)

The federal "Children's Health Insurance Program Reauthorization Act of 2009"[281] provided that nothing in federal law is to be construed to limit the ability of states to furnish health assistance services covered under the Children's Health Insurance Program through school-based health centers.[282] The bill specifies that a school-based health center is permitted to furnish health assistance services that CHIP Part I, II, or III covers if the center meets the requirements applicable to other providers providing those services. The bill permits the ODJFS Director to adopt rules pertaining to the billing, reimbursement, and data collection for school-based health centers.

IX. Children's Buy-In Program

The Children's Buy-In Program is an existing state-funded health care program for individuals under 19 years of age who have countable family income exceeding a certain amount and meet other eligibility requirements, including requirements regarding access to creditable coverage. Individuals participating in the program are subject to premiums and co-payments.

Eligibility requirements

(R.C. 5101.5212)

Current law provides that an individual's countable family income must exceed 250% of the federal poverty guidelines to meet the income requirement for the Children's Buy-In Program. The bill raises this to 300% of the federal poverty guidelines.

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[281] Public Law 111-3.

[282] Under federal law, a "school-based health center" is defined as a health clinic that (a) is located in or near a school facility of a school district or board or of an Indian tribe or tribal organization, (b) is organized through school, community, and health provider relationships, (c) is administered by a sponsoring facility, (d) provides through health professionals primary health services to children in accordance with state and local law, and (e) satisfies other requirements as a state may establish for the operation of a health clinic (42 U.S.C. 1397jj (c)(9).

Other eligibility requirements for the Children's Buy-In Program concern access to creditable coverage. "Creditable coverage" is a federal term meaning all of the following: (1) a group health plan, (2) health insurance coverage, (3) Medicare parts A and B, (4) Medicaid, (5) medical care available through the United States Armed Forces (10 U.S.C. Chapter 55), (6) a medical care program of the Indian Health Service or of a tribal organization, (7) a state health benefits risk pool, (8) health insurance available to federal employees (5 U.S.C. Chapter 89), (9) a public health plan, or (10) a health plan available under the Peace Corps (22 U.S.C. 2504(e)). For purposes of state law governing the Children's Buy-In Program, medical assistance available under the Children's Buy-In Program or the Program for Medically Handicapped Children is not considered to be creditable coverage.

The bill revises the eligibility requirements for the Children's Buy-In Program regarding access to creditable coverage. Under current law, an individual is ineligible for the program unless the individual has not had creditable coverage for at least six months before enrolling in the program, unless the individual lost the only creditable coverage available to the individual because the individual exhausted a lifetime benefit limitation. Also, one or more of the following must apply to the individual:

(1) The individual must be unable to obtain creditable coverage due to a pre-existing condition of the individual;

(2) The individual must have lost the only creditable coverage available to the individual because the individual exhausted a lifetime benefit limitation;

(3) The premium for the only creditable coverage available to the individual must be greater than 200% of the premium applicable to the individual under the Children's Buy-In Program;

(4) The individual must participate in the Program for Medically Handicapped Children.

Instead of those eligibility requirements regarding access to creditable coverage, the bill provides that an individual must not have had creditable coverage for at least three, rather than six, months before enrolling in the Children's Buy-In Program. And, the three-month requirement does not apply if at least one of the requirements from Column I and at least one of the requirements from Column II apply:

Column I	Column II
The individual's parents must be involuntarily unemployed.	The cost of the least expensive creditable coverage available to the individual must be greater than 10% of the individual's countable

Column I	Column II
	family income.
At least one of the individual's parents must be unable to find work due to a disabling condition.	The premium for the creditable coverage with the lowest premium available to the individual must be greater than 150% of the premium applicable to the individual under the Children's Buy-In Program.
At least one of the individual's parents must have involuntarily lost creditable coverage for the individual.	The individual must be unable to obtain creditable coverage due to a pre-existing condition of the individual.
The individual must have creditable coverage under COBRA continuation coverage.	The individual must have lost the only creditable coverage available to the individual because the individual exhausted a lifetime benefit limitation. The individual must participate in the Program for Medically Handicapped Children.

X. 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.

XI. 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.

- Provides that, as of September 29, 2009, the judge of the Lorain County Court of Common Pleas, Division of Domestic Relations, whose term began on February 9, 2009, is the probate judge of the Lorain County Probate Court and that the successors to that judge must be elected as the judge of the probate division of that court.

- Provides that in Lorain County, all proceedings that are within the jurisdiction of the Lorain County Probate Court that are pending before a judge of the Domestic Relations Division of the Lorain County Court of Common Pleas on the effective date of the bill will remain with that judge of the Domestic Relations Division of the Lorain County Court of Common Pleas.

- Provides that in Lorain County, all proceedings that are within the jurisdiction of the Domestic Relations Division of the Lorain County Court of Common Pleas that are pending before the probate judge of the Lorain County Probate Court on September 29, 2009, remain with that probate judge of the Lorain County Probate Court.

- Changes the pay period for the clerks of municipal courts other than those of Auglaize, Brown, Hamilton, Holmes, Lorain, Portage, and Wayne counties to either semimonthly or biweekly, as determined by the payroll administrator.

- 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.

- Increases from $26 to $31 the additional filing fees in the municipal court, county court, and court of common pleas in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state and to support the office of the State Public Defender.

- Provides that the moneys collected by the clerk of the court for the filing fees described in the prior dot point and that must be transmitted to the State Treasurer do not include an amount equal to 1% of those moneys retained to cover administrative costs.

- Provides that if the court fails to transmit to the State Treasurer the moneys the court collects for the filing fees described in the second prior dot point in a manner prescribed by the State Treasurer or the Ohio Legal Assistance Foundation the court must forfeit the moneys the court retains to cover administrative costs and must transmit to the State Treasurer all moneys collected, including the forfeited amount retained for administrative costs, for deposit in the legal aid fund.

- Specifies that the domestic relations division of the court of common pleas is not required to collect the $31 in additional filing fees described in the third prior dot point, except in proceedings concerning annulments, dissolutions of marriage, divorces, and legal separation.

- 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.

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.

Lorain County Court of Common Pleas

Currently the Lorain County Court of Common Pleas has ten judges that are elected pursuant to R.C. 2301.02: six judges of the general division and four judges of the domestic relations division (R.C. 2301.02). The four judges of the domestic relations division, and their successors, have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of Lorain County Court of Common Pleas and are elected and designated as the judges of the Court of Common Pleas, Domestic Relations Division. They have all of the powers relating to the juvenile courts, and all cases under R.C. Chapters 2151. and 2152., all parentage proceedings over which the juvenile court has jurisdiction, and all divorce, dissolution of marriage, legal separation, and annulment cases are assigned to them, except cases that for some special reason are assigned to some other judge of the court of common pleas. (R.C. 2301.03(C)(1)(a).) Under the bill, from February 9, 2009, through *September 28, 2009*, the judge of the Lorain County Court of Common Pleas whose term begins on February 9, 2009, has all the powers relating to juvenile courts, and cases under R.C. Chapters 2151. and 2152., parentage proceedings over which the juvenile court has jurisdiction, and divorce, dissolution of marriage, legal separation, and annulment cases are assigned to that judge, except cases that for some special reason are assigned to some other judge of the Court of Common Pleas. Under the bill, the other three judges of the Domestic Relations Division retain the above-described jurisdiction without limitation.

Current law provides that on and after January 1, 2006, the judges of the Court of Common Pleas, Division of Domestic Relations, in addition to the powers and jurisdiction described above, have jurisdiction over matters that are within the jurisdiction of the probate court (R.C. 2301.03(C)(1)(b)). Current law also provides that on and after February 9, 2009, "probate court" means the Domestic Relations Division of the Court of Common Pleas, and "probate judge" means each of the judges of the Court of Common Pleas who are judges of the Domestic Relations Division (R.C. 2101.01(B)(2)(b)). The bill provides that from January 1, 2006, through *September 28, 2009,* the judges of the Court of Common Pleas, Division of Domestic Relations, have jurisdiction over matters that are within the jurisdiction of the probate court (R.C. 2301.03(C)(1)(b)). The bill also provides that the above-described definitions of "probate court" and "probate judge" are operative from February 9, 2009, through *September 28, 2009,* that the judge of Lorain County Court of Common Pleas, Division of Domestic Relations, whose term begins on February 9, 2009, and successors, is the probate judge beginning September 29, 2009, and is elected and designated as judge of the Court of Common Pleas, Probate Division, and specifies that there are nine judges of the Lorain County Court of Common Pleas that are elected pursuant to R.C. 2301.02 and one judge elected pursuant to R.C. 2101.01 (R.C. 2101.01(B)(2)(a) and (b) and 2301.02).

Current law also provides that the judge of the Court of Common Pleas, Division of Domestic Relations, whose term begins on February 9, 2009, is the successor to the probate judge who was elected in 2002 for a term that began on February 9, 2003. On and after February 9, 2009, with respect to Lorain County, all references in law to the probate court must be construed as references to the Court of Common Pleas, Division of Domestic Relations, all references to the probate judge must be construed as references to the judges of the Court of Common Pleas, Division of Domestic Relations, and all references in law to the clerk of the probate court must be construed as references to the judge who is serving pursuant to Rule 4 of the Rules of Superintendence for the Courts of Ohio as the administrative judge of the Court of Common Pleas, Division of Domestic Relations (R.C. 2301.03(C)(2)(b) and (c).) Current law specifies that the judges of the Domestic Relations Division of the Lorain County Court of Common Pleas elected pursuant to R.C. 2301.02 also perform the duties and functions of the judge of the probate division. The bill provides that after September 28, 2009, the judge of the Lorain County Court of Common Pleas, Division of Domestic Relations, whose term begins on February 9, 2009, is the probate judge, that the references in law to the probate court, probate judge, and the clerk of the probate court that are described above are operative from February 9, 2009 through *September 28, 2009,* and that the judges of the Domestic Relations Division of the Lorain County Court of Common Pleas also perform the duties and functions of the judge of the probate division *from February 9, 2009, through September 28, 2009* (R.C. 2301.02 and 2301.03(C)(1)(c) and (2)(a) and (b)).

The bill specifies in uncodified law that in Lorain County, all proceedings that are within the jurisdiction of the Probate Court under R.C. Chapter 2101. and other provisions of the Revised Code that are pending before a judge of the Domestic Relations Division of the Lorain County Court of Common Pleas on the effective date of the bill remain with that judge of the Domestic Relations Division of the Lorain County Court of Common Pleas. It also specifies that all proceedings that are within the jurisdiction of the Domestic Relations Division of the Lorain County Court of Common Pleas under R.C. Chapter 2301. and other provisions of the Revised Code that are pending before the probate judge of the Lorain County Probate Court on September 29, 2009, remain with that probate judge of the Lorain County Probate Court. Finally, it specifies that the successors to the judge of the Lorain County Court of Common Pleas who was elected pursuant to R.C. 2301.02 in 2008 for a term that began on February 9, 2009, must be elected in 2014 and thereafter pursuant to R.C. 2101.02 as judges of the Probate Division of the Lorain County Court of Common Pleas. (Section 721.10(A) and (B).)

Pay period for certain municipal court clerks

(R.C. 1901.31)

Under existing law, the clerks of municipal courts other than those of Auglaize, Brown, Hamilton, Holmes, Lorain, Portage, and Wayne counties are paid in semimonthly installments. The bill changes the pay period for the clerks of municipal courts other than those of Auglaize, Brown, Hamilton, Holmes, Lorain, Portage, and Wayne counties to either semimonthly or biweekly, as determined by the payroll administrator, and reiterates the existing provision in R.C. 1901.31(A)(2)(d) that the clerk of the Columbiana County Municipal Court be paid either semimonthly or biweekly, as determined by the payroll administrator. (R.C. 1901.31(C)(3).)

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.[283]

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.

Additional filing fees to assist legal aid societies

Current law states that the municipal court, in all its divisions except the small claims division, the county court, in all its divisions except the small claims division, and the court of common pleas must collect the sum of $26 as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state and to support the

[283] 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.

office of the State Public Defender. The clerk of the court must transmit the moneys collected on or before the 20th day of the following month to the State Treasurer in a manner prescribed by the State Treasurer or by the Ohio Legal Assistance Foundation. The additional filing fees are not collected in proceedings concerning annulments, dissolutions of marriage, divorces, legal separation, spousal support, marital property or separate property distribution, support, or other domestic relations matters. (R.C. 1901.26(C), 1907.24(C), and 2303.201(C).)

The bill increases the additional filing fee to $31 and provides that the moneys collected by the clerk of the court that must be transmitted to the State Treasurer do not include an amount equal to up to 1% of those moneys retained to cover administrative costs. The bill also provides that if the court fails to transmit to the State Treasurer the moneys the court collects in a manner prescribed by the State Treasurer or by the Ohio Legal Assistance Foundation, the court must forfeit the moneys the court retains to cover the administrative costs, including the hiring of any additional personnel necessary to implement this provision, and must transmit to the State Treasurer all moneys collected under R.C. 1901.26(C), 1907.24(C), and 2303.201(C), including the forfeited amount retained for administrative costs, for deposit in the legal aid fund (R.C. 1901.26(C), 1907.24(C), and 2303.201(C)). With respect to the court of common pleas, the bill specifies that the additional $31 filing fees do not apply to the domestic relations division of the court except that the additional $31 filing fees do apply to proceedings concerning annulments, dissolutions of marriage, divorces, and legal separation.

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.[284]

[284] 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.

- 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.[285] 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.[286] The study is to include an analysis of all of the following:

(1) The feasibility of a transition to a nonprofit organization;

[285] 42 U.S.C.15041 *et seq.*; the specific requirement is in 42 U.S.C. 15043.

[286] Federal law provides certain requirements for the redesignation of an agency administering funds for the protection of persons with mental illness, mental retardation, developmental disabilities, or other disabilities. The protection agency may not be redesignated unless (1) there is good cause, (2) the Governor gives the agency 30 days notice of the intention to make the redesignation and an opportunity to respond to the assertion that good cause has been shown, (3) individuals with disabilities or their representatives have timely notice of the redesignation and an opportunity for public comment, and (4) the agency has the opportunity to appeal to the United States Rehabilitation Services Administration Commissioner (29 U.S.C. 732(c)(1)(B)(i) and 42 U.S.C. 15043(a)(4)). Certain programs provide exceptions to these requirements (29 U.S.C. 732(c)(1)(B)(ii)).

(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.

LEGISLATIVE SERVICE COMMISSION (LSC)

- Re-establishes the Legislative Committee on Education Oversight and the Legislative Office of Education Oversight.

Legislative Office of Education Oversight

(R.C. 3301.68 and 3314.03(A)(11)(g))

The General Assembly eliminated the Legislative Office of Education Oversight (LOEO) in Am. Sub. H.B. 66 of the 126th General Assembly (the 2005-2007 operating budget act), effective December 31, 2005. The bill re-establishes both LOEO and, to oversee it, the Legislative Committee on Education Oversight. As provided in previous law, the Legislative Committee itself is subject to the oversight and direction of the Legislative Service Commission. The Committee must direct the work of the LOEO, may employ a director and other staff for LOEO, and may contract technical advisors. The committee must consist of ten members, five members of the House of Representatives appointed by the Speaker of the House and five Senators appointed by the President of the Senate. The Speaker and the President each may not appoint more than three members from the same political party.

The LOEO, directed by the Legislative Committee on Education Oversight, must review and evaluate education and school-related programs that receive state financial assistance in any form, as directed by the Committee. The Committee then reports the results of each review to the General Assembly. The reviews and evaluations may include any of the following:

(1) An assessment of the uses school districts and institutions of higher education make of state money they receive and determination of the extent to which such money improves school district or institutional performance in the areas for which the money was intended to be used;

(2) A determination of whether an education program meets its intended goals, has adequate operating or administrative procedures and fiscal controls, encompasses only authorized activities, has any undesirable or unintended effects, and is efficiently managed; and

(3) An examination of various pilot programs developed and initiated in school districts and at state colleges and universities to determine whether such programs suggest innovative, effective ways to deal with problems that may exist in other school districts or state colleges or universities, and to assess the fiscal costs and likely impact of adopting such programs throughout the state.

If the General Assembly directs the LOEO to submit a study by a specific date, the committee, upon a majority vote of its members, may modify the scope and due date of the study to accommodate the availability of data and resources.

The bill also revives a prior law directing the governing authority of a community school to submit to the LOEO an annual progress report and any other information LOEO requests in performing any study or research that the General Assembly requires it to conduct.

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 cooperation, and other library purposes. All investment earnings of the fund must be credited to the fund.

LOCAL GOVERNMENT (LOC)

- Modifies the makeup of a financial planning and supervision commission and the qualifications of commission members.
- Specifies the number of commission members necessary to constitute a quorum.
- Authorizes boards of county commissioners to adopt quarterly spending plans for any appropriation from any county fund.
- Requires a board to notify affected county offices or departments of the plan and allow them to comment on the plan at a public meeting of the board.
- Requires that a member of the board of county commissioners be a member of the county board of revision, and removes the requirement that the president of the board of county commissioners be a member.
- 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.
- Removes a provision that excludes employees and officers of the court and employees of the clerks of courts who perform a judicial function 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.

- Reduces, from fifteen to ten, the minimum number of days for bidding when a nonchartered municipal corporation sells personal property by Internet auction.

- Authorizes a board of county commissioners for a sewer district, and a board of trustees for a regional water and sewer district, to offer discounts or reductions on water and sewer rates, rentals, or charges to certain persons 65 years of age or older who are eligible for the homestead exemption or qualify as low-and moderate-income persons.

- Adds that the Ohio Commission on Local Government Reform and Collaboration, in developing its recommendations, must consider making annual financial reporting across local governments consistent for ease of comparison and aligning regional planning units across state agencies.

- Extends the time from October 15, 2009, to October 15, 2010, during which local governments may enter enterprise zone agreements.

- Authorizes all counties to create a county land reutilization corporation for the purpose of disposing of tax-delinquent real property.

- Authorizes a certain nonprofit corporation (one currently authorized to establish a police department and having certain specified corporate purposes) to create a special improvement district governed by the corporation's existing board.

- Permits a sheriff, deputy sheriff, or municipal police officer, who is trained in the same manner and to the same extent as uniformed employees of the Motor Carrier Enforcement unit of the State Highway Patrol, to enforce compliance with commercial motor vehicle transportation safety, economic, and hazardous materials requirements.

- Requires the Public Utilities Commission (PUCO) to establish a memorandum of agreement between the PUCO and the legislative authority of a county or municipal corporation regarding compliance enforcement by sheriffs, deputy sheriffs, and municipal police officers and procedures for entering into that memorandum.

- Permits authorized and uniformed sheriffs, deputy sheriffs, or municipal police officers, in accordance with memoranda of agreement with the PUCO to stop and conduct inspections of commercial vehicles and certain property.

- Requires the PUCO to adopt rules specifying (1) how a violation cited by a sheriff, deputy sheriff, or municipal police officer must be forwarded to the PUCO, (2) training, education, and certification requirements for sheriffs, deputy sheriffs, and municipal police officers, and (3) the eligibility of the legislative authority of a

county or municipal corporation to submit a request for reimbursement for training and equipment costs incurred and the procedures for obtaining reimbursement.

- Creates the Local Commercial Vehicle Enforcement Fund into which forfeitures for compliance violations discovered by a sheriff, deputy sheriff, or municipal police officer are deposited and specifies how the amounts in the fund are to be allocated.

- Increases the amount of each fee that a clerk of a court of common pleas retains for issuing a certificate of title for a watercraft or outboard motor, motor vehicle, off-highway motorcycle, or all-purpose vehicle when there is no lien or security interest noted on the certificate.

- Prohibits the state and political subdivisions from using internet reverse auctions to purchase supplies or services if the contract concerns the design, construction, alteration, repair, reconstruction, or demolition of a building, highway, road, street, alley, drainage system, water system, waterworks, ditch, sewer, sewage disposal plant, or any other structure or works of any kind.

- Increases certain fees that a sheriff charges for the service and return of certain writs and orders and for transporting convicted felons to state correctional institutions.

- Requires a charge of $4 for accident reports and a charge of $4 for photographs or any other "electronic format" related to accident reports.

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.

County quarterly spending plans

(R.C. 5705.392)

Current law authorizes a board of county commissioners to adopt as part of its annual appropriation resolution, or amended appropriation resolution, a spending plan setting forth a quarterly schedule of expenditures of all appropriations for the fiscal year for the county general fund. The plan must set forth a quarterly schedule of expenditures for each county office, department, and division and for each must set forth the amount appropriated for personal services. The offices, departments, and divisions may not incur expenses exceeding the money appropriated or enter into contracts or give orders that would cause their expenses to exceed amounts appropriated for the quarter.

The bill authorizes counties to adopt spending plans for all other county funds. At least 30 days before adopting an appropriation or amended appropriation resolution, the board of county commissioners must deliver to each office, department, or division written notice of its intention to adopt a spending plan for that office, department, or division. The board must deliver the notice and a copy of the proposed plan by regular first class mail or by personal service. The office, department, or division may meet with the board at any regular session of the board to comment on the notice, express concerns, or ask questions about the proposed plan.

County board of revision

(R.C. 5715.02)

Current law requires the President of a board of county commissioners to be a member of the county board of revision. The bill removes this requirement and requires a member of the board of county commissioners, selected by the board of county commissioners, to be a member of the county board of revision.

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.[287]

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.

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[287] 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 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.

Collective bargaining with court and clerk of court employees

Current law under the PECBL provides an exception to the definition of "public employee" for employees and officers of the courts and employees of the clerks of courts who perform a judicial function. The bill removes these employees from the list of exclusions from the definition of "public employee." Therefore, under the bill, these types of employees are defined as "public employees" 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.

Minimum bidding period for certain sales of personal property by Internet auction

(R.C. 721.15)

Current law authorizes a nonchartered municipal corporation to sell personal property that is unneeded, obsolete, or unfit for use by a variety of means, including a sale by Internet auction. The legislative authority must adopt a resolution on an annual

basis expressing its intent to sell the property in this manner. Under current law, the property must be available on the Internet for bidding for at least 15 days, including Saturdays, Sundays, and legal holidays.

The bill reduces, from fifteen to ten, the minimum number of days for bidding when a municipal corporation sells personal property by Internet auction.

Discounts or reductions on water and sewer service for certain persons 65 years of age or older

(R.C. 6103.01, 6103.02, 6117.01, 6117.02, 6119.011, and 6119.091)

Current law authorizes a board of county commissioners to create a sewer district and provide water and sewer services in the district. Similarly, the board of trustees of a regional water and sewer district may provide water and sewer services in the district under the Regional Water and Sewer Districts Law. The board of county commissioners is required to fix reasonable water and sewer rates and other charges. The board of trustees of a regional water and sewer district is authorized to charge rentals and other charges for water and sewer services.

The bill authorizes such a board of county commissioners and board of trustees to establish discounted rates, rentals, or charges, or to establish another mechanism for providing a reduction in rates, rentals, or charges, for persons who are 65 years of age or older. A board is required to establish eligibility requirements for a discounted or reduced rate, rental, or charge in addition to the recipients being 65 years of age or older. One of those requirements must be that a recipient qualify as a low- and moderate-income person under guidelines adopted by the Housing Finance Agency or that a recipient be eligible for the homestead exemption, which provides real property tax reductions to elderly persons who own real property.

Ohio Commission on Local Government Reform and Collaboration

(Section 610.30)

Am. Sub. H.B. 562 of the 127th General Assembly (Section 701.20) created the Ohio Commission on Local Government Reform and Collaboration to develop recommendations on ways to increase the efficiency and effectiveness of local government operations, to achieve cost savings for taxpayers, and to facilitate economic development in Ohio. The commission must issue a report of its findings and recommendations to the President of the Senate, the Speaker of the House of Representatives, and the Governor not later than July 1, 2010. In developing the recommendations, the commission must consider, but is not limited to, the following:

(1) Restructuring and streamlining local government offices to achieve efficiencies and cost savings for taxpayers and to facilitate local economic development;

(2) Restructuring and streamlining special taxing districts and local government authorities authorized by the Ohio Constitution or Ohio laws to levy a tax of any kind or to have a tax of any kind levied on its behalf, and of local government units, including schools and libraries, to reduce overhead and administrative expenses;

(3) Restructuring, streamlining, and finding ways to collaborate on the delivery of services, functions, or authorities of local government to achieve cost savings for taxpayers;

(4) Examining the relationship of services provided by the state to services provided by local government and the possible realignment of state and local services to increase efficiency and improve accountability; and

(5) Ways of reforming or restructuring constitutional, statutory, and administrative laws to facilitate collaboration for local economic development, to increase the efficiency and effectiveness of local government operations, to identify duplication of services, and to achieve costs savings for taxpayers.

The bill requires the commission also to consider the following:

(1) Making annual financial reporting across local governments consistent for ease of comparison; and

(2) Aligning regional planning units across state agencies.

Enterprise zone agreements

(R.C. 5709.62, 5709.63, and 5709.632)

Existing law permits counties and municipal corporations to designate areas within the municipality or county as "enterprise zones." After designating an area as an enterprise zone, the municipality or board must petition the Director of Development for certification of the designated enterprise zone. Under current law, if the Director certifies a designated enterprise zone, the municipality or board may then enter into an enterprise zone agreement with a business for the purpose of fostering economic development in the enterprise zone. Under an enterprise zone agreement, the business agrees to establish or expand within the enterprise zone, or to relocate its operations to the zone, in exchange for tax relief and other incentives.

Current law authorizes local governments to enter enterprise zone agreements through October 15, 2009. The bill extends the time during which local governments may enter such an agreement to October 15, 2010.

County land reutilization corporations

(R.C. 1724.04 and 323.78)

Sub. S.B. 353 of the 127th General Assembly authorized the creation of a type of "community improvement corporation" known as a "county land reutilization corporation" (CLRC) under R.C. 1724.04 in counties with a population of greater than 1.2 million. The purpose of CLRCs is to assist other entities in assembling, clearing, and clearing title of property in a coordinated manner and to promote economic and housing development in the county or region. (For more information regarding what authority is granted to CLRCs, see the LSC bill analysis for Sub. S.B. 353.)

The bill extends to all county treasurers the authority to invoke the "alternative redemption period" when foreclosing the delinquent tax lien against abandoned land. Sub. S.B. 353 authorized the use of an alternative redemption period in counties having a population greater than 1.2 million. The alternative period potentially shortens the time within which an owner or other interested party may "redeem" abandoned tax-foreclosed property by paying the outstanding tax debt. The alternative redemption period is the 45-day period after an adjudication of foreclosure is journalized by a court or county board of revision. Under traditional property foreclosure procedure, the right to "redeem" property by paying the debt for which the property is being foreclosed when the entry of confirmation of sale or transfer is filed after the property is sold in a tax sale auction.

Special improvement districts

(R.C. 1710.01, 1710.02, 1710.03, 1710.04, 1710.06, 1710.10, and 1710.13)

The bill authorizes the creation of a special improvement district by certain existing nonprofit corporations, and provides for the governance of the district by the existing corporation's governing board instead of the creation of a new board. Special improvement districts currently may be created by property owners to provide public improvements or services funded by local government bonds and special assessments levied on property in the district. The improvements that the district may provide are those that a municipal corporation may levy special assessments for, and the services are those that a municipal corporation may provide or for which special assessments may be levied under the general law governing special assessments (R.C. Chapter 727.).

To create a special improvement district (SID) under the bill, a nonprofit corporation must exist before the district is created, must have certain specified purposes, and must have created a police department under existing law authorizing the establishment of a police department by certain nonprofit corporations (R.C. 1702.80). The specified purposes include: the acquisition of real property within a specified area for the subsequent transfer to its members exclusively for charitable, scientific, literary, or educational purposes, or holding and maintaining and leasing such property; planning for and assisting in the development of its members; providing for the relief of the poor and distressed or underprivileged in the area and adjacent areas; combating community deterioration and lessening the burdens of government; providing or assisting others in providing housing for low- or moderate-income persons; and assisting its members by the provision of public safety and security services, parking facilities, transit service, landscaping, and parks.

Under current law governing special improvement districts (R.C. Chapter 1710.), a SID is created by property owners within a contiguous area. A nonprofit corporation must be created specifically for the purpose of the SID, and the corporation's board of trustees is the governing board of the SID. Before a SID may be created, the corporation's articles of incorporation must be filed for approval by the township or municipal corporation where the district would be located. The articles must be accompanied by a petition signed by the owners of either 75% of the area to be in the SID or 60% of the front footage in the SID (in either case excluding churches and governments that do not specifically request inclusion). If the township or municipal corporation approves the petition and articles, the district is created, and all owners of property in the district become members of the district, and their property subject to any assessment that may be levied, except for the state or federal government, and except for any local government or church that does not specifically request to be a member. The SID board of directors is composed of at least five members, including the municipal corporation's chief executive (or designee) if the SID is in a municipal corporation, and an appointee by the legislative body of the township or municipal corporation where the SID is located. The remaining directors are elected by a majority vote of the members of the SID.

If an existing nonprofit corporation creates a SID under the bill's new authority, the corporation need only file a copy of its existing articles of incorporation for approval by the township or municipal corporation. The corporation need not file a petition signed by property owners. If the articles are approved by the township or municipal corporation, the membership is composed of all property owners except those excepted from SIDs under current law, but any church that is a member of the existing nonprofit corporation is a member of the SID. The existing corporation's board of trustees would be the SID board of directors. The election of directors otherwise required by current

law would not be required, and the requirement that a municipal executive and appointees of the legislative authorities be members of the district's board of directors may be satisfied by the membership on the corporation's board of representatives of the municipal corporation or township; or, the requirement may be waived if approved by the municipal corporation or township. Several governance and procedural provisions of current law applicable to SID boards do not apply to the existing nonprofit corporation's board to the extent they are not consistent with its regulations, including the appointment of proxies or designees, notices of meetings, the election of officers, and annual reporting. In the case of inconsistency, the existing corporation's regulations govern.

Current SID law requires that any law enforcement or fire protection services to be provided by the SID be provided only by contract with the township or municipal corporation. Under the bill, a SID created by an existing nonprofit corporation may provide its own law enforcement service without such a contract, in view of the fact that an existing nonprofit corporation qualified to create a SID under the bill is qualified under existing law to establish its own police department.

Current law provides procedures for the dissolution of a SID and the disposition of its assets and liabilities. This provision does not apply to a SID created by an existing nonprofit corporation under the bill's authority.

Expanded enforcement of commercial motor vehicle transportation laws

(R.C. 311.32 and 737.39)

Current law authorizes the motor carrier enforcement unit[288] of the State Highway Patrol within the Department of Public Safety to stop and inspect commercial motor vehicles in order to enforce compliance with current law and any Public Utilities Commission (PUCO) rule or order pertaining to motor vehicle transportation safety, economic, and hazardous materials requirements. The bill grants the same authority to a sheriff, deputy sheriff, or municipal police officer who is trained in the same manner as uniformed employees of the Patrol's Motor Carrier Enforcement Unit. A sheriff, deputy sheriff, or municipal police officer must cooperate with the PUCO in carrying out this enforcement authority and in enforcing any other applicable laws and must comply with any rules the PUCO adopts under the bill (see "**Memorandum of agreement and PUCO rules**" below).

[288] R.C. 5503.34 (not in the bill)

Commercial motor vehicle inspections

(R.C. 4905.06, 4919.79, and 4923.20)

Current law permits authorized employees of the Motor Carrier Enforcement Unit of the Patrol to conduct inspections of certain commercial motor vehicles and to do so by entering in or upon any vehicle of any interstate carriers of persons or property, including those carrying hazardous materials, entering in or upon any property of a motor transportation company engaged in the intrastate transportation of persons, and entering in or upon the premises of a private motor carrier engaged in the intrastate transportation of persons. Under the bill, this authority is expanded to permit authorized sheriffs, deputy sheriffs, and municipal police officers to conduct such inspections in accordance with memoranda of agreement entered into with the PUCO (see "**Memorandum of agreement and PUCO rules**" below).

Memorandum of agreement and PUCO rules

(R.C. 4919.80(A) and (B))

The bill requires the PUCO to establish a memorandum of agreement between the PUCO and the legislative authority of a county or municipal corporation in relation to the enforcement authority granted to a sheriff, deputy sheriff, and municipal police officer under the bill. The PUCO also must establish the procedures for entering into the memorandum. In addition, the bill requires the PUCO to adopt rules that it finds necessary regarding this new enforcement authority. The rules must include all of the following pursuant to the enforcement authority granted under the bill:

(1) Specifications of the form, manner, and time in which any violation cited under the bill must be forwarded to the PUCO;

(2) Specification of the training, education, and certification required in order to take action;

(3) The eligibility of, and procedures to be followed by, the legislative authority of a county or municipal corporation to apply to the PUCO for reimbursement only of training and equipment costs incurred by the county or municipal corporation.

Local Commercial Motor Vehicle Enforcement Fund and distribution of forfeitures

(R.C. 4919.80(C))

The bill creates in the state treasury the Local Commercial Motor Vehicle Enforcement Fund. All forfeitures[289] collected as a result of a sheriff, deputy sheriff, or municipal police officer enforcing compliance with commercial motor vehicle transportation laws as authorized by the bill must be deposited to the credit of the Fund. An amount not exceeding the first $200,000 of forfeitures deposited in a fiscal year must be used by the PUCO for the administration of the Fund and to carry out the PUCO's duties pursuant to the bill. The bill requires any excess forfeitures not exceeding $1.2 million deposited in the fiscal year to be distributed by the PUCO to the legislative authority of any county or municipal corporation upon application for reimbursement of training and equipment costs pursuant to rules adopted by the PUCO under the bill. In addition, the bill specifies that all forfeitures collected and equal to or greater than $1.2 million in a fiscal year must be deposited to the credit of the General Revenue Fund.

Clerk of courts titling fees

(R.C. 1548.10, 4505.09, and 4519.59)

Am. Sub. H.B. 2 of the 128th General Assembly generally increased the fee that a clerk of a court of common pleas charges for issuing a certificate of title for a watercraft or outboard motor, motor vehicle, off-highway motorcycle, or all-purpose vehicle from $5 to $15. The bill revises the amount of the fee that the clerk retains when there is no lien or security interest noted on the certificate of title, as follows: (1) $12 for each watercraft or outboard motor, rather than $10.50 as under Am. Sub. H.B. 2 and (2) $12.25 for each motor vehicle, off-highway motorcycle, or all-purpose vehicle, rather than $10.50 as under Am. Sub. H.B. 2.

As a result of the clerk keeping these additional funds: (1) the Chief of the Division of Watercraft will receive $3 rather than $4.50 as under Am. Sub. H.B. 2 for each watercraft or outboard motor certificate of title when there is no lien or security interest noted on the certificate and (2) the Registrar of Motor Vehicles will receive $2.75, rather than $3.50 as under Am. Sub. H.B. 2 for each motor vehicle, off-highway motorcycle, or all-purpose vehicle certificate of title when there is no lien or security

[289] Current law requires the PUCO to assess forfeitures for violations of noncompliance with commercial motor vehicle laws found in Revised Code Chapters 4919., 4921., and 4923. The PUCO may assess forfeitures of not more than $10,000 for each day of each violation.

interest noted on the certificate. For the Registrar, the reduction in fees per certificate of title with no lien or security interest notation results in the Registrar distributing $.75 less for each such certificate to the State Bureau of Motor Vehicles Fund.

Limitation on state and political subdivision use of Internet reverse auctions

(R.C. 9.314 and 9.317)

Under current law, whenever any political subdivision[290] determines that the use of a reverse auction[291] is advantageous to the political subdivision, the political subdivision, in accordance with this Ohio law and the political subdivision's rules, can purchase supplies or services by reverse auction soliciting proposals through a request for proposals. Also, whenever the Director of Administrative Services determines that the use of a reverse auction is advantageous to the state, the Director, in accordance with rules the Director adopts, can purchase supplies or services by reverse auction. The Director also can authorize a state agency that is authorized to purchase supplies or services directly to purchase them by reverse auction. (R.C. 125.072, not in the bill.)

The bill prohibits a political subdivision and a state agency[292] from purchasing supplies or services by reverse auction if the contract concerns the design, construction, alteration, repair, reconstruction, or demolition of a building, highway, road, street, alley, drainage system, water system, waterworks, ditch, sewer, sewage disposal plant, or any other structure or works of any kind.

Changes in certain fees charged by a sheriff and by a law enforcement agency for accident reports

(R.C. 311.17, 2949.17, and 5502.12)

Sheriff's fees

Current law requires the sheriff to charge various fees for the service and return of specified writs and orders. The bill increases from $20 to $30 the fee charged for a

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[290] "Political subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities only in geographic areas smaller than Ohio and also includes a contracting authority.

[291] "Reverse auction" means a purchasing process in which offerors submit proposals in competing to sell supplies or services in an open environment via the internet.

[292] "State agency" means any organized body, office, agency, institution, or other entity established by the laws of Ohio for the exercise of any function of state government (R.C. 9.23, not in the bill).

writ or order of execution when money is paid without levy or when no property is found. The bill also increases from $10 to $20 the fee charged for an arrest warrant, for each person named in the warrant. And the bill increases from $6 to $10 the fee charged for a subpoena, for each person named in the subpoena in either a civil or criminal case. (R.C. 311.17(A)(1)(a), (A)(5), and (A)(8).)

Current law requires the sheriff to charge for serving each summons, writ, order, or notice a fee of $1 per mile for the first mile, and 50¢ per mile for each additional mile, going and returning, with the actual mileage to be charged on each additional name. The bill increases these amounts from $1 to $2 and from 50¢ to $1. (R.C. 311.17(B).)

Current law provides for reimbursement to the county when the sheriff transports indigent convicted felons to a state correctional institution in an amount equal to (1) 10¢ a mile from the county seat to the state correctional institution and return for the sheriff and each of the guards involved and (2) 5¢ a mile from the county seat to the state correctional institution for each prisoner. The bill changes the amount of this reimbursement to not less than $1 a mile from the county seat to the state correctional institution and return for each prisoner. (R.C. 2949.17(B).)

Accident report fees

Current law requires law enforcement agencies to submit motor vehicle accident reports to the Director of Public Safety for purposes of statistical, safety, and other studies. The law enforcement agency that submits such a report must furnish a copy of the report and associated documents to any person claiming an interest arising out of a motor vehicle accident, or to the person's attorney, upon payment of a nonrefundable fee that must not exceed $4. The bill sets the amount of this fee at $4.

Current law further provides that the cost of photographs must be in addition to the nonrefundable $4 fee for the accident report. The bill provides that the cost of photographs or any other "electronic format" must be a $4 fee in addition to the nonrefundable $4 fee for the accident report, whether the report was submitted by the State Highway Patrol or another law enforcement agency. (R.C. 5502.12.)

MANUFACTURED HOMES COMMISSION (MHC)

- Transfers the licensing and regulatory authority of manufactured housing brokers, dealers, and salespersons from the Registrar of Motor Vehicles to the Manufactured Homes Commission, effective July 1, 2010.

- Transfers the inspection authority for manufactured homes located in manufactured home parks from the Department of Health to the Manufactured Homes Commission, effective January 1, 2010.

- Makes changes to the law regarding application for certificate of title for manufactured and mobile homes.

Manufactured housing dealers, brokers, and salespersons

Licensure of manufactured housing dealers, brokers, and salespersons

(R.C. 4505.062, 4505.20, 4517.01, 4517.02, 4517.03, 4517.052, 4517.27, 4517.30, 4517.33, 4517.43, 4781.01, 4781.02, 4781.05, 4781.16, 4781.17, 4781.18, 4781.19, 4781.20, 4581.21, and 4781.23; Sections 745.20, 745.30, 745.40, and 812.10)

Effective July 1, 2010, the bill transfers the authority of and responsibility for licensure of manufactured housing dealers, brokers, and salespersons from the Registrar of Motor Vehicles to the Manufactured Homes Commission and specifically allows the Executive Director of the Commission to review those applications. However, except as provided below, the bill maintains current law's licensure requirements and processes including license renewal and maintenance requirements, confidentiality requirements, and grounds for refusal to issue or renew, suspension, and revocation of a license:

(1) The bill adds to the definition of a salesperson any person employed by a manufactured home broker in addition to a person employed by dealers.

(2) The bill's licensure requirements eliminate the possibility that a person licensed as a motor vehicle dealer or salesperson could do the business of a manufactured housing dealer or salesperson.

(3) The bill removes the requirement that applicants for a manufactured housing broker license submit a separate application for each location at which the business is to be conducted and, instead requires them to submit a separate application for each county as is required for dealer licenses.

(4) The bill removes a reference to applicants for initial licensure submitting an application "annually."

(5) Under current law, when a manufactured housing salesperson applies to have his or her license reinstated, transferred, or registered under a new dealer, the

person must pay a $2 fee. Rather than specifying the fee, the bill requires the Commission to establish the fee for the reinstatement or transfer of those licenses.

(6) Under continuing law, all appeals resulting from the Registrar's refusal to issue any license upon proper application must be taken within 30 days from the date of the order, or the order is final and conclusive. The bill applies that 30-day time limit to requests for adjudication hearings for any person whose manufactured housing dealer, broker, or salesperson's license is revoked, suspended, denied, or not renewed by the Commission.

Regulation of manufactured housing dealers, brokers, and salespersons

(R.C. 4781.04, 4781.05, 4781.16, 4781.22, 4781.24, 4781.25, and 4781.99; Sections 745.10 and 812.10)

Effective July 1, 2010, the bill also transfers the authority of and responsibility for regulation of manufactured housing dealers, brokers, and salespersons from the Registrar of Motor Vehicles to the Manufactured Homes Commission. In addition to the Commission's current responsibilities regarding manufactured housing installers, the bill requires the Commission to adopt rules governing the training, experience, and education requirements for manufactured housing dealers, brokers, or salespersons; to govern the investigation of and investigate complaints concerning any violation of manufactured homes law or complaints involving the conduct of any licensed manufactured housing dealer, broker, or salesperson; and conduct audits and inquiries for manufactured housing dealers, brokers, and salespersons. Under the bill, the Executive Director of the Commission is responsible for notifying manufactured housing dealers, brokers, and salespersons of any changes in the laws and regulations that govern them.

The bill maintains the current law's regulation in all of the following areas:

(1) Prohibited acts for manufactured housing dealers including soliciting the sale of a manufactured home or mobile home person other than a licensed salesperson in the employ of the dealer; paying any commission or compensation in connection with the sale of a manufactured home or mobile home except a salesperson in the employ of the dealer; and failing to immediately notify the Commission upon termination of the employment of a licensed salesperson;

(2) Written contracts for every retail sale of a manufactured home or mobile home;

(3) Bonds for manufactured housing brokers;

(4) Penalties for violation of the laws governing manufactured housing dealers, brokers, and salespersons.

Current law regulating motor vehicle dealers (including manufactured housing dealers) prohibits signing contracts, taking deposits, or completing sales at the location of a motor vehicle show. For purposes of that law, as it stands prior to July 1, 2010, when the authority for licensure of manufactured housing dealers transfers from the Registrar to the Commission, the bill expressly allows dealers to sign contracts, take deposits, and complete sales at the location of a motor vehicle show if the motor vehicles are new manufactured homes. After July 1, 2010, the bill's proposed regulation of manufactured housing dealers is silent on the point.

Additionally, existing law prohibits a motor vehicle dealer, including a manufactured home dealer, from selling, displaying, offering for sale, or dealing in motor vehicles (including manufactured or mobile homes) at any place except an established place of business that is used exclusively for the purpose of selling, displaying, offering for sale, or dealing in motor vehicles (including manufactured or mobile homes). Existing law also prohibits manufactured housing brokers from engaging in the business of brokering manufactured or mobile homes at any place except an established place of business that is used exclusively for the purpose of brokering manufactured or mobile homes.

The bill clarifies those requirements as they apply to manufactured housing dealers and brokers. Under the bill, a place of business used for the brokering or sale of manufactured homes or mobile homes would be considered as used exclusively for brokering, selling, displaying, offering for sale, or dealing in manufactured or mobile homes (motor vehicles including manufactured or mobile homes prior to July 1, 2010) even though, industrialized units are brokered, sold, displayed, offered for sale, or dealt at the same place of business. For purposes of the law beginning July 1, 2010, the bill also adds places of business used for dealing in manufactured or mobile homes to the above clarification.

Under the bill, if a licensed new or used motor vehicle dealer also is a licensed manufactured home park operator, all of the following apply:

(1) An established place of business that is located in the operator's manufactured home park and that is used for selling, leasing, and renting manufactured homes and mobile homes in that manufactured home park would be considered as used exclusively for that purpose even though rent and other activities related to the operation of the manufactured home park take place at the same location or office as the sales and leasing activities.

(2) The dealer's established place of business in the manufactured home park would be staffed by someone licensed and regulated under the law governing manufactured housing dealers, brokers, and salespersons who could reasonably assist any retail customer with or without an appointment, but such established place of business must not be required to satisfy office size, display lot size, and physical barrier requirements applicable to other used manufactured housing (motor vehicle dealers including manufactured housing dealers prior to July 1, 2010).

(3) The manufactured and mobile homes being offered for sale, lease, or rental by the dealer may be located on individual rental lots inside the operator's manufactured home park.

Compliance with installation and other standards

(R.C. 3733.02, 4781.04, 4781.06, and 4781.07)

Continuing law requires the Manufactured Homes Commission to adopt rules that govern the inspection of the installation of manufactured housing and the design, construction, installation, approval, and inspection of foundations and the base support systems for manufactured housing located in manufactured home parks. However, under current law, those inspections are completed by the Department of Health or a licensor, as determined by the Department. Effective January 1, 2010, the bill transfers the authority for inspections to the Commission or to any building department or personnel or any department, any licensor or personnel of any licensor, or any third party as long as the individual is certified by the Commission.

Application for certificate of title of a manufactured or mobile home

(R.C. 4505.01, 4505.111, 4505.06, and 4505.181)

Except as provided below, the bill maintains current law in regards to titling manufactured and mobile homes:

First, under current law, every motor vehicle that is assembled from component parts by a person other than the manufacturer must be inspected by the State Highway Patrol prior to the issuance of title to the motor vehicle. The bill exempts manufactured homes and mobile homes from that requirement.

Second, under continuing law, manufactured and mobile homes must have certificates of title through the Registrar of Motor Vehicles, and those applications for certificate of title must be filed in the same way as an application for certificate of title of a motor vehicle is filed within 30 days after the delivery of the manufactured or mobile home. The bill clarifies the deadlines by which a motor vehicle or manufactured

housing dealer must file for a certificate of title for a new or used manufactured or mobile home. Under the bill, the delivery date for a manufactured or mobile home is the date on which an occupancy permit for the manufactured or mobile home is delivered to the purchaser. Additionally, if a certificate of title for a used manufactured or mobile home was issued to the dealer, the same 30-day requirement applies. If the dealer does not have a certificate of title because the dealer is displaying the home on behalf of a secured party and the dealer complies with the requirements below, the application for certificate of title must be filed within 30 days after the dealer obtains the certificate of title from the secured party or within the normal 30-day period beginning on the date on which an occupancy permit for the manufactured or mobile home is delivered to the purchaser, whichever is later.

Third, continuing law allows a motor vehicle or manufactured housing dealer to display, offer for sale, or sell a motor vehicle, used manufactured home, or used mobile home without first obtaining a certificate of title in the name of the dealer if the deal meets specified requirements including possessing a bill of sale and posting a bond or a deposit in a sum that is based upon the number of years that the dealer has been licensed. The bill adds the requirement that the bill of sale be available for inspection by the Manufactured Homes Commission and, in addition to the Attorney General and the Registrar, the dealer notify the Manufactured Homes Commission when the dealer cancels the required bond.

Fourth, under continuing law, if a retail purchaser purchases a motor vehicle, including a manufactured or mobile home, from a dealer that did not have a certificate of title as described above and the dealer does one of the following, the purchaser may rescind the transaction and receive a full refund: (1) the dealer does not obtain the title within 40 days after the sale, (2) the dealer did not disclose that the vehicle is a rebuilt salvage vehicle, (3) the dealer makes an inaccurate odometer disclosure. The bill adds the following to that list: (4) if the motor vehicle is a used manufactured home or used mobile home that has been repossessed, but a certificate of title for the repossessed home has not yet been transferred by the repossessing party to the dealer on the date the retail purchaser purchases the used (repossessed) manufactured home or used mobile home from the dealer, and the dealer fails to obtain a certificate of title on or before 40 days after the dealer obtains the certificate of title for the home from the repossessing (usually a financial institution) party or the date on which an occupancy permit for the home is delivered to the purchaser by the appropriate legal authority, whichever occurs later.

- 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.

MEDICAL TRANSPORTATION BOARD (AMB)

- Exempts from requirements pertaining to ambulette services an entity that is not certified by the Department of Aging but provides ambulette services under a contract 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, when allocating money from the General Revenue Fund (GRF) for local management of mental health services, to allocate the money to groups of two or more ADAMHS boards (boards of alcohol, drug addiction, and mental health services), instead of separate boards, if the boards included in each group agree to its group allocation.

- Requires the ODMH Director to establish a limit on the amount or portion of state and federal funds provided to ADAMHS boards that may be used for administrative purposes and to specify the permissible uses of the funds for administrative purposes.

- Permits the ODMH Director to deny funds to an ADAMHS board that exceeds the limit the Director establishes.

- Permits ADAMHS boards to seek a variance or waiver from the limit by submitting a written application to the ODMH Director and specifies that the Director has sole discretion to grant or deny the variance or waiver.

- 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 Community Behavioral Health Elevation and Administration Advisory Group and requires the Group to study the statewide administration and management of Medicaid-covered community behavioral health services.

- Requires the Advisory Group to issue a report regarding its study not later than June 30, 2010.

- Requires ODMH and ODADAS to implement changes to the administration and management of Medicaid-covered community behavioral health services not later than July 1, 2011, but provides that the Departments' implementation of the changes is subject to changes in state law that otherwise would conflict with the Departments' implementing the changes, including changes related to funding.

- Requires the ODMH Director, ODADAS Director, and ODJFS Director to convene a group to develop recommendations regarding the amount, duration, and scope of publicly funded community behavioral health services that should be available through Ohio's community behavioral health system.

- Permits a care coordination agency to provide certain information to the Ohio Family and Children First Cabinet Council regarding care coordination for at-risk individuals and permits the Council to use the information to help improve care coordination for at-risk individuals throughout Ohio.

- Specifies that the prohibition against disclosing, without patient consent, certain documents related to a patient's hospitalization for a psychiatric condition or criminal trial when the patient is alleged to be insane does not apply when the exchange is between (1) ODMH hospitals, institutions, or facilities, or community mental health agencies, and (2) other providers of treatment and health services for a patient.

- Specifies that the purpose of the exchange of documents must be to facilitate the patient's continuity of care.

- Requires the custodian of records of an ODMH hospital, institution, or facility, or of a community mental health agency, to attempt to obtain patient consent before the documents are disclosed.

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 service 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 ODADAS Director may approve a

district comprised of a single county or combination of counties with a smaller population.[293]

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).[294]

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.[295]

Allocation of state GRF money 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 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 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 state General Revenue Fund (GRF) 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 appropriated from the GRF for local management of mental health services to separate ADAMHS boards and community mental health

[293] R.C. 340.01 (not in the bill).

[294] R.C. 340.02 and 340.021.

[295] R.C. 340.03(A)(1)(c).

boards, to allocate money from the GRF for the local management of mental health services to groups of two or more boards (instead of separate boards) if the boards included in each group proposed to receive a group allocation agree to the group allocation in lieu of separate allocations. At the request of a single board or group of two or more boards, the Director must consider a proposal for mental health services to be funded on a regional or statewide basis.

If funds for local management of mental health services are allocated to groups of ADAMHS boards and community mental health boards, the bill requires the ODMH Director to require that the boards included in each group timely submit to the Director a joint plan for the provision of mental health services and the use of funds.

Limit on use of funds for administrative purposes

(R.C. 5119.621)

Separate boards

The bill requires the ODMH Director, when the Director provides state or federal funds to an ADAMHS board or community mental health board for the local management of mental health services, to establish a limit on the amount or portion of the funds that may be used for administrative purposes and the permissible uses of the funds for administrative purposes. In establishing the limit on the amount or portion of the funds that may be used for administrative purposes, the Director must take into account the board's community mental health plan and total budget for mental health services. In specifying the permissible uses of funds for administrative purposes, the bill requires the 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, and other functions required under statutes governing ADAMHS boards.

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 the funds according to the general categories of permissible uses established by the Director.

The bill permits a board to seek a variance or waiver from the maximum amount or portion of the funds that may be used for administrative purposes by submitting a written application to the ODMH Director. The Director has sole discretion in granting or denying the variance or waiver and the Director's determination is final.

The bill also permits the ODMH Director to deny state or federal funds to a board that exceeds the limit on the amount or portion of funds that may be used for administrative purposes.

Groups of boards

If the ODMH Director allocates funds appropriated from the GRF for local management of mental health services to a group of boards as described above, the bill permits the Director to specify a maximum amount or portion of such funds that may be used by the group for administrative purposes. To accommodate the establishment of a maximum amount or portion of state or federal funds that may be used by a group of boards for administrative purposes, the bill requires the Director to make all necessary adjustments in the procedures used to establish a limit on the amount or portion of funds that may be used by a single ADAMHS board or community mental health board for administrative purposes.

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 provision of state or federal 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 provision of state or federal 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[296] 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

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

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, health oversight activities, and research activities,[297] as long as the use and disclosure otherwise comports with HIPAA regulations.[298]

Medicaid Community Behavioral Health Elevation and Administration Advisory Group

(Section 751.10)

The bill creates the Medicaid Community Behavioral Health Elevation and Administration Advisory Group. The Group is charged with studying the statewide administration and management of Medicaid-covered community behavioral health services.[299]

Composition of Group

The Medicaid Community Behavioral Health Elevation and Administration Advisory Group is to consist of all of the following:

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[297] 45 C.F.R. 164.512.

[298] 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)).

[299] The bill defines "community behavioral health services" as (1) community mental health services certified by the ODMH Director and (2) services provided by an alcohol and drug addiction program certified by ODADAS.

(1) The ODMH Director or the Director's designee;

(2) The ODADAS Director or the Director's designee;

(3) The Director of the Ohio Department of Job and Family Services (ODJFS);

(4) Representatives of ADAMHS boards;[300]

(5) Representatives of providers of community behavioral health services;

(6) Consumers of community behavioral health services and advocates of such consumers;

(7) 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;

(8) At the option of the Senate President, up to two members of the Senate from different political parties appointed by the Senate President;

(9) 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. In appointing representatives of the ADAMHS boards, providers, consumers and consumer advocates, the co-chairpersons are required to accept nominations from all of the following:

(1) The Ohio Association of County Behavioral Health Authorities;

(2) The National Alliance on Mental Illness Ohio;

(3) The Ohio Council of Behavioral Health and Family Services Providers;

(4) The Ohio Association of Child Caring Agencies;

(5) The Ohio Citizens Advocates for Chemical Dependency Prevention and Treatment;

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

(6) The Ohio Alliance for Recovery Providers;

(7) The Ohio Federation for Children's Mental Health;

(8) Other organizations that represent the interests of 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.

Report

The Group is required to submit a report regarding its study to the Governor and General Assembly[301] not later than June 30, 2010. The report must include all of the following:

(1) A plan for the uniform and statewide administration and management of Medicaid-covered community behavioral health services in accordance with federal requirements;

(2) A fiscal analysis of the impact that any changes to the system of paying providers of Medicaid-covered community behavioral health services and related management functions would have on ODMH and ODADAS and ADAMHS boards;[302]

(3) Recommendations for increasing efficiencies related to submission of Medicaid claims for community behavioral health services, processing and payment of such claims, and exchange of information regarding Medicaid-covered and non-Medicaid-covered community behavioral health services;

(4) Recommendations for system changes needed to implement the statewide administration and management of the Medicaid-covered community behavioral health services.[303]

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[301] In submitting the report to the General Assembly, the Group is to provide it to the Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and the Director of the Legislative Service Commission (R.C. 101.68(B)).

[302] The fiscal analysis must include an examination of funding options for any changes to the system of paying providers of Medicaid-covered community behavioral health services and focus on creating the most efficient and effective payment system possible.

The Group is to cease to exist on submission of its report.

Departments' implementation of system changes

The bill requires ODMH and ODADAS to implement changes to the administration and management of Medicaid-covered community behavioral health services in a manner that is uniform, statewide, and consistent with federal requirements. The changes must include changes to the system of paying providers of Medicaid-covered community behavioral health services. The changes must be implemented not later than July 1, 2011. In implementing the changes, ODMH and ODADAS may adopt, in whole or in part, the recommendations included in the Group's report. ODMH and ODADAS are to implement the changes under ODJFS's supervision. The bill provides, however, that the Departments' implementation of the changes is subject to the enactment or adoption of changes in state law, including state law regarding funding, that otherwise would conflict with the Departments' implementation of the changes. ODMH and ODADAS are permitted to take actions as part of the implementation of the changes as are consistent with state law.

Community behavioral health services study

(Section 751.13)

The bill requires the ODMH Director, ODADAS Director, and ODJFS Director to convene a group to develop recommendations regarding the amount, duration, and scope of publicly funded community behavioral health services that should be available through Ohio's community behavioral health system. The recommendations are to include recommendations regarding the conditions under which the services should be available.

The group is to consist of representatives of all of the following:

(1) ODMH, ODADAS, and ODJFS;

(2) ADAMHS boards;[304]

(3) Providers of community behavioral health services;

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[303] The recommendations for system changes must focus on increasing efficiencies, transparency, and accountability in order to improve the delivery of community behavioral health services.

[304] The reference to ADAMHS boards also refers to community mental health boards and alcohol and drug addiction services boards.

(4) Consumers of community behavioral health services and advocates of such consumers.

Members of the group are to serve without compensation, except to the extent that serving on the group is considered part of their regular employment duties.

The group is required to prepare a report with its recommendations and submit the report to the Governor and General Assembly not later than June 30, 2011.[305] The group is to cease to exist on submission of the report.

Care coordination for at-risk individuals

The bill includes provisions regarding care coordination services provided by care coordination agencies to at-risk individuals. A care coordination agency is defined as an individual, private entity, or government entity that assists at-risk individuals access available health and social services the at-risk individuals need. An at-risk individual is defined as an individual at great risk of not being able to access available health and social services due to barriers such as poverty, inadequate transportation, culture, and priorities of basic survival.

Care coordination agency information

(R.C. 121.375)

The bill permits a care coordination agency to provide certain information to the Ohio Family and Children First Cabinet Council regarding at-risk individuals. Specifically, a care coordination agency may provide the following information:

(1) The types of individuals the agency identifies as being at-risk individuals;

(2) The total per-individual cost to the agency for care coordination services provided to at-risk individuals;

(3) The administrative cost per individual for care coordination services provided to at-risk individuals;

(4) The specific work products the agency purchased to provide care coordination services to at-risk individuals;

[305] In submitting the report to the General Assembly, the group is to provide it to the Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and the Director of the Legislative Service Commission (R.C. 101.68(B)).

(5) The strategies the agency uses to help at-risk individuals access available health and social services;

(6) The agency's success in helping at-risk individuals access health and social services;

(7) The mechanisms the agency uses to identify and eliminate duplicate care coordination services.

The bill authorizes the Council to use the information from care coordination agencies to help improve care coordination for at-risk individuals throughout Ohio.

Regional care coordination hubs

(Section 335.40.15)

The bill earmarks $130,000 to Toledo/Lucas County CareNet, $130,000 to Health Care Access Now in Cincinnati, and $130,000 to Community Health Access Project in Richland County. Each of these regional care coordination hubs is to use the money to do all of the following:

(1) Help a care coordination agency that volunteers to work with the hub identify at-risk individuals and eliminate duplicate care coordination services provided to at-risk individuals the hub helps the agency identify;

(2) Collect the following information from a care coordination agency for each at-risk individual the hub helps the agency identify: (a) whether the agency succeeded in enrolling the at-risk individual in the agency's care coordination services, (b) the duplicate care coordination services for the at-risk individual that were eliminated, (c) the health and social services the at-risk individual needs, (d) the barriers the at-risk individual has to accessing the health and social services, (e) whether the agency succeeded in helping the at-risk individual access the health and social services the individual needs, and (f) the outcomes of the health and social services the at-risk individual accessed;

(3) Compile the information collected from care coordination agencies and provide it to the hub's governing board and the Ohio Children and Family First Cabinet Council.

The bill also earmarks $124,000 to the Ohio Children and Family First Cabinet Council for the Council to provide support services to the three regional care coordination hubs, facilitate the delivery of information from the hubs to the Council, and to help improve care coordination services based on information from the hubs.

Disclosure of hospital psychiatric records

(R.C. 5122.31)

All certificates, applications, records, and reports made for purposes of Ohio law governing the hospitalization of the mentally ill and criminal trials of persons alleged to be insane that identify a patient or former patient, or a person whose hospitalization for mental illness has been sought under the law governing hospitalization of the mentally ill, must be kept confidential and not be disclosed by any person unless the patient has consented to the disclosure. A number of exceptions to this confidentiality requirement exist, however, including one that permits hospitals, ADAMHS boards, and community mental health agencies to disclose necessary medical information to insurers to obtain payment for goods and services furnished to a patient and one that permits ODMH hospitals, institutions, and facilities to disclose certain psychiatric records and information with (1) other ODMH hospitals, institutions, and facilities, and (2) community mental health agencies and ADAMHS boards with which ODMH has a current agreement for patient care or services.

The bill expands the list of exceptions to this confidentiality requirement by permitting ODMH hospitals, institutions, and facilities and community mental health agencies to exchange psychiatric records and other pertinent information regarding a patient with other providers of treatment and health services. The bill specifies that the purpose of the exchange must be to facilitate the patient's continuity of care. The bill requires, however, that the custodian of records of an ODMH hospital, institution, or facility, or of a community mental health agency, attempt to obtain patient consent before a document is disclosed.

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.

- Revises the law governing the rules ODMR/DD must adopt regarding the failure of a county property tax levy for services for individuals with mental retardation or other developmental disability.

- 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.

- Revises the conditions by which a county MR/DD board may satisfy a requirement to have a business manager and Medicaid services manager.

- Requires a county MR/DD board to include with each individualized service plan a summary page, agreed to by the county MR/DD board, provider, and individual, clearly outlining the amount, duration, and scope of service to be provided under the plan.

- 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.

County MR/DD board levy failure

(R.C. 5123.0413 (primary), 5123.049, 5126.0512, and 5126.19)

Current law requires ODMR/DD to adopt rules establishing a method of paying for extraordinary costs, including extraordinary costs for services to individuals with mental retardation or other developmental disability, and ensure the availability of adequate funds in the event a county property tax levy for services for those individuals fails. ODMR/DD must adopt the rules in consultation with ODJFS, the Office of Budget and Management, and county MR/DD boards. The rules may provide for using and managing the State MR/DD Risk Fund, the State Insurance Against MR/DD Risk Fund, or both. ODJFS is prohibited from requesting federal approval to increase the number of slots for ODMR/DD-administered home and community-based services until the rules are in effect.

The bill replaces this provision of law with a provision that requires ODMR/DD to adopt rules to establish both of the following in the event a county property tax levy for services for individuals with mental retardation or other developmental disability fails:

(1) A method of paying for ODMR/DD-administered home and community-based services;

(2) A method of reducing the number of individuals a county MR/DD board would otherwise be required to ensure are enrolled in a Medicaid waiver program under which ODMR/DD-administered home and community-based services are provided.[306]

As under current law, ODMR/DD is required to adopt the rules required by the bill in consultation with ODJFS, the Office of Budget and Management, and county MR/DD boards.

The bill abolishes the State MR/DD Risk Fund and the State Insurance Against MR/DD Risk Fund. Current law requires that government providers of ODMR/DD-administered home and community-based services be paid the federal share of the Medicaid allowable payment, less (1) the amount withheld as a fee the state charges county MR/DD boards for Medicaid paid claims for such services provided to individuals eligible for county MR/DD board services and (2) any amount that may be required by ODMR/DD rules regarding county property tax failures to be deposited into the State MR/DD Risk Fund. With the abolishment of the State MR/DD Risk Fund, a government provider is to be paid the federal share less only the amount withheld as the fee. Existing law authorizes the ODMR/DD Director to grant temporary funding from the Community MR/DD Trust Fund based on allocations to county MR/DD boards. Because of the abolishment of the State MR/DD Risk Fund and the State Insurance Against MR/DD Risk Fund, the bill eliminates law that permits the ODMR/DD Director to use money available in the Community MR/DD Trust Fund for the same purposes that ODMR/DD rules provide for money in the two abolished funds to be used.

[306] Each county MR/DD board is required by current law to ensure, for each Medicaid waiver program under which ODMR/DD-administered home and community-based services are provided, that the number of individuals eligible for county MR/DD board services who are enrolled in such a Medicaid waiver program is no less than the sum of (1) the number of individuals eligible for county MR/DD board services who are enrolled in such a Medicaid waiver program on June 30, 2007, and (2) the number of slots for such Medicaid waiver programs the county MR/DD board requested before July 1, 2007, that were assigned to the county MR/DD board before that date but in which no individual was enrolled before that date.

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.

County MR/DD board business and Medicaid services managers

(R.C. 5126.054)

Existing law requires each county MR/DD board to develop a three-calendar year plan that includes three components. One of the components is to provide for the implementation of Medicaid case management services and ODMR/DD-administered home and community-based services for individuals who begin to receive the services on or after the date the county MR/DD board's plan is approved by ODMR/DD. This component must include assurances that the county MR/DD board will (1) employ a business manager who is either a new employee who has earned at least a bachelor's degree in business administration or a current employee who has the equivalent experience of a bachelor's degree in business administration and (2) employ or contract

with a Medicaid services manager who is either a new employee who has earned at least a bachelor's degree or a current employee who has the equivalent experience of a bachelor's degree. If a county MR/DD board will employ a new employee as the business manager or Medicaid services manager, the board must include in the component of the plan a timeline for employing the employee. Two or three county MR/DD boards that have a combined total enrollment in county MR/DD board services not exceeding 1,000 individuals may satisfy the requirement to have a Medicaid services manager by sharing the services of a Medicaid services manager or using the services of a Medicaid services manager employed by or under contract with a regional council of county MR/DD boards.

The bill revises the conditions by which a county MR/DD board may satisfy the requirement to have a business manager and Medicaid services manager. Under the bill, a county MR/DD board may satisfy the requirement to have a business manager, and satisfy the requirement to have a Medicaid services manager, by employing or contracting with a business manager or Medicaid services manager, as appropriate, or entering into an agreement with another county MR/DD board that employs or contracts with a business manager or Medicaid services manager to have the business manager or Medicaid services manager, as appropriate, serve both counties. A county MR/DD board is prohibited by the bill from having the board's superintendent serve as the business manager or Medicaid services manager. The bill eliminates provisions specifying the minimum education or equivalent experience requirements that must be met to serve in either position.

Individual service plan summary page

(R.C. 5126.055)

County MR/DD boards are given Medicaid local administrative authority to perform certain tasks for individuals seeking or receiving ODMR/DD-administered home and community-based services. Included in these tasks is the requirement to develop, with the individual receiving services and the provider of the individual's services, an individualized service plan that includes coordination of services and recommend to ODMR/DD and ODJFS that the plan be approved.

The bill requires that each individualized service plan include a summary page, agreed to by the county MR/DD board, provider of services, and individual receiving services, that clearly outlines the amount, duration, and scope of services to be provided under the plan.

Fiscal plan for home and community-based Medicaid waiver services

(Section 337.30.40)

The 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, including the methodology's components that reflect (a) wages and benefits for persons providing direct care and (b) training and direct supervision of those persons.

County share of Medicaid home and community-based services

(Section 337.30.60)

With certain exceptions, continuing law requires a county 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.[307]

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.

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.

COMMISSION ON MINORITY HEALTH (MIH)

- Adds the Director of Alcohol and Drug Addiction Services, or the Director's designee, and two representatives of the Lupus Awareness and Education Program to the Commission on Minority Health.

[307] R.C. 5126.0510.

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.[308] 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 to have 21 members by adding the Director of Alcohol and Drug Addiction Services or the Director's designee, and two representatives of the Lupus Awareness and Education Program.

DEPARTMENT OF NATURAL RESOURCES (DNR)

- Establishes an energy resource extraction fee of 8¢ per ton of coal to be paid by the operator of a coal mining operation, and states that the purpose of the energy resource extraction fee 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 money from the energy resource extraction fee on coal is to be credited to the existing Coal Mining Administration and Reclamation Reserve Fund.

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

- Allows the Director of Natural Resources to reduce the fee and to transfer a portion of the proceeds to the existing Geological Mapping Fund under certain circumstances.

- Requires the Chief of the Division of Mineral Resources Management to study the solvency of the Coal Mining Administration and Reclamation Reserve Fund, report the Chief's determination concerning the Fund to the Director of Budget and Management, and make recommendations concerning the rate of the energy extraction fee charged under the bill.

- Renames the Division of Soil and Water Conservation as the Division of Soil and Water Resources, and transfers most of the duties and responsibilities of the Division of Water, which is abolished by the bill (see below), to the renamed Division, including the administration of the Water Management Fund, responsibility for well construction logs and well sealing reports, issuance of construction permits for dams and levees, inspection of dams, dikes, and levees, floodplain management activities, and responsibility for water resource inventories.

- Abolishes the Division of Water, transfers most of its duties and responsibilities to the renamed Division of Soil and Water Resources as discussed above, and transfers to the Division of Parks and Recreation its authority, duties, and responsibilities concerning canals, canal lands, and canal reservoirs owned by the state.

- Abolishes the Division of Real Estate and Land Management, transfers its duties and responsibilities concerning the geographic information system needs of the Department of Natural Resources (DNR) to the Director of Natural Resources, transfers to the Division of Engineering its duties concerning the coordination and conduct of all real estate functions for the Department, the duties to assist the Department and its Divisions in comprehensive planning, capital improvements planning, and other similar planning, and other duties and responsibilities, and transfers to the Division of Parks and Recreation its duties and responsibilities concerning the statewide recreational trails system.

- Revises the authority, duties, and responsibilities of the Director to reflect the abolishment and transfer of duties and responsibilities of the Division of Real Estate and Land Management under the bill.

- Revises the authority, duties, and responsibilities of the Chief Engineer of the Division of Engineering to reflect the changes discussed above, and requires the Chief Engineer to carry out all of the Chief Engineer's duties with the approval of the Director.

- Makes other changes to facilitate the renaming of the Division of Soil and Water Conservation, the abolishment of the Divisions of Water and of Real Estate and Land Management, and the transfers of authority, duties, and responsibilities.

- Transfers the administration of state programs governing wild, scenic, and recreational river areas from the Division of Natural Areas and Preserves to the Division of Watercraft, authorizes the Chief of the Division of Watercraft to adopt rules for the administration of those areas, and generally retains the statutory requirements and procedures governing the programs.

- Authorizes the Chief to adopt rules establishing fees and charges for the conducting of stream impact reviews of planned or proposed development for purposes of those state programs.

- By operation of law, requires money in the Waterways Safety Fund that is used for the purposes of the Watercraft and Waterways Law to be used to administer the state programs for wild, scenic, and recreational river areas rather than the Natural Areas and Preserves Fund as in 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 Soil and Water Resources to adopt rules governing the payment and collection of the fee; and requires boards of health and the Environmental Protection Agency to collect the fee on behalf of the Division and submit the proceeds of the fee to the Division quarterly.

- Increases the minimum amount of the fee that a person must file with the Chief of the Division of Soil and Water Resources 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 most of the fee amounts and by requiring that the fee be based not only on the height of a class I, class II, or class III dam, but also on the linear foot length of the dam and the per-acre foot of volume of water impounded by the dam, and establishes fee amounts using the new criteria.

- Requires rules adopted by the Chief of the Division of Soil and Water Resources regarding the annual fees to be subject to the prior approval of the Director.

- Establishes a compliant dam discount program that allows for certain discounts of the annual fee if the owner of a dam is in compliance with specified safety and maintenance requirements and has developed an emergency action plan.

- 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.

- Specifies that grandchildren may be of any age, instead of under 18 years of age, for purposes of a provision of current law amended by the bill that allows a resident of this state who owns land in this state and the owner's children of any age and grandchildren to hunt on the lands without a hunting license.

- 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.

- Creates the "Ohio Nature Preserves" license plate and requires the DNR to use contributions that persons pay when obtaining the license plate to help finance nature preserve education, nature preserve clean-up projects, and nature preserve maintenance, protection, and restoration.

- Requires the Director and the organization Farmers and Hunters Feeding the Hungry to enter into a memorandum of understanding that prescribes a method by which the organization may donate venison to Ohio's food banks and methods that encourage private persons to make matching donations in money or food to Ohio's food banks that are equal or greater in value to the donated venison.

- Requires the Director to enter into a memorandum of understanding with the Southeastern Ohio Port Authority to develop the former Marietta State Nursery property, and establishes provisions that must be included in the memorandum.

Energy resource extraction fee for coal

(R.C. 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. It states that the purpose of the energy resource extraction fee 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 fee charged under the bill. In accordance with those rules, the Chief must collect from each operator of a coal mining operation the fee that is charged under the bill. The Chief must transfer the money collected to the Treasurer of State who must credit it to the existing Coal Mining Administration and Reclamation Reserve 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 balance of the Coal Mining Administration and Reclamation Reserve Fund to determine if the balance

of the Fund is sufficient to fulfill the purposes for which the fee is levied under the bill for the fiscal biennium in which the examination is conducted. The Director must certify the Director's determination 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 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 must be 8¢ per ton of coal.

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 to the existing Geological Mapping Fund a portion of money credited to the Coal Mining Administration and Reclamation Reserve Fund resulting from the energy resource extraction fee that is collected.

The bill requires the Chief of the Division of Mineral Resources Management, not later than January 1, 2015, to complete a study to determine the solvency of the Coal Mining Administration and Reclamation Fund. The Chief must report the determination to the Director of Budget and Management and make recommendations to the Director concerning the rate of the energy resource extraction fee charged under the bill.

Reorganization of certain divisions

(R.C. 121.04, 307.79, 504.21, 903.082, 903.11, 903.25, 1501.01, 1501.05, 1501.07, 1501.30, 1504.01 (repealed), 1504.02 (repealed), 1504.03 (repealed), 1504.04 (repealed), 1506.01, 1507.01, 1511.01, 1511.02, 1511.021, 1511.022, 1511.03, 1511.04, 1511.05, 1511.06, 1511.07, 1511.071, 1511.08, 1514.08, 1514.13, 1515.08, 1515.183, 1519.03, 1520.02, 1520.03, 1521.02 (repealed), 1521.03, 1521.031, 1521.04, 1521.05, 1521.06, 1521.061, 1521.062, 1521.063, 1521.064, 1521.07, 1521.10, 1521.11, 1521.12, 1521.13, 1521.14, 1521.15, 1521.16, 1521.18, 1521.19, 1523.01, 1523.02, 1523.03, 1523.04, 1523.05, 1523.06, 1523.07, 1523.08, 1523.09, 1523.10, 1523.11, 1523.12, 1523.13, 1523.14, 1523.15, 1523.16, 1523.17, 1523.18, 1523.19, 1523.20, 1541.03, 3701.344, 3718.03, 6109.21, and 6111.044; Sections 515.30, 515.40, and 515.50)

Current law

Current law creates in the Department of Natural Resources eight Divisions. Those Divisions include the Division of Water, the Division of Soil and Water Conservation, the Division of Real Estate and Land Management, the Division of Parks and Recreation, and the Division of Engineering. In addition, current law establishes the authority of each Division and its duties and responsibilities.

Renaming of the Division of Soil and Water Conservation; transfer of duties to renamed Division

The bill renames the Division of Soil and Water Conservation as the Division of Soil and Water Resources and retains its current duties and responsibilities. In addition, the bill transfers to the Division most of the duties and responsibilities of the Division of Water, which is abolished by the bill (see below). The transferred duties and responsibilities include the administration of the Water Management Fund, responsibility for well construction logs and well sealing reports, issuance of construction permits for dams and levees, inspection of dams, dikes, and levees, floodplain management activities, and responsibility for water resource inventories.

Abolishment of the Division of Water and transfer of its duties

As discussed above, the bill abolishes the Division of Water and transfers most of its duties and responsibilities to the renamed Division of Soil and Water Resources. However, the bill transfers the Division of Water's authority, duties, and responsibilities concerning canals, canal lands, and canal reservoirs owned by the state to the Division of Parks and Recreation.

Abolishment of the Division of Real Estate and Land Management and transfer of its duties

The bill abolishes the Division of Real Estate and Land Management and transfers its duties and responsibilities concerning the geographic information system needs of the Department of Natural Resources to the Director of Natural Resources. In addition, the bill transfers to the Division of Engineering the Division of Real Estate and Land Management's duties concerning the coordination and conduct of all real estate functions for the Department, the duties to assist the Department and its Divisions in comprehensive planning, capital improvements planning, and other similar planning, and other duties and responsibilities. Finally, the bill transfers to the Division of Parks and Recreation the Division of Real Estate and Land Management's duties and responsibilities concerning the statewide recreational trails system.

Duties of the Director of Natural Resources

The bill revises the authority, duties, and responsibilities of the Director of Natural Resources to reflect the abolishment and transfer of the duties and responsibilities of the Division of Real Estate and Land Management as discussed above.

Duties of the Chief Engineer

The bill revises the authority, duties, and responsibilities of the Chief Engineer of the Division of Engineering to reflect the changes discussed above. In addition, the bill requires the Chief Engineer to carry out all of the Chief Engineer's duties with the approval of the Director of Natural Resources.

The bill also revises the qualification requirements for the Chief Engineer by specifying that the Chief Engineer must be a professional engineer who is registered under the Professional Engineers and Professional Surveyors Law or a professional architect who is certified under the Architects Law rather than a registered professional engineer as in current law.

Miscellaneous

The bill makes other statutory changes to facilitate the renaming of the Division of Soil and Water Conservation, the abolishment of the Divisions of Water and of Real Estate and Land Management, and the transfers of authority, duties, and responsibilities under the bill. In addition, the bill provides for the necessary transfer of assets and liabilities and provides that legal actions initiated under existing law by a renamed or abolished Division are to be continued by the appropriate Division as specified by 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.[309] In addition, the Chief may supervise, operate, protect, and maintain such areas

[309] 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).)

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.

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, 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.[310]

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.

[310] Section 7 of Article XVIII, Ohio Constitution.

Natural Areas and Preserves Fund; Waterways Safety Fund

(R.C. 1517.11 and 1547.75 (not in the 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 of the Division of Watercraft determines that they are in the best interests of the state.

Fees for watercraft and livery registrations

(R.C. 1547.531, 1547.54, 1547.542, and 1547.99)

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.[311] 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 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

[311] Current law defines "powercraft" as any vessel propelled by machinery, fuel, rockets, or similar device (R.C. 1547.01(B)(4)).

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 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 (EPA). 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 Soil and Water Resources (see above) has adopted an alternative fee amount in rules (see below), the fee amount established in rules. A board of health or the EPA, as applicable, must collect well log filing fees on behalf of the Division of Soil and Water Resources. After collection, the fees must be transferred quarterly to the Division in accordance with rules. Proceeds of well log filing fees must be used by the Division for the purposes of acquiring, maintaining, and dispensing digital and paper records of well logs that are filed with the Division.

The 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 EPA.

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 of the Division of Soil and Water Resources 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 of the Division of Soil and Water Resources. It then amends the statutory fee schedule that establishes the annual fee by increasing most of the fee amounts and by requiring that the fee be based not only on the height of a dam, but also on the linear foot length of the dam and the

per-acre foot of volume of water impounded by the dam. Thus, the new fee scheduled established in the bill is as follows:

(1) For any dam classified as a class I dam, $300 plus $10 per foot of height of dam, 5¢ per foot of length of the dam, and 5¢ per acre foot of water impounded by the dam;

(2) For any dam classified as a class II dam, $90 plus $6 per foot of height of dam, 5¢ per foot of length of the dam, and 5¢ per acre foot of water impounded by the dam; and

(3) For any dam classified as a class III dam, $90 plus $4 per foot of height of the dam, 5¢ per foot of length of the dam, and 5¢ per acre foot of volume of water impounded by the dam.

The bill retains the requirement that the Chief adopt rules for the establishment of an annual fee schedule in lieu of the fee schedule established in statute. However, it provides that the adoption of those rules is subject to the prior approval of the Director of Natural Resources.

The bill then establishes a compliant dam discount program to be administered by the Chief of the Division of Soil and Water Resources. Under the program, the Chief may reduce the amount of the annual fee that an owner of a dam is required to pay under the statutorily established fee schedule if the owner is in compliance with specified statutorily required safety and maintenance requirements and has developed an emergency action plan pursuant to standards established in rules adopted by the Chief. The Chief is not permitted to discount an annual fee by more than 25% of the total annual fee that is due. In addition, the Chief cannot discount the annual fee that is due from the owner of a dam who has been assessed a penalty for failure to pay the annual fee.

Hunting licenses

(R.C. 1531.01 and 1533.10)

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 of any 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.

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.

"Ohio Nature Preserves" License Plate and the Ohio Nature Preserves Fund

(R.C. 4501.243 and 4503.563)

Under the bill, the owner or lessee of any passenger car, noncommercial motor vehicle, recreational vehicle, or other vehicle of a class approved by the Registrar of Motor Vehicles may apply to the Registrar for the registration of the vehicle and issuance of "Ohio Nature Preserves" license plates. The application for "Ohio Nature Preserves" license plates may be combined with a request for a special reserved license plate provided in current law. Upon receipt of the completed application and compliance with the bill's requirements, the Registrar is required to issue to the applicant the appropriate vehicle registration and a set of "Ohio Nature Preserves" license plates with a validation sticker, or a validation sticker alone when required by current law.

In addition to the letters and numbers ordinarily inscribed on license plates, "Ohio Nature Preserves" license plates must be inscribed with identifying words or markings designed by the Department of Natural Resources and approved by the Registrar. "Ohio Nature Preserves" license plates must bear county identification stickers that identify the county of registration by name or number.

"Ohio Nature Preserves" license plates and validation stickers are issued upon payment of a contribution (see below), the regular taxes prescribed in current law, any applicable local motor vehicle tax, a Bureau of Motor Vehicles (BMV) administrative fee of $10, and the applicant's compliance with all other applicable laws relating to the registration of motor vehicles. If the application for "Ohio Nature Preserves" license plates is combined with a request for a special reserved license plate provided in current law, the applicant must also pay the applicable additional special reserved license plate fee.

For each application for registration and registration renewal received under the bill, the Registrar is required to collect a contribution in an amount not to exceed $40, as determined by the Department. The Registrar must transmit the contribution to the Treasurer of State for deposit into the Ohio Nature Preserves Fund, which the bill creates. The Fund consists of the contributions that are paid by persons who obtain "Ohio Nature Preserves" license plates. The bill requires the Department to use that money to help finance nature preserve education, nature preserve clean-up projects,

and nature preserve maintenance, protection, and restoration. All investment earnings of the Fund must be credited to the Fund. The bill requires the Registrar to deposit the $10 BMV administrative fee, the purpose of which is to compensate the BMV for additional services required in issuing "Ohio Nature Preserves" license plates, into the State Bureau of Motor Vehicles Fund.

Donations of venison by Farmers and Hunters Feeding the Hungry

(Section 751.40)

The bill requires the Director of Natural Resources to enter into a memorandum of understanding with the organization Farmers and Hunters Feeding the Hungry. The memorandum must prescribe a method by which, during the period from July 1, 2009, through June 30, 2011, Farmers and Hunters Feeding the Hungry may donate venison to Ohio's food banks. The memorandum also must prescribe methods that encourage private persons to make matching donations in money or food to Ohio's food banks that are equal or greater in value to the venison that is donated by Farmers and Hunters Feeding the Hungry.

Sale of Marietta State Nursery land

(Section 753.10)

The bill requires the Director of Natural Resources to enter into a memorandum of understanding with the Southeastern Ohio Port Authority to develop the future use of the property that formerly comprised the Marietta State Nursery. The memorandum must provide for the sale of the property for highest and best use, sale and usage of the property that is compatible with neighboring properties, maximum financial return for the Department, and expeditious sale of parcels of the property.

Additionally, the memorandum must require contracted professional engineering services to provide both of the following:

(1) A phase 1 environmental site assessment; and

(2) A master plan for property development, including an inventory of site features and assets; collection of public input through a meeting and comment period; identification of site usage areas; lot lines and parcel sizes in concept; means of ingress and egress from State Route 7 and interior site access that are delineated in concept; identification of utility services, locations, and capacities; plans for compliance with subdivision regulations; recommendations for possible deed restrictions; an evaluation of permits that must be obtained and other regulatory requirements that must be satisfied for purposes of the development of the property; and any necessary maps.

The memorandum must require the Port Authority to do all of the following: (1) manage the formulation of the master plan, (2) create a master plan brochure and sales brochures, (3) market the property by mail, signage, and the web sites *www.pioneerspirit.us* and *www.Ohiosites.com*, (4) respond to sales leads, (5) screen inquiries regarding the property, (6) negotiate sales based on pricing guidelines established by the Department, and (7) present qualified purchase offers to the Department.

Under the bill, the memorandum must specify that the Department owns the property, that it may sell the property in lots to the Port Authority, and that the Port Authority then may sell the lots to individual private buyers. The memorandum also must specify that the Department is responsible for paying for the environmental, engineering, graphic design, signage, and printing costs as invoices for those costs are received. The bill requires the Department and the Port Authority to agree to a cap for each of those invoices. Finally, the memorandum must specify that as parcels of the property are transferred to private buyers, the Port Authority retains 5% of the sale price of each parcel as a fee for services provided by the Port Authority.

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 (OLAF).

- 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 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 (OLAF), 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 OLAF for the actual, reasonable costs of administering those provisions. The bill also specifies that the OLAF 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 OLAF 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 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 interest on trust 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 (OLAF).

(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 OLAF 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 OLAF 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 (OLAF) 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 OLAF 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 (OLAF), 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 OLAF, 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 of Insurance 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 of Insurance (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 of Insurance 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)

- Reclassifies 29 traffic offenses as minor misdemeanors, regardless of prior offenses.
- Provides that no certificate of registration is required for an all-purpose vehicle that is used primarily for agricultural purposes when the owner qualifies for the current agricultural use valuation credit, unless it is to be used on any public land, trail, or right-of-way.

- Increases the three-year snowmobile, off-highway motorcycle, and all-purpose vehicle registration fee from $31.25 to $32.25.

- Removes the minimum age requirement of 12 years for operation of snowmobiles, off-highway motorcycles, and all-purpose vehicles on state-controlled land under Department of Natural Resources jurisdiction when such a minor is accompanied by a parent or guardian who is a licensed driver and is 18 years of age or older.

- Applies the enhanced penalty provisions of the state criminal trespass statute (doubling of the fine and impoundment of the certificate of registration) to state criminal trespass violations that are committed using snowmobiles and off-highway motorcycles.

- Specifies that the rules the Registrar of Motor Vehicles must adopt by October 1, 2009, to permit multi-year registration of up to five years of commercial trailers and semitrailers must permit a person who owns or leases only one such trailer or semitrailer to be eligible for such multi-year registration, thus eliminating the requirement that a person must own at least two such vehicles in order to be eligible for multi-year registration.

- Requires a person who owns or leases a noncommercial motor vehicle such as a passenger car and who registers the vehicle for two years to pay a service fee of $7 at the time of registration (two times the service fee amount of $3.50) rather than $5.25 (one and one-half times the service fee amount of $3.50).

- Authorizes reimbursement from the State Law Enforcement Assistance Fund for the cost of annual continuing professional training for each of a public appointing authority's officers or troopers who completes the training in a timely manner, whether or not the public appointing authority receives an extension for the officers and troopers who do not timely complete the training.

- Eliminates the prohibition against carrying a firearm during the course of official duties or the performance of functions by a peace officer or trooper who has not completed continuing professional training.

- Specifies that a person who has a valid driver's or commercial driver's license cannot be required to have a motorcycle operator's endorsement to operate a three-wheel motorcycle with a motor of not more than 50 cubic centimeters piston displacement.

- Allows the Registrar to determine by rule the manner to use to indicate the expiration of a validation sticker issued for an all-purpose vehicle (three-year registration period) or for a trailer or semitrailer (up to a five-year registration period).

- Eliminates provisions in the Child Restraint Law that prohibit the use of a violation of that law in other criminal proceedings.

- Creates the Rehabilitation Employment Fund to be used by the Rehabilitation Services Commission to fund employment-related services and requires each applicant for a "handicapped" removable windshield placard or license plate who is walking-impaired to be asked whether the person wishes to contribute $2 to the fund.

- Requires the Registrar to determine the feasibility of implementing an electronic commercial fleet licensing and management program enabling commercial tractor, trailer, and semitrailer owners to conduct electronic transactions by July 1, 2010, or sooner.

- Provides that the increases in the fees for initial reserve license plates and personalized license plates enacted in the Transportation Appropriations Act apply to each registration renewal with an expiration date on or after October 1, 2009, and to each initial registration application received on or after that date.

- Clarifies (1) that the $1 fee for a replacement certificate of registration must be deposited into the State Bureau of Motor Vehicles Fund and (2) that $5.50 of each fee collected for a set of two replacement license plates, a single replacement license plate, or a replacement validation sticker is to be deposited into the State Highway Safety Fund and that the remaining portion of each such fee is to be deposited into the State Bureau of Motor Vehicles Fund.

Reclassification of traffic law violations

(R.C. 4513.021, 4513.03, 4513.04, 4513.05, 4513.06, 4513.07, 4513.071, 4513.09, 4513.11, 4513.111, 4513.12, 4513.13, 4513.14, 4513.15, 4513.16, 4513.17, 4513.171, 4513.18, 4513.19, 4513.21, 4513.22, 4513.23, 4513.24, 4513.242, 4513.28, 4513.60, 4513.65, 4513.99, 4549.10, and 4549.12)

The bill reclassifies the following 29 traffic offenses as minor misdemeanors, regardless of prior similar offenses. Unless otherwise noted, under current law, each offense is a minor misdemeanor on a first offense, a fourth degree misdemeanor on a second offense within one year, and a third degree misdemeanor on each subsequent offense within one year.

R.C. Section	Description of offense
4513.021	Maximum bumper height; vehicle modifications; suspension system disconnection (First offense, minor misdemeanor; subsequent offenses, third degree misdemeanor)
4513.03	Display of lighted lights
4513.04	Required headlights
4513.05	Required tail lights and illumination of rear license plate
4513.06	Required red reflectors
4513.07	Safety lighting for commercial vehicles
4513.071	Required stop lights on rear of vehicle
4513.09	Required red light or flag for extended load
4513.11	Required equipment for animal-drawn and slow-moving vehicles
4513.111	Lights for multi-wheel agricultural tractors and farm machinery
4513.12	Spotlights and auxiliary driving lights
4513.13	Cowl, fender, and back-up lights
4513.14	Display of two lighted lights
4513.15	Headlight illumination standards
4513.16	Speed restriction for vehicles with less intense lights
4513.17	Number of lights permitted; flashing light restrictions
4513.171	Lights on coroner's vehicle
4513.18	Lights on snow removal equipment and oversize vehicles
4513.19	Focus and aim of headlights
4513.21	Horns, sirens, and warning devices
4513.22	Muffler requirements
4513.23	Rear view mirrors
4513.24	Windshields and wipers
4513.242	Security decal display

R.C. Section	Description of offense
4513.28	Warning devices displayed on disabled vehicles
4513.60	Vehicles on private property without permission (First offense, minor misdemeanor; subsequent offenses, third degree misdemeanor)
4513.65	Willfully leaving a junk motor vehicle uncovered (First offense, minor misdemeanor; second offense, fourth degree misdemeanor; subsequent offenses, third degree misdemeanor)
4549.10	Operating manufacturer vehicle without placard (First offense, minor misdemeanor; subsequent offenses, fourth degree misdemeanor)
4549.12	Resident operating a vehicle with number issued by other state (First offense, minor misdemeanor; subsequent offenses, fourth degree misdemeanor)

Driver's license vision screening fee

(R.C. 4507.24)

Am. Sub. H.B. 2 of the 128th General Assembly increased the fee charged for vision screening of a driver's license applicant by $1.75 (to a total of $2.75). The bill directs that the entire amount of the increase be paid into the State Highway Safety Fund, rather than $1 of the increase as Am. Sub. H.B. 2 required.

State Highway Safety Fund

(R.C. 4501.06)

The bill updates the cross-referencing list of fees deposited into the State Highway Safety Fund to include fees from the cost of replacing a license plate and obtaining an initial or personalized license plate, which were added to the fees being deposited in that Fund by Am. Sub. H.B. 2 of the 128th General Assembly.

Registration exemption for certain all-purpose vehicles

(R.C. 4519.02)

Under current law, no person may operate a snowmobile, off-highway motorcycle, or all-purpose vehicle within this state unless it is registered and numbered, subject to certain exceptions. One exception provides that no registration is required for a snowmobile, off-highway motorcycle, or all-purpose vehicle that is operated exclusively upon lands owned by the owner of the snowmobile, off-highway

motorcycle, or all-purpose vehicle, or on lands to which the owner has a contractual right.

Under provisions contained in the Transportation Appropriations Act that will become effective July 1, 2009, no registration is required for an all-purpose vehicle that is used primarily on a farm as a farm implement.

The bill eliminates the phrase "on a farm as a farm implement" and provides that no registration is required for an all-purpose vehicle that is used primarily for agricultural purposes when the owner qualifies for the current agricultural use valuation credit, unless it is to be used on any public land, trail, or right-of-way. An all-purpose vehicle that is exempted from registration under this provision and is operated for agricultural purposes may use public roads and rights-of-way when traveling from one farm field to another when such use does not violate existing law governing the operation of all-purpose vehicles on public roads and rights-of-way.

Identifying markers for snowmobiles and off-highway motorcycles

(R.C. 4519.04)

Under current law, when a person registers a snowmobile, off-highway motorcycle, or all-purpose vehicle, the Registrar or deputy registrar issues to the owner a certificate of registration and a registration sticker. The Registrar determines the sticker color and size, the combination of numerals and letters displayed on it, and placement of the sticker on the snowmobile, off-highway motorcycle, or all-purpose vehicle. The owner of a snowmobile also is required to paint or otherwise attach upon each side of the forward cowling of the snowmobile the identifying registration number, in block characters not less than two inches in height and of a color that is distinctly visible and legible.

Under provisions contained in the Transportation Appropriations Act that will become effective July 1, 2009, owners of all-purpose vehicles will not be issued a registration sticker; rather, they will be issued one license plate and a validation sticker or a validation sticker alone if the registration is a renewal. The license plate and validation sticker must be displayed on the all-purpose vehicle so that they are distinctly visible, in accordance with rules the Registrar must adopt.

Under the bill, when a person registers a snowmobile or off-highway motorcycle the Registrar or deputy registrar must issue to the owner a certificate of registration and two decal registration stickers. The Registrar must determine the color and size of the stickers and the combination of numerals and letters displayed on them. One sticker must be placed on each side of the forward cowling or fuel tank of the snowmobile or off-highway motorcycle.

Increase in snowmobile, off-highway motorcycle, and all-purpose vehicle registration fees

(R.C. 4519.04)

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.

Under a provision contained in Am. Sub. H.B. 2 of the 128th General Assembly (the Transportation Appropriations Act) that will become effective July 1, 2009, this registration fee will increase from $5 to $31.25. Another provision of that act requires the Registrar of Motor Vehicles to retain not more than $5 of each $31.25 all-purpose vehicle registration fee to pay for the licensing and registration costs the Bureau of Motor Vehicles (BMV) incurs in registering the all-purpose vehicle. The remaining $26.25 must be deposited into the State Recreational Vehicle Fund.

The bill increases the three-year registration fee from $31.25 to $32.25 and requires the Registrar to retain not more than $6 of each $32.25 snowmobile, off-highway motorcycle, and all-purpose vehicle registration fee to pay for the licensing and registration costs the BMV incurs in registering the snowmobile, off-highway motorcycle, or all-purpose vehicle. The remaining maximum possible amount of $26.25 still must be deposited into the State Recreational Vehicle Fund.

Operation of snowmobiles, off-highway motorcycles, and all-purpose vehicles by minors on state-controlled land under DNR jurisdiction

(R.C. 4519.44)

Current law prohibits a person who is less than 16 years of age from operating a snowmobile, off-highway motorcycle, or all-purpose vehicle on any land or waters other than private property or waters owned or leased by the person's parent or guardian unless the person is accompanied by another person who is at least 18 years of age and is a licensed driver. The Department of Natural Resources (DNR) may permit a person who is less than 16 years of age but is at least 12 years of age to operate a snowmobile, off-highway motorcycle, or all-purpose vehicle on state-controlled land under DNR jurisdiction if the person is accompanied by a parent or guardian who is at least 18 years of age and is a licensed driver.

The bill eliminates the "12 years of age" minimum age requirement, thereby permitting any minor who is less than 16 years of age and is accompanied by a parent or guardian who is at least 18 years of age and is a licensed driver to operate a

snowmobile, off-highway motorcycle, or all-purpose vehicle on state-controlled land under DNR jurisdiction.

Affidavit of ownership when obtaining a certificate of registration for certain off-highway motorcycles and all-purpose vehicles

(R.C. 4519.03)

Under current law, if a person owned an off-highway motorcycle or all-purpose vehicle prior to July 1, 1999, the person has not been required to obtain a certificate of title for the motorcycle or vehicle so long as the person did not sell or otherwise transfer ownership of the motorcycle or vehicle. In addition, if, since that date, the person has operated the off-highway motorcycle or all-purpose vehicle only on lands the person owns or to which the person has a contractual right, the person also has not been required to obtain a certificate of registration for the motorcycle or vehicle.

Current law provides that no certificate of registration or renewal of a certificate of registration may be issued for an off-highway motorcycle or all-purpose vehicle unless a certificate of title (physical or electronic) has been issued for that motorcycle or vehicle. The certificate of title must be presented to the Registrar or deputy registrar when the application for the initial certificate of registration for the motorcycle or vehicle is submitted.

The bill provides that in the case of an off-highway motorcycle or all-purpose vehicle that was purchased prior to October 1, 2005, and for which a certificate of title has not been issued, the owner is not required to present a physical certificate of title or memorandum certificate of title or an electronic certificate of title for the motorcycle or vehicle. The owner instead may present a signed affidavit of ownership in a form prescribed by the Registrar at the time of application for the certificate of registration. The affidavit must include, at a minimum, the date of purchase, make, model, and vehicle identification number (VIN) of the off-highway motorcycle or all-purpose vehicle. If no VIN has been assigned to the motorcycle or vehicle, then its serial number must be presented at the time of application.

Addition of snowmobiles and off-highway motorcycles to the enhanced penalty provisions of the trespassing statute

(R.C. 2911.21)

The trespassing statute prohibits any person, without privilege to do so, from knowingly entering or remaining on the land or premises of another. Whoever commits trespassing is guilty of criminal trespass, a fourth-degree misdemeanor

(punishable by a fine of not more than $250, a jail term of not more than 30 days, or both).

Under provisions contained in the Transportation Appropriations Act that will become effective July 1, 2009, if a person uses an all-purpose vehicle in committing criminal trespass, the court must impose a fine of two times the usual amount imposed for such a violation. If the offender previously has been convicted of or pleaded guilty to two or more state or local criminal trespass violations and the offender, in committing each violation, used an all-purpose vehicle, the court, in addition to or independent of all other penalties imposed for the violation, may impound the certificate of registration and license plate of that all-purpose vehicle for not less than 60 days. The court must send the impounded certificate and license plate to the Registrar, who must hold them for the impoundment period, and the clerk of the court must pay the fine to the State Recreational Vehicle Fund.

The bill adds snowmobiles and off-highway motorcycles to the enhanced penalty provisions of the state criminal trespass statute (doubling of the fine and impoundment of the certificate of registration). As a result, the penalty provisions are to apply not only to criminal trespass violations that are committed using all-purpose vehicles, as provided in the Act, but also to state criminal trespass violations that are committed using snowmobiles and off-highway motorcycles.

Multi-year registration of motor vehicles

(R.C. 4503.103)

Commercial trailers and semitrailers

Current law requires the Registrar of Motor Vehicles to adopt rules to permit any person or lessee who owns or leases two or more commercial trailers or semitrailers to register them for up to five succeeding registration years. At the time of such registration, the person must pay all annual taxes and fees for each year of registration. Current law does not set a deadline for the adoption of such rules by the Registrar, however, and the Registrar has not adopted any such rules. Under a provision contained in the Transportation Appropriations Act that will become effective July 1, 2009, the Registrar is required to adopt these rules not later than October 1, 2009.

The bill retains the October 1, 2009, deadline enacted by the Act, but it specifies that the rules must permit any person who owns or leases a commercial trailer or semitrailer to register it for up to five years, thus eliminating the requirement that a person must own at least two such vehicles in order to be eligible for this multi-year registration. The bill also provides that a person who registers a commercial trailer or semitrailer under this multi-year registration provision must pay for each year of

registration the additional $30 fee imposed for such vehicles by the Act plus the $3.50 Bureau of Motor Vehicles or deputy registrar service fee.

Passenger cars, motorcycles, and noncommercial trucks and trailers

Current law permits a person who owns or leases a noncommercial motor vehicle such as a passenger car, motorcycle, truck, or trailer to register the vehicle for two years. The person must pay the annual taxes and fees for both years, but the person is required to pay only one and one-half times the amount of the BMV or deputy registrar service fee; that fee currently is $3.50, so the person must pay a service fee of $5.25. The bill increases this service fee amount from one and one-half times the amount of the service fee to the amount of the service fee times the number of years of registration, which is two years, resulting in a total service fee due of $7.

Effects of not completing annual continuing professional training by peace officers and troopers

(R.C. 109.802 and 109.803)

Under existing law, a public authority that appoints peace officers or troopers may be reimbursed from the State Law Enforcement Assistance Fund for the cost of annual continuing professional training for each of the authority's officers or troopers only if all of the authority's officers or troopers complete the training or the public authority receives because of emergency circumstances an extension for one or more of its officers or troopers to obtain the training. If such an extension is granted, the public authority is entitled to reimbursement for the officers or troopers who timely complete the training. The bill authorizes reimbursement for each officer or trooper who completes the training in a timely manner, even if other officers or troopers have not completed the training and the appointing authority has not obtained an extension for those officers and troopers to obtain the training, provided the appointing authority has complied with R.C. 109.761 (employee reporting requirements). Existing law prohibits a peace officer or trooper who has not completed continuing professional training from carrying a firearm during the course of official duties or the performance of a peace officer's or trooper's functions. The bill eliminates the prohibition.

Operation of small three-wheel motorcycles

(R.C. 4507.03)

In general, no person may operate a motor vehicle on public property or private property open to the public unless the operator of the vehicle has a valid driver's license and no person may operate a motorcycle without having a valid license as a motorcycle operator, usually in the form of a motorcycle operator's endorsement on the person's

driver's license. Current law establishes exemptions to this general requirement, including the operation of certain road machinery and agricultural tractors. The bill allows a person who has a valid driver's or commercial driver's license to operate a three-wheel motorcycle with a motor of not more than 50 cubic centimeters piston displacement without being required to have a motorcycle operator's endorsement.

Multi-year vehicle registration stickers

(R.C. 4503.191)

In general, a vehicle license plate is issued for a multi-year period as determined by the Director of Public Safety and the validity of a current registration is indicated by a validation sticker attached to the license plate. The validation sticker indicates the expiration of the registration period, which, for a passenger vehicle is typically one year, but may be two years. The validation stickers must be different colors each year.

The bill allows the Registrar of Motor Vehicles, by rule, to determine the manner by which specified multi-year validation stickers may indicate the expiration of the registration period. The bill applies to validation stickers issued for an all-purpose vehicle, which is a three-year registration, and to validation stickers for those trailers or semitrailers that may be registered for up to five years under the International Registration Plan (TRP, a registration reciprocity agreement among states of the United States, the District of Columbia, and provinces of Canada providing for payment of license fees on the basis of fleet distance operated in various jurisdictions).

Child Restraint Law

(R.C. 4511.81)

The state Child Restraint Law regulates the manner in which certain children must be restrained when being transported in a motor vehicle. For example, when a child who is less than four years of age, weighs less than 40 pounds, or meets both of these criteria is being transported in a motor vehicle, the child generally must be properly secured in accordance with the manufacturer's instructions in a child restraint system that meets federal motor vehicle safety standards.

The Child Restraint Law provides that the failure of a motor vehicle operator to secure a child in a child restraint system, a booster seat, or an occupant restraining device (1) is not negligence imputable to the child, (2) is not admissible as evidence in any civil action involving the rights of the child against any other person allegedly liable for injuries to the child, (3) is not to be used as a basis for a criminal prosecution of the operator of the motor vehicle other than a prosecution for a violation of the Child Restraint Law, and (4) is not admissible as evidence in any criminal action involving the

motor vehicle operator other than a prosecution for a violation of the Child Restraint Law.

The bill eliminates above restrictions (3) and (4) from the Child Restraint Law. The result is that the failure of a motor vehicle operator to secure a child in a child restraint system, a booster seat, or an occupant restraining device (1) also may be used as a basis for a criminal prosecution of the motor vehicle operator other than a prosecution for a violation of the Child Restraint Law, and (2) is admissible as evidence in any criminal action involving the motor vehicle operator, not just a prosecution for a violation of the Child Restraint Law.

Voluntary donation to Rehabilitation Services Commission from applicants for license plates and placards for the walking-impaired

(R.C. 4503.44)

The bill requires the Registrar of Motor Vehicles or a deputy registrar to ask each person applying for a removable windshield placard or temporary removable windshield placard or duplicate removable windshield placard or license plate ("handicapped" plates and placards) issued to a person who is walking-impaired, whether the person wishes to make a $2 voluntary contribution to support rehabilitation employment services. The voluntary contribution is in addition to any fee for issuance of the placard or license plate. The bill requires a deputy registrar to transmit the contributions to the Registrar in the time and manner prescribed by the Registrar and requires the Registrar to transmit the contributions to the Treasurer of State for deposit into the Rehabilitation Employment Fund, which the bill creates in the state treasury.

The contributions in the Rehabilitation Employment Fund must be used by the Rehabilitation Services Commission to purchase services related to vocational evaluation, work adjustment, personal adjustment, job placement, job coaching, and community-based assessment from accredited community rehabilitation program facilities.

Online commercial fleet licensing and management program

(R.C. 4503.10)

The bill requires the Registrar to determine the feasibility of implementing an electronic commercial fleet licensing and management program. The program must enable the owners of commercial tractors, commercial trailers, and commercial semitrailers to conduct electronic transactions by July 1, 2010, or sooner. If the Registrar determines that implementing the program is feasible, the Registrar must adopt new

rules or amend existing rules as necessary in order to respond to advances in technology.

Additionally, if the International Registration Plan (IRP, a registration reciprocity agreement among states of the United States, the District of Columbia, and provinces of Canada providing for payment of license fees on the basis of fleet distance operated in various jurisdictions) allows member jurisdictions to permit applications for registrations to be made via the Internet, the rules the Registrar adopts for electronic transactions must permit Internet registration of IRP-registered vehicles.

Fees for certain special and replacement license plates

(R.C. 4503.19, 4503.40, and 4503.42)

Fees for field or initial reserve and personalized license plates

The Bureau of Motor Vehicles produces a number of special license plates. Among them are two license plates known as "initial reserve" or "field reserve" license plates and "personalized" license plates. Initial reserve license plates are license plates that bear any of a number of certain specified combinations of letters, numbers, or letters and numbers and carry an extra fee of $10. Of that $10 fee, $7.50 compensates the Bureau for additional services required in issuing the license plates and $2.50 is deposited into the state treasury to the credit of the State Highway Safety Fund. Personalized license plates bear numbers, letters, or numbers or letters that are not normally produced by the Bureau (unlike standard issue license plates and initial reserve license plates) and carry an extra fee of $35. Of that $35 fee, $5 compensates the Bureau for additional services required in issuing the license plates and $30 is credited to the Fund.

Under provisions contained in the Transportation Appropriations Act that will become effective July 1, 2009, the additional fee for initial reserve license plates will increase from $10 to $25. Of that $25 fee, $7.50 compensates the Bureau for additional services required in issuing the license plates (unchanged from current law) and $17.50 is to be credited to the Fund. The additional fee for personalized license plates will increase on that date from $35 to $50. Of that $50 fee, $5 compensates the Bureau for additional services required in issuing the license plates (unchanged from current law) and $45 is to be credited to the Fund.

The bill provides that, in the case of initial reserve license plates, for each registration renewal with an expiration date before October 1, 2009, and for each initial application for registration received before that date, the Registrar is allowed a fee not to exceed $10. For each registration renewal with an expiration date on or after October 1, 2009, and for each initial registration application received on or after that

date, the Registrar is allowed a fee of $25. The bill specifies that $7.50 of each such fee (unchanged from current law), whether it be $10 or $25, compensates the Bureau for additional services required in issuing the license plates and that the remaining portion of the fee is to be credited to the Fund.

In the case of personalized license plates, the bill similarly provides that for each registration renewal with an expiration date before October 1, 2009, and for each initial application for registration received before that date, the Registrar is allowed a fee not to exceed $35. For each registration renewal with an expiration date on or after October 1, 2009, and for each initial registration application received on or after that date, the Registrar is allowed a fee of $50. The bill specified that $5 of each such fee (unchanged from current law), whether it be $35 or $50, compensates the Bureau for additional services required in issuing the license plates and that the remaining portion of the fee is to be credited to the Fund.

Fees for replacement license plates

Current law prescribes a fee of $1 for a replacement certificate of registration, a fee of $7.50 for a set of two replacement license plates, and a fee of $6.50 for a single replacement license plate or a replacement validation sticker. Current law does not specify the disposition of the $1 fee, but $5.50 of each $7.50 fee and $5.50 of each $6.50 single replacement license plate fee must be credited to the State Highway Safety Fund.

Under the bill, the $1 fee for a replacement certificate of registration must be credited to the State Bureau of Motor Vehicles Fund. Commencing with each request made on or after October 1, 2009, or in conjunction with replacement license plates issued for renewal registrations expiring on or after October 1, 2009, the fee for a set of two replacement license plates is $7.50 and the fee for a single replacement license plate or replacement validation sticker is $6.50. The bill requires the Registrar to credit $5.50 of each $7.50 fee collected to the State Highway Safety Fund and the remaining $2 to the State Bureau of Motor Vehicles Fund. Of each $6.50 fee collected, the bill requires the Registrar to credit $5.50 to the State Highway Safety Fund and the remaining $1 to the State Bureau of Motor Vehicles Fund.

PUBLIC UTILITIES COMMISSION (PUC)

- Adds to the current definition of "advanced energy project" any technologies, products, activities, or management practices or strategies that facilitate the generation or use of energy for purposes of the laws governing funding of such projects.

- Adds methane gas emitted from an operating or abandoned coal mine to the current definition of "advanced energy resource" for purposes of the law governing the funding of advanced energy projects and alternative energy requirements imposed on electric distribution utilities and electric services companies.

- Creates the 9-1-1 Funding and Modernization Task Force to (1) review current funding models for Ohio 9-1-1 systems, (2) research, analyze, and recommend appropriate future funding models and modernization policies to improve the effectiveness of their infrastructure and personnel, and (3) deliver a report of recommendations to the Speaker of the House of Representatives, the President of the Senate, and the Governor.

Alternative energy requirements

(R.C. 4928.01; R.C. 4928.64 (not in the bill))

Current law requires that by 2025 and thereafter, an electric distribution utility provide at least 25% of the electric supply for its standard service offer and an electric services company provide at least 25% of its electricity supply for Ohio retail consumers from "alternative energy resources" and creates related benchmarks. Of the 25%, half may come from certain advanced energy resources, and at least half must come from renewable energy resources (for example, solar energy, wind energy, geothermal energy, and power produced by a hydroelectric facility), with .5% coming specifically from solar energy.

The definition of "advanced energy resource" currently includes, for example, fuel cells used in the generation of electricity, certain advanced nuclear energy technology, and advanced solid waste or construction and demolition debris conversion technology. The bill adds to this definition methane gas emitted from an operating or abandoned coal mine, thus allowing such methane gas to qualify as an advanced energy resource for purposes of the alternative energy requirements.

Advanced energy projects

(R.C. 3706.25 and 4928.01; R.C. 166.01, 166.08, 166.30, 3706.26, 3706.27, 3706.28, 3706.29, and 4928.62 (not in the bill))

Under current law, the Department of Development may provide grants, contracts, loans, loan participation agreements, linked deposits, and energy production incentives for advanced energy projects and the Ohio Air Quality Development Authority may provide grants and loans for advanced energy projects.

Under current law, an "advanced energy project" includes any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity, and that reduce or support the production of clean, renewable energy. Advanced energy project also includes advanced energy resources, renewable energy resources (see "**Alternative energy requirements**," above), and certain additional efforts related to advanced energy, renewable energy, or energy efficiency referred to in R.C. 4928.621. The bill adds to the definition any technologies, products, activities, or management practices or strategies that facilitate the generation or use of "energy." The bill also adds methane gas emitted from an operating or abandoned coal mine to the definition of "advanced energy resource" for the purposes of an advanced energy project.

9-1-1 Funding and Modernization Task Force and report

(Section 749.10)

Ohio's 9-1-1 systems–-background

Generally

Under current law (R.C. 4931.40 to 4931.69), individuals can request emergency law enforcement, firefighting, ambulance, rescue, and medical service through 9-1-1 systems in Ohio. A call made to a 9-1-1 system is routed for response to a continuously operated public safety answering point (PSAP) for a specific territory. Ohio 9-1-1 systems must provide both wireline 9-1-1 and wireless 9-1-1 service via the PSAPs. While wireline 9-1-1 calls originate from landlines and rely on interconnected wires or cables, wireless 9-1-1 calls originate from wireless service providers.

Funding for 9-1-1 system

Ohio law provides mechanisms for funding both wireline and wireless 9-1-1 service. With respect to wireline 9-1-1 service, each subdivision served by a PSAP provides funding from existing sources to run it. This money may be raised by various means, including (1) real and personal property taxes and local sales taxes, (2) assessments against certain improved real property, and (3) a voter-approved monthly charge on residential and business access lines, in certain circumstances. Wireline telephone company costs are covered by a monthly charge imposed on residential and business customer access lines in the area served by a 9-1-1 system. With respect to wireless 9-1-1 service, PSAPs are funded by a portion of a monthly charge on each wireless telephone number of a wireless service subscriber that has a billing address in Ohio. The current charge is 28¢ a month.

Ohio 9-1-1 Council; Wireless 9-1-1 Advisory Board

Ohio law establishes the Ohio 9-1-1 Council and the Wireless 9-1-1 Advisory Board to help guide Ohio's 9-1-1 systems. The Council which is charged with the duties of (1) establishing and arbitrating 9-1-1 system standards consistent with those in industry and federal law, (2) researching and making recommendations regarding any 9-1-1 issues and improvements, including legislation or policies, and (3) making nominations for, recommending duties for, and evaluating the performance of, the Ohio 9-1-1 Coordinator. The Board has the duty to recommend the amount of the wireless 9-1-1 charge to the Ohio 9-1-1 Coordinator and consult with the PUCO and Coordinator on rules related to the implementation of Ohio's wireless 9-1-1 program.

The Bill Creation of 9-1-1 Funding and Modernization Task Force

The bill creates the 9-1-1 Funding and Modernization Task Force in response to the General Assembly's finding that the funding for infrastructure and personnel of 9-1-1 systems in Ohio is disparate in meeting state and local needs. The Task Force is created to review current funding models and research, analyze, and recommend to the General Assembly and the Governor appropriate future funding models and modernization policies to improve the effectiveness of the infrastructure and personnel of 9-1-1 systems in Ohio.

Task Force report

The bill requires the Task Force to complete and deliver a report to the Speaker of the House of Representatives, the President of the Senate, and the Governor no later than ten months after the effective date of this provision. The Task Force must coordinate with the Ohio 9-1-1 Council and the Wireless 9-1-1 Advisory Board in preparing the report. The bill abolishes the Task Force upon delivery of the report.

The bill requires the report to consist of all of the following:

(1) An overview of the current state and local funding for 9-1-1 systems in Ohio and existing modernization programs;

(2) Information regarding differences in funding for access of 9-1-1 systems in Ohio by persons using traditional wireline services, wireless telephone service, Voice over Internet Protocol technology, and any other major emerging telephone technology in common use, and an assessment of the parity of such funding;[312]

[312] Generally, Voice over Internet Protocol technology means what its title states – it allows transmission of voice communication over the Internet.

(3) A summary of reviewed federal initiatives related to 9-1-1 system funding and modernization;

(4) A detailed analysis of the use of the funds disbursed by the state from the wireless 9-1-1 charge imposed on wireless customers;

(5) A detailed technical analysis of the current 9-1-1 services available in each county in Ohio, including the viability of consolidating adjacent 9-1-1 systems;

(6) An analysis of the best practices of other states in 9-1-1 system funding and modernization;

(7) Detailed recommendations for future state and local funding to achieve parity among technologies used to access 9-1-1 services and to provide, throughout Ohio, adequate infrastructure and personnel for the full implementation and operation of Phase II enhanced 9-1-1 service in accordance with federal law.[313]

Task Force membership and operation

The bill requires that the members comprising the Task Force must be appointed 60 days after the effective date of this section. The Task Force members are the following: (1) three members of the House of Representatives--two appointed from the majority party by the Speaker and one appointed from the minority party by the Minority Leader, (2) three members of the Ohio Senate--two appointed from the majority party by the President and one appointed from the minority party by the Minority Leader, (3) the chairperson of the Public Utilities Commission (PUCO) or another commissioner appointed by the chairperson, (4) the Director of Public Safety, (5) one representative selected by the County Commissioners' Association of Ohio and appointed by the Governor, (6) one representative selected by the Ohio Municipal League and appointed by the Governor, (7) one representative selected by the Ohio Township Association and appointed by the Governor; and (8) two members of the public appointed by the Governor.

Under the bill, the Task Force must hold its inaugural meeting not later than 90 days after the effective date of this section and must meet at least monthly (in person or by teleconference) until it completes its report (see "**Task Force report**," above). Also, the members of the Task Force are to serve without compensation and vacancies must be filled in the manner of the original appointments. A majority of the members constitute a quorum. The bill further requires the Governor to select a Task Force

[313] Phase II requires the capability of determining the number and actual location of the wireless 9-1-1 caller. According to the PUCO, 61 counties have achieved Phased II implementation.

Chairperson and Vice-Chairperson from among its members and allows the Chairperson to appoint a Secretary.

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.

- Permits eligible foster youth who are attending two-year institutions of higher education and who also meet the guidelines for the Ohio Education and Training Voucher Program to use Ohio College Opportunity Grant funds for housing expenses.

- 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.

- Prescribes a formula the Chancellor must use to calculate the need-based block grant allocations to eligible nonprofit private institutions for fiscal years 2010 and 2011.

- Specifies that the criteria the Chancellor uses in awarding grants under the Choose Ohio First Scholarship and the Ohio Co-op/Internship programs include the extent

to which a grant proposal will increase the number of women participating in the programs.

- Allows the Chancellor to authorize institutions of higher education to award Choose Ohio First Scholarships in an amount greater than one-half of the highest in-state, undergraduate instructional and general fees charged by all state universities to (1) undergraduate students enrolled in a program leading to a teaching profession in science, technology, engineering, math, or medicine (STEMM), or (2) graduate students in STEMM fields or STEMM education.

- Eliminates the requirement that a private Ohio institution of higher education, in order to submit a proposal for Choose Ohio First Scholarships, must collaborate with a state university or college in implementation of the proposal.

- Permits a private Ohio institution of higher education to submit a proposal for the Ohio Research Scholars Program.

- Changes allocation of 25% of the Nurse Education Assistance Fund from loans to students in prelicensure professional nurse education programs for licensed practical nurses to loans to students in any nurse education programs, as determined by the Chancellor, and requires the Chancellor to give preference to programs aimed at increasing enrollment in an area of need.

- Establishes a procedure for the Chancellor to adjust the instructional and general fees charged for an associate degree program at a public institution of higher education for the 2009-2010 and 2010-2011 academic years, subject to approval of either the institution's board of trustees or the Controlling Board.

- Defines the "University System of Ohio" as the collective group of state institutions of higher education, and "member of the University System of Ohio" as any individual state institution of higher education.

- Replaces the "course applicability system" with an information system the Chancellor selects, contracts for, or develops to assist and advise transfer students at state institutions of higher education.

- Requires the Chancellor to administer a grant program to provide grants for training for individuals seeking employment in the biotechnology or bioscience fields or other critical-demand fields.

- 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.

- Either through competitive bidding or a request for proposals, authorizes a state university, the Northeastern Ohio Universities College of Medicine, and any community college, state community college, university branch, or technical college to implement water conservation measures in their buildings and on surrounding grounds owned by the institution, and authorizes the Director of Administrative Services to implement such measures at the institution's request pursuant to competitive bidding or an RFP.

- Provides that such an institution, when using an RFP process, must select the proposal that is most likely to result in the greatest savings when the proposal's cost is compared to the resultant water or wastewater cost savings, operating cost savings, or avoided capital costs.

- Prohibits an institution from awarding a water conservation installment payment or other contract pursuant to an RFP, unless the contract's cost is not likely to exceed the amount of waste, water, or wastewater savings, operating cost savings, and avoided capital costs over not more than 15 years.

- Regardless of whether competitive bidding or an RFP process is used, requires the Director to select the proposal that is most likely to result in the greatest water or wastewater savings, operating cost savings, and avoided capital costs created and, further, to evaluate a proposal as to the availability of funds to pay for the water conservation measure or measures either with current appropriations or by financing through an installment payment contract.

- Requires that a water conservation installment payment contract entered into by an institution, and that such an installment payment contract or other contract entered into by the Director, provide that (1) not less than one-fifteenth of the contract's costs will be paid within two years from the date of purchase, and (2) the remaining balance will be paid within 15 years from the date of purchase.

- Regarding an energy or water conservation installment payment contract entered into by the Director, requires that the contract provide that all payments, except payments for repairs and obligations on termination of the contract prior to its expiration, must be a stated percentage of the measure's calculated energy, water, or

wastewater cost savings, operating costs, and avoided capital costs over a defined time period and be made only to the extent that those savings and avoided costs are realized; and prohibits such a contract requiring any additional capital investment or contribution of funds, other than funds available from state or federal grants, or providing a payment term longer than 15 years.

- Requires that an energy conservation installment payment contract entered into by the Director for an institution must provide that (1) not less than one-fifteenth of the contract's costs will be paid within two years from the date of purchase, and (2) the remaining balance will be paid within 15 years from the date of purchase, as opposed to ten years under current law.

- Changes a restriction applicable to an energy conservation installment payment contract entered into by the Director for an institution so that the contract cannot provide for a payment term longer than 15 years, as opposed to current law's maximum term of five years for a cogeneration system and ten years for any other energy conservation measure.

- Declares that it is the public policy of the state for institutions of higher education to facilitate and assist with establishing and developing entrepreneurial projects to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the state pursuant to Section 13 of Article VIII of the Ohio Constitution and determines that entrepreneurial projects qualify as property, structures, equipment, and facilities under that constitutional provision.

- Authorizes a board of trustees of an institution of higher education to (1) enter into an agreement to develop entrepreneurial projects, (2) acquire stock or other ownership in entrepreneurial projects or related legal entities, or (3) make or guarantee loans and borrow money and issue bonds, notes, or other evidence of indebtedness to provide money for entrepreneurial projects.

- Requires that the bond proceeding law governing the issuance of bonds, notes, and other evidence of obligations by an institution of higher education for housing and dining facilities, auxiliary facilities, or education facilities also govern bonds, notes, and other evidence of indebtedness issued by an institution of higher education for entrepreneurial projects.

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.[314] 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 (OBM) have no reason to believe the requesting district or the community or technical college it operates will be unable to pay when due the bond service charges on the obligations for which the request is made;

[314] See R.C. 3354.12, 3354.121, 3357.11, 3357.112, and 3358.10, not in the bill.

(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.[315] 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.

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,[316] 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

[315] 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)).

[316] For the definition of credit enhancement facility, see R.C. 133.01 (not in the bill).

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.[317]

The bill permits the Chancellor, with the advice and consent of the OBM, to adopt reasonable rules for the implementation of the intercept program. The rules must include criteria for the evaluation and approval or denial of community or technical college district requests for withholding under the program.

Issuance of bonds by the Ohio Building Authority

As part of this intercept program, the 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,[318] 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

[317] 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)).

[318] For a definition of those terms, see R.C. 3345.12.

premiums on insurance, all related direct administrative expenses and allocable portions of direct costs of the Authority and of the college or district, cost of engineering, architectural services, design, plans, specifications and surveys, legal fees, fees and expenses of trustees, depositories, bond registrars, and paying agents for the obligations, cost of issuance of the obligations and expenses of financial advisers and consultants in connection with the issuance, and all other expenses necessary or incident to planning or determining feasibility or practicability with respect to the facilities.

The bond service charges, and all other payments required to be made by the trust agreement or indenture securing the obligations, are to be payable solely from available community or technical college receipts pledged to their payment. "Available community or technical college receipts" generally means all money received by a community or technical college or community or technical college district, including income, revenues, and receipts from the operation, ownership, or control of facilities, grants, gifts, donations, and pledges, receipts from fees and charges, the allocated state share of instruction, and the proceeds of the sale of obligations. The available community or technical college receipts pledged and thereafter received by the Authority are immediately subject to the lien of the pledge, which lien is binding against all parties having claims of any kind against the Authority. Every pledge may be extended to the benefit of the owners and holders of the obligations for the further securing of the payment of bond service charges.

The obligations may be issued at one time or from time to time, and each issue is to mature at the time the Authority determines, but not more than 40 years from the date of issue. The Authority must also determine the form of the obligations, fix their denominations, establish their interest rate or rates, and establish a place of payment of bond service charges. The 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; Section 371.50.82; 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 OCOGP, 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 generally prohibits an OCOGP grant from exceeding the total state cost of attendance (an exception exists for foster youth, discussed in the next paragraph), 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.

As stated above, an OCOGP grant generally may not exceed the total state cost of attendance. However, the bill creates an exception to this prohibition. Under the bill, if a student is enrolled in a two-year institution of higher education and is eligible for an Education and Training Voucher through the Ohio Education and Training Voucher Program that receives funding under the federal John H. Chafee Foster Care Independence Program, the amount of an OCOGP grant awarded may exceed the total state cost of attendance to additionally cover housing costs. In order to be eligible for an Education and Training Voucher, a student must be aged 18, 19, or 20 at the time of first application; a U.S. citizen or qualified non-citizen; accepted into or enrolled in a degree, certificate or other accredited program at a college, university, technical or vocational school; have less than $10,000 worth of personal assets; and must fall into at least one of the following categories: (1) the student was in foster care on the student's 18th birthday and aged out at that time, (2) the student's foster care case will be closed between the ages of 18 and 21, or (3) the student was adopted from foster care with adoption finalization after the student's 16th birthday.

Notwithstanding these 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.

Block grant programs

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 block 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 student aid recipient, the nonprofit private institution or career college receiving a block 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. That undistributed amount must be deducted from the next such grant received by the institution or college.

The bill retains the OCOGP requirements under current law regarding institution eligibility for grants based on cohort student loan default rates and applies it to the new OCOGP and the block grant programs.

Private Higher Education Needs-Based Financial Aid Block Grant--Allocations

(Section 371.50.82)

The bill prescribes a formula for the Chancellor to use to calculate the distribution of the block grants to private, nonprofit institutions of higher education for FY 2010 and FY 2011. In FY 2010, eligible private nonprofit institutions must receive 90% of the amounts the institution received in FY 2008 under the Ohio Instructional Grant (OIG) Program and OCOGP. If there are any remaining funds after the

distribution of that calculation, the institution must also receive a percentage of the remaining funds equal to the percentage that the weighted Pell-eligible students enrolled at the institution in the 2008-2009 academic year represents of the total number of weighted Pell-eligible students attending all eligible institutions that year. Weights are determined by school year as follows: (1) 1.0 for full-time equivalent first-year students, (2) 1.1 for full-time equivalent sophomores, (3) 1.2 for full-time equivalent juniors, and (4) 1.3 for full-time equivalent seniors.

In FY 2011, each eligible institution must receive a percentage of the total appropriation for the Private Higher Education Needs-Based Financial Aid Block Grant equal to the percentage that the weighted Pell-grant eligible students enrolled at the institution in 2009-2010 represents of the total number of weighted Pell-eligible students enrolled in all eligible institutions in that academic year.

Each institution must report the number and grade level of students enrolled at the institution who are Pell-eligible for the academic year prior to the fiscal year of block grant funding. If an institution fails to do so, the institution will receive an amount calculated by taking the institution's unweighted total number of state need-based aid eligible students for the academic year two years prior to the fiscal year of the block grant.

Choose Ohio First Scholarships, Ohio Research Scholars, and Ohio Co-op/Internship Programs

Background

The Ohio Innovation Partnership is a multi-pronged grant program designed to attract students and scholars in the fields of science, technology, engineering, mathematics, and medicine (STEMM) to state universities and the Northeastern Ohio Universities College of Medicine (NEOUCOM). It includes the Choose Ohio First Scholarship Program, the Ohio Research Scholars Program, and the Ohio Co-op/Internship Program.

Under the Choose Ohio First Scholarship Program, the Chancellor may award competitive grants to state universities and NEOUCOM, solely or in collaboration with other institutions of higher education, to fund scholarships for qualified students. The scholarships are awarded to each participating eligible student as a grant to the institution the student is attending and must be reflected on the student's tuition bill.

The Ohio Research Scholars Program awards grants to recruit scientists to college faculties. The grants must be deposited in a new or existing endowment fund.

The Ohio Co-op/Internship Program awards grants to encourage cooperative education or internship programs at Ohio institutions of higher education to encourage Ohio residents to stay in or return to the state.

Award criteria

(R.C. 3333.62 and 3333.73)

Current law lists several criteria for the Chancellor to use in awarding Choose Ohio First and Ohio Co-op/Internship grants to institutions. The bill adds as a new criterion for the Chancellor to consider: the extent to which a proposal will increase the number of women participating in the Choose Ohio First Scholarship Program and cooperative education and internship programs, respectively.

Under current law, no student may receive a Choose Ohio First Scholarship in an amount more than half of the highest in-state undergraduate instructional and general fees charged by all state universities. The bill, however, allows the Chancellor to authorize an institution of higher education to award a Choose Ohio First Scholarship for more than that amount to either (1) an undergraduate student who qualifies for the scholarship and is enrolled in a program leading to a teaching profession in a STEMM field or (2) a graduate student who qualifies for the scholarship and is in a STEMM field or STEMM education. As under current law, Choose Ohio First scholarships may be awarded to graduate students only as part of an initiative to recruit Ohio residents enrolled outside Ohio to return to Ohio to study in a STEMM field or STEMM education.

Participation of private institutions

(R.C. 3333.61)

Also under current law, a nonpublic four-year Ohio institution of higher education may submit a proposal for Choose Ohio First scholarships if the proposal is in collaboration with a state university or NEOUCOM. The bill eliminates this requirement and allows nonpublic institutions of higher education to submit proposals on their own. The bill also allows nonpublic institutions to submit proposals for a grant from the Ohio Research Scholars Program. As under current law, if the Chancellor awards a nonpublic institution scholarships or grants, the nonpublic institution must comply with all the rules and requirements that apply to public institutions.

Nurse Education Assistance Loan Program

(R.C. 3333.28)

Under current law, the Chancellor must distribute the funds in the Nurse Education Assistance Loan Program between July 1, 2005, and January 1, 2012 as follows:

(1) 50% of the funds as loans to registered nurses enrolled in post-licensure education programs;

(2) 25% of the funds as loans to students enrolled in prelicensure registered nurse education programs;

(3) 25% of the funds as loans to students enrolled in prelicensure licensed practical nurse education programs.

The bill changes the specific allocation to prelicensure licensed practical nurse education programs in (3), and instead directs the Chancellor to allocate 25% of the funds as loans to students in any nurse education program the Chancellor determines. However, the Chancellor must give preference to "programs aimed at increasing enrollment in an area of need." Presumably, the Chancellor would determine the area of need.

Fees for associate degree programs

(Section 371.30.10)

The bill allows the Chancellor to adjust the instructional and general fees charged for an associate degree program for the 2009-2010 and 2010-2011 academic years at public institutions of higher education. Further, the bill outlines the procedure the Chancellor must follow if the Chancellor intends to seek a fee adjustment for associate degree programs.

First, the Chancellor must notify the institution's board of trustees of the Chancellor's intent to seek an adjustment of the instructional and general fees. Second, the Chancellor must request that the board (1) provide access to data and to administrators and other employees of the institutions, as specified by the Chancellor, to analyze the fee amounts and (2) prepare and submit a report justifying the current fee amounts or proposing an adjustment to those amounts. The report must be submitted to the Chancellor within 30 days after the request. Third, the Chancellor must convene a meeting with the board to reach an agreement on adjusting the fee amounts and on a plan to implement the adjustments. (The Chancellor and the board may designate

employees of the institution to participate in the meeting.) If an agreement is reached, the board must take action to implement the plan to adjust the fee amounts.

If no agreement is reached, the Chancellor must make a recommendation to the board of trustees for an adjustment to the fee amounts. In making the recommendation, the Chancellor must specify the actions that should be taken to make the adjustment viable and must demonstrate that the adjustment will not adversely impact the financial or educational condition of the institution. The Chancellor cannot make a recommendation that would cause an institution to be placed on fiscal watch under the ratio analysis performed on the financial condition of an institution.[319] The board must adopt or reject the Chancellor's recommendation within ten days of receiving it.

If the board of trustees rejects the Chancellor's recommendation, the Chancellor may submit the recommendation to the Controlling Board for approval. If the Controlling Board approves the recommendation, the board of trustees must implement the recommendation and adjust the instructional and general fee amounts accordingly.

The bill also specifies that any restrictions on tuition increases that may be applicable to a public institution of higher education's associate degree programs in FY 2012 or FY 2013 must be applied to the instructional and general fees charged for the programs *before* any adjustment made by the Chancellor's recommendation, unless a law enacted after the bill's effective date requires otherwise.

University System of Ohio

(R.C. 3345.011; Section 515)

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,[320] 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.

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[319] Ohio Administrative Code (O.A.C.) 126:3-1-01(A)(4).

[320] 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.

College transfer policies

(R.C. 3333.16)

Under current law, all state institutions of higher education must fully implement the "course applicability system" (CAS) to assist and advise transfer students. The bill removes the specific reference to the course applicability system and replaces it with an "information system for advising and transferring selected by, contracted for, or developed by the Chancellor."

Biotechnology and bioscience training grants

(R.C. 3333.91)

The bill requires the Chancellor to provide grants to eligible entities to provide training for individuals who are not employed, but wish to receive training, in the biotechnology field or bioscience sector. The Chancellor may also provide grants for any other field in which critical demand exists for certain skills. Under the bill, municipal corporations and employers that provide a training program as outlined by the bill may apply for a grant. Any of the following entities that sponsor multi-employee training projects are also eligible to apply: business associations, strategic business partnerships, institutions of secondary or higher education, large manufacturers for supplier network companies, and agencies of the state or of a political subdivision of the state or recipients of grants under the federal Workforce Investment Act of 1998.

Eligible entities must ensure that the money will be used for employee training programs such as:

(1) Training programs that are in response to new or changing technology introduced into the workplace;

(2) Job-linked training programs that offer special skills for career advancement or that are preparatory for, and lead directly to, a job with definite career potential and long-term job security;

(3) Training programs that are necessary to implement a total quality management system, a total quality improvement system, or both within the workplace;

(4) Training related to learning how to operate new machinery or equipment;

(5) Training for employees of companies that are expanding into new markets or expanding reports from this state and that provide jobs in this state;

(6) Basic training, remedial training, or both, of employees as a prerequisite for other vocational or technical skills training or as a condition for sustained employment;

(7) Other training activities, training projects, or both, related to the support, development, or evaluation of job training programs, activities, and delivery systems, including training needs assessment and design.

The bill directs the Chancellor to use the same competitive process for making awards as the Ohio Co-op/Internship program[321] and to adopt rules to establish the terms and conditions under which a grant may be awarded and generally to implement the grant program. The rules must include a requirement that a non-employer applicant must specify in the application which employers would benefit from the training provided to ensure that the training provided satisfies the needs of employers located in the area where the entity provides the training programs. The Chancellor must also adopt rules to establish methods and procedures to identify transitional jobs and to develop and identify training strategies that will enable individuals not employed in the biotechnology field or the bioscience sector to be employed in that field or sector.

No grant for training programs may exceed 50% of the allowable costs of the training programs. Allowable costs include, but are not limited to: administrative costs for tracking, documenting, reporting, and processing training funds or project costs; costs for developing a curriculum; wages for instructors and for individuals receiving training if those individuals are employed by the employer offering the training; costs incurred for producing training materials, including scrap product costs; trainee travel expenses; costs for rent, purchase, or lease of training equipment; other usual and customary training costs.

Money received from the grant may be used only for the specified program for which the entity applied. However, a municipal corporation that receives a grant may use the money for a training program that is also funded under the federal Workforce Investment Act.

The Chancellor must require an employee of the Board of Regents to conduct at least one on-site visit to monitor the application of the grant and compliance with the bill and any other rules the Chancellor adopts, either during the course of the grant period or within six months after the end of that period. The employee must verify that the grantee's financial management system "is structured to provide for accurate, current, and complete disclosure of the financial results of the grant program."

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[321] R.C. 3333.73, not in bill. The Ohio Co-op/Internship program criteria includes the extent to which the proposal will keep and attract Ohioans in the state and the quality of the proposed project.

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 renamed the Eastern Gateway Community College District, to be governed by a new board of trustees composed of residents of the four-county territory. The powers, duties, obligations, liabilities, employees, and property of the board of trustees of the Jefferson County Community College District will be assigned to the board of trustees of the eastern Gateway Community College District.

Taxes and bonds

Under 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-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).

Energy and water conservation measures at universities

(R.C. 156.01, 156.02, 156.03, 156.04, 3345.61, 3345.62, 3345.63, 3345.64, 3345.65, and 3345.66)

Continuing law authorizes a state university, the Northeastern Ohio Universities College of Medicine, and any community college, state community college, university branch, or technical college (hereafter "institution" or "institutions") to implement specified energy conservation measures in existing buildings to reduce their energy consumption and operating costs. To do so, the institution can issue notes to finance those measures and any attendant architectural and engineering consulting services.

In general, the bill allows any such institution also to implement specified water conservation measures. It also authorizes the Director of Administrative Services to implement water conservation measures at such institutions. Additionally, the bill makes certain changes in the authority of an institution or the Director to implement energy conservation measures at such an institution. (The bill does not (1) affect the Director's authority to implement energy conservation measures in other state buildings, or (2) allow the Director to implement water conservation measures in those other buildings.)

Water conservation measures

Allowable measures

Under the bill, an institution can, in the manner of energy conservation measures, purchase, lease-purchase, lease with an option to buy, or make an installment purchase of water conservation measures to reduce water consumption in existing buildings or on surrounding grounds owned by the institution. To do so, the institution can issue notes to finance the measures and any attendant architectural and engineering consulting services. The bill also authorizes the Director of Administrative Services to implement water conservation measures at an institution.

A "water conservation measure" includes any (1) water-conserving fixture, appliance, or equipment, or the substitution of a nonwater-using fixture, appliance, or equipment, (2) water-conserving, landscape irrigation equipment, (3) landscaping measure that reduces storm water runoff demand and capture and hold applied water and rainfall, including landscape contouring such as the use of a berm, swale, or terrace and including the use of a soil amendment, including compost, that increases the water-holding capacity of the soil, (4) rainwater harvesting equipment or equipment to make use of water collected as part of a storm water system installed for water quality control, (5) equipment for recycling or reuse of water originating on the premises or from another source, including treated, municipal effluent, (6) equipment needed to

capture water for nonpotable uses from any nonconventional, alternate source, including air conditioning condensate or gray water, and (7) any other modification, installation, or remodeling approved by the institution's board of trustees as a water conservation measure.

Contract for a report on measures

Similar to energy conservation measures, an institution, and the Director, upon request of the institution, can contract with a company,[322] architect, professional engineer, contractor, or other person experienced in the design and implementation of water conservation measures for a report containing an analysis, cost estimates, and recommendations pertaining to the implementation of measures meeting the bill's standard.

Allowable contracts

Contracts to implement one or more water conservation measures can include installment payment contracts or other types of contracts. The contract process for implementation of the measures for both an institution and the Director is similar insofar as proposals generally will be obtained through either competitive bidding or a request for proposal (RFP).

Approval standards for contracts implementing measures

The bill provides that an institution, when using an RFP process, must select the proposal that is most likely to result in the greatest savings when the proposal's cost is compared to the resultant water or wastewater cost savings, operating cost savings, or avoided capital costs (see the definitions of these terms in the last paragraph of this subsection). Neither current law nor the bill applies that standard to such a contract entered into by an institution pursuant to competitive bidding.

Too, under the bill, an institution cannot award a water conservation installment payment or other contract pursuant to an RFP unless the contract's cost is not likely to exceed the amount of water or wastewater savings, operating cost savings, and avoided capital costs over not more than 15 years. The bill does not include a provision that applies that standard for such a contract entered into by an institution pursuant to competitive bidding.

If the Director uses an RFP process, the Director must select one or more proposals that are most likely to result in the greatest water or wastewater savings, operating cost savings, and avoided capital costs created. As with energy conservation

[322] Line 13343 of the bill appears to require amendment to refer to an "*energy or* water services company."

measures, the Director also must evaluate a proposal as to the availability of funds to pay for the water conservation measure or measures either with current appropriations or by financing through an installment payment contract.

Under the bill, "avoided capital costs" is defined as a measured reduction in the cost of future equipment or other capital purchases resulting from implementation of one or more water conservation measures, when compared to an established baseline for previous such cost. "Operating cost savings" means a measured reduction in the cost of stipulated operation or maintenance created by the installation of new equipment or implementation of a new service, when compared with an established baseline for previous such stipulated costs. And, "water or wastewater cost savings" means a measured reduction in the cost of water consumption, wastewater production, or stipulated operation or maintenance resulting from implementation of one or more water conservation measures, when compared to an established baseline for previous such costs.

Terms of contracts implementing measures

A water conservation installment payment contract entered into by an institution must require repayment on the following terms: (1) not less than one-fifteenth of the contract's costs will be paid within two years from the date of purchase, and (2) the remaining balance will be paid within 15 years from the date of purchase. The bill establishes this same requirement for both water conservation installment payment and other contracts entered into by the Director.

A water conservation installment payment contract entered into by the Director is subject to additional restrictions. The contract must provide that all payments, except payments for repairs and obligations on termination of the contract prior to its expiration, must be a stated percentage of the measure's calculated water or wastewater cost savings, operating costs, and avoided capital costs over a defined time period and must be made only to the extent that those savings and avoided costs are realized. Too, no such contract can require any additional capital investment or contribution of funds, other than funds available from state or federal grants, or a payment term longer than 15 years.

Energy conservation measures

Under current law, an institution can purchase, lease-purchase, lease with an option to buy, or make an installment purchase of energy conservation measures to reduce energy consumption, in existing buildings owned by the institution and can issue notes to do so. The Director, under current law, can implement those measures at an institution. The bill makes changes to conform this law as needed to the new water conservation provisions of the bill.

Contract for a report on measures

Under current law, an institution or the Director can contract with a company, architect, professional engineer, contractor, or other person experienced in the design and implementation of energy conservation measures for a report containing an analysis, cost estimates, and recommendations regarding the implementation of energy conservation measures that would significantly reduce energy consumption and operating costs in a building owned by the institution. The bill changes this standard to require the report to focus on measures that result in energy cost savings, operating cost savings, or avoided capital costs for the institution. The terms "operating cost savings" and "avoided capital costs" are defined for energy conservation measures similarly to the definitions applicable to water conservation measures, as described above. The bill defines "energy cost savings" as a measured reduction in the cost of fuel, energy consumption, or stipulated operation or maintenance resulting from the implementation of one or more energy conservation measures when compared to an established baseline for previous such costs.

Contracts implementing measures

Under current law, an energy conservation installment payment contract entered into by an institution must require that (1) not less than one-tenth of the costs of the contract be paid within two years from the date of purchase, and (2) the remaining balance of the costs of the contract must be paid within ten years from the date of purchase or, in the case of a cogeneration system, within five years. The bill changes these repayment requirements to mirror the requirements applicable to water conservation measures, so that not less than one-fifteenth of the contract costs for all types of energy conservation measures must be repaid within two years from the date of purchase and so that the remaining balance of a contract must be paid within 15 years of the date of purchase.

Additionally, the bill requires the director to select one or more proposals for energy conservation measures most likely to result in the greatest energy savings, operating cost savings, and avoided capital costs created for implementation under an installment payment contract or other contract. It also requires that an energy conservation installment payment contract or other contract entered into by the Director contain the following terms: (1) not less than one-fifteenth of the contract's costs will be paid within two years from the date of purchase, and (2) the remaining balance will be paid within 15 years from the date of purchase.

An energy conservation installment payment contract entered into by the Director is subject to additional restrictions. The contract must provide, similar to current law, that all payments, except payments for repairs and obligations on

termination of the contract prior to its expiration, must be a stated percentage of the measure's calculated energy cost savings, operating costs, and avoided capital costs over a defined time period and must be made only to the extent that those savings and avoided costs are realized. Too, no such contract can require any additional capital investment or contribution of funds, other than funds available from state or federal grants, or a payment term longer than 15 years. The payment term alters the ten-year repayment requirement of existing law for energy conservation measures other than cogeneration systems.

Miscellaneous changes

The bill eliminates the distinction between cogeneration systems that are energy conservation measures and other energy conservation measures with respect to the repayment terms of installment payment contracts for such measures entered into by institutions or by the Director on their behalf. Under current law, the repayment terms are five years. The bill changes them to 15 years. The bill also changes the amount that must be paid in the first two years for installment payment contracts entered into by an institution for cogeneration systems from one-tenth to one-fifteenth.

The bill also changes the limitations relating to the cost of the measures versus the savings likely to result from the measures. Under current law, an institution or the Director cannot contract for implementation of a cogeneration system as an energy conservation measure if the cost of the contract would likely exceed the cost savings over five years. The bill eliminates the distinction between cogeneration systems and other types of energy conservation measures regarding the comparison of costs versus savings for institution-implemented measures with the result that the comparison relates to a 15-year period. With respect to the Director-implemented measures, the bill makes the cost versus savings contract limitation inapplicable to energy savings measures for institutions.

Overview of entrepreneurial projects and definitions

(R.C. 3345.36(A))

The bill authorizes a board of trustees of an institution of higher education to pursue methods of establishing and developing certain "entrepreneurial projects" generally for the purpose of improving the economy of the state.

The bill defines "entrepreneurial project" as an effort to develop or commercialize technology through research or technology transfer or investment of real or personal property, or both, including undivided and other interests therein, acquired by gift or purchase, constructed, reconstructed, enlarged, improved, furnished, or equipped, or any combination thereof, by an institution of higher education or by others.

"Governmental agency," as defined in the bill, means the state and any state department, division, commission, institution or authority; a municipal corporation, county, or township, and any agency thereof, and any other political subdivision or public corporation or the United States or any agency thereof; any agency, commission, or authority established pursuant to an interstate compact or agreement; and any combination of the above. An "institution of higher education" means a state university or college, or a community college district, technical college district, university branch district, or state community college, and includes the applicable board of trustees or, in the case of a university branch district, any other managing authority. In addition, under the bill, "person" means individuals or entities engaged in industry, commerce, distribution, or research. "Stock or other ownership" means equity or other ownership rights held or received in return for the grant of rights to intellectual property developed by an institution of higher education but excludes equity or other ownership rights held or received in return for the investment of money.

Purpose and methods of developing entrepreneurial projects

(R.C. 3345.36(B))

Section 13 of Article VIII of the Ohio Constitution provides a means to create or preserve jobs and employment opportunities and improve the economic welfare of the people of the state, by declaring it to be in the public interest and a proper public purpose to make or guarantee loans and to borrow money and issue bonds or other obligations to provide moneys for the acquisition, construction, enlargement, improvement, or equipment, of property, structures, equipment and facilities for industry commerce, distribution, and research. The Constitution permits the enactment of laws to carry out these purposes and to authorize the borrowing of money and the issuance of bonds or other obligations provided that tax moneys are not obligated or pledged for the payment of bonds or obligations issued or guarantees made pursuant to those laws.

The bill declares that, pursuant to that provision of the Constitution, it is the public policy of the state for institutions of higher education to facilitate and assist with establishing and developing entrepreneurial projects or to assist and cooperate with any governmental agency in achieving this purpose in order to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of Ohio. Under the bill, an entrepreneurial project is determined to qualify as "property, structures, equipment, and facilities" described in Art. VIII, Sec. 13.

In pursuit of this stated public policy to create jobs and improve the state's economic welfare, the bill authorizes a board of trustees of an institution of higher education to do any of the following by resolution:

(1) Enter into an agreement with persons and with governmental agencies to induce such persons to acquire, construct, reconstruct, rehabilitate, renovate, enlarge, improve, equip, furnish, or otherwise develop entrepreneurial projects;

(2) Acquire stock or other ownership in an entrepreneurial project or a legal entity formed in connection with a project;

(3) Make or guarantee loans and borrow money and issue bonds, notes, or other evidence of indebtedness to provide moneys for the acquisition, construction, enlargement, improvement, equipment, maintenance, repair, or operation of entrepreneurial projects.

The bill states that bonds, notes, or other evidence of indebtedness issued under the bill do not constitute debt for which the full faith and credit of the state or an instrumentality or political subdivision of the state may be pledged and moneys raised by taxation cannot be obligated or pledged for their repayment.

Applicability of bond proceeding law to entrepreneurial projects

(R.C. 3345.12)

The bill applies current bond proceeding law governing bonds, notes, and other evidence of obligations issued by institutions of higher education for housing and dining facilities, auxiliary facilities, or education facilities, and the terms for that debt, to the bonds, notes, and other evidence of indebtedness issued for entrepreneurial projects. The bill refers to these new obligations as "assurances" to fund the costs of entrepreneurial projects in order to distinguish them from the obligations described under the current bond proceeding law.

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.

- Repeals the prohibition against smoking, using, or possessing tobacco in specified correctional institutions and repeals duties of DRC with respect to the prohibition.

- Permits, rather than requires, the Department of Rehabilitation and Correction to provide certain medical laboratory services to the Departments of Mental Health, Mental Retardation and Developmental Disabilities, Youth Services, and Rehabilitation and Correction.

- Increases the penalties for assault, aggravated menacing, menacing by stalking, and menacing if the victim is an officer or employee of an adult protective services agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties.

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.

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.

Laboratory services

(R.C. 5120.135)

Current law requires the Department of Rehabilitation and Correction (DRC) to provide laboratory services for itself and the Departments of Mental Health, Mental Retardation and Developmental Disabilities, and Youth Services. The laboratory services include medical laboratory analysis; professional laboratory and pathologist consultation; procurement, storage, and distribution of laboratory supplies; and performance of phlebotomy services. DRC may also provide these laboratory services to other state, county, or municipal agencies and to private persons under certain circumstances, as well as to federal agencies and to public and private entities funded in whole or in part by the state under certain circumstances.

If DRC does not provide laboratory services in a satisfactory manner to the Departments of Mental Health, Mental Retardation and Developmental Disabilities, and Youth Services, current law specifies a process for resolving the unsatisfactory services. The director of the department receiving unsatisfactory services must first attempt to resolve the matter with the DRC Director. If, after this attempt, the provision of laboratory services continues to be unsatisfactory, the department's director must notify the DRC Director regarding the continued unsatisfactory provision of laboratory services. If, within 30 days after the DRC Director receives this notice, DRC does not provide the specified laboratory services in a satisfactory manner, the department director must notify the DRC Director of the director's intent to cease obtaining laboratory services from DRC. Following the end of a 60-day cancellation period, the department that sent the notice may obtain laboratory services from a provider other than DRC, if the department certifies to the Department of Administrative Services that the resolution process has been correctly followed.

The bill permits, rather than requires, DRC to provide the laboratory services to the Departments of Mental Health, Mental Retardation and Developmental Disabilities, Youth Services, and Rehabilitation and Correction. The bill also eliminates the resolution process for the departments to follow if DRC provides unsatisfactory laboratory services.

Offenses against an officer or employee of an adult protective services agency

(R.C. 2903.13, 2903.21, 2903.211, and 2903.22)

Under current law, assault, aggravated menacing, and menacing by stalking are normally misdemeanors of the first degree, while menacing is normally a misdemeanor of the fourth degree. However, if the victim is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, then (1) assault, aggravated menacing, or menacing by stalking is either a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree, and (2) menacing is either a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree. The bill extends the application of the enhanced penalties, on the same conditions, to cases in which the victim is an officer or employee of an adult protective services agency. (R.C. 2903.13(C)(5), 2903.21(B), 2903.211(B)(3), and 2903.22(B).)

RETIREMENT (RET)

- Removes current and future Unemployment Compensation Advisory Council members from the Public Employees Retirement System (PERS).

- 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.

- Provides that the employer contribution under the State Highway Patrol Retirement System (SHPRS) is to be 26.5% of members' salaries.

- Requires the Ohio Retirement Study Council to (1) annually review the adequacy of SHPRS employee and employer contribution rates and the contribution rates recommended in a report prepared by the SHPRS actuary for the upcoming year and (2) make recommendations to the General Assembly as necessary for the proper financing of SHPRS benefits.

- Provides for the confidentiality of certain records maintained by the Ohio Public Employees Deferred Compensation Board on an individual who is a participating employee or continuing member, including personal history records, medical records, and tax information.

- Specifies the circumstances under which otherwise confidential records may be released, such as pursuant to a court order or an administrative subpoena.

- Requires, when an individual becomes employed in a position paid by warrant of the Director of Budget and Management, the individual's employer to provide information to the employee regarding the benefits of deferred compensation and to secure, in writing, the employee's election to participate or not participate in the Deferred Compensation Program.

- Requires such an election to be filed with the program not later than 30 days after the employee's employment begins.

- Specifies that the Treasurer of State is the custodian of contributions into the Deferred Compensation Program.

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[323] or state employing unit[324] 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 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.

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[323] "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).)

[324] "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).)

SHPRS contribution rates

(R.C. 5505.15 and 5505.152)

Ohio law requires public employers and their employees to contribute to one of five state retirement systems: the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), School Employees Retirement System (SERS), and State Highway Patrol Retirement System (SHPRS). Under current law, SHPRS members must contribute to SHPRS an amount equal to 10% of their salaries. The employer (the State Highway Patrol) must contribute to SHPRS an amount equal to a "certain percentage" of members' salaries (not in statute, but currently 25.5%).[325] The bill requires the employer to contribute to SHPRS an amount equal to 26.5% of members' salaries.

The bill requires the Ohio Retirement Study Council to do the following: (1) annually review the adequacy of SHPRS employee and employer contribution rates and the contribution rates recommended in a report prepared by the SHPRS actuary for the upcoming year and (2) make recommendations to the General Assembly as necessary for the proper financing of SHPRS benefits. The actuarial calculations used by the actuary are to be based on the entry age normal actuarial cost method,[326] and the adequacy of the contribution rates is to be reported on the basis of that method.

Deferred Compensation Program for public employees

Access to records

(R.C. 148.05 and 3105.87)

Existing law provides for the confidentiality of various records in the possession of the state retirement systems. This confidentiality does not currently apply to the records maintained by the Ohio Public Employees Deferred Compensation Board. The bill generally applies similar confidentiality provisions to the records maintained by the Board.

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[325] Current law provides that the SHPRS employer contribution must not be lower than 9% of members' salaries and not exceed three times the SHPRS member contribution (10%), which is 30% of members' salaries. (R.C. 5505.15(B).)

[326] "Entry age normal actuarial cost method" means an actuarial cost method under which the actuarial present value of the projected benefits of each individual included in the valuation is allocated on a level basis over the earnings or service of the individual between the entry age and the assumed exit age, with the portion of the actuarial present value that is allocated to the valuation year to be the normal cost and the portion of the actuarial present value not provided for at the valuation date by the actuarial present value of future normal costs to be the actuarial accrued liability. (R.C. 5505.152(A).)

Under the bill, records of the Board generally are open to public inspection, except that the following records are not open to the public without the written authorization of the individual concerned:

- Information pertaining to an individual's participant account;

- The individual's personal history record. An individual's "personal history record" means information maintained by the Board on an individual who is a participating employee or continuing member that includes the address, telephone number, social security number, record of contributions, records of benefits, correspondence with the Ohio public employees deferred compensation program, or other information the board determines to be confidential.

Additionally, all medical reports, records, and recommendations of a participating employee or a continuing member that are in the Board's possession are privileged. And, all tax information of a participating employee, continuing member, or former participant or member that is in the Board's possession is confidential to the extent that the information is confidential under the Tax Law or any other provision of the Revised Code.

Notwithstanding this general confidentiality, the Board may furnish information as follows:

- If a participating employee, continuing member, or former participant or member is subject to an order for restitution to the victim of a crime or is convicted of or pleads guilty to a charge of theft in office, or, on written request of a prosecutor, the Board must furnish to the prosecutor the information requested from the individual's personal history record or participant account.

- Pursuant to a court or administrative order issued pursuant to the Child Support Law, the Board must furnish to a court or child support enforcement agency the required information.

- Pursuant to an administrative subpoena issued by a state agency, the Board must furnish the information required by the subpoena.

- The board must comply with orders issued by a court to provide information necessary to make an award of spousal support. The bill authorizes a court to order the Board to provide information from a participant's personal history record to determine the amount of the award.

The bill specifies that a statement that contains information obtained from the program's records that is signed by the executive director or the director's designee and to which the Board's official seal is affixed, or copies of the program's records to which the signature and seal are attached, must be received as true copies of the Board's records in any court or before any officer of the state.

New employees

(R.C. 148.04)

The bill establishes a process for new employees to be notified of their option to participate in the Deferred Compensation Program and for those employees to choose whether or not they wish to participate.

Whenever an individual becomes employed in a position paid by warrant of the Director of Budget and Management, the individual's employer must do both of the following at the time the employee completes the employee's initial employment paperwork: (1) provide information to the employee either verbally or in writing regarding the benefits of long-term savings through deferred compensation, and (2) secure, in writing, the employee's election to participate or not participate in a Deferred Compensation Program offered by the Board.

If the employee elects to participate in the Deferred Compensation Program, the employee also must execute a participation agreement to become a member of the program. An election regarding participation must be made in the manner and form as is prescribed by the Ohio Public Employees Deferred Compensation Program and must be filed with the program. The employer must forward each election to the Deferred Compensation Program not later than 30 days after the date on which the employee's employment begins.

Miscellaneous changes

(R.C. 148.02 and 148.04)

The bill specifies that the Treasurer of State is the custodian of contributions into the Deferred Compensation Program.

Existing law lists various options for possible investment of deferred funds, including life insurance, annuities, variable annuities, pooled investment funds managed by the Board, or other forms of investment approved by the Board. The bill eliminates these specific types of investments and instead requires the Board to offer a program of deferred compensation, including a reasonable number of options to the employee for the investment of deferred funds.

Existing law requires the state retirement system serving an eligible employee to serve as collection agent for compensation deferred by any of its members and to account for and deliver those amounts to the board. The bill eliminates this requirement.

SCHOOL FACILITIES COMMISSION (SFC)

- Extends until December 31, 2009, the deadline for a school district that was conditionally approved for a project under the Classroom Facilities Assistance Program (CFAP) in July 2008 to pass a levy to raise its share of the project cost.

- Reduces by 1% the local share of a CFAP project for a school district that passed a levy in fiscal year 2008 based on an estimated share that was 1% lower than the actual share required due to the district's percentile ranking on the finalized equity list.

- Specifies that priority for assistance under CFAP for a school district participating in the Expedited Local Partnership Program is based on the district's percentile ranking on the equity list at the time it entered into its agreement for the Expedited Program.

- Changes the ½-mill maintenance levy requirement for a school district participating in the Accelerated Urban 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.

- Permits the School Facilities Commission to approve a project under the Exceptional Needs Program in fiscal year 2010 for a school district that (1) initially applied for the program in fiscal year 2008 and (2) is ranked higher than 360 on the equity list for fiscal year 2009.

- Limits a school district's share of a classroom facilities project under the Extreme Environmental Contamination Program to 75% of the project cost.

- 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 of a school district income tax allocated for the project cost, debt service, or maintenance set-aside associated with a state-assisted classroom

facilities project is not considered a "current expense" to be included in calculating a district's tuition rate for nonresident students or the determination of whether the district has met its obligation to levy at least 20 mills for the operating expenses of the district.

- Specifies that bonds issued by a joint vocational school district under existing law to pay for the district's share of the project cost, and that are payable from a property tax for general permanent improvements, are not counted toward the district's unvoted debt limit.

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, as indicated on an annual percentile ranking of all districts known as the "equity list." The lowest wealth districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served. For most districts, the portion of the project cost paid by the district is equal to its percentile ranking. Besides raising its 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.

Temporary extension of deadline to raise local share of a CFAP project

(Section 385.70)

Under current law, a school district participating in CFAP must pass a levy to raise its share of the project cost within one year after the date after the School Facilities Commission certifies its conditional approval of the project to the district board of

education. If the district fails to meet this deadline, the conditional approval lapses and the state funds encumbered for the project are released.[327]

The bill grants a five-month extension for passing a levy to certain school districts. Specifically, districts undertaking a CFAP project that was conditionally approved by the Commission in July 2008 have until December 31, 2009, to pass a levy for their local share before their project approval lapses and the state funds are released. With the extension, these districts will have an additional opportunity to seek passage of a levy at the general election in November 2009.

Adjustment of local share for certain CFAP projects

(Section 385.90)

Under current law, if a school district has a net gain in interdistrict open enrollment students equal to at least 10% of the district's formula ADM (average daily membership), the net gain is added to the district's "valuation per pupil" to determine its ranking on the equity list. This provision was enacted in Am. Sub. H.B. 119 of the 127th General Assembly (the main operating budget for the 2008-2009 biennium) and would have first affected funding determinations for school districts in fiscal year 2010. Subsequently, Am. Sub. H.B. 562 of the 127th General Assembly (the capital budget for the 2009-2010 capital biennium) applied the provision retroactively to funding determinations in fiscal year 2009.

The bill adjusts the local share of a CFAP project for a school district that passed a levy to raise its portion of the project cost in fiscal year 2008 and then became eligible for the retroactive application of the open enrollment provision under H.B. 562, *if* the district based its levy amount on its projected share derived from a preliminary equity list and later was ranked one percentile higher on the finalized equity list, resulting in a 1% higher actual share. Since the levy amount may be insufficient to cover the higher share, the bill directs the School Facilities Commission to reduce the district's share by 1% to equal the projected share from the preliminary equity list.

Priority for CFAP for Expedited Local Partnership districts

(R.C. 3318.36)

The Expedited Local Partnership Program allows school districts that have not yet been served under CFAP to spend local funds on a discrete part of their classroom

[327] R.C. 3318.05. Nevertheless, when the district is able to raise its local share, it has first priority for state funding as those funds become available.

facilities needs and then apply those expenditures toward their share of a district-wide project when their percentile ranking makes them eligible for CFAP. The local share of the CFAP project is generally based on the district's percentile ranking at the time it entered into an agreement under the Expedited Program, regardless of changes in that ranking before the district becomes eligible for CFAP. In other words, the district is able to "lock in" its project share at that time. However, under current law, the district's priority for CFAP, or when it will be served under that program, remains based on the district's most recent percentile ranking.

The bill enables a school district to lock in its priority for CFAP in the same way it locks in its project share. Therefore, the district's percentile ranking at the time of its agreement under the Expedited Program will determine when it becomes eligible for CFAP. For example, a district ranked at the 63rd percentile when it enters the Expedited Program will be served under CFAP when the 63rd percentile becomes eligible, even if the district drops to the 65th percentile in the intervening period. This provision also works the other way. If a district moves into a lower percentile after entering the Expedited Program, it will only be eligible for CFAP when the district's original (and higher) percentile is reached.

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.

Eligibility for Exceptional Needs Program

(Section 385.85)

The Exceptional Needs School Facilities Assistance Program provides low-wealth and geographically large school districts with funding in advance of their district-wide CFAP projects to construct single buildings in order to address acute health and safety issues. A district that is reasonably expected to be eligible for CFAP within three fiscal

years after its application for assistance under the Exceptional Needs Program is generally ineligible for the program.[328]

The bill temporarily permits participation in the Exceptional Needs Program for certain school districts that otherwise would be disqualified due to their proximity to CFAP eligibility. Under the bill, in fiscal year 2010 only, the School Facilities Commission may approve an Exceptional Needs project for a district that (1) initially applied for the program in fiscal year 2008 and (2) is ranked higher than 360 on the equity list for fiscal year 2009.

Local share under the Environmental Contamination Program

(Section 385.50)

The Extreme Environmental Contamination Program, which is a sub-program of the Exceptional Needs School Facilities Assistance Program, provides state assistance to school districts for the relocation or replacement of a single facility damaged by extreme environmental contamination. As required by the Exceptional Needs Program, a school district's share of a project to address a contaminated facility is equal to its percentile ranking on the equity list. However, the bill caps a district's maximum share at 75%. Therefore, if a district with a ranking higher than the 75th percentile on the equity list (for example, a district at the 80th percentile) participates in the program, it would pay just 75% of the project cost. The cap only applies to the Environmental Contamination Program. It does not affect a district's share of a later project under any of the other classroom facilities assistance programs, including the Exceptional Needs Program.

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.

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[328] R.C. 3318.37, not in the bill. The only exception is for a district that entered into an agreement under the Expedited Local Partnership Program during the first two years of that program's existence and whose entire classroom facilities plan consists of one building for grades K to 12 (R.C. 3318.37(A)(2)).

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.[329] 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 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[330] and to determine whether a district has met its obligation to levy at least 20 mills for the current expenses of the district.[331] 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.

JVSD funding source for OSFC-aided project

(R.C. 133.06 and 3318.44)

Continuing law authorizes joint vocational school districts to finance their portion of the cost of School Facilities Commission-aided projects by one or more of several revenue sources, including bonded indebtedness, permanent improvement tax levies, and locally donated contributions. They may also issue bonds payable from a tax levy for general permanent improvements if revenue from the levy may lawfully be used to pay general construction, renovation, repair, or maintenance expenses. The bond issuance does not have to be approved by voters if the revenue from the levy may lawfully be used for the purpose of paying the bond debt charges. The bonds are to be issued under the "uniform" public securities law codified as Chapter 133. of the Revised Code.

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[329] R.C. 3318.052, not in the bill.

[330] 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).

[331] 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).

The bill specifies that such bonds are not to be counted toward a joint vocational school district's unvoted debt limit if the district's board formally covenants to continue collecting the tax in sufficient amounts to pay the bonds (including associated financing costs), even if voters or the school board act to reduce the levy's rate. Under continuing law, school districts (presumably including joint vocational school districts) may incur indebtedness of up to 0.1% of its taxable property value without voter approval, subject to certain exceptions. (R.C. 133.06(A).)

A similar provision currently applies to other kinds of school districts.

SECRETARY OF STATE (SOS)

- Designates voting machines, marking devices, and automatic tabulating equipment as state capital facilities for which the Ohio Building Authority is authorized to issue revenue obligations, and specifies that county boards of elections are state agencies having jurisdiction over those state capital facilities.

- Establishes the County Voting Machine Revolving Lease/Loan Fund to finance a portion of the acquisition of voting machines, marking devices, and automatic tabulating equipment by boards of county commissioners.

- Requires the Secretary of State to administer the County Voting Machine Revolving Lease/Loan Fund, adopt rules for the lease program's implementation, and approve purchases of voting machines, marking devices, and automatic tabulating equipment using moneys from the Fund.

- Specifies that voting machines, marking devices, and automatic tabulating equipment will be leased by participating counties until all lease payments have been made, at which time ownership will transfer to the counties.

- Establishes the Board of Elections Reimbursement and Education Fund in the state treasury, which is to be used by the Secretary of State to reimburse boards of elections for various purposes, including reimbursements for special elections to fill vacancies in Congress, and to provide training and educational programs for employees and members of boards of elections.

- Permits the fund to receive transfers of cash pursuant to Controlling Board action and also to receive revenues from fees, gifts, grants, donations, and other similar receipts.

- Establishes the Statewide Ballot Advertising Fund, which must be used by the Secretary of State to pay advertising costs for required public notices of statewide ballot issues.

Acquisition of voting machines, marking devices, and automatic tabulating equipment; County Voting Machine Revolving Lease/Loan Fund

(R.C. 111.26 and 152.33)

The 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 voting machines, marking devices, and automatic tabulating equipment.

Use of Ohio Building Authority bond proceeds for specified election equipment; designation of boards of elections as state agencies

The bill designates voting machines, marking devices, and automatic tabulating equipment as capital facilities under the Ohio Building Authority Law. Capital facilities, as defined in the Building Authority Law, generally are buildings and other structures for housing branches and agencies of state government. Therefore, the bill also declares both of the following: (1) that voting machines, marking devices, and automatic tabulating equipment financed under the bill's provisions are capital facilities for the purpose of housing agencies of state government, their functions and equipment and (2) that boards of elections, due to their responsibilities related to the proper conduct of elections under state law, are state agencies having jurisdiction over those state capital facilities.

The bill authorizes the Ohio Building Authority to issue revenue obligations under the Building Authority Law to pay all or part of the cost of voting machines, marking devices, and automatic tabulating equipment. A county acquires use of the voting machines, marking devices, and automatic tabulating equipment by lease from the Secretary of State, as described more completely below.

County Voting Machine Revolving Lease/Loan Fund

The 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 voting machines, marking devices, and automatic tabulating equipment, as needed to ensure sufficient moneys to support appropriations from the fund. Lease payments from counties acquiring voting machines, marking devices, and automatic tabulating equipment financed from the fund and interest

earnings on the balance in the fund also must be credited to the fund. The fund also may receive any other authorized transfers of cash.

Moneys in the fund are required to be used for the purpose of acquiring a portion of the voting machines, marking devices, and automatic tabulating equipment used by a county, at the request of the applicable board of elections. Acquisitions made under the bill must provide not more than 50% of the estimated total cost of a board of county commissioners' purchase of voting machines, marking devices, and automatic tabulating equipment. Participation in the fund by a board of county commissioners must be voluntary.

The Secretary of State is required to administer the Fund in accordance with the bill and must enter into any lease or other agreement with the Department of Administrative Services, the Ohio Building Authority, or any board of elections that is necessary or appropriate to accomplish the bill's purposes.

County lease of voting equipment acquired through the fund

Counties must lease the voting machines, marking devices, and automatic tabulating equipment financed in part from the County Voting Machine Revolving Lease/Loan Fund from the Secretary of State, and may enter into any agreements required under the applicable bond proceedings. A county acquiring voting machines, marking devices, and automatic tabulating equipment through a lease from the fund is required to contribute to the cost of that equipment. As previously mentioned, acquisitions made under the bill must provide not more than 50% of the estimated total cost of a board of county commissioners' purchase of voting machines, marking devices, and automatic tabulating equipment. All voting machines, marking devices, and automatic tabulating equipment purchased through the fund 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 machines, marking devices, and automatic tabulating equipment purchased through the fund are the responsibility of the participating boards of elections and boards of county commissioners.

The voting machines, marking devices, and automatic tabulating equipment lease may obligate the counties, as state agencies using capital facilities, to operate the voting machines, marking devices, and automatic tabulating equipment for such period of time as may be specified by law and to pay such rent as the Secretary of State determines to be appropriate. Notwithstanding any other provision of 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 machines, marking devices, or automatic tabulating 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 machines, marking devices, and automatic tabulating equipment acquisition and revolving lease/loan program established under the bill. The rules must require that the Secretary of State approve any acquisition of voting machines, marking devices, and automatic tabulating equipment using money made available under the bill. An acquisition for any one board of county commissioners must not exceed $5 million, and must be made only for voting machines, marking devices, or automatic tabulating equipment purchased on or after March 31, 2008. Any costs incurred on or after January 1, 2008, may be considered as the county cost percentage for the purpose of an acquisition made through the bill.

Board of Elections Reimbursement and Education Fund

(R.C. 111.27)

The bill establishes the Board of Elections Reimbursement and Education Fund in the state treasury. The fund is permitted to receive transfers of cash pursuant to Controlling Board action and also to receive revenues from fees, gifts, grants, donations, and other similar receipts. The Secretary of State is required to use the fund for both of the following:

(1) To reimburse boards of elections for various purposes, including reimbursements for special elections to fill vacancies in Congress; and

(2) To provide training and educational programs for employees and members of boards of elections.

Statewide Ballot Advertising Fund

(R.C. 3501.17(G))

The Ohio Constitution requires information regarding statewide ballot issues, including the arguments for and against those issues, to be published in newspapers of general circulation throughout the state. Under continuing law, appropriations made to

the Controlling Board are used to reimburse the Secretary of State for all expenses the Secretary of State incurs for that advertising.

The bill establishes the Statewide Ballot Advertising Fund in the state treasury. The fund receives transfers approved by the Controlling Board and must be used by the Secretary of State to pay the costs of advertising statewide ballot issues. Any transfers may be requested from and approved by the Controlling Board prior to placing the required advertising, in order to facilitate the timely provision of the advertising.

COMMISSION ON HISPANIC-LATINO AFFAIRS (SPA)

- Requires that the House Speaker appoint a House member from among the House members who are affiliated with the majority political party in the House of Representatives, and the Senate President appoint a Senate member from among the Senate members affiliated with a different political party than the House member appointed by the House Speaker, to the Commission on Hispanic-Latino Affairs.

Change in legislative membership of Commission on Hispanic-Latino Affairs

(R.C. 121.31; Section 701.60)

Current law requires that the Senate President appoint a Senate member of the majority party in the Senate, and the House Speaker appoint a House member of the minority party in the House of Representatives, to the Commission on Hispanic-Latino Affairs. The bill instead requires that the House Speaker appoint a House member from among the House members who are affiliated with the majority political party in the House of Representatives, and that the Senate President appoint a Senate member from among the Senate members who are affiliated with a different political party than the House member appointed by the House Speaker, to the Commission. (R.C. 121.31.) The bill further requires that the House Speaker and Senate President, as soon as possible after the effective date of this change, make or remake appointments to the Commission to bring the legislative membership into conformity with this change (Section 701.60).

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.

- Authorizes voters to repeal a conversion levy that originally was imposed for a continuing period of time, and terminates conversion levy reimbursement if the levy is repealed.

- Raises the fee for administering property taxes that the state excises from property tax distributions to local taxing units.

- Consolidates into one annual payment the semiannual state reimbursement of local governments for the 10% and 2.5% property tax reductions for manufactured and mobile homes.

- Requires the compensation paid to county auditors for additional expenses associated with the recent expansion of homestead exemption eligibility to be paid on a semi-annual, instead of annual, basis.

- Authorizes the exemption and remittance of taxes paid or abatement of unpaid taxes on airport property leased by a port authority that was precluded from exemption because the port authority did not own the property, as required under prior law, at the time it submitted the application for exemption.

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 annual licensing fees for tobacco product distribution licenses from $100 to $1,000 for each place of business, wholesale cigarette licenses from $200 to $1,000, and retail cigarette licenses from $30 to $125.

- Requires the $125 retail license fee and the $1,000 wholesale license fee to be paid for each place of business instead of for all places of business.

- Eliminates the authority of a wholesale or retail licensee to assign such a license to another person.

- Increases the retail license replacement fee from 50¢ to $5 and the transfer fee, from one place of business to another, for such licenses from $1 to $5.

- Increases the wholesale license replacement fee from 50¢ to $25 and the transfer fee, from one place of business to another, for such licenses from $1 to $25.

- Imposes a $25 fee to replace a tobacco product distribution license and to transfer such a license from one place of business to another place of business of the same licensee.

- Increases the percentage of wholesale cigarette license fees paid into the Cigarette Tax Enforcement Fund from 47.5% to 100% of the amount collected (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 100% of severance tax revenue from salt extraction to be used for the Geological Mapping Fund.

- Transfers from county auditors to the Tax Commissioner the responsibility for issuing wholesale cigarette licenses.

- Requires late cigarette license fees collected by county auditors to be sent to the Treasurer of State by the last day of the month following the month in which the money was collected, rather than by December 31.

- Specifies that the cigarette and tobacco product licensing provisions take effect January 1, 2010.

- Permits local authorities to modify the definition of which hotels are subject to local lodging taxes.

III. Tax Credits

- Authorizes up to a total of $10 million of tax credits annually for insurance companies and financial institutions for purchasing and holding securities issued by

low-income community development organizations to finance investments in qualified active low-income community businesses in Ohio, in accordance with the federal New Markets Tax Credit law.

- Increases the total amount of credits that may be issued for investments in small Ohio businesses engaged in research and development or technology development from $30 million to $45 million.

- Changes the basis of job retention tax credits from tax withholdings from employees filling full-time employment positions to withholdings from all employees.

- Expands job retention credit eligibility to foreign and domestic insurance companies.

- Reduces the minimum qualifying employment threshold to the equivalent of 500 full-time employees.

- Reduces the minimum qualifying investment threshold to $50 million over three years if the business activity at the project site is primarily manufacturing, or $20 million if the business activity consists significantly of corporate administrative functions.

- Relaxes the intrastate job relocation prohibition by permitting a business to relocate jobs to the project from another Ohio facility if the business notifies the local jurisdiction from which the positions will be removed.

- Limits the total credit that may be granted annually to $13 million for 2010; for each year thereafter until year 2024, increases the annual limit by $13 million per year; for 2024 and thereafter, the annual limit is $195 million.

- Changes the basis of job creation tax credits from tax withholdings from new full-time employees to annual aggregate tax withholdings from full- and part-time employees that exceed withholdings for a base year adjusted for an assumed rate of payroll growth attributable to pay increases.

- Requires a business to maintain operations at the project location for the greater of seven years, or the term of the credit plus three years, instead of twice the term of the tax credit.

- Relaxes the intrastate job relocation prohibition by permitting a business to relocate Ohio jobs to the project from another Ohio facility if the business notifies the local jurisdiction from which the positions will be removed.

- Authorizes the Director to request a complete or partial refund of job creation credits if the business does not maintain operations at the project site for the term of the credit or a period equal to the greater of seven years or the term of the credit plus three years.

- Authorizes a refundable, nontransferable credit against the corporation franchise tax or the income tax for motion pictures produced at least partly in Ohio, subject to approval by the Director of Development.

- Credit equals 25% of expenditures for goods and services purchased and consumed in Ohio directly for the production.

- Requires Ohio production expenditures to exceed $300,000 before a credit is authorized.

- Limits total motion picture credits allowed to $20 million per fiscal biennium (not more than $10 million of which may be allowed in the first year of a biennium) and $5 million per production.

- Creates the Motion Picture Tax Credit Program Operating Fund and authorizes fund money to be used for Ohio Film Office expenses and to pay the costs of administering the credit.

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.

- Creates an income tax refund "check-off" contribution for the benefit of the Ohio Historical Society.

- Changes the name of the Litter Tax and Natural Resource Tax Administration Fund to the Income Tax Contribution Administration Fund.

VI. Miscellaneous Tax Provisions

- Incorporates into Ohio's tax law changes made to federal tax law since December 30, 2008, and permits a taxpayer whose taxable year ends after that date, but before the effective date of the incorporated changes, to elect to apply federal law as it existed before that date.

- Revises procedural requirements governing how the Department of Taxation is to send notices to taxpayers, including procedures for when mail is returned undeliverable, and creates a presumption of constructive service.

- 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 board of education may adopt the resolution proposing the conversion on or after January 1, 2010, but before January 1, 2015. The conversion requires voter approval.

The conversion is effected by repealing current expense effective millage in excess of 20 mills and re-levying some or all of that millage as a fixed-sum levy. This new conversion levy is for a fixed amount of money each year equal to the money that

would be raised from the repealed millage re-levied if that millage were levied on all taxable property, including Class I real property, all other real property ("Class II"), and public utility tangible personal property.

A conversion levy could be levied permanently, or for a specified number of years up to ten years. A conversion levy originally imposed permanently may be reduced or repealed by voter initiative.

H.B. 920 limitation and 20-mill floor

The effect of adopting a conversion levy is to reduce the current expense millage to the 20-mill threshold or "floor" at which the H.B. 920 tax limitation no longer operates. Under continuing law, when a school district's current expense millage is effectively raising no more than the equivalent of 2% of the taxable property value (i.e., 20 mills per dollar), the H.B. 920 tax reduction factors no longer prevent inflationary increases in property values from causing proportionate increases in tax revenue: the revenue raised equals 2% of whatever the taxable property value happens to be each year, including inflationary appreciation. (R.C. 319.301(E)(2); Article XII, Section 2a(D), Ohio Constitution.)

Some levies are not considered in determining whether a district's current expense millage equals or exceeds the 20-mill threshold even though the revenue may be used for current expenses: so-called "emergency" levies, "substitute" levies, "incremental" levies, and "charge-off" levies (R.C. 5705.194, 5705.199, 5705.213, and 5705.211, respectively). When one of more of these levies is in effect, total current expense millage can exceed 20 mills but the school district is considered to be levying only the minimum 20 mills for the purposes of the H.B. 920 limitation, and therefore revenue from the 20 mills is permitted to increase in response to property value appreciation.

Conversion levies also 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 (assuming the board will re-levy all of the repealed millage),

the estimated tax rate (which will equal the Class I effective millage in excess of 20 mills), and the levies or portion of a levy that would be repealed. The 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**"). If the school board wants the conversion levy to raise less than the amount certified by the Commissioner, the board may request the Commissioner to re-determine the estimated tax rate for the amount the board specifies. This request must be made on or before January 1, 2015, and may be made only once by each school board. The Commissioner must certify the new estimated tax rate within ten days after receiving the request.

The 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. 5705.219(B)(4) and 5705.2110)

In most school districts eligible to levy a conversion levy, the conversion is likely to cause some degree of initial revenue loss from repealing existing millage, even if all of the repealed millage is re-levied. The loss is caused by the difference between the effective rates on Class I, Class II, and public utility personal property. Under the conversion, the number of mills that must be repealed is determined solely by the difference between 20 mills and the effective rate on Class I real property. The Class I effective rate typically differs from the effective rate on Class II property (in most districts the Class I effective rate is less than the Class II effective rate because the H.B. 920 reductions for Class I tend to accumulate more rapidly than for Class II). The Class I effective rate will be less than the rate on public utility personal property, which is the full voted rate because the H.B. 920 reduction does not apply to personal property. Therefore, in many districts the repeal of existing levies forces a reduction in the effective rate on Class II property and in the rate on public utility personal property, whereas the effective rate on Class I property remains relatively unchanged initially.[332]

[332] 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

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. Revenue loss and reimbursement is determined as if school districts were required to re-levy all the millage that is repealed. In the first year of reimbursement, the school district's total reimbursement equals the loss as certified by the Tax Commissioner. In subsequent years, the reimbursement is phased out. The reimbursement for each succeeding year equals the prior year's reimbursement less approximately one-half of the additional Class I tax revenue generated from inflationary appreciation in that property as a result the suspension of the H.B. 920 reduction.

Reimbursements will be paid for 13 years, unless the reimbursement amount for a year equals zero or the levy is repealed. If a school district re-levied all repealed millage and later reduces the amount of the levy, the reimbursement payments are reduced proportionally. Reimbursement payments are required to be made on or before the last day of April and October. Each payment equals one-half of the total reimbursement for the year. The Tax Commissioner must certify a school district's total reimbursement amount for each year to the Department of Education on or before February 28.

Business personal property tax loss reimbursement

(R.C. 5751.20(F) and (I) and 5751.21(E))

Under continuing law, school districts are compensated for tax losses resulting from a phase-out of business personal property taxes. Losses from fixed-sum levies are reimbursed through 2010, and thereafter reimbursed until the levy expires or, if they are renewed, until the renewal levy expires, but not after 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

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.

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.

Exemption: port authority

(Section 757.10)

Under current law, property that is owned by an airport and leased to a port authority for an initial period of at least 30 years may be exempted from real property taxation. Before R.C. 5715.27 was amended by Sub. H.B. 160 of the 127th General Assembly, it required the applicant for exemption to own the property for which it sought exemption. Sub. H.B. 160 was precipitated by an Ohio Supreme Court holding that a petitioner who did not own property did not have standing to petition the Tax Commissioner for exemption under R.C. 5715.27 where the petitioner did not hold legal title to the property as formerly required under that section. *Performing Arts Sch. of Metro. Toledo, Inc. v. Wilkins*, 104 Ohio St.3d 284 (2004).

The bill authorizes the exemption and abatement of unpaid taxes or remittance of taxes paid on airport property that is leased to a port authority for the time that it was

precluded from exemption because the port authority did not own the property, as required under prior law, at the time it submitted the application for exemption. The application for exemption and abatement or remittance must be submitted by the current owner of the property to the Tax Commissioner on or before January 1, 2010. The application must include a copy of the Tax Commissioner's final determination dismissing the previous application for exemption and a certificate issued by the county treasurer stating the amount of taxes that have been paid or that are owed on the property for which exemption is sought.

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.[333] 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.

[333] 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.

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 for a tobacco product distributor license or with the county auditor for a wholesale or retail cigarette license. 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 transfers responsibility for issuing wholesale cigarette licenses from the county auditor to the Tax Commissioner, and increases the annual fees for tobacco product distribution licenses to $1,000, wholesale cigarette licenses to $1,000, and retail cigarette licenses to $125 for each place of business. If a license is issued for less than one year, the fee is reduced proportionately to the remainder of the year, but not to less than $25 for a retail license or $200 for a wholesale cigarette or tobacco product distributor license. The bill eliminates the authority of cigarette wholesale and retail licensees to assign such licenses to another person, and increases the transfer fees (from one place of business to another) from $1 to $5 for retail licenses and from $1 to $25 for wholesale licenses. The bill increases the retail license replacement fee from 50¢ to $5 and the wholesale license replacement fee from 50¢ to $25. It also imposes $25 fees for replacing and transferring (from one place of business to another place of business of the same licensee) a tobacco product distribution license.

Fee distribution

Under 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. The bill requires late cigarette license fees collected by county auditors to be sent to the Treasurer of State by the last day of the month following the month in which the money was collected, rather than by December 31, as required under current law.

The changes made to the cigarette and tobacco product licensing provisions take effect January 1, 2010.

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 all salt severance tax revenue to be credited to the Geological Mapping Fund. Money in that fund is used for purposes of performing necessary field, laboratory, and administration tasks to map and make public reports on the geology and mineral resources of each county.

Lodging tax

(R.C. 5739.01(M) and 5739.09(G))

Current law authorizes counties, townships, and municipal corporations to levy lodging taxes subject to various restrictions on the rate and purpose of the tax. If a tax

is levied, it applies to any "hotel," which current law defines as any "establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether the rooms are in one or several structures." Current law authorizes the taxing authorities to modify the definition of "hotel" for local tax purposes by applying the tax to establishments with fewer than five guest rooms.

The bill authorizes local authorities to further modify the definition of which hotels are subject to local lodging taxes by specifying both of the following: (1) that the five-room minimum threshold is to be determined regardless of whether each room is accessible through its own keyed entry or several rooms are accessible through the same keyed entry, and (2) in determining the number of rooms, all rooms are included regardless of the number of structures in which the rooms are situated or the number of parcels of land on which the structures are located if the structures are under the same ownership and the structures are not identified in advertisements of the accommodations as distinct establishments. For this purpose, the bill specifies that two or more structures are under the same ownership if they are owned by the same person, or if they are owned by two or more persons the majority of the ownership interests of which are owned by the same person. (In this context, "person" is used in its legal sense and not in reference only to individuals. It includes all forms of business associations. R.C. 5701.01.)

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[334]), 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 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

[334] 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.

long as the transferee's holding would qualify if the transferee were the purchaser at the original issuance.

Beginning January 1, 2010, credits must be applied over a seven-year period. For the first two years no credit may be applied, 7.0% may be applied for the third year, and 8.0% for each of the last four years. The amount of qualified low-income community investments is the total amount of investments that are invested in qualified active low-income community businesses, not exceeding $2,564,000 per business, for a maximum credit of $1 million.

A "qualified active low-income community businesses" is any partnership or corporation that derives less than 15% of its annual revenue from the rental or sale of real property (except for certain special purpose entities owned by the business and created for the purpose of renting or selling the property back to the tenant) and that, for any tax year, satisfies all of the following:

(1) At least 50% of total gross income of the entity is derived from the active conduct of qualified business within a low-income community;

(2) A substantial portion of the use of the tangible property of the entity (whether owned or leased) is within a low-income community;

(3) A substantial portion of the services performed for the entity by its employees are performed in a low-income community;

(4) Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to collectibles (other than collectibles held primarily for sale in the ordinary course of business);

(5) Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to nonqualified financial property.[335]

The Ohio Department of Development may award a combined maximum of $10 million of tax credits annually (disregarding credit carry-forwards).

[335] 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.

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 (except that in the seventh year, only 75% of the purchase price must be used for qualified low-income community investments).

The bill gives rule-making authority to the Director of Development to determine how credits are to be awarded and recaptured, if necessary. Under existing law, there is a three-year statute of limitations on assessing unpaid tax. The bill specifies that the statute of limitations does not apply to tax assessments related to the recapture of the credit.

The bill authorizes the Director to charge fees to cover expenses of administering the tax, and it establishes the New Markets Tax Credit Operating Fund for that purpose.

Technology investment tax credit increase

(R.C. 122.151(D)(2))

Continuing law authorizes a tax credit against certain state taxes for a person who invests in an Ohio business with annual gross revenue or a net book value under $2.5 million that is engaged primarily in research and development, technology transfer, bio-technology, information technology, or the application of new technology developed through research and development or acquired through technology transfer. The credit may be claimed by persons subject to the income tax, corporation franchise tax, dealers in intangibles tax, or the gross receipts excise taxes on natural gas companies and certain other public utilities.

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. 122.171(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 12 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 and, when applicable, requires the Superintendent of Insurance to administer the credit.

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 maintain operations at the project site for at least the greater of (a) the term of the credit plus three years, or (b) seven years. If the business fails to do so, the TCA may require the business to reimburse the state for up to 100% of the credit allowed and actually received if the business maintained operations at the project location for less than the term of the credit and up to 50% of the credit allowed if business maintained operations for the term of the credit or more.

Under the bill, if the business maintains operations at the project site for at least the term of the credit but less than the greater of seven years or the term of the credit plus three years, the TCA may require the business to reimburse the state for up to 75% of the credit allowed and actually received.

Under 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 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. This adjusted base year amount becomes the starting base year amount for the next year. A job creation credit may not be claimed on the basis of tax withholdings from any employee whose withholdings are the basis for a job retention tax credit (if a business were to have both a job creation and job retention credit agreement).

The credit may be based only on amounts withheld after the business became eligible for the credit. If the business first becomes eligible for a credit midway through the first year of its credit eligibility, the first year's withholding base is adjusted proportionately.

Tax credit agreement

(R.C. 122.17(D) and (K))

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 75% of the credit allowed and actually received if the business maintained operations at the project location for at least the term of the credit but less than the greater of seven years or the term of the credit plus three years. If the business 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, 5733.59, 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

A credit is available only if the lesser of budgeted or actual eligible production expenditures exceeds $300,000. The credit equals 25% of the lesser eligible production expenditure amount (excluding budgeted or actual expenditures for resident cast and crew) plus 35% of budgeted or actual expenditures for resident cast and crew. Not more than $20 million in credits may be allowed per fiscal biennium (not more than $10 million of which may be allowed in the first year of a biennium), and not more than $5 million in credits may be allowed per production.

Eligible productions and expenditures

"Motion picture" is defined as "entertainment content" created partly or wholly in Ohio for distribution or exhibition to the general public. It includes feature-length films; documentaries; television series, miniseries, and specials; interactive web sites; sound recordings; videos; music videos; interactive television; interactive games; videogames; commercials; any format of digital media; and any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in either a product or a motion picture by any means and media in any digital media format, film, or videotape, provided the motion picture qualifies as a motion picture. It excludes sexually explicit productions for which records must be maintained under 18 U.S.C. 2257 and television news, weather, sports, market reports, award shows and galas, fundraisers, "infomercials," political advertising, and in-house advertising. "Eligible production expenditures" is defined to

mean expenditures for goods or services (including payroll) purchased and consumed in Ohio directly for the production.

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 "sufficient evidence of reviewable progress" to the Director within 90 days of the certification, and at any time thereafter upon the Director's request. If the company fails to do so, the Director may rescind the certification. If the Director rescinds the certification, the company may reapply.

If a motion picture company's production has been certified as a tax-credit eligible production, the company may apply for a tax credit certificate on or after July 1, 2009. The form and manner of the application are determined by the Director in consultation with the Tax Commissioner.

Examination of expenditures

Before a credit certificate may be issued, the production must be complete, and the company must hire, at its own expense, an independent certified public accountant (CPA) to determine the production expenditures that qualify as eligible production expenditures. The CPA must issue a report certifying the eligible production expenditures to the Director of Development and to the motion picture company, and must provide to the Director any additional information the Director requires.

After receiving the report, the Director may disallow any expenditure certified by the CPA that the Director determines is not an eligible production expenditure. If the Director disallows an expenditure, the Director must issue a written notice to the motion picture company stating that the expenditure is disallowed and the reason for the disallowance. Upon examination of the CPA's report and denial of any eligible production expenditures, the Director must determine, for purposes of computing the credit, the lesser of total budgeted eligible production expenditures as stated in the application for certification, or the actual eligible production expenditures. After making that determination, and so long as the applicable eligible production expenditures amount is greater than $300,000, the Director must determine the credit amount and issue a tax credit certificate to the motion picture company. The credit amount is not subject to adjustment unless the Director determines an error was made in the computation of the credit amount.

Credit certificate

The credit certificate must contain a unique identifying number and state the credit amount and the amount of the eligible production expenditures on which the credit is based. The certificate information must be recorded in a register maintained by the Director of Development. Upon issuance of a certificate, the Director must certify the Tax Commissioner the name of the applicant, the amount of eligible production expenditures shown on the certificate, and any other information required under rules adopted to administer the credit program.

Administrative rules

The bill requires the Director of Development, in consultation with the Tax Commissioner, to adopt rules pursuant to Chapter 119. to administer the tax credit program. The rules must address what constitutes a tax credit-eligible production and eligible expenditures, activities that constitute the production of a motion picture, reporting sufficient evidence of reviewable progress, a 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 situsued 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 were not required to file returns or pay the minimum tax due February 9 of 2007, 2008, or 2009.

Consolidated elected taxpayer group

(R.C. 5751.01(R), 5751.011, 5751.013, and 5751.014)

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.[336] 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.

[336] A qualifying pass-through entity or trust is a pass-through entity or trust with a nonresident owner or beneficiary on behalf of whom the entity or trust is required by law to withhold income tax to ensure payment by the owner or beneficiary.

The bill eliminates the various conditions and corresponding payment requirements, and requires payment of the entire amount assessed if any of the following circumstances exist:

(1) A person files a tax return reporting Ohio adjusted gross income, less personal exemptions, of less than one cent for reasons other than the required computations of taxable income;

(2) A person files a tax return that the Tax Commissioner determines to be incomplete, false, fraudulent, or frivolous;

(3) A person does not file a tax return, and the failure is for some reason other than that the person asserts it is not subject to Ohio taxation due to a lack of nexus with the state, or that the computations to determine a taxpayer's tax liability, or application of allowed credits, result in a tax liability of less than $1.01.

School district income tax

(R.C. 5748.02 and 5748.03)

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; Section 803.20)

Under continuing law, a municipal corporation may levy a tax on the income of a nonresident only if taxation of the nonresident is consistent with the Due Process Clause of the Fourteenth Amendment of the United States Constitution:

> "Th[e] test is . . . whether the taxing power exerted by the [local government] bears fiscal relation to protection, opportunities and benefits given by the [government]. The . . . question is whether the [local government] has given anything for which it can ask return.

Wisconsin v. J. C. Penney Co. (1940), 311 U.S. 435, 444; and *Angell v. Toledo* (1950), 153 Ohio St. 179. Under Section 13, Article XVIII of the Ohio Constitution, the General Assembly has authority to further limit the taxing jurisdiction of municipal corporations.

The 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. The bill first applies these amendments to taxable years beginning on or after January 1, 2010.

Income tax refund contribution for Ohio Historical Society

(R.C. 149.308 and 5747.113)

The bill authorizes taxpayers who are due a refund of overpaid Ohio income tax to specify that all or a part of the refund be paid to the Ohio Historical Society. Contributions are to be credited to the Ohio Historical Society Income Tax Contribution Fund, a fund created by the bill. The Society must use money in the fund in furtherance of its public functions as provided in R.C. 149.30 to 149.31 and other laws (summarized below). In addition to income tax refund contributions, the fund may accept direct contributions.

Currently, there are three income tax refund contributions or "check-offs": one for the benefit of the Natural Areas and Preserves Fund; one for the benefit of the Nongame and Endangered Wildlife Fund; and one for the benefit of the Military Injury Relief Fund. The Natural Areas and Preserves Fund and the Nongame and Endangered Wildlife Fund are administered by the Department of Natural Resources. The Military Injury Relief Fund is administered by the Department of Job and Family Services for the benefit of military personnel injured while serving under Operation Iraqi Freedom or Operating Enduring Freedom (Afghanistan).

As with the existing check-offs, the bill's Ohio Historical Society check-off would authorize taxpayers to direct that all or part of their refund be credited to the designated fund. The designation is made on the annual income tax return. The designation may not be revoked once the designation is made and the return is filed.

Report

The bill requires the Ohio Historical Society to submit a biennial report on the effectiveness of the check-off to the General Assembly in January of every odd-numbered year. The report must include information about how the Society spent money from the Ohio Historical Society Income Tax Contribution Fund and the amount of money contributed (including both the amount contributed through the refund check-off and the amount contributed directly). The report must provide this information for each of the five preceding years.

Administrative expenses

The Department of Taxation is entitled to reimbursement for its costs of administering the check-offs. Reimbursement currently is paid from the existing check-off funds in equal one-third shares. The reimbursement may not exceed 2-1/2% of the total amount contributed. Under the bill, the reimbursement would be divided in equal one-fourth shares among the two DNR funds, the Military Injury Relief Fund, and the Ohio Historical Society Income Tax Contribution Fund. The reimbursement would continue to be limited to 2-1/2% of contributions.

Application date

(Section 803.20)

Income tax refunds may be contributed to the Ohio Historical Society beginning with taxable years that begin in or after 2009.

Check-off Administrative Expense Fund

Currently, the fund from which income tax check-off expenses are paid is named the Litter Control and Natural Resource Tax Administration Fund.

The bill renames the fund the Income Tax Contribution Administration Fund to reflect the new check-offs available to taxpayers.

VI. Miscellaneous Tax Provisions

Incorporation of changes to the Internal Revenue Code

(R.C. 5701.11)

Ohio's tax laws incorporate some provisions of federal law, and because federal law is susceptible to being amended frequently, ongoing Ohio law specifies the version of federal law that is incorporated. Specifically, under current law, a reference in the tax title (Title 57) of the Ohio Revised Code to the Internal Revenue Code (IRC) or other

laws of the United States means those laws as they existed on December 30, 2008, unless the Revised Code section contains a date certain that specifies the day, month, and year. (December 30, 2008, is the effective date of H.B. 458 of the 127th General Assembly, which is the most recent act to incorporate federal tax law changes.)

The bill incorporates into Ohio tax law references to the IRC or United States Code all changes to the IRC or United States Code between December 30, 2008, and the bill's effective date. The principle federal act whose tax law changes are incorporated is The American Recovery and Reinvestment Act of 2009--the federal "stimulus" bill. As under prior law, this incorporation does not apply to references to the IRC or federal laws as of a date certain specifying the day, month, and year.

Current law authorizes a taxpayer whose taxable year ended after December 21, 2007, and before December 30, 2008, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable year. The election was available to taxpayers subject to the corporation franchise tax or personal income tax and to electric companies subject to municipal income tax.

The bill revises this election so that it may be made for a taxpayer's taxable year ending after December 30, 2008, but before the bill's effective date. The bill retains the provision specifying that similar elections made under prior versions of R.C. 5701.11 remain effective for the taxable years to which the previous elections applied.

Service of tax-related notices and orders

(R.C. 4303.331, 5703.37, 5728.12, 5739.131, 5747.16, 5749.12, and 5751.09)

The 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.

DEPARTMENT OF TRANSPORTATION (DOT)

- Creates a Division, and a Deputy Director of, Equal Employment Opportunity in the Department of Transportation.

Creation of a Division, and a Deputy Director of, Equal Employment Opportunity in the Department of Transportation

(R.C. 5501.04)

The bill creates a Division of Equal Opportunity in the Department of Transportation. The division is to be headed by a deputy director. The division is to ensure that minority groups and all groups protected by state and federal civil rights laws are afforded equal opportunity to be recruited, trained, and work in the employment of, or on projects of, the Department of Transportation, and to participate in any contracts the Department awards. The Director of Transportation must report each year to the Governor and General Assembly on the division's activities and accomplishments. (R.C. 5501.04.)

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."[337]

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.[338] The bill requires the Chancellor to provide administrative assistance and all necessary documentation to assist the Advisory Board in preparing its report.[339] 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.[340]

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.[341] It does not make any other changes to the membership of the Advisory Board.

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[337] R.C. 3334.03(A).

[338] R.C. 3334.031(B).

[339] R.C. 3334.03(B).

[340] R.C. 3334.031(E).

[341] 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.

- Modifies the amount of money the Department of Youth Services must withhold from future payments to a county's Felony Delinquent Care and Custody Fund and enacts a mechanism for determining the amount to be so withheld from a county that is linked to the *maximum balance carry-over* (defined in the bill) that is permitted at the end of the previous fiscal year from funds allocated to the county during that previous fiscal year.

County Juvenile Felony Delinquent Care and Custody Fund

(R.C. 5139.43(B))

Under current law, the Department of Youth Services (DYS), with the advice of the RECLAIM advisory committee, allocates annual operational funds to juvenile courts for juvenile felony delinquent care and custody programs, and grants state subsidies to counties to be used for unruly or delinquent children (R.C. 5139.34 and 5139.41, not in the bill). Each county must create a Felony Delinquent Care and Custody Fund, and the funds and subsidies received by a county are deposited in the county's Fund. Current law provides that beginning June 30, 2008, at the end of each fiscal year, 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 a county an amount equal to any moneys in the county's Fund that exceed the total moneys allocated to the county during the preceding fiscal year, and to reallocate the amount withheld.

The bill modifies the amount of moneys DYS must withhold from future payments to a county for deposit into the county's Delinquent Care and Custody Fund and enacts a mechanism for determining the amount that must be so withheld. Under the bill, the *maximum balance carry-over* at the end of each respective fiscal year in the Fund in any county from funds allocated to the county under the aforementioned operational funds and state subsidies in the previous fiscal year cannot exceed an amount calculated as provided in the formula described in the next sentence, unless the county is granted an exemption by DYS. Beginning June 30, 2008, the *maximum balance carry-over* at the end of each respective fiscal year must be determined by the following formula: for fiscal year 2008, the maximum balance carry-over is 100% of the fiscal year 2007 allocation, to be applied in determining the fiscal year 2009 allocation; for fiscal year 2009, it is 50% of the fiscal year 2008 allocation, to be applied in determining the

fiscal year 2010 allocation; for fiscal year 2010, it is 25% of the fiscal year 2009 allocation, to be applied in determining the fiscal year 2011 allocation; and for each fiscal year subsequent to fiscal year 2010, it is 25% of the immediately preceding fiscal year's allocation, to be applied in determining the allocation for the next immediate fiscal year. DYS is required to withhold from future payments to a county in any fiscal year an amount equal to any moneys in the county's Fund that exceed the *maximum balance carry-over* that applies for that county for the fiscal year in which the payments are being made, and to reallocate the amount withheld.

MISCELLANEOUS (MSC)

- Expands the activities that may be funded by the Low- and Moderate- Income housing Trust Fund to include tenant education, tenant organizations, promoting positive interactions with landlords, and initiatives related to creating county trust funds.

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

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

- Explicitly requires that the Ohio School Facilities Commission, the Ohio Housing Finance Agency, the Third Frontier Commission, the Clean Ohio Council, and state universities purchase goods and services as required by the Minority Business Enterprise Set Aside Law.

- Permits the Chancellor of the Board of Regents to set aside, and the Workers' Compensation Investment Committee to set aside in the investment policy it adopts, 15% of contracts for administration of funds for minority owned and controlled firms, firms owned and controlled by women, and ventures involving minority owned and controlled firms and firms owned and controlled by women.

- Requires the Ohio Venture Capital Authority to give equal consideration, in selecting program administrators, to certain minority owned and controlled firms, firms owned and controlled by women, and ventures involving minority owned and controlled firms and firms owned and controlled by women.

- Requires the Ohio Venture Capital Authority, the Chancellor of the Board of Regents, and the Administrator of Workers' Compensation to submit an annual report containing information regarding the minority or women-owned businesses with which it contracts as program administrators or investment managers.

- Requires the Residential Construction Advisory Committee to provide the Board of Building Standards with any rule the Committee recommends to update or amend the state residential building code or to update or amend rules that the Board adopts that relate to the certification of entities that enforce the state residential building code.

- Permits any person to petition the Committee to recommend a rule to the Board regarding the state residential building code or relating to the certification of entities that enforce the state residential building code and requires the Committee to provide the Board with any rule the Committee recommends after receiving such a petition.

- Requires the Committee to provide the Board with a written report of the Committee's findings for specified considerations the Committee makes in regards to any recommendation the Committee makes to the Board.

- Authorizes the director of a cabinet department to recruit a loaned executive who is an employee of a public entity or of a private profit-making or nonprofit-making entity to assist the department in its work.

- Adds as members of the Ohio Family and Children First Cabinet Council the Directors of Aging and of Rehabilitation and Correction.

- Authorizes the Governor to execute a Governor's Deed conveying to the Dayton Public School District/Dayton Board of Education, and its successors and assigns, all of the state's right, title, and interest in certain real estate located in Montgomery County.

- Specifies that the consideration for the conveyance is a transfer to the state at no cost of land adjacent to the remaining Twin Valley Behavioral Healthcare/Dayton Campus, subject to certain conditions, including construction, demolition, and environmental restoration by the grantee or a purchase price of $1,175,000.

- Requires the Director of Budget and Management to (1) study the economic viability of tracks where permit holders conduct live horse racing and (2) make recommendations regarding ways to ensure their economic viability to the Governor, House Speaker, and Senate President not later than 30 days after the effective date of the provision.

Uses of funds in the Low- and Moderate- Income Housing Trust Fund

(R.C. 174.03)

Existing law designates uses and purposes for funds in the Low- and Moderate-Income Housing Trust Fund. The bill expands these purposes to include (1) efforts aimed at improving the quality of life of tenants by tenant education with respect to their rights and responsibilities, planning and implementing activities designed to improve conflict resolution and mediation with landlords, and developing tenant councils and organizations, and (2) promoting capacity building initiatives related to the creation of county trust funds.

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

(R.C. 123.152, 123.154, and 125.081)

The bill requires that state agencies, state universities, and the Ohio Housing Finance Agency, the Third Frontier Commission, the Clean Ohio Council, and the Ohio School Facilities Commission comply with a new statute based upon Executive Order 2008-13S when complying with the minority business enterprise set aside purchasing requirements of the Minority Business Enterprise Set Aside Law or with the procurement goals of the EDGE Business Enterprise Law (R.C. 123.152(B)(2) and (B)(14) and 125.081(B)). Executive Order 2008-13S requires each agency to appoint an Equal Opportunity Officer and to include specified provisions in their contracts for the purchase of goods and services.

"Minority business enterprise" means an individual who is a United States citizen and who owns and controls a business, partnership, corporation, or joint venture of any kind that is owned or controlled by United States citizens who are Ohio residents and members of one of the following economically disadvantaged groups: Blacks or African-Americans, American Indians, Hispanics or Latinos, and Asians (R.C. 122.71(E)(1)). "EDGE business enterprise" means a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture certified as a

participant in the Encouraging Diversity, Growth, and Equity (EDGE) Program by the Director of Administrative Services (R.C. 123.152(A)).

Equal Employment Opportunity Officers

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

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

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

- Report minority business enterprise or EDGE business enterprise enrollment for all contracts issued by the agency to the Deputy Director of the Equal Opportunity Division.

- Implement a scorecard system that tracks compliance with the minority business enterprise and EDGE business enterprise program requirements by the agency.

- Implement the outreach and training plan to ensure compliance by the agency with minority business enterprise and EDGE business enterprise requirements.

- Attend the semiannual training conducted by the Deputy Director of the Equal Opportunity Division on minority business enterprise and EDGE business enterprise requirements.

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

The bill requires the Deputy Director of the Equal Opportunity Division to (1) develop a scorecard system and the outreach and training plan, (2) conduct semiannual training on minority business enterprise set aside and EDGE business enterprise procurement requirements for Equal Employment Opportunity Officers, (3) conduct an annual review of each state agency's compliance with minority business enterprise set aside and EDGE business enterprise procurement requirements, and (4) make recommendations for improved compliance as a result of each review. (R.C. 123.154(A).)

Agency contract provisions

The bill requires each state agency ensure that all contracts for the purchase of goods and services contain provisions that do all of the following:

- Prohibit contractors and subcontractors from engaging in discriminatory employment practices.
- Certify that contractors and subcontractors are in compliance with all applicable federal and state laws and rules that govern fair labor and employment practices.
- Encourage contractors and subcontractors to purchase goods and services from certified minority business enterprise and EDGE business enterprise vendors. (R.C. 123.154(B).)

EDGE waiver controls

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

- Having all waivers reviewed by the agency's Procurement Officer, in collaboration with the agency's Equal Employment Opportunity Officer, who must certify that each waiver the agency issues complies with criteria for granting the waiver.
- Submitting quarterly reports to the Equal Opportunity Division that lists each waiver the agency grants.
- Permitting the Equal Opportunity Division to complete its review of the agency's quarterly report and to conduct periodic audits of the agency's administration of the waiver process.

The Deputy Director of the Equal Opportunity Division must review each quarterly report of EDGE business enterprise waivers and conduct periodic audits of

each agency's administration of the waiver process. If the Deputy Director determines that a state agency has not properly administered the issuance of EDGE business enterprise waivers, subsequent waivers cannot be issued by that state agency without the authorization and approval of the Deputy Director. The Deputy Director may release a state agency from the approval process when the Deputy Director has determined that the agency has the ability to consistently administer the waiver process. (R.C. 123.154(C).)

Annual compliance report

Annually, on October 1, the Deputy Director of the Equal Opportunity Division must submit a written report to the Governor, the House Speaker, the Senate President, and the House and Senate Minority Leaders that describes the progress of state agencies in advancing the minority business enterprise set aside and EDGE business enterprise procurement programs, as well as any initiatives that have been implemented to increase the number of certified minority business enterprise and EDGE business enterprise vendors doing business with the state. (R.C. 123.154(D).)

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

(Section 701.50)

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

Purchase of goods and services under the Minority Business Enterprise Set Aside Law by Ohio School Facilities Commission, Ohio Housing Finance Agency, Third Frontier Commission, Clean Ohio Council, and state universities

(R.C. 125.081)

The bill explicitly requires that the Ohio School Facilities Commission, the Ohio Housing Finance Agency, the Third Frontier Commission, the Clean Ohio Council, and state universities set aside a percentage purchases of goods and services for purchase from minority business enterprises as required by the Minority Business Enterprise Set

Aside Law (R.C. 125.081(B)). Currently, the percentage of purchases to be so set aside is to approximate 15%.

Minority and women-owned investment managers and agents

Ohio Venture Capital Authority

(R.C. 150.05)

Under current law, the Ohio Venture Capital Authority, after soliciting and evaluating requests for proposals, must select, as program administrators, not more than two private, for-profit investment funds to acquire loans for the program fund and to invest money in the program fund as prescribed in the investment policy established or modified by the Authority.

The bill requires the Authority to give equal consideration, in selecting these program administrators, to minority owned and controlled investment funds, to funds owned and controlled by women, to ventures involving minority owned and controlled funds, and to ventures involving funds owned and controlled by women that otherwise meet the policies and criteria established by the Authority.

Chancellor of the Board of Regents: Ohio College Savings Plan

(R.C. 3334.11)

The bill requires the Chancellor of the Board of Regents, as current law requires the Ohio Tuition Trust Authority, to establish policies, objectives, or criteria for the operation of the Ohio College Savings Plan investment program. In establishing policies and criteria for the selection of agents and investment managers with whom the Chancellor can contract for the administration of the assets of the funds, the Chancellor can set aside approximately 15% of the contracts for minority owned and controlled firms, firms owned and controlled by women, and ventures involving minority owned and controlled firms and firms owned and controlled by women that otherwise meet the established policies and criteria. Under current law, the Authority is required to give equal consideration to these firms and ventures.

Bureau of Workers' Compensation Investment Committee

(R.C. 4123.442)

The Bureau of Workers' Compensation Investment Committee develops the investment policy for investing Bureau of Workers' Compensation funds. The bill requires the Committee to specify in the investment policy that the Administrator or employees of the Bureau of Workers' Compensation, when contracting with agents and

investment managers for the administration of the assets of the funds, may set aside approximately 15% of the contracts for minority owned and controlled firms, for firms owned and controlled by women, for ventures involving minority owned and controlled firms, and for ventures involving firms owned and controlled by women that otherwise meet the policies and criteria established by the Committee.

Annual report--minority or women-owned businesses

(R.C. 150.051, 3334.111, and 4123.446)

The bill requires the Ohio Venture Capital Authority, the Chancellor of the Board of Regents (for the Ohio College Savings Plan), and the Administrator of Workers' Compensation to submit annually to the Governor and to the General Assembly[342] a report containing the following information:

(1) The name of each program administrator or investment manager that is a minority business enterprise[343] or a women's business enterprise[344] with which the Authority, Chancellor, or Administrator contracts;

(2) The amount of assets managed by program administrators or investment managers that are minority business enterprises or women's business enterprises, expressed as a percentage of assets managed by program administrators or investment managers with which the Authority, Chancellor, or Administrator has contracted; and

(3) Efforts by the Authority, Chancellor, or Administrator to increase utilization of program administrators or investment managers that are minority business enterprises or women's business enterprises.

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[342] Whenever any statute requires that a report be submitted to the General Assembly, the requirement is fulfilled by the submission of a copy of the report, recommendation, or document to the Director of the Legislative Service Commission, the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives (R.C. 101.68, not in the bill).

[343] "Minority business enterprise" means an individual who is a United States citizen and owns and controls a business, or a partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, which citizen or citizens are Ohio residents and are members of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians.

[344] "Women's business enterprise" means a business, or a partnership, corporation, limited liability company, or joint venture of any kind, that is owned and controlled by women who are United States citizens and Ohio residents.

Residential Construction Advisory Committee

(R.C. 3781.10, 3781.12, 3781.19, and 4740.14)

Under current law, the Residential Construction Advisory Committee must provide the Board of Building Standards with a proposal for a state residential building code that the Committee recommends. The Board must adopt rules establishing a code as the state residential building code upon receipt of a recommendation from the Committee that is acceptable to the Board. The bill additionally requires the Committee to provide the Board with proposed rules to update or amend the state residential building code or to update or amend rules that the Board adopts that relate to the certification of entities that enforce the state residential building code that the Committee recommends.

Under current law, any person may petition the Board to adopt, amend, or annul any rule the Board adopts. The bill permits any person to petition the Committee to recommend a rule to update or amend the state residential building code or to update or amend rules that the Board adopts that relate to the certification of entities that enforce the state residential building code. The Committee must provide the Board with any rule the Committee recommends after receiving such a petition.

The Committee must consider, under current law, all of the following factors in making its recommendation to the Board:

(1) The impact that the state residential building code may have upon the health, safety, and welfare of the public;

(2) The economic reasonableness of the residential building code;

(3) The technical feasibility of the residential building code;

(4) The financial impact that the residential building code may have on the public's ability to purchase affordable housing.

The bill prohibits the Committee from making its recommendation to the Board until the Committee has considered the factors listed above and requires the Committee to provide the Board with a written report of the Committee's findings for each consideration listed above.

Loaned executives from a public or private entity to state cabinet departments

(R.C. 121.13)

The bill authorizes the director of each cabinet department, with the approval of the Governor, to recruit and retain individuals employed by public entities or by private profit-making or nonprofit-making entities to function as "loaned executives," to support state functions and to assist the department in the conduct of its work. The bill prohibits a loaned executive from participating, during the loaned executive's service with the state, in any decision, approval, disapproval, recommendation, rendering of advice, investigation, or other substantial exercise of administrative discretion that is directly related to the pecuniary interest of the loaned executive's regular employer.

The bill further provides that a loaned executive is not entitled to, and cannot receive, compensation from the state, but may receive compensation and actual and necessary expenses from the loaned executive's regular employer. The bill provides that receipt of this compensation or these expenses does not violate the prohibition in current law against a public official or employee receiving outside compensation for the general performance of the public official's or employee's duties. But a loaned executive is deemed to be a public official or employee for the purposes of the state Ethics Law. (R.C. 121.13(B).)

Ohio Family and Children First Cabinet Council

(R.C. 121.37)

Current law creates the Ohio Family and Children First Cabinet Council to help families seeking government services by streamlining and coordinating existing government services. The Council is composed of the Superintendent of Public Instruction and the Directors of Youth Services, Job and Family Services, Mental Health, Health, Alcohol and Drug Addiction Services, Mental Retardation and Developmental Disabilities, and Budget and Management. The chairperson of the Council is the Governor or the Governor's designee.

The bill adds the Directors of Aging and of Rehabilitation and Correction as members of the Council.

Land conveyance from state to Dayton Public Schools

(Section 753.20)

The bill authorizes the Governor to execute a Governor's Deed in the name of the state conveying to the Dayton Public School District/Dayton Board of Education

("grantee"), and its successors and assigns, all of the state's right, title, and interest in 45.3599 acres of real estate situated in the City of Dayton in Montgomery County. The 45.3599 acres must be conveyed as an entire tract and not in parcels.

Consideration for conveyance of the 45.3599 acres is the transfer by the grantee to the state at no cost of 8.9874 acres adjacent to the remaining Twin Valley Behavioral Healthcare/Dayton Campus, subject to the following conditions:

(1) Within 180 days after conveyance of the 45.3599 acres, the grantee at its own cost must complete construction of a new western extension off Mapleview Avenue to provide a new entrance roadway to the remaining Twin Valley Behavioral Healthcare/Dayton Campus and provide an easement to the state for full utilization of the roadway for the benefit of the remaining Twin Valley Behavioral Healthcare/Dayton Campus until the 8.9874 acres is transferred to the state.

(2) Within 340 days after the occupancy of the New Belmont High School, the grantee must demolish and environmentally restore the 8.9874 acres.

In lieu of the transfer of the 8.9874 acres, if the Director of Mental Health determines that the grantee has insufficiently performed the construction, demolition, and environmental restoration obligations contemplated by the conditions described above, the grantee must pay as consideration a purchase price of $1,175,000 to the state, which is the appraised value of the 45.3599 acres less the cost of demolition, site, and utility work.

Upon transfer of the 8.9874 acres to the state or payment of the purchase price, the Auditor of State, with the assistance of the Attorney General, must prepare a deed to the 45.3599 acres. The deed must state the consideration and must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee must present the deed for recording in the Office of the Montgomery County Recorder.

The grantee must pay all costs associated with conveyance of the 45.3599 acres, including recordation costs of the deed.

If the payment of $1,175,000 is made in lieu of the transfer of the 8.9874 acres to the state, the proceeds of the conveyance of the 45.3599 acres must be deposited into the state treasury to the credit of the Department of Mental Health Trust Fund and the easement to the state for full utilization of the roadway for the benefit of the remaining Twin Valley Behavioral Healthcare/Dayton Campus becomes a permanent easement.

The bill prohibits the grantee, during any period that any bonds issued by the state to finance or refinance all or a portion of the 45.3599 acres are outstanding, from using any portion of the 45.3599 acres for a private business use[345] without the prior written consent of the state.

Authority to make the conveyance described above expires two years after the effective date of the section of law in which it is expressed.

Office of Budget and Management study of the economic viability of horse racing tracks

(Section 737.10)

The bill requires the Director of Budget and Management to study the economic viability of tracks where permit holders conduct live horse racing. Not later than 30 days after the effective date of this provision, the Director must prepare a report that includes the findings resulting from the study and that makes recommendations regarding ways to ensure the economic viability of tracks. The Director must transmit a copy of the report to the Governor, the House Speaker, and the Senate President. (Section 737.10.)

NOTE ON EFFECTIVE DATES

(Sections 809.10 to 812.50)

Section 1d, Article II of the Ohio Constitution states that "[l]aws providing for tax levies [and] appropriations for the current expenses of the state government and state institutions *** shall go into immediate effect," and "shall not be subject to the referendum." R.C. 1.471 implements this provision with respect to appropriations, providing that a codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if (1) it is an appropriation for current expenses, (2) it is an earmarking of the whole or part of an appropriation for current expenses, or (3) its implementation

[345] "Private business use" means use, directly or indirectly, in a trade or business carried on by any private person other than use as a member of, and on the same basis as, the general public. Any activity carried on by a private person who is not a natural person is presumed to be a trade or business. "Private person" means any natural person or any artificial person, including a corporation, partnership, limited liability company, trust, or other entity, including the United States or any agency or instrumentality of the United States, but excluding any state, territory, or possession of the United States, the District of Columbia, or any political subdivision thereof that is referred to as a "State or local governmental unit" in Treasury Regulation § 1.103-1(a) and any person that is acting solely and directly as an officer or employee of or on behalf of any such governmental unit.

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
Reported, H. Finance & Appropriations	04-28-09
Passed House (53-45)	04-29-09

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